C. B. II No. 276

LOK SABHA

THE COMPANIES (AMENDMENT) BILL, 1972

(Report of the Joint Committee)

[Presented on the 15th November, 1973]

LOK SABHA SECRETARIAT
NEW DELHI
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LOK SABHA SECRETARIAT

CORRIGENDA
TO
THE REPORT OF THE JOINT COMMITTEE ON
THE COMPANIES (AMENDMENT) BILL, 1972.

Page (i),
(i) line 14 for "41" read "37"
(ii) after line 14, insert -

"APPENDIX IV:

List of Associations, organisations, etc., who give evidence before the Joint Committee .. .. 41"

Page (vii), line 23 from bottom for "1966" read "1956"
Page (viii), line 3, for "3", read "8"
Page (xii), line 19 from bottom, for "deterimental" read "detrimental"
Page (xii) lines 4 & 3 from bottom for "dividents" read "dividends"
Page (xiii), line 10 from bottom, for "it" read "if"
Page (xiv), line 5 from bottom for "Cnommittee" read "Committee"
Page (xvi), line 11, for "Govrnment" read "Government"
Page (xix), line 8 from bottom, for "bureaucrafts" read "bureaucrats"
Page (xxii),
(i) line 20 from bottom, after "may" insert "be"
(ii) line 1 from bottom, for "1972" read "1973"
Page 2, line 21 for "fafter" read "after"
Page 3, marginal heading to clause 4, for "Ammendment" read "Amendment"
Page 4, line 7, for "proceding" read "proceeding"
Page 5, line 17, for "aurnover" read "turnover"
Page 10,
(i) line 31, for "director" read "directors"
(ii) line 34, for "be" read "by"
(iii) line 35, for "ransferred" read "transferred"
Page 12, line 27, for "with" read "within"

...2/-

Page 13, line 22, for "whenever" read "wherever"
Page 14, marginal heading, for "share" read "shares"
Page 16, line 41, for "share" read "shall"
Page 17, line 42, delete "an"
Page 20, line 16, for "commenecment" read "commencement"
Page 24, line 14, for "previosuly" read "previously"
Page 26, line 25, for "porviso" read "proviso"
Page 28, lines 1 and 6, for "buisness" read "business"
Page 42, line 19 for "Industrial" read "Industries"
Page 44, line 26, for "Surus" read "Susrut"
Page 47, line 12 from bottom, for "Monday"
read "Mody"
Page 86,
(i) line 9 for "Direction 5"
read "Direction 58"
(ii) line 13, for "12.40 hours
read "11.55 hours"
Page 93, last line, for "Directors" read "Directions"
Page 125, line 21-22, for "Corporte" read "Corporate"
Page 126, line 16, for "Sheiff" read "Sheriff"

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JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972.

COMPOSITION OF THE COMMITTEE

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Somnath Chatterjee
6. Shri Tridib Chaudhuri
7. Shri Kehmchandbhai Chavda
8. Shri C. Chittibabu
9. Shri S. R. Damani
10. Shri Madhu Dandavate
11. Shri G. C. Dixit
12. Shrimati V. Jeyalakshmi
13. Shri Popatlal M. Joshi
14. Shri Ramachandran Kadannappalli
15. Shri Baburao Jangluji Kale
16. Shri Jagannath Mishra
17. Shri Surendra Mohanty
*18. Shri Muhammed Sheriff
19. Shri Priya Ranjan Das Munsi
20. Shri D. K. Panda
21. Shri Narsingh Narain Pandey
22. Shri H. M. Patel
23. Shri S. B .P. Pattabhai Rama Rao
24. Shri R. Balakrishna Pillai
25. Shri Jagannath Rao
26. Shri Bishwanath Roy
27. Shri P. M. Sayeed
28. Shri R. R. Sharma
29. Shri P. Ranganath Shenoy
30. Shri R. K. Sinha.

*Appointed on the 5th December, 1972 *vide* Shri C. C. Desai died.

Rajya Sabha

31. Shri Salil Kumar Ganguli
32. Shri B. T. Kulkarni
33. Shri Harsh Deo Malaviya
34. Shri S. S. Mariswamy
35. Shri Jagdish Prasad Mathur
36. Shri M. K. Mohta
37. Shrimati Saraswati Pradhan
38. Shri D. D. Puri
39. Shri K. Srinivasa Rao
40. Shri S. G. Sardesai
41. Shri Himmat Sinh
42. Shri Habib Tanvir
*43. Shri H. M. Trivedi
44. Shri Mahavir Tyagi
45. Dr. M. R. Vyas.

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*
2. Shri N. L. Vaidyanathan—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri K. K. Ray—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*

SECRETARIAT

1. Shri P. K. Patnaik—*Joint Secretary.*
2. Shri H. G. Paranjpe—*Deputy Secretary.*

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*Appointed on the 29th March, 1973 *vice* Shri K. V. Raghunatha Reddy resigned.

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* further to amend the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969, was referred, having been authorised to submit the report on their behalf, present their report with the Bill, as amended by the Committee annexed thereto.

2. The Bill was introduced in Lok Sabha on the 11th August, 1972. The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri K. V. Raghunatha Reddy, the then Minister of Company Affairs on the 23rd August, 1972 and was adopted (Appendix I).

3. Rajya Sabha concurred in the said motion on the 26th August, 1972 (Appendix II).

4. The massage from Rajya Sabha was reported to Lok Sabha on the 29th August, 1972.

5. The Committee held 38 sittings in all.

6. The first sitting of the Committee was held on the 2nd September, 1972 to draw up their future programme of work. The Committee decided to invite memoranda from various Chambers of Commerce and Industry, associations, organisations, individuals, etc., interested in the subject matter of the Bill, and also decided to issue a Press Communique in this behalf fixing the 20th September, 1972 as the last date for receipt of memoranda. The Chairman was authorised to decide, after examining the memoranda received from various associations, organisations, etc., as to which of them should be called upon to give oral evidence before the Committee.

7. 130 memoranda on the Bill were received by the Committee from various associations, organisations, individuals, etc. (*vide* list at Appendix III).

8. At their second sitting held on the 27th September, 1972, the then Minister of Company Affairs (Shri K. V. Raghunatha Reddy) explained in detail the implications of the various provisions of the Bill. At this sitting, the Committee also decided to extend the time for the submission of memoranda upto the 10th October, 1972 in view of the requests from several associations, organisations, etc.

9. At their 13th sitting held on the 13th December, 1972, the Committee decided to hold their sittings at Calcutta and Bombay from the 1st to 4th January, 1973 and 22nd to 24th January, 1973 repectively to

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*Published in the Gazette of India Extraordinary Part II, Section 2, dated the 11th August, 1972.

hear oral evidence of the representatives of various assiciations, organisations, etc.

10. The Committee heard evidence given by the representatives of various Chambers of Commerce and Industry, associations, organisations, etc. at their sittings held at Delhi on the 28th and 29th September, 1972; from 23rd to 28th October and from 11th to 13th December, 1972, at Calcutta from the 1st to 4th January, 1973, at Bombay from the 22nd to 24th January, 1973 and at Madras from the 13th to 16th June, 1973 (*vide* list at Appendix IV).

11. The report of the Committee was to be presented to the House by the 13th November, 1972. The Committee were granted four extensions of time—the first extension on the 13th November, 1972 upto the 23rd February, 1973, the second extension on the 22nd February, 1973 upto the 30th July, 1973, the third extension on the 27th July, 1973 upto the 5th September, 1973 and the fourth extension on the 30th August, 1973 upto the 16th November, 1973.

12. At their twenty-first sitting held on the 7th February, 1973, the Committee decided that (i) the evidence given before them might be laid on the Table of both the Houses; and (ii) two copies each of the memoranda received by the Committee from various associations, organisations, etc. might be placed in the Parliament Library after the presentation of the Report, for reference by the Members of Parliament.

13. At their sitting held on the 10th July, 1973, the Committee decided to take up general discussion on each clause of the Bill prior to taking up clause-by-clause consideration of the Bill. Accordingly, the Committee at their sittings held from the 10th to 13th and 21st July, 1973, held a general discussion on the amendments proposed in relation to the various clauses of the Bill. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs also explained his tentative reactions with regard to the various suggestions made by the Members of the Committee in relation to the various clauses of the Bill.

14. The Committee considered the Bill clause-by-clause at their sittings held from the 15th to 18th October, 1973.

15. The Committee considered and adopted the Report on the 8th November, 1973.

16. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

17. *Clause* 2—[*Sub-clause* (*i*)]:—

(a) The sub-clause seeks to insert a new clause (18A) in section 2 of the principal Act defining the meaning of expression "group". The Committee feel that in order to achieve the object of the proposed provision, the definition should be made more comprehensive so that the cases where two or more individuals, associations, firms or bodies corporate, or any combination thereof, are in a position to exercise control could also be covered. The definition has been amended accordingly.

(b) In view of the insertion of the definition of "group", the Committee feel that it is advisable to provide for a forum for the decision on any doubt or dispute as to whether two or more individuals, associations, firms or bodies corporate or any combination thereof do or do not constitute a "group". Accordingly, an explanation to the definition of "group" has been added.

Sub-clause (iii).—The definition of the expression "Secretary" has been modified to make it harmonious with the provisions of clause 30 (originally clause 29) of the Bill (new section 383A). Other amendments made are of consequential nature.

18. *Clause* 3.—By clause 3, two new sections were sought to be introduced by the Bill namely, sections 4A and 4B. Section 4B contains a wider definition of the expression "same management". Since that expression has already been defined in sub-section (1B) of section 370 and the definition of "same management", as contained in sub-section (1B) of section 370 of the Companies Act, 1956, has been adopted in the Monopolies and Restrictive Trade Practices Act, 1969, the Bill sought to omit sub-section (1B) from section 370 and also sought to make a consequential amendment in the Monopolies and Restrictive Trade Practices Act, 1969, so that the wider definition of "same management", as contained in section 4B, may be available for the determination of inter-connection of companies to which the Monopolies and Restrictive Trade Practices Act, 1969 applies.

The Committee feel that the new definition of "same management" is so wide that it is likely to restrict the operations of small and medium-sized companies and is also likely to retard formation of capital and impede inter-corporate investments which are needed for the sturdy growth of the corporate sector. The Committee, therefore, feel that, so far as the definition contained in sub-section (1B) of section 370 is concerned, that definition should be retained so that that definition may continue to apply to the companies governed by the Companies Act, 1966. But so far as the companies governed by the Monopolies and Restrictive Trade Practices Act, 1969, are concerned, they should be governed by the wider definition of "same management" and, consequently, the wider definition of "same management", as contained in section 4B, should be transferred to the Monopolies and Restrictive Trade Practices Act, 1969. New section 4B has, therefore, been omitted from clause 3 and clause 43 of the Bill (originally clause 39) has been amended to include therein the wider definition of "same management".

19. *New Clause* 4.—In view of the proposal to transfer to the Company Law Board some of the powers which were so long exercised by the Courts, the Committee feel that the strength of the Company Law Board might be raised to nine so that the matters in relation to which the powers of the court are proposed to be transferred to the Company Law Board might be disposed of expeditiously by one or more Benches formed by the Board. In order to enable the Company Law Board to discharge its quasi-judicial functions it is also necessary to clothe it with the powers of a civil court to enforce the attendance of witnesses and production of documents, etc., and also to provide for punishment for its contempt. The Committee also recommend that it should be ensured that persons having adequate legal qualifications and experience are appointed as members of the Company Law Board to discharge its quasi-judicial powers.

New clause 4 has, accordingly, been inserted by the Committee to provide for the above matters.

20. *Clauses* 5, 9, 13 *and* 14 [*Original clauses* 4, 3, 11 *and* 12].—These clauses seek to transfer to the Central Government the powers to decide certain matters which are at present decided by the Courts. A point was raised before the Joint Committee that, since these powers are of a quasi-judicial nature, they should not be exercised by the Central Government. The Committee, therefore, feel that instead of conferring these powers on the Central Government, these powers should be conferred by the statute itself on the Company Law Board to enable it to exercise such powers quasi-judicially.

These clauses have been amended accordingly.

21. *Clause* 6 [*Original clause* 5]—(*a*) *Sub-clause* (*i*).—According to existing section 43A(1), where one or more bodies corporate hold not less than twenty-five per cent of the paid-up share capital of a private company, such private company becomes a public company. The sub-clause, as introduced, proposes to reduce the said percentage from twenty-five to ten. The Committee feel that the reduction of the percentage of share-holding to ten is likely to hamper the formation and growth of private limited companies in the small scale sector, especially in the rural areas, and, therefore, the provisions of section 43A(1) should not be disturbed. The Committee further feel that private companies which are less capital intensive but have a considerable consumer and employee interest because of its high turnover, should be brought within the ambit of deemed public companies irrespective of its paid-up share capital. The Committee, therefore, recommend that a private company, irrespective of its paid up share capital, shall become a public company if it has an average annual turnover of one crore rupees or more. The Committee have, therefore, inserted new sub-section (1A) after sub-section (1) of section 43A, to achieve these objectives.

(*b*) *Sub-clause* (*ii*).—The Bill, as originally introduced, sought to provide that a private company holding ten per cent. or more of the paid-up share capital of a public company will be deemed to be a public company. The Committee feel that the fixation of the percentage at ten is likely to hamper the growth and formation of capital of public companies. The Committee, therefore, recommend that the percentage be increased to twenty-five. The sub-clause has been amended accordingly. A consequential change in the number of the sub-section has been made.

(*c*) *Sub-clause* (*iii*).—The Committee feel that a private company in which the entire share capital is held by another private company need not become a public company. The sub-clause has, therefore, been omitted in order that the exemptions under section 43A as it stands may continue to be in force.

(*d*) *Sub-clause* (*iv*) [*Renumbered as sub-clause* (*iii*)].—The amendments are of a consequential nature. The Committee feel that private companies which do not have an average annual turnover of rupees one crore or more should file with the Registrar a certificate to that effect.

(*e*) *New sub-clause* (*iv*).—The Committee feel that every private company having share capital should file with the Registrar, alongwith

the annual return, a certificate signed by both the signatories of the annual return, stating that since the date of the annual general meeting with reference to which the last annual return was submitted, or in the case of a first return, since the date of the incorporation of the private company it did not hold twenty-five per cent or more of the paid-up share capital of one or more public companies.

A new sub-section (9) has been added to Section 43A accordingly.

(*f*) The Committee have inserted an 'Explanation" including therein definitions of the expressions "relevant period" and "turn-over" so that there may not be any difficulty with regard to the interpretation of those expressions.

22. *Clause* 7 [*Original clause* 6].—This clause seeks to insert new sections 58A and 58B.

(i) Sub-section (2) of the proposed section 58A provides that no company shall invite or accept any deposit except after the publication of an advertisement specifying therein the financial condition, management structure and other particulars of the company. The Committee feel that such advertisement should not be necessary for the acceptance of deposit from the directors or share-holders of the company. It would be enough if acceptance by a company of deposits is made in accordance with the rules made by the Central Government after consultation with the Reserve Bank of India. So far as invitation by a company of deposits from the public is concerned, such invitation should, however, be made in accordance with the rules made by the Central Government under sub-section (1) and such invitation shall not be made except after the publication in the prescribed form and in the prescribed manner of an advertisement including therein the financial position of the company.

(ii) The Committee feel that the deposits which have so far been accepted by the companies may have been either utilised by them or invested in long-term securities and, as such, the companies may not be in a position to refund the deposits within thirty days from the commencement of the Amending Act. Consequently, if the provisions as contained in the Bill introduced in Lok Sabha are maintained, most of the companies may be forced to take loans from nationalised or other banks for the repayment of the deposits and such loans may put undue strain on the financial position of the companies. The Committee, therefore, feel that the provisions with regard to refund of deposits should be liberalised and, accordingly, the Committee recommend that—

(a) pre-Amending Act deposits, which were accepted by companies in accordance with the directions made by the Reserve Bank under Chapter IIIB of the Reserve Bank of India Act, 1934, should be allowed to continue in accordance with the terms of such deposit. But no such deposit shall be renewed, after the expiry of the term thereof, unless the deposit is such that it could have been accepted by the company if the rules made by the Central Government under sub-section (1) were in force at the time when the deposit was accepted by the company.

(b) pre-Amending Act deposits, which were accepted by companies in contravention of the aforesaid directions made by the Reserve Bank, should, however, be refunded in accordance with the terms of such deposit. But where such deposits are not refundable earlier, they should be refunded in a phased manner, namely, one-third of such deposit should be refunded before the 1st day of April, 1974; another one-third should be refunded before the 1st day of April, 1975 and the balance should be refunded before the 1st day of April, 1976. Such refund will, however, be without prejudice to any action which may be taken under the Reserve Bank of India Act, 1934, for the acceptance of the deposit in contravention of directions made by the Reserve Bank of India.

(c) post-Amending Act deposits, which are accepted in contravention of the rules made by the Central Government under sub-section (1), should be refunded within thirty days from the date of acceptance of such deposits or within such further time, not exceeding thirty days, as the Central Government may, on sufficient cause being shown by the company, allow.

(iii) The Committee feel that, where there has been an omission or failure to refund any deposit in accordance with the provisions indicated above, a fine should be imposed on the company for such contravention and the amount of the fine shall not be less than twice of the amount in relation to which the refund has not been made and out of the fine, if realised, an amount equal to the amount of the deposit, which has not been refunded, will be paid by the court trying the offence to the depositor, and, on such payment, the liability of the company to make the refund shall stand discharged. Further, where there has been an omission or failure to make any refund of the deposit in accordance with the provisions indicated above, every officer of the company who is knowingly guilty of the omission or failure or who has knowingly or wilfully authorised such omission or failure shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(iv) The Committee feel that the provisions of the Companies Act, 1956 relating to prospectus should, as far as practicable, apply to an advertisement referred to in section 58A. Accordingly, section 58B, as sought to be introduced by the Bill, has been redrafted.

23. *New clause* 10.—The Committee feel that the distinction made by the existing Act between the preference shares issued by a public company before and after the commencement of the Companies Act, 1956, should be removed and all the preference shares should be placed on the same footing, so that no extra voting right is enjoyed by the preference shares which are issued before the 1st day of April, 1956. Accordingly, section 90 of the principal Act has been substituted by a new section.

24. *Clause* 12 [*Original clause* 10].—The clause introduces new sections 108A to 108H.

I. *New section* 108*A*.—The amendments made in this section are of a consequential nature.

II. *New section* 108B.—(i) This section stipulates restriction on the transfer of shares. The Committee feel that provisions of section 108B should not affect the liquidity of shares and the period of restriction on the transfer of shares might be limited to sixty days and where any transfer to the proposed transferee is not approved by the Central Government, it would be open to the company to give a fresh intimation with a proposal to transfer the share to any other transferee. Sub-section (2) has been amended accordingly.

(ii) Amendment in sub-section (3) of section 108B is of a clarificatory nature.

(iii) The Committee feel that the payment of market value of shares should be made forthwith where there is no dispute as to the market value or the market value has been mutually agreed upon. But where there is a dispute as to the market value, the value as estimated, by the Central Government or the corporation shall be paid forthwith and the balance may be paid within thirty days from the date of determination of the market value by the court. Accordingly, a new sub-section (4) has been inserted in section 108B.

(iv) The Committee feel that since section 108B provides for restriction on the transfer of shares, it is not necessary to make the acquirer punishable. Clause (c) of sub-section (6) of section 108B has, therefore, been omitted.

Other amendments in this section are of drafting nature.

III. *New section* 108C.—Section 108C stipulates restriction on the transfer of shares of foreign bodies corporate having an established place of business in India in cases where holding of shares is ten per cent. or more of the nominal share capital of the foreign company concerned, except with the previous approval of the Central Government. The Committee feel that the approval of transfer of shares should not be refused unless it is prejudicial to the public interest. The Committee also feel that the scope of the section should be limited to transfer of holdings of shares by bodies corporate and should not cover transfers of holding by individuals.

Clause (ii) of sub-section (1) has been amended accordingly. Other amendments made are of verbal nature.

IV. *New section* 108D.—This section freezes the voting right in respect of the shares or block of shares in relation to which any direction has been made by the Central Government. The Committee feel that the voting rights should not be frozen for all time to come.

Accordingly, sub-section (4) has been added to section 108D which provides that, on the re-transfer of the shares to the seller, he shall have voting and other rights in respect of the shares provided that he has refunded the purchase money to the purchaser.

V. *New section* 108E.—The Committee feel that if the approval of the Central Government under section 108A or 108C is not granted within sixty days, it should be presumed to have been given.

A new section 108E has been inserted accordingly.

VI. *New section* 108*H*.—The Committee considers it advisable to confine the operation of the scope of proposed sections 108A etc. to companies covered by Part A of Chapter III of the Monopolies and Restrictive Trade Practices Act, 1969 in view of their particular bearing upon the aspect of concentration of economic power. Section 108H has been substituted to give effect to this view.

25. *Clause* 15 [*Original clause* 13].—A point was raised in the Joint Committee that, in view of the provisions of section 187C, the companies may be dragged into court for the determination of the person to whom the dividend is to be paid; and, as a result of such litigation, payment of dividends may be indefinitely delayed. The Committee feel that with a view to allaying these apprehensions, it might be clarified that the obligation of the companies to pay dividends will become discharged if dividends are paid to the registered shareholders in accordance with the provisions of section 206.

A new sub-section (7) to section 187C has been added accordingly.

26. *Clause* 17 [*Original clause* 15].—This clause seeks to insert new section 204A which provides for imposition of restrictions on persons who had functioned in the distant past as managing agents or secretaries and treasurers to any office of profit in the company. The Committee are of the opinion that such restrictions should be imposed only on those persons who had functioned as managing agents or secretaries and treasurers after the 15th August, 1960.

The clause has been amended accordingly.

27. *New clause* 18.—Sub-section (3) of new section 205A imposes certain restrictions on the declaration of dividends from accumulated profits. A point was raised in the Joint Committee that this provision may encourage the distribution of the entire profits for a year by way of dividends and such distribution may be deterimental to the interests of the company as well as of its shareholders. The Committee feel that a certain percentage of the profits, not exceeding ten, may compulsorily be transferred to the reserves which would be both beneficial to the company and the shareholders because such reserves would be available to the company for ploughing them back for the expansion of the activities of the company and would also be available for declaration of dividends in a lean year, subject to the rules as may be made by the Central Government as envisaged in the proposed section. The clause provides for the above matters. A proviso has been added to make it clear that voluntary transfer of a higher percentage of profits to the reserves are not prohibited by the proposed sub-section but such transfer will have to be made in accordance with the rules made by the Central Government.

28. *Clause* 19 [*Original clause* 16].—This clause, as introduced, required that a company should transfer the entire amount of the dividents to a special dividend account within seven days from the date of declaration of the dividend. It was pointed out to the Joint Committee that this provision was very harsh and might lead to various

difficulties. The Committee was also informed that since, under the Act, the companies had forty-two days' time to pay the dividends, the provision requiring them to deposit the entire amount of dividends to a special account within seven days was an unreasonable one. The Committee, therefore, feel that only the amount which remains unpaid after the expiry of forty-two days from the date of declaration of dividends may be transferred to the special dividend account and the interest accruing on such amount should enure to the benefit of the shareholders to whom the dividends remain unpaid and may be paid to them in proportion to the amount due to them.

The clause has been amended accordingly.

29. *Clauses* 21 *and* 22 [*Original clause* 18 *and* 19].—The amendments made are of drafting and verbal nature.

30. *Clause* 23 [*Original clause* 20].—(i) The Committee are of the opinion that in view of the proposed ceiling on the number of audits to be undertaken by an auditor, it is necessary that every company while appointing an auditor under sub-section (1) of section 224 shall obtain a certificate from the auditor to the effect that the appointment or re-appointment, if made will be in accordance with the limits specified by sub-sections (1B) and (1C).

A proviso to sub-section (1) of section 224 has been added accordingly.

(ii) New sub-section (1B) proposed to be inserted in section 224 provides for the rotation of audit work amongst the auditors. This was done with a view to bringing about a dissociation of auditors from groups of companies so that they may not have any temptation to shield the shortcomings of the managements from the shareholders. It was also done with a view to achieving a more equitable distribution of audit work amongst the different auditors so that the younger sections of the audit profession may have better chances of advancement in the profession.

The evidence which was adduced before the Joint Committee, however, established that the system of rotation might be evaded very easily and that such rotation would not serve the purpose for which the provisions were conceived.

The Committee have considered this matter in all its aspects and feel that a ceiling on the number of audits would achieve the objects which the Government had in view when the Bill was introduced. Since companies are of different sizes, the ceiling will be meaningful only it it is fixed in such a way that both the number and the size of the companies are taken into account in determining the ceiling. The Committee are of the view that a ceiling at twenty companies might be put; such a ceiling will sufficiently serve to break the evil of continued association of chartered accountants practising as auditors, singly or in firms, with groups of companies, as such groups generally consist o fmuch more than 20 companies. Out of these 20 companies, not more than ten should be companies having paid-up share capital of Rs. 25 lakhs or more. In the case of firms of auditors, the Committee feel that the ceiling may be

20 per partner of the firm so that firms may not get an advantage over the individual auditors. The fixation of the number of audits per partner of the firm may encourage large firms to retain their advantage of size by taking in more partners. Thus, opportunities may grow for the members of the accountancy profession of becoming partners of auditing firms. Where, however, any partner of a firm of auditors is also a partner in any other firm or firms of auditors, the overall ceiling in relation to such partner will also be 20, so that he may not be able to get an extra advantage by becoming a partner in more than one firm of auditors and thereby defeat the purpose of the provisions contemplated in the Bill. The clause has been amended accordingly.

31. *Clause* 24 [*Original clause* 21].—The clause seeks to insert new section 224A providing that in the case of a company in which not less than twenty-five per cent of the subscribed share capital is held by a public financial institution or a nationalised bank or a general insurance company, or in any combination thereof, the appointment or re-appointment of an auditor shall have no effect unless approved by the Central Government. The Committee feel that the Government should not be overburdened with the responsibility for giving approvals. The Committee, therefore, feel that in such cases the appointment or re-appointment of an auditor should be made by the company by a special resolution.

The clause has been amended accordingly.

32. *Clause* 25 [*Original clause* 22].—By this clause, a proviso to sub-section (1) of section 233B is sought to be added which provides that if the Central Government is of opinion that sufficient number of Cost Accountants within the meaning of the Cost and Works Accountants Act, 1959 are in practice and are available, for conducting the audit of cost accounts, the Government may by notification in the Official Gazette direct that on and from such date as may be specified, no Chartered Accountant within the meaning of Chartered Accountants Act, 1949 shall conduct the audit of cost accounts of any company.

The Committee feel that cost audit should be conducted only by qualified cost accountants. Therefore, the proposed amendment could be made more positive by providing that if the Central Government is of opinion that sufficient number of cost accountants are not available. the Government may, by notification, direct that for a specified period of time, chartered accountants who fulfil the prescribed qualification may also conduct the audit of cost accounts of any company.

The proviso has been amended accordingly.

33. *Clause* 26 [*Original clause* 23].—The amendment is of a clarificatory nature.

34. *Clause* 27 [*Original clause* 24].—This clause seeks to insert new section 294AA empowering the Central Government to prohibit the appointment of sole selling agents in certain cases. The Cnommittee feel that the prohibition may be limited, to a period to be fixed by the Central Government so that on the expiry of the specified period, it may be open to the Central Government to review the whole matter.

Sub-section (1) has been amended accordingly.

35. *Clause* 28 [*Original clause* 25].—By this clause, a proviso to sub-section (1) of section 297 is being added to provide that in the case of companies having paid-up share capital of not less than rupees twenty-five lakhs, no contract in which the directors are interested shall be entered into without the approval of the Central Government. The Committee feel that if such a provision is made, it may cause avoidable inconvenience to many companies, particularly the small and medium-sized companies and incidentally increase unduly the work-load for the Government in having to deal with a large number of applications for its approval. The limit has, therefore, been increased to rupees one crore.

The proviso has been amended accordingly.

36. *Clause* 29 [*Original clause* 26].—The amendments made are of a drafting nature.

37. *Original clauses* 27 *and* 28.—These clauses have been omitted consequent on the changes made in clause 3 of the Bill.

38. *Clause* 30 [*Original clause* 29].—The amendments made are of a drafting nature.

39. *Clause* 33 [*Original clause* 32].—The Central Government is empowered to notify that the provisions of the Act, as may be specified by it, shall apply to foreign companies in which one or more citizens of India hold a certain percentage of shares. The Committee feel that, in order to enable the Central Government to know the shareholdings of the Indian citizens, it is necessary to require foreign companies to submit their annual returns to the Registrar of Companies. The provisions of section 209A and sections 234 to 246 should be made applicable only to the Indian business of a foreign company.

The clause has been amended accordingly.

40. *Clause* 35 [*Original clause* 34].—The Committee feel that a ceiling with regard to audit work should also apply to Government companies.

The clause has been amended accordingly.

41. *Clause* 36 [*Original clause* 35].—The amendment is of a drafting nature.

42. *New clause* 37.—This clause has been inserted in order to confer upon the Company Law Board, powers to accord approval, etc., subject to conditions, and to prescribe fees in relation to approval, sanction consent, confirmation etc.

43. *New clauses* 39 *and* 40.—The Committee on Subordinate Legislation of both Houses of Parliament have approved a revised model clause for the laying, before Parliament, of rules, etc. made by the Central Government under Central Acts. These clauses have been inserted with a view to amending sub-section (3) of sections 641 and 642 of the Act with a view to bringing these sections in conformity with the revised model clause approved by the abovementioned Committees.

44. *New clause* 43.—This clause reproduces, with suitable modifications, new section 4B which was sought to be inserted by clause 3 of the Bill.

45. *Clause* 1.—According to the clause as introduced in the Lok Sabha, the amending Act would come into force on the date on which it is assented to by the President . Since the Bill envisages the framing of rules in consultation with the Reserve Bank of India in relation to certain matters, and also the prescription of fees etc., the Committee feel that it may not be possible for the Central Government to frame the rules before assent is given by the President to the Amending Act. In the circumstances, the Committee recommend that the Central Govrnment might be empowered to bring the Amending Act into force on such date as that Government may, by notification in the Official Gazette, appoint.

The clause has been amended accordingly.

46. *Enacting Formula.*—The amendment made is of a formal nature.

47. The Committee recommend that the Bill, as amended, be passed.

NEW DELHI;
November 15, 1973.
Kartika 24, 1895 (*Saka*).

NAWAL KISHORE SHARMA,
Chairman,
Joint Committee.

MINUTES OF DISSENT

I

I cannot fully agree with the report of the Joint Committee on the Companies (Amendment) Bill, 1972.

If any radical changes in the existing Companies Act are to be implemented effectively, it is absolutely necessary that structural changes are introduced in the Boards of Directors and managements of companies, so that these Boards can represent the interests of labour, consumers and shareholders.

It is also necessary to give proportional representation to the shareholders on the Boards of Directors, when a group of shareholders representing a voting power of at least ten per cent. demands such a representation.

Unfortunately the Companies (Amendment) Bill, 1972 and the report of the Joint Committee thereon have not even touched those sections of the Companies Act which deal with the constitution of the Boards of Directors and management.

To prevent the collusion between the auditors and the companies without depriving the companies of the expertised knowledge of experienced auditors, it is necessary to introduce a joint audit system providing for the appointment of one auditor from the panel of senior auditors and one from the panel of junior auditors; both the panels being drawn up by the Institute of Chartered Accountants of India.

The report of the Joint Committee has not accepted this important provision for the joint audit system.

If the Companies Act has to work satisfactorily the meaning of "public financial institutions" for the purposes of this Act has to be widened so as to bring into the ambit of "public financial institutions", General Insurance Corporation of India and Nationalised Banks also.

The Joint Committee report does not accept this important aspect regarding public financial institutions and I would not like to be a party to the exclusion of these two important institutions, from the ambit of "public financial institutions."

NEW DELHI;
November 8, 1973.

MADHU DANDAVATE

II

With deep disappointment in our minds we have to include our minutes of dissent as hereunder:—

The Bill is a halfhearted measure. Its provisions will hardly be able to meet adequately with cases of abuse or distortions in the system of

corporate management and holdings. Some of he rigorous provisions relating to take-over have been diluted during the discussions before the Joint Committee, while some provisions are directed towards further perpetuation of bureaucratic control. The jurisdiction of the Courts has been curtailed and more powers have been conferred on the Company Law Board, whose performance in the past has neither been able to rouse confidence in the minds of the people who had occassions to take recourse to the Board nor helped in the proper and speedy implemntation of the provisons of the Act. The reasons which have been put forward for curtailing court's jurisdiction are not only unconvincing, they are also not bonafide. Whereas proceedings before the Courts are open to public view, the bureaucratic procedure is clandestine. In any event the aggrieved party will come to court in the end. So excepting creating a fresh army of white collar bureaucrats no other results can be achieved although scope for corruption will increase. Bureaucratic control is also discernible from the provisions made for deposit of the unpaid amount of dividend with the Government. This will only lead to multiplicity of white collar Government employees for which there is no necessity at all No company has yet been known to have misappropriated money from dividend account. The provision of requiring scurity from share-holders is a ridiculous and irresponsible measure.

We feel that this kind of unimaginative legislation can hardly achieve proper formulation of law relating to corporate management or achieve desirable objectives. Too many restrictions requiring unnecessary secretarial work will not help formation and growth of the small companies, although there should be adequate provisions in the law to check mismanagement and to provide remedial measures in all cases of abuse which can be done by enacting certain procedure and enforcing strict observance of the same. There are still various lacunae in the company laws for the removal of which no attempt has been made in the present Bill. Till now the law does not provide for participation by the workers in the management of the companies. The Bill, as well as the Act, does not lay down any guidelines for the discharge of duties and functions by the directors who may be nominated by the Government in the Boards of various companies. Similarly, no attempt has been made to lay down the principles on which the Public Trustee has to exercise his powers and functions. Guidelines have not been laid down to indicate for what act or omission a director can be removed. Everything has been left to the caprices of an inefficient bureaucracy.

Too sweeping restrictions regarding deposits particularly from shareholders or directors will only hamper the proper functioning of the companies without any concommitant benefit. The provision in the Bill for obtaining permission from all stock exchanges to which applications have been made for dealing with shares before the shares are allotted by a company will create avoidable uncertainties.

While restrictions have been sought to be imposed on the appointment of secretary, consultant or advisor so far as the former managing agents, secretaries or treasurers or associates thereof are concerned, a time-limit of five years has been put. We do not find any rational explanation for such time-limit. The object seems to be to allow such persons to stage a come-back in the company's management after the period expires.

The provisions in the Bill for making over the unpaid amount of dividend to the Government and for making applications to the Government for recovery of the same are objectionable features of the Bill. More so, is the provision for payment of unpaid dividend to share-holders upon security being furnished. This will very seriously hit a large number of small share-holders. We do not find any reason why any amount of unpaid dividend, which has remained unpaid for no fault of the company, should be appropriated by the Government and should not be utilised by the company, which has generated the funds, for its own purposes. Moreover calling for security will virtually result in forfeiture of the amount to Government.

Although the original provision in the Bill with regard to the appointment of auditors has been considerably improved, we feel there was and still is scope for further improvement.

We feel that the matter of cost audit should be left with the cost accountants. The oft-repeated excuse either for avoiding cost audit or for cost audit to be made by chartered accountants because of inadequacy of the number of cost accountants does not seem to be borne out by the available statistics as to the present number of cost accountants in the country. Statutory requirements to carry out cost-audit in respect of manufacturing and producing concerns and proper implementation of such provision will do away largely with the manipulation in the costing of products of such concerns. It is unfortunate that the Bill does not make such cost audit compulsory.

Various offences have been created in the Bill which will be, what are known as absolute offences, that is, persons may be held guilty of offences without any mens-rea. On principle, we have been opposed to creation of such offences because in many cases such provisions will operate harshly and in most cases such provisions will be utilised for objectives other than those which seem to have prompted making of such provisions.

One particularly significant and objectionable provision of the Bill is the provision with regard to compulsory appointment of company secretaries. The provision is to be found in clause 29 of the amending Bill seeking to add a new section 383A to the Companies Act, 1956 which makes it obligatory to every company having a paid up capital of Rs. 25 Lakhs or more to employ a whole time company secretary having such qualification as may be prescribed.

In the notes on clause 29 of the draft Bill the Government has stated "*.....this provision will also help the growth of the profession of company secretaries and provide employment opportunities to qualified secretaries.*" This is significant. This discloses how the mind of the Government works. This reveals the reactionary, anti-people and blissfully ignorant nature of the pseudo-socialists heading the Government and their "Committed bureaucrafts". There are about 3,000 companies in India with paid-up capital of Rs. 25 Lakhs or more. By making it obligatory for such companies to employ a person having a diploma of a company secretary, special privilege and employment opportunities are being created in favour of individuals whose qualifications are not likely to contribute towards increase in production. Minimum six crores of rupees per annum would have to be spent on such unproductive personnel. It has been argued that since due to systematic encroachment by

the bureaucracy into the day to day administration of a company the management of a company has become complicated, it is necessary to have the assistance of these diploma holders. One does not see why this must be made obligatory. What for the Directors are there? What is the function of the Managing Director or the Manager? Who are the people those are doing this joo now? Why replace them? Why lawyers who with 10 years experience are considered to be competent enough to fill the highest judicial posts in the country or the charted accountants should be excluded from being employed as secretaries of a company? Why create an unproductive privileged class? The answer to all these are not far of seek. It has always been the policy of this Government to pursue two distinct policies (1) to preserve the monopolists; (2) to create side by side a bureaucratic capitalism which would serve as cloak and cover for monopoly capital and faithfully serve the interests of the monopolists from behind the screens. By treating all companies having paid-up capital of more than 25 lakhs (whose number to-day exceeds 3,000) the big and small companies have been put under the same hardship. It is not difficult to appreciate who would suffer in such a case. This would help the monopolists because lots of money which could have been spent on productive labour, would have to be spent by smaller companies on these secretaries. And there would come into existence a large group of white collar employees, the top bureaucrats of the private sector who with their assistants, stenographers, typists and peons will produce paper work only. A large part of the surplus if any would be swallowed by them. This is what is happening everywhere as a result of every Government policy. "Production" and "Productive labour" are mere slogans with this Government. Attempt is always to over centralise everything and thus create an ever-increasing army of superfluous bureaucrats.

We wonder whether ever and if so when will Government realise that the prospects of socialism increased national income, surpuls production and many other desirable things continue to recede with the growth in the number of unproductive workers.

SALIL KUMAR GANGULI

SOMNATH CHATTERJEE

NEW DELHI;
November 8, 1973

III

The stated object of this Bill is to deal with the problem of the growing concentration of economic power in the hands of private monopoly capital achieved through "take-over bids" and other means, as innumerable other malpratices and abuses of the private corporate sector which have assumed serious proportions.

In his opening remarks made before the Joint Committee, the then Minister for Company Affairs, Shri Raghunath Reddy, stated that the Government considered this Bill as one of the means of advancing towards a socialist society through the instrumentality of the law.

Judged by this criterion, it is necessary to make certain general observations on the Bill before considering the utility of its clauses in dealing with the problems posed by it.

The long experience of advanced capitalist countries, and even our own experience of the last decade and more has proved that legislation and administrative measures have failed to prevent the rapid growth of private monopoly concerns what to speak of controlling or restricting their activities. The Note circulated by the Department of Company Affairs explaining the inadequacy of existing legislation in dealing with this question frankly states that "it has been the experience that not a single case of take-over bids could be regulated or undesirable one prevented by the Government."

The root of this failure does not lie in faulty legislation or the sins of omission and commission of the administrative machinery.

The root lies in this that existing legislation has all along conceded the position that the growth of private monopoly in industry and finance is intrinsically conducive to the development of industrial efficiency and economy of scale, and as such, to the development of national production. The only objectionable aspect of the growth of such monopoly, it is argued, is that it often resorts to anti-social practices like extracting unconscionable profits from the people and so on. Naturally, what follows is that the task of anti-monopoly legislation is to prevent or curb such practices.

The fact of the matter, however, is that despite its tall claims, private monopoly capital operates, not as a force for increasing social production but for restricting it considering the available productive capacity of industry at any given moment.

Such has been the actual experience all over the capitalist world. To refer to two illustrations from our own experience of recent years, the textile and the sugar industries are there. Monopolists in some of our engineering industries have done the same. The question of the very partial utilisation of our existing industrial capacity is also there. All this goes to prove that the very basis of monopoly profits, not an aberration, is the restriction and not the expansion of production.

Considering particularly the extremely acute crisis of production in our country for which private monopoly capital is dominantly responsible, it is our opinion that Indian monopoly concerns must be taken over by the Government without further delay. Amended legislation will not solve the problem.

Coming to the question of the abuses and malpractices of the private corporate sector as a whole, including private limited companies, the concern shown by the relevant clauses of the Bill is for the protection of the interest of small and scattered shareholders of companies, the small investors ,often referred to as the minority shareholders. The question of depositors entrusting their hard earned savings to joint stock companies is also dealt with. Such shareholders and depositors are no doubt at the mercy of the dominant owners of companies, and being helpless in protecting their interests against the latter, are generally cheated by them and have to suffer serious losses.

Some clauses also deal with the interest of the Government and public financial institutions where they happen to be minority shareholders in joint stock companies in the private sector.

But a vital question is ignored by these provisions. It is the working class, whether in the public or private sectors of industry, that actually produces the products of industry. As such it has every right to participate effectively in the management of industry, both at shop level where production takes place and at the managerial level, i.e. in the boards of directors of industrial concerns or financial institutions. The existing multiplicity of trade unions is no argument for denying this right to workers. National Trade Union Centres in our country have put forward proposals for the election of workers' representatives by all the workers in each industry to its governing bodies.

At present workers not only have no right in respect of the general management of industry but are helpless even when employers defraud them of their dues in respect of their provident fund and gratuity.

Legalist arguments may be put forth that the Company Law is no place to make a provision for the exercise of this right for which separate legislation may be enacted. But this contention cannot be accepted by those who hold that the company law needs amendment in the interest of an advance towards a socialist society.

Workers' effective participation in the management of industry is, however, needed not only in defence of the interests of the working class.

It is also needed as a powerful instrument for exposing and rectifying the abuses and frauds practised by the monopolists and the private corporate sector as a whole whether in the sphere of financial transactions or in the actual technical processes of industry. No other agency is as much qualified to deal with such practices effectively and speedily.

This brings us to another serious shortcoming of this Bill, *viz.*, that it makes the bureaucracy the main instrument for dealing with the problem of private monopoly concentration and the abuses of the private corporate sector.

Some abuses may discovered and rectified by such adminisrative intervention, but it also involves making the existing company law, complicated and vast as it is, even more labyrinthian and complicated. That, as we know by experience, gives a handle to the powerful vested interests in industry to delay, if not to defeat, the ends of law by resorting to endless legal proceedings. That also gives them an opportunity for corrupting weak and careerist elements in the administrative services.

A glaring instance of this approach of the Bill is the manner in which it tries to tackle the problem of the concentration of audit. Putting a ceiling in the number of audits that an auditor can undertake is not an effective method for tackling the abuses arising from such concentration. The nationalisation of audit is the correct solution.

The provisions of this Bill have to be considered bearing these limitations in view. They will not solve the basic problems dealt with by the Bill. All the same to a certain extent they can help to bring to light the harmful practices of the monopolists and the private corporate sector and thereby enable Parliament and public opinion to deal with them more effectively. As such they can be helpful.

NEW DELHI;
November 11, 1972.

S. G. SARDESAI
D. K. PANDA

IV

It is painful to note that with their hard labour which the Joint Committee has put in, it could not achieve its aim to amend the Bill comprehensively in order to make it effective to check the cases of abuses inherent in the company system or distortion of the system which admittedly has assumed comparatively serious proportions.

Certain provisions of the Companies (Amendment) Bill are still ambiguous. Some of them have knowingly been included by the Government, in such a way that they will mar the growth, development and smooth working of companies both private and public, and such provisions are still in the Bill.

Providing for punishment for imprisonment in financial matters is also a point in which we could not agree.

It is also unfortunate that under clause 31 of the Bill, the Government has been given wide powers to appoint as many directors as it wants. The Government may appoint directors on political motives, who may be absolutely ignorant of the business and their official in-experience, they may completely ruin the business.

We regret and are unable to agree to the conclusions of the Joint Committee particularly on the following clauses for which we submit our following amendments:—

(i) *Clause* 2—omit "or has the object of exercising". occurring in clause (18A) of section 2.

(ii) *Clause* 2—for explanation substitute the following explanation:—

"*Explanation*—The Group shall be deemed to have control over a body corporate if (a) it holds more than 50 per cent of the voting power in the body corporate or (b) it controls the composition of the Board of Directors of such Body Corporate or majority of the Directors of such Body Corporate or the constituent and|or nominees of the group."

(iii) *Clause* 11—(New section 94A)—after sub-section (3), the following sub-section (4) may be added:—

"(4) Where any request has been made to the Central Government by a company under this section final orders must be passed within ninety days of the receipt of the application and if such orders are not passed the application shall be deemed to be allowed."

(iv) *Clause* 12—in sub-section (2) of section 108B after clause (b) add the following clause (c):

"(c) No orders shall be passed unless the company and also the person who intends to transfer any such share is given an opportunity of being heard."

(v) *Clause* 12—in clause (b) of sub-section (6) of section 108B for the words "imprisonment for a term which may extend to three years" substitute the words "fine which may extend to five thousand rupees."

(vi) *Clause* 12—in clause (b) of sub-section (2) of section 108C for the words "imprisonment for a term which may extend to three years" substitute the words "fine which may extend to five thousand rupees."

(vii) *Clause* 12—in clause (c) of sub-section (2) of section 108C omit the words "or with imprisonment for a term which may extend to three years, or with both".

(viii) *Clause* 12—in sub-section (1) of section 108F for the words "imprisonment for a term which may extend to five years and shall also be liable to fine" substitute the words "fine which may extend to five thousand rupees".

(ix) *Clause* 26—sub-section (3) of section 269 may be omitted.

(x) *Clause* 27.—in sub-section (2) of section 294AA the words "unless such appointment has been previously approved by the Central Government" may be deleted.

(xi) *Clause* 27—in sub-section (3) of section 294AA the words "and the approval of the Central Government" may be deleted.

(xii) *Clause* 31.—for sub-clause (i) substitute "(i) in sub-section (1), for the words 'not more than two persons' substitute 'not more than three persons' ".

(xiii) *Clause* 31.—for sub-clause (ii) substitute "(ii) in sub-section (2), for the words 'not more than two persons' substitute 'not more than three persons' ".

We are, therefore, of the opinion that the Companies (Amendment) Bill, 1972, as originally drafted and even after some amendments by the Joint Committee is a piece of legislation which gives wide powers to the Government not needed to control or regulate the abuses prevalent in the company affairs but for interference and regimentation. The powers vested in the Government are most likely to be misused in the interest of the party in power and will not serve the healthy growth of Industry.

NEW DELHI; R. R. SHARMA

November 12, 1973. JAGDISH PRASAD MATHUR

V

We regret we have to append this minute of dissent for inspite of the great amount of time, care and thought that has undoubtedly been given by the Committee to the Bill, and the modification that have, as a result, been recommended, the Bill remains unsatisfactory. It is no ones contention that there is no justification for the objectives which are sought to be achieved through this Bill. Quite obviously, it is essential at the same time to see that every possible care is taken to ensure that the remedies proposed are not worse than the disease. The cumulative effect of the Bill, even as now modified, is to confer upon the Government, which means the bureaucracy, widespread powers of interference in company management. These powers can only be exercised with the help of a large, efficient and honest administrative organisation, and having regard to our experience hitherto, there is scarcely any warrant for assuming that the Government will be able easily to organise an administrative

set up of this calibre. Moreover, such degree of bureaucratic interference will have a seriously dampening effect on private enterprise especially in the sphere of small and medium scale enterprise.

Having made these general observations, we would draw attention to some of the more important amendments and strongly commend that a further thought be given to them along lines indicated.

Definition of "Group" (*Clause* 2).—To begin with, we would urge that the concept of "group" has not been as precisely and clearly defined as is essential in this very important and basic context. In its application in the definition of "companies under the same management", it is possible that two companies which are entirely unconnected with each other may be deemed to be interconnected. The result will be that the restrictive provisions of the Monopolies and Restrictive Trade Practices Act would be attracted by both the companies and one of them which has no financial or other relationship with the other company will be unnecessarily subjected to the requirements of the Monopolies and Restrictive Trade Practices Act. It will be difficult for such companies to establish that they have a completely separate and different identity, in no way related to the other body corporate. It is not in our view enough to provide that if any question arises as to whether two or more individuals, association, firms or bodies corporate or any combination thereof constitute a group, the Company Law Board after giving reasonable opportunity to them of being heard will decide the same. However, this is not an altogether satisfactory solution. A definition should have precision and clarity so the individuals will be able to identify their position. Several alternative definitions were suggested by witnesses in the course of their evidence before the Joint Committee. It is a matter for regret that none of them received due considration.

Definition of "same management" (*Clause* 43).—The definition of two bodies corporate to be deemed under the same management is now incorporated as an amendment to section 2 (g) of the Monopolies and Restrictive Trade Practices Act. The definition of the term, however, is very vague and unintelligible. A definition should be precise and not give rise to unintended consequences.

Even though two bodies corporate have nothing in common their respective business are entirely different and they are controlled by two different persons, yet they would be regarded as being under the same management if by virtue of the definition of the group, the two persons controlling these two bodies corporate are said to belong to a group. This would be the effect of the words "any of the constituents of the same group".

Sub-clause (iv) of the Explanation also requires to be modified as it will completely distort the true position. It is not inconceivable that a person who is one of three directors in a small private company may also be one of the directors of a big company which may have a board of twelve persons. This person may be on the board of the big company because of his special qualifications in a particular line and the company considers his knowledge, experience and association with the company useful. However, in such a situation the two companies, one small and insignificant, and the other big and financially strong, will be deemed to be under the same management. The provisions of the Monopolies and Restrictive Trade Practices Act will then become operative and there will

be difficulties even for the small company if it wants to obtain an industrial licence or otherwise wants to expand its activities, because it will be deemed to be associated with a larger house. This is bound to be a disincentive to the entrepreneur and professional management, a result which is contrary to Government's proclaimed policy.

Private Company (*Clause* 6).—The clause provides that any private company with an average annual turnover of rupees one crore over a period of three years either preceding or following the date on which the Act comes into force shall, irrespective of its paid up capital, become a public company. It is submitted that it is necessary to have a definite relationship betweent the paid up capital and turnover, otherwise it will very badly hit several small scale industries which are able to achieve high turnover with low capital investment. Instances of such industries are cotton ginning and pressing, oil milling, manufacture of plastic goods, paper packaging, etc. No social purpose would be served by such a sweeping change.

It is, therefore, suggested that paid up capital must be one of the criteria, even though it may be fixed at a lower figure of only rupees fifteen lakhs, in order to safeguard the interests of small scale industries.

Acquisition of Shares (*Clause* 12).—The clause provides that no individual, group, constituent of a group, firm, body corporate or bodies corporate under the same management may acquire severally or jointly except with Government approval shares exceeding 25 per cent of the paid-up share capital of a company.

The concept of control of a company should be clearly defined in the Act. It is clearly desirable that one concept runs throughout the provisions of the Act. Some sections of the Act and the Bill contemplate one-third of the share-holding of a company's capital for the purpose of control while some other provisions like this clause envisage twenty-five per cent. of the shareholding in a company. The definition of "same management" contemplates one-third of the shares of a company. It may be pointed out that the Dutt Committee also adopted one-third shareholding as the criterion for control. It is only reasonable that the same criterion should be adopted here also.

Inspection (*Clause* 21).—The powers of inspection of the Registrar and the Inspecting officer have been considerably enlarged under this provisions. No doubt under the existing section 209 an inspection may be ordered without notice to the management. But this goes further. Any officer may ask for any information and make a report without indicating to the company or its officer the allegations and without limitation on the powers of the Inspectors. The company will not be given a copy of the report nor will it have any knowledge of what report is made against it. It is only reasonable that the elementary norms of judicial procedure and principles of natural justice should be followed in such matters. An opportunity should be given to the company to explain matters and the arbitrary powers given to the Inspector should be curtailed by suitable safeguards.

Appointment of Managing Director (*Clause* 26).—This clause provides that the Central Government shall not accord its approval for the appointment or re-appointment of a managing director or whole-time

director under sub-section (1) unless it is satisfied that it is in the interest of the company to have a managing director or a whole-time director. Such a provision is totally objectionable. It is not Government which is running the company and cannot possibly be in a position to know whether the company needs a managing director or not. The intention of the Government is clearly to go only into the merits of the person proposed to be appointed as their managing director and decide whether he is fit to be a managing director or not, if so, what remuneration should be paid to him. The provision should be modified and made definite and in line with the intention stated, in the Note on the clause, which states in terms that the objection of amending section 269 is to take power for Government to approve the appointment.

Appointment of auditors by special resolution (*Clause* 24).—The Companies (Amendment) Bill provides that where twenty-five per cent. or more of the subscribed capital of a company is held by financial institutions, banks, etc., the appointment of an auditor shall be made by a special resolution only.

It is not understood why the entire subscribed share capital is considered for the purpose of this section instead of capital having voting rights. In the passing of special resolution, the preference share-holders will have no say unless they have a voting right. The section, as worded at present, will only increase the work of the companies. The intention of the Government can only be amply carried out if the section is made applicable to cases where twenty-five per cent. of the share capital carrying voting rights is held by public financial institutions, etc.

Declaration of particulars of beneficial owner by a registered holder of shares (*Clause* 15).—The effect of the Section is two fold. Firstly, any registered holder of any share will be under obligation to make a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares. Secondly, any person who holds a beneficial interest in a share shall be under obligation to declare the nature of his interest and particulars of the person in whose name the shares stand registered in the books of the company. The notes on clauses state that section 187C makes it obilgatory for both the benamidar as well as the beneficial owner to make declarations. However, the wording of the section is such that it goes much beyond the stated intention of the Government. It will be clear that there is a definite relationship between a benamidar and a beneficial owner and where such relationship exists, in other words, where a benamidar holds a share for the benefit of the beneficial owner, both the benamidar as well as beneficial owner are aware of the situation. However, there must be any number of cases where no such relationship exists and the registered holder of a share simply does not know about the beneficial owner, although the beneficial owner is aware of the person in whose name the share stand.

A specific example will make the point clear. It is normal practice for share brokers and dealers in shares to buy and sell shares and, in the process, get some shares registered in their names. Now, supposing a

person had bought 10,000 shares of a certain company and having got them registered in his name, sold them away. Out of his buyers, those holding 9,900 shares got the shares registered in their respective names but one person who had bought 100 shares simply neglected to do so. It is well known that the method of trading on the stock exchanges is such that there is a long chain of transactions between brokers, dealers, etc., before the shares reach an ultimate buyer. The seller can thus never know who is the ultimate buyer and whether the latter has got the shares registered in his name or not. Since the section would apply to all cases in which the name of a person appears in the register of members of a company as on the date of commencement of the Act, it would appear that a transaction which may have been done several years ago would also come under the scope of this section. A person may not even know that some shares, which were standing in his name in the books of a company 10 or 15 or 20 years ago, are still continuing in his name because the buyer has neglected to get them transferred. In such case, it will be physically impossible for him to comply with the requirements of this section. On the other hand, the penalty, namely Rs. 1,000|- for every day during which the default continues, would amount to rupees one million if the default continues for three years solely through ignorance of the person concerned, whereas the value of the shares concerned may be only Rs. 1,000|-. Making it obligatory for a person to make a declaration when he is not in a position to know the facts is contrary to all principles of natural justice and the penalty prescribed is patently unjust.

The purpose of the Government can easily be served if the onus is placed squarely on the beneficial owner to make a declaration because the beneficial owner must know the name of the person in whose name the shares are registered. It may be provided that failure to do so will make him lose all claim to the shares in question. The registered holder should be made to make a declaration only if asked by the Company Law Board to do so, and then again only if he is in a position to give the desired information. As stated eariler, he may not even know about all the companies in whose books his name may appear as share holder and secondly, it may be impossible for him to know the name of the present beneficial holder of such shares. Even if he comes to know about the first part all he may be able to say is that he does not know the name of the beneficial owner and the Government would then be free to take such action in regard to the shares in question as it deems fit.

Unclaimed Dividends (Clause 19).—The Bill retains the proposal that dividends not claimed beyond six months shall be turned over to the central revenues, and that the reghtful claimants will, thereafter, have to approach Government, as and when they are in a position to claim the dividend due to them. It is difficult to understand why such a provision is considered to be necessary at all. There has been no complaint that dividends claimed even after a very long period of time had been refused by some stock companies. The money belongs to the company and the shareholders and not to the Government. We would urge a reconsideration—even at this stage because the new provision will result in considerable harassment and trouble to the smaller claimants, who are likely to preponderate for the obvious reason that governmental machinery normally functions with painful slowness, particularly where money has to be disbursed.

Deposits (*Clause* 7).—It is proposed that an advertisement specifying therein the financial condition, management structure and other particulars of the company should not be necessary for the acceptance of deposits from the directors or shareholders of the company and that it would be enough if acceptance by the company of deposits is made in accordance with the rules made by the Central Government after consultation with the Reserve Bank of India. This decision, however, has not been incorporated by a suitable amendment in sub-clause (2) of new section 58A. It should be specifically clarified.

Finally we would like to make a general reference to the final provisions in the Bill. There can be no two opinions but that punishment must be meted out for offences which are committed knowingly and wilfully. It seems to us desirable to spell out clearly the obligation and responsibilities of the company and its officers. They will not always be in a position to know whether they have violated the law when they do or refrain from doing a particular act. This will be the position for instance under the provisions of new sections 108A or 108B.

NEW DELHI;
November 14, 1973

H. M. PATEL
M. K. MOHTA
MAHAVIR TYAGI

Bill No. 72-B of 1972.

THE COMPANIES (AMENDMENT) BILL, 1972

(AS REPORTED BY THE JOINT COMMITTEE)

[*Words underlined or side-lined indicate the amendments suggested by the Committee; asterisks indicate omissions.*]

A

BILL

further to amend the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969.

BE it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Companies (Amendment) Act, 1973.

(*2*) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 2.

1 of 1956.

2. In the Companies Act, 1956 (hereinafter referred to as the principal Act), in section 2,—

(*i*) after clause (*18*), the following clause shall be inserted, namely:—

'(*18A*) "group" means a group of two or more individuals, associations, firms or bodies corporate, or any combination thereof, which exercises or is in a position to exercise, or has the object of exercising, control over any body corporate, firm or trust.

Explanation.—If any question arises as to whether two or more individuals, associations, firms or bodies corporate, or any combination thereof, constitute, or fall within, a "group", the

Company Law Board shall, after giving such individuals, associations, firms or bodies corporate, or any combination thereof, a reasonable opportunity of being heard, decide the same;';

(*ii*) to clause (*25*), the following *Explanations* shall be added, namely:—

'*Explanation I.*—For the purposes of this Act, references to "managing agent" shall be construed as references to any individual, firm, or body corporate who, or which, was, at any time before the 3rd day of April, 1970, the managing agent of any company.

Explanation II.—For the removal of doubts, it is hereby declared that notwithstanding anything contained in section 6 of the Companies (Amendment) Act, 1969, this clause shall remain, and shall be deemed always to have remained, in force;"; 17 of 1969.

(*iii*) in clause (*30*), on the expiry of six months from the commencement of the Companies (Amendment) Act, 1973,—

(*i*) in sub-clause (*a*), for the words "the secretaries and treasurers or the secretary", the words "or the secretaries and treasurers" shall be substituted;

(*ii*) sub-clause (*c*) shall be omitted;

(*iv*) in clause (*36*), after the words "other document", the words "inviting deposits from the public or" shall be inserted;

* * * * *

(*v*) *to clause* (*44*), the following *Explanations* shall be added, namely:—

'*Explanation I.*—For the purposes of this Act, references to "secretaries and treasurers" shall be construed as references to any firm or body corporate which was, at any time before the 3rd day of April, 1970, secretaries and treasurers of any company.

Explanation II.—For the removal of doubts, it is hereby declared that notwithstanding anything contained in section 6 of the Companies (Amendment) Act, 1969, this clause shall remain, and shall be deemed always to have remained, in force;'; 17 of 1969.

(*vi*) in clause (*45*),—

(*a*) for the words "any individual, firm or body corporate", the words "any individual possessing the prescribed qualifications," shall be substituted;

(*b*) for the words "purely ministerial or administrative duties;", the words "ministerial or administrative duties."*** shall be substituted.

Insertion of new section 4A.

3. After section 4 of the principal Act, the following section shall be inserted, namely:—

Public financial institutions.

"4A. (*1*) Each of the financial institutions specified in this subsection shall be regarded, for the purposes of this Act, as a public financial institution, namely:—

(*i*) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913; 7 of 1913.

(*ii*) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948; 15 of 1948.

(*iii*) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964; 18 of 1964.

(*iv*) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956; 31 of 1956.

(*v*) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963. 52 of 1963.

(*2*) Subject to the provisions of sub-section (*1*), the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution:

Provided that no institution shall be so specified unless—

(*i*) it has been established or constituted by or under any Central Act, or

(*ii*) not less than fifty-one per cent. of the paid-up share capital of such institution is held or controlled by the Central Government.".

* * * * *

Ammendment of Section 10E.

4. In section 10E of the principal Act,—

(*i*) in sub-section (*2*), for the word "five", the word "nine" shall be substituted;

(*ii*) after sub-section (*4A*), the following sub-sections shall be inserted, namely:—

"(*4B*) Without prejudice to the provisions of sub-section (*4A*), the Board, with the previous approval of the Central Government, may, by order in writing, form one or more Benches from among its members and authorise each such Bench to exercise and discharge such of the Board's powers and functions as may be specified in the order; and every order made or act done by a Bench in exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board.

(*4C*) Every Bench referred to in sub-section (*4B*) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908.

(*a*) discovery and inspection of documents or other material objects producible as evidence;

(*b*) enforcing the attendance of witnesses and requiring the deposit of their expenses;

(*c*) compelling the production of documents or other material objects producible as evidence and impounding the same;

(*d*) examining witnesses on oath;

(*e*) granting adjournments;

(*f*) reception of evidence on affidavits.

(*4D*) Every Bench shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898, and every proceeding before the Bench shall be deemed to be a judicial proceding within the meaning of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code.". 5 of 1898. 45 of 1860.

Amendment of sections 17, 18 and 19.

5. (*1*) In sections 17, 18 and 19 of the principal Act, for the word "Court", wherever it occurs, the words "Company Law Board" shall be substituted.

(*2*) Nothing contained in sub-section (*1*) shall apply to any proceedings under section 17, or under sub-section (*4*) of section 18, which is pending at the commencement of the Companies (Amendment) Act, 1973, before any Court or to any alteration of the memorandum of a company which has been confirmed, before such commencement, by any Court.

Amendment of section 43A.

6. In section 43A of the principal Act,—

(i) after sub-section (*1*), the following sub-sections shall be inserted, namely:—

"(*1A*) Without prejudice to the provisions of sub-section (*1*), where the average annual turnover of a private company, whether in existence at the commencement of the Companies (Amendment) Act, 1973, or incorporated thereafter, is not during the relevant period less than rupees one crore, the private company shall, irrespective of its paid-up share capital, become, on and from the expiry of a period of three months from the last day of the relevant period during which the private company had the said average annual turnover, a public company by virtue of this sub-section:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (*1*) of section 3 and the number of its members may be, or may at any time be reduced, below seven.

(*1B*) Where not less than twenty-five per cent of the paid-up share capital of a public company, having share capital, is held by a private company, the private company shall,—

(*a*) on and from the date on which the aforesaid percentage is first held by it after the commencement of the Companies (Amendment) Act, 1973, or

(*b*) where the aforesaid percentage has been first so held before the commencement of the Companies (Amend-

ment) Act, 1973, on and from the expiry of the period of three months from the date of such commencement, unless within that period the aforesaid percentage is reduced below twenty-five per cent, of the paid-up share capital of the public company.

become, by virtue of this sub-section, a public company, and thereupon all other provisions of this section shall apply thereto:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (*iii*) of sub-section (*1*) of section 3 and the number of its members may be, or may at any time be reduced, below seven.";

(*ii*) in sub-section (*8*), after clause (*b*), the following clause shall be inserted, namely:—

"(c) that the private company, irrespective of its paid-up share capital, did not have, during the relevant period, an average annual aurnover of rupees one crore or more;";

(*iii*) after sub-section (*8*), the following sub-section shall be inserted, namely:—

'(*9*) Every private company, having share capital, shall file with the Registrar along with the annual return a certificate signed by both the signatories of the return, stating that since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the private company, it did not hold twenty-five per cent. or more of the paid-up share capital of one or more public companies.

Explanation.—For the purposes of this section,—

(a) "relevant period" means the period of three consecutive financial years,—

(*i*) immediately preceding the commencement of the Companies (Amendment) Act, 1973, or

(*ii*) a part of which immediately preceded such commencement and the other part of which immediately, followed such commencement, or

(*iii*) immediately following such commencement or at any time thereafter;

(*b*) "turnover", of a company, means the aggregate value of the goods produced, supplied, distributed or controlled or services rendered, by the company during a financial year.'.

7. After section 58 of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 58A and 58B.

'58A. (*1*) The Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the Deposits not to be

Invited without issuing an advertisement.

manner in which and the conditions subject to which deposits may be invited or accepted by a company either from the public or from its members.

(2) No company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless—

(a) such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1), and

(b) an advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed.

(3) (a) Every deposit accepted by a company at any time before the commencement of the Companies (Amendment) Act, 1973, in accordance with the directions made by the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934, shall, unless renewed in accordance with clause (b), be repaid in accordance with the terms of such deposit. 2 of 1934.

(b) No deposit referred to in clause (a) shall be renewed by the company after the expiry of the term thereof unless the deposit is such that it could have been accepted if the rules made under sub-section (1) were in force at the time when the deposit was initially accepted by the company.

(c) Where before the commencement of the Companies (Amendment) Act, 1973 any deposit was received by a company in contravention of any direction made under Chapter IIIB of the Reserve Bank of India Act, 1934, repayment of such deposit shall be made in the manner specified in clause (d), and such repayment shall be without prejudice to any action that may be taken under the Reserve Bank of India Act, 1934 for the acceptance of such deposit in contravention of such direction. 2 of 1934.

(d) Unless a deposit referred to in clause (c) is repayable earlier under the terms of such deposit, repayment of one-third of such deposit shall be made before the 1st day of April, 1974; repayment of another one-third of such deposit shall be made before the 1st day of April, 1975, and repayment of the balance of such deposit shall be made before the 1st day of April, 1976.

(4) Where any deposit is accepted by a company after the commencement of the Companies (Amendment) Act, 1973, in contravention of the rules made under sub-section (1), repayment of such deposit shall be made by the company within thirty days from the date of acceptance of such deposit or within such further time, not exceeding thirty days, as the Central Government may, on sufficient cause being shown by the company, allow.

(5) Where a company omits or fails to make repayment of a deposit in accordance with the provisions of clause (c) of sub-section (3), or in the case of a deposit referred to in sub-section (4), within the time specified in that sub-section,—

(a) the company shall be punishable with fine which shall not be less than twice the amount in relation to which the repayment of the deposit has not been made, and out of the fine, if realised, an amount equal to the amount in relation to which the repayment of deposit has not been made, shall be paid by the

Court, trying the offence, to the person to whom repayment of the deposit was to be made, and on such payment, the liability of the company to make repayment of the deposit shall, to the extent of the amount paid by the Court, stand discharged;

(*b*) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(*6*) Where a company accepts or invites, or allows or causes any other person to accept or invite on its behalf, any deposit in contravention of the provisions of sub-section (*1*) or sub-section (*2*), as the case may be,—

(*a*) the company shall be punishable,—

(*i*) where such contravention relates to the acceptance of any deposit, with fine which shall not be less than an amount equal to the amount of the deposit so accepted,

(*ii*) where such contravention relates to the invitation of any deposit, with fine which may extend to one lakh rupees but shall not be less than five thousand rupees;

(*b*) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(*7*) (*a*) Nothing contained in this section shall apply to,—

(*i*) a banking company, or

(*ii*) such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(*b*) Except the provisions relating to advertisement contained in clause (*b*) of sub-section (*2*), nothing in this section shall apply to such classes of financial companies as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

Explanation.—For the purposes of this section "deposit" means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

58B. The provisions of this Act relating to a prospectus shall, so far as may be, apply to an advertisement referred to in section 58A.'. Provisions relating to prospectus to apply to advertisement.

8. In section 73 of the principal Act,— Amendment of section 73.

(*i*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Where a prospectus, whether issued generally or not, states that an application has been, or will be made, for permission for the shares or debentures offered thereby to be dealt

with in one or more recognized stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void if the permission has not been applied for before the tenth day after the first issue of the prospectus, or, where such permission has been applied for before that day, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists:

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt with on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956, such allotment shall not be void until the dismissal of the appeal.";

42 of 1956.

(*ii*) in sub-section (2), for the words "or has not been granted as aforesaid", the words "or, such permission having been applied for, has not been granted as aforesaid" shall be substituted;

(*iii*) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) For the purposes of this section, it shall be deemed that permission has not been granted if the application for permission, where made, has not been disposed of within the time specified in sub-section (*1*).".

Amendment of section 79.

9. (*1*) In section 79 of the principal Act,—

(*i*) in sub-sections (*2*) and (*3*), for the word "Court", wherever it occurs, the words "Company Law Board" shall be substituted;

(*ii*) in sub-section (*2*),—

(*a*) in clause (*ii*), the words and brackets "(not exceeding ten per cent. or such higher percentage as the Central Government may permit in any special case)" shall be omitted;

(*b*) to clause (*ii*), the following proviso shall be added, namely:—

"Provided that no such resolution shall be sanctioned by the Company Law Board if the maximum rate of discount specified in the resolution exceeds ten per cent, unless that Board is of opinion that a higher percentage of discount may be allowed in the special circumstances of the case;".

(*2*) Nothing contained in sub-section (*1*) shall affect any issue of shares at a discount which has been sanctioned by the Court or any proceeding relating to such sanction which is pending before the Court at the commencement of the Companies (Amendment) Act, 1973.

Substitution of section 90.

10. For section 90 of the principal Act, the following section shall be substituted, namely:—

Savings.

"90. (*1*) Nothing in sections 85, 86, 88 and 89 shall, in the case of any shares issued by a public company before the commencement

of this Act, affect any voting rights attached to the shares save as otherwise provided in section 89, or any rights attached to the shares as to dividend, capital or otherwise.

(2) Nothing in sections 85 to 89 shall apply to a private company, unless it is a subsidiary of a public company.

(3) For the removal of doubts, it is hereby declared that on and from the commencement of the Companies (Amendment) Act, 1973, the provisions of section 87 shall apply in relation to the voting rights attached to preference shares issued by a public company before the 1st day of April, 1956, as they apply to the preference shares issued by a public company after that date.

Explanation.—For the purposes of this section, references to a public company shall be construed as including references to a private company which is a subsidiary of a public company.".

Insertion of new section 94A.

11. After section 94 of the principal Act, the following section shall be inserted, namely:—

Share capital to stand increased where an order is made under section 81 (4).

"94A. (1) Notwithstanding anything contained in this Act, where the Central Government has, by an order made under sub-section (4) of section 81, directed that any debenture or loan or any part thereof shall be converted into shares in a company, the conditions contained in the memorandum of such company shall, where such order has the effect of increasing the nominal share capital of the company, stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(2) Where, in pursuance of an option attached to debentures issued or loans raised by the company, any public financial institution has converted such debentures or loans into shares in the company, the Central Government may, on the application of such public financial institution, direct that the conditions contained in the memorandum of such company shall stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(3) Where the memorandum of a company becomes altered, whether by reason of an order made by the Central Government under sub-section (4) of section 81 or sub-section (2) of this section, the Central Government shall send a copy of such order to the Registrar who shall, on receipt of such order, carry out the necessary alterations in the memorandum of the company.".

Insertion of new sections 108A to 108H.

12. After section 108 of the principal Act, the following sections shall

be inserted, namely:—

Restriction on the acquisition of shares.

'108A. (*1*) Except with the previous approval of the Central Government, no individual, group, constituent of a group, firm, body corporate, or bodies corporate under the same management, shall jointly or severally acquire or agree to acquire, whether in his or its own name or in the name of any other person, any equity shares in a public company, *** or a private company which is a subsidiary of * a public company, if the total nominal value of the equity shares intended to be so acquired exceeds, or would, together with the total nominal value of any equity share already held in the company by such individual, firm, group, constituent of a group, body corporate, or bodies corporate under the same management, exceeds twenty-five per cent. of the paid-up equity share capital of such company.

(*2*) Any person who acquires any share in contravention of the provisions of sub-section (*1*), shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Restriction on the transfer.

108B. (*1*) Every body corporate, or bodies corporate under the same management, holding whether singly or in the aggregate, ten per cent. or more of the nominal value of the subscribed equity share capital of any other company, shall, before transferring one or more of such shares, give to the Central Government an intimation of its or their proposal to transfer such share, and every such intimation shall include a statement as to the particulars of the share proposed to be transferred, the name and address of the person to whom the share is proposed to be transferred, the share holding, if any, of the proposed transferee in the concerned company and such other particulars as may be prescribed.

(*2*) Where, on receipt of an intimation given under sub-section (*1*) or otherwise, the Central Government is satisfied that as a result of such transfer, a change in the composition of the Board of directors of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, it may be order, direct that—

(*a* no such share shall be ransferred to the proposed transferee:

Provided that no such order shall preclude the company from intimating, in accordance with the provisions of sub-section (*1*), to the Central Government its proposal to transfer the share to any other person, or

(*b*) where such share is held in a company engaged in any industry specified in Schedule XIII, such share shall be transferred to the Central Government or to such corporation owned or controlled by that Government as may be specified in the direction.

(*3*) Where a direction is made by the Central Government under clause (*b*) of sub-section (*2*), the share referred to in such direction shall stand transferred to the Central Government or the corporation specified therein, and the Central Government or the specified corporation, as the case may be, shall pay, in cash, to the body cor-

porate or bodies corporate from which such share stands transferred, an amount equal to the market value of such share, within the time specified in sub-section (4).

Explanation.—In this sub-section, "market value" means, in the case of a share which is quoted on any recognised stock exchange, the value quoted at such stock exchange on the date on which the direction is made, and, in any other case, such value as may be mutually agreed upon between the holder of the share and the Central Government or the specified corporation, as the case may be, or in the absence of such agreement, as may be determined by the Court.

(4) The market value referred to in sub-section (3) shall be given forthwith, where there is no dispute as to such value or where such value has been mutually agreed upon, but where there is a dispute as to the market value, such value as estimated by the Central Government or the corporation, as the case may be, shalll be given forthwith and the balance, if any, shall be given within thirty days from the date when the market value is determined by the Court.

(5) If the Central Government does not make any direction under sub-section (2) within sixty days from the date of receipt by it of the intimation, given under sub-section (1), the provisions contained in sub-section (2) with regard to the transfer of such share shall not apply.

(6) (a) Every company which makes any transfer of shares in contravention of the provisions of this section, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of this section has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years.

Restriction on the transfer of shares of foreign companies.

108C. (1) No body corporate, or bodies corporate under the same management, which holds, or hold in the aggregate,*** ten per cent. or more of the nominal value of the equity share capital of a foreign company, having an established place of business in India, shall transfer any share in such foreign company to any citizen of India or any body corporate incorporated in India except with the previous approval of the Central Government and such previous approval shall not be refused unless the Central Government is satisfied that such transfer would be prejudicial to the public interest.

(2) (a) Every company which makes any transfer of shares in contravention of the provisions of this section, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of this section has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years.

(c) Every other person who transfers * * any share in contravention of the provisions of this section, shall be punishable

with fine which may extend to five thousand rupees, or with imprisonment for a term which may extend to three years, or with both.

Power of Central Government to direct companies not to give effect to the transfer.

108D. (*1*) Where the Central Government is satisfied that as a result of the transfer of any share or block of shares of a company, a change in the controlling interest of the company is likely to take place and that such change is prejudicial to the interests of the company or to the public interest, that Government may direct the company not to give effect to the transfer of any such share or block of shares and—

(*a*) where the transfer of such share or block of shares has already been registered, not to permit the transferee or any nominee or proxy of the transferee to exercise any voting or other rights attaching to such share or block of shares,

(*b*) where the transfer of such share or block of shares has not been registered, not to permit any nominee or proxy of the transferor to exercise any voting or other rights attaching to such share or block of shares.

(*2*) Where any direction is made by the Central Government under sub-section (*1*), the share or the block of shares referred to therein shall stand retransferred to the person from whom it was acquired and thereupon the amount paid by the transferee for the acquisition of such share or block of shares shall be refunded to him by the person from whom such share or block of shares was acquired by such transferee.

(*3*) If the refund referred to in sub-section (*2*) is not made with a period of thirty days from the date of the direction referred to in sub-section (*1*), the Central Government shall, on the application of the person entitled to get the refund, direct, by order, the refund of such amount and such order may be enforced as if it were a decree made by a civil court.

(*4*) The person to whom any share or block of shares stand retransferred under sub-section (*2*) shall, on making refund under sub-section (*2*) or sub-section (*3*), be eligible to exercise voting or other rights attaching to such share or block of shares.

Time within which refusal to be communicated.

108E. Every request made to the Central Government for according its approval to the proposal for the acquisition of any share referred to in section 108A or the transfer of any share referred to in section 108C shall be presumed to have been granted unless, within a period of sixty days from the date of receipt of such request, the Central Government communicates to the person by whom the request was made, that the approval prayed for cannot be granted.

Penalty for contravention of section 108A, 108B or 108C.

108F. (*1*) Every person who exercises any voting or other right in relation to any share acquired in contravention of the provisions of section 108A, section 108B or section 108C shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(2) If any company gives effect to any voting or other right exercised in relation to any share acquired in contravention of the provisions of section 108A, section 108B or section 108C, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees, or with imprisonment for a term which may extend to three years, or with both.

Nothing in sections 108A to 108D to apply to Government companies, etc.

108G. Nothing contained in section 108A, section 108B, section 108C or section 108D shall apply to the transfer of any share to, or by,—

(*a*) any company in which not less than fifty-one per cent. of the share capital is held by the Central Government;

(*b*) any corporation (not being a company) established by or under any Central Act;

(c) any public financial institution specified by or under section 4A.

Construction of references to "shares" or "share capital" in sections 108A to 108D.

108H. References in sections 108A, 108B, 108C and 108D to shares or share capital, as the case may be, shall be construed as references to shares or share capital, respectively, of a body corporate owning any undertaking to which the provisions of Part A of Chapter III of the Monopolies and Restrictive Trade Practices Act, 1969, apply.'.

54 of 1969.

Amendment of section 141.

13. (*1*) In section 141 of the principal Act, for the word "Court", whenever it occurs, the words "Company Law Board" shall be substituted.

(2) Nothing in sub-section (*1*) shall affect any order made by the Court under section 141 or any proceeding relating to any matter specified in that section which is pending before the Court at the commencement of the Companies (Amendment) Act, 1973.

Amendment of section 186.

14. In section 186 of the principal Act, in sub-section (*1*), for the word "Court", wherever it occurs, the words "Company Law Board" shall be substituted.

Insertion of new sections 187C and 187D.

15. After section 187B of the principal Act, the following sections shall be inserted, namely:—

Declaration by persons not holding beneficial interest in any share.

"187C. (*1*) Notwithstanding anything contained in section 150, section 153B or section 187B, a person, whose name is entered, at the commencement of the Companies (Amendment) Act, 1973, or at any time thereafter, in the register of members of a company as the holder of a share in that company but who does not hold the beneficial interest in such share, shall, within such time and in such form as may be prescribed, make a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such share.

(2) Notwithstanding anything contained elsewhere in this Act, a person who holds a beneficial interest in a share or a class of shares of a company shall, within thirty days from the commencement of the Companies (Amendment) Act, 1973, or within thirty days after his becoming such beneficial owner, whichever is later, make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Whenever there is a change in the beneficial interest in such shares the beneficial owner shall, within thirty days, from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(4) Notwithstanding anything contained in section 153 where any declaration referred to in sub-section (1), sub-section (2) or sub-section (3) is made to a company, the company shall make a note of such declaration, in its register of members and shall file, within thirty days from the date of receipt of the declaration by it, a return in the prescribed form with the Registrar with regard to such declaration.

(5) (a) If any person, being required by the provisions of sub-section (1), sub-section (2) or sub-section (3), to make a declaration, fails, without any reasonable excuse, to do so, he shall be punishable with fine which may extend to one thousand rupees for every day during which the failure continues.

(b) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default,, shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

(6) Any charge, promissory note or any other collateral agreement, created, executed or entered into in relation to any share, by the ostensible owner thereof, or any hypothecation by the ostensible owner of any share, in respect of which a declaration is required to be made under the foregoing provisions of this section, but not so declared, shall not be enforceable by the beneficial owner or any person claiming through him.

(7) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend in accordance with the provisions of section 206, and the obligation shall, on such payment, stand discharged.

Investigation of beneficial ownership of share in certain cases.

187D. Where it appears to the Central Government that there are good reasons so to do, it may appoint one or more Inspectors to investigate and report as to whether the provisions of section 187C have been complied with with regard to any share, and thereupon the provisions of section 247 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.".

Amendment of section 192.

16. In section 192 of the principal Act, in sub-section (*4*),—

(*i*) in item (*ii*) of clause (*ee*), for the word and figures "section 294", the words and figures "section 294 or section 294AA" shall be substituted;

(*ii*) after clause (*f*), the following clause shall be inserted, namely:—

"(*g*) copies of the terms and conditions of appointment of a sole selling agent appointed under section 294 or of a sole selling agent or other person appointed under section 294AA.".

Insertion of new section 204A.

17. After section 204 of the principal Act, the following section shall be inserted, namely:—

Restrictions on the appointment of former managing agents or secretaries and treasurers to any office.

'204A. (*1*) Except with the previous approval of the—

(*a*) company in general meeting, and

(*b*) Central Government,

no company shall, during a period of five years from the commencement of the Companies (Amendment) Act, 1973, appoint as secretary, consultant or adviser or to any other office, by whatever name called,—

(*i*) any individual, firm or body corporate who, or which, had at any time after the 15th day of August, 1960, been holding office as the managing agents or secretaries and treasurers of the company, or

(*ii*) any associate of the managing agents or secretaries and treasurers as aforesaid:

Provided that where any such appointment has been made before the commencement of the Companies (Amendment) Act, 1973, no such appointment shall be continued by the Company after a period of six months from such commencement unless such appointment has been approved by the company in general meeting and the Central Government before the expiry of the said period.

(*2*) (*a*) Where—

(*i*) any individual, firm or body corporate, who, or which, had at any time after the 15th day of August, 1960, been holding office as the managing agents or secretaries and treasurers of the company, or

(*ii*) any associate of the managing agents or secretaries and treasurers as aforesaid;

has been appointed by such company at any time during a period of five years preceding the 3rd day of April, 1970, or at any time after that date, as its secretary, consultant or adviser, or to any other office under it, by whatever name called, the Central Government may, if it appears to it that there is good reason for so doing, require the company to furnish to it such information as it may consider necessary, with regard to the terms and conditions of the appointment of such individual, firm or body corporate as secretary, consultant or adviser or as the holder of such other office, for the purpose of determining whether or not such terms and conditions are prejudicial to the interest of the company.

(*b*) If the company refuses or neglects to furnish any such information, the Central Government may appoint a competent person

to investigate and report on the terms and conditions of appointment to any of the offices referred to in clause (*a*) and the provisions of section 240A shall, so far as may be, apply, to such investigation, as they apply to any other investigation made under any other provision of this Act.

(c) If, after perusal of the information furnished by the company, or, as the case may be, the report submitted by the person appointed under clause (*b*), the Central Government is of opinion that the terms and conditions of appointment to any of the officers referred to in clause (*a*) are prejudicial to the interests of the company, it may, by order, make such variations in those terms and conditions as would, in its opinion, no longer render such terms and conditions of appointment prejudicial to the interests of the company.

(*d*) As from such date as may be specified by the Central Government in the order aforesaid, the appointment referred to in clause (*a*) shall be regulated by the terms and conditions as varied by that Government.

(*3*) For the purposes of this section, the expression "appointment" includes re-appointment, employment and re-employment.'.

Amendment of section 205.

18. In section 205 of the principal Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) Notwithstanding anything contained in sub-section (*1*), on and from the commencement of the Companies (Amendment) Act, 1973, no dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (*2*), except after the transfer to the reserves of the company of such percentage of its profits for that year, not exceeding ten per cent., as may be prescribed:

Provided that nothing in this sub-section shall be deemed to prohibit the voluntary transfer by a company of a higher percentage of its profits to the reserves in accordance with such rules as may be made by the Central Government in this behalf.".

Insertion of new sections 205A and 205B.

19. After section 205 of the principal Act, the following sections shall be inserted, namely:—

Unpaid dividend to be transferred to special dividend account.

'205A. (*1*) Where, after the commencement of the Companies (Amendment) Act, 1973, a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted, within forty-two days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of forty-two days, transfer the total amount of dividend which remains unpaid or in relation to which no dividend warrant has been posted within the said period of forty-two days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called "Unpaid Dividend Account of.....Company Limited|Company (Private) Limited".

(*2*) Where the whole or any part of any dividend, declared by a company before the commencement of the Companies (Amend-

ment) Act, 1973, remains unpaid at such commencement, the company shall, within a period of six months from such commencement transfer such unpaid amount to the account referred to in sub-section (*1*).

(*3*) Where, owing to inadequacy or absence of profits in any year, any company proposes to declare dividend out of the accumulated profits earned by the company in previous years and transferred by it to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be made by the Central Government in this behalf, and, where any such declaration is not in accordance with such rules, such declaration shall not be made except with the previous approval of the Central Government.

* * * * *

(*4*) If the default is made in transferring the total amount referred to in sub-section (*1*) or any part thereof to the unpaid dividend account of the concerned company, the company shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accruing on such amount shall enure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(*5*) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of three years from the date of such transfer, shall be transferred by the company to the general revenue account of the Central Government but a claim to any money so transferred to the general revenue account may be preferred to the Central Government by the person to whom the money is due and shall be dealt with as if such transfer to the general revenue account had not been made, the order, if any, for payment of the claim being treated as an order for refund of revenue.

(*6*) The company shall, when making any transfer under sub-section (*5*) to the general revenue account of the Central Government any unpaid or unclaimed dividend, furnish to such officer as the Central Government may appoint in this behalf a statement in the prescribed form setting forth in respect of all sums included in such transfer, the nature of the sums, the names and last known addresses of the person entitled to receive the sum, the amount to which each person is entitled and the nature of his claim thereto and such other particulars as may be prescribed.

(*7*) The company shall be entitled to a receipt from the Reserve Bank of India for any money transferred by it to the general revenue account of the Central Government and such receipt shall be an effectual discharge of the company in respect thereof.

(*8*) If a company fails to comply with any of the requirements of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the failure continues.

Payment of unpaid or unclaimed dividend.

205B. Any person claiming to be entitled to any money transferred under sub-section (5) of section 205A to the general revenue account of the Central Government, may apply to the Central Government for an order for payment of the money claimed; and the Central Government may, if satisfied, whether on a certificate by the company or otherwise, that such person is entitled to the whole or any part of the money, claimed, make an order for the payment to that person of the sum due to him after taking such security from him as it may think fit.'.

Amendment of section 209.

20. In section 209 of the principal Act, in sub-section (4),—

(*i*) the brackets and letter "(*a*)" shall me omitted;

(*ii*) clauses (*b*), (c) and (*d*) shall be omitted.

Insertion of new section 209A.

21. After section 209 of the principal Act, the following section shall be inserted, namely:—

Inspection of books of account, etc., of companies.

"209A. (*1*) The books of account and other books and papers of every company shall be open to inspection during business hours—

(*i*) by the Registrar, or

(*ii*) by such officer of Government as may be authorised by the Central Government in this behalf:

Provided that such inspection may be made without giving any previous notice to the company or any officer thereof;

(*2*) It shall be the duty of every director, other officer or employee of the company to produce to the person making inspection under sub-section (*1*), all such books of account and other books and papers of the company in his custody or control and to furnish him with any statement, information or explanation relating to the affairs of the company as the said person may require of him within such time and at such place as he may specify.

(*3*) It shall also be the duty of every director, other officer or employee of the company to give to the person making inspection under this section all assistance in connection with the inspection which the company may be reasonably expected to give.

(*4*) The person making the inspection under this section may, during the course of inspection,—

(*i*) make or cause to be made copies of books of account and other books and papers, or

(*ii*) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(*5*) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, any person making an inspection under this section shall have the same powers

as are vested in a civil court under the Code of Civil Procedure, 5 of 1908. 1908, while trying a suit, in respect of the following matters, namely:—

(*i*) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person;

(*ii*) summoning and enforcing the attendance of persons and examining them on oath;

(*iii*) inspection of any books, registers and other documents of the company at any place.

(*6*) Where an inspection of the books of account and other books and papers of the company has been made under this section, the person making the inspection shall make a report to the Central Government.

(*7*) Any officer authorised to make an inspection under this section shall have all the powers that a Registrar has under this Act in relation to the making of inquiries.

(*8*) If default is made in complying with the provisions of this section, every officer of the company who is in default shall be punishable with fine which shall not be less than five thousand rupees, and also with imprisonment for a term not exceeding one year.

(*9*) Where a director or any other officer of a company has been convicted of an offence under this section he shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified for holding such office in any company, for a period of five years from such date."

Amendment of section 217.

22. In section 217 of the principal Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

'(*2A*) (*a*) The Board's report shall also include a statement showing the name of every employee of the company who—

(*i*) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than thirty-six thousand rupees; or

(*ii*) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than three thousand rupees per month.

(*b*) The statement referred to in clause (*a*) shall also indicate,—

(*i*) whether any such employee is a relative of any director or manager of the company and if so, the name of such director, and

(*ii*) such other particulars as may be prescribed.

Explanation.—"Remuneration" has the meaning assigned to it in the *Explanation* to section 198'.

Amendment of section 224.

23. In section 224 of the principal Act,—

(*i*) to sub-section (*1*), the following proviso shall be added, namely:—

"Provided that before any appointment or re-appointment of auditor or auditors is made by any company at any annual general meeting, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or re-appointment, if made, will be in accordance with the limits specified in sub-sections (*1B*) and (*1C*).";

(*ii*) in sub-section (*1A*), the words "unless he is a retiring auditor" shall be omitted;

(*iii*) after sub-section (*1A*), the following sub-sections shall be inserted, namely:—

'(*1B*) On and from the financial year next following the commenecment of the Companies (Amendment) Act, 1973, no company shall appoint or re-appoint any person or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of more than the specified number of companies:

Provided that in the case of a firm of auditors, "specified number of companies" shall be construed as specified number of companies per partner of the firm:

Provided further that where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed the specified number in the aggregate.

(*1C*) For the purposes of enabling a company to comply with the provisions of sub-section (*1B*), a person or firm holding, immediately before the commencement of the Companies (Amendment) Act, 1973, appointment as the auditor of a number of companies exceeding the specified number, shall, within sixty days from such commencement, intimate his or its unwillingness to be re-appointed as the auditor from the financial year next following such commencement, to the company or companies of which he or it is not willing to be re-appointed as the auditor; and shall simultaneously intimate to the Registrar the names of the companies of which he or it is willing to be re-appointed as the auditor and farward a copy of the intimation to each of the companies referred to therein.

Explanation I.—For the purposes of sub-section (*1B*) and (*1C*),"specified number" means,—

(*a*) in the case of a person or firm holding appointment as auditor of a number of companies each of which has a paid-up share capital of less than rupees twenty-five lakhs, twenty such companies;

(*b*) in any other case, twenty companies, out of which not more than ten shall be companies each of which has a paid-up share capital of rupees twenty-five lakhs or more.

Explanation II.—In computing the specified number, the number of companies in respect of which or any part of which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm, shall be taken into account.';

(*iv*) in sub-section (*2*), for the words "At any annual general meeting", the words "Subject to the provisions of sub-section (*1B*) and section 224A, at any annual general meeting" shall be substituted.

Insertion of new section 224A.

24. After section 224 of the principal Act, the following section shall be inserted, namely:—

Auditor not to be appointed except with the approval of the company by special resolution in certain cases.

'224A. (*1*) In the case of a company in which not less than twenty-five per cent. of the subscribed share capital is held, whether singly or in any combination, by—

(*a*) a public financial institution or a Government company or Central Government or any State Government, or

(*b*) any financial or other institution established by any Provincial or State Act in which a State Government holds not less than fifty-one per cent. of the subscribed share capital, or

(*c*) a nationalised bank or an insurance company carrying on general insurance business,

the appointment or re-appointment at each annual general meeting of an auditor or auditors shall be made by a special resolution.

(*2*) Where any company referred to in sub-section (*1*) omits or fails to pass at its annual general meeting any special resolution appointing an auditor or auditors, it shall be deemed that no auditor or auditors had been appointed by the company at its annual general meeting, and thereupon the provisions of sub-section (*3*) of section 224 shall become applicable in relation to such company.

Explanation.—For the purposes of this section,—

(*a*) "general insurance business" has the meaning assigned to it in the General Insurance (Emergency Provisions) Act, 1971; 17 of 1971.

(*b*) "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.'. 5 of 1970.

Amendment of section 233B.

25. In section 233B of the principal Act,—

(*i*) in sub-section (*1*), for the words beginning with "who shall be either" and ending with "prescribed qualifications", the following shall be substituted, namely:—

"who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959: 23 of 1959.

Provided that if the Central Government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act, 1959, are not available for conducting the audit of the cost accounts of companies generally, that Government may, by notification in the Official Gazette direct

that, for such period as may be specified in the said notification, such Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, as possesses the prescribed qualifications, may also conduct the audit of the cost accounts of companies, and thereupon a Chartered Accountant possesing the prescribed qualifications may be appointed to audit the cost accounts of the company.";

38 of 1949.

(*ii*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) The auditor under this section shall be appointed by the Board of directors of the company with the previous approval of the Central Government.";

(*iii*) in sub-section (*4*), for the words "Company Law Board", the words "Central Government" shall be substituted;

(*iv*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*5*) (*a*) A person referred to in sub-section (*3*) or sub-section (*4*) of section 226 shall not be appointed or re-appointed for conducting the audit of the cost accounts of a company.

(*b*) A person appointed, under section 224, as an auditor of a company, shall not be appointed or re-appointed for conducting the audit of the cost accounts of that company.

(*c*) If a person, appointed for conducting the audit of cost accounts of a company, becomes subject, after his appointment, to any of the disqualifications specified in clause (*a*) or clause (*b*) of this sub-section, he shall, on and from the date on which he becomes so subject, cease to conduct the audit of the cost accounts of the company.

(*6*) Upon receipt of an order under sub-section (*1*), it shall be the duty of the company to give all facilities and assistance to the person appointed for conducting the audit of the cost accounts of the company.

(*7*) The company shall, within thirty days from the date of receipt of a copy of the report referred to in sub-section (*4*), furnish the Central Government with full information and explanations on every reservation or qualification contained in such report.

(*8*) If, after considering the report referred to in sub-section (*4*) and the information and explanations furnished by the company under sub-section (*7*), the Central Government is of opinion that any further information or explanation is necessary, that Government may call for such further information and explanation and thereupon the company shall furnish the same within such time as may be specified by that Government.

(*9*) On receipt of the report referred to in sub-section (*4*) and the informations and explanations furnished by the company under sub-section (*7*) and sub-section (*8*), the Central Government may take such action on the report, in accordance with the provisions of this Act or any other law for the time being in force, as it may consider necessary.

(*10*) The Central Government may direct the company whose cost accounts have been audited under this section to circulate to its members, along with the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf.

(*11*) If default is made in complying with the provisions of this section, the company shall be liable to be punished with fine which may extend to five thousand rupees, and every officer of the company who is in default, shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.".

Amendment of section 269.

26. In section 269 of the principal Act,—

(*i*) in sub-section (*1*) (including the proviso thereto), the words "for the first time", wherever they occur, shall be omitted;

(*ii*) to sub-section (*1*), the following *Explanation* shall be added, namely:—

'*Explanation.*—In this sub-section, and in sub-sections (*3*) and (*5*), "appointment" includes "re-appointment" and "whole-time director" includes "a director in the whole-time employment of the company".';

(*iii*) after sub-section (*2*), the following sub-sections shall be inserted, namely:—

"(*3*) The Central Government shall not accord its approval under sub-section (*1*) in any case, unless it is satisfied that—

(*a*) it is in the interests of the company to have a managing or whole-time director,

(*b*) the proposed managing or whole-time director of the company is, in its opinion, a fit and proper person to be appointed as such and that the appointment of such person as managing or whole-time director is not against the public interest, and

(*c*) the terms and conditions of appointment of the proposed managing or whole-time director of the company are fair and reasonable.

(*4*) While according its approval under sub-section (*1*), the Central Government may, if it is of opinion that in the interests of the company it is necessary so to do, accord approval to the appointment for a period lesser than the period for which the person is proposed to be appointed by the company.

(*5*) If the appointment of a person as a managing or whole-time director is not approved by the Central Government, the person so appointed shall vacate his office as such managing or whole-time director on the date on which the decision of the Central Government is communicated to the company, and if he omits or fails to do so, he shall be punishable with fine which may extend to five hundred rupees for every day during which he omits or fails to vacate such office.".

Insertion of new section 294AA.

27. After section 294A of the principal Act, the following section shall be inserted, namely:—

Power of Central Government to prohibit the appointment of sole selling agents in certain cases.

'294AA. (*1*) Where the Central Government is of opinion that the demand for goods of any category, to be specified by that Government, is substantially in excess of the production or supply of such goods and that the services of sole selling agents will not be necessary to create a market for such goods, the Central Government may, by notification in the Official Gazette, declare that sole selling agents shall not be appointed by a company for the sale of such goods for such period as may be specified in the declaration.

(*2*) No company shall appoint any individual, firm or body corporate, who or which has a substantial interest in the company, as sole selling agent of that company unless such appointment has been previosuly approved by the Central Government.

(*3*) No company having a paid-up share capital of rupees fifty lakhs or more shall appoint a sole selling agent except with the consent of the company accorded by a special resolution and the approval of the Central Government.

(*4*) The provisions of sub-section (*5*), (*6*) and (*7*) of section 294 shall, so far as may be, apply to the sole selling, or the sole purchasing or buying, agents of a company.

(*5*) A company seeking approval under this section shall furnish such particulars as may be prescribed.

(*6*) Where any appointment has been made of a sole selling agent by a company before the commencement of the Companies (Amendment) Act, 1973, and the appointment is such that it could not have been made except on the authority of a special resolution passed by the company and the approval of the Central Government, if sub-section (*2*), sub-section (*3*) and sub-section (*8*), were in force at the time of such appointment, the company shall obtain such authority and approval within six months from such commencement; and if such authority and approval are not so obtained, the appointment of the sole selling agent shall stand terminated on the expiry of six months from such commencement.

(*7*) If the company in general meeting disapproves the appointment referred to in sub-section (*3*), such appointment shall, notwithstanding anything contained in sub-section (*6*), cease to have effect from the date of the general meeting.

(*8*) The provisions of this section except those of sub-section (*1*), shall apply so far as may be to the appointment by a company of a sole agent for the buying or purchasing of goods on behalf of the company.

Explanation.—In this section,—

(*a*) "appointment" includes "re-appointment",

(*b*) "substantial interest",—

(*i*) in relation to an individual, means the beneficial interest held by such individual or any of his relatives,

whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the company, whichever is the lesser;

(*ii*) in relation to a firm, means the beneficial interest held by one or more partners of the firm or any relative of such partner, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the company whichever is the lesser;

(*iii*) in relation to a body corporate, means the beneficial interest held by such body corporate or one or more of its directors or any relative of such director, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the company whichever is the lesser.'.

Amendment of section 297.

28. In section 297 of the principal Act, to sub-section (*1*), the following proviso shall be added, namely:—

"Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.".

Amendment of section 314.

29. In section 314 of the principal Act,—

(*i*) in clause (*b*) of sub-section (*1*), for the portion beginning with "no partner or relative" and ending with "legal or technical adviser", the words "no partner or relative of such director, no firm in which such director, or a relative of such director is a partner, no private company of which such director is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a total monthly remuneration of five hundred rupees or more,

except that of managing director or manager," shall be substituted;

(*ii*) after sub-section (*1A*), the following sub-section shall be inserted, namely:—

"(*1B*) Notwithstanding anything contained in sub-section (*1*),—

(*a*) no partner or relative of a director or manager,

(*b*) no firm in which such director or manager, or relative of either, is a partner,

(c) no private company of which such a director or manager or relative of either, is a director or member,

shall hold any office or place of profit in the company which carries a total monthly remuneration of not less than three thousand rupees, except with the prior consent of the company

by a special resolution and the approval of the Central Government:

Provided that in a case where no office of profit could have been held in the company by a person if this section had been in force at the time when the appointment or re-appointment to such office of profit was made, the company shall, within a period of six months from the commencement of the Companies (Amendment) Act, 1973, obtain the approval of the company in general meeting and of the Central Government for the holding, by such person of the office of profit.";

(*iii*) sub-section (*2*) shall be re-lettered as clause (*a*) thereof, and after clause (*a*), as so relettered, the following clause shall be inserted, namely:—

"(*b*) The company shall not waive the recovery of any sum refundable to it under clause (*a*) unless permitted to do so by the Central Government.";

(*iv*) after sub-section (*2A*), the following sub-section shall be inserted, namely:—

"(*2B*) If any office or place of profits is held in contravention of the provisions of sub-section (*1B*) or, as the case may be, the proviso thereto, the director, partner, relative, firm, private company or manager concerned shall be deemed to have vacated his or its office as such on and from the date next following the date of the general meeting of the company referred to in sub-section (*1B*) or, as the case may be, the porviso thereto, and shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.";

(*v*) in sub-section (*3*), for the words "within the meaning of sub-section (*1*)", the words "within the meaning of this section" shall be substituted;

(*vi*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) Nothing in this section shall apply to a person, who being the holder of any office of profit in the company, is appointed by the Central Government, under section 408, as a director of the company."

* * * * *

Insertion of new section 383A.

30. After section 383 of the principal Act, the following section shall be inserted, namely:—

Certain companies to have secretaries.

"383A. (*1*) Every company having a paid-up share capital of * * * rupees twenty-five lakhs or more shall have a whole-time secretary, * * * and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company.

(2) Where, at the commencement of the Companies (Amendment) Act, 1973,—

(a) any firm or body corporate is holding office, as the secretary of a company, such firm or body corporate shall, within six months from such commencement, vacate office as secretary of such company;

(b) any individual is holding office as the secretary of more than one company having a paid-up share capital of rupees twenty-five lakhs or more, he shall, within a period of six months from such commencement, exercise his option as to the company of which he intends to continue as the secretary and shall, on and from such date, vacate office as secretary in relation to all other companies."

Amendment of section 408.

31. In section 408 of the principal Act,—

(*i*) in sub-section (*1*), for the words "not more than two persons", the words "such number of persons as the Central Government may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest" shall be substituted;

(*ii*) in sub-section (2), for the words "not more than two persons", the words "such number of persons as the Central Government may, by order in writing, specify as being necessary to effectively safeguard the interest of the company, or its shareholders or the public interest" shall be substituted;

(*iii*) after sub-section (5), the following sub-sections shall be inserted, namely:—

"(*6*) Notwithstanding anything contained in this Act or in any other law for the time being in force where any person is appointed by the Central Government to hold office as director or additional director of a company in pursuance of sub-section (*1*) or sub-section (2), the Central Government may issue such directions to the company as it may consider necessary or appropriate in regard to its affairs.

(7) The Central Government may require the persons appointed as directors or additional directors in pursuance of sub-section (*1*) or sub-section (2) to report to the Central Government from time to time with regard to the affairs of the company.".

Amendment of section 591.

32. Section 591 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and after sub-section (*1*), as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an

established place of buisness in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the buisness carried on by it in India, as if it were a company incorporated in India.".

Amendment of section 600.

33. In section 600 of the principal Act, sub-section (3) shall be re-lettered as clause (a) thereof, and after clause (a), as so re-lettered, the following clause shall be inserted, namely:—

"(b) On and from the commencement of the Companies (Amendment) Act, 1973,—

(*i*) the provisions of section 159 shall, subject to such modifications or adaptations as may be made therein by the rules made under this Act, apply to a foreign company having an established place of business in India, as they apply to a company incorporated in India;

(*ii*) the provisions of section 209A and sections 234 to 246 (both inclusive) shall, so far as may be, apply only to the Indian business of a foreign company having an established place of business in India, as they apply to a company incorporated in India.".

Amendment of section 616.

34. In section 616 of the principal Act, after clause (*d*), the following clause shall be inserted, namely:—

"(*e*) to such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification in the Official Gazette, specify in this behalf, subject to such exceptions, modifications or adaptations, as may be specified in the notification.".

Amendment of section 619.

35. In section 619 of the principal Act, to sub-section (2), the following proviso shall be added, namely:—

"Provided that limits specified in sub-sections (*1B*) and (*1C*) of section 224 shall apply in relation to the appointment or re-appointment of an auditor under this sub-section.".

Insertion of new section 619B.

36. After section 619A of the principal Act, the following section shall be inserted, namely:—

Provisions of section 619 to apply to certain companies.

"619B. The provisions of section 619 shall apply to a company in which not less than fifty-one per cent. of the paid-up share capital is held by one or more of the following or any combination thereof, as if it were a Government company, namely:—

(*a*) the Central Government and one or more Government companies;

(*b*) any State Govornment or Governments and one or more Government companies;

(c) the Central Government, one or more State Governments and one or more Government companies;

(*d*) the Central Government and one or more corporations owned or controlled by the Central Government;

(*e*) the Central Government, one or more State Governments and one or more corporations owned or controlled by the Central Government;

(*f*) one or more corporations owned or controlled by the Central Government or the State Government;

(*g*) more than one Government company.".

Amendment of section 637A.

37. In section 637A of the principal Act,—

(*i*) in sub-section (*1*), for the words "Central Government", wherever they occur, the words "Central Government or Company Law Board" shall be substituted;

(*ii*) in sub-section (*2*),—

(*a*) for the words "Central Government", the words "Central Government or Company Law Board" shall be substituted;

(*b*) in clauses (*a*) and (*b*), after the words "that Government", the words "or Board" shall be inserted.

Insertion of new section 637AA.

38. After section 637A of the principal Act, the following section shall be inserted, namely:—

Power of Central Government to fix a limit with regard to remuneration.

"637AA. Notwithstanding anything contained in section 198, section 309 or section 637A, the Central Government may, while according its approval under section 269, to any appointment or to any remuneration under section 309, section 310, section 311 or section 387, fix the remuneration of the person so appointed or the remuneration, as the case may be, within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the Central Government shall have regard to—

(*a*) the financial position of the company;

(*b*) the remuneration or commission drawn by the individual concerned in any other capacity, including his capacity as a sole selling agent;

(c) the remuneration or commission drawn by him from any other company;

(*d*) professional qualifications and experience of the individual concerned;

(*e*) public policy relating to the removal of disparities in income.".

Amendment of section 641.

39. In section 641 of the principal Act in sub-section (*3*), for the portion beginning with "comprised in one session or" and ending with "session immediately following", the following shall be substituted, namely:—

"comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,".

Amendment of section 642.

40. In section 642 of the principal Act, in sub-section (3), for the portion beginning with "comprised in one session or" and ending with "session immediately following", the following shall be substituted, namely:—

"comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,".

Insertion of new Schedule XIII.

41. After Schedule XII of the principal Act, the following Schedule shall be inserted, namely:—

"SCHEDULE XIII

(*See* section 108B)

PART I

1. Aircraft.

2. Air transport.

3. Arms and ammunition and allied items of defence equipment.

4. Atomic energy.

5. Coal and lignite.

6. Heavy castings and forgings of iron and steel.

7. Heavy electrical plant including large hydraulic and steam turbines.

8. Heavy plant and machinery required for iron and steel production, for mining, for machine tool manufacture and for such other basic industries as may be specified by the Central Government.

9. Iron and steel.

10. Mineral oils.

11. Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.

12. Mining and processing of copper, lead, zinc, tin, molybdenum and wolfram.

13. Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond.

14. Railway transport.

15. Ship-building.

16. Telephones and telephone cables, telegraph and wireless apparatus (excluding radio receiving sets).

PART II

1. Aluminium and other non-ferrous metals not included in Part I.

2. All other minerals except "minor minerals" as defined in rule 3 of the Minerals Concession Rules, 1949.

3. Antibiotics and other essential drugs.

4. Basic and intermediate products required by chemical industries such as the manufacture of drugs, dyestuffs and plastics.

5. Carbonisation of coal.

6. Chemical pulp.

7. Ferro alloys and tool steels.

8. Fertilizers.

9. Machine tools.

10. Road transport.

11. Sea transport.

12. Synthetic rubber.".

Substitution of new section for section 22 of Act 42 of 1956.

42. For section 22 of the Securities Contracts (Regulation) Act, 1956, the following section shall be substituted, namely:—

Right of appeal against refusal of stock exchanges to list securities of public companies.

'22. Where a recognised stock exchange acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any public company, the company shall be entitled to be furnished with reasons for such refusal, and may,—

(*a*) within fifteen days from the date on which the reasons for such refusal are furnished to, it

(*b*) where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (*1*) of section 73 of the Companies Act, 1956 (hereafter in this section referred to as the "specified time"), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Central Government may, on sufficient cause being shown, allow,

1 of 1956.

appeal to the Central Government against such refusal, omission or failure, as the case may be, and thereupon the Central Government may, after giving the stock exchange an opportunity of being heard,—

(*i*) vary or set aside the decision of the stock exchange, or

(*ii*) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,

and where the Central Government sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Central Government'.

Amendment of Act 54 of 1969.

43. In the Monopolies and Restrictive Trade Practices Act, 1969, in clause (*g*) of section 2,—

(*i*) in sub-clause (*iii*) (c), the words "within the meaning of section 370 of the Companies Act, 1956," shall be omitted; 1 of 1956.

(*ii*) in sub-clause (*v*), the words "within the meaning of the said section 370" shall be omitted;

(*iii*) after sub-clause (*vii*), but before the *Illustration*, the following *Explanations* shall be inserted, namely:—

"*Explanation I.*—For the purposes of this Act, two undertakings, owned by bodies corporate, shall be deemed to be under the same management,—

(*i*) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or

(*ii*) if the managing director or manager of one such body corporate is the managing director or manager of the other; or

(*iii*) if one such body corporate holds not less than one-third of the equity shares in the other or controls the composition of not less than one-third of the total membership of the Board of directors of the other; or

(*iv*) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with the relatives of such directors) one-third of the directors of the other; or

(*v*) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than one-third of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-third of the equity shares in the other; or

(*vi*) if the same body corporate or bodies corporate belonging to a group, holding not less than one-third of the equity shares in one body corporate, also hold not less than one-third of the equity shares in the other; or

(*vii*) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individual (whether independently or together with his relatives) or the same body corporate (whether independently or together with its subsidiaries); or

(*viii*) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individuals

belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or

(*ix*) If the directors of the one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II.—If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of or controlled by, the group shall be deemed to be under the same management.

Explanation III.—If two or more bodies corporate under the same management hold, in the aggregate, not less than one-third equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first-mentioned bodies corporate.

Explanation IV.—In determining whether or not two or more bodies corporate are under the same management, the shares held by public financial institutions in such bodies corporate shall not be taken into account.".

APPENDIX I

(*Vide* para 2 of the Report)

Motion in Lok Sabha for reference of the Bill to the Joint Committee

"That the Bill further to amend the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969, be referred to a Joint Committee of the Houses consisting of 45 members, 30 from this House, namely:—

(1) Shri Syed Ahmed Aga
(2) Shri Bedabrata Barua
(3) Shri H. K. L. Bhagat
(4) Shri Somnath Chatterjee
(5) Shri Tridib Chaudhuri
(6) Shri Khemchandbhai Chavda
(7) Shri C. Chittibabu
(8) Shri S. R. Damani
(9) Shri C. C. Desai
(10) Shri G. C. Dixit
(11) Shrimati V. Jeyalakshmi
(12) Shri Popatlal M. Joshi
(13) Shri Ramchandran Kadannapalli
(14) Shri Baburao Jangluji Kale
(15) Shri Jagannath Mishra
(16) Shri Surendra Mohanty
(17) Shri Priya Ranjan Das Munsi
(18) Shri D. K. Panda
(19) Shri Narsingh Narain Pandey
(20) Shri Madhu Dandavate
(21) Shri H. M. Patel
(22) Shri S. B. P. Pattabhi Rama Rao
(23) Shri R. Balakrishna Pillai
(24) Shri Jagannath Rao
(25) Shri Bishwanath Roy
(26) Shri P. M. Sayeed
(27) Shri Nawal Kishore Sharma
(28) Shri R. R. Sharma
(29) Shri P. Ranganath Shenoy
(30) Shri R. K. Sinha.

and 15 members from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee, the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 15 members to be appointed by Rajya Sabha to the Joint Committee."

APPENDIX II

(*Vide* para 3 of the Report)

Motion in Rajya Sabha

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill further to amend the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969, and resolves that the following 15 members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

(1) Shri Mahavir Tyagi
(2) Shri M. K. Mohta
(3) Shri B. T. Kulkarni
(4) Shri Jagdish Prasad Mathur
(5) Shri Harsh Deo Malviya
(6) Shri Salil Kumar Ganguli
(7) Dr. M. R. Vyas
(8) Shri K. Srinivasa Rao
(9) Shri S. G. Sardesai
(10) Shri Himmat Sinh
(11) Shri S. S. Mariswamy
(12) Shri D. D. Puri
(13) Shrimati Saraswati Pradhan
(14) Shri Habib Tanvir
(15) Shri K. V. Raghunatha Reddy."

APPENDIX III

(*Vide* para 7 of the Report)

List of Associations, Organisations, etc. from whom Memorandum were received by the Joint Committee.

1. Madura Ramnad Chamber of Commerce, Madurai.
2. Lovelock & Lewes Junior Qualified Assistants Association, Calcutta.
3. Chartered Accountants' Association for Nationalisation of Audit Profession and Services, Calcutta.
4. Shri G. N. Ganguli and others, Chartered Accountants, C/o Lovelock & Lewes, Calcutta.
5. Shri S. K. Gupta and others, Chartered Accountants, C|o S. R. Batliboi, & Co., Chartered Accountants, Calcutta.
6. S. R. Batliboi & Co. Employees' Union, Calcutta.
7. Lovelock and Lewes Employees' National Union, Calcutta.
8. Price Waterhouse Peat & Co. Employees' Union, Calcutta.
9. Ray & Ray Employees' Union, Calcutta.
10. G. Basu & Co. Employees' Association, Calcutta.
11. Shri M. L. Daga & others, Chartered Accountants, C|o M|s Price Waterhouse Peat & Co., Calcutta.
12. The Committee of Yunger Partners of Established Auditing Firms C|o S. R. Batliboi & Co., Calcutta.
13. Indian Merchants Chamber, Bombay.
14. A. F. Ferguson & Co., Chartered Accountants, Bombay.
15. Association of Chartered Accountants, Calcutta.
16. Shri S. N. Singh, The Indian Law Institute, New Delhi.
17. Shri S. Sathyammoorthy, Methods & Systems Management Consultants, Indore.
18. Shri Jagan Nath Gupta, Delhi.
19. Punjab, Haryana & Delhi Chamber of Commerce & Industry, New Delhi.
20. Shri K. M. Mookerjee, Calcutta.
21. N. M. Raiji & Co., Chartered Accountants, Bombay.
22. The Young Chartered Accountants Fourm, Calcutta.
23. The Chartered Institute of Secretaries, India Association, Calcutta.
24. Northern India Share Holders Association, New Delhi.
25. West Bengal Chartered Accountants Employees Association, Calcutta.

26. Shri S. S. Kothari, Former M.P. Chartered Accountant, Calcutta.
27. Eastern U.P. Chamber of Commerce and Industry, Allahabad.
28. Bihar Chamber of Commerce, Patna.
29. Bombay Incorporated Law Society, Bombay.
30. Shri H. B. Dhondy, Chartered Accountant, Bombay.
31. Western India Young Chartered Accountants' Forum, Bombay.
32. Incorporated Law Society of Calcutta.
33. The Institute of Cost and Works Accountants of India, Calcutta.
34. The Associated Chamber of Commerce and Industry of India, New Delhi.
35. The Bombay Study Circle on Corporate Law and Allied Subjects, Bombay.
36. Madhya Pradesh Organisation of Industries, Bhopal.
37. The Madhya Pradesh Chamber of Commerce and Industry, Gwalior.
38. Central India Chamber of Commerce and Industry, Ujjain.
39. The Bengal Chamber of Commerce and Industry, Calcutta.
40. The Calcutta Stock Exchange Association Limited, Calcutta.
41. The Bombay Shareholders' Association Bombay.
42. The Commerce Graduates' Association, Bombay.
43. Bombay Chamber of Commerce & Industry, Bombay.
44. Prof. K. T. Merchant, Member, Company Law Advisory Committee.
45. Dr. R. S. Nigam, Reader in Commerce, University of Delhi.
46. Industrial Estate Manufacturers' Association, Sanatnagar, Hyderabad-18.
47. Indo-American Chamber of Commerce, Bombay.
48. The Institute of Chartered Accountants of India, New Delhi.
49. Institute of Company Secretaries of India, New Delhi.
50. The Madhya Pradesh Textile Mills Association, Indore.
51. Shri V. D. Kulshreshtha, Research Associate and Programme Coordinator, Indian Law Institute, New Delhi.
52. Mrs. K. R. Javeri, Secretary, The Tata Iron and Steel Co. Ltd. & Secretaries of certain other public limited companies of Bombay.
53. The Madras Shareholders' Association, Madras.
54. The Southern India Chamber of Commerce and Industry, Madras.
55. The Madras Chamber of Commerce & Industry, Madras.
56. The Ahmedabad Millowners' Association, Ahmedabad.
57. Shri M. P. Modi and other employees of M|s. N. M. Raiji & Co., Bombay.
58. Shri R. Nanabhoy, Cost Accountant, Bombay.

59. National Forum of Shareholders, Calcutta.
60. Indian Chamber of Commerce, Calcutta.
61. Merchants' Chamber of U.P., Kanpur.
62. Central Gujarat Chamber of Commerce, Baroda.
63. The Mahratta Chamber of Commerce and Industries, Poona.
64. Bharat Chamber of Commerce, Calcutta.
65. Federation of Andhra Pradesh Chamber of Commerce and Industry, Hyderabad.
66. Saurashtra Chamber of Commerce, Bhavnagar.
67. Alembic Chemical Works Co. Ltd., Baroda.
68. Delhi Factory Owners Federation, New Delhi.
69. Merchants' Chamber of Commerce, Calcutta.
70. Andhra Chamber of Commerce, Madras.
71. Malwa Chamber of Commerce, Indore.
72. The Industrial Credit and Investment Corporation of India, Ltd., Bombay.
73. Federation of Indian Chambers of Commerce & Industry.
74. The Stock Exchange, Bombay.
75. V. N. Poddar, J. K. Chemicals Ltd., Bombay.
76. Premier Construction Co. Ltd., Bombay.
77. Karnatak Chamber of Commerce & Industry, Hubli.
78. Shri Babubhai M. Chinai, M.P.
79. The Chartered Accountants Forum, Bhopal.
80. Shri M. L. Maheshwary, Calcutta.
81. Gujarat Chamber of Commerce and Industry, Ahmedabad.
82. National Alliance of Young Entrepreneurs, New Delhi.
83. Yuva Krantikari Parishad, Jaipur.
84. Federation of Gujarat Mills and Industries, Baroda.
85. Shri M. K. Tadvalkar, Chartered Accountant, Bombay.
86. Tholiya and Company, Bombay.
87. Jayantilal Thakar & Co., Chartered Accountants, Bombay.
88. The Millowners' Association, Bombay.
89. The Mysore Chamber of Commerce & Industry, Bangalore.
90. The Madras Stock Exchange Ltd., Madras.
91. Shri R. Venkatesan, Chartered Accountant, Madras.
92. The Hyderabad Stock Exchange Limited, Hyderabad.
93. The Upper India Chamber of Commerce, Kanpur; Company Law Study Circle, Kanpur and U.P. Chamber of Commerce, Kanpur.
94. J. N. Sharma & Co., Chartered Accountants, Kanpur.
95. Bengal National Chamber of Commerce and Industry, Calcutta.
96. Calcutta Study Circles on Corporate Law and Allied Subjects, Calcutta.
97. Calcutta Trades Association, Calcutta.

98. The Association of Practising Cost Accountants of India, Calcutta.
99. Shri R. C. Bhandari, Calcutta.
100. Delhi Stock Exchange Association Limited, New Delhi.
101. Mehra Goel & Co., Chartered Accountants, Delhi.
102. The India, Pakistan and Bangladesh Association, London.
103. Poysha Industrial Company Limited, Bombay.
104. The Ahmedabad Mill and Gin Stores Merchants' Association. Ahmedabad.
105. Shri Vipin C. Bhagat, Ahmedabad.
106. Shri V. S. Deshpande, Sholapur.
107. Federation of Associations of Small Industries of India, New Delhi.
108. Shri V. A. Sundaram, Secretary, Hindustan Antibiotics Limited, Pimpri (in personal capacity).
109. Neomer Limited, Baroda.
110. Dharak Limited, Bangalore.
111. Shreno Limited, Baroda.
112. Shri N. T. Dalal, Chartered Accountant, Bombay.
113. Shri Adhishwar Prasad Jain, Kanpur.
114. Shri P. R. Venkatachalam, Madras.
115. Cownpore Sugar Works Limited, Kanpur.
116. Shri N. Dandekar, I.C.S. (Retd.), Chartered Accountant, Bombay.
117. Shri F. R. Ginwalla, Bombay.
118. All-India Manufacturers' Organisation, Bombay.
119. Company Secretaries Association of India, Delhi.
120. Shri Dinesh Mills Ltd., Baroda.
121. The All India Association of Industries, Bombay.
122. Shri K. V. Sohanbhogue, Calcutta.
123. Shri C. U. Mody, Bombay.
124. Gujrati Foundry, Bombay.
125. Bombay Type Founders' Association, Bombay.
126. The Andheri Homoeopathic Centre, Bombay.
127. Hindustan Chamber of Commerce, Madras.
128. Madras Chamber of the Institute of Company Secretaries, Madras.
129. Shri D. Subramanian and Dr. H. K. Paranjpe, Members of the Monopolies and Restrictive Trade Practices Commission, New Delhi.
130. Bar Council of Uttar Pradesh, Allahabad.

APPENDIX IV

(*Vide* para 10 of the Report)

List of Associations, Organisations, etc. who gave evidence before the joint Committee

Sl. No.	Name of Association/Individual	Date on which evidence was taken
1	Shri D. L. Mazumdar, Former Secretary, Department of Company Affairs, Government of India.	28-9-1972
2	Punjab, Haryana & Delhi Chamber of Commerce and Industry, New Delhi.	29-9-1972
	Spokesmen : 1. Shri Prem Pandhi, *Chairman.* 2. Shri C.K. Hazari, *Member, Managing Committee.* 3. Shri Raghu Nath Rai, *Member, Company Law and Taxation Panel.* 4. S. Lahiri, *Member Company Law and Taxation Panel.* 5. Shri R. Subramaniam, *Member, Company Law and Taxation Panel.* 6. Shri Onkar Ntah, *Member, Company Law and Taxation Panel.* 7. Shri M.L. Nandrajog, *Secretary.* 8. Shri S. Ganapathi, *Senior Assistant Secretary.*	
*3	Price Water House Peat & Company Employees' Union, Calcutta.	23-10-1972
	Spokesmen : 1. Shri Ajit Paul. 2. Shri Rohin Shome.	
*4	Lovelock & Lewes Employees' National Union, Calcutta.	23-10-1972
	Spokesmen : 1. Shri P.K. Datta. 2. Shri R.K. Gupta.	
5	Chartered Accountant Employees of Messers. Love lock and Lewes, Calcutta.	24-10-72
	Spokesmen : 1. Shri Sujit Bhattacharya. 2. Shri R.K. Bhattacharya.	

*Appeared jointly.

Sl. No.	Name of Association/Individual	Date on which evidence was taken
*6	G. Basu & Co. Employees'Association, Calcutta . .	24-10-1972
	Spokesmen :	
	1. Shri Utpal K. Sarkar	
	2. Shri Nilkantha Ganguli.	
*7	Ray & Ray Employees Union, Calcutta . .	24-10-1972
	Spokesmen :	
	1. Shri Sunit Nandy.	
	2. Shri Nirmal Maitra.	
8	Northern India Shareholders Association, New Delhi . .	25-10-1972
	Spokesmen :	
	1. Shri Premjus Roy, *Member, Executive Committee.*	
	2. Dr. K. B. Rohtagi, *Dean Faculty of Law, Delhi University.*	
	3. Shri L. N. Modi, *Member.*	
**9	Madhya Pradesh Organisation of Industrial, Bhopal .	26-10-1972
	Spokesman	
	Shri M. L. Sharma	
**10	Madhya Pradesh Chamber of Commerce & Industry, Gwalior.	26-10-1972
	Spokesmen :	
	1. Shri A. C. Mitra.	
	2. Shri R. A. Makharia.	
	3. Shri K. S. Daver	
	4. Shri S. V. Mazumdar.	
	5. Shri A. P. Johri.	
11	The Young Chartered Accountants Forum, Calcutta .	27-10-1972
	Spokesmen:	
	1. Shri M. C. Bhandari, *Chairman*	
	2. Shri K. M. Azad.	
	3. Shri I. P. Khanna.	
	4. Shri H. K. Chowdhury.	

*Appeared jointly.
**Appeared jointly.

Serial No.	Name of Association/Individual	Date on which evidence was taken
12	The Institute of Chartered Accountants of India, New Dlehi	28-10-1972

Spokesmen :

1. Shri G. P. Kapadia, *First President Leader of Delegation*
2. Shri R. K. Khanna, *President-elect.*
3. Shri S. K. Gupta, *Vice-President-elect.*
4. Shri A. B. Tandon, *Retiring President*
5. Shri P. Brhamayya, *Past President*
6. Shri V. B. Haribhakti, *Past President*
7. Shri C. Balakrishnan, *Secretary*

13	Associated Chambers of Commerce and Industry of India, New Delhi	11-12-1972

Spokesmen :

1. Shri N. M. Wagle
2. Shri N. A. Palkhivala
3. Shri M. H. Mody
4. Shri S. H. Gursahani
5. Shri M. M. Sabharwal
6. Shri R. L. Mehta
7. Dr. S. Chakravarty

14	Federation of Indian Chambers of Commerce & Industry, New Delhi	12-12-1972

Spokesmen :

1. Shri Madanmohan Mangaldas, *President*
2. Lala Charat Ram, *Vice-President*
3. Shri M. L. Khaitan
4. Shri C. C. Chokshi
5. Shri J. P. Thacker
6. Shri G. L. Bansal
7. Shri P. Chentsal Rao
8. Shri N. Krishnamurthi

15	Yuva Krantikari Parishad, Jaipur	13-12-1972

Spokesmen :

1. Shri R. D. Sharma
2. Shri L. R. Agarwal
3. Shri Gopal Behari
4. Shri R. P. Sharma

Serial No.	Name of Association/Individual	Date on which evidence was taken
16	The Bengal Chamber of Commerce & Industry Calcutta	1-1-1973
	Spokesmen :	
	1. Shri A. W. B. Hayward	
	2. Dr. S. Chakravarty	
	3. Shri D. K. Basu	
	4. Shri S. K. Ganguly	
	5. Shri M. Ghose	
17	The Institute of Cost & Works Accountants of India, Calcutta	1-1-1973
	Spokesmen :	
	1. Shri Shyamlal Banerjee	
	2. Shri M. R. S. Iyengar	
	3. Shri G. K. Abhyankar	
	4. Shri N. K. Bose	
	5. Shri V. Kalyanaraman	
	6. Shri S. K. Mitra	
18	Chartered Accountants' Association for Nationalisation of Audit Profession and Services, Calcutta	1-1-1973
	Spokesmen :	
	1. Shri Arun Kumar Mukherjee	
	2. Shri Indra Nath Das	
	3. Shri Surus Mukherji	
	4. Shri Manas Kumar Banerjee	
	5. Shri Samarendra Nath Pathak	
19	Bengal National Chamber of Commerce and Industry Calcutta	2-1-1973
	Spokesmen :	
	1. Shri T. P. Chakravarti	
	2. Shri G. Saha	
	3. Shri Milan Kumar Mookerjee	
	4. Shri M. C. Poddar	
	5. Shri R. M. Mitra	
	6. Dr. B. N. Ghose	
20	Institute of Company Secretaries of India, New Delhi	2-1-1973
	Spokesmen :	
	1. Shri R. Krishnan	
	2. Shri L. R. Puri	
	3. Shri T. V. Ramachandran	
	4. Shri P. A. S. Rao	
	5. Shri K. V. Suryanarayanan	
	6. Shri T. P. Subbaraman	

Serial No.	Name of Association/Individual	Date on which evidence was taken
21	Shri S. S. Kothari, Ex M. P.	2-1-1973
22	Indian Chamber of Commerce, Calcutta	3-1-1973
	Spokesmen :	
	1. Shri R. B. Shah	
	2. Shri Ranadev Chaudhuri	
	3. Shri P. M. Narielvala	
	4. Shri J. Singhi	
	5. Shri R. S. Lodha	
	6. Shri C. S. Pande	
	7. Shri Manab Chaudhuri	
23	Merchants' Chamber of Commerce, Clacutta	3-1-1973
	Spokesmen :	
	1. Shri B. S. Kothari	
	2. Shri D. M. Kothari	
	3. Shri B. P. Agarwala	
	4. Shri H. R. Bose	
24	Association of Chartered Accountants, Calcutta.	3-1-1973
	Spokesmen :	
	1. Shri N. Ganguly	
	2. Shri S.S. Samanta	
	3. Shri K.P. Bhaumik	
	4. Shri A.K. Chakravarty	
25	Incorporated law Society of Calcutta	3-1-1973
	Spokesman :	
	1. Shri P.K. Himmatsingka	
	2. Shri R.C. Kar	
	3. Shri B.P. Khaitan	
26	The Chartered Institute of Secretaries of India, Calcutta	3-1-197
	Spokesman :	
	1. Shri Y. Verma	
	2. Shri S.K. Basu	
	3. Shri S. Raha	
	4. Shri P.K. Ahluwalia	
	5. Shri A. De	
	6. Shri B. Sen	

Sl. No.	Name of Association/Individual	Date on which evidence was taken
27.	The Association Practising Cost Accountants of India, Calcutta	3-1-1973
	Spokesmen :	
	1. Shri A.K. Biswas	
	2. Shri B.L. Mishra	
	3. Shri S.N. Ghose	
	4. Shri R.K. Bose	
	5. Shri A.K. Mitra	
28.	National Forum of Shareholders, Calcutta	3-1-1973
	Spokesmen :	
	1. Shri M.C. Bhandari	
	2. Shri Chandravadan Desai	
	3. Shri Hari Gopal Acharya	
	4. Shri Jagmohan Sharma	
	5. Shri Banshi Mohan Chattoraj	
29.	Bharat Chamber of Commerce, Calcutta	4-1-1973
	Spokesmen :	
	1. Shri Rajaram Bhiwaniwalla, *President.*	
	2. Shri S.B. Goenka, *Junior Vice-President.*	
	3. Shri R.N. Bangur	
	4. Shri B.P. Poddar	
	5. Dr. B. Mookerjee	
	6. Shri Mohan Singhi	
	7. Shri K.C. Mukerjee, *Secretary.*	
	8. Shri N. Saha	
30.	Calcutta Trades Association, Calcutta	4-1-1973
	Spokesmen :	
	1. Shri S.K. Maskara	
	2. Shri R.N. Bhaduri	
	3. Shri Sumermal Jain	
	4. Shri P.K. Jalan	
31.	Bar Library Club, Calcutta	4-1-1973
	Spokesmen :	
	1. Shri S.C. Sen	
	2. Shri S.B. Mukerjee	
32.	The Indian Merchants' Chamber, Bombay	22-1-197
	Spokesmen :	
	1. Shri Charandas V. Mariwala, *President.*	
	2. Shri J.H. Doshi	
	3. Shri J.P. Thacker	
	4. Shri S.V. Ghatalia	
	5. Shri Tanubhai D. Desai	
	6. Shri C.L. Gheevala, *Secretary.*	
	7. Shri M.K. Desai, *Deputy Secretary.*	
	8. Shri N.Y. Gaitonde, *Assistant Secretary.*	

Sl. No.	Name of Association/Individual	Date on which evidence was taken
33	Shri H.B. Dhondy, *Chartered Accountant, Bombay.*	22-1-1973
34.	Millowners' Association, Bombay	22-1-1973
	Spokesmen :	
	1. Shri Ram Prasad Poddar, *Deputy Chairman.*	
	2. Shri Pratap Bhogilal	
	3. Shri Sudhir Thackersey	
	4. Shri Tanubhai Desai	
	5. Shri R.L.N. Vijayanagar, *Secretary.*	
35.	Bombay Chamber of Commerce and Industry, Bombay.	23-1-197
	Spokesmen :	
	1. Shri M.H. Mody, *Leader*	
	2. Shri N.S. Phatarphekar	
	3. Shri S.H. Gursahani	
	4. Shri D.P. Mehta	
36.	Shri N. Dandekar, ICS (Retd.), *Chartered Accountant, Bombay*	23-1-1973
37.	Stock Exchange, Bombay	23-1-1973
	Spokesman :	
	Shri Phiroze Jamshedji Jeejeebhoy, *President.*	
38.	The Committee of Younger Partners of the Established Auditing Firms, Calcutta	23-1-1973
	Spokesmen :	
	1. Shri P.M. Narielvala, *Chairman.*	
	2. Shri L.K. Ratna, *Secretary.*	
	3. Shri Y.H. Malegam, *Member.*	
39.	Bombay Study Circle on Corporate Law and Allied Subjects	23-1-1973
	Spokesmen :	
	1. Shri C.C. Chokshi, *President.*	
	2. Shri R.P. Kedia	
	3. Shri J.E. Dastur	
	4. Shri Dinesh Monday	
	5. Shri N.V. Iyer	
	6. Shri N.C. Mehta	
40.	Mahratta Chamber of Commerce and Industries, Poona.	23-1-1973
	Spokesmen :	
	1. Shri G.A. Thakkar	
	2. Shri S.C. Chagla	
	3. Shri R.M. Gandhi	
	4. Shri M.M. Thakore	
	5. Shri S.R. Somvanshi	
	6. Shri K.S. Danait	
	7. Shri K.S. Bhat	

Sl. No.	Name of Association/Individual	Date on which evidence was taken
41.	Company Secretaries of certain public limited companies in Bombay *Spokesmen* : 1. Shri S.S. Borker 2. Shri N.D. Sonde 3. Shri R.S. Gandhi 4. Shri K.B. Dabke 5. Shri R.D. Kulkarni 6. Shri P.S. Kanungo	23-1-1973
42.	Prof. K.T. Merchant, *Member, Company Law Advisory Committee*	24-1-1973
43.	Shri F.R. Ginwalla, *Corporate Law Adviser, Bombay*	24-1-1973
44.	Indo-American Chamber of Commerce, Bombay *Spokesmen* : 1. Shri J.B. Dadachanji 2. Shri C.S. Vidyasankar 3. Shri A.R. Burton 4. Dr. B.V. Bhoota	24-1-1973
45.	Bombay Shareholders' Association, Bombay *Spokesmen* : 1. Shri Tanubhai D. Desai, *President.* 2. Shri Dhirajlal Maganlal, *Vice-President.* 3. Shri J.C. Mashriwala, *Secretary.* 4. Shri J.D. Mehta, *Secretary.* 5. Shri H.B. Perreira, *Assistant Secretary.*	24-1-1973
46.	Western India Young Chartered Accountants' Forum, Bombay *Spokesmen*: 1. Shri Jagesh Desai 2. Shri Bansilal Kucheria 3. Shri Rajkumar H. Achhipalia	24-1-1973
47.	Public Financial Institutions *Spokesmen* : 1. Shri V.V. Chari, *Deputy Governor, Reserve Bank of India and Vice Chairman, Industrial Development Bank of India.* 2. Shri H.T. Parekh, *Chairman, Industrial Credit and Investment Corporation of India.* 3. Shri James Raj, *Chairman, Unit Trust of India.* 4. Shri V.V. Divecha, *Chief Law Officer, Industrial Credit and Investment Corporation of India.*	13-6-1973

Sl. No.	Name of Association/Individual	Date on which evidence was taken
48.	The Madras Chamber of Commerce & Industry Madras *Spokesmen* : 1. Shri A.K. Sivaramakrishnan 2. Shri C.S. Vidyasankar 3. Shri R.N. Ratnam	14-6-1973
49.	The Southern India Chamber of Commerce and Industry, Madras *Spokesmen* : 1. Shri S. Narayanaswamy, *President.* 2. Shri N.C. Krishnan 3. Shri R. Venkatesan 4. Shri K.V. Srinivasan.	14-6-1973
50.	Madras Stock Exchange Limited, Madras *Spokesmen* : 1. Shri J.V. Somayajulu, *President.* 2. Shri M.S. Siva Subramaniam, *Vice-President.* 3. Shri E.V. Rajagopalan, *Council Member.* 4. Shri E.R. Krishnamurti, *Executive Director.* 5. Shri Y. Sundara Babu, *Secretary.*	14-6-1973
51.	Madras Shareholders' Association, Madras. *Spokesmen* : 1. Shri S. Annaswami 2. Shri V.M. Thomas 3. Shri C. Muthiya	15-6-1973
52.	Mysore Chamber of Commerce and Industry, Bangalore *Spokesmen* : 1. Shri G. Ramrathnam, *President.* 2. Shri J. Srinivasan. 3. Shri H.C. Nagabhushana	15-6-1973
53.	Ahmedabad Millowners' Association, Ahmedabad *Spokesmen* : 1. Shri N.V. Iyer 2. Shri R.M. Dave	16-6-1973
*54.	Madhya Pradesh Textile Mills Association, Indore *Spokesmen* : 1. Shri E.B. Desai 2. Shri D.N. Makharia	16-6-1973
*55.	Central India Chamber of Commerce & Industry, Ujjain *Spokesman* : 1. Shri S.V. Mazumdar 2. Shri M.D. Gupta 3. Shri D.N. Makharia	16-6-1973

*Appeared jointly.

APPENDIX V

Minutes of the Sittings of the Joint Committee on the Companies (Amendment) Bill, 1972

I

First Sitting

The Committee sat on Saturday, the 2nd September, 1972 from 15.00 to 16.00 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Tridib Chaudhuri
6. Shri Khemchandbhai Chavda
7. Shri C. Chittibabu
8. Shri C. C. Desai
9. Shri G. C. Dixit
10. Shri Ramachandran Kadannappalli
11. Shri Baburao Jangluji Kale
12. Shri Jagannath Mishra
13. Shri D. K. Panda
14. Shri Narsingh Narain Pandey
15. Shri H. M. Patel
16. Shri S. B. P. Pattabhi Rama Rao
17. Shri Jagannath Rao
18. Shri Bishwanath Roy
19. Shri P. M. Sayeed
20. Shri R. R. Sharma
21. Shri P. Ranganath Shenoy
22. Shri R. K. Sinha

Rajya Sabha

23. Shri Salil Kumar Ganguli
24. Shri B. T. Kulkarni
25. Shri Harsh Deo Malaviya

26. Shrimati Saraswati Pradhan
27. Shri S. G. Sardesai
28. Shri Himmat Sinh
29 Shri Habib Tanvir
30. Shri Mahavir Tyagi
31. Dr. M. R. Vyas
32. Shri K. V. Raghunatha Reddi

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri P. B. Menon—*Joint Secretary.*
2. Ch. S. Rao—*Deputy Secretary.*
3. Shri C. R. D. Menon—*Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. At the outset, the Chairman welcomed the Members of the Committee and emphasised the importance and urgency of the task before the Committee.

3. The Members of the Committee desired that the Department of Company Affairs might make available to them relevant literature having bearing on the provisions of the Bill such as the Acts which the Bill seek to amend, Reports of various expert Committees, etc. and also a note on the effectiveness of the existing Company Law.

4. The Committee then considered their future programme of work. The Committee decided to invite memoranda from the Chambers of Commerce and Industry, Associations, Organisations, individuals, etc. interested in the subject matter of the Bill and also to take oral evidence of those who might express a desire to that effect. The Committee also decided to issue a Press Communique in this behalf and fixed the 20th September, 1972 as the last date for receipt of memoranda. They also decided to address a circular letter to the Federation of Indian Chambers of Commerce and Industry, the Institute of Chartered Accountants of India, Bar Council of India, all State Bar Councils, Supreme Court Bar Association, all High Courts Bar Associations, Trade|Labour Unions, etc. inviting their comments on the Bill.

5. The Committee then authorised the Chairman to Select the Associations, Organisations, etc. for oral evidence.

The Committee also desired the Minister in-charge of the Bill to explain the implications of the provisions of the Bill at their sitting to be held on the 27th September, 1972 and decided to hear evidence on the 28th and 29th September and also on the 30th September, 1972, if necessary.

6. The Committee also desired that the Department of Company Affairs might tabulate the various memoranda|suggestions that might be

received by the Committee and offer their comments on the various points raised therein for consideration of the Committee.

7. The Committee then adjourned.

II

Second Sitting

The Committee sat on Wednesday, the 27th September, 1972 from 10.00 to 10.15 hours and again from 16.00 to 18.00 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Tridib Chaudhuri
6. Shri Khemchandbhai Chavda
7. Shri C. Chittibabu
8. Shri S. R. Damani
9. Shri Madhu Dandavate
10. Shri G. C. Dixit
11. Shrimati V. Jeyalakshmi
12. Shri Baburao Jangluji Kale
13. Shri Jagannath Mishra
14. Shri Surendra Mohanty
15. Shri Priya Ranjan Das Munsi
16. Shri Narsingh Narain Pandey
17. Shri H. M. Patel
18. Shri S. B. P. Pattabhi Rama Rao
19. Shri R. Balakrishna Pillai
20. Shri Jagannath Rao
21. Shri Bishwanath Roy
22. Shri P. M. Sayeed
23. Shri R. R. Sharma
24. Shri P. Ranganath Shenoy

Rajya Sabha

25. Shri Salil Kumar Ganguli
26. Shri B. T. Kulkarni
27. Shri S. S. Mariswamy
28. Shri Jagdish Prasad Mathur
29. Shrimati Saraswati Pradhan

30. Shri D. D. Puri
31. Shri Himmat Sinh
32. Shri Habib Tanvir
33. Shri Mahavir Tyagi
34. Dr. M. R. Vyas
35. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
4. Shri Ch. S. Rao—*Deputy Secretary.*
5. Dr. (Mrs.) Usha Dar—*Joint Director (Research and Statistics).*
6. Shri C. R. D. Menon—*Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. At the outset, the Chairman informed the Committee about the sudden demise of Shri C. C. Desai, a member of the Committee, on the 22nd September, 1972. The Committee thereafter passed the following condolence resolution:—

> "This Committee resolves to place on record its sense of profound distress and grief on the sudden demise of one of its Members, Shri C. C. Desai. An eminent administrator, he served with great diligence and capacity the Provincial Government of Central Provinces and Berar and the Central Government of India. Later, he represented India as its High Commissioner in Ceylon and Pakistan and won a high place in regard to his diplomatic skill and ability. On retirement from service, as an industrialist, he played a prominent part in the management of many undertakings and gained a valuable insight into the working and problems of the corporate sector. As a Member of Parliament, he devoted special attention to matters of economic policy, development and administration and, more particularly, to problems of Company Law. His absence will be most keenly felt when the Committee gets down to its present task of reporting on the Companies (Amendment) Bill, 1972 and his wise counsel will be greatly missed. The Committee wishes to convey its heart-felt condolences and sympathy to the bereaved family."

The members stood in silence for a short while.

3. As a mark of respect to the memory of Shri C. C. Desai, the Committee then adjounrned to meet again at 16.00 hours.

[The Committee re-assembled at 16.00 hours]

4. The Minister of Company Affairs (Shri K. V. Raghunatha Reddy) explained in detail the implications of the various provisions of the Bill.

5. The Chairman informed the Committee that various Chambers of Commerce and Industry, Companies, business organisations and other associations had requested that in view of the importance of the Bill, the last date for presentation of memoranda on the provisions of the Bill be extended in order to enable them to examine the Bill in all its aspects. The Committee, after some discussion, decided to extend the time for submission of memoranda on the Bill upto the 10th October, 1972. The Committee also decided that no further extension might be granted for submission of memoranda. The Committee directed to Lok Sabha Secretariat to issue a Press Communique to that effect and also desired that the various Chambers of Commerce and Industry, business organisations and other associations, who had sought extension of time, might be informed accordingly.

6. The Committee then adjourned to meet again at 11.00 hours on Thursday, the 28th September, 1972.

III

Third Sitting

The Committee sat on Thursday, the 28th September, 1972 from 11.00 to 13.45 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri C. Chittibabu
7. Shri S. R. Damani
8. Shri Madhu Dandavate
9. Shri G. C. Dixit
10. Shrimati V. Jeyalakshmi
11. Shri Ramachandran Kadannappalli
12. Shri Baburao Jangluji Kale
13. Shri Priya Ranjan Das Munsi
14. Shri Narsingh Narain Pandey
15. Shri H. M. Patel
16. Shri S. B. P. Pattabhi Rama Rao
17. Shri R. Balakrishna Pillai
18. Shri Jagannath Rao
19. Shri Bishwanath Roy
20. Shri P. M. Sayeed

21. Shri R. R. Sharma
22. Shri P. Ranganath Shenoy
23. Shri R. K. Sinha.

Rajya Sabha

24. Shri Salil Kumar Ganguli
25. Shri B. T. Kulkarni
26. Shri S. S. Mariswamy
27. Shri Jagdish Prasad Mathur
28. Shri M. K. Mohta
29. Shrimati Saraswati Pradhan
30. Shri D. D. Puri
31. Shri Himmat Sinh
32. Shri Habib Tanvir
33. Shri Mahavir Tyagi
34. Dr. M. R. Vyas
35. Shri K. V. Raghunatha Reddy.

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
4. Shri Ch. S. Rao—*Deputy Secretary.*
5. Dr. (Mrs.) Usha Dar—*Joint Director (Research and Statistics).*
6. Shri C. R. D. Menon—*Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Before Shri D. L. Mazumdar, Former Secretary, Department of Company Affairs proceeded to give evidence, the Chairman drew his attention to Direction 58 of the Directions by the Speaker.

3. The evidence lasted till 13.45 hours.

4. A verbatim record of evidence was kept.

5. The Committee then adjourned to meet at 11.00 hours on Friday the 29th September, 1972.

IV

Fourth Sitting

The Committee sat on Friday, the 29th September, 1972 from 11.00 hours to 14.00 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Khemchandbhai Chavda
6. Shri S. R. Damani
7. Shri Madhu Dandavate
8. Shri G. C. Dixit
9. Shrimati V. Jeyalakshmi
10. Shri Ramachandran Kadannappalli
11. Shri Baburao Jangluji Kale
12. Shri Surendra Mohanty
13. Shri Priya Ranjan Das Munsi
14. Shri Narsingh Narain Pandey
15. Shri S. B. P. Pattabhi Rama Rao
16. Shri R. Balakrishna Pillai
17. Shri Jagannath Rao
18. Shri Bishwanath Roy
19. Shri P. M. Sayeed
20. Shri R. R. Sharma
21. Shri P. Ranganath Shenoy.

Rajya Sabha

22. Shri Salil Kumar Ganguli
23. Shri B. T. Kulkarni
24. Shri S. S. Mariswamy
25. Shri Gagdish Prasad Mathur
26. Shri M. K. Mohta
27. Shrimati Saraswati Pradhan
28. Shri D. D. Puri
29. Shri Himmat Sinh
30. Shri Mahavir Tyagi
31. Dr. M. R. Vyas
32. Shri K. V. Raghunatha Reddy.

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
4. Shri Ch. S. Rao—*Deputy Secretary.*
5. Dr. (Mrs.) Usha Dar—*Joint Director (Research and Statistics).*
6. Shri C. R. D. Menon—*Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Before the Committee proceeded to hear the evidence of the following representatives of Punjab, Haryana and Delhi Chamber of Commerce and Industry, New Delhi, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:—

1. Shri Prem Pandhi—*Chairman.*
2. Shri C. K. Hazari—*Member, Managing Committee.*
3. Shri Raghu Nath Rai—*Members, Company Law and Taxation Panel.*
4. Shri S. Lahiri— —Do—
5. Shri R. Subramaniam —Do—
6. Shri Onkar Nath— —Do—
7. Shri M. L. Nandrajog—*Secretary.*
8. Shri S. Ganapathi—*Senior Assistant Secretary.*

The evidence lasted till 13.45 hours.

3. A verbatim record of evidence was kept.

4. The Committee decided to hear further evidence on the provisions of the Bill at Delhi from 23rd to 28th October, 1972 and if need be at places outside Delhi during January, 1973.

5. The Chairman was authorised to select parties for evidence to be held during October, 1972 at Delhi.

6. The Committee then adjourned.

V

Fifth Sitting

The Committee sat on Monday, the 23rd October, 1972 from 11.00 to 12.30 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua

4. Shri H. K. L. Bhagat
5. Shri Tridib Kumar Chaudhuri
5. Shri G. C. Dixit
7. Shrimati V. Jeyalakshmi
8. Shri Baburao Jangluji Kale
9. Shri Narsingh Narain Pandey
10. Shri H. M. Patel
11. Shri S. B. P. Pattabhi Rama Rao
12. Shri R. Balakrishna Pillai
13. Shri Jaganaath Rao
14. Shri Bishwanath Roy
15. Shri R. R. Sharma
16. Shri P. Ranganath Shenoy.

Rajya Sabha

17. Shri Salil Kumar Ganguli
18. Shri B. T. Kulkarni
19. Shri Jagdish Prasad Mathur
20. Shri M. K. Mohta
21. Shri Srinivasa Rao
22. Shri S. G. Sardesai
23. Shri Mahavir Tyagi
24. Dr. M. R. Vyas
25. Shri K. V. Raghunatha Reddy.

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
4. Shri Ch. S. Rao—*Deputy Secretary.*
5. Dr. (Mrs.) Usha Dar—*Joint Director (Research and Statistics).*
6. Shri C. R. D. Menon—*Under Secretary.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

2. The Committee heard evidence of the representatives of the Employees' Unions mentioned below:

[In the beginning, the Chairman drew the attention of the representatives of the Employees' Unions to the provisions of Direction 58 of the Directions by the Speaker.]

I. Price Waterhouse Peat & Co. Employees' Union, Calcutta.

Spokesmen:

1. Shri Ajit Paul
2. Shri Robin Shome.

II. *Lovelock & Lewes Employees' National Union, Calcutta.*

Spokesmen:

1. Shri P. K. Datta
2. Shri R. K. Gupta.

3. The evidence lasted till 12.30 hours.

4. A verbatim record of evidence was kept.

5. The Committee then adjourned to meet again at 11.00 hours on Tuesday, the 24th October, 1972.

VI

Sixth Sitting

The Committee sat on Tuesday, the 24th October, 1972 from 11.00 to 13.30 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Tridib Chaudhuri
6. Shri S. R. Damani
7. Shri G. C. Dixit
8. Shrimati V. Jeyalakshmi
9. Shri Ramachandran Kadannappalli
10. Shri Baburao Jangluji Kale
11. Shri Jagannath Rao
12. Shri D. K. Panda
13. Shri Narsingh Narain Pandey
14. Shri H. M. Patel
15. Shri S. B. P. Pattabhi Rama Rao
16. Shri R. Balakrishna Pillai
17. Shri Bishwanath Roy
18. Shri R. R. Sharma
19. Shri P. Ranganath Shenoy

Rajya Sabha

20. Shri B. T. Kulkarni
21. Shri Harsh Deo Malaviya
22. Shri M. K. Mohta
23. Shrimati Saraswati Pradhan
24. Shri K. Srinivasa Rao

25. Shri S. G. Sardesai
26. Shri Habib Tanvir
27. Shri Mahavir Tyagi
28. Dr. M. R. Vyas
29. Shri K. V. Raghunatha Reddy.

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*
4. Shri S. C. Bhardwaj—*Deputy Director.*
5. Shri C. R. D. Menon—*Under Secretary.*
6. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

2. The Committee heard evidence of the representatives of the Association, Union *etc.*, mentioned below:—

[In the beginning, the Chairman drew the attention of the representatives of the Association, Union to the provisions of Direction 58 of the Directions by the Speaker.]

I. *Chartered Accountant Employees of Messrs Lovelock and Lewes, Calcutta.*

Spokesmen:

1. Shri Sujit Bhattacharya
2. Shri R. K. Bhattacharya

[11.00 to 12.30 hours]

II. *G. Basu & Co. Employees' Association, Calcutta Spokesmen*:

Spokesmen:

1. Shri Utpal K. Sarkar
2. Shri Nilkantha Ganguli

III. *Ray & Ray Employees Union, Calcutta*

Spokesmen:

1. Shri Sunit Nandy
2. Shri Nirmal Maitra

[12.30 to 13.30 hours]

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again at 11.00 hours on Wednesday, the 25th October, 1972.

VII

Seventh Sitting

The Committee sat on Wednesday, the 25th October, 1972 from 11.00 to 13.10 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Tridib Chaudhuri
6. Shri Khemchandbhai Chavda
7. Shri C. Chittibabu
8. Shri S. R. Damani
9. Shri G. C. Dixit
10. Shrimati V. Jeyalakshmi
11. Shri Popatlal M. Joshi
12. Shri Ramachandran Kadannappalli
13. Shri D. K. Panda
14. Shri Narsingh Narain Pandey
15. Shri S. B. P. Pattabhi Rama Rao
16. Shri R. Balakrishna Pillai
17. Shri Jagannath Rao
18. Shri Bishwanath Roy
19. Shri R. R. Sharma
20. Shri P. Ranganath Shenoy

Rajya Sabha

21. Shri Salil Kumar Ganguli
22. Shri B. T. Kulkarni
23. Shri Harsh Deo Malaviya
24. Shri S. S. Mariswamy
25. Shrimati Saraswati Pradhan
26. Shri K. Srinivasa Rao
27. Shri Mahavir Tyagi
28. Dr. M. R. Vyas
29. Shri K. V. Raghunatha Reddy.

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*

3. Shri C. M. Narayanan—*Director of Investigation and Inspection*

4. Shri Ch. S. Rao—*Deputy Secretary*

5. Dr. (Mrs.) Usha Dar—*Joint Director.*

6. Shri C. R. D. Menon—*Under Secretary.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

2. Before the Committee proceeded to hear the evidence of the following representatives of the Northern India Shareholders Association, New Delhi, the Chairman drew their attention to the provisions of Direction 58 of Directions by the Speaker:—

1. Shri Premjus Roy—*Member, Executive Committee*

2. Dr. K. B. Rohtagi—*Dean, Faculty of Law, Delhi University.*

3. Shri L. N. Modi—*Member.*

The evidence lasted till 13.10 hours.

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again at 11.00 hours on Thursday, the 26th October, 1972.

VIII

Eighth Sitting

The Committee sat on Thursday, the 26th October, 1972 from 11.00 to 14.00 hours.

PRESENT

Shri H. K. L. Bhagat—*In the Chair*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga

3. Shri Bedabrata Barua

4. Shri S. R. Damani

5. Shri G. C. Dixit

6. Shrimati V. Jeyalakshmi

7. Shri Popatlal M. Joshi

8. Shri Ramachandran Kadannappalli

9. Shri Baburao Jangluji Kale

10. Shri D. K. Panda

11. Shri Narsingh Narain Pandey

12. Shri H. M. Patel

13. Shri S. B. P. Pattabhi Rama Rao

14. Shri R. Balakrishna Pillai

15. Shri Jagannath Rao

16. Shri Bishwanath Roy
17. Shri P. Ranganath Shenoy

Rajya Sabha

18. Shri B. T. Kulkarni
19. Shri Harsh Deo Malaviya
20. Shri S. S. Mariswamy
21. Shri M. K. Mohta
22. Shrimati Saraswati Pradhan
23. Shri K. Srinivasa Rao
24. Shri S. G. Sardesai
25. Dr. M. R. Vyas
26. Shri K. V. Raghunatha Reddy

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection*
4. Shri Ch. S. Rao —*Deputy Secretary*
5. Dr. (Mrs.) Usha Dar—*Joint Director*
6. Shri C. R. D. Menon—*Under Secretary*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary*

2. In the absence of the Chairman, Shri H. K. L. Bhagat was elected as the Chairman for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee heard evidence of the representatives of the following Chambers of Commerce and Industry:—

[In the beginning, the Chairman drew the attention of the representatives of the Chambers of Commerce and Industry, etc. to the provisions of Direction 58 of the Directions by the Speaker.]

I. *Madhya Pradesh Organisation of Industries, Bhopal*

Spokesman:

Shri M. L. Sharma

II. *Madhya Pradesh Chamber of Commerce & Industry, Gwalior*

Spokesmen:

1. Shri A. C. Mitra
2. Shri R. A. Makharia
3. Shri K. S. Daver
4. Shri S. V. Mazumdar
5. Shri A. P. Johri

4. The evidence lasted till 14.00 hours.

5. A verbatim record of evidence was kept.

6. The Committee then adjourned to meet again at 11.00 hours on Friday, the 27th October, 1972.

IX

Ninth Sitting

The Committee sat on Friday, the 27th October, 1972 from 11.00 to 13.25 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Age
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri G. C. Dixit
6. Shrimati V. Jeyalakshmi
7. Shri Ramachandran Kadannappalli
8. Shri D. K. Panda
9. Shri Narsingh Narain Pandey
10. Shri H. M. Patel
11. Shri S. B. P. Pattabhi Rama Rao
12. Shri Jagannath Rao
13. Shri Bishwanath Roy
14. Shri R. R. Sharma
15. Shri P. Ranganath Shenoy

Rajya Sabha

16. Shri B. T. Kulkarni
17. Shri S. S. Mariswamy
18. Shri M. K. Mohta
19. Shrimati Saraswati Pradhan
20. Dr. M. R. Vyas
21. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretay*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection*

4. Shri Ch. S. Rao—*Deputy Secretary*

5. Dr. (Mrs.) Usha Dar—*Joint Director*

6. Shri C. R. D. Menon—*Under Secretary*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary*

2. Before the Committee proceeded to hear the evidence of the following representatives of the Young Chartered Accountants' Forum, Calcutta, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:—

1. Shri M. C. Bhandari—*Chairman*
2. Shri K. M. Azad
3. Shri I. P. Khanna
4. Shri H. K. Chowdhury

3. The evidence lasted till 13.15 hours.

4. A verbatim record of evidence was kept.

5. The Committee decided to ask for an extension of time for presentation of their Report upto the last day of the first week of the next Budget Session, 1973.

6. The Committee authorised the Chairman and, in his absence, Shri H. K. L. Bhagat to move the necessary motion in the House.

7. The Committee also authorised the Chairman to fix dates for the next round of sittings of the Committee.

8. The Committee then adjourned to meet again on Saturday, the 28th October, 1972.

X

Tenth Sitting

The Committee sat on Saturday, the 28th October, 1972 from 11.00 to 14.30 hours.

PRESENT

Shri Syed Ahmed Aga—*In the Chair.*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri H. K. L. Bhagat
4. Shri Tridib Chaudhuri
5. Shri S. R. Damani
6. Shri G. C. Dixit
7. Shrimati V. Jeyalakshmi
8. Shri Ramachandran Kadannappalli

9. Shri D. K. Panda
10. Shri Narsingh Narain Pandey
11. Shri H. M. Patel
12. Shri S. B. P. Pattabhi Rama Roy
13. Shri Jagannath Roy
14. Shri Bishwanath Roy
15. Shri R. R. Sharma
16. Shri P. Ranganath Shenoy

Rajya Sabha

17. Shri B. T. Kulkarni
18. Shri S. S. Mariswamy
19. Shri Jagdish Prasad Mathur
20. Shrimati Saraswati Pradhan
21. Shri Habib Tanvir
22. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection*
4. Shri Ch. S. Rao—*Deputy Secretary*
5. Dr. (Mrs.) Usha Dar—*Joint Director.*
6. Shri C. R. D. Menon—*Under Secretary*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary*

2. Before the Commitee proceeded to hear the evidence of the following representatives of the Institute of Chartered Accountants of India, New Delhi, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:—

1. Shri G. P. Kapadia, First President—Leader of the Delegation.
2. Shri R. K. Khanna, President-elect.
3. Shri S. K. Gupta, Vice-President-elect.
4. Shri A. B. Tandan, Retiring President.
5. Shri P. Brahmayya, Past President.
6. Shri V. B. Haribhakti, Past President.
7. Shri C. Balakrishnan, Secretary.

The evidence lasted till 14.30 hours.

3. A verbatim record of evidence was kept.

4. The Committee then adjourned.

XI

Eleventh Sitting

The Committee sat on Monday, the 11th December, 1972 from 15.00 to 18.15 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri H. K. L. Bhagat
4. Shri Somnath Chatterjee
5. Shri Tridib Chaudhuri
6. Shri Khemchandbhai Chavda
7. Shri S. R. Damani
8. Shri G. C. Dixit
9. Shri Popatlal M. Joshi
10. Shri Jagannath Mishra
11. Shri Surendra Mohanty
12. Shri H. M. Patel
13. Shri S. B. P. Pattabhi Rama Rao
14. Shri R. Balakrishna Pillai
15. Shri Jagannath Rao
16. Shri P. Ranganath Shenoy

Rajya Sabha

17. Shri B. T. Kulkarni
18. Shri Harsh Deo Malaviya
19. Shri Jagdish Prasad Mathur
20. Shri M. K. Mohta
21. Shri D. D. Puri
22. Shri Mahavir Tyagi
23. Dr. M. R. Vyas
24. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri Ch. S. Rao—*Deputy Secretary*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*
5. Shri C. R. D. Menon—*Under Secretary*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. Before the Committee proceeded to hear evidence of the following representatives of the Associated Chambers of Commerce and Industry of India, New Delhi, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:—

1. Shri N. M. Wagle
2. Shri N. A. Palkhivala
3. Shri M. H. Mody
4. Shri S. H. Gursahani
5. Shri M. M. Sabharwal
6. Shri R. L. Mehta
7. Dr. S. Chakravarty

The evidence lasted till 18.15 hours.

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again on 12th December, 1972 at 15.00 hours.

XII

Twelfth Sitting

The Committee sat on Tuesday, the 12th December, 1972 from 15.00 to 18.45 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Somnath Chatterjee
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri S. R. Damani
7. Shri Madhu Dandavate
8. Shrimati V. Jeyalakshmi
9. Shri Popatlal M. Joshi
10. Shri Baburao Jangluji Kale
11. Shri Muhammed Sheriff
12. Shri H. M. Patel
13. Shri R. Balakrishna Pillai
14. Shri Jagannath Rao
15. Shri R. R. Sharma
16. Shri P. Ranganath Shenoy

Rajya Sabha

17. Shri B. T. Kulkarni
18. Shri Harsh Deo Malaviya
19. Shri M. K. Mohta
20. Shri D. D. Puri
21. Shri S. G. Sardesai
22. Shri Himmat Sinh
23. Shri Mahavir Tyagi
24. Dr. M. R. Vyas
25. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection*
4. Shri Ch. S. Rao—*Deputy Secretary*
5. Dr. (Mrs.) Usha Dar—*Joint Director.*
6. Shri C. R. D. Menon—*Under Secretary*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. Before the Committee proceeded to hear evidence of the following representatives of the Federation of Indian Chambers of Commerce & Industry, New Delhi, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:—

1. Shri Madanmohan Mangaldas—*President*
2. Lala Charat Ram—*Vice-President*
3. Shri M. L. Khaitan
4. Shri C. C. Chokshi
5. Shri J. P. Thacker
6. Shri G. L. Bansal
7. Shri P. Chentsal Rao
8. Shri N. Krishnamurthi

The evidence lasted till 18.45 hours.

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again on 13th December, 1972 at 16.00 hours.

XIII

Thirteenth Sitting

The Committee sat on Wednesday, the 13th December, 1972 from 16.00 to 17.00 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Tridib Chaudhuri
4. Shri Madhu Dandavate
5. Shrimati V. Jeyalakshmi
6. Shri Jagannath Mishra
7. Shri Muhammed Sheriff
8. Shri H. M. Patel
9. Shri S. B. P. Pattabhi Rama Rao
10. Shri R. Balakrishna Pillai
11. Shri R. R. Sharma
12. Shri P. Ranganath Shenoy

Rajya Sabha

13. Shri Jagdish Prasad Mathur
14. Shri M. K. Mohta
15. Shri D. D. Puri
16. Shri S. G. Sardesai
17. Shri Himmat Sinh
18. Shri Mahavir Tyagi
19. Dr. M. R. Vyas
20. Shri K. V. Raghunatha Reddy

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection*
4. Shri Ch. S. Rao—*Deputy Secretary*
5. Dr. (Mrs.) Usha Dar—*Joint Director.*
6. Shri C. R. D. Menon—*Under Secretary*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. Before the Committee proceeded to hear evidence of the following representatives of the Yuva Krantikari Parishad, Jaipur, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:

1. Shri R. D. Sharma

2. Shri L. R. Agarwal
3. Shri Gopal Behari
4. Shri R. P. Sharma

The evidence lasted till 16.45 hours.

3. A verbatim record of evidence was kept.

4. The Committee then considered their future programme of work. They decided to hold their sittings at Calcutta from Monday, the 1st January to Thursday, the 4th January, 1973 and at Bombay from Monday, the 22nd January to Wednesday, the 24th January, 1973 to hear oral evidence of the representatives of various Associations, Organisations, etc.

The Committee authorised the Chairman to select parties to be called for oral evidence at Calcutta and Bombay.

5. The Committee then adjourned.

XIV

Fourteenth Sitting

The Committee sat on Monday, the 1st January, 1973 from 10.15 to 13.30 hours in Council Chamber, Assembly Building, Calcutta.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri H. K. L. Bhagat
4. Shri Somnath Chatterjee
5. Shri Tridib Chaudhuri
6. Shri Khemchandbhai Chavda
7. Shri G. C. Dixit
8. Shrimati V. Jeyalakshmi
9. Shri Popatlal M. Joshi
10. Shri Ramachandran Kadannappalli
11. Shri Jagannath Mishra
12. Shri Muhammed Sheriff
13. Shri Priya Ranjan Das Munsi
14. Shri D. K. Panda
15. Shri Narsingh Narain Pandey
16. Shri S. B. P. Pattabhi Rama Rao
17. Shri R. R. Sharma
18. Shri P. Ranganath Shenoy

Rajya Sabha

19. Shri Salil Kumar Ganguli
20. Shri Harsh Deo Malaviya
21. Shri S. S. Mariswamy
22. Shri Jagdish Prasad Mathur
23. Shrimati Saraswati Pradhan
24. Shri D. D. Puri
25. Shri S. G. Sardesai
26. Shri Himmat Sinh
27. Shri Habib Tanvir
28. Shri Mahavir Tyagi
29. Dr. M. R. Vyas
30. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri Ch. S. Rao—*Deputy Secretary*
4. Dr. (Mrs.) Usha Dar—*Joint Director*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. The Committee heard evidence of the representatives of the Associations, Organisations, etc. mentioned below:

[In the beginning, the Chairman drew the attention of the representatives of the following Associations, Organisations, etc. to the provisions of Direction 58 of the Directions by the Speaker.]

I. **The Bengal Chamber of Commerce and Industry, Calcutta**

Spokesmen:

1. Shri A. W. B. Hayward
2. Dr. S. Chakravarty
3. Shri D. K. Basu
4. Shri S. K. Ganguly
5. Shri M. Ghose

[10.15 to 11.55 hours]

II. **The Institute of Cost and Works Accountants of India, Calcutta**

Spokesmen:

1. Shri Shyamal Banerjee
2. Shri M. R. S. Iyengar
3. Shri G. K. Abhyankar

4. Shri N. K. Bose
5. Shri V. Kalyanaraman
6. Shri S. K. Mitra

[11.55 to 13.00 hours]

III. **Chartered Accountants' Association for Nationalisation of Audit Profession and Services, Calcutta**

Spokesmen:

1. Shri Arun Kumar Mukherjee
2. Shri Indra Nath Das
3. Shri Susrut Mukherji
4. Shri Manas Kumar Banerjee
5. Shri Samarendra Nath Pathak

[13.00 to 13.30 hours]

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again at 10.00 hours on Tuesday, the 2nd January, 1973 in Council Chamber, Assembly Building, Calcutta.

XV

Fifteenth Sitting

The Committee sat on Tuesday, the 2nd January, 1973 from 10.00 to 13.30 hours in Council Chamber, Assembly Building, Calcutta.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri H. K. L. Bhagat
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri C. Chittibabu
7. Shri G. C. Dixit
8. Shrimati V. Jeyalakshmi
9. Shri Popatlal M. Joshi
10. Shri Ramachandran Kadannappalli
11. Shri Jagannath Mishra
12. Shri Muhammed Sheriff
13. Shri Priya Ranjan Das Munsi
14. Shri D. K. Panda

15. Shri Narsingh Narain Pandey
16. Shri S. B. P. Pattabhi Rama Rao
17. Shri Jagannath Rao
18. Shri R. R. Sharma
19. Shri P. Ranganath Shenoy
20. Shri Baburao Jangluji Kale

Rajya Sabha

21. Shri Salil Kumar Ganguli
22. Shri Harsh Deo Malaviya
23. Shri S. S. Mariswamy
24. Shri Jagdish Prasad Mathur
25. Shri M. K. Mohta
26. Shrimati Saraswati Pradhan
27. Shri D. D. Puri
28. Shri S. G. Sardesai
29. Shri Himmat Sinh
30. Shri Mahavir Tyagi
31. Dr. M. R. Vyas
32. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra, *Joint Secretary and Legislative Counsel*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri Ch. S. Rao—*Deputy Secretary*
4. Dr. (Mrs.) Usha Dar—*Joint Director*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

2. The Committee heard evidence of the representatives of the Associations, Organisations, etc. mentioned below:

[In the beginning, the Chairman drew the attention of the representatives of the following Associations, Organisations, etc. to the provisions, of Direction 58 of the Directions by the Speaker.]

I. Bengal National Chamber of Commerce and Industry, Calcutta

Spokesmen:

1. Shri T. P. Chakravarti
2. Shri G. Saha
3. Shri Milan Kumar Mookerjee
4. Shri M. C. Poddar

5. Shri R. M. Mitra
6. Dr. B. N. Ghose

[10.00 to 12.00 hours]

II. *Institute of Companies Secretaries of India, New Delhi.*

Spokesmen:

1. Shri R. Krishnan
2. Shri L. R. Puri
3. Shri T. V. Ramachandran
4. Shri P. A. S. Rao
5. Shri K. V. Suryanarayanan
6. Shri T. P. Subbaraman

[12.00 to 13.00 hours]

III. Shri S. S. Kothari, Ex-M.P.

[13.00 to 13.30 hours]

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again at 10.00 hours on Wednesday, the 3rd January, 1973 in Council Chamber, Assembly Building, Calcutta.

XVI

Sixteenth Sitting

The Committee sat on Wednesday, the 3rd January, 1973 from 10.00 to 13.15 hours and again from 15.00 to 17.15 hours in Council Chamber Assembly Building, Calcutta.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Somnath Chatterjee
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri G. C. Dixit
7. Shri Baburao Jangluji Kale
8. Shri Jagannath Mishra
9. Shri Muhammed Sheriff
10. Shri S. B. P. Pattabhi Rama Rao
11. Shri R. Balakrishna Pillai
12. Shri Jagannath Rao
13. Shri R. R. Sharma

14. Shri P. Ranganath Shenoy
15. Shri R. K. Sinha

Rajya Sabha

16. Shri Salil Kumar Ganguli
17. Shri B. T. Kulkarni
18. Shri Harsh Deo Malaviya
19. Shri S. S. Mariswamy
20. Shri Jagdish Prasad Mathur
21. Shri M. K. Mohta
22. Shrimati Saraswati Pradhan
23. Shri D. D. Puri
24. Shri S. G. Sardesai
25. Shri Himmat Sinh
26. Shri Mahavir Tyagi
27. Dr. M. R. Vyas
28. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. P. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*
4. Dr. (Mrs.) Usha Dar—*Joint Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee heard evidence of the representatives of the Associations, Organisations, etc. mentioned below:

[In the beginning, the Chairman drew the attention of the representatives of the following Associations, Organisations, etc. to the provisions of Direction 58 of the Directions by the Speaker.]

I. Indian Chamber of Commerce, Calcutta.

Spokesmen:

1. Shri R. B. Shah
2. Shri Ranadev Chaudhuri
3. Shri P. M. Narielvala
4. Shri J. Singhi
5. Shri R. S. Lodha
6. Shri C. S. Pande
7. Shri Manab Chaudhuri

(10.15 to 12.10 hours)

II. **Merchants' Chamber of Commerce, Calcutta**

Spokesmen:

1. Shri B. S. Kothari
2. Shri D. M. Kothari
3. Shri B. P. Agarwala
4. Shri H. R. Bose.

(12.10 to 12.50 hours)

III. **Association of Chartered Accountants, Calcutta**

Spokesmen:

1. Shri N. Ganguly
2. Shri S. S. Samanta
3. Shri K. P. Bhaumik
4. Shri A. K. Chakravarty

(12.50 to 13.50 hours)

[The Committee adjourned for lunch at 13.15 hours and reassembled at 15.00 hours.]

IV. **Incorporated Law Society of Calcutta**

Spokesmen:

1. Shri P. D. Himmatsingka
2. Shri R. C. Kar
3. Shri B. P. Khaitan

(15.00 to 15.35 hours)

V. **The Chartered Institute of Secretaries of India, Calcutta**

Spokesmen:

1. Shri Y. Verma
2. Shri S. K. Basu
3. Shri S. Raha
4. Shri P. K. Ahluwalia
5. Shri A. De.
6. Shri B. Sen.

(15.35 to 16.00 hours)

VI. **The Association of Practising Cost Accountants of India, Calcutta.**

Spokesmen:

1. Shri A. K. Biswas
2. Shri B. L. Mishra
3. Shri S. N. Ghose
4. Shri R. K. Bose
5. Shri A. K. Mitra

(16.00 to 16.30 hours)

VII. **National Forum of Shareholders, Calcutta**

Spokesmen:

1. Shri M. C. Bhandari
2. Shri Chandravadan Desai
3. Shri Hari Gopal Acharya
4. Shri Jagmohan Sharma
5. Shri Banshi Mohan Chattoraj

(16.30 to 17.15 hours)

3. A verbatim record of evidence was kept.

The Committee then adjourned to meet again at 10.00 hours on Thursday, the 4th January, 1973 in Council Chamber, Assembly Building, Calcutta.

XVII

Seventeenth Sitting

The Committee sat on Thursday, the 4th January, 1973 from 10.00 to 13.30 hours in Council Chamber, Assembly Building, Calcutta.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Somnath Chatterjee
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri G. C. Dixit
7. Shri Baburao Jangluji Kale
8. Shri Jagannath Mishra
9. Shri Muhammed Sheriff
10. Shri S. B. P. Pattabhi Rama Rao
11. Shri R. Balakrishna Pillai
12. Shri Jagannath Rao
13. Shri R. R. Sharma
14. Shri P. Raganath Shenoy
15. Shri R. K. Sinha

Rajya Sabha

16. Shri Salil Kumar Ganguli
17. Shri Harsh Deo Malaviya
18. Shri S. S. Mariswamy
19. Shri Jagdish Prasad Mathur
20. Shri M. K. Mohta

21. Shri Himmat Sinh
22. Shri Mahavir Tyagi
23. Dr. M. R. Vyas

Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secy.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee heard evidence of the representatives of the Associations, Organisations, etc. mentioned below:

[In the beginning, the Chairman drew the attention of the representatives of the following associations, organisations, etc. to the provisions of Direction 58 of the Directions by the Speaker.]

I. Bharat Chamber of Commerce, Calcutta

Spokesmen:

1. Shri Rajaram Bhiwaniwalla, President
2. Shri S. B. Goenka, Junior Vice-President.
3. Shri R. N. Bangur
4. Shri B. P. Poddar
5. Dr. B. Mookerjee
6. Shri Mohan Singhi
7. Shri K. C. Mukerjee, Secretary
8. Shri N. Saha

(10.00 to 11.40 hours)

II. Calcutta Trades Association, Calcutta

Spokesmen:

1. Shri S. K. Maskara
2. Shri R. N. Bhaduri
3. Shri Sumermal Jain
4. Shri P. K. Jalan

(11.40 to 12.15 hours)

III. Bar Library Club, Calcutta

Spokesmen:

1. Shri S. C. Sen
2. Shri S. B. Mukerjee

(12.15 to 13.15 hours)

3. A verbatim record of evidence was kept.

4. The Committee then placed on record their warm appreciation of the valuable assistance rendered to them by the Secretary, West Bengal Legislative Assembly, their Reporters and other members of the staff in holding their sittings in the Council Chamber.

5. The Committee also placed on record their appreciation of the assistance rendered to them by the officers and staff of the Department of Company Affairs in holding the sittings at Calcutta.

6. The Committee then adjourned to meet at Bombay on Monday, the 22nd January, 1973.

XVIII

Eighteenth Sitting

The Committee sat on Monday, the 22nd January, 1973 from 10.00 to 13.30 hours in Council Hall, Bombay.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri C. Chittibabu
7. Shri S. R. Damani
8. Shri Madhu Dandavate
9. Shri G. C. Dixit
10. Shrimati V. Jeyalakshmi
11. Shri Popatlal M. Joshi
12. Shri Baburao Jangluji Kale
13. Shri Jagannath Mishra
14. Shri Surendra Mohanty
15. Shri Muhammed Sheriff
16. Shri Priya Ranjan Das Muns
17. Shri D. K. Panda
18. Shri Narsingh Narain Pandey
19. Shri H. M. Patel
20. Shri S. B. P. Pattabhi Rama Rao
21. Shri R. Balakrishna Pillai
22. Shri Jagannath Rao
23. Shri Bishwanath Roy
24. Shri P. Ranganath Shenoy
25. Shri R. K. Sinha

Rajya Sabha

26. Shri Salil Kumar Ganguli
27. Shri B. T. Kulkarni
28. Shri Harsh Deo Malaviya
29. Shri M. K. Mohta
30. Shrimati Saraswati Pradhan
31. Shri D. D. Puri
32. Shri S. G. Sardesai
33. Shri Himmat Sinh
34. Shri Habib Tanvir
35. Shri Mahavir Tyagi
36. Dr. M. R. Vyas
37. Shri K. V. Raghunatha Reddy

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee heard evidence of the representatives of the Associations, Organisations, etc., mentioned below:

[In the beginning the Chairman drew the attention of the representatives of the following associations, organisations, etc. to the provisions of Direction 58 of the Directions by the Speaker.]

I. The Indian Merchants' Chamber, Bombay

Spokesmen:

1. Shri Charandas V. Mariwala—*President.*
2. Shri J. H. Doshi.
3. Shri J. P. Thacker.
4. Shri S. V. Ghatalia.
5. Shri Tanubhai D. Desai.
6. Shri C. L. Gheevala—*Secretary.*
7. Shri M. K. Desai—*Deputy Secretary.*
8. Shri N. Y. Gaitonde—*Assistant Secretary.*

[10.00 to 12.10 hours]

II. Shri H. B. Dhondy— *Chartered Accountant, Bombay.*

[12.10 to 12.40 hours]

III. Millowners' Association, Bombay

Spokesmen:

1. Shri Ram Prasad Poddar—*Deputy Chairman.*
2. Shri Pratap Bhogilal.

3. Shri Sudhir Thackersey.

4. Shri Tanubhai Desai.

5. Shri R. L. N. Vijayanagar—*Secretary.*

[12.40 to 13.30 hours]

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again at 10.00 hours on Tuesday, the 23rd January, 1973 in Council Hall, Bombay.

XIX

Nineteenth Sitting

The Committee sat on Tuesday, the 23rd January, 1973 from 10.00 to 13.30 hours and again from 15.00 to 17.00 hours in Council Hall, Bombay.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri C. Chittibabu
7. Shri S. R. Damani
8. Shri Madhu Dandavate
9. Shri G. C. Dixit
10. Shrimati V. Jeyalakshmi
11. Shri Popatlal M. Joshi
12. Shri Jagannath Mishra
13. Shri Surendra Mohanty
14. Shri Muhammed Sheriff
15. Shri Priya Ranjan Das Munsi
16. Shri D. K. Panda
17. Shri Narsingh Narain Pandey
18. Shri H. M. Patel
19. Shri S. B. P. Pattabhi Rama Rao
20. Shri R. Balakrishna Pillai
21. Shri Jagannath Rao
22. Shri Bishwanath Roy
23. Shri P. Ranganath Shenoy

Rajya Sabha

24. Shri Salil Kumar Ganguli
25. Shri B. T. Kulkarni

26. Shri Harsh Deo Malaviya
27. Shri Jagdish Prasad Mathur
28. Shri M. K. Mohta
29. Shrimati Saraswati Pradhan
30. Shri D. D. Puri
31. Shri S. G. Sardesai
32. Shri Himmat Sinh
33. Shri Mahavir Tyagi
34. Dr. M. R. Vyas.

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee heard evidence of the representatives of the Associations, Organisations, etc., mentioned below:

[In the beginning, the Chairman drew the attention of the representatives of the following associations, organisations, etc. to the provisions of Direction 58 of the Directions by the Speaker.]

I. Bombay Chamber of Commerce and Industry, Bombay

Spokesmen:

1. Shri M. H. Mody—*Leader.*
2. Shri N. S. Phatarphakar.
3. Shri S. H. Gursahani.
4. Shri D. P. Mehta.

[10.00 to 11.50 hours]

II. Shri N. Dandekar, ICS, (Retd.), Chartered Accountant, Bombay.

[11.50 to 13.10 hours]

III. The Stock Exchange, Bombay,

Spokesman:

Shri Phiroze Jamshedji Jeejeebhoy—*President.*

[13.10 to 13.30 hours]

[The Committee adjourned for lunch at 13.30 hours and reassembled at 15.00 hours.]

IV. The Committee of Younger Partners of the Established Auditing Firms, Calcutta

Spokesmen:

1. Shri P. M. Narielvala—*Chairman.*
2. Shri L. K. Ratna—*Secretary.*
3. Shri Y. H. Malegam—*Member.*

[15.00 to 15.40 hours]

V. Bombay Study Circle on Corporate Law and Allied Subjects

Spokesmen:

1. Shri C. C. Chokshi—*President.*
2. Shri R. P. Kedia
3. Shri J. E. Dastur
4. Shri Dinesh Mody
5. Shri N. V. Iyer
6. Shri N. C. Mehta

[15.40 to 16.10 hours]

VI. Mahratta Chamber of Commerce and Industries, Poona

Spokesmen:

1. Shri G. A. Thakkar
2. Shri S. C. Chagla
3. Shri R. M. Gandhi
4. Shri M. M. Thakore
5. Shri S. R. Somvanshi
6. Shri K. S. Danait
7. Shri K. S. Bhat

[16.10 to 16.45 hours]

VII. Company Secretaries of certain public limited companies in Bombay

Spokesmen:

1. Shri S. S. Borker
2. Shri N. D. Sonde
3. Shri R. S. Gandhi
4. Shri K. B. Dabke
5. Shri R. D. Kulkarni
6. Shri P. S. Kanungo

[16.45 to 17.00 hours]

3. A verbatim record of evidence was kept.

4. The Committee then adjourned to meet again at 10.00 hours on the 24th January, 1973 in Council Hall, Bombay.

XX

Twentieth Sitting

The Committee sat on Wednesday, the 24th January, 1973 from 10.00 to 13.45 hours in Council Hall, Bombay.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri S. R. Damani
7. Shri Madhu Dandavate
8. Shri G. C. Dixit
9. Shrimati V. Jeyalakshmi
10. Shri Popatlal M. Joshi
11. Shri Baburao Jangluji Kale
12. Shri Jagannath Mishra
13. Shri Surendra Mohanty
14. Shri Muhmammed Sheriff
15. Shri Priya Ranjan Das Munsi
16. Shri Narsingh Narain Pandey
17. Shri H. M. Patel
18. Shri S. B. P. Pattabhi Rama Rao
19. Shri R. Balakrishna Pillai
20. Shri Bishwanth Roy
21. Shri P. Ranganath Shenoy

Rajya Sabha

22. Shri Salil Kumar Ganguli
23. Shri B. T. Kulkarni
24. Shri Jagdish Prasad Mathur
25. Shrimati Saraswati Pradhan
26. Shri D. D. Puri
27. Shri Himmat Sinh
28. Shri Habib Tanvir
29. Shri Mahavir Tyagi
30. Dr. M. R. Vyas.

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*

3. Shri Ch. S. Rao—*Deputy Secretary.*

4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee heard evidence of the representatives of the Associations, Organisations, etc., mentioned below:

[In the beginning, the Chairman drew the attention of the representatives of the following Associations, Organisations, etc. to the provisions of Direction 5 of the Directions by the Speaker.]

I. **Prof. K. T. Merchant—Member, Company Law Advisory Committee**

[10.00 to 11.35 hours]

II. **Shri F. R. Ginwalla—Corporate Law Adviser, Bombay.**

[11.35 to 12.40 hours]

III. **Indo-American Chamber of Commerce, Bombay.**

Spokesmen:

1. Shri J. B. Dadachanji
2. Shri C. S. Vidyasankar
3. Shri A. R. Burton
4. Dr. V. V. Bhoota.

(11.55 to 12.40 hours)

IV. **The Bombay Shareholders' Association, Bombay.**

Spokesmen:

1. Shri Tanubhai D. Desai—*President.*
2. Shri Dhirajlal Maganlal—*Vice-President.*
3. Shri J. C. Mashriwala—*Secretary.*
4. Shri J. D. Mehta—*Secretary.*
5. Shri H. B. Perreira—*Assistant Secretary.*

[12.40 to 13.00 hours]

V. **Western India Young Chartered Accountants' Forum, Bombay.**

Spokesmen:

1. Shri Jagesh Desai
2. Shri Bansilal Kucheria
3. Shri Rajkumar H. Achhipalia.

[13.00 to 13.40 hours]

3. A verbatim record of evidence was kept.

4. The Committee desired that the Department of Company Affairs might prepare a gist of important points raised by the various witnesses during the course of their evidence before the Committee. The Committee also desired that the Department of Company Affairs might furnish their comments on the points raised by the witnesses to the Lok Sabha Secretariat, for circulation to the members of the Committee.

5. The Committee further decided that Government amendments to the Bill, if any together with explanatory notes thereon might also be made available to the members of the Committee before the 5th February, 1973.

6. The Committee then placed on record their warm appreciation of the valuable assistance rendered to them by the Secretary, Maharashtra Legislature and other members of the staff in holding their sittings in Council Hall, Bombay.

7. The Committee also placed on record their appreciation of the assistance rendered to them by the officers and staff of the Department of Company Affairs in holding the sittings at Bombay.

8. The Committee then adjourned.

XXI

Twenty-first Sitting

The Committee sat on Wednesday, the 7th February, 1973 from 11.00 to 12.00 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri S. R. Damani
7. Shri Madhu Dandavate
8. Shrimati V. Jeyalakshmi
9. Shri Popatlal M. Joshi
10. Shri Jagannath Mishra
11. Shri Surendra Mohanty
12. Shri Muhammed Sheriff
13. Shri Jagannath Rao
14. Shri Bishwanath Roy
15. Shri R. R. Sharma
16. Shri P. Ranganath Shenoy.
17. Shri R. K. Sinha.

Rajya Sabha

18. Shri Salil Kumar Ganguli
19. Shri B. T. Kulkarni
20. Shri Jagdish Prasad Mathur
21. Shri M. K. Mohta
22. Shri D. D. Puri

23. Shri S. G. Sardesai
24. Shri Himmat Sinh
25. Shri Mahavir Tyagi.
26. Shri M. R. Vyas.

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law and Justice and Company Affairs and Shri D. R. Chavan, Minister of State in the Ministry of Law and Justice and Company Affairs, who were not the members of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee considered their future programme of work. After some discussion, the Committee felt that it would not be possible for them to complete their work by the stipulated date *i.e.* the 23rd February, 1973. The Committee, therefore, decided to ask for another extension of time for presentation of their report upto the first day of the second week of the Monsoon Session (1973).

The Committee authorised, the Chairman and in his absence Shri S. R. Damani, to move the necessary motion in the House.

4. The Committee also decided to hear further oral evidence of some more associations, organisations, etc. in March, 1973.

The Committee authorised the Chairman to select the organisations etc. for oral evidence and also fix the dates of the next sittings of the Committee.

5. The Committee also decided to hold one or two sittings in April, 1973 to have a general discussion on the various points raised in the memoranda submitted to the Committee and also during the course of oral evidence before the Committee.

6. The Committee decided to take up clause-by-clause consideration of the Bill during the next inter-session period.

7. The Committee decided that—

(i) evidence given before the Committee be printed and laid on the Table of both the Houses; and

(ii) two copies of the memoranda received by the Committee from various associations, organisations, etc. be placed in Parliament Library, after the report of the Committee had been presented to the House for reference by Members.

8. At the end, the Committee adopted the following resolution:—

"The Committee place on record their high appreciation of the assistance and advice given by Shri K. V. Raghunatha Reddy as Member of this Committee as well as Minister-in-charge of the Department of Company Affairs, in their deliberations."

The Committee authorised the Chairman to communicate the above resolution to Shri K. V. Raghunatha Reddy.

9. The Committee then adjourned.

XXII

Twenty-second Sitting

The Committee sat on Friday, the 11th May, 1973 from 10.00 to 10.45 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri Somnath Chatterjee
5. Shri G. C. Dixit
6. Shri Baburao Jangluji Kale
7. Shri Jagannath Mishra
8. Shri Surendra Mohanty
9. Shri S. B. P. Pattabhi Rama Rao
10. Shri R. Balakrishna Pillai
11. Shri Bishwanath Roy
12. Shri P. Ranganath Shenoy
13. Shri R. K. Sinha.

Rajya Sabha

14. Shri Salil Kumar Ganguli
15. Shri B. T. Kulkarni
16. Shri Harsh Deo Malaviya
17. Shri Jagdish Prasad Mathur
18. Shri D. D. Puri
19. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri Y. T. Shah—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri N. K. Sen Gupta—*Director.*
4. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
5. Shri H. D. Panjwani—*Deputy Secretary.*
6. Dr. (Mrs.) Usha Dar—*Joint Director.*
7. Shri C. R. D. Menon—*Joint Director.*
8. Shri M. C. Varma—*Secretary, Company Law Board.*
9. Shri S. C. Bharadwaj—*Deputy Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee considered their future programme. After some discussion, the Committee decided to hear oral evidence of the remaining associations, organisations, etc. including the representatives of the public financial institutions either at Bangalore or Trivandrum, subject to availability of accommodation, from Wednesday, the 13th June to Saturday, the 16th June, 1973.

3. The Committee desired that notices of Government amendments together with explanatory notes thereon might be made available to the members of the Committee by Saturday, the 23rd June, 1973 and the members might send their notices of amendments, if any, to the Lok Sabha Secretariat by Saturday, the 30th June, 1973 at the latest.

4. The Committee then decided to take up clause-by-clause consideration of the Bill for a week from Monday, the 9th July, 1973 onwards. The Committee further decided to hold their sittings for the purpose either at Srinagar or Simla, subject to the availability of accommodation.

The Committee then adjourned.

XXIII

Twenty-third Sitting

The Committee sat on Wednesday, the 13th June, 1973 from 11.00 hours to 13.15 hours in Committee Room, Old Legislators' Hostel Madras.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Khemchandbhai Chavda

4. Shri C. Chittibabu
5. Shri Madhu Dandavate
6. Shri G. C. Dixit
7. Shri Popatlal M. Joshi
8. Shri Ramachandran Kadannappalli
9. Shri Baburao Janguji Kale
10. Shri Jagannath Mishra
11. Shri Muhammed Sheriff
12. Shri Narsingh Narain Pandey
13. Shri S. B. P. Pattabhi Rama Rao
14. Shri R. Balakrishna Pillai
15. Shri Jagnnath Rao
16. Shri Bishwanath Roy
17. Shri R. R. Sharma
18. Shri P. Ranganath Shenoy
19. Shri R. K. Sinha

Rajya Sabha

20. Shri B. T. Kulkarni
21. Shri Harsh Deo Malaviya
22. Shri S. S. Mariswamy
23. Shrimati Saraswati Pradhan
24. Shri S. G. Sardesai
25. Shri H. M. Trivedi
26. Shri Mahavir Tyagi
27. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri P. B. Menon—*Joint Secretary.*
2. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
3. Shri C. R. D. Menon—*Joint Director.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of Proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset, the Chairman infromed the Committee about the sudden demise of Shri S. Mohan Kumaramangalam, Minister of Steel

and Mines and Shri K. Baladhandayutham, M.P. on the 31st May, 1973. The Committee, thereafter, passed the following condolence resolution:

> "The Committee place on record their profound sense of sorrow over the demise on the 31st May, 1973 of their most esteemed colleagues, Shri S. Mohan Kumaramangalam, Minister of Steel and Mines and Shri K. Baladhandayutham, M.P. and send their heartfelt condolences to members of the bereaved families."

The members stood in silence for a short while.

4. Before the Committee proceeded to hear the evidence of the following representatives of the Public Financial Institutions, the Chairman drew their attention to Direction 58 of the Directions by the Speaker:

1. Shri V. V. Chari—*Deputy Governor, Reserve Bank of India and Vice-Chairman, Industrial Development Bank of India.*
2. Shri H. T. Parekh—*Chairman, Industrial Credit and Investment Corporation of India.*
3. Shri James Raj—*Chairman, Unit Trust of India.*
4. Shri V. V. Divecha—*Chief Law Officer, Industrial Credit and Investment Corporation of India.*

5. The evidence lasted till 13.15 hours.

6. A verbatim record of evidence was kept.

7. The Committee then adjourned to meet again at 11.00 hours on Thursday, the 14th June, 1973 in Committee Room, Old Legislators' Hostel, Madras.

XXIV

Twenty-fourth Sitting

The Committee sat on Thursday, the 14th June, 1973 from 11.00 to 13.30 hours in Committee Room, Old Legislators' Hostel Madras.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Khemchandbhai Chavda
4. Shri Madhu Dandavate
5. Shri G. C. Dixit
6. Shri Popatlal M. Joshi
7. Shri Ramachandran Kadannappalli

8. Shri Baburao Jangluji Kale
9. Shri Jagannath Mishra
10. Shri Muhammed Sheriff
11. Shri Priya Ranjan Das Munsi
12. Shri Narsingh Narain Pandey
13. Shri S. B. P. Pattabhi Rama Rao
14. Shri R. Balakrishna Pillai
15. Shri Jagannath Rao
16. Shri Bishwanath Roy
17. Shri R. R. Sharma
18. Shri P. Ranganath Shenoy
19. Shri R. K. Sinha

Rajya Sabha

20. Shri B. T. Kulkarni
21. Shri Harsh Deo Malaviya
22. Shri S. S. Mariswamy
23. Shrimati Saraswati Pradhan
24. Shri S. G. Sardesai
25. Shri H. M. Trivedi
26. Shri Mahavir Tyagi
27. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri P. B. Menon—*Joint Secretary*
2. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
3. Shri C. R. D. Menon—*Joint Director.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee heard evidence of the representatives of the Associations, Organisations etc. mentioned below:

[In the beginning, the Chairman drew the attention of the representatives of the Associations, Organisations, etc. to the provisions of Direction 58 of the Directors by the Speaker.]

I. **The Madras Chamber of Commerce & Industry, Madras**

Spokesmen:

1. Shri A. K. Sivaramakrishnan
2. Shri C. S. Vidyasankar
3. Shri R. N. Ratnam

[11.00 to 11.30 hours]

II. **The Southern India Chamber of Commerce and Industry, Madras**

Spokesmen:

1. Shri S. Narayanaswamy—*President.*
2. Shri N. C. Krishnan
3. Shri R. Venkatesan
4. Shri K. V. Srinivasan

[11.30 to 12.40 hours]

III. **Madras Stock Exchange Limited, Madras**

Spokesmen:

1. Shri J. V. Somayajulu—*President.*
2. Shri M. S. Siva Subramaniam—*Vice-President.*
3. Shri E. V. Rajagopalan—*Council Member.*
4. Shri E. R. Krishnamurti—*Executive Director.*
5. Shri Y. Sundara Babu—*Sercetary.*

[12.40 to 13.30 hours]

4. A verbatim record of evidence was kept.

5. The Committee then adjourned to meet again at 11.00 hours on Friday, the 15th June, 1973 in Committee Room, Old Legislators' Hostel, Madras.

XXV

Twenty-fifth Sitting

The Committee sat on Friday, the 15th June, 1973 from 11.00 hours to 13.30 hours in Committee Room, Old Legislators' Hostel, Madras.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Khemchandbhai Chavda
4. Shri C. Chittibabu
5. Shri Madhu Dandavate
6. Shri G. C. Dixit
7. Shri Popatlal M. Joshi
8. Shri Ramachandran Kadannappalli

9. Shri Baburao Jangluji Kale
10. Shri Jagannath Mishra
11. Shri Muhammed Sheriff
12. Shri Priya Ranjan Das Munsi
13. Shri Narsingh Narain Pandey
14. Shri S. B. P. Pattabhi Rama Rao
15. Shri R. Balakrishna Pillai
16. Shri Jagannath Rao
17. Shri Bishwanath Roy
18. Shri R. R. Sharma
19. Shri P. Ranganath Shenoy
20. Shri R. K. Sinha

Rajya Sabha

21. Shri Harsh Deo Malaviya
22. Shri S. S. Mariswamy
23. Shrimati Saraswati Pradhan
24. Shri H. M. Trivedi
25. Shri Mahavir Tyagi
26. Dr. M. R. Vyas

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri P. B. Menon—*Joint Secretary*
2. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
3. Shri C. R. D. Menon—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee heard evidence of the representatives of the Associations, Organisations, etc. mentioned below:

[In the begining, the Chairman drew the attention of the represetatives of the Associations, Organisations, etc. to the provisions of Direction 58 of the Directions by the Speaker].

I. The Madras Shareholders Association, Madras.

Spokesmen:

1. Shri S. Annaswami
2. Shri V. M. Thomas
3. Shri C. Muthiya

[11.00 to 12.00 hours]

II. Mysore Chamber of Commerce and Industry, Bangalore.

Spokesmen:

1. Shri G. Ramrathnam—*President.*
2. Shri J. Srinivasan
3. Shri H. C. Nagabhashana

[12.00 to 13.30 hours]

4. A verbatim record of evidence was kept.

5. The Committee then adjourned to meet again at 11.00 hours on Saturday, the 16th June, 1973, in Committee Room, Old Legislators' Hostel, Madras.

XXVI

Twenty-six Sitting

The Committee sat on Saturday, the 16th June, 1973 from 11.00 to 13.30 hours in Committee Room, Old Legislators' Hostel, Madras.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Badabrata Barua
3. Shri Khemchandbhai Chavda
4. Shri Madhu Dandavate
5. Shri G. C. Dixit
6. Shri Popatlal M. Joshi
7. Shri Baburao Jangluji Kale
8. Shri Jagannath Mishra
9. Shri Muhammed Sheriff
10. Shri Priya Ranjan Das Munsi
11. Shri Narsingh Narain Pandey
12. Shri S. B. P. Pattabhi Rama Rao
13. Shri R. Balakrishna Pillai
14. Shri Bishwanath Roy
15. Shri R. R. Sharma
16. Shri P. Ranganath Shenoy

Rajya Sabha

17. Shri B. T. Kulkarni
18. Shri Harsh Deo Malaviya
19. Shrimati Saraswati Pradhan
20. Shri S. G. Sardesai
21. Shri Mahavir Tyagi
22. Dr. M. R. Vyas.

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri P. B. Menon—*Joint Secretary.*
2. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
3. Shri C. R. D. Menon—*Joint Director.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of procedure and Conduct of Business in Lok Sabha.

3. The Committee heard evidence of the representatives of the Associations, Organisations, etc. mentioned below:

[In the beginning, the Chairman drew the attention of the representatives of the Associations, Organisations, etc. to the provisions of Direction 58 of the Directions by the Speaker.]

I. Ahmedabad Mill-owners' Association, Ahmedabad.

Spokesmen:

1. Shri N. V. Iyer
2. Shri R. M. Dave

[11.00 to 12.05 hours]

II. **Madhya Pradesh Textile Mills Association, Indore**

Spokesmen:

1. Shri E. B. Desai
2. Shri D. N. Makharia.

III. **Central India Chamber of Commerce & Industry, Ujjain**

Spokesmen:

1. Shri S. V. Mazumdar
2. Shri M. D. Gupta
3. Shri D. N. Makharia.

[12.05 to 13.15 hours]

4. A verbatim record of evidence was kept.

5. The Chairman announced that in accordance with the decision of the Committee taken at their sitting held on the 11th May 1973, notices of Government amendments together with explanatory notes thereon would be made available to the members of the Committee by the 23rd June, 1973 and members might send their notices of amendmetns, if any, to the Lok Sabha Secretariat by the 30th June, 1973. The Committee would take up clause-by-clause consideration of the Bill from the 9th July, 1973 onwards.

6. The Committee then placed on record their warm appreciation of the valuable assistance rendered to them by the Secretary, Tamil Nadu Legislative Assembly, their Reporters and other members of the staff in holding their sittings in the Old Legislators' Hostel, Madras.

7. The Committee also placed on record their warm appreciation of the valuable assistance rendered to them by the State Government, officers of the Department of Company Affairs including Regional Director, Company Law, Board, Madras and his officers and staff in holding the sittings. They spared no pains in making the stay of the members of the Committee at Madras comfortable.

8. The Committee then adjourned.

XXVII

Twenty-seventh Sitting

The Committee sat on Monday, the 9th July, 1973 from 10.00 hours to 10.30 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Somnath Chatterjee
4. Shri Tridib Chaudhuri
5. Shri S. R. Damani
6. Shri Madhu Dandavate
7. Shri G. C. Dixit
8. Shri Muhammed Sheriff
9. Shri Narsingh Narain Pandey
10. Shri H. M. Patel
11. Shri S. B. P. Pattabhi Rama Rao
12. Shri Jagannath Rao

Rajya Sabha

13. Shri Salil Kumar Ganguli
14. Shri Jagdish Prasad Mathur
15. Shri M. K. Mohta
16. Shri D. D. Puri
17. Shri S. G. Sardesai
18. Shri Mahavir Tyagi
19. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*
2. Shri N. L. Vaidyanathan—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri P. B. Menon—*Joint Secretary.*
2. Shri Ch. S. Rao—*Deputy Secretary.*
3. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee mourned the death of Shri D. R. Chavan, Minister of State in the Ministry of Law, Justice and Company Affairs and passed the following condolence resolution:

> "The Committee place on record their profound sense of sorrow over the sudden demise on the 8th July, 1973 of their most esteemed colleague, Shri D. R. Chavan, Minister of State in the Ministry of Law, Justice and Company Affairs and send their heartfelt condolences to members of the bereaved family."

Thereafter, the Members stood in silence for a short while as a mark of respect to the deceased.

4. The Committee then adjourned to meet on the 10th July, 1973 at 10.00 hours.

XXVIII

Twenty-eighth Sitting

The Committee sat on Tuesday, the 10th July, 1973 from 10.00 hours to 13.00 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri H. K. L. Bhagat
4. Shri Somnath Chatterjee
5. Shri Tridib Chaudhuri
6. Shri Khemchandbhai Chavda
7. Shri S. R. Damani
8. Shri Madhu Dandavate
9. Shri G. C. Dixit
10. Shri Potatlal M. Joshi
11. Shri Surendra Mohanty
12. Shri Muhammed Sheriff

13. Shri Priya Ranjan Das Munsi
14. Shri Narsingh Narain Pandey
15. Shri H. M. Patel
16. Shri S. B. P. Pattabhi Rama Rao
17. Shri Jagannath Rao
18. Shri Bishwanath Roy
19. Shri R. R. Sharma
20. Shri P. Ranganath Shenoy
21. Shri R. K. Sinha

Rajya Sabha

22. Shri Salil Kumar Ganguli
23. Shri B. T. Kulkarni
24. Shri Jagdish Prasad Mathur
25. Shri M. K. Mohta
26. Shrimati Saraswati Pradhan
27. Shri D. D. Puri
28. Shri S. G. Sardesai
29. Shri Himmat Sinh
30. Shri H. M. Trivedi
31. Shri Mahavir Tyagi
32. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*
2. Shri N. L. Vaidyanathan—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri P. B. Menon—*Joint Secretary.*
2. Shri Ch. S. Rao—*Deputy Secretary.*
3. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. After some discussion, the Committee decided to take up general discussion on each clause of the Bill prior to taking up clause-by-clause consideration of the Bill.

Accordingly, the Committee took up general discussion on the amendment proposed in relation to clauses 2 to 4 of the Bill.

4. The Committee then adjourned to meet again on the 11th July, 1973 at 10.00 hours.

XXIX

Twenty-ninth Sitting

The Committee sat on Wednesday, the 11th July, 1973 from 10.00 hours to 13.15 hours

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Somnath Chatterjee
4. Shri Khemchandbhai Chavda
5. Shri S. R. Damani
6. Shri Madhu Dandavate
7. Shri G. C. Dixit
8. Shri Popatlal M. Joshi
9. Shri Jagannath Mishra
10. Shri Surendra Mohanty
11. Shri Muhammed Sheriff
12. Shri Narsingh Narain Pandey
13. Shri H. M. Patel
14. Shri S. B. P. Pattabhi Rama Rao
15. Shri Jagannath Rao
16. Shri Bishwanath Roy
17. Shri R. R. Sharma
18. Shri P. Ranganath Shenoy
19. Shri R. K. Sinha

Rajya Sabha

20. Shri B. T. Kulkarni
21. Shri Jagdish Prasad Mathur
22. Shri M. K. Mohta
23. Shrimati Saraswati Pradhan
24. Shri D. D. Puri
25. Shri S. G. Sardesai
26. Shri Himmat Sinh
27. Shri H. M. Trivedi
28. Shri Mahavir Tyagi
29. Dr. M. R. Vyas.

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*
2. Shri N. L. Vaidyanathan—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE AND COMPANY AFFAIRS

(DEPARTMENT OF COMPANY AFFAIRS)

1. Shri P. B. Menon—*Joint Secretary.*
2. Shri Ch. S. Rao—*Deputy Secretary.*
3. Dr. (Mrs.) Usha Dar—*Joint Director.*
4. Shri C. R. D. Menon—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission to the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outsets, Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs explained his tentative reactions to the suggestions made by the Members in relation to Clauses 2 to 4 of the Bill. Thereafter, the Committee took up general discussion on the amendments proposed in relation to clauses 5 to 10 of the Bill. The discussion on clause 10 was not concluded.

4. The Committee then adjourned to meet again on the 12th July, 1973 at 10.00 hours.

XXX

Thirtieth Sitting

The Committee sat on Thursday, the 12th July, 1973 from 10.00 hours to 13.00 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri H. K. L. Bhagat
4. Shri S. R. Damani
5. Shri Madhu Dandavate
6. Shri G. C. Dixit
7. Shri Popatlal M. Joshi
8. Shri Baburao Jangluji Kale
9. Shri Jagannath Mishra
10. Shri Surendra Mohanty
11. Shri Muhammed Sheriff
12. Shri Narsingh Narain Pandey
13. Shri H. M. Patel

14. Shri S. B. P. Pattabhi Rama Rao
15. Shri Jagannath Rao
16. Shri Bishwanath Roy
17. Shri R. R. Sharma
18. Shri P. Ranganath Shenoy
19. Shri R. K. Sinha

Rajya Sabha

20. Shri Salil Kumar Ganguli
21. Shri B. T. Kulkarni
22. Shri Harsh Deo Malaviya
23. Shri Jagdish Prasad Mathur
24. Shri M. K. Mohta
25. Shrimati Saraswati Pradhan
26. Shri D. D. Puri
27. Shri S. C. Sardesai
28. Shri Himmat Sinh
29. Shri H. M. Trivedi
30. Shri Mahavir Tyagi.

LEGISLATIVE COUNCEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*
2. Shri N. L. Vaidyanathan—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri P. B. Menon—*Joint Secretary.*
2. Shri Ch. S. Rao—*Deputy Secretary.*
3. Dr. (Mrs.) Usha Dar—*Joint Director.*
4. Shri C. R. D. Menon—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset, the Committee decided that the sitting fixed for Saturday, the 14th July, 1973 might be cancelled.

4. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs then explained his tentative reactions to the suggestions made by the Members in relation to Clauses 5 to 9 of the Bill. Thereafter, the Committee resumed general discussion on the amendments proposed with regard to Clauses 10 to 17 of the Bill.

5. The Committee then adjourned to meet again on the 13th July, 1973 at 10.00 hours.

XXXI

Thirty-first Sitting

The Committee sat on Friday, the 13th July, 1973 from 10.00 hours to 13.00 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri S. R. Damani
4. Shri Madhu Dandavate
5. Shri G. C. Dixit
6. Shri Baburao Jangluji Kale
7. Shri Jagannath Mishra
8. Shri Surendra Mohanty
9. Shri Muhammed Sheriff
10. Shri Priya Ranjan Das Munsi
11. Shri Narsingh Narain Pandey
12. Shri H. M. Patel
13. Shri S. B. P. Pattabhi Rama Rao
14. Shri Jagannath Rao
15. Shri Bishwanath Roy
16. Shri R. R. Sharma
17. Shri P. Ranganath Shenoy
18. Shri R. K. Sinha

Rajya Sabha

19. Shri Salil Kumar Ganguli
20. Shri B. T. Kulkarni
21. Shri Harsh Deo Malaviya
22. Shri S. S. Mariswamy
23. Shri Jagdish Prasad Mathur
24. Shrimati Saraswati Pradhan
25. Shri D. D. Puri
26. Shri Himmat Sinh
27. Shri Mahavir Tyagi

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*
2. Shri N. L. Vaidyanathan—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri P. B. Menon—*Joint Secretary.*
2. Shri Ch. S. Rao—*Deputy Secretary.*
3. Dr. (Mrs.) Usha Dar—*Joint Director.*
4. Shri C. R. D. Menon—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset, Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs stated that he would give his tentative reactions to the suggestions made by the Members in relation to Clauses 10 to 17 at a later date. Thereafter, the Committee resumed general discussion on the amendments proposed with regard to Clauses 18 to 39 of the Bill.

4. The Committee then adjourned.

XXXII

Thirty-second Sitting

The Committee sat on Saturday, the 21st July, 1973 from 14.00 hours to 15.00 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri H. K. L. Bhagat
4. Shri Somnath Chatterjee
5. Shri Tridib Chaudhuri
6. Shri Khemchandbhai Chavda
7. Shri Madhu Dandavate
8. Shri G. C. Dixit
9. Shri Ramachandran Kadannappalli
10. Shri Jagannath Mishra
11. Shri Surendra Mohanty
12. Shri Muhammed Sheriff
13. Shri Narsingh Narain Pandey
14. Shri H. M. Patel
15. Shri Jagannath Rao
16. Shri Bishwanath Roy
17. Shri P. M. Sayeed
18. Shri P. Ranganath Shenoy
19. Shri R. K. Sinha

Rajya Sabha

20. Shri Salil Kumar Ganguli
21. Shri Harsh Deo Malaviya
22. Shri Jagdish Prasad Mathur

23. Shri D. D. Puri

24. Shri S. G. Sardesai

25. Shri Himmat Sinh

26. Shri H. M. Trivedi

27. Shri Mahavir Tyagi

28. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

2. Shri N. L. Vaidyanathan—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri K. K. Ray—*Secretary.*

2. Shri P. B. Menon—*Joint Secretary.*

3. Shri Ch. S. Rao—*Deputy Secretary.*

4. Dr. (Mrs.) Usha Dar—*Joint Director.*

5. Shri C. R. D. Menon—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not a member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, explained the Government position with regard to the various clauses of the Bill.

4. The Committee decided that the notices of amendments so far received from Members of the Committee might be treated as cancelled and the Members might give fresh notices of amendments in the light of the position explained by the Minister of Law, Justice and Company Affairs.

5. The Committee then considered their future programme of work and decided as under:

(i) Last date for receipt of notices of Government amendments.—26-7-1973

(ii) Last date for receipt of notices of amendments from Members. —7-8-1973

(iii) Clause-by-clause consideration of the Bill—16-8-1973 onwards.

6. The Committee felt that as they had yet to take up clause-by-clause consideration of the Bill, it would not be possible for them to complete their work by the stipulated date *i.e.* 30th July, 1973 and decided to ask for a further extension of time for presentation of their report upto the last day of July-August Session, 1973.

7. The Committee authorised the Chairman, and in his absence, Shri R. K. Sinha to move the necessary motion in the House.

8. The Committee then adjourned.

XXXIII

Thirty-third Sitting

The Committee sat on Thursday, the 16th August, 1973 from 09.30 to 10.45 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Somnath Chatterjee
4. Shri Tridib Chaudhuri
5. Shri S. R. Damani
6. Shri Jagannath Mishra
7. Shri D. K. Panda
8. Shri H. M. Patel
9. Shri S. B. P. Pattabhi Rama Rao
10. Shri P. Ranganath Shenoy
11. Shri R. K. Sinha

Rajya Sabha

12. Shri Harsh Deo Malaviya
13. Shri S. S. Mariswamy
14. Shri M. K. Mohta
15. Shri D. D. Puri
16. Shri S. G. Sardesai
17. Shri H. M. Trivedi
18. Shri Mahavir Tyagi
19. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*
2. Shri N. L. Vaidyanathan—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri K. K. Ray—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*
5. Shri C. R. D. Menon—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the Member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. After some discussion, the Committee decided to postpone clause-by-clause consideration of the Bill. They decided to hold their sittings from the 15th October, 1973 till the conclusion of clause-by-clause consideration of the Bill.

4. The Committee then decided to ask for further extension of time for presentation of their Report upto the last day of the first week of the next session.

5. The Committee authorised the Chairman and in his absence, Shri R. K. Sinha to move the motion in the House.

6. The Committee then adjourned.

XXXIV

Thirty-fourth Sitting

The Committee sat on Monday, the 15th October, 1973 from 10.30 to 12.45 and again from 16.00 to 18.00 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Somnath Chatterjee
6. Shri Tridib Chaudhuri
7. Shri Khemchandbhai Chavda
8. Shri S. R. Damani
9. Shri Madhu Dandavate
10. Shri G. C. Dixit
11. Shrimati V. Jeyalakshmi
12. Shri Popatlal M. Joshi
13. Shri Baburao Jangluji Kale
14. Shri Jagannath Mishra
15. Shri Muhammed Sheriff
16. Shri Narsingh Narain Pandey
17. Shri H. M. Patel
18. Shri S. B. P. Pattabhi Rama Rao
19. Shri R. Balakrishna Pillai
20. Shri Bishwanath Roy

Rajya Sabha

21. Shri B. T. Kulkarni
22. Shri Harsh Deo Malaviya
23. Shri S. S. Mariswamy
24. Shri Jagdish Prasad Mathur
25. Shri M. K. Mohta
26. Shri D. D. Puri
27. Shri K. Srinivasa Rao
28. Shri S. G. Sardesai
29. Shri Himmat Sinh
30. Shri Habib Tanvir
31. Shri H. M. Trivedi
32. Shri Mahavir Tyagi
33. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*
2. Shri N. L. Vaidyanathan—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri K. K. Ray—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee took up clause-by-clause consideration of the Bill.

4. *Clause* 2.—The following amendments were accepted:—

(i) Page 1, line 10,
after "or" *insert* "is in a position to exercise or"

(ii) Page 1, *after* line 11, *insert*—

"*Explanation.*—If any question arises as to whether two or more individuals, associations, firms or bodies corporate, or any combination thereof, constitute, or fall within, a 'group', the Company Law Board shall, after giving such individuals, associations, firms or bodies corporate, or any combination thereof, a reasonable opportunity of being heard, decide the same."

(iii) Page 2, *for* line 8 *substitute*—

"(iii) in clause (30), on the expiry of six months from the commencement of the Companies (Amendment) Act, 1973.—

(i) in sub-clause (a), for the words 'the secretaries and treasurers or the secretary', the words 'or the secretaries and treasurers shall be substituted;

(ii) sub-clause (c) shall be omitted;"

The clause, as amended, was adopted.

5. The Committee rose at 12.45 hours and re-assembled at 16.00 hours.

6. *Clause* 3.—The following amendment was accepted:

"Pages 3 and 4, *omit* lines 14—44 and lines 1—28 respectively."

Further consideration of the clause was held over.

7. *New Clause* 3A.—The following clause was adopted subject to drafting changes:

Page 4, *after* line 28, *insert*

"Amendment of section 10E.

3A. In section 10E of the principal Act,

(i) in sub-section (2), for the word 'five', the word 'nine' shall be substituted;

(ii) after sub-section (4A), the following sub-sections shall be inserted, namely:—

'(4B) Without prejudice to the provisions of sub-section (4A), the Board, with the previous approval of the Central Government, may, by order in writing, form one or more Benches from among its members and authorise each such Bench to exercise and discharge such of the Board's powers and functions as may be specified in the order; and every order made or act done by a Bench in exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board.

(4C) Every Bench referred to in sub-section (4B) shall have powers which are vested in a court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908.

(a) discovery and inspection of documents or other material objects producible as evidence;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses;

(c) compelling the production of documents or other material objects producible as evidence and impounding the the same;

(d) examining witnesses on oath;

(e) granting adjournments;

(f) reception of evidence taken on affidavit.

(4D) Every Bench shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898, and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code' ". 5 of 1898. 45 of 1860.

8. *Clause* 4.—The following amendment was accepted:

Page 4, line 30,

for "Central Government"

substitute "Company Law Board".

The clause, as amended, was adopted.

9. *Clause* 5.—The following amendments were accepted:

(i) Page 4, *for* lines 38—50, and page 5, *for* lines 1—11, *substitute*

"(i) after sub-section (1), the following sub-section shall be inserted, namely:—

(1A) Without prejudice to the provisions of sub-section (1) where the average annual turn-over of a private company, whether in existence at the commencement of the Companies (Amendment) Act, 1973, or incorporated thereafter, is not, during the relevant period, less than rupees one crore, the private company shall, irrespective of its paid-up share capital, become, on and from the expiry of a period of three months from the last day of the relevant period during which the private company had the said average annual turn-over, a public company by virtue of this sub-section:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.".

(ii) Page 5, line 14,

for "(1A) Where not less than ten per cent."
substitute "(1B) Where not less than twenty-five per cent.".

(iii) Page 5, line 25,

for "ten per cent."
substitute "twenty-five per cent.".

(iv) Page 5, *after* line 28, *insert*

"Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.".

(v) Page 5, *for* lines 29—40, *substitute*

'(iii)' in sub-section (8), after clause (b), the following clause shall be inserted, namely:—

(c) that the private company, irrespective of its paid-up share capital, did not have, during the relevant period, an average annual turn-over of rupees one crore or more;

(iv) after sub-section (8), the following sub-section shall be inserted namely:—

'(9) Every private company, having share capital, shall file with the Registrar alongwith the annual return a certificate signed by both the signatories of the return, stating that since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the

private company, it did not hold twenty-five per cent. or more of the paid-up share capital of one or more public companies.

Explanation.—For the purposes of this section,—

(a) "relevant period" means the period of three consecutive financial years,—

(i) immediately preceding the commencement of the Companies (Amendment) Act, 1973, or

(ii) a part of which immediately preceded such commencement and the other part of which immediately followed such commencement, or

(iii) immediately following such commencement or at any time thereafter;

(b) "turn-over", of a company, means the aggregate value of the goods produced, supplied, distributed or controlled, or services rendered, by the company during a financial year.".

10. *Clause* 6.—I. The following amendment was accepted subject to drafting changes:

Page 6, *for* lines 4—48, *substitute*—

"(2) No company shall invite or allow any other person to invite or cause to be invited on its behalf any deposit unless—

(a) such deposit is invited or is cause to be invited in accordance with the rules, made under sub-section (1), and

(b) an advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed.

(3) (a) Every deposit accepted by a company at any time before the commencement of the Companies (Amendment) Act, 1973, in accordance with the directions made be the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934, shall, unless renewed in accordance with clause (b), be repaid in accordance with the said directions.

2 of 1934.

(b) No deposit referred to in clause (a) shall be renewed by the company unless the deposit is such that it could have been accepted if the rules made under sub-section (1) were in force at the time of the acceptance of the deposit.

(c) Where, before the commencement of the Companies (Amendment) Act, 1973 any deposit was received by a company in contravention of any direction given under Chapter IIIB of the Reserve Bank of India Act, 1934, repayment of such deposit shall be made, without prejudice to any action which may be taken under the Reserve Bank of India Act, 1934 for the acceptance of such deposit in contravention of such direction, in the manner specified in clause (d).

2 of 1934.

(d) Repayment of one-third of the deposit referred to in clause (c) shall be made, unless it is repayable earlier under the terms of the deposit, before the 1st day of April, 1974; repayment

of another one-third of the said deposit shall be made before the 1st day of April, 1975 and repayment of the balance of the said deposit shall be made before the 1st day of April, 1976.

(4) Where any deposit is accepted by a company after the commencement of the Companies (Amendment) Act, 1973 in contravention of the rules made under sub-section (1), repayment of such deposit shall be made by the company within thirty days from the date of acceptance of such deposit or within such further time, not exceeding thirty days, as the Central Government may, on sufficient cause being shown by the company, allow.

(5) Where a company omits or fails to make repayment of a deposit in accordance with the provisions of clause (c) of sub-section (3), or in the case of a deposit referred to in sub-section (4), within the time specified in that sub-section,—

(a) the company shall be punishable with fine which shall not be less than twice the amount in relation to which the repayment of the deposit has not been made, and out of the fine, if realised, an amount equal to the amount in relation to which the repayment of deposit has not been made, shall be paid by the court trying the offence to the person to whom repayment of the deposit was to be made, and on such payment, the liability of the company to make repayment of the deposit shall, to the extent of the amount paid by the court, stand discharged;

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine."

II. The following amendments were accepted:

(i) Page 6, line 49, *for* "(5)" *substitute* "(5) (a)".

(ii) Page 6, line 50, *for* "(a)" *substitute* "(i)".

(iii) Page 7, line 1, *for* "(b)" *substitute* "(ii)".

(iv) Page 7, *after* line 3 *insert*—

"(b) Except the provisions relating to advertisement contained in clause (b) of sub-section (2), nothing in this section shall apply to such classes of financial companies as the Central Government may, after consultation with the Reserve Bank of India.
specify in this behalf."

(v) Page 7, *for* lines 9-11, *substitute*—

"58B. The provisions of this Act relating to a prospectus shall, so far as may be, apply to an advertisement referred to in section 58A."

The Clause, as amended, was adopted.

11. *Clause* 7.—Further consideration of the clause was held over.

12. The Committee then adjourned to meet again at 10.30 hours on Tuesday, the 16th October, 1973.

XXXV

Thirty-fifth Sitting

The Committee sat on Tuesday, the 16th October, 1973 from 10.30 to 13.15 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Somnath Chatterjee
6. Shri Tridib Chaudhuri
7. Shri Khemchandbhai Chavda
8. Shri S. R. Damani
9. Shri Madhu Dandavate
10. Shri G. C. Dixit
11. Shrimati V. Jeyalakshmi
12. Shri Popatlal M. Joshi
13. Shri Baburao Jangluji Kale
14. Shri Jagannath Mishra
15. Shri Surendra Mohanty
16. Shri Muhammed Sheriff
17. Shri Priya Ranjan Das Munsi
18. Shri Narsingh Narain Pandey
19. Shri H. M. Patel
20. Shri S. B. P. Pattabhi Rama Rao
21. Shri R. Balakrishna Pillai
22. Shri Bishwanath Roy

Rajya Sabha

23. Shri B. T. Kulkarni
24. Shri Harsh Deo Malaviya
25. Shri S. S. Mariswamy
26. Shri Jagdish Prasad Mathur
27. Shri M. K. Mohta
28. Shrimati Saraswati Pradhan
29. Shri D. D. Puri
30. Shri K. Srinivasa Rao
31. Shri S. G. Sardesai
32. Shri Himmat Sinh
33. Shri Mahavir Tyagi
34. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*
2. Shri N. L. Vaidyanathan—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri K. K. Ray—*Secretary.*

2. Shri P. B. Menon—*Joint Secretary.*

3. Shri Ch. S. Rao—*Deputy Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee resumed clause-by-clause consideration of the Bill.

4. *Clause* 8.—The following amendment was accepted:

Page 7, line 45, *for* "Central Government" *substitute* "Company Law Board"

The Clause, as amended, was adopted.

5. *New Clause* 8A.—The following clause was adopted subject to drafting changes, if necessary: "Substitution of section 90.

Page 8, *after* line 16, *insert*—

8A. For section 90 of the principal Act, the following section shall be substituted, namely:

'Savings.

90. (1) Nothing in section 85, 86, 88 and 89 shall, in the case of any shares issued by a public company before the commencement of this Act, affect any voting rights attached to the shares save as otherwise provided in section 89, or any rights attached to the shares as to dividend, capital or otherwise.

(2) Nothing in sections 85 to 89 shall apply to a private company, unless it is a subsidiary of a public company.

(3) For the removal of doubts, it is hereby declared that on and from the commencement of the Companies (Amendment) Act, 1973, the provisions of section 87 shall apply in relation to the voting rights attached to preference shares issued by a public company before the 1st day of April, 1956, as they apply to the preference shares issued by a public company after that date.

Explanation:—For the purposes of this section, references to a public company shall be construed as including references to a private company which is a subsidiary of a public company.'."

The clause as amended, was adopted.

6. *Clause* 9.—The clause was adopted without any amendment.

7. *Clause* 10.—The following amendments were accepted:

(i) Page 9, lines 8-9,

omit "the total paid-up capital of which is not less than rupees twenty-five lakhs".

(ii) Page 9, line 10, *omit* "such"

(iii) Page 9, line 22,

for "equity share capital"

substitute, "subscribed equity share capital"

(iv) Page 9, line 23, *for* "any such share"

substitute, "any one or more of such shares"

(v) Page 9, line 24,

after, "its" *insert* "or their"

(vi) Page 9, *for* lines 36-37, *substitute*

"(a) no such share shall be transferred to the proposed transferee:

Provided that no such order shall preclude the company from intimating, in accordance with the provisions of sub-section (1), to the Central Government its proposal to transfer the share to any other person, or"

(vii) Page 9, lines 47-48,

for "to the holder of such share an amount equal to the market value of such share"

substitute, "to the body corporate or bodies corporate from which such share stands transferred, an amount equal to the market value of such share, within the time specified in sub-section (3A)"

(viii) Page 10, *after* line 7, *insert*,

"(3A) The market value referred to in sub-section (3) shall be given forthwith, where there is no dispute as to such value or where such value has been mutually agreed upon, but where there is a dispute as to the market value, such value as estimated by the Central Government or the corporation, as the case may be, shall be given forthwith and the balance, if any, shall be given within thirty days from the date when the market value is determined by the Court."

(ix) Page 10, *omit* lines 20—23.

(x) Page 10, line 25, *omit* "(i)"

(xi) Page 10, line 26,

for "aggregate, or"

substitute "aggregate"

(xii) Page 10, lines 27-28,

omit "(ii) individual, who holds, whether by himself or together with his relatives;"

(xiii) Page 10, line 33, *after* "Central Government" *add*

"and such previous approval shall not be refused unless the Central Government is satisfied that such transfer would be prejudicial to the public interest"

(xiv) Page 10, line 41, *omit* "or acquires"

(xv) Page 11, *after* line 24, *insert*

"(4) The person to whom any share or block of shares stand re-transferred under sub-section (2) shall, on making refund under sub-section (2) or sub-section (3) be eligible to exercise voting or other rights attaching to such share or block of shares.

Time-within which refusal to be communicated.

108DA. Every request made to the Central Government for according its approval to the proposal for the acquisition of any share referred to in section 108A or the transfer of any share referred to in section 108C shall be presumed to have been granted unless, within a period of sixty days from the date of receipt of such request, the Central Government communicates to the person by whom the request was made, that the approval prayed for cannot be granted."

(xvi) Page 12, *for* lines 1—6, *substitute*

"Construction of references of 'shares' or 'share capital' in sections 108A, 108B, 108C and 108D.

108G. References in sections 108A, 108B, 108C and 108D to shares or share capital, as the case may be, shall be construed as references to shares or share capital, respectively, of a body corporate owning any undertaking to which the provisions of Part A of Chapter III of the Monopolies and Restrictive Trade Practices Act, 1969, apply.".

The clause, as amended was adopted.

8. *Clause* 11.—The following amendment was accepted:

Page 12, line 8,

for "Central Government"

substitute "Company Law Board"

The clause, as amended, was adopted.

9. *Clause* 12.—The following amendment was accepted:

Page 12, line 14,

for "Central Government"

substitute "Company Law Board"

The clause, as amended, was adopted.

10. *Clause* 13.—The following amendment was accepted:

Page 13, *after* line 22, *insert*

"(7) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend in accordance with the provisions of section 206, and the obligation shall, on such payment, stand discharged."

The clause, as amended, was adopted.

11. *Clause* 14.—The clause was adopted without any amendment.

12. *Clause* 15.—The following amendments were accepted:

(i) Page 13, lines 46-47
for "before the 3rd day of April, 1970"
substitute "at any time after the 15th day of August, 1960".

(ii) Page 14, line 12,
for "before the 3rd day of April, 1970"
substitute "at any time after the 15th day of August, 1960".

The clause, as amended, was adopted.

13. *New Clause* 15A.—The following new clause was adopted:

Page 14, *after* line 49, *add*

"Amendment of section 205.

15A. In section 205 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

'(2A) Notwithstanding anything contained in sub-section (1), on and from the commencement of the Companies (Amendment) Act, 1973, no dividend shall be declared or paid by a company for any financial year out of the profits of the Company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), except after the transfer to the reserves of the company of such percentage of its profits for that year, not exceeding ten per cent., as may be prescribed'."

14. *Clause* 16.—The following amendments were accepted:

(i) Page 15, *for* lines 3—9, *substitute*

"Unpaid dividend to be transferred to special divided account.

205A. (1) Where a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted, within forty-two days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of forty-two days, transfer the total amount of dividend which remains unpaid or in relation to which no dividend warrant has been posted within the said period of forty-two days, to a special account to be opened by the company in that behalf in any schedule bank, to be called 'Unpaid Dividend Account of.....Company Limited/ Company Private Limited'."

(ii) Page 15, line 31, *after* "per annum", *add*—

"and the interest accruing on such amount shall ensure to the benefits of the members of the company in proportion to the amount remaining unpaid to them".

The clause, as amended, was adopted.

15. *Clause* 17.—The clause was adopted without any amendment.

16. The Committee then adjourned to meet again at 10.30 hours on Wednesday, the 17th October, 1973.

XXXVI

Thirty-sixth Sitting

The Committee sat on Wednesday, the 17th October, 1973 from 10.30 to 13.15 hours and again from 16.00 to 17.15 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Somnath Chatterjee
6. Shri Tridib Chaudhuri
7. Shri S. R. Damani
8. Shri Madhu Dandavate
9. Shri G. C. Dixit
10. Shrimati V. Jeyalakshmi
11. Shri Popatlal M. Joshi
12. Shri Ramachandran Kadannappalli
13. Shri Baburao Jangluji Kale
14. Shri Jagannath Mishra
15. Shri Surendra Mohanty
16. Shri Muhammed Sheriff
17. Shri Priya Ranjan Das Munsi
18. Shri D. K. Panda
19. Shri Narsingh Narain Pandey
20. Shri H. M. Patel
21. Shri S. B. P. Pattabhi Rama Rao
22. Shri Bishwanath Roy
23. Shri R. R. Sharma

Rajya Sabha

24. Shri Salil Kumar Ganguli
25. Shri B. T. Kulkarni
26. Shri Harsh Deo Malaviya
27. Shri S. S. Mariswamy
28. Shri Jagdish Prasad Mathur
29. Shri M. K. Mohta
30. Shrimati Saraswati Pradhan
31. Shri D. D. Puri
32. Shri K. Srinivasa Rao
33. Shri S. G. Sardesai
34. Shri Himmat Sinh
35. Shri H. M. Trivedi

36. Shri Mahavir Tyagi

37. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

2. Shri N. L. Vaidyanathan—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri K. K. Ray—*Secretary.*

2. Shri P. B. Menon—*Joint Secretary.*

3. Shri Ch. S. Rao—*Deputy Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee resumed clause-by-clause consideration of the Bill.

4. *Clause* 18.—The following amendment was accepted:

Page 16, line 31,

after "produce"

insert "or cause to be produced"

The clause, as amended, was adopted.

5. *Clause* 19.—The following amendment was accepted subject to drafting changes:

Page 17, line 46,

for "the relationship, if any, of any such employee to"
substitute "whether any such employee is a relative of"

The clause, as amended, was adopted.

6. *Clause* 20.—The following amendments were accepted subject to drafting changes:

(i) Page 18, *after* line 3, *insert*

"(i) to sub-section (1), the following proviso shall be added namely:—

'Provided that every company shall obtain from the person proposed to be appointed as an auditor of the company, a certificate to the effect that he has not accepted offer of appointment for auditing the accounts of more than nineteen companies in accordance with the requirements of this Act;"

(ii) Page 18, *for* lines 8-15, *substitute*

"(1B) On and from the financial year next following the commencement of the Companies (Amendment) Act, 1973, no company shall appoint or re-appoint any person or firm as its auditor

if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of more than twenty companies:

Provided that in the case of firm of auditors, twenty companies' shall be construed as twenty companies per partner of the firm:

Provided further that where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account by all the firms together, in relation to such partner shall not exceed twenty in the aggregate.

(1C) For the purposes of enabling a company to comply with provisions of sub-section (1B), a person or firm holding immediately before the commencement of the Companies (Amendment) Act, 1973, appointment as the auditor of a number of companies exceeding twenty, shall, within sixty days from such commencement, intimate his or its unwillingness to be re-appointed as the auditor from the financial year next following such commencement, to the company or companies of which he or it is not willing to be re-appointed as the auditor; and shall simultaneously intimate to the Registrar the names of the companies of which he or it is willing to be re-appointed as the auditor.

Explanation.—For the purposes of sub-sections (1B) and (1C), 'twenty companies', referred to therein, means twenty companies of which not more than ten are companies each of which has a paid-up share capital of rupees twenty-five lakhs or more.".

The clause, as amended, was adopted.

7. *Clause* 21.—Out of the following two amendments one was accepted subject to drafting and consequential changes:

(i) Page 18, *for* lines 31-32, *substitute*—

"the appointment or re-appointment of an auditor shall be made by a special resolution."

(ii) Page 18, line 32,

for "the Central Government"

substitute "a special resolution"

The clause, as amended, was adopted.

8. *Clause* 22.—The following amendment was accepted subject to drafting and consequential changes:

Page 19, *for* lnies 6-14, *substitute*—

"Provided that if Central Government is of opinion that sufficient number of Cost Accountants within the meaning of the Cost and Works Accountants Act, 1959, are not available for conducting the audit of the cost accounts of any company, the Government may, by notification in the Official Gazette, direct that, for a specified period of time, Chartered Accountants within the meaning of the Chartered Accoun-

tants Act, 1949, who fulfil qualifications as may be prescribed by Government, shall conduct the audit of cost accounts of any company."

The clause, as amended, was adopted.

9. The Committee rose at 13.15 hours and re-assembled at 16.00 hours.

10. *Clause* 23.—The following amendment was accepted:

Page 21, line 4, *after* "director", *insert*,

"on the date on which the decision of the Central Government is communicated to the company,".

The clause, as amended, was adopted.

11. *Clause* 24.—The following amendment was accepted:

Page 21, line 16, *after* "goods", *add*

"for such period as may be specified in the declaration".

The clause, as amended, was adopted.

12. *Clause* 25.—The following amendment was accepted:

Page 22, line 28,

for "twenty-five lakhs"

substitute "one crore".

The clause, as amended, was adopted.

13. *Clause* 26.—The following amendment was accepted:

Page 23, *after* line 21, *insert*

"(iiia) after sub-section (2A), the following sub-section shall be inserted, namely:

'(2B) if any office or place of profit is held in contravention of the provisions of sub-section (1B) or, as the case may be, the proviso thereto, the director, partner, relative, firm, private company or manager concerned shall be deemed to have vacated his or its office as such on and from the date next following the date of the general meeting of the company referred to in sub-section (1B) or as the case may be, the proviso thereto, and shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.'

14. *Clauses* 27 *and* 28.—These clauses were omitted consequent on the changes made in the Bill.

15. *Clause* 29.—The following amendments were accepted:

(i) page 23, line 40,

omit "who shall possess such qualifications as may be prescribed,".

(ii) Page 24, line 8, *after* "company", *insert*

"having a paid-up capital of not less than rupees twenty-five lakhs"

The clause, as amended, was adopted.

16. *Clauses* 30 *and* 31.—These clauses were adopted without any amendment.

17. *Clause* 32.—The following amendment was accepted:

Page 25, *for* lines 9—12, *substitute*

"(b) (i) The provisions of section 159 shall subject to such modifications or adaptations as may be made therein by the rules made under this Act, apply to a foreign company having an established place of business in India, as they apply to a company incorporated in India.

(ii) The provisions of section 209A and sections 234 to 246 (both inclusive) shall, so far as may be, apply only to the Indian business of a foreign company having an established place of business in India, as they apply to a company incorporated in India.".

The clause, as amended, was adopted.

18. *Clause* 33.—The clause was adopted without any amendment.

19. *Clause* 34.—The following amendment was accepted:

Page 25, *for* lines 22—27 *substitute*

"Provided that nothing contained in this sub-section shall be deemed to prohibit the application of sub-sections (1B) and (1C) of section 224 to a Government company."

The clause, as amended, was adopted.

20. *Clause* 35.—The following amendment was accepted:

Page 25, line 32, *after* "following"

insert "or any combination thereof".

The clause, as amended, was adopted.

21. *New Clause* 35A.—The following new clause was adopted:

Page 26, *after* line 3, *insert*

35A. In section 637A of the principal Act— "Amendment of section 637A.

(i) in sub-section (1), for the words "Central Government", wherever they occur, the words "Central Government or Company Law Board" shall be substituted;

(ii) in sub-section (2),—

(a) for the words "Central Government" the words "Central Government or Company Law Board" shall be substituted;

(b) in clauses (a) and (b), after the words "that Government" the words "or Board" shall be inserted".

22. *Clause* 36.—The clause was adopted without any amendment.

23. *New Clause* 36A.—The following new clause was adopted:

Page 26, *after* line 24, *insert*

36A. In section 641 of the principal Act, in sub-section (3), for the portion beginning with "comprised in one session or" and "Amendment of section 641.

ending with "session immediately following,", the following shall be substituted, namely:—

'comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid',"

24. *New Clause* 36B.—The following new clause was adopted.

Page 26, *after* line 24, *insert*

"Amendment of section 642.

36B. In section 642 of the principal Act, in sub-section (3), for the words "or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, "the words" or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, "shall be subtituted."

25. *Clauses* 37 *and* 38.—These clauses were adopted without any amendment.

26. *Clause* 39.—The following amendment was accepted:

Page 28 *for* lines 12-15, *substitute*

"Amendment of Act 54 of 1969.

39. In the Monopolies and Restrictive Trade Practices Act, 1969, in clause (g) of section 2,—

(i) in sub-clause (iii) (c), the words "within the meaning of section 370 of the Companies Act, 1956", shall be omitted; 1 of 1956.

(ii) in sub-clause (v), the words "within meaning of the said section 370" shall be omitted;

(iii) after sub-clause (vii), but before the Illustration, the following Explanations shall be inserted, namely:—

'*Explanation I.*—For the purposes of this Act, two undertakings, owned by bodies corporate, shall be deemed to be under the same management,—

(i) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or

(ii) if the managing director or manager of one such body corporate is the managing director or manager of the other; or

(iii) If one such body corporate holds not less than one-third of the equity shares in the other or controls the composition of not less than one-third of the total membership of the Board of directors of the other; or

(iv) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with the relatives of such directors) one-third of the directors of the other; or

(v) if the same individual or individuals belonging to a group, while holding (whether by themselves or together

with their relatives) not less than one-third of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-third of the equity shares in the other; or

(vi) if the same body corporate or bodies corporate belonging to a group, holding not less than one-third of the equity shares in one body corporate, also hold not less than one-third of the equity shares in the other; or

(vii) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individual (whether independently or together with his relatives) or the same body corporate (whether independently or together with its subsidiaries); or

(viii) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporte; or

(ix) if the directors of the one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II.— If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of or controlled by, the group shall be deemed to be under the same management.

Explanation III.—If two or more bodies corporate under the same management hold, in the aggregate, not less than one third equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first-mentioned bodies corporate.

Explanation IV.—In determining whether or not two or more bodies corporate are under the same management, the shares held by public financial institutions in such bodies corporate shall not be taken in to account.' "

The clause, as amended, was adopted.

27. The Committee then adjourned to meet at 10.30 hours on Thursday, the 18th October, 1973.

XXXVII

Thirty-seventh Sitting.

The Committee sat on Thursday, the 18th October, 1973 from 10.30 to 11.15 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri Somnath Chatterjee
5. Shri Tridib Chaudhuri
6. Shri Khemchandbhai Chavda
7. Shri S. R. Damani
8. Shri Madhu Dandavate
9. Shri G. C. Dixit
10. Shrimati V. Jeyalakshmi
11. Shri Popatlal M. Joshi
12. Shri Ramachandran Kadannappalli
13. Shri Jagannath Mishra
14. Shri Surendra Mohanty
15. Shri Muhammed Sheiff
16. Shri D. K. Panda
17. Shri H. M. Patel
18. Shri S. B. P. Pattabhi Rama Rao
19. Shri Jagannath Rao
20. Shri Bishwanath Roy
21. Shri R. R. Sharma

Rajya Sabha

22. Shri Salil Kumar Ganguli
23. Shri S. S. Mariswamy
24. Shri Jagdish Prasad Mathur
25. Shrimati Saraswati Pradhan
26. Shri D. D. Puri
27. Shri K. Srinivasa Rao
28. Shri S. G. Sardesai
29. Shri Himmat Sinh
30. Shri H. M. Trivedi
31. Shri Mahavir Tyagi
32. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*
2. Shri N. L. Vaidyanathan—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri K. K. Ray—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs, who was not the member of the Committee, attended the sitting with the permission of the Chairman in terms of proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee resumed further clause-by-clause consideration of the Bill.

4. *Clause* 3.—[*Vide* paragraph 6 of the Minutes dated the 15th October, 1973]—The clause was adopted without any further amendment.

5. *Clause* 7.—[*Vide* paragraph 11 of the Minutes dated the 15th October, 1973]—The clause was adopted without any amendment.

6. *Clause* 1.—The following amendment was accepted.

Page 1, *for* line 3, *substitute*

1. (1) This Act may be called the Companies (Amendment) Act, 1973. 'Short title and commencement.

(2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.' ..

The clause, as amended, was adopted.

7. *Enacting Formula.*—The following amendment was accepted:

Page 1, line 1,

for "Twenty-third" *substitute* "Twenty-fourth"

The Enacting formula, as amended, was adopted.

8. *Long Title.*—The Long title was adopted without any amendment.

9. The Committee authorised the Legislative Counsel to correct patent errors and carry out amendments of consequential or drafting nature in the Bill, if any.

10. The Chairman then drew the attention of the Members of the Committee to the provisions of Direction 87 of the Directions by the Speaker relating to Minutes of Dissent.

11. The Committee decided to sit on Thursday, the 8th November, 1973 at 11.00 hours for consideration and adoption of their draft Report.

12. The Chairman announced that the Minutes of Dissent, if any, might be sent to Lok Sabha Secretariat so as to reach them by Wednesday, the 14th November, 1973.

13. The Committee placed on record their appreciation for the assistance rendered by the Minister of Law, Justice and Company Affairs (Shri H. R. Gokhale) and Deputy Minister in the Ministry of Law, Justice and Company Affairs (Shri Bedabrata Barua) during the course of their deliberations.

14. The Committee also placed on record their appreciation for the cooperation and assistance rendered by the Legislative Counsel, officers of the Department of Company Affairs and the officers and staff of the Lok Sabha Secretariat.

15. The Committee also placed on record their thanks to the Chairman (Shri Nawal Kishore Sharma) for ably conducting the proceedings of the Committee and guiding their deliberations at various stages of the Bill.

16. The Committee then adjourned.

XXXVIII

Thirty-eighth Sitting

The Committee sat on Thursday, the 8th November, 1973 from 11.00 to 12.15 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri H. K. L. Bhagat
3. Shri Tridib Chaudhuri
4. Shri S. R. Damani
5. Shri Madhu Dandavate
6. Shri G. C. Dixit
7. Shrimati V. Jeyalakshmi
8. Shri Ramachandran Kadannappalli
9. Shri Jagannath Mishra
10. Shri Muhammed Sheriff
11. Shri D. K. Panda
12. Shri Narsingh Narain Pandey
13. Shri H. M. Patel
14. Shri R. Balakrishna Pillai
15. Shri Jagannath Rao
16. Shri Bishwanath Roy
17. Shri R. R. Sharma

Rajya Sabha

18. Shri Salil Kumar Ganguli
19. Shri Harsh Deo Malaviya
20. Shri S. S. Mariswamy
21. Shri Jagdish Prasad Mathur
22. Shrimati Saraswati Pradhan
23. Shri D. D. Puri
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1. Shri K. K. Ray—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.* ....
3. Shri Ch. S. Rao—*Deputy Secretary.* .. ..

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

2. The Committee considered and adopted the Bill, as amended, subject to the following modification:—

Page 6, line 16,

for "said directions."

substitute "terms of such deposit."

3. The Committee then considered and adopted the draft Report subject to the following modification:

Para 22(i),

for "It would be enough if acceptance by a company of deposits from its directors or shareholders is made in accordance with the rules made by the Central Government after consultation with the Reserve Bank of India."

substitute

"It would be enough if acceptance by a company of deposits is made in accordance with the rules made by the Central Government after consultation with the Reserve Bank of India."

4. The Committee authorised the Chairman and, in his absence, Shri Jagannath Mishra to present the Report and to lay the evidence on the Table of the House on Thursday, the 15th November, 1973.

5. The Committee authorised Shri D. D. Puri and, in his absence, Shri Harsh Deo Malaviya to lay the Report and evidence on the Table of Rajya Sabha on the 15th November, 1973.

6. The Committee then adjourned.

C.B. II No. 277

LOK SABHA

JOINT COMMITTEE

ON

THE COMPANIES (AMENDMENT) BILL, 1972

EVIDENCE

(VOL. I)

LOK SABHA SECRETARIAT
NEW DELHI

August, 1973/Sravana, 1895 (Saka)

Price : Rs. 7.40

LOK SABHA SECRETARIAT

CORRIGENDA

TO

THE RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972.

Page (iv), line 11, for "Norrhern" read "Northern".
Page 3, col. 2, line 6 from bottom, for "Parctices" read "Practices".
Page 15, col. 2, line 7, for "Aents" read "Agents".
Page 21, col. 2, lines 12 & 11 from bottom, for "repretation" read "representation".
Page 23, col. 1, line 5, for "and" read "an".
Page 30, col. 1, for lines 41-42, read "against public interest if a certain individual is being appointed. Again,"
Page 32, col. 1, line 14, for "administrating" read "administrative".
Page 45, col. 2, line 10 from bottom, for "are" read "con-"
Page 47, col. 2, line 30, for "to" read "it".
Page 51, line 11 from bottom, for "3" read "2".
Page 73, col. 1, line 23, for "Our" read "Your".
Page 77, col. 2, line 16, for "bureacracy" read "bureaucracy".
Page 82, col. 1, line 23, for "facts" read "facets"
Page 88, col. 1 -
(i) delete line 38.
(ii) after line 41, insert "their breach than in their observance."
Page 113, col. 1, line 24, for "sumbission" read "submission."
Page 114, col. 1, line 29, for "repect" read "reject".
Page 129, line 1, for "ACCORD" read "RECORD".
Page 135, col. 1, line 3 from bottom, for "reasonible" read "responsible".
Page 135, col. 2 -
(i) line 12, for "uner" read "under".
(ii) line 10 from bottom, for "expertise" read "expertise".
Page 137, col. 1, line 17 from bottom, for "there" read "they"
Page 139, col. 2, line 11, for "his" read "he".

(P.T.O.)

Page 140, col. 2 -
(i) after line 14, insert "independent and it should have a high"
(ii) line 15 from bottom, for "Is" read "It".
Page 141, col. 2, line 2 from bottom, for "objective" read "objection"
Page 145, col. 1, for line 10 from bottom, read "accountants alone."
Page 147, col. 2, line 9 from bottom, for "auditor" read "audit or"
Page 149, col. 2 -
(i) line 30, after "Sharma" add "which deals with the question".
(ii) line 37, for "it" read "the disciplinary jurisdiction over auditors".
Page 157 -
(i) col. 1, line 10, for "Constinuation" read "continuation"
(ii) col. 2, line 10, for "charterer" read "chartered".
Page 160, col. 2, line 14, for "committed" read "commented".
Page 178, col. 2, line 12 from bottom, for "querd" read "quired".
Page 187, col. 1, line 24, for "company" read "economy".
Page 189, col. 1 -
(i) line 7, for "mm" read "him".
(ii) line 11, after "economy" insert "by".
(iii) line 30, for "alternately" read "alternatively".
Page 189, col. 2 -
(i) line 5, for "yours" read "your".
(ii) line 9, for "minority" read "majority".
Page 190, col. 2, for line 7, read "words are omitted; they become what".
Page 193, col. 1 -
(i) line 35, for "is" read "it".
(ii) line 36, for "expended" read "expanded"
Page 195, col. 2, add at the end "examination should be conducted by".
Page 203, col. 1, line 14, for 'My' read "The".
Page 205, col. 1, line 25, for "incincere" read "insincere".

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Page 206, col. 1 -
(i) line 22, for "It" read "If".
(ii) line 33, for "your" read "you are".
Page 211, for line 7, read "earlier, quite a few critical and".
Page 214 -
(i) col. 1, line 16 from bottom, for "manifeld" read "manifold"
(ii) col. 2, line 14, for "perbably" read "probably".
Page 215, col. 2, line 30, for "how" read "who".
Page 222, col. 2, line 3 from bottom, for "onelous" read "onerous".
Page 234, col. 2, line 27, for "cmmodity" read "commodity".
Page 253, col. 2, line 4 from bottom, for "asay" read "away".
Page 263, col. 1, for line 22 from bottom, read "Direction which says that the".
Page 271, col. 2, line 8, for "grms" read "firms".
Page 280 -
(i) col. 1, line 18 from bottom, for "confirmat on" read "confirmation".
(ii) col. 2, line 22, for "hamful" read "harmful".
Page 283, col. 2, line 18, for "nowdays to bet" read "now-a-days to get".
Page 284, col. 1, line 32, for "perforamnce" read "performance".
Page 286, col. 1, line 16, for "causes" read "cases".
Page 292, col. 2, line 8 from bottom, for "Chef" read "Chief".
Page 294, col. 2 -
(i) lines 11-12, for "Ins tute" read "Institute".
(ii) line 14, for "In" read "I".
(iii) lines 31-32, for "nationl Insitute" read "national Institute".
Page 323, col. 1, line 8, for "Rourkella" read "Rourkela".
(ii) line 9, for "Villai" read "Bhilai".

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Page 333 -
(i) col. 1, line 1 from bottom, for "repition" read "repetition".
(ii) col. 2, line 11, for "shoud" read "should".
Page 341, col.1, lines 24 and 27, for "Benamdars" read "Benamidars".
Page 350, col. 1 -
(i) line 5, for "reaonable" read "reasonable".
(ii) line 22, for "57" read "57½".
Page 356, col.1, line 23, after "bids" insert "we".

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COMPOSITION OF THE COMMITTEE

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Somnath Chatterjee
6. Shri Tridib Chaudhuri
7. Shri Khemchandbhai Chavda
8. Shri C. Chittibabu
9. Shri S. R. Damani
10. Shri Madhu Dandavate
11. Shri G. C. Dixit
12. Shrimati V. Jeyalakshmi
13. Shri Popatlal M. Joshi
14. Shri Ramachandran Kadannappalli
15. Shri Baburao Jangluji Kale
16. Shri Jagannath Mishra
17. Shri Surendra Mohanty
*18. Shri Muhammed Sheriff
19. Shri Priya Ranjan Das Munsi
20. Shri D. K. Panda
21. Shri Narsingh Narain Pandey
22. Shri H. M. Patel
23. Shri S. B. P. Pattabhi Rama Rao
24. Shri R. Balakrishna Pillai
25. Shri Jagannath Rao
26. Shri Bishwanath Roy
27. Shri P. M. Sayeed
28. Shri R. R. Sharma
29. Shri P. Ranganath Shenoy
30. Shri R. K. Sinha

*Appointed on the 5th December, 1972 *vice* Shri C. C. Desai died.

Rajya Sabha

31. Shri Salil Kumar Ganguli
32. Shri B. T. Kulkarni
33. Shri Harsh Deo Malaviya
34. Shri S. S. Mariswamy
35. Shri Jagdish Prasad Mathur
36. Shri M. K. Mohta
37. Shrimati Saraswati Pradhan
38. Shri D. D. Puri
39. Shri K. Srinivasa Rao
40. Shri S. G. Sardesai
41. Shri Himmat Sinh
42. Shri Habib Tanvir
*43. Shri H. M. Trivedi
44. Shri Mahavir Tyagi
45. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
4. Shri Ch. S. Rao—*Deputy Secretary*
5. Dr. (Mrs.) Usha Dar—*Joint Director*
6. Shri C. R. D. Menon—*Joint Director*

SECRETARIAT

1. Shri P. K. Patnaik—*Joint Secretary*
2. Shri H. G. Paranjpe—*Deputy Secretary.*

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*Appointed on the 29th March, 1973 *vice* Shri K. V. Raghunatha Reddy resigned.

WITNESSES EXAMINED

JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Thursday, the 28th September, 1972 from 11.00 to 13.45 hours

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri C. Chittibabu
7. Shri S. R. Damani
8. Shri Madhu Dandavate
9. Shri G. C. Dixit
10. Shrimati V. Jeyalakshmi
11. Shri Ramachandran Kadannappalli
12. Shri Baburao Jangluji Kale
13. Shri Priya Ranjan Das Munsi
14. Shri Narsingh Narain Pandey
15. Shri H. M. Patel
16. Shri S. B. P. Pattabhi Rama Rao
17. Shri R. Balakrishna Pillai
18. Shri Jagannath Rao
19. Shri Bishwanath Roy
20. Shri P. M. Sayeed
21. Shri R. R. Sharma
22. Shri P. Ranganath Shenoy
23. Shri R. K. Sinha

Rajya Sabha

24. Shri Salil Kumar Ganguli
25. Shri B. T. Kulkarni
26. Shri S. S. Mariswamy
27. Shri Jagdish Prasad Mathur
28. Shri M. K. Mohta
29. Shrimati Saraswati Pradhan
30. Shri D. D. Puri

31. Shri Himmat Sinh
32. Shri Habib Tanvir
33. Shri Mahavir Tyagi
34. Dr. M. R. Vyas
35. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
4. Shri Ch. S. Rao—*Deputy Secretary.*
5. Dr. (Mrs.) Usha Dar—*Joint Director (Research and Statistics).*
6. Shri C. R. D. Menon—*Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESS EXAMINED

Shri D. L. Mazumdar—*Former Secretary, Department of Company Affairs.*

(*The witness was called in and he took his seat*)

MR. CHAIRMAN: Thank you Mr. Mazumdar for the trouble you have taken to come here. The Committee is very much interested to know about your views. As, for example, being the Former Secretary, Department of Company Affairs, you are expected to enlighten the Committee with your views and it was only for that purpose that the Committee wanted to hear you. For your information, I would like to read out:

"The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of the Parliament. I hope you would abide by the rules of the Committee."

Now, I would like you to make your comments first. I hope you must have gone through the provisions of the Bill. The Committee would be interested to know your views and after that the Members would like to put certain questions, I think, you will reply them.

SHRI D. L. MAZUMDAR: I must apologize to you and the Members of the Committee for not being able to provide you with a memorandum, which I was asked to do by your Secretariat. I explained to them that the time was very short inasmuch as I got the notice only about 10 days back. In fact, the last week was bad for me in that I had got myself earlier involved in several engagements which did not leave me much time to prepare a memorandum. But then they informed me that I could come even without submitting a memorandum and tender my evidence. I understand that it is customary for witnesses to make general comments before they take up the provisions of the Bill for the consideration of this Committee. If that is your wish, I shall start with

general observations on certain broad aspects of the enforcement of the administration of the Act particularly in the light of the new provisions which will undoubtedly impose a good deal of additional burden on the administration. If you desire, I shall make some general remarks. Or, Members may like to put questions.

MR. CHAIRMAN: We would like to hear your comments as a whole on the Amending Bill.

SHRI D. L. MAZUMDAR: I would like to touch on certain important peripheral issues which will condition the working and the administration of the Act, and which you may like to consider at the appropriate stage when the hearing of the witness is over, because they will have a close bearing on the quality of the administration and enforcement of the Act in due course. I would like to start, if you permit me to do so, with these few words of very general nature not related to any one or more of the specific provisions in the Act.

The scope of the present amending Bill is clear from the statement of Objects and Reasons appended to it. Avowedly, it represents the first instalment of the conclusions reached by the Administration on the recommendations and suggestions for a comprehensive review of the Companies Act and other related Acts which were made by the Working Group of the Administrative Reforms Commission some time ago and on those provisions which in the judgement of the Administration are necessary to deal with and check those abuses in Company practice which are considered to have assumed serious proportions pending a more comprehensive review of the Law. This is my understanding of what is stated in the Objects and Reasons. The scope of the present Bill and its general approach therefore follow the broad pattern of the earlier amending Acts of 1960, 65 and 69. The substantive provisions of the Bill relate, as far as I could make out hurriedly during the last two or three days to 21 clauses of which I think 16 are new clauses and the rest are amendment of the existing sections of the Act. Even the later new clauses attempt to deal with more important issues of Company management and practice which have been under consideration off and on since the Act of 1956 came into force but in respect of which no specific provisions were incorporated in this Act either in 56 or in the subsequent amendments to it. In this opening statement, as I said, Mr. Chairman, I refrain from referring to any of the provisions of the amending Bill, but I would like to confine myself to some general comments on the circumstances and conditions in which alone I consider that a Bill like this, with wide ramifications into trade and industry can be purposefully and effectively administered. In this context, I would like to repeat with your permission, some relevant observations of the Working Group of the Administrative Reforms Commission. This is what that body has said way back in 68:

> "Whatever may be the reasons for these frequent amendments since 60, it would not be unfair to infer that they were conceived and designed primarily to deal with ad-hoc issues which arose from time to time and which could not obviously have been based on any total view of the Company Law and its bearing on the working of Joint Stock Companies. We, therefore, suggest (That is what the group says) that a comprehensive look at the detailed provisions of the Companies Act and also other related statutes, some of which are at present administered by several Ministries and Departments, should be undertaken at an appropriate stage as soon as the Legislature had dealt with the Monopolies and Restrictive Trade Parctices Bill . . .

(The Committee reported in 1968 and the Billl was passed into law in 1969).

which we understand is now before a Select Committee of the

Parliament. If an integrated Ministry to deal with Company affairs is established at an early date, in pursuance of the recommendations which we propose to make, this overall review of the technical provisions of the Law would be rendered much easier. Our suggestion for a comprehensive study of the Companies Act and other related Acts bearing on the management and operation of Companies is not however tied up with this recommendation. The issue is of sufficient importance in itself to justify early action alike in the interest of administration and of the business community. The object of this overall review would be to make a detailed study of the specific provisions of the Act in relation to other related Acts with a view to:

(i) coordinating and integrating the policy decisions involved in the relevant provisions of all these Acts now administered by each department in an un-coordinated and fragmentary manner; and

(ii) to enabling the Government to assess the total burden imposed on the Administration in order to find out how much of it could be reduced through changes in "the technical requirements of the Law and better coordination and integration of the Administration of other statutes now administered by several other Ministries".

I have taken the liberty, Mr. Chairman, of reading these observations of the Working Group of the Administrative Reforms Commission to underscore the points which that body was anxious to make and it is always important to bear in mind that the efficiency of the Company Law Administration as an instrument for the regulation of Company practice depends to a very large extent on the support which it receives from other related statutes and specifically from the convergence of the policies embodied in these statutes, not to speak of an integrated administrative approach to the problem of trade and industry carried on through the Joint Stock form of enterprise.

Talking of the conditions necessary for the efficient administration of the Act, and the purposeful enforcement of its provisions, I would like to refer to a few major considerations, in particular, to which this Committee may like to give some thought at the appropriate stage. Firstly, it seems to be very important to take adequate administrative action well ahead of the coming into force of the Act to strengthen the present administrative capability of the executive authority on which will fall the burden of enforcing the amended Act. The financial memorandum attached to the Bill recognises the need for such a strengthening but in my view, it is important to initiate without much delay even from now, the steps that would be necessary to equip the Department of Company Affairs both at the Centre and at the Regional and State levels with the requisite manpower, not merely in quantity, but what is much more important in quality, so that decisions may be taken not merely in the light of knowledge and understanding of the goals of policy but also in the complexities of the present day trade and industry and according to a time-schedule which takes due note of the dynamism of the modern business. Secondly, another consideration, which I would like is that the policy implications of the amending provisions which deal with the substantive problem of Company management and company practice, particularly in the new areas to which the Act is now proposed to be extended, are adequately spelt out not in legal terms, but in administrative terms. This will be essential not only for the guidance of the executive agency entrusted with the enforcement of the Act, but also necessary for the Company Management which will be called upon to bear the direct responsibility for giving effect to the

provisions of the Act. This exercise presupposes an intimate dialogue with informed representatives of trade and industry and of the professions closely connected with company management, on the basis of which alone appropriate guidelines can be laid down, with sufficient detail and clarity, for the benefit alike of the Administration and of the business community. For this purpose, it may be necessary to supplement the internal exercises undertaken—or proposed to be undertaken—in the Department itself, with some substantial assistance from other competent sources or bodies whether already associated with the Department, or not, Thirdly, in view of the impending large increase in the discretionary authority of Government in several new areas of company management, it is very desirable that the exercise of this discretion in decision-making, in all sensitive areas of company management and significant sectors of company practice, should, as far as possible, be on the basis of advice by a quasi-autonomous body like, say, the present Advisory Committee under Section 410 of the Companies Act. If the services of this Committee are to be utilised for this purpose, it would need to be vitalised and, if necessary, reconstituted with competent and active membership possessing a high degree of intellectual maturity. In several areas of company management now proposed to be brought under the surveillance of the Central Government for the first time, the assistance which the Administration can expect to receive from such an Advisory body will be invaluable. I have in mind, particularly, matters like take-over bids, appointment and re-appointment of Managing Directors and Managers and the appointment and re-appointment of sole-selling agents, as also that of auditors etc. Lastly, I should like to draw special attention to the provisions of the Amending Bill which replace the authority of the court by that of the Central Government. In agreement with the general views expressed some time ago by the Working Group on Company Law Reform (in Chapter-XIV of its Report) dealing with the problems of the organization needed for adjudication of company cases and judicial review of administrative action, I would favour the proposed transfer of authority therein to Central Government. However, I think it desirable if not necessary that in these cases, the decisions of the Administration are compulsorily based on the advice and recommendations of a body like the Advisory Committee. For this will ensure that the discretionary powers in this particular area are not only exercised objectively, but are also seen to be so exercised. In cases in which it is proposed to divest the courts of their present authority, this would appear to be a specially important consideration. These are my general observations on the circumstances and conditions which will enable the Administration from to give purposive and not merely mechanical effect to the provisions of the Act. The present Bill contain 16 new clauses and 21 old. I thought it would save time if I jotted down my thoughts in this manner. Probably, in the course of the questions that might be addressed to me by the Members of the Committee, it will be easier for me to deal with them, apart from broad new issues of policy which are not many.

MR. CHAIRMAN: So, you have expressed your views. Now, I would request the Members to take it up, because they are interested in putting questions as to the general nature of the specific clauses. Now, Mr. Jagannath Rao.

SHRI JAGANNATH RAO: Mr. Mazumdar, you had considerable experience as Secretary of the Department of Company Affairs for over ten years—even more than that, I believe.

SHRI D. L. MAZUMDAR: Not merely Secretary, but also earlier as in-charge of the Companies Bill, 1956.

SHRI JAGANNATH RAO: I also understand that the amendment of 1960 was at your instance.

SHRI D. L. MAZUMDAR: No, Sir. It was on the basis of the recommendations of the Shastri Committee.

SHRI JAGANNATH RAO: Section 43A was introduced in the Act in accordance with the recommendations made by the Shastri Committee. Now this is sought to be amended, I mean clause 5. They want to substitute Section 43A by insertion of a new clause, which says, "Save as otherwise provided...." Suppose there is a private limited company. That company owns, in another private limited company, 10 per cent or more of the shares,—I mean there are private limited companies 'A' and 'B' 'A' becomes a public limited company; so also, company 'B' becomes a public limited company. Both are deemed so. Do you agree with this provision?

SHRI D. L. MAZUMDAR: There is a slight difference between Section 43A as it stood in 1961 and the present one.

SHRI JAGANNATH RAO: My point is that when private company 'A' invests in private company 'B', under the present clause, both companies become public limited companies. Do you agree with this? No public interest is involved. Company 'A', say, consists of 50 persons and company 'B' consists also of 50 persons—no public finance or interest is involved.

MR. CHAIRMAN: What is your view about it?

SHRI D. L. MAZUMDAR: I have no evidence before me really, except what is stated in the Notes on clauses, to assess the reasons for the changes proposed in sub-clause (ii) of Cause 5 which purports to amend the provisions of Section 43A, except that. Perhaps, the object might have been to identify and bring certain private companies of the type visualized in this sub-clause within the scope of the surveillance of the Administration, because they were supposed to form part of a group or to facilitate group operations.

SHRI JAGANNATH RAO: I now mention the case of company 'A' and company 'B'. Company 'B' invests in the shares of company 'A' *i.e.*, 10 per cent or more—both will then become public limited companies. Is it necessary that the position should be so?

SHRI D. L. MAZUMDAR: It depends upon the size of the private company and how it derives its finances. If it derives its finances from a public source, it would mean something which might need watching.

MR. CHAIRMAN: Mr. Jagannath Rao has a different question.

Suppose two private companies are there. There is a private company 'A' which invests a certain amount above the limit in another company 'B' which is also a private company, by operation of this clause both of them would become public limited companies. He wants your opinion as to what do you think about this change and whether it would be desirable and whether public interest would be served by it? Probably that is what he means.

SHRI D. L. MAZUMDAR: Take for example, one private company 'A' with a capital of one crore of rupees which wants to invest in another private company with a capital of, say, another crore of rupees and where the funds have been substantially contributed from public sources. In this case I consider that there is a *prima facie* case for taking the view that both of them should be deemed to be public limited companies.

MR. CHAIRMAN: Let one Member ask questions from the witness at one time and then another member can do so.

SHRI JAGANNATH RAO: As I understand your statement, there are two distinct private companies where no public finance has been borrowed, in that case does your test apply?

SHRI D. L. MAZUMDAR: It does not apply.

SHRI JAGANNATH RAO: You know from your experience that investment in private sector is in three ways, *i,e.*, by the public, by inter-corporate investment and from the Government revenues. The public investment is always limited. The best investment is inter-corporate investment and the Government revenues. Don't you think by reducing 25 per cent to 10 per cent there would be less investment in the corporate sector?

SHRI D. L. MAZUMDAR: That is a very different issue. That depends really on the investment climate in the future. We are thinking not only of today but also of the future. If the investment climate is such that they cannot raise revenues from the market, then your point would have some validity.

SHRI JAGANNATH RAO: A private company with a paid up capital of Rs. 25 lakhs and with a turn over of Rs. 50 lakhs becomes a public limited company. In the Notes on Clauses it is said Rs. 50 lakhs during the three consecutive financial years, then what will be the position?

SHRI D. L. MAZUMDAR: Turnover is flexible from year to year. Incidentally, I might mention that the Working Group of the Administrative Reforms Commission did not like to use the criterion of turnover. They preferred the criterion of borrowings from the financial institutions under the control of the State. That was one of the criteria laid down by them.

MR. CHAIRMAN: Do you agree with the recommendation of the Working Group?

SHRI D. L. MAZUMDAR: I would prefer it instead of using the criterion of turnover because I like the small companies to grow big.

SHRI JAGANNATH RAO: Then in the definition word 'control' is used. Don't you think that 'control' should be defined in the Amending Bill? Unless we read 4B along with it, it is not clear. It should be made clear.

SHRI D. L. MAZUMDAR: I do not know. Control is not a question of law but is a question of fact.

SHRI K. V. RAGHUNATHA REDDY: The word 'control' has been used in several enactments.

MR. CHAIRMAN: He has expressed his views. Let us go on to some other question.

SHRI D. L. MAZUMDAR: I have said nothing is lost by not defining it.

MR. CHAIRMAN: He has replied. You cannot force the witness to reply in a particular way.

SHRI JAGANNATH RAO: You said that the functions of the court should be taken away and the Government should be invested with those functions—this is in the case of 17, 18 and 19. You have no objection if these are transferred to the Central Government. There are so many other sections in which the court's intervention is there.

SHRI D. L. MAZUMDAR: I was confining myself to the Amending Bill only.

SHRI JAGANNATH RAO: Do you not agree that these should be the functions of the court and should not be given to the officers of the C.&A.G.?

SHRI D. L. MAZUMDAR: So much is left to the officers of the Administration at present that it is hardly worthwhile to care at these minor provisions.

SHRI JAGANNATH RAO: You are completely ousting the jurisdiction of the court.

SHRI D. L. MAZUMDAR: I do not think the court will be any wiser than the Administration in dealing with the issues covered by these sections of the Act.

SHRI JAGANNATH RAO: For the amendment of the Articles of Association.

SHRI D. L. MAZUMDAR: At one stage some years back, it was seriously considered that the authority of the Court in regard to this should be transferred to the Department after a special resolution of the Company in general meeting had been passed for this purpose. For various reasons we did not pursue this suggestion at that time. The present proposal, therefore, is nothing new to me. Please, remember that the question of the amendment of the articles does not always concern only the shareholders. They may affect several other interests. For example, a company wishes to change its Memorandum or Articles of Association for the purpose of diversification, etc. In a case like this along with the management and the shareholders, the interest of the public may also be involved. A Jute Company for example, may like to go in for the manufacture of cement or things of that sort. I do not think in such case the courts are by and large the best authority to decide such issues. I do not think issues like this are within the expertise of the Court. Decisions on such issues can better be taken by the concerned officers of the Administration. Therefore, I have urged in my opening remarks that whenever such powers are taken by the Central Government, their exercise should be subject to the advice of the Advisory Committee.

SHRI JAGANNATH RAO: From the amending Bill it seems as also in the Act, Government control is at every stage. Do you think it necessary?

SHRI D. L. MAZUMDAR: Control must necessarily be selective. For example, I do not see any advantage in transferring the funds—the special account in clause 205A of the Bill to the General Revenue. I am not in favour of this proposal. It will not cause any advantage to the public except to provide Government with working funds which a Government like ours can do without.

SHRI JAGANNATH RAO: Government's view as explained by the Minister is that in India to-day it is the sellers market and not the buyers market, where the demand is much more than the supply. There is no need for the selling agent. Do you not agree that the marketing is an integral part of production made by any company and the sole selling agency, if it exists or not, should depend on the company itself and not on the Government?

For instance take the case of electric fans—Orient, Usha Crompton, every company would like to push up its products.

SHRI D. L. MAZUMDAR: This was one of the provisions to which I had referred in passing in my opening remarks. I do not think that economic and commercial matters like take-over bids, controls, marketing arrangements, etc. can be decided adequately, properly, competently, unless Government have the benefit of well-considered outside judgement, and that was my point in saying that there should be guidelines laid down not merely in general terms about all such matters including the complex problems relating to concentration of economic powers, but with sufficient detail, and also appropriate working rules and executive instruction should be prescribed with sufficient concreteness particularly in respect of the new areas where the powers of the State have to be extended, after the prior consultations, prior reviews by experts and subject to reference to the Advisory Committee. That is the crux of my approach to issue of 'control' in such matter, I do not agree that no control is necessary and such matters can be always left to market forces.

SHRI JAGANNATH RAO: Under Section 294 the sole selling agents can file the agreements with the Registrar.

MR. CHAIRMAN: He has expressed his views. You may agree or not.

SHRI D. L. MAZUMDAR: That section is not as effective as it appears.

SHRI D. D. PURI: My first question is that for the first time we are attempting to define the word 'group'. I will not touch control. This was a question on my list, but it has already been answered.

This definition is going to have far-reaching repercussions. Assuming that holding 51 per cent shares in a company is one of the accepted criteria of control, then would Mr. Mazumdar accept the present definition where no number of persons is given. Fifty-one percent shares may be held by 100 persons and they may have the intention of holding control of the company. Apparently, the word 'group' has a connotation of four or five persons, but without any number having been laid down at all and without control having been defined, would it not be the very large number of persons who happen to total up to 51 per cent of the shares of the Company come within this definition?

SHRI D. L. MAZUMDAR: I think, this amendment was intended not for the Company Act, but to help the Monopoly Commission. They have appartently some difficulties. That is my hunch, I do not know.

SHRI D. D. PURI: Do you agree with me that this definition is likely to cover situations which are not contemplated?

SHRI D. L. MAZUMDAR: The idea is that the word 'group' means a group of persons or combination of persons who exercise the control.

SHRI D. D. PURI: The sum of shares will total up to 51 per cent.

SHRI D. L. MAZUMDAR: If a large number of people are members of the group, ipso *facto*, they will be deemed to exercise control.

SHRI D. D. PURI: What would be your reaction to a specfic number being mentioned.

SHRI D. L. MAZUMDAR: I am prepared to go by this definition except this. I have been worried by the words 'or has the obeject of exercising'. I have not understood these words.

SHRI K. V. RAGHUNATHA REDDY: If the expression 'object' is not used, then the problem would become very difficult. There can be any number of groups. Mere formation means nothing. But the group has got an object. Four or five of us join together and decide that we should take over a Company. Then in pursuance of this object, we do certain acts. You purchase ten per cent shares, some other five per cent and another 15 per cent shares and so on and in this process, we throw out the management. That is why we have said 'group having an object'. Mere group in English terminology means nothing.

SHRI D. D. PURI: The Minister has explained that this is meant to bring under control some people who have got together with the object of exercising control.

SHRI D. L. MAZUMDAR: The word 'object' as used is really a subjective state of mind and it must be reflected in some steps taken. You will encounter hurdles in courts unless you say that the object must be recorded in the Memorandum of Articles etc.

SHRI K. V. RAGHUNATHA REDDY: I do not think any group who wants to take over a company would say so.

SHRI D. L. MAZUMDAR: If instead of the word 'Object' as used in the relevant definition 'steps taken' are inserted, then it might be all right.

SHRI D. D. PURI: I would refer you to page 3, clause 4B(1) (iv) It reads:

"(1) For the purposes of this Act, two bodies corporate shall be deemed to be under the same management—

(iv) If one or more directors of one body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with relatives) one-third of the directors of the other."

I will put aconcrete proposition. There is a company, which was formerly a private company has now become a public company, in which relations constitute one-third of the members of the Board. Would not every other company where any one of these is a director, come in the same group?

SHRI D. L. MAZUMDAR: The word 'relatives' in the sub-clause quoted would seems to me to apply to that other company. That seems to be more reasonable than your interpretation, but you can clarify the position, if you like.

SHRI D. D. PURI: When Company 'A' holds less than 33 per cent shares of company 'B' they are not deemed under the same management. This means that holding less then 33 per cent is not looked upon with disfavour under the scheme of the Act. If these companies come under the same management under some other provision of the Act, have a common Managing Director, why should it be that they should not be permitted to hold even 33 per cent shares? When company 'A' owns less than 33 per cent of company 'B', it is not looked upon with disfavour. But if they come under the same management under some other provisions of the Bill, why should it be looked upon with disfavour if company 'A' holds up to 33 per cent of company 'B'?

SHRI D. L. MAZUMDAR: The issue is quite different; you are using the word in a different context. I think that merely because something is said in one section about holding 33 per cent it does not follow that if any other provisions dealing with other areas says something about the company holding 33 per cent, it would be less effective; it is only in relation to this Section that it is relevant.

SHRI D. D. PURI: The term "accustomed to act" has been used in the same clause 4B (1) (ix). Please throw some light as to what it is likely to mean and what is its exact connotation.

SHRI D. L. MAZUMDAR: It sounds rather queer phrase, but it has a fairly long heritage. It is really derived from the provisions of the Companies Act, 1956. We had borrowed it from the English Companies Act, 1948—probably sections 454 or 456 of the English Companies Act, if I remember aright—and as I learnt at that time the phrase was devised by the Solicitor to the British Treasury. I am sure the pharase is well known to the Department of Company Affairs.

SHRI D. D. PURI: If a private company invests 10 per cent of its capital in a public company, it automatically becomes a public company. That has been dealt with. Now, 10 per cent will not bring it anywhere near control. Would it not create difficulties in the investment of surplus funds from time to time in public limited companies? And what benefit do you think is attached to converting a private company into a public company the moment it invests 10 per cent in the share of a public company?

SHRI D. L. MAZUMDAR: I can answer one part of the question fairly easily—I do not think the sources of investment would be affected mate-

rially by this provision. I do not think that public companies depend materially on this sort of small investment of 10 per cent from private companies in this country even today.

The other part of the question is what is the purpose of trying to give the private companies the status of a public company if they invest only 10 per cent. I will say that so far as the working of the Companies Act is concerned or company organisation is concerned, I am unable at the moment, without assistance, to answer this question.

SHRI D. D. PURI: My question was not that the public companies would be starved of funds; my question was that it would be a hardship to the private companies not being permitted to invest funds.

SHRI D. L. MAZUMDAR: You seem to assume that a private company has so much surplus funds that it does not know what to do with it and therefore it should earn a return by investing it in a public company; but I do not share the view.

SHRI D. D. PURI: Now, this question is, in regard to deposits. It seems that even according to the objects and reasons in the note circulated, regulation is deemed to be necessary on inviting deposits. The Section, as it is worded, even covers acceptance thereof. I am confining myself to a case where no invitation for a deposit has been made but a deposit is given and it has been accepted. Even in that case, the law as it is proposed, insists upon advertisement and that advertisement must contain certain particulars. Now, even in regard to share capital sometimes, when you are not asking for public investment, a prospectus is not necessary, whereas, in the case of deposits, even if you are not inviting the public to deposit money with you, there is insistence upon advertisement and upon compliance with all the provisions attaching to the issue of a prospectus—even though (and this is important) deposits rank prior to share capital. You are laying down conditions in respect of deposits (which there is no proposal to amend) which you are not laying down in respect of shares, even though deposits rank prior to shares. And what is most ambiguous is 58B. As it is proposed now, under circumstances where there is conflict between the Rules and the Act, the Rules will prevail.

SHRI D. L. MAZUMDAR: I did not follow your question.

SHRI D. D. PURI: My question is in respect of cases where deposits are not invited and yet advertisement is necessary. In addition, there is a clause about acceptance also.

SHRI D. L. MAZUMDAR: That no company shall accept or allow any other person to invite or accept?

SHRI D. D. PURI: Yes.

SHRI D. L. MAZUMDAR: Perhaps the only motive behind this provision, if at all was that Government wanted to protect probably certain types of people who would invest, who put in deosits in such companies.

MR. CHAIRMAN: Apart from the motive, do you agree with these provisions being incorporated? Or is it going to help the public or company?

SHRI D. L. MAZUMDAR: I would say that the companies have grown up in the past, in some areas, with the help of deposits. It may be so in certain backward areas also in the future. I would not therefore like to provide for any compulsory requirement that in all cases there should be such advertisements but it should depend on certain types of deposits.

SHRI D. D. PURI: Now I would refer to page 9, Section 108B.

According to this, where one company holds more than ten per cent shares of another company, before

any shares are sold, a notice has to be given. Obviously this provision wants to control or regulate the transfer of shares in bulk. But the clause as it reads, it means even if one share out of ten per cent is sought to be transferred, the transfer will be held up and sanction of the Government will have to be obtained.

SHRI D. L. MAZUMDAR: This is undoubtedly a very drastic provision, but it seems to me that it is not entirely a new concept. Actually this concept is embodied in section 346 of the Act of 1956. We had then inserted provision like this with the object of controlling changes in the Managing Agents. The concept is not thus new. One recognises the hardship likely to be caused by these petty transfers, and we had attempted to deal with the difficulties by an executive instruction that if the management of the company certified that the transfer of shares did not involve any change in the controlling interest or the management of the company, the transfer would ordinarily be accepted. This served the Administration's purpose, I would prefer some such provision should be made in the present case also.

SHRI D. D. PURI: On page 15, Section 205A(2).

In your long experience, you have probably noticed that the large number of unclaimed dividends are in respect of those shares which are either under transmission, where somebody has died and taking out papers normally takes more than six months, or it is in respect of very small shareholders. The big shareholder is always careful. This provision means that any dividend which is not claimed within six months, will be transferred to Government and then a claim will have to be made to the Government.

SHRI D. L. MAZUMDAR: I have already said something about it. I do not see any advantage which prompted this amendment.

SHRI D. D. PURI: The next clause is in regard to the restrictions on the payment of dividends out of reserves, i.e. section 205(3. Would it not lead to two things. One that a large amount would be carried forward in the profit and loss accounts year after year without appropriation transfer to any reserves? Secondly would it not lead to large dividends to be declared while going of the company is not good? Last year it was good, this year may be a leaner one

SHRI D. L. MAZUMDAR: As it is, it means that in all cases, where reserves are utilised for declaring a dividend, the company wil have to take the previous permission of the Central Government. I should have found it easier to accept the amendment if it was suggested that where it was intended to increase the dividend more than the average dividend of the last three years, such permission should be sought, I ask why shareholders should not get profit of the accumulated profits? I have not understood the rationale of the proposed amendment.

SHRI K. V. RAGHUNATHA REDDY: If the company wants to maintain an artificial rate of dividend, not having any relationship to the actual profits, it is to discourage that.

SHRI D. L. MAZUMDAR: Where the surplus in any year does not enable a company to declare any dividend, it should be able to draw on its reserves.

SHRI K. V. RAGHUNATHA REDDY: In what manner it should be done? According to the present rule, the dividends can be taken for that purpose. Otherwise quite a good number of big companies without making any profit, draw every year from the reserves and declaring 11 per cent or 15 per cent dividend putting up an artificial picture to the public that the company is doing very bad.

SHRI D. L. MAZUMDAR: I am very grateful for the suggestion. That problem can be met. In fact, wherever the surplus at the disposal of a company in a particular year does not enable it to declare a high rate of dividend it can be provided that it should confine itself to a reasonable rate of prescribed dividend. That I can understand. But I do not like the shareholders to be deprived of a reasonable rate of dividend whatever be the reasonable figure prescribed on any account.

MR. CHAIRMAN: That means you want restrictions should be placed but the way the restrictions placed in this clause should be changed.

SHRI D. L. MAZUMDAR: I think so. If the object is, as the Minister has kindly explained, the provision in the present Bill would have to be suitably changed.

SHRI D. D. PURI: I would like to obtain your views in case of dividends which remain unclaimed for a period of six years or whatever it is, should they not rightfully belong to the other share-holders? What is your opinion?

SHRI D. L. MAZUMDAR: I will not go into the question of law. I would, however say that such dividends should belong to the company and I do not think anybody else has any better claim on them, as far as I understand the law.

SHRI K. V. RAGHUNATHA REDDY: Suppose I am a share-holder and I did not claim any dividend. I am as good as any other share holder. I suddenly die, I have not claimed any dividend. Now there may be legal representatives for claiming my dividend and if my legal representatives are not there, then under what obligation—whether it is social or religious—my property should go to other share holders?

MR. CHAIRMAN: The rule of *escheat* is there and in the case of exchange, when a person dies, all his properties and belongings should be vested in the State. So the same principle should be applicable in the case of dividends which are not claimed.

SHRI D. L. MAZUMDAR: I am very grateful to you, sir, for having explained a point which was obscure, but if that is the intention surely the suggested amendment should be changed. If the intention is to apply the law of escheat to such dividends, the amendment should be worded differently.

SHRI BEDABRATA BARUA: Don't you think that by this provision if enacted, the actual payment of dividend will be expedited because the companies will have no interest, who themselves may likely to manipulate the payment of dividends in such a way that more people do not get notice of dividends, etc?

SHRI D. L. MAZUMDAR: If this provision is retained, you should also consider how it is going to work it in practice. The object of this provision is to create a psychological impression.

SHRI S. R. DAMANI: I want to raise a point in regard to the amendment under Section 218(a). Here the words 'in combination therefor with other....control of the company' should not be used because after associating with any other company or the companies, both the groups will come under the same management.

MR. CHAIRMAN: In fact this question was answered. The purpose was to exercise the control.

SHRI S. R. DAMANI: Amendment No. 6 Section 295 page 5—Clause 6 last line. These loans which are being given by a body corporate, by another body corporate, have the approval of the Government and they are solely managed by both the companies.

MR. CHAIRMAN: Are you referring to sub-clause (2) or what?

SHRI D. L. MAZUMDAR: I am afraid I have not understood the question.

SHRI MAHAVIR TYAGI: I want to make one clarification. Suppose, some body corporate has taken loan from the other body corporate with the approval of Government. Now, those loans should not be treated as deposits.

MR. CHAIRMAN: For your information, you may refer to page 7. It is clear.

SHRI MAHAVIR TYAGI: If any company has taken loan according to the rules of Reserve Bank other than the existing ones. Now, after these amendments are approved, those companies have utilized that loan for some purpose, for expansion or for modernisation and that loan is not kept in the bank. Now, immediately, they are asked to pay within 30 days. How the Companies will be able to bring the money and make the payment and if they cannot make the payment, then they have to pay the penalty.

MR. CHAIRMAN: It will be looked into when the rules are framed.

SHRI MAHAVIR TYAGI: This provision, according to the witness, will be practical.

SHRI D. L. MAZUMDAR: He is talking of possible conflicts at this stage. Presumably, it will by the first task of the Department to adjust these apparent conflicts. Nobody will be penalised. I take it for such apparent difficulties.

SHRI MAHAVIR TYAGI: Since Mr. Mazumdar has some experience of administration, what is his assessment of the additional staff and officials etc. which would be needed by the Company Law Deptt. for the purpose of operating the law? After all, there are 22,575 companies at present. Their returns are to be examined; decisions have to be taken etc. Government have to nominate some officials for this. How many thousands of officers will be needed for the purpose of conducting this business quickly? I can understand red tapism is there. In the matter of administration, quick decisions are needed. Otherwise, the companies will suffer losses. Will the Government be able to make so much control?

SHRI D. L. MAZUMDAR: I thought I had indicated in my opening statement the importance of the points which Mr. Tyagi is trying to make. At the beginning, I had said that the burden on the administration was likely to increase considerably not merely in quantity but also qualitatively and the nature of task it would have to tackle. I also made several suggestions as to how these difficulties could be eased; how this burden could be carried more effectively with such guidance and assistance as the Department could obtain from informal bodies and associations. It is not possible for me to make a statistical estimate of how many additional clerks, assistants or superintendents, for example, were likely to be required for the administration of the amended Act. In many cases arising out of the proposed amendments, decisions would have to be taken at a very high level. Our experience in the past has been that decision making has not been often got stuck up not merely at the lower level but also at the higher level, because the officers concerned did not have the requisite competent background. Probably they could not dispose of the cases quickly because of their doubts and hesitations, or possibly they waited for something to turn up. Increasingly in future, it will be the quality of administration needed in future that will impose an additional burden on the Department which seems to me to be a much more important consideration than the quantitative aspect of it.

SHRI MAHAVIR TYAGI: Another point is regarding taking over control of all the public companies in all important matters. Usually, we just have an alternative to give basic rights to the shareholders and instead of Government approving, whereby important matters were to be approved, suppose we ask the approval of the shareholders or the proprietors of the companies. Suppose, you divert this approval to the shareholders. Would they not feel more responsibility about it and it will be done better?

SHRI D. L. MAZUMDAR: This was largely the pattern adopted in the provisions of the 1956 Act. We introduced provisions about general meetings, the requirements about such meetings, about special resolutions, about special notices all with the object of eliciting shareholders' active interest support for good management of companies. But I regret to say that in that hope many of us have been sorely disappointed. Shareholders have not functioned in this country, as indeed they hardly do also in other countries. That does not necessarily mean that control will also do the trick.

SHRI MAHAVIR TYAGI: That corporation, as it is known generally, is encouraged mostly by industrialists, people and Directors and this and that etc. They are just trying to persuade the officers so that too much discretion, as you know, comes to the Government officials. There would be a tendency for corporation increasing this like anything because these people have become more attractive and the political party might also (those in power) collect fund in crores and like that, because discretion will be there. Therefore, they may exploit the whole complex. Another thing was after this Bill is passed, would there not be a situation that the whole industry will come practically under the control of the Government for all practical purposes? There was a mention that we had abolished Managing Agencies and the Parliament had approved this thing. Now, in this Bill, there is a mention that those Managing Agencies which were abolished are trying to come out in some way or the other. These Managing Aents carried on their business, improved the same and they made a lot of profit. They were abolished not because of any aspersion on their working, but because, as a policy, Government thought that Managing Agency must be abolished. Suppose if the shareholders of a Company desire that the ex-Managing Agents should be employed in the interest of the company, because of their experience, why should the Government come in the way? What would be your reaction to this?

SHRI D. L. MAZUMDAR: My understanding was that even in this rather stringent piece of legislation, the new section 204A, as such, does not debar, appointment of ex-managing Agents or employees of ex-Managing Agents or their former partners from holding offices of profit in their companies. All that this clause requires, I think, is the approval of the Company and also of the Central Government. It seems to me that Government do not really have any particular sort of 'class' prejudice against the ex-Managing Agents. I think it will be wrong to attribute this to Government.

MR. CHAIRMAN: Mr. Sharma, have you any questions to ask?

SHRI R. R. SHARMA: I would like to refer to page 11 of the amending Bill, Section 108F—Mr. Mazumdar, what is your opinion if we include both the Central Government and also the State Government.

MR. CHAIRMAN: He means that this fifty one per cent may be held by the Central Government and the State Government. He wants that the words "and or State Government" may be added. What will be your reaction to this suggestion?

SHRI D. L. MAZUMDAR: I have no objection. I do not think that the omission of the words "State Government" was deliberate.

SHRI R. R. SHARMA: Please refer to page 17 of the amending Bill. Do you think that these provisions are severe and do you think that we should retain them?

SHRI D. L. MAZUMDAR: I have no hesitation in saying that this is a drastic penalty, and what the clause provides is minimum punishment, not maximum. Obviously, the only justification for this would be that there has been wide-spread and rampant abuse of the provisions which were enacted earlier, namely, section 209 and so on. Presumably it was assumed that this sort of draconian punishment alone could deter malpractices and bring the offenders to book. I think that is the only justification.

SHRI R. R. SHARMA: In his general remarks, I think the witness has expressed the apprehension that these provisions may be mis-used.

SHRI D. L. MAZUMDAR: I have not said that.

MR. CHAIRMAN: He said that stricter control would sometimes create difficulties. Therefore, he said that better administration is required.

SHRI R. R. SHARMA: He also said that some guidelines should be laid down. My question is whether the guidelines are to be provided in the Act itself or in the Rules?

SHRI D. L. MAZUMDAR: Where there is provision for Rules under the Act, obviously, rules will have to be framed. Where there is no provision for rules and matters are referred to the Central Government for the exercise of its jurisdiction, it should be provided in the Act. I suggest that one may pick up all important areas of such discretionary authority. This one can do easily say at one sitting. There should be guidelines in respect of all such areas. As a matter of fact, in the earlier Act of 1956, there was a provision that certain important matters involving exercise of discretion by the Administration, should be referred to the Company Law Advisory Commission compulsorily, for advice but the decision was of the Central Government. So, I do not want to elaborate my point further. The need for such outside advice is much greater now than it was in the past because the area of discretion is already expanding and for other reasons which I need not detail here but which I can explain elsewhere to the executive authorities, if necessary.

SHRI M. K. MOHTA: I want to refer to Page 1 of the amending Bill, Clause 2, where the definition of "group" is given. I think this would give rise to certain un-intended complications. For instance, if there are two groups of shareholders holdng 49 per cent each, warring for the control of the Company, and an innocent share-holder like me is holding 2 per cent. I have to vote for one or the other group. In my judgement, if I feel that one group is better equipped to manage the Company, I will vote for that group. Even though I may vote for one or the other group, I may have nothing to do with these groups. As a consequence, wherever else I may be interested, I will be said to be a member of that group, to which I may have voted, in all the other Companies also. Is it necessary to have such wide ranging intrepretations due to the faulty wording of the provisions?

SHRI D. L. MAZUMDAR: Supposing you happen to side with Faction 'A' as against Faction 'B', to secure the control of the Company, then you will come within the ambit of this definition. I think that is your question. My understanding of such matters is that definitions of the provisions of the Law do not by themselves entail action. The criterion for action is whether the circumstances

of the case necessitate that ABC or XYZ should be brought within the provisions of that section. I think Government will use their judgement in such matters and they will not pick up some 'X' or 'Y' as conspirators.

SHRI M. K. MOHTA: Clause 10. According to this Section, any person or body who holds a controlling interest in a particular company according to the limitations mentioned, would not be able to purchase even a single more share in the company, without the consent of Government. Is this desirable?

SHRI D. L. MAZUMDAR: You are referring again to that point which we have partially discussed.

MR. CHAIRMAN: Rather fully discussed.

SHRI D. L. MAZUMDAR: My remedy in such cases would be that if any body threatens you with action for this reason, write confidentially to the Administration and I feel sure that if the facts are suggested, they will take no action whatsoever.

MR. CHAIRMAN: Next question, if there is any.

SHRI M. K. MOHTA: Section 108E, that is the same question. In a situation where shares are sought to be transferred from one group to another at a certain price, the price need not necessarily be the market price. It is common knowledge that the bulk of shares which are offered, are also refused if they are at higher prices. In such cases, if the Government were to intervene and direct that the shares should be sold to this party or that, why should not the price earlier agreed to, prevail? Government may say that *status quo ante* may be maintained. If they are to be transferred to Government, why at market price and why not at lead price? What is your opinion?

D. L. MAZUMDAR: One point I would like to bring to your notice. While somebody is buying up shares, the bulk of them, to acquire control or prior to acquisition of control, he creates a situation in which the market itself pays higher price. It happens very often.

MR. CHAIRMAN: If you look to the explanation, it makes your point clear. It is at page 10. The Government has the discretion there.

SHRI D. L. MAZUMDAR: Is it fair that in such a situation, the Government should pay an inflated price?

SHRI M. K. MOHTA: In page 10, it says, "(Reads) .....

SHRI D. L. MAZUMDAR: There is a point in what he says.

SHRI M. K. MOHTA: I am not talkng of any other thing, but a situation where there is a stock exchange quotation.

SHRI D. L. MAZUMDAR: That depends on the facts of the case whether the original stock exchange valuation was unduly depressed, or it was a normal valuation. All these are matters of fact, but this explanation is normal, and Government would one hopes, depend upon what is deemed as a fair price when Government issues orders regarding restitution of shares.

MR. CHAIRMAN: Is the discretion of the Government to be exercised in that way?

SHRI M. K. MOHTA: Another question regarding re-appointment of auditors. It has been made out that the provision has been brought about in order to prevent concentration of audit in the hands of a few auditors. I put it to you that a small auditor who cannot be said to be a person who has accumulated or has concentration of audit, even such a small auditor would not be kept

after the stipulated time, except with the approval of the Government. Would not such a provision give a leverage to the authorities to dispense official patronage?

SHRI D. L. MAZUMDAR: You are referring to 224. There are two sections. The present one is 224 who is proposed to be amended and the new clause is 224A. This subject is a matter in which I took considerable interest in 1956. The object of the present provisions (*i.e.* in 1956 Act), relating to auditors was to ensure independence of the auditors and the security of the position given to them, subject, of course, to their competence, which was being looked after and continues to be looked after by the Institute of Chartered Accountants, regarding qualifications therein, research, studies etc. I mention this point because the new provisions in these two sections do seem in their likely impact to diverge from that goal. We thought at that time that security would ensure independence. We felt that given reasonable security, auditors would not be at the mercy or pleasure of the company managemet; nor would they be at the pleasure of Government. We thought the provisions then made would insulate them from the pressures of management and Goverment which might improperly like to put in new people in old posts, hoping all the time that as the profession developed, things would steadily improve. We did a great deal of work for the Institute of Chartered Accountants in those earlier years to enable it to improve the quality of its members. Now with reference to what Mr. Mohta says, I would concede that the new provisions suggested might, to some extent, undermine the security and affect their independence from both sides—from the side of management as well as of Government. Their new position might be a little more vulnerable than now it is. I would not comment on the avowed purposes of the suggested amendments. I appreciate some of them. There should be no undue concentration of audit work in a few hands. Just as we have change the position in regard to directors, I was wondering why a similar provision could not be made for company auditors limit the number of company audits they could undertake. Normally, we don't prescribe limits for professional work, but new norms are not ruled out for dealing with new situations. If for this reason a professional is to be limited in any way it should not be a matter of much concern. If the law says that he would not take up more than 5 or 10 audits or briefs for reasons of public interest, that is adequate for the purpose of the law. I was wondering if the purpose was one of dealing with undesirable concentration of audits why was not that principle already followed in the case of company directorship applied to company audits? My fear is that, apart from the dilution— I would not say erosion—of independence of the auditors (independence both as against the management and as against the Government) the proposed large-scale extension in the use of discretionary powers might affect also the integrity of Central Government offices and those in the office of the Comptroller and Auditor General.

SHRI BEDABRATA BARUA: Do you think the question of fundamental rights will be raised on this issue?

SHRI D. L. MAZUMDAR: I have already expressed my views on this point. I would submit that apart from any other consideration, I am very keen on the independence of auditors in relation to the competence exercise of their professional judgment. I do not like this to be diluted. In saying this I am not unappreciative of the objects of the amendments proposed. What I say really means is, that we should explore the possible alternatives. Further it is important to study the facts. The middle-sized auditors would not be automatically benefitted by this new clause. They are also likely to be ousted. So, my younger chartered

accountants who see me occasionally mention that they are not happy either. Another aspect of the problem calls for some basic consideration. Many of the audit firms not small ones but the large and middle sized audit firms have built up sizeable organisations. They employ a substantial volume of qualified technical man-power.

SHRI D. L. MAZUMDAR: In future these people are likely to be dislocated in some cases every three years. They are a competent body of men. Several of these organisations were built up during the last ten or fifteen years. If the bosses of these firms find that they may not have sufficient business after 1st January, 1971 many of these younger people in the firms may themselves be jeopardy. I do not think that the proposed new clauses will be of much help to the younger group of trained and qualified chartered accountants who now man the organisation of the accountancy.

SHRI BEDABRATA BARUA: There is a system of house auditors and in view of this really the auditor may not be independent. Therefore, do you have any alternative suggestion?

SHRI D. L. MAZUMDAR: The auditors of companies does not function in vacuum. There are under the surveillance of the company and also under the surveillance of Government. Government should be able to exercise proper check and take suitable action where necessary in appropriate cases.

SHRI K. V. RAGHUNATHA REDDY: Mr. Mazumdar, have you read Wanchoo Committee's Report and the recommendatons made.

SHRI D. L. MAZUMDAR: I have.

SHRI M. K. MOHTA: What are your views regarding the penal provisions containing in the Act? Should there be any built in safeguard against such smaller companies particularly when the offences may be unintended?

SHRI D. L. MAZUMDAR: I find myself very little in sympathy with the point of view expressed.

SHRI SALIL KUMAR GANGULI: My question relates to clause 29. That the compulsory provision of a secretary would not mean that the white collar employees will be greater in number and the interest of the company will be affected because of lack of resources?

SHRI D. L. MAZUMDAR: If a company with a capital of Rs. 25 lakhs or more cannot afford to have a "house keeper" that company should hardly exist.

SHRI JAGDISH PRASAD MATHUR: May I suggest that in our political system will it not be proper that the decision making power should be vested in a board headed by a Supreme Court Judge or a High Court Judge?

SHRI D. L. MAZUMDAR: Certainly not.

SHRI BISHWANATH ROY: Whether this amending Bill would be effective in expediting the working of the Company Law?

SHRI D. L. MAZUMDAR: It depends on how it functions.

SHRI H. M. PATEL: In reply to certain questions which Mr. Mohta put Mr. Mazumdar said Government should be expected to exercise their discretion wisely and therefore legal provisions should remain as they are. This to my sense is very strange. If the legal provision cannot be conveniently amended that is a different matter. But there is no necessity to run the risk of exercise of discretionary powers if the legal provision can be properly amended. The Company cannot function efficiently if it has a sword of democles hanging over its head. To the extent possible the legal provision should be made as clear as possible to express clearly whatever the Government's intention is.

SHRI D. L. MAZUMDAR: I said in my opening remarks that so far as the guide lines and rules are concerned it should be done in sufficient detail and there should be clearity.

It is clear that the home work will have to be done by the partners but you say because that is difficult and cannot be done, therefore, you eliminate certain provisions of the law which may otherwise be serving the purpose. I do not accept provided that serves the purpose.

SHRI H. M. PATEL: If this provision is interpreted in this way, should that not be modified?

SHRI D. L. MAZUMDAR: All that I have been stressing from the beginning is the need for purposeful and effective administration. There is no purposeful administration, if, for, example, the provision is interpreted in a manner which makes business impossible. The purpose of the law is not to stifle business but to see that the business is carried on, with due regard to those wider considerations which are sometime outside the ken of management. If somebody claims that the law is there to stifle business and can prove, it, I shall whole-heartedly oppose such law.

SHRI H. M. PATEL: Along with this go a statement by the Minister stating Government's intentions precisely.

SHRI D. L. MAZUMDAR: The Minister may be asked a question in Parliament.

SHRI H. M. PATEL: You give expression to a certain point of view and that is why I am asking this question.

MR. CHAIRMAN: He has replied. It is for the Minister and the Parliament. It is the witness's own way of replying the questions.

SHRI H. M. PATEL: I object very strongly to your saying that I am pursuing these questions with a view to getting the witness to say what I wanted to say. If you feel so, I shall not ask the question.

MR. CHAIRMAN: The witness should have the freedom to answer.

SHRI D. L. MAZUMDAR: What Mr. Patel says is reasonable, provided it is understood that the object of the Bill is not only to promote and develop business in this country but to do so in confirmity with the accepted social aims and objects of the country. Along with growth, the manner in which growth takes place, is equally important. There should be an appropriate equation between growth and the manner of growth. This is what the Minister Incharge of the Companies Bill of 1953-54 had stated in Parliament when it was enacted into law. The object of that Act was not to impose curbs and hamper business, but the object was to promote and develop business along the lines which the community could accept in the context of our economic and social goals which the community had earlier accepted broadly. No doubt an enunciation of policy in this light can be made only in Parliament in due course, but it is for the Minister to decide on the from of the statement.

SHRI H. M. PATEL: He considers that the independence of audit is of great importance and nothing should be done that would jeopardise that. These provisions are in this Bill. Am I justified in concluding that they are not so disigned?

SHRI D. L. MAZUMDAR: I have already expressed my views on this subject. I fear that the proposed provisions might dilute the independence of auditors.

SHRI TRIDIB CHAUDHURI: I want to ask a general sort of question which was touched upon by Mr. Mazumdar in his introductory remarks when he referred to the need for this Committee and also the Government

to give some thought to engaging in preparatory exercise for the implementation of the Bill. Under the powers of the Company Law Department or the Ministry of Government it is being extended in various direction. Keeping that in view, do you think on the basis of your long experience in the administration of Company affairs whether the present structure of organisation and the strength of manpower of the Company Law Department as it is could be sufficient to achieve the objectives of the Bill. They are preventing concentration of economic power, undesirable taking over and other things, filling up the lacuna of Monopolies and Restrictive Trade Practices Act and so on and whether the present structure of the Company Law Department is integrated enough; secondly whether this present strength is adequate enough to achieve the objectives of the Bill.

SHRI D. L. MAZUMDAR: This is a very wide question. I have written extensively about it in the past. My views are known to the authorities and also to all those who are incharge of the management of Companies. In my opening statement I have stated that I do not think that the Administration as it is contituted would be able to carry the burden of the additional responsibility in the future, with all the additional powers now proposed to be conferred on the company Law Board. I also made it clear that it was not quantity alone but also the quality of administration that was becoming increasingly important. So I do not know if I can add very usefully to what I have said in regard to this question, without going into organisational and administrative details.

SHRI P. R. SHENOY: You said that the Advisory Board under the Act should be strengthened. Do you mean that it should be a quasi-judicial body with independent powers? And what should be the constitution of the Advisory Body.

SHRI D. L. MAZUMDAR: Here again, that is the business of the Government I have no doubt myself that this body should be sufficiently powered for independent evaluation and assessment of problems placed before it; and quite a large number of business problems will have to be placed before the Committee.

SHRI P. R. SHENOY: Should it be a quasi judicial body?

SHRI D. L. MAZUMDAR: I do not know what exactly you have in mind but it should certainly be called upc to give advice on all matters requirea by the Administration in these areas, in respect of which many new provisions have been made in the present amending Bill. I do not say the Advisory Board should be the final authority—which will approve or reject—but that it should be advisory and should be able to say that for such and such purposes approval should be given and for such reasons it was making its recommendations.

SHRI HIMMAT SINH: I feel that Mr. Majumdar has made a meaningful observation when he said that the ethos behind the 1956 Act was not achieved or fulfilled. Because of the manner in which the Board of Directors function, they undermined the vision which the framers of the legislation had and therefore, by and large, the vision behind the 1956 Act remained unfulfilled. Would you not, therefore, suggest that the constitution of the Board of Directors as at present also needs to be revised. Because, in my opinion, unless you have repretation of the people who generate wealth, who are responsible for the profession, on the Board of Directors, you can never have that picture which you would like to have. After all, various amendments have been enacted and yet we find that the Company Law remains incomplete. Therefore would you not as an administrator of experience—advocate the representation on the Board of Directors of those people

who are responsible for generation of wealth or generation of production—who are responsible for the costs of the product which the company produces. If I am to be specific, I may say, would you not advocate the representation of the workers on the Boards of the Companies.

SHRI D. L. MAZUMDAR: The thrust of your question is whether there should be workers' representation on the Board. I took the view along with all of my colleagues only three or four years ago in the Report of the Working Group on Company Law of the Administrative Reforms Commission, where we discussed this subject considerably,— a view to which I still adhere— that the time was not yet ripe for workers' representation, as such, on a compulsory basis because lots of complications arise in the present circumstances of our country. The persons who set up workers' organisations and the men who run them—I say this out of personnal experience—are no more of any help to the Management of the companies then their absence would be a deterrent or drawback.

SHRI K. S. CHAVDA: You are a very experienced man in regard to the working of the Companies Act. You have expressed your views regarding Clause 20 and 21. We have recieved memoranda from the Chartered Accountants organisations and in one memorandum they have said that the appointment of an Auditor should be in the individuals' name and not in the name of firms. What is your opinion regarding this suggestion?

SHRI D. L. MAZUMDAR: I must confess that I have not fully grasped the implications of the suggestion. Chartered Accountants are now either individuals or firms. Now, firms are controlled or guided in matters of policy by the senior partners of the firms. Is it the suggestion that we should name a partner as being the auditor of such and such a company?

SHRI K. S. CHAVDA: If the appointment of auditors are in the name of individuals and not in the firm's name, what will be the position regarding big companies.

SHRI D. L. MAZUMDAR: Even small firms can have partners like the big firms. So, I have not yet grasped the significance of the argument as to how it will help the Companies if the appointment of auditors are in the name of individuals. I could not understand the thrust of the question.

SHRI BEDABRATA BARUA: As I have been also to understand it, a junior may do all the work but the result would go to the senior partner; the junior member does not get any credit. So, suppose a number of partners, are there, they can share the profit as partners, but as far as appointment is concerned, it is sought to be made in the name of the auditor himself. But as far as appointment is concerned, let it be in the name of auditor so that it will be seen from the Balance-sheet that so and so has audited. Second thing is that the distribution of work also should be properly done. One big man cannot do all the companies works. Every year he has to employ some people.

SHRI D. L. MAZUMDAR: How to ensure it. I am unable to understand it. If I say that 'X', 'Y' or 'Z' in the Department of Company Affairs should do it, how can I ensure that 'X', 'Y' or 'Z' is doing it.

SHRI MADHU DANDAVATE: The powers of the Court under sections 17, 18 and 19 are sought to be transferred to the Central Government. In your introductory remarks you made a comment that before the new provisions of the Bill are implemented, to use your own term, the administrative capability must be improved considerably. Now, I would like to know if you have any suggestions regarding some structural changes to be brought out so that the administration capa-

bility may be actually introduced and these provisions can be made very effective.

SHRI D. L. MAZUMDAR: I cannot here and now produce and adequate organisation chart need for the Department. If the Ministry asks me to do that, I should be glad to do so. I am here at the invitation of the Joint Select Committee and if that Committee asks me to give a chart, I shall be glad to do so within 15 days. The important thing is to recognise and whch I was concerned to stress in my evidence, is the need for what has to be done. As I mention in broad terms, the Department has to be strengthened not merely quantitatively—not merely by increasing the strength of junior assistants, technical officers, etc.—but also qualitatively inducting higher grade competent peopel into the Ministry, whether they are available from the recongnised service cadres of the Government or from the open market.

SHRI MADHU DANDAVATE: Whether it is merely the quality of the personnel or whether it is due to lack of structural changes, the administrative capability is lagging behind?

SHRI D. L. MAZUMDAR: I have not used the phrase 'structural changes", I suggested that instead of merely strengthening the Department numerically it should be strengthened also qualitatively. I also said, incidentally, unless there was a convergent policy relating to the corporate sector of our country, for which other Ministries are also responsible and that involves a certain degree or type of restructuring of the administrative Ministries concerned—a matter which goes beyond the capacity of one Minister or another, acting singly—effective structural changes cannot be thought of.

SHRI MADHU DANDAVATE: There is a reference in regard to the sharing of the dividents which are not claimed by the shareholders, by the other shareholders or taken by the Government. Here for claiming the dividends six months time limit is prescribed. But in the report it is pointed out that there are two categories of share holders those who have got large shares and those who have got a small number of shares. Those who have got larger shares get their dividends in time and in the case of smaller number of shareholders, sometimes it is not know to them that they should claim for dividends. Whenever such a shareholder dies, his representative or the heir is not aware of this claim and by this six months period is elapsed. Therefore, to give the benefit of share dividends to his representative or somebody whom he has authorised to receive it, the limit of six months will be hardly sufficient time for him to prefer the claim.

SHRI D. L. MAZUMDAR: I think it is provided as 3 years.

SHRI K. V. RAGHUNATHA REDDY: :With reference to section 43(A) that is private limited companies becoming public limited company's share-holders, have you not come across cases where the big private companies having subsidiaries in other private companies, thus having a hold on the assets of the private companies? Don't you think that such cases should be brought within the purview of the Bill?

SHRI D. L. MAZUMDAR: It should be specifically spelt out in that case, in the law that public limited companies which are subsidiaries to the private companies should also fall within the scope of the relevant provisions of the Bill.

SHRI K. V. RAGHUNATHA REDDY: The private limited companies make an investment in another private limited companies and thereby they make profits and the profits made out of this investment is again invested in another company. So, none of the private limited company will come within the purview of the

Section 372. Have you come across such instances?

SHRI D. L. MAZUMDAR: If you are thinking only of public limited companies which are subsidiaries to private limited companies then some difinite provision may be suggested. But through a process of what is called 'Chinese boxes' one fits into another.

SHRI K. V. RAGHUNATHA REDDY: I make a strategic investment in respect of some strategic share-holders. That is good enough for me to control the company. It may be 100 per cent; it may be 5,000 per cent. I control private company. One private limited company controls another private limited company by way of share holding. In such cases, the question that has been raised is why a private limited company which makes an investment in another private limited company be penalised by being brought into the picture as a public limited company and some of the assets may go up to crores of rupees. I hope you will agree with this. Then there are private limited companies with a capital of three hundred crores of rupees, one lakh, two thousand and three thousand rupees. There are public limited companies as well as private limited companies which make use of this. My control will be even 100 per cent and this money is being pumped into for the purpose of purchasing shares and without any control it continues. At least after the ban, the Govt. has come forward to ask applications. Some very strategic take over has been prevented not because of any prior knowledge but because they come forward for filing applications. In such cases, the Govt. wakes up and see that some misdeed is being done. I cannot say law can prevent that particular misdeed. I hope you have no objection.

SHRI D. L. MAZUMDAR: My point is that law should provide specifically for such cases where Govt. is of the view that something is being done which is deterimental to the public interest. As a matter of fact what you are saying is not new in company practice whether in this country or abroad. Such company manipulations have been going on in other countries also for many decades. In dealing with such malpractices, the criterian adopted is the impact which they produce on the economy. Why should we not follow a similar procedure and deal with such practices at the point where they produce an impact on our economy?

SHRI K. V. RAGHUNATHA REDDY: What is the difference between the private limited company and the public limited company. Heavens are not going to fall if the public limited company comes under the private limited company. The only restriction which applies to the private limited company is that the character of the private limited company is respected whatever the persons. They are supposed to be a private money for the purpose of running a business because the philosophy behind the private limited company is that people out of their own resources put in money and start trading not depending for public resources and public money. If the public resources come in by way of investment or by way of assets building, then in such cases, it is necessary that they should be treated on par with the public limited company.

SHRI D. L. MAZUMDAR: Exactly I agree with the *criterion* suggested.

SHRI K. V. RAGHUNATHA REDDY: A particular company in Bombay which is a private limited company, its paid-up capital is Rs. 300. Only with 300 paid-up capital, they have now raised it to one lakh. There are companies which are willing to give. The affluents of course have raised the capital upto one lakh. This entire money has been used. There is absolutely no means of preventing it. It is a private limited company. Do you want us to keep quiet or do you want to control it in some manner or other. It is only the crime that makes the law.

SHRI D. L. MAZUMDAR: I do not know the full facts of this particular case, but I would say something to supplement what you said. I know of a case where a company with a capital of Rs. 200 was engaged in purchase of ships in which Government was interested many years ago, and I remember that the then Department of Company Law Administration having objected to a loan being given to the company by Government to a company of this type. Government ultimately agreed to the recommendation but only after the matter had been discussed fully in the Cabinet in view of the objection raised by some of us in the Company Law Department. Government should not offer the facility of a loan of 14 crores or so to a company with such a trifling capital. So, I am aware of facts like the one mentioned by the Minister. The point is where there are troubles of this sort there are also many ways dealing with them, and changes in law should as a rule, be based on the average incidents of the evils proposed to be counteracted for their spread.

SHRI K. V. RAGHUNATHA REDDY: About the deposits, Mr. Puri had asked you something. It is not merely a case of deposits, it is a regular business of canvassing for securing deposits by saying so many things. The private advertisement would go on for the purpose. I know one company in which the total paid-up capital was 8 lakhs and the total deposits raised are 7 crores and it goes on. In such cases, what we require is you please tell the public what four company is, what is your balance-ce-sheet.

SHRI D. L. MAZUMDAR: I think my earlier observations on this question covers the point raised by the Minister. We must always try to protect honest people, but there is a point beyond which it is futile to try to protect fools.

MR. CHAIRMAN: Thank you Mr. Mazumdar. The Committee is grateful to you. Thank you.

[*The Committee then adjourned*]

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972.

Friday, the 29th September, 1972 from 11.00 to 14.00 hours

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Khemchanbdhai Chavda
6. Shri S. R. Damani
7. Shri Madhu Dandavate
8. Shri G. C. Dixit
9. Shrimati V. Jeyalakshmi
10. Shri Ramachandran Kadannappalli
11. Shri Baburao Jangluji Kale
12. Shri Surendra Mohanty
13. Shri Priya Ranjan Das Munsi
14. Shri Narsingh Narain Pandey
15. Shri S. B. P. Pattabhi Rama Rao
16. Shri R. Balakrishna Pillai
17. Shri Jagannath Rao
18. Shri Bishwanath Roy
19. Shri P. M. Sayeed
20. Shri R. R. Sharma
21. Shri P. Ranganath Shenoy

Rajya Sabha

22. Shri Salil Kumar Ganguli
23. Shri B. T. Kulkarni
24. Shri S. S. Mariswamy
25. Shri Jagdish Prasad Mathur
26. Shri M. K. Mohta
27. Shrimati Saraswati Pradhan
28. Shri D. D. Puri
29. Shri Himmat Sinh
30. Shri Mahavir Tyagi
31. Dr. M. R. Vyas
32. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
4. Shri Ch. S. Rao—*Deputy Secretary.*
5. Dr. (Mrs.) Usha Dar—*Joint Director (Research and Statistics).*
6. Shri C. R. D. Menon—*Under Secretary.*

SECRETARIAT

Shri H. G. Parahjpe—*Deputy Secretary*

WITNESSES EXAMINED

Punjab Haryana and Delhi Chamber of Commerce and Industry, New Delhi.

Spokesmen:

1. Shri Prem Pandhi—*Chairman.*
2. Shri C. K. Hazari—*Member, Managing Committee.*
3. Shri Raghu Nath Rai—*Member, Company Law and Taxation Panel.*
4. Shri S. Lahiri
5. Shri R. Subramaniam—*Member Company Law and Taxation Panel.*
6. Shri Onkar Nath
7. Shri M. L. Nandrajog—*Secretary.*
8. Shri S. Ganapathi—*Senior Assistant Secretary.*

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: Mr. Prem Pandhi and all of you who have accompanied him, I welcome you all on behalf of the Committee and myself. You have submitted a Memorandum. You are free to emphasise any point which you want to do. Then the members will be requested to put questions. I think you will reply them.

The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire that it may be treated as confidential, such evidence is liable to be made available to the Members of Parliament. I have read this rule for your benefit.

SHRI PREM PANDHI: Thank you very much Mr. Chairman and Members of the Committee. The Committee and Members of the Punjab, Haryana and Delhi Chamber are very grateful to you for giving us this opportunity to appear before you and explain further the Chamber's views on the proposed amendments to the Companies Act. I would like to amplify it. We are seventy years old. We cover the entire northern region, Punjab, Haryana, Delhi and Himachal Pradesh. We have about three hundred members of small, medium and large size including some public sector undertakings.

The Companies (Amendment) Bill, 1972 seeks to make far-reaching changes in the laws regulating the working of the corporate system. The corporate sector, as you know, has played a useful and dynamic role in

developing our economy by stimulating growth of savings through investment, creating opportunities for employment and maintaining production and supply of essential goods and services. In our opinion, it would be an unwise policy to place undue fetters on the activities of the entire sector for the misdeeds of a few who might have indulged in undesirable practices to prevent which this piece of legislation is sought to be introduced.

The assumption of powers to acquire and control the acquisition of shares, to approve auditors where 25 per cent of the shares is held by Government, etc. and raising the number of Government directors from two to any number are apparently designed to hasten the process of take over of the companies by Government and increase areas of governmental interest in the running of the industry. The transfer of power from judiciary to the executive, widening of the base for determining companies under 'same management', controlling the appointment and re-appointment of Managing d whole-time Directors, sole-selling agents etc. would erode the initiative and enterprise of the professional managers running the companies and thus hamper the growth. In view of the serious impact which the proposed amendments will have on companies, the Chamber constituted an expert panel to examine the various provisions of the Bill and frame comments which have been submitted to you.

I would like to make here one general point. What would happen is that after these amendments are introduced, some rules would be framed, as usual. Now because of the increased area of administrative decision-making, there would perhaps be scope of appointment of some kind of an administrative board or something like that where without the necessity of having to go to judiciary, one can have a court of appeal and in a very efficient and quicker way look for some kind of a redress.

Now, I would go clause by clause.

MR. CHAIRMAN: Since you have submitted your Memorandum, it contains all the points as far as the clauses are concerned. If you have any specific suggestions to make, or you want to emphasise any particular point, you may do so, otherwise you have made your point.

SHRI PREM PANDHI: I would only refer to some of the important clauses, Sir.

Clauses 2 and 3 refer to the definition of 'group', which according to us is very important. Mr. Raghunath Rai will make a submission in this regard.

SHRI RAGHU NATH RAI: With regard to the definition of the word 'group' and the definition of the words 'same management', we have submitted in the Memorandum three points that the definition is so wide that it embraces practically everybody in this field. We have also mentioned that it embraces trusts which may be absolutely independent of the company. The Bill seeks to give retrospective effect to these two definitions. We submit that no retrospective effect should be given to these definitions. Whatever has been done under the present Act has been done according to law and something might have followed out of this. To give it retrospective effect would mean undoing something which has already been done according to law. Our submission is that under 'same management' even a stranger would come in.

SHRI PREM PANDHI: In regard to our commenting on the more important clauses, we had, at the moment, commented only on one point. There are other points also on which we would like to comment, if you give us an opportunity.

MR. CHAIRMAN: If you have any more points, you can go on.

SHRI PREM PANDHI: I would request Mr. Hazari to comment on clauses 6 and 7.

SHRI C. K. HAZARI: By the amendment suggested, by revising the definition, a large number of private companies will become public companies for all practical purposes. Our submision is that this will increase work of the companies themselves as well as the Department because a lot of returns will have to be filed by the private companies to the Government for scrutiny.

We have also suggested in our memorandum that the financial limits fixed for private companies with capital of Rs. 25 lakhs and Rs. 50 lakhs turnover should be reconsidered as, in the opinion of the Chamber, they are considered to be very low and particularly because of the inflationary trend in the country, the limit of Rs. 25 and 50 lakhs loss much of their value. Our suggestion is that it should be raised to 50 lakhs capital and Rs. 2 crores turnover.

In connection with deposits being received by the companies, it is felt by the Chamber that this will create some difficulties for the companies themselves besides the method suggested of issuing prospectuses being rather cumbersome and might not serve the purpose for which the clause is being changed. The Chamber accepts that a certain amount of regulation on deposits is absolutely necessary to safeguard the interests of the depositors, but looking at the practical side as to how the deposits are accepted today and whether the changes now going to be introduced will create practical difficulties, I would just say that deposits are being accepted under the present regulations of Government for periods of one year only by the companies and they are payable after the expiry of the period. Certain information is supposed to be published by the companies which the Reserve Bank has prescribed. It may be suggested in this connection that the companies may be required to publish some information in the newspapers once a year or twice a year for the benefit of the would-be depositors, but the issue of a prospectus from time to time will not satisfy the needs of the would-be depositors. Then, there is a provision that if the rules that are framed later on are such that the amounts become refundable, the refunds would be made within 30 days. My submission is that these conditions will not be practicable because companies enter into an agreement whenever they receive deposits and if it is for one year or two or three years, these deposits should be allowed to run the entire period and should be made payable only after maturity. This period of 30 days may not apply to certain types of deposits.

The Bill requires now that the appointment of Auditors should be brought under control. (This is in regard to Clause 29 on page 12 of our memorandum). It is now going to be prescribed that any Auditor who has worked for three years will be subject to change. Now, I need not argue about it except to say that the right of the shareholders, which we consider to be fundamental, should be allowed to prevail. The majority rule in a democratic country like ours should decide who should be the Auditor. In cases of companies where the holding of financial institutions are 25 per cent or more, the right to appoint Auditors is now to be given to the financial institutions. The financial institutions, in my opinion, are as much shareholders of the company as any other shareholder and if they so desire, they can exercise their voting power at the meeting; no special authority need be given to the financial institutions.

I now refer to Clause 22. In my opinion, it is a very important clause because it seems to me that Chartered Accountants are being deprived of the right to act as Cost Auditors. I am personally a Chartered Accountant and partly a Cost Accountant. The distinction seems to me to be somewhat superficial. A Chartered Accountant's work is very much concerned with Cost and to say that Cost Accountants should be the only people who qualify to conduct an audit, in my opinion, is something which

flows from a presumption that Chartered Accountants cannot perform this duty. My submission is that this matter needs reconsideration.

Then, another aspect is that Cost Audit Reports may be published by the order of Government. In our opinion the costing data of any company is of private and confidential nature which the company would not like to be published for the use of its competitors. Today, returns are submitted to Government and if they so desire, even today they can ask for further information and elaboration and issue orders on the various facts either to act or not to act in a certain manner. To invite comment from the public or criticism from the public who are not directly connected with the costing data will, in my opinion, create unnecessary difficulties in the operation of the companies.

Now, I will take Clause 23 regarding appointment of whole-time Directors. Today, under the present law, Government has to approve the appointment of whole-time Directors. There might be a necessity to make changes to make the law clearer or more effective, but in the proposed Bill, many other considerations are now being brought in. I will refer to a provision in this regard which was not acting in the public interest. As far as the appointment of Directors in private companies and public companies are concerned, ordinarily one does not think that there would be anything done dividual is being appointed. Again against public interest if a certain inthe reappointment is also done subject to new conditions. Reappointing the same directors on the same conditions is a matter which should not be reopened from time to time. When the terms and conditions are once approved by the Government, the Directors should be allowed to continue on the same terms and conditions. If in the present context, it seems unusual to indicate something about the professional directors to Government, then these professional Directors also look for security like anybody else. They feel insecure because they do not have much financial interest in the company or may be no interest in the company and they will be subjected after three or five years, to certain amount of scrutiny. We do not know what the results would be, but definitely it would go against the professional managers who are supposed to act in a company in a manner that they bring about good management and professional outlook in the company. Thank you, sir.

SHRI PREM PANDHI: Thank you very much, sir. I think as far as highlighting of the points is concerned, we will finish at this stage and we would be very happy to answer any questions that may be put by the Members of the Committee.

SHRI MADHU DANDAVATE: Sir, the system of Managing Agencies managing these companies was already abolished. Is it not a fact that even with the amendment of the Act in 1969, the evils—by back door methods—of the previous managing systems were already operating and as a result of that, don't you feel that some of the amendments that are proposed in this amending Bill will, to a very great extent, be able to remove all those evils?

SHRI PREM PANDHI: Sir, generally, to the extent of what I said in my introductory remarks in the beginning, there is no denying the fact that for a number of these amendments, there are goods reasons why it is necessary to bring them in. On the whole the problem arises about the manner in which it is sought to plug those loopholes and then the manner in which the execution takes place. As it is, one is getting into a stage where one has to go to Government for too many permission or approvals and the speed with which the approvals come is very slow due to the system leading to various kinds of difficulties and delays. What one fears is that these amendments would lead to even greater controls and administrative difficulties and inspite of their very best

efforts, and dealing with a number of officials in the Government, one has come across the fact that they are extremely helpful people and they are very anxious to do things quickly. This is what one fears that whilst it is a good thing to try and plug these loopholes but in regard to the administrative capacity for the system to take on this load one has doubts.

SHRI MADHU DANDAVATE: What would be your objection to having this provision, as far as 'X' managing agents are concerned? Before they entered into any agreement with 'X' management, if they have to take permission of the Central Government so as to remove all malpractices, what concrete objection you will have to this? Is it that there is too much power in the hands of the Government or do you have any other objection to this?

SHRI RAGHU NATH RAI: So far as the Chamber of Commerce is concerned, we do not have any statistics to say as to how many managing agents have tried, to circumvent the law and entered into the management through back door. Of course, there may be a few cases but my submission only is this law should not be changed only for the sake of a few exceptions and whatever they have done, they have still done it according to the law and they have not in any way undermined the interest of the company.

MR. CHAIRMAN: It looks that there is a difference of opinion in what you say and Mr. Pandhi has said. Mr. Pandhi agrees to the views of Mr. Dandavate. He says that those loopholes are to be plugged because of the inefficiency or inability of the Government officials. It would be casting an onerous burden on the business. This is what he said. But you on the other hand say that these managing agents have not done anything wrong or have not tried to enter from the back door. So there is a difference of opinion in this regard.

SHRI MADHU DANDAVATE: There is another very important aspects. As far as the present practice is concerned, the definition of the concept of the same management is a very valid one. You will find, at least here you would agree on the basis of the experience, that due to the wrong interpretation or inadequate definition of these clauses, so many disadvantages have been there and if you look at the actual working of the M.R.T.P., Act you will find that they have pointed out in a number of reports what exactly are the definitions when we deal with the various cases. And they themselves who are actually concerned with the working of the Commission, very often pointed out what are the difficulties faced and how to remove them. So, do you think there is need for reviving the bill? Do you think that this will help or worsen the situation?

SHRI PREM PANDHI: We are quite aware of the fact that the Monopolies Act and the Companies Act have to work hand in hand and certain deficiencies are there in the Monopolies Act and the Companies Act. But, in our Memorandum, we have clarified where certain difficulties are likely to arise; for example, the concept of same management should not be stretched too far and, in all matters, everything cannot be legislated and, where executive powers are given, these should be exercised according to some guidelines and principles. The Amendments give powers to Government which are difficult to both implement and understand. In conclusion, we are not just objecting to all these changes, but are recommending that certain things ought to be clarified so that there is no confusion in the minds of the company officials who have to observe the laws as also in the minds of officials who have to administer these.

SHRI MADHU DANDAVATE: Do you think there is a confussion in the present definition?

SHRI C. K. HAZARI: We have pointed out that when a person acts as Chairman of a company he may not have financed yet he may be deemed to be that.

SHRI MADHU DANDAVATE: The powers of the authority of the court under the provision are now sought to be transferred to the Central Government. It is true that there should not be too much concentration of powers in the hands of the Government. Do you suggest any structural changes in the existing administrating matter and certain changes in the authority.

SHRI C. K. HAZARI: We must admit that we do not know what difficulties have taken place in the past when the powers vested with the court in certain matters are sought to be taken away. The Government has experienced certain difficulties in this matter....But as our Chairman made a submission earlier that in matters where any party is aggrieved by any decission some sort of judicial process ought to be available to the company to come and operate and seek redress.

SHRI M. K. MOHTA: Regarding clause 2, they have commented that the definition is extremely wide and vague. Do you have any alternative suggestion to make regarding the group which will serve the intention of the Government as well as not being vague?

SHRI PREM PANDHI: I would ask my colleague Mr. Raghu Nath Rai to answer this question. I would like to make one submission in regard to the alternative suggestions we may have. In the context of some of the problems that we have raised in our memorandum, I feel that there is need for making some sort of constructive suggestion as an alternative to these. But the time we have had for this at the present moment has been very little. We tried to give a lot of thought to this. All that one needs is more time for that. Now, I will request Mr. Raghunath Rai to comment on this.

SHRI RAGHU NATH RAI: On this point, we have suggested in our memorandum that the areas where the misuse of power can be done in this clause 18(a) should be deleted because with it, it becomes absolutely in our opinion vague. Because how is the 'object' going to be determined, there is no rule, no regulation and it can be interpreted in different manner on different occasions. That is why we submitted that this area should be defined clearly so that there is no ambiguity about it and both the management of the company as well as the department know clearly as to the area of their jurisdiction so that if they have to enter into any transaction they should know clearly in advance or that they would have connected under the definition of word 'group' with this word as it stands with this provision or 'excise' or have the object of exercising control. This becomes absolutely impossible for anyone individual to interpret and to project his own working in the company.

SHRI M. K. MOHTA: The definition of same management as has been in the previous Act would be quite adequate and sufficient to meet the situation or does the Chamber think that no amendment is at all possible?

SHRI RAGHU NATH RAI: We have already submitted that.

MR. CHAIRMAN: There is no specific suggestion to make, but no alternative he has pointed out.

SHRI M. K. MOHTA: On the question of inter-corporate investment.

MR. CHAIRMAN: The witness has said no. So far as he is concerned, he is not able to point out the exact definition. But this definition is not happily worded. It requires a change.

SHRI JAGANNATH RAO: Does he say that no amendment is necessary at all?

MR. CHAIRMAN: The witness has to reply and whatever he replies you have to hear.

SHRI RAGHU NATH RAI: So far as the Chamber is concerned, we are no doubt of the view that no amendment is called for in the area 'group' in the definition. But as our Chairman has already submitted that if the Government feels in the working of the particular section of the Act they have any difficulty or they consider that particular type of transaction entered into between the company should be deemed to be under the same group, our only submission was that we have no objection to it so long as it is clearly defined and we know in advance as to how it is going to happen.

SHRI MAHAVIR TYAGI: So the chamber is not opposed to it.

SHRI M. K. MOHTA: What the Chamber feels that an investment by a private limited company in another private limited should not be subjected to any restriction of the Government at all or should it be subjected to some restriction. If so, to what extent and also in the case of a private limited company in another public limited company. Is it to be negotiated or regulated or restricted? If it is to be regualted to what extent?

SHRI C. K. HAZARI: In the opinion of the Chamber, the present restrictions under the Act are adequate. The Companies have to operate within certain limits that have been laid down, *i.e.* 20 per cent, 30 per cent and so on, and this need not be changed.

SHRI M. K. MOHTA: My next question is regarding the reappointment of auditors. To what extent does the Chamber think that there has been concentration in audit in reality apart from the propaganda that have been made by both the sides? What is the extent of the concentration? Whether there is any case for curbing such concentration and whether the Chamber agrees to the way in which this is being sought to be curbed or not?

SHRI C. K. HAZARI: Sir, the Chamber have no data available to it and no definition on the word 'Concentration' as far as the auditors are concerned. We heard the word when the Monopoly Act was enacted. But this new type of concentration as far as a profession is concerned, is unheard of. I would submit, Sir, that this should not be there. If I want to go to an expensive doctor, I should be allowed to do so if I can afford. Similarly if companies want to have the services of experienced auditors to advice them on certain matters, they should be allowed to employ them. It is not a question of just carrying out checking of accounts. But various matters are discussed between the Company Board of Directors and the auditors who have the necessary experience and this experience will be very useful in the management of a Company. If we are so much concerned with the breaking up of the so-called concentration, it would mean that a Company will be asked to appoint some auditors who may be unknown, who may not be adequately staffed and who may not be knowledgeable, and this will not help the Management of the Company.

SHRI M. K. MOHTA: My last question is this. I would ask a general question. What would be the overall impact and effect of the amending Bill on the industrial and economic development of the country and to what extent would it ensure social justice?

SHRI PREM PANDHI: I did touch on this point in the beginning. We spent lot of time in discussing this particular point. This kind of detailed taking of interest in the running of an industry is perhaps going to lead to a situation where a number of us in industry are going to approach the Government to give us rooms and offices to work in Shastri Bhawan itself. It is not that. I said myself in the beginning that a number of these things are required. But in terms of the very very widespread, intimate and detailed contact that is going to become necessary as a result of this measure, the rate of growth,

if that is what one is looking for, to be improved in the economic field, I cannot help thinking that this is going to be most definitely and adversely affected.

SHRI K. S. CHAVDA: Sir, they have mentioned in their memorandum on Page 12 (Clause 19) that the Ministry of Industrial Development collects on regular basis detailed information regarding persons in the employment of business houses and industrial undertakings drawing salaries over Rs. 2,000 per month. So, Mr. Pandhi, you have no objection to this, is it not?

SHRI PREM PANDHI: Are you referring to what the Ministry of Industry is already asking for?

SHRI K. S. CHAVDA: I have said that they have mentioned in their memorandum that the Industrial Development Ministry collects detailed information regarding their employees who are drawing Rs. 2,000 and more per month. I said that they have no objection to this? Is it not Mr. Pandhi or have you got any objection to this?

SHRI PREM PANDHI: There are lots of things on which we are asked to give information and we had given this. To the extent that this is there, we provide the same. We have no objection to this because we have to do this. What we are objecting to or what we have made out in our Memorandum in regard to this Clause is that the additional information that is asked for is perhaps unnecessary and this is an avoidable increase of work.

SHRI K. S. CHAVDA: For your benefit, May I read the requirements as to the Profit and Loss Account. Page 554 of the Companies Act, Schedule VI, Part II, footnote 2.

"In respect of sub-items (1) and (2) the profit and loss account should also indicate separately the number of employees of the company who are in reecipt of, or are entitled to receive emoluments amounting in the aggregate, to Rs. 2,000/- or more per mensem, and in computing such aggregate emoluments—

(i) All payments to be made by the company in cash,

(ii) all contributions etc., to be made by the company, whether in cash or otherwise, and

(iii) the approximate money value, where practicable, of perquisites and benefits in kind,

shall also be included".

The provision is already existing. Have you represented to the Government that this provision should not be there?

SHRI PREM PANDHI: This provision to which you have referred, Sir, relates to the rules which were enforced last year. If I remember correctly, and several representations have been made by various Chambers, including this Chamber that we represent, in regard to the rules that have been enforced. In case of some companies which represented to the Company Law Board, certain exemptions have also been granted in respect of the requirements that are to be fulfilled under these rules. The one requirement under the rules was that salary and perquisites of the employees should also be given. To our mind, this is absolutely unnecessary and the publication of the names of the employees is not necessary. In fact, there is something private and confidential about certain matters and salaries one generally does not like to disclose.

MR. CHAIRMAN: Even with regard to names, is it something private?

SHRI PREM PANDHI: Name is disclosed and, against names, we have to mention the salary the person draws.

SHRI K. S. CHAVDA: What harm is there if you disclose the names?

SHRI C. K. HAZARI: We have put forward the view that this is unnecessary. In our opinion, this is somewhat a private matter. Even the Income-Tax returns which are filed are generally considered private and confidential matters and they are not supposed to be disclosed, the way this Bill proposes.

SHRI D. D. PURI: My first question relates to Clause 2 regarding the definition of "group" and exercising control. A view has been expressed that the clause would be perhaps a little less vague and ambiguous if the words "has the object of exercising" are deleted. I put it to the distinguished gentlemen here—if "which exercises" were deleted and "has the object of exercising" retained, would it not make the Clause a little less vague and certainly, then the group would be identifiable. The party or whoever wishes to poise this charge of a group would have to establish the objection of that group. Every single vote in a share-holders' meeting is important and if 51% vote in favour of a thing in any meeting, it might change the situation. I wish to put it to them that if the words, "has the object of exercising" were retained and "which exercises" were deleted, could it not make it a little less clear?

SHRI RAGHU NATH RAI: We agree that if these words are deleted, the meaning of the word "group" would certainly be more clear than now.

MR. CHAIRMAN: Mr. Rai, I am making it clear. Look to the definition *i.e.* clause 2(i). He asked a question whether, if the words, "any combination thereof which exercises" and "which exercises" were deleted and the rest retained, would it not serve your purpose? This is what Mr. Puri means.

SHRI RAGHU NATH RAI: Our submission is that "any combination thereof which exercises" is a matter which, we know at the present time, whether it is exercising or not; but even then, how they are exercising control is again not definite, because, how a combination of certain people would act, as Hon. Member pointed out with 51 per cent voting in a particular case, would also amount to this, that they are exercising control over the company, although they have no hand in its management. This, in my opinion, is not clear; but subsequently when these words are mentioned, they are absolutely superfluous, in our opinion, and unnecessary. Thirdly, it is further mentioned that the "group" means those who have control over a corporate body.

SHRI MADHU DANDAVATE: He is very clear.

MR. CHAIRMAN: Now next question. Mr. Puri, I have put the question to the witness in different ways; but the witness does not want to agree with you.

SHRI D. D. PURI: My next question is in regard to page 4, "accustomed to act." That is, "if the directors are accustomed to act". I would like the views of the Chamber as to how they would interpret these and at what stage and in what point of time or action, would a custom evolve in the voting of the Directors. Does it present any difficulty to them? They have, in their note, interpreted it to include a situation where the two companies have a common chairman. That is at page 3 of their memo. I have a little difficulty in understanding this part of the memorandum. They have stated that where two companies have a common chairman, they would be deemed to act, accustomed to act, in accordance with his directions or instructions. Now, Sir, there are two points arising out of this. Number one, I take it that it is not the point of view of the Chamber that if anyone is presiding over a matter, he can take away the freedom of the other participants therein. Certainly, it should not be the idea at

all. Merely because one happens to be the chairman of a company and he presides over the Board meetings of the company, it does not mean that the directors can be deemed to be accustomed to act in accordance with the directives of the chairman. That is my first question. My second question is, whether this is likely to present serious difficulties in its interpretations and connotations in the day-to-day working of the company.

SHRI C. K. HAZARI: Our Chamber supports the view expressed by the Hon. Member that the words "accustomed to act" are something which is not easily comprehensible. It may be that these words exist in the present Act also.

MR. CHAIRMAN: They have been carried over.

SHRI K. S. CHAVDA: They are the hang-overs of the past.

SHRI C. K. HAZARI: May be; but I think we are looking at the Act and the entire company administration as it has worked in the past several years; and we are going to revise our views on certain matters. I would suggest that these are things which are difficult to comprehend and likely to create certain doubts in the minds of those who run the company.

SHRI D. D. PURI: My third question is, briefly speaking, in regard to dividends on which three provisons are sought to be made in the Bill. Number one, if a dividend remains unpaid for a period of six months, it has to be remitted to the Government. The second is that the freedom of the company has been curtailed for declaration of dividend out of reserves. And the third is that after a period of six years, the dividend becomes the actual property of the Government. In regard to the first one, *viz.*, six months, is it not the experience of the Chamber which consists of company executives and auditors that more than 90 per cent of the dividends which remain unclaimed, relate to shares in transmission delays involved in obtaining succession certificates and they may relate to small shareholders? Large shareholders see to it that the dividends are collected on the date. Is it not their experience that dividends remaining unclaimed, relate to small shareholders? In regard to the second question, I would like to know about the freedom, that is sought to be curtailed, of the companies to declare dividends out of reserves—how far would it apply to carry forwards in profit and loss account? Would it not lead to large amounts being carried forward in profit and loss accounts; and also would it not lead to a situation where the companies would declare large dividends, even part of the profits that they would normally carry to reserves, because they are going to lose the freedom to declare dividends out of the reserves later on? Thirdly, what is the view of the Chamber regarding this, that ultimately, if the dividend is not claimed for a period of six years, should it actually, and in justice, belong to the other shareholders or should it go to the Government?

SHRI C. K. HAZARI: In answer to the three questions of the hon. Member, I would explain a little bit in regard to our position. The Chamber is opposed to this clause totally, because it seems to me to be undue interference with the working of the companies. The allocation of dividends is made at the shareholders' meeting. Thereafter, within 42 days, the dividend is supposed to be paid. The Act now proposes that this amount should be transferred to a separate bank account within 7 days. I would submit that there seems to be no necessity for such a transfer, for the simple reason that quite a large number of companies are paying dividends out of funds which they have borrowed from the banks. The interest charged is anything over 11 per cent and if this

money remains locked up separately, for six weeks or eight weeks, there would be unnecessary charge of interest to the companies, which could be avoided. The payment of dividend once it is made, is claimed by the shareholders immediately in, I would say, a very large majority of cases, because as a shareholder when one receives a cheque for the payment of dividend, one does not keep it with him. Money is needed by every one. A very large number of shareholders depend upon share dividends. Therefore, this condition does not seem to be correct. With regard to the reserves, as a shareholder I, or anyone, would look forward to a continuity of income. I may not entirely depend upon it; but still, I look forward to a certain flow of income to come to me year after year. The company management are trying to regulate a certain flow of dividend year after year. They might be compelled, in one year, to reduce it when profits are not sufficient, or to increase it when the profits are more. The third point raised by the hon. Member is whether this amount should be deposited with the Government after six years or not. We are unable to comprehend this. If money remains unclaimed by the share-holders it becomes the property of the Government. Similarly, the shareholders who do not claim dividends, unfortunately might lose the right to claim after a certain period. Today there is no regulation to do so. I would suggest that this may be looked into. If for ten or twelve years dividend is not claimed by the share-holders, the same may be transferred to the Reserve Fund.

SHRI D. D. PURI: In regard to auditors, the provisions of the Bill make it compulsory that in respect of an auditor who has been functioning for three years, cannot be re-appointed automatically. I put it to the Chamber that a view has been expressed here by someone that it is only the security of tenure of the auditor which leads to independence and, therefore, is it not their view that if there are any restrictions to be imposed, they should be restrictions on change of auditors and not on continuing auditors once appointed. Any restriction on re-appointments would lead to lack of independence rather than other way round.

SHRI C. K. HAZARI: I am not an auditor.

SHRI D. D. PURI: In certain circumstances the number of Government directors is sought to be raised from two to without any limit. Now among the gentlemen present here on behalf of the Chamber who have had experience over the last twenty or twenty-five years in auditing companies, have any instances come to their notice where the two directors nominated by the Government, been over-ruled or some serious situation has arisen because the Government directors were in a minority?

SHRI C. K. HAZARI: Personally I had the experience of working with the directors nominated by financial institutions. They are not Government directors but the representatives of Government institutions. We had absolutely no difficulty in working with the directors and this I would say that there was almost a total unanimity in matters concerning the company's management. This clause to which the hon. Member referred, for some reason, it is not clear to us.

MR. CHAIRMAN: They have not over-ruled, that is what you mean.

SHRI C. K. HAZARI: They are cooperative.

SHRI SALIL KUMAR GANGULI: Among your members there must be several companies having a paid up capital between Rs. 25 lakhs and Rs. 50 lakhs. Have you any idea as to the profit they made during the last financial year or previous to that?

SHRI PREM PANDHI: I am afraid this information would not be readily available across the table.

MR. CHAIRMAN: Can you supply us the information of a company with a paid up capital between Rs. 25 to 50 lakhs and making profits and the quantum of profit?

SHRI RAGHU NATH RAI: Certainly, we will.

SHRI JAGANNATH MISHRA: Can you perhaps give us some instances where Government has readily come to a decision?

SHRI PREM PANDHI: We have really not had much time. When this piece of legislation got combined with another piece of legislation, *i.e.* the Amendment to the Foreign Exchange Act, and the period was very very small to think in terms of this. I would again, as a general thing say, when one is dealing with law-in all these clauses we are asked about these alternatives or whether or not these clauses should be there; or are they justified? What one would like to know is take things like the appointment of auditors, or where the unclaimed dividends should go, or information about the people who are drawing more than Rs. 3,000 a month, or permission for the directors' appointment to be renewed. At the moment we have a piece of legislation in front of us as it is intended to be, but what one would like to know what is the need for all this. Industry wants to work actively. Why is it, when one knows the administrative wherewithals are not unlimited, necessary to bring in a great many of these clauses for administering facilities are inadequate.

I think the explanation is to be given from the other side than from us.

SHRI SYED AHMED AGA: I would like to draw your attention to clause 10, page 6 of this Memorandum that has been circulated. If it is unfair to take over the companies, how else are you going to safeguard this?

SHRI RAGHU NATH RAI: Unless a certain complaint is made by the Management, how is the Government going to take initiative to take the shares of the particular company. This concept is so vague what we feel that it is no more necessary for the Government to have this power. On the application of the management or on the application of the persons who have been refused transfer of share, Government can go into the question whether the transfer of share is with a view to acquire control over the interest of the Company or into the management and the affairs of that Company? Sections 409, 410 give adequate powers to the Government and our submission was with this power in the hands of the Government, by amendment of Section 104, every time even a small share is to be transferred somebody comes and writes a letter to the Government, the purpose of this is acquired. Government comes into picture and starts investigation. In other words even the prospective transferees of the share should approach the Government. The number will become so huge that it will become difficult for the Government to manage it.

SHRI SYED AHMED AGA: Clauses 20 and 21. They say it is the fundamental right of the shareholders of the company to appoint auditors. The same principle or view I express here is that it is from the point of view of the non-controlling shareholders. The controlling shareholders appoint the auditors and not the non-controlling shareholders. The auditor is there to safeguard the non-controlling shareholders. How do you deal with this point?

SHRI PREM PANDHI: How would it be possible to correct? Suppose just by the change of auditors the interest of the non-controlling shareholders would be better safeguarded or if a change takes place and that change was not considered adequate or good by the controlling shareholders, how will that be for the overall good of the Company? That is not easy to

understand and that is why we have said that the interests of the shareholders not only who control but also non-controlling would be far better safeguard if the auditors changes are not made too frequently.

SHRI R. R. SHARMA: Memorandum No. 6, Clause 10, para 14. You have offered no comments. Have you got any comments with regard to the penal provision?

SHRI RAGHUNATH RAI: We have already submitted that so far as this amendment of Section 108 A is concerned, it is absolutely not necessary. The penal provision will put so much of difficulty for the company that even the honest company management will be faced with those difficulties. We oppose the penal provision.

SHRI P. M. SAYEED: May I know if I have understood Shri Pandhi correctly—that he said that the Chamber feels that there must be different set up of administrative machinery, a different set up through which they can contact other than the Government Machinery.

SHRI PREM PANDHI: The suggestion I made was that the only remedy that is available to us to-day in case some unjust decisions are taken, is by going to court.

With the increasing area of administrative control in the day-to-day running of the industry, our suggestion was that there perhaps ought to be some provision where there is an independent Board, or some other kind of an organization, where if I am aggrieved about a certain administrative decision, I can go without having to recourse to the courts every time.

SHRI P. M. SAYEED: You prefer to approach to that set up than to the courts.

SHRI PREM PANDHI: I mean for day-to-day matters. I do not say that courts should be eliminated. One should have recourse to the courts only in extreme cases. If the hon. Member were a professional Manager in an industry, he would have known the day-to-day difficulties. On everything it is not always possible to go to the courts. It is not a feasible proposition.

SHRI P. M. SAYEED: Is it because the Government's hands are full, you wanted decentralization.

SHRI PREM PANDHI: I did not mean that.

SHRI HIMMAT SINH: One page 4 of your Memorandum, paragraph 10, you have made certain comments in respect of new sub-section (1A) of section 43A, where a private company becomes a public limited company. You have said that there appears to be no logic behind the enunciation which has been made in the proposed enactment. It should not be assumed to a limited company. Don't you think that the private company which is the investee company, should share the responsibility of the public limited company.

SHRI C. K. HAZARI: The amount of 2½ lakhs which would convert a private company for all practical purposes into a public limited company seems to be too small. We have suggested deletion of this clause, because in our opinion, private companies generally should not be disturbed in making their own decisions. Quite a number of them are small companies who might have reserve funds and would like to invest their cash into some shares of public companies to the extent of 10 per cent of the capital. Just merely because a company invests a small amount to earn dividend it should not be brought within the purview of the law by making it a public company. We have, therefore, suggested deletion.

SHRI HIMMAT SINH: You have said that 2 1|2 lakhs is too small an amount. You must be aware of private companies which operate on a share capital of few hundreds of rupees and they undertake the work worth lakhs of rupees. Why do you regard 2 1|2 lakhs as a small amount?

SHRI C. K. HAZARI: As I submitted, the private companies should be left out of anything that is proposed in the Bill, because these are owned by certain families, certain friends etc. and they should be free to make investments. We have only illustrated the point by giving this amount. In principle, these companies should not be touched. That is what we feel.

SHRI HIMMAT SINH: The question is that when a public limited company takes an interest in a private limited company, the assumption is that the public limited company wants to evade the responsibility which falls on them by virtue of certain compliances. The investment in the public limited company is to evade this responsibility. Therefore, it is necessary for the private company to share the same responsibility. Therefore, the private company in which the investment is made should be *ipso facto* regarded as a public limited company.

SHRI C. K. HAZARI: I do not share the views on behalf of our Chamber.

SHRI HIMMAT SINH: Now in regard to clause 6, you have said that the proposal with regard to deposits is bad and you regard it too cumbersome. With the efficiency that the private sector claims, nothing can be so cumbersome as to make available information to the public, which wants to make deposits and which would attract them to make deposits. Yesterday a reference was made to a very senior officer of the ICS, who lost all his savings because he deposited with some company. But perhaps the information that is sought to be made available to the people, who are interested in the deposit, if that was made available to that gentleman, he would have been saved.

SHRI C. K. HAZARI: Our chamber is not at all opposed to giving information to the would-be depositors. What we have submitted is that issuance of prospectus on the same lines when a company issues and floats shares in the market does not seem to be practical proposition.

Quite a different category of deposits are floated from time to time. Deposit is a day-to-day affair. If any depositor goes into a company's office and wants to put in some money this money is accepted. The regulations which the Government wishes to have are most welcome but the issue of prospectus, in my opinion, will not serve the purpose a would-be depositor does not even read the prospectus. And, how often can a company continue to issue prospectuses when deposits are a day-to-day affair? All the 300 working days we have receive deposits and pay deposits; so how can a prospectus be given to a depositor when he comes to hand over a deposit.

SHRI HIMMAT SINH: Regarding Section 108D you say that this should be applies to a holding above a certain minimum, the minimum being 5,000. Once you accept the principle of making a regulation, why are you restricting it to 5,000?

SHRI RAGHU NATH RAI: So far as benefit of transfer is concerned, my submission was that a restriction is imposed that the transfer should be registered within a particular time and we do not think that he has any scope left over. If a small shareholder having Rs. 500 in the beneficiary and has to take permission from the Government and report it to Government and register it, the procedural effect will be lost and the purpose which is tried to be achieved will not be served.

SHRI PREM PANDHI: In fact, they themselves accepted this principle.

For example, where a small scale industry or the smaller man is concerned, they have said that perhaps it is not worthwhile to go through the routine of going through all these formalities.

SHRI HIMMAT SINH: There is a certain amount of responsibility on the part of the Chamber in regard to the introduction of a system of cost accounting. Yau have said that the work of the auditor itself is adequate and there is no need for any intricate system of cost accounting to be imposed on a company. But the auditor, after all, depends on the disclosures you have made before him. Cost accountancy is a different thing altogether. Cost accountancy is a specialised job just as a Secretary's job, is a specialised job and the Auditor's job is a specialised job. In my opinion, you should welcome it rather than object to it.

SHRI C. K. HAZARI: As submitted by me earlier, the demarcation of work between Chartered Accountants and Cost Accountants seems to be artificial. Chartered Accountants, because of their education and experience, are adequately armed for carrying out cost studies. Cost Accountants may have had some specialisation in the cost accounting field, but I am afraid that just because they have passed this examination it should not be assumed that they have become specialists in cost audit.

SHRI S. S. MARISWAMY: This is in regard to clause 29. You wanted the 25 lakhs to be raised to Rs. 50 lakhs. I would like to know whether in your opinion Rs. 25 lakhs is too small a sum and whether a company with Rs. 25 lakhs cannot pay a whole-time Secretary.

SHRI RAGHU NATH RAI: So far as a company with a capital of Rs. 25 lakhs is concerned, the work of the Secretary is not so much, and there is no necessity for a whole-time person for it. This is the first time it is being done as a sort of compulsion that a particular company should have a Secretary with a particular qualification, when the work of the Secretary is being admirably and honestly done by another person and the company has not felt any difficulty. Our suggestion is that these companies are too small to be able to afford the luxury of a whole-time person and the consequences following it.

SHRI BEDABRATA BARUA: Are you aware of the legal position that once a dividend is declared, it becomes debt payable by the company and is therefore held in trust by the company for the shareholders? What have you to say on this legal position?

SHRI RAGHU NATH RAI: It is no doubt a social law that dividend once declared becomes debt; but it is debt to whom? It is debt by the company to its own shareholders who are the owners of the company. The definition of the word 'debt', just as in income-tax and certain other matters, is that it should be handed over to the company if it is not wanted for a particular period. So, there should be no separate account. The shareholders has no claim separately though he has a right, no doubt, to the dividend.

SHRI BEDABRATA BARUA: It is not denied to him, but he does not claim it.

SHRI RAGHU NATH RAI: My objection is also to having separate accounts.

SHRI BEDABRATA BARUA: Regarding take-over, you have said that sufficient provision is made in the present Act. Are you not aware that a lot of take-over is taking place all round the country and a lot of money is being paid in black?

SHRI RAGHU NATH RAI: Our submission is that Section 499 gives sufficient powers to Government to check these malpractices.

SHRI BEDABRATA BARUA: This law is not very stringent. These laws are for average company management. These things are being practised in most advanced countries. Take overs do not take place in the manner in which it takes place in this country. If this type of take over is being done then we have provision under Section 409 to prevent this practice. But I would like to know from you whether you have any objection if a private limited company is made public limited company when public interest is involved.

SHRI RAGHU NATH RAI: Our submission only is what is the definition of the public interest, because public interest means the interest of the share holders, that has to be defined.

SHRI BEDABRATA BARUA: Suppose loans are given to the company from public financial institutions.

SHRI RAGHU NATH RAI: For that, financial institutions can always insist on the company concerned to see that public interest is safeguarded.

SHRI BEDABRATA BARUA: About investigation, you have said that the provisions under section 209 is,applicable. You have said that inspection of the company's documents is tantamount to investigation. In fact what we propose to do is to ask these companies to produce certain documents. Beyond that it is not taken as investigation. So, whenever you are asked to produce the documents and papers, it cannot be taken as tantamount to investigation.

SHRI RAGHU NATH RAI: Our submission is that the word is not confined to the production of the documents and papers. It also means calling of the witnesses and asking the witnesses to come and explain before a junior officer of the Department. If the object of the inspection is to watch only the performance of the companies, we can appreciate the objective of the clause but I do not know whether this is going to achieve any results if the wording is done in this manner.

SHRI BEDABRATA BARUA: There are officers of the company who are examined by the Department to find out or to elicit certain information. Is it taken as a stringent measure. It is only to see whether the company is running properly. What is the difficulty in giving evidence?

SHRI RAGHU NATH RAI: The present provision is that the Registrar of Companies has got sufficient powers to incorporate further amendments to the rules. He can also get the details and also examine any Director. But the enlargement of the scope in this present provision would in our opinion go too far than the intentions as laid down at present.

SHRI BEDABRATA BARUA: You said that benami should be prohibited in certain cases if the small share holders have no objection. You also said that the dividend amount should not be transferred to the special account in a scheduled bank. Suppose the small share holders are interested to safeguard their position what objection you have got?

SHRI RAGHU NATH RAI: Our submission was that small share holders should not be affected. According to the Government point of views if it remains unclaimed for a particular period it should go to the Government.

SHRI MAHAVIR TYAGI: I wanted to know what is the justification for benami transaction. Why should it be allowed at all?

SHRI RAGHU NATH RAI: I only asked to prohibit any benami transaction. Let the benami be banned altogether. I have no objection.

SHRI BEDABRATA RARUA: Regarding auditor under section 224A you are pleased to give this analogy of the doctor. I have got the analogy elsewhere in so many things. 'The auditor is after all like a doctor'.

Now the point is that the doctor would treat the patient but whom would the auditor treat? The company or the majority of share holders?

SHRI C. K. HAZARI: May be you have in mind certain auditors who have not performed the duty properly. But in my humble opinion, sir, this will not be the way to deal with the company. If the auditors do not perform the duty according to the share holders or the company, it is they who need to be punished for changing the auditors frequently.

SHRI BEDABRATA BARUA: That is a different matter. I just wanted a clarification on these points only.

SHRI MAHAVIR TYAGI: About auditor I want to know one thing. One auditor is committed to work according to the management of the company but he goes away and another auditor comes in and he takes objection to certain transactions which the previous auditor did not do. Therefore, in the interest of the shareholders, is it not always good that auditors must generally be changed?

SHRI C. K. HAZARI: It is rather doubtful to say that the first auditor was not correct or the second one was correct. It is too much to presupme that the second one is better than the first one.

SHRI MAHAVIR TYAGI: Suppose one auditor is committed to certain transaction which in another auditor's view is objectinonable. If that is so, is it not necessary that in the interest of the shareholders, the auditors should be changed?

SHRI C. K. HAZARI: My submission is that there is no commitment on the part of the auditor in so far as the transaction is concerned. He has to perform his duty according to his knowledge and conscience.

DR. M. R. VYAS: On going through the Memorandum submitted by the Chamber of Commerce, I find that most of the objections are levelled against revealing of certain facts about the working of the company. May I know from the representative whether they have any objection to the revealing of these facts like control of certain transfers which are unknown to share-holders, benami transactions, working of the auditors, etc. to the public.

SHRI PREM PANDHI: Sir in regard to the fundamental question of asking for information, there is no objection whatsoever to give any information they want because we know they are working in a system which is democratic. We would be perfectly willing to give information on everything we do, but the problem arises where, for example, in this very series of amendments, after the Cost Accountants have done their costing analysis, the Government can publish information in "public interest"; this fact could be most harmful for the company concerned *vis-a-vis* the competitors. After all we are in business, and there are certain things which we do not want to reveal. Everything is not in the interest of public to reveal. Each thing has to be taken by itself. Within the quantum of information that one has to give to the agencies, who are asking for this information, and each bit of information that one gives needs further information, fuarther questioning what is called for and whether it is possible for anyone even objectively and logically to analyse it and put to some use that is something which one does not know.

DR. M. R. VYAS: In your memorandum you said there has been cases of wrong take over of companies and also losses incurred by individuals by depositing. Now, considering this fact would we know from you whether this chamber or any other chamber what steps they have taken in the past to stop such cheating?

SHRI PREM PANDHI: There are companies just as individuals in a family, who want to observe certain code of ethics and conduct. Similarly,

in the industrial community, chambers of commerce, there are units all the time who want to do whatever is possible and trying to educate its memberships and trying to persuade its membership to act in a social manner. But you would appreciate that there is no sanction that any chambers of commerce can apply as a result of which such nefarious practices can be stopped. There have been instances wehere members have been persuaded out of some unsocial acts and also there have been cases where applications for Chamber membership have not been accepted from some unsocial companies.

DR. M. R. VYAS: Since the Chamber has no authority on behalf of them to check this, why did you mind the Govt. to check this party?

SHRI PREM PANDHI: There is nothing like that. We have all the information that you want.

DR. M. R. VYAS: I thought your memorandum speaks otherwise.

SHRI PREM PANDHI: No.

DR. M. R. VYAS: You have mentioned share-holders being the sole criterion of the interest of the company being managed. Have you come across, perhaps in my opinion a large number of companies, where the interest of the managing group or the Chairman has been completely at variance with the interest of the share-holders?

SHRI PREM PANDHI: This is a very different kind of question—it is not impossible that there might be cases of the kind mentioned, but we certainly have not come across such cases. The Chamber might have to appoint a Special Committee to collect statistics of the very few cases of the kind mentioned where interests of the share-holders are at variance from those of the officials running the company. In fact, by and large our Chamber represents professionally managed companies, and professional managers—like the way civil servants work for the Government—have no personal interest which might be called "management" interest. We professional managers try to run our industry efficiently and profitably keeping in mind the social obligations about which the Government talk so much from time to time.

DR. M. R. VYAS: I am not casting any aspersion on any individual. I refer to the objections raised to the question of sabotage of sole selling agents. As you are aware these so-called agencies have been largely used to deprive the share-holders of their genuine profits.

SHRI PREM PANDHI: It is not inconceivable what the hon. Member has said is right. In terms of a general answer, the chamber is definitely of the view that sole selling agents is an institution which, if it is properly used, is a useful institution for running many industries.

SHRIMATI V. JEYALAKSHMI: Regarding clause 5, it should be gross turnover or net turn-over.

SHRI PREM PANDHI: It should be net turn-over after allowing trade discount, commission etc.

SHRIMATI V. JEYALAKSHMI: Clause 5. It is not less than Rs 50 lakhs. Is it necessary to specify here the period during which the turnover is not less than 50 lakhs?

SHRI RAGHU NATH RAI: If the question of net turn-over is to be considered, then the average of three years giving certain amount of stability to the turnover should be considered. Otherwise, the turn-over exceeding a particular amount of Rs. 50 lakhs in one year and being less than the amount in the next year would reach such an unstable position that every time the position of the company is changing.

SHRIMATI V. JEYALAKSHMI: Please refer to Clause 10, Section 108B, sub-section 2(b).

"Where such share is held in a company engaged in any industry specified in Schedule XIII, such share shall be transferred to the Central Government etc....

Do you feel that there is any necessity for amending this Clause so that companies manufacturing only an insignificant part of the items mentioned in Schedule XIII, are exempted from selling their shares to the Central Government.

SHRI RAGHU NATH RAI: Our Chamber is opposed to this particular Clause because we feel that Government using this Clause may try to nationalise everything through the back-door. If the Government wants to take-over any particular industry there are other means to take-over than trying to control the transfer of shares and then asking the shareholder of the Company concerned to offer it to the Government, and this should not be there in our opinion.

SHRIMAT V. JEYALAKSHMI: Can you give an idea, if this is not possible now, later on in a note, about the extent of inter-corporate investments in Punjab, Haryana and Delhi. How many private companies in Punjab, Haryana and Delhi are likely to become public companies as a result of this Clause?

SHRI RAGHU NATH RAI: If we are permitted by the Government to inspect the Registrar's Office, we will certainly give these particulars because they are available there only.

SHRI PREM PANDHI: The first question was asked by the hon. Member in regard to the practice obtaining in the United Kingdom. One of my colleagues has just corrected my answer. I would like to say that in the United Kingdom, for the change of the Objects Clause, there is no need for going to the Courts unless a share-holder objects.

SHRI S. R. DAMANI: I would like to ask only one or two questions because all my colleagues have dealt with all other matters. On Page 5 (Clause 6) of their memorandum, they have dealt only with deposits. By amendment of Section 43A, it is proposed by the Government that all the investment of a private company in another private company will be restricted. He has not said anything about this. How it is going to affect a private company? Here, Government is proposing that if one private limited company invests ten per cent of their capital in another private limited company, both the private limited companies will be deemed as public limited companies. He has not expressed the view as to how it is going to affect the private limited companies. Do you agree with the Government proposal or have you got to say something on this?

MR. CHAIRMAN: This question has come up before and it has been answered. Anyway, the witness may again reply.

SHRI C. K. HAZARI: On page 4 of our memorandum *vide* para 12, we have expressed our views on this clause.

SHRI S. R. DAMANI: On page 4 you have mentioned that the percentage of shareholding of a private company in a public company envisaged in the proposed sub-section(1A) of Section 43A for treating such private company as a public company should be raised from 10 per cent to 25 per cent. You have also said that Government should in fact encourage the investment of funds by private limited companies in public limited companies because operations of the latter are generally better regulated and are trolled. That you have said. I am asking about the deletion of sub-sections (6) and (7) in the proposed amendment of Section 43A. This restricts the investment of a private limited company in another private limited company and if the investment is ten per cent of the capital, then both will be deemed as public limited companies.

SHRI C. K. HAZARI: We have also made this point before. We want that private limited companies should be treated some what differently than public limited companies in most of the matters. With regard to the proposed provision that if a private limited company invests ten per cent in another private limited company then both of them will be brought within the purview of the law and both will be deemed as public limited companies, our Chamber's view would be that this does not seem to be justified.

SHRI S. R. DAMANI: Please refer to page 2 (Clause 3) of your memorandum where you have expressed your views about the definition of "same management". What should be the criteria, in your view, for considering companies to be under the same management?

SHRI RAGHU NATH RAI: Our submission, which we have earlier also made, is that we have not discussed the alternative proposals about this clause. But in general we can say this. If it is desired that only a director who has a particular percentage of investment in another company and who is also a director in that company, only under that condition it should be considered that the companies are under the same management, to that extent it will be a restriction. We are only going by choice. We do not want this provision. But if the hon. Members desire that some sort of provision is necessary, we have to submit to the Government and we cannot say 'no' to it.

SHRI S. R. DAMANI: My next question is regarding the reappointment of Managing Directors. I think you have referred to this on page 13 (Clause 23) of your memorandum. Do you agree with the proposals of the Government or you want to make any suggestions?

SHRI C. K. HAZARI: We are generally opposed to the new proposed clause of the Bill. The present Company Law adequately covers this aspect and gives the Government powers to interfere. Actually in this Clause, Government is taking further powers on the appointment of whole-time Directors and also on new appointments. In our opinion, this does not seem to be justified As stated earlier, Companies are having more and more professional Directors on their Boards and this restriction on the re-appointment of Directors will go against the very policy that Government is wanting us to implement that there should be more and more professional Directors on the Board.

SHRI S. R. DAMANI: My point is this. Government have certain things in their mind. They want to control the re-appointment of Directors. In this context, what, you think, should be the criteria in the matter of re-appointment of Directors?

SHRI MADHU DANDAVATE: Where is the question of criteria? They are against it.

SHRI C. K. HAZARI: We should take it because once the appointment has been made of a professional director the need for coming again and again to the Government for permission is unnecessary.

MR. CHAIRMAN: It has been asked formerly also, why permission should be sought for re-appointment.

SHRI JAGANNATH RAO: Don't you agree that the Government, as the custodian of the rights and liberties of people, should have a regulatory power of control over the corporate sector? And if so, do you think the clauses in the amending Bill are not reasonable?

SHRI PREM PANDHI: In regard to the first question, in somewhat different context, the same question had been raised earlier by other honourable members. I agree that there are occasions where regulation and control are not only unavoidable but, in the interests of the community, are

desirable. But, my main point is that Government should take over only as much as it can administer efficiently. There is no point in taking over hundreds and thousands of things all of which, by themselves, may be very desirable, but which the Government are unable to administer efficiently.

SHRI JAGANNATH RAO: Why do you presume that Government is inefficient? It is the Government's charge to run it efficiently.

MR. CHAIRMAN: They do not presume it; it is their apprehension.

SHRI PREM PANDHI: I would also alter the words slightly. I am sure the officers are extremely efficient, but the difficulty is this that they have too much to do.

SHRI JAGANNATH RAO: I presume from your memo. that some of the clauses are rather unreasonable. I would like to ask you one or two questions. There is some criterion prescribed for converting a private limited company into a public limited company. Do you agree that the turnover should be the basis to determine the character of the company?

SHRI C. K. HAZARI: The suggestion in the Bill is that these measures should be adopted for determining whether the company is a private company or a public company. I am not aware whether this kind of criterion does apply to companies in any part of the world. However, if it is an Indian concept, then we are bothered about the paid-up capital and we want that it should be subjected to much greater control. In that case, the suggestion is that at least a limit should be fixed, which should sound reasonable; and it should not come in the way of real private companies, if they are having sizeable private capital from outsiders. Otherwise, they may consider taking over.

SHRI JAGANNATH RAO: What is the turnover, according to you, which should be the minimum? Is it Rs. 2 crores? Don't you think the paid-up capital should also be the basis?

SHRI C. K. HAZARI: I don't agree with it.

SHRI JAGANNATH RAO: You said that when a private company invests 10 per cent or more in another private limited company, it becomes a public limited company. Suppose this 10 per cent is raised to 20 per cent, would you still object to it?

SHRI C. K. HAZARI: We have not agreed to it in our memorandum.

SHRI JAGANNATH RAO: Regarding the appointment of Managing Director, he is appointed now for five years. What is your objection for coming to the Department of Company Affairs for his re-appointment? If you regard him as efficient, he will naturally get renewal. What is your objection then?

SHRI PREM PANDHI: As I said earlier, what is important in this context is for somebody to explain to us as to why this clause is necessary, instead of our having to answer to. It is the other way round. But, if we have to answer it, our answer is that Government have laid down, in black and white, the criteria for the appointment of whole-time Managing Directors and Directors. If they want to change those criteria, they can change those criteria; and to the extent that, those criteria are changed, they can, at that time, say that on the completion of the existing contracts, because of the change of the criteria, they would like to reconsider re-appointment but, as long as the criteria are what they are, it is not easily obvious to us as to why reappointment permissions are necessary.

SHRI JAGANNATH RAO: Regarding sole selling agents, do you not think that where the demand exceeds supply, there is no need for sole selling agents?

SHRI PREM PANDHI: This is a situation which can change. One is talking here of a principle and not of a situation. One has come across lots of occasions in India itself where sugar has been in plenty, then it became short; the same is the case with cement, torch-cell, etc. So, we are talking on a matter of principle, not of a particular situation and what you say is right in terms of a situation of the kind you are referring to.

SHRI P. R. SHENOY: You said that the approval of the Government should not be made necessary in the matter of appointment of auditor in cases in which Government has 25 per cent of the share capital or more. What do you think of appointing joint auditors in such cases?

SHRI C. K. HAZARI: I am not able to comprehend whether there is a problem before us which can be solved by having joint auditors. The powers vested in the Government are to appoint two auditors. If the Government has the power, though they can have power to appoint 5 or 6 auditors, it does not mean that Government can appoint only one or two auditors. We oppose it because the Government institutions are shareholders. If they want, they can definitely influence the policies of the company. Once they do it, in matters of greater importance, I do not see why they want to have influence in the appointment of auditors. They could exercise their rights through the normal democratic way of voting.

SHRI P. R. SHENOY: You are of the view that the overall effect of the proposed amendment, if passed, will be adverse on the industrial growth. The industry can grow with the support of share-holders, depositors and public in general. Are you of the view that the present provisions of the Company Act do not require any amendment at all in the interest of share-holders or depositors or public in general by restricting the activities of Managing Directors and sole selling agents and restricting the acceptance of deposits etc.?

SHRI PREM PANDHI: To this very general question it is not possible to give a very short summary answer, but the answer really is ,as I have said on behalf of the Chamber on more than one occasion before, that to the extent that it is necessary to stop some unsocial practice, certain provisions are needed in terms of addition or alteration of the Act. These should be brought in if it is possible to carry them out in an efficient manner. The very efficient, helpful and imaginative civil servants who are going to administer these laws have only certain amount of time available with them to do their job, and the new legislation, all of which is not absolutely necessary, will add a load that they are not likely to be able to carry out efficiently and promptly.

SHRI K. V. RAGHUNATHA REDDY: Can you tell us as to what will normally be the share holding of the Directors, Managing Directors and Incharge of the Management in the private sector and in the public limited companies?

SHRI PREM PANDHI: As I said earlier in a very large number of companies that at least our Chamber is representing, shares held by the directors would be almost non-existent or they would be small. But for, others, we have not collected any statistics.

SHRI K. V. RAGHUNATHA REDDY: In a country like India which is so vast in its geography, have you come across in your experience that the share-holders really exercised their right?

SHRI RAGHUNATH RAI: A year or two ago, two or three such cases did happen in Bombay which were published in the newspapers all over India. Besides that in the absence of any firm information or statistics, I am afraid our Chamber would not be able to answer.

SHRI K. V. RAGHUNATHA REDDY: Have you not come across in your experience where a company

along with individuals contributed money and formed a trust and made use of these trust funds for the purpose of purchasing shares in other corporate bodies and controlling them through the trust funds though the trusts are not governed under the Companies Act or any other Act?

SHRI RAGHU NATH RAI: You are quite right that there would be some odd instances of this nature but to the best of the knowledge of the Chambers, one does not think that this is tne general situation.

SHRI K. V. RAGHUNATHA REDDY: I am afraid our experience is that it is a general situation. In your experience you have not come across cases where sole selling companies will be private companies and they will be getting fattened up and the public sector will become lean in its proportion. In fact the Managers and Directors have some interest in sole selling agencies while the sole selling prospers and the public sector declines.

SHRI C. K. HAZARI: This is quite a different question from the first one. As our Chairman said before, we are talking of a principle.

SHRI K. V. RAGHUNATHA REDDY: We are dealing with facts here.

SHRI C. K. HAZARI: Government has powers even to-day to regulate certain agencies and all agreements are approved by the Government and I am sure they go into the matter whether an agreement is reasonable or not.

MR. CHAIRMAN: Is it or is it not a fact that the sole selling agents are getting fatter and fatter at the expense of the share holders which control the companies?

SHRI C. K. HAZARI: Yes. In certain cases this is so as it is so in many of the fields and one cannot stop that.

SHRI K. V. RAGHUNATHA REDDY: I got a letter from the hon'ble member that two companies have been taken over by the two big business houses. Suppose all of you put money. We assume not in every case there is a question of 51 per cent shares being held by the Directors. There are companies where it is 5 per cent, 10 per cent and in very exceptional cases 51 per cent are held by the Board of Directors. If you put in hard work and one fine morning it is taken away. If there are hard cases, do you not like that such take over should be there.

SHRI C. K. HAZARI: Yes, Sir.

SHRI K. V. RAGHUNATHA REDDY: Section 409 deals with the postmortem. Before that we cannot do anything else. Do you agree?

SHRI C. K. HAZARI: As I said earlier, most of these things by themselves are perfectly justifiable.

MR. CHAIRMAN: Mr. Pandhi nd other friends, we are thankful to vou for the time you have spent with the Committee. I hope your views will be of interest to the Committee.

SHRI PREM PANDHI: Thank you very much.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Monday, the 23rd October, 1972 from 11.00 to 12.30 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Tridib Chaudhuri
6. Shri G. C. Dixit
7. Shrimati V. Jeyalakshmi
8. Shri Baburao Jangluji Kale
9. Shri Narsingh Narain Pandey
10. Shri H. M. Patel
11. Shri S. B. P. Pattabhi Rama Rao
12. Shri R. Balakrishna Pillai
13. Shri Jagannath Rao
14. Shri Bishwanath Roy
15. Shri R. R. Sharma
16. Shri P. Ranganath Shenoy.

Rajya Sabha

17. Shri Salil Kumar Ganguli
18. Shri B. T. Kulkarni
19. Shri Jagdish Prasad Mathur
20. Shri M. K. Mohta
21. Shri K. Srinivasa Rao

22. Shri S. G. Sardesai

23. Shri Mahavir Tyagi

24. Dr. M. R. Vyas

25. Shri K. V. Raghunatha Reddy.

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
4. Shri Ch. S. Rao—*Deputy Secretary.*
5. Dr. (Mrs.) Usha Dar—*Joint Director*
6. Shri C. R. D. Menon—*Under Secretary.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

WITNESSES EXAMINED

I. Prime Waterhouse Peat & Co. Employees' Union, Calcutta.

Spokesmen :

1. Shri Ajit Paul
2. Shri Robin Shome.

II. Lovelock & Lewes Employees' National Union, Calcutta.

Spokesmen :

1. Shri P. K. Datta
3. Shri R. K. Gupta.

(*The witnesses were called in and they took their seats*).

MR. CHAIRMAN: Gentlemen, on behalf of the Joint Committee, I welcome you. You have sent the memorandum and since you have desired that your views may be given here together, we have called you together. I hope you have no objection. Before you state your views, I would like to bring the Direction 58 to your notice. You may kindly note that the evidence that the witnesses give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, it is liable to be made

available to the Members of Parliament. This is the direction which I have read out for your benefit. I welcome you again. I hope the Joint Committee would be benefited by your views. I would like you to express your views on the Memo. as a whole. One of you may take the opportunity of expressing your views; and then the Members would put questions to you and you have to reply. Any one of you may reply to the questions.

SHRI AJIT PAUL: On behalf of all of us, I express our gratefulness to you. I am Ajit Paul and on my right are Mr. R. K. Gupta and Mr. P. K. Dutta and on my left is Mr. Rabin Shome. On our behalf, Shri P. K. Dutta will speak.

SHRI P. K. DUTTA: Mr. Chairman and other hon. Members, we have submitted our Memorandum already and I believe, you have gone through it, Sir. As we have said, we welcome whole-heartedly the amendments to the existing Companies Act.

The primary object of the amendments, as I have understood, is to restrict the close association of auditors and a group of companies. The proposed amendment in our opinion, would strengthen the close association not only between the auditors and a group of companies but between the existing bureaucracy and the parties in the process of seeking and granting approval in the matter of reappointment of auditors. In fact, this issue of reappointment for all practical purposes would be governed by the absolute discretion of the bureaucracy. Thus the evil features of close association would be multiplied as a result of the amendment, defeating the very spirit of the Bill.

Moreover, as a result of the restriction on reappointment of auditors after three consecutive years, the independent character of the auditors will be seriously affected making them entirely dependent on clients. There would automatically be a heavy curtailment in the set up of the established audit firms left with no alternative but to resort to mass retrenchment. There will be a total disruption of the permanent structure of employment in the sphere of commercial audit.

The disruption, referred to above, would give rise to a system of floating and contract labour without stable wage structure and adequate service conditions leading to exploitation of labour in its ugliest form.

The amendment would gravely affect the future of articled and audit clerks at present undergoing training of four and six years respectively. The uncertain position of the audit firms would prevent them from offering such training facilities to the young generation and this would eventually pose a serious threat to the future of the entire audit profession.

Then we have said about nationalisation of the audit profession. In the meantime, we have suggested that an Inspectorate can be formed for this purpose. They can check all the audit firms in general.

Now about the propriety audit. The routine audit has no power of investigating the transactions in general. So, the propriety audit will widen the scope of audit more thoroughly and efficiently.

If I am permitted to clarify, in an audit conducted under section 227 of the Companies Act, 1956, the auditor is to report to the shareholders on the accounts examined by him. He has to carry out checks in accordance with the general accepted auditing standards so as to enable himself to report, whether or not, the accounts reflect a true and fair position of the company. The audit checks involve checking of a representative number of transactions of a company during a year with supporting vouchers, books and records so as to ascertain that these are genuine transactions. The auditor does not question or verify the propriety of the transaction or the prudence or impru-

gence of the transactions. He is satisfied if the transaction is genuine and is recorded properly. In a propriety audit, the auditor goes further. He will not only check the transactions with supporting vouchers, but will also satisfy himself as to the propriety of the transactions. Thus while checking a purchase-transaction, he will not only check the purchase invoice and goods receipt notes, but will satisfy himself as to whether the purchase has been made in the best interest of the company by ascertaining the necessity for the goods of that description at the relevant time and whether the purchase has been made at the best possible price. Again for example while checking the costs, he will enquire whether there were ways and means of bringing down the cost without affecting the quality of the finished products, and if so, why those were not adopted. In a propriety audit the auditor should also satisfy himself as to whether the business of the company is being run most efficiently and whether the directors have discharged their duties satisfactorily and whether or not the management needs a change. The auditor. should also satisfy himself that the Directors have adequate means to safeguard the assets of the company. Thus the scope of the Auditors in a propriety audit is wider and naturally he has wide powers of examination and inquiry. Much advantage can be gained by introducing propriety audit after duly codifying the rights and duties of an auditor carrying out a propriety audit. All matters to be incorporated in the report should be exhaustive and consistent with the Government's objective of keeping the big business houses in check; and this can be done by the Government without any difficulty by exercising the powers granted under Section 227(4A) of the Companies Act, 1956.

SHRI MAHAVIR TYAGI: In your memoranda there is one point concerning your organisation; but this is not linked with the proposal for amendment because the amendment does not look into the employment or unemployment. But the main point you have mentioned here is that you want the whole audit to be nationalised?

SHRI P. K. DUTTA: Yes.

SHRI MAHAVIR TYAGI: That means that all the auditors are just to come under the employment of Government.

SHRI P. K. DUTTA: I want audit to be nationalised in the sense of restricting concentration and other things; nationalisation of the whole profession would serve the purpose.

SHRI MAHAVIR TYAGI: You suggested that only those who are in collusion with the directors etc. may be nationalised.

SHRI P. K. DUTTA: My first preference is to nationalise the whole profession and if that is not possible at the moment, then the big concerns can be nationalised; that is the second choice.

SHRI MAHAVIR TYAGI: Then what is your objection to this amendment? This amendment is to control auditing so that audit may run on a standard basis and there will be no collusion between the directors and the auditors. For that purpose, the amendment has been proposed. What is the objection you have?

SHRI P. K. DUTTA: What I want to say to the Hon. Member is this, that the particular clause will aggravate the unemployment problem in the sense that if this is done, then the people who are engaged in the work, where they are employees connected with the firms may have to suffer in the sense that this firm will retrench them.

SHRI MAHAVIR TYAGI: So, in principle you don't object to the Government proposal that after three years or so the auditors may apply to the general body of shareholders and their approval will have to be taken? That is a sort of protection

Government have proposed so that the auditors may not be under the thumb of the directors but can be independent. You don't have any objection in principle but your objection is only because there is a risk of unemployment.

SHRI P. K. DUTTA: Primarily; in principle I agree to what has been said but actually, if this is done, then the independent character of the auditors, in my opinion, will be seriously affected. Now, as it is, approval is not to be sought by the auditors but the companies will have to take permission to appoint the auditors. So, in that case the auditors will have to be more dependent on their clients than they are at the moment.

SHRI M. K. MOHTA: In their memorandum they have said a few unkind words about bureaucracy and yet they have suggested that the entire profession should be nationalised which would mean that auditors also would become bureaucrats or will be under the bureaucrats after nationalisation. How do they re-concile these two points? Why do they want to become bureaucrats or to entirely depend on the bureaucrats?

SHRI P. K. DUTTA: Actually, if the whole profession is to be nationalised, there is no third party in between —only the Government on the one side and the auditors of the companies to be audited on the other side. So, in my opinion, nationalisation won't have this sort of thing.

SHRI M. K. MOHTA: There is talk about concentration of audit in some very large firms and therefore the necessity of seeking the permission of the Government after three years—presumably so that the smaller firms could also be given a chance to compete against the large firms. If that be so, does not the witness think that restriction, if any, should apply only to the large auditing firms and not to all audit firms; or, if it is said that there is some collusion between the business houses on the one hand and some audit firms on the other, in that case, should not the restriction apply to only such audit firms as are sort of black-listed by the authorities instead of having a blanket ban on all audit firms not to be appointed after three years except with the permission of the Government? And moreover this kind of division is not likely to hit much more the smaller audit firms than the larger audit firms in the sense that the audit firms may have only employed all kinds of favour. They are not entitled to be reappointed and also according to the practice or perhaps the regulation prevailing in the provision, they cannot go and work for other people.

SHRI P. K. DUTTA: I would request the hon. Member to repeat the question.

MR. CHAIRMAN: There are three questions. One is whether the present provisions of the Bill would not hit the smaller audit firm? The hon. Member says that probably the present provisions envisaged are made to ensure the smaller firms to have more business because all these restrictions are likely to hit the smaller firms more because every three years period, this would have to be changed and the smaller firms would have to change their clientele. So the first question is whether such a provision is not going to hinder the progress or do more harm to these smaller firms of the auditors. The second question is inter-connected, whether the bigger firms which are supposed to be restrictive in their business, would not be having contacts with the smaller firms. And those firms who are in collusion with the industrial Houses, if they are found to be in collusion should be black-listed. Would it not serve the purpose?

SHRI P. K. DUTTA: In my opinion, the first question itself is covered by the proposed amendment in the Bill.

Actually the interests of the smaller firms have been restored by this amendment. So if they are hit hard, then the purpose of this amendment in the Bill will be defeated. As far as the second question is concerned, a suggestion has been made in my memorandum too. Suppose a collusion has been proved between the auditors and the group of companies, then that particular company can be black-listed and that will, from my point of view, not disturb the structure of the employment in connection with it and I think this word 'unemployment' is a word with which India and every State is fighting against and this disruption will hit more thus leading to more unemployment. That is why if the companies are black-listed when the collusion is proved, that would serve the purpose.

SHRI M. K. MOHTA: The memorandum does not mention this and in his oral evidence it is clear that there will be disruption in the employment of auditors and there will be a large scale retrenchment by the firms and so forth. So we should take it to mean that the witnesses are not in favour of this suggestion just because the mere fact of concentration in some firms is not considered objectional by the witnesses. Am I right in supposing?

SHRI P. K. DUTTA: What I was trying to tell was that the amendment as proposed in the Bill would not help remove this concentration; and more so it will come in other form.

SHRI M. K. MOHTA: But have you considered that concentration is objectionable or not?

SHRI P. K. DUTTA: As a principle, concentration is objectionable.

SHRI H. M. PATEL: The witnesses represent two large firms. Could they kindly tell us whether they would know the number of companies coming under this?

SHRI P. K. DUTTA: It is not possible to tell, sir.

SHRI H. M. PATEL: Surely they can make a good case. How many are employed in the firm? Do you represent 100 per cent employees?

SHRI P. K. DUTTA: Yes, sir. 100 per cent.

SHRI H. M. PATEL: If they represent 100 per cent employees, it seems to me that they should know the number of companies.

MR. CHAIRMAN: Anyway they do not want to give this information.

SHRI H. M. PATEL: Would they kindly be in a position to say how many auditors are working in each firm?

SHRI P. K. DUTTA: Auditor means what kind of auditors?

MR. CHAIRMAN: Those who are helping these firms in the business . . . auditor means fellow auditor.

SHRI P. K. DUTTA: You mean Chartered Accountants.

MR. CHAIRMAN: Yes.

SHRI P. K. DUTTA: The figure which I am giving may not be the correct one. It is roughly 350.

MR. CHAIRMAN: Each company.

SHRI P. K. DUTTA: Both 350.

SHRI H. M. PATEL: How many Chartered Accountants, Article Clerks and Partners are there?

SHRI P. K. DUTTA: The Chartered Accountants are approximately 350 and article clerks are 160—175 in both the firms.

SHRI H. M. PATEL: Would you give us an idea of the total number of employees in each of these two firms?

SHRI P. K. DUTTA: A little over 500 in both the firms.

SHRI H. M. PATEL: If the amendment becomes a law, then these firms will lose their business or not.

SHRI P. K. DUTTA: There is no provision in the Bill.

SHRI H. M. PATEL: You know the secret of the firms.

SHRI P. K. DUTTA: No.

SHRI JAGANNATH RAO: You kindly see clause 21 of the Bill. Would you agree with me that Government should have such regulatory control in the matter of appointment and re-appointment of auditors?

SHRI P. K. DUTTA: Government might have control.

SHRI JAGANNATH RAO: Do you apprehend that if the Government has such power? So many auditors would be thrown out of employment? Would you suggest any guideline in the matter of appointment and re-appointment?

SHRI P. K. DUTTA: At the moment, no.

SHRI JAGANNATH RAO: How many companies your firm is auditing and if so, since how long?

SHRI P. K. DUTTA: I do not know.

SHRI R. R. SHARMA: Does he want to say that there is no concentration of audit?

SHRI P. K. DUTTA: If there is any, then it is due to the loophole in the Company Act itself.

SHRI R. R. SHARMA: Whether there is a concentration of audit or not.

SHRI P. K. DUTTA: I have no idea.

SHRI R. R. SHARMA: I would like to know what does it mean by outright nationalisation.

SHRI P. K. DUTTA: Nationalisation in toto.

SHRI JAGDISH PRASAD MATHUR: May I know because you represent the employees and because you have personal knowledge of these affairs and as an employee of these big firms, do you feel hesitant to report or you feel that whatever you report or audit, the Manager of the company or the big accountants do not carry your say because you cannot do anything; because you are helpless there. You want nationalisation because the Government wants to avoid this mal-practice. Do you think that if such thing happens there and you cannot express your independent opinion, so you want nationalisation?

SHRI P. K. DUTTA: No. As a principle, I am for nationalisation.

MR. CHAIRMAN: The hon. Member's question is this. Are you aware of some malpractices being done by the companies? As a man who is dealing with the audit business and audit firms, can you tell, by experience, that such malpractices are being done or are being adopted by these firms?

SHRI P. K. DUTTA: No.

SHRI JAGDISH PRASAD MATHUR: These firms are working honestly, may I take it like that. The view of the Government is that there is close association between the companies and the auditors. So, because of this close association, something wrong might happen. The Employees' Union, because they are the.....

MR. CHAIRMAN: I follow.

SHRI JAGDISH PRASAD MATHUR: May I take that there is no corruption and there are no malpractices.

MR. CHAIRMAN: It is a simple question, asked by the hon. Member whether there is any collusion between the firms and the firms of the auditors?

SHRI P. K. DUTTA: I have no knowledge of it.

SHRI JAGDISH PRASAD MATHUR: You have expressed the fear that the power to ban re-appointment of auditors given to the Government, if used by the Government, would result in retrenchment. But, do you not think that there are so many chartered accountant firms throughout the country, working in smaller districts and smaller towns, and who have no chance of working in big cities like Bombay, Madras etc., even though some of the companies might have been incorporated in their own towns or in their own cities. They never get a chance. If the work is decentralised, they will get a chance. Decentralisation never means that there will be work and there will be retrenchment. The work will be distributed. How do you say that there will be reternchment and people will go out of employment?

SHRI P. K. DUTTA: Because there is no provision.

MR. CHAIRMAN: I think that is all.

SHRI BISWANATH ROY: According to the statement of the witness, nationalisation of the audit system is required. This means that whole system should be under the Government. Does he mean that this system should be completely and fully controlled and run by the Government and will it do good for the society?

SHRI P. K. DUTTA: It will really do good for the society.

SHRI S. B. P. PATTABHI RAMA RAO: From your memorandum, I see that you favour nationalisation of the audit firms. That means, Government will have to pay compensation. Instead of that, I suggest that the Accountants General's Office be expanded and a section be created with auditors and all that, so that they can take over auditing of these firms without much trouble and without much suspicion on the part of the Government as well as the Companies. How do you think of it?

SHRI P. K. DUTTA: We have stated in Para 12 of our memorandum:

> "We would further point out that nationalisation of the audit profession, as suggested earlier, have the following positive features:—
>
> (a) Nationalisation would not inflict any financial burden on the Exchequer insofar as there is no capital outlay in these audit establishments where the question of return of capital does not arise.
>
> (b) At present, these audit firms have yearly substantial surplus after meeting their estabment expenses and, therefore, nationalisation of these firms would considerably augment the revenue income of the Government".

SHRI S. B. P. PATTABHI RAMA RAO: How can there be nationalisation without some compensation?

MR. CHAIRMAN: His contention is that there is no capital involved. Therefore, there is no question of any compensation. Compensation is payable only when there is an element of capital. There is no capital because it is not the capital which is invested but it is the brain which is invested.

SHRI S. B. P. PATTABHI RAMA RAO: How can that be? There must be building etc.

SHRI H. K. L. BHAGAT: I would like to know from the witness as to what is the extent and nature of security of service of the employees in the audit firms. Has he got any suggestions to make in this connection?

MR. CHAIRMAN: Have you got any suggestions?

SHRI H. K. L. BHAGAT: I have a feeling—I do not mean to cast any aspersion—that he was somewhat hesitant to give the information which normally one expects of him. I am not blaming him. He may be only an employee. In view of this, I would like to know as to what is the extent and nature of security of service and whether he has any suggestions to make in this connection, so that the employees can function more independently and more effectively.

SHRI P. K. DUTTA: As I said earlier, propriety audit be introduced. If the propriety audit is introduced instead of statutory audit, then employment scope is there. Security for an employee is there. The standard of the audit profesion will go further high.

SHRI H. K. L. BHAGAT: Mr. Chairman, I have a feeling that the witness does not want to answer this question. He talks of the propriety audit. But it does not talk of the security of the employees. I have put a very specific and precise question. If he does not want to answer this question, he may do so.

SHRI P. K. DUTTA: I had no intention to offend any of the hon. Members here. If he has been offended on this, I am sorry for that. I regret it very much.

SHRI JAGDISH PRASAD MATHUR: Is he hiding the facts?

MR. CHAIRMAN: We cannot force the witness to answer in a particular manner. While I agree with you, I feel that we should not force a witness to answer in a manner which we like, howsoever desirable it may be and to the benefit of the Committee. The witness is there to answer and we have our own conclusions to draw.

SHRI H. K. L. BHAGAT: I would like to know one thing. The witness has preferred nationalisation of audit firms. I am sure he should have done this for some important reosans. I would like to know as to what, in his opinion, will be the gains from nationalisation of this profession. How will it benefit and how will it improve the work of the companies and how will it prevent any wrong being done and so on? For what reasons, does he prefer nationalisation?

MR. CHAIRMAN: Can you enumerate the reasons for nationlisation.

SHRI R. K. GUPTA: About nationalisation, I feel, having been in the audit for more than a decade, that by nationalisation the interest of the country's economy, the sanctity of the audit as well as the interest of the employees will be adequately safefeguarded.

SHRI H. K. L. BHAGAT: In what manner?

SHRI R. K. GUPTA: There will be effective check on the loopholes of the Companies Act.

SHRI H. K. L. BHAGAT: Say it precisely.

SHRI R. K. GUPTA: Say, for example, concentration....

SHRI H. K. L. BHAGAT: How can concentration take place?

SHRI R. K. GUPTA: In the preamble, it has been said that there has been concentration and, to check concentration, the Government feels that they should amend Section 224 of the Companies Act.

SHRI H. K. L. BHAGAT: Anyway, the witnesses are free to give any replies. I am free to give my opinion. At least I am totally dissatisfied with the replies. I want to record it.

SHRI S. G. SARDESAI: Am I to understand that the purpose of the various recommendations which have been made in your memorandum is to serve both the needs, first to improve on the point of honesty and efficiency of the audit and, secondly, to provide for the proper protection of the employees of the auditing firms?

SHRI R. K. GUPTA: Yes, Sir.

SHRI S. G. SARDESAI: In the opening paragraph of your memorandum, you have whole-heartedly welcomed the Bill. As has been made clear, the main purpose of the Bill is, precisely, to restrict, to control the concentration of economic power and development of private monopoly in the hands of a certain groups of companies. The whole question has come up because there are a certain number of big auditing firms which audit the accounts of big companies. Normally, the auditing of very big companies is not done by small auditors. The purpose of the Bill is to Normally, the auditing of very big companies and that kind of a thing. In this sense of the term, there is also a concentration of auditing profession. Will you agree with me there?

SHRI R. K. GUPTA: Fundamentally, I belive there can be no concentration of a profession.

SHRI S. G. SARDESAI: There is collusion between a group of big companies....

SHRI R. K. GUPTA: I am not aware of any collusion between a group of companies.

SHRI S. G. SARDESAI: Here, you say, you welcome the Bill wholeheartedly with the very purpose of he Bill. Your most important and basic suggestion is complete nationalisation of the auditing profession. May I take it that you want to make the auditing profession a sort of public service? There are other public services also in India. From the point of view of certain economic objectives which our country and Parliament has in view, from the point of view of developing a socialist economy and from the point of view of the importance of auditing, the auditing could become a public service. That is your view-point when you talk of nationalisation.

SHRI R. K. GUPTA: Yes, Sir.

SHRI S. G. SARDESAI: The question has been raised here with regard to small auditing firms. If the entire profession is nationalised, if it is transformed into a public service, then unnecessarily small firms would also be drawn in. Do I understand that it is on account of that your second suggestion is that you are not demanding nationalisation of all auditing firms but of big, well-established auditing firms? If the recommendation made by you in paragraph 7 is carried out, the small firms will still continue. Am I right?

SHRI R. K. GUPTA: Yes, Sir.

SHRI S. G. SARDESAI: If the big auditing firms are taken over and converted into a public service which mainly deal with big industries in the country, the smaller firms can continue side by side.

SHRI R. K. GUPTA: Yes, Sir.

SHRI S. G. SARDESAI: I would like to know one thing more. What the Bill says is that there is a certain collusion between big auditing firms. The word "collusion" is not used. But everybody is using it. Your other recommendation is to have regular inspectorates. Any way, you are asking for still more bureaucratisation. Bureaucracy, as it is, has certain powers. Now, to deal with the ques-

tion of bureaucratisation, would you not agree if the representatives of unions of these auditing firms are associated with the machinery of the inspection? Actually, it is the employees who do most of the practical work of checking up of accounts and all that. If the Bill could provide for the representatives of trade unions of these firms to be associated with the Government machinery of the inspection, would it not be better?

SHRI R. K. GUPTA: That will be better.

SHRI S. G. SARDESAI: It would also deal with the problem of bureaucratisation which has been raised by some Members of the Committee. One question which you have raised and which, frankly, is not quite clear to me. In practice, the amendment which is moved here, as far as I am able to make out, could lead to some sort of rotation of auditors' firms auditing the accounts of various companies. The total number of auditors are there and they are not going to be changed at present. The total amount of audit work will continue. It would probably affect the position of employment and may lead to some retrenchment. Then, for that, would it not be correct for the Government to make some provision. Some type of provision or guarantee that in case this amendment is brought into operation by its acceptance by Parliament that it will not affect the employment of the employees of these firms. Will that be correct?

SHRI R. K. GUPTA: Yes Sir.

SHRI SYED AHMED AGA: I would like to understand the note better. Therefore, I want to ask a few questions. In this note they have said that the proposed amendment is going to lead to considerable uncertainty. Then, again, it says that there is going to be the immediate danger of marked unemployment. It will ruin their entire clientele. I do not think they are rash statements. I think they are well-considered statements that they are making. Therefore, I do not know why I should not conclude that there is real concentration of work in some firms and there is no equitable distribution among the various firms. Should I also not infer that there is some amount of collusion or some kind of general understanding between these very big firms and the monopoly houses in order to perpetuate their strong-hold? Why should I not also try to infer that the interests of the smaller and non-controlling shareholders are not really safe? This is what I would like to understand.

MR. CHAIRMAN: The same question. It has arisen because of the remarks in your memorandum. Why should he not infer collusion between the firms of auditors and the companies? Have you anything to say about it?

SHRI R. K. GUPTA: No.

MR. CHAIRMAN: He has already said to so many questions that he has no knowledge of any collusion.

SHRI SYED AHMED AGA: But he also accepts that there is concentration of work in these big firms.

SHRI R. K. GUPTA: By concentration what we meant is take for instance ICI, the same firm, Lovelock & Lewes is doing the audit of this firm for the past 40-50 years. With the enactment of this law, there will be a vacuum.

MR. CHAIRMAN: He accepts the idea of concentration.

SHRI TRIDIB CHAUDHURI: Could you tell us how the industrial relations in the audit firms, that is your relations with your employers, are governed now? Some years ago there was a case where the employers took the stand that the audit profession is not an industry but subsequently, the court over-ruled it. What I want to know is: what kind of job security or rather privileges that you have now? If any dispute arises, how are you governed? How far you are unionised?

SHRI R. K. GUPTA: At the moment, we have some sort of job security.

But the Industrial Disputes Act does not apply to us.

SHRI TRIDIB CHAUDHURI: Would you like it to apply?

SHRI R. K. GUPTA: Yes, Sir.

SHRI TRIDIB CHAUDHURI: Because your apprehension directly supports the idea of concentration and you are afraid that with concentration or no concentration at least there are some established firms which employ so many people and if now the business is taken out of their hands by the principal of rotation or the Government's intention of ending concentration in audit profession you are afraid just as you have mentioned that the Lovelock and Lewes is doing the ICI firms for so many years and now there will be a complete vacuum. So, short of nationalisation, could you think of, if not in this memorandum, of some provision which should govern the employees in the audit profession because I understand in their memorandum—I do not know whether these figures are correct—they say that there are about 6000 audit firms and if on an average they employ about 10 employees, then there will be 60,000 employees in this profession. Could you think out something, if not now and submit to us how your interests can be protected? Otherwise, what has happened? An impression has been created that somehow or other you support this concentration because concentration is established business. Concentration has resulted in certain firms growing in size and so many are employed both the big firms and small firms are and the members, as far as I can understand, sympathise with you and nobody wants unemployment. At the same time there is the other aspect, namely, that the Government has, in its mind the ending of concentration. Then there is the Young Chartered Accountants' Association and other bodies who are also carrying on their agitation. So, purely from your point of view that is from the employees' point of view, have you any suggestions to make? If not now, you can send it to us later on.

SHRI R. K. GUPTA: I shall be glad to send it later on.

SHRI BEDABRATA BARUA: Nationalisation from the national point of view will not be necessary unless there is something wrong in the profession. When you say that you are not aware of mal-practices, does it mean that you are sure that there are no malpractices? I am trying to put it in the alternative. I am not saying that there have been any mal-practices. The belief is that there is no malpractice but there has been some sort of collusion or some sort of slurring over some points which may be contested in some way. Are we to understand that this type of collusion is not known to you even if it takes place, because it takes place at a level to which you have no access?

There have been a number of solutions which you have mentioned. There was a Bill before Parliament asking for the imposition of a ceiling on the number of audits that a firm can do. Obviously it may affect you and the employment situation. Do you have any suggestion to make about the necessity of a ceiling?

SHRI R. K. GUPTA: About the ceiling, I have not given any thought.

SHRI BEDABRATA BARUA: What are your terms of appointment? Is it a contractual obligation or if evil days come, there can be retrenchment, etc.?

SHRI R. K. GUPTA: I think so.

MR. CHAIRMAN: Thank you, gentlemen, for having taken the trouble to come over to Delhi to express your views. I hope the Committee will be benefited by your views. If you have any further views to express about the ceiling, etc. and other matters, you may send a supplementary memorandum to the Committee. Thank you again.

SHRI R. K. GUPTA: We thank you for the opportunity you have given us to appear before you and place our viewpoints.

The Committee then adjourned.

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Tuesday, the 24th October, 1972 from 11.00 to 13.00 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Tridib Chaudhuri
6. Shri S. R. Damani
7. Shri G. C. Dixit
8. Shrimati V. Jeyalakshmi
9. Shri Ramchandran Kadannappalli
10. Shri Baburao Jangluji Kale
11. Shri Jagannath Rao
12. Shri D. K. Panda
13. Shri Narsingh Narain Pandey
14. Shri H. M. Patel
15. Shri S. B. P. Pattabhi Rama Rao
16. Shri R. Balakrishna Pillai
17. Shri Bishwanath Roy
18. Shri R. R. Sharma
19. Shri P. Ranganath Shenoy

Rajya Sabha

20. Shri B. T. Kulkarni
21. Shri Harsh Deo Malaviya
22. Shri M. K. Mohta
23. Shrimati Saraswati Pradhan
24. Shri K. Srinivasa Rao
25. Shri S. G. Sardesai
26. Shri Habib Tanvir
27. Shri Mahavir Tyagi
28. Dr. M. R. Vyas
29. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*
4. Shri S. C. Bhardwaj—*Deputy Director.*
5. Shri C. R. D. Menon—*Under Secretary.*
6. Dr. (Mrs.) Usha Dar—*Joint Director (Research).*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary*

WITNESSES EXAMINED

I. *Chartered Accountant Employees of Messrs Lovelock and Lewes, Calcutta.*

Spokesmen:

1. Shri Sujit Bhattacharya
2. Shri R. K. Bhattacharya

II. *G. Basu & Co. Employees' Association, Calcutta*

Spokesmen:

1. Shri Utpal K. Sarkar
2. Shri Nilkantha Ganguli

III. *Ray & Ray Employees' Union, Calcutta*

Spokesmen:

1. Shri Sunit Nandy
2. Shri Nirmal Maitra

1. Chartered Accountant Employees of Messrs Loyelock and Lewes, Calcutta

Spokesmen:

1. Shri Sujit Bhattacharya
2. Shri R. K. Bhattacharya

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: On my own behalf and on behalf of the Committee I welcome you both. I hope your views will benefit the Committee.

Before you proceed I would like to draw your attention to the direction. The witnesses may kindly note that the evidence that they would give would be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Since you have submitted a memoranda, you may point out anything which you deem to be of some importance to the Members of the Committee, either a few of the salient points or something which you want to explain and after that the Members of the Committee would ask you questions. I hope you would answer the questions which would be of benefit to the Committee.

SHRI SUJIT BHATTACHARYA: As all the members of the Committee know we represent the Chartered Accountant employees of Messrs. Lovelock and Lewes, Calcutta. We have branch offices in a number of places.

In the Memorandum we have submitted before the hon. members we have made two explicit points in regard to amendment of Section 224 and introduction of new Section 224A. The first point is, the amendment in the form envisaged would create unemployment of the Chartered Accountant and other employees in what is termed as the established firms of Chartered Accountants.

Further, we have suggested that the control and function of audit firms employing more than fifty persons be taken over by the Government so that employment can be avoided in case of several thousand of employees all over India and at the same time serve the social purpose, for which we think, the Bill is intended. We would like to take this opportunity of expounding on the above two points.

As regards unemployment, the statement of Objects and Reasons in clauses 20 and 21 of the Bill in regard to the amendments of section 224 and introduction of the new section 224A indicates that there exists "concentration of audit in a few established firms of auditors." Obviously it is to be construed that one of the purposes of the aforesaid amendment is to eliminate such concentration. We beg to submit that elimination of the concentration, if any, will lead to unemployment.

The Government in its effort to break the concentration will be bound not to approve the appointment of established firm of Chartered Accountants, as auditors of the same Company for a period exceeding three years. It may be said that this in itself will not cause unemployment, as a system of rotation will come into being, and the audits exceeding three years which are taken away from the established firms will be offset by a similar number of audits which these firms will get in place of the audits lost. While we agree that there is a possibility of such rotation taking place however in order to give secu-

rity of employment any offset would have to be of equal volume. We humbly submit that if the offset is of equal volume, then the concentration in the established firms of Chartered Accountants would still remain, and the very purpose of the amendment in so far as its purpose is to eliminate concentration would be defeated. Therefore, in order to effectively tackle the problem of concentration, the Government would be bound to introduce further amendments whereby the established firms of Chartered Accountants are debarred from taking up fresh appointments, even after having to give up audits after a period of three years. The hon. Members would, we hope, therefore, appreciate that effectively tackling the problem of concentration in the manner as envisaged in the proposed amendment would ultimately lead to unemployment amongst the staff of the established firm of Chartered Accountants.

We have suggested that the control and function of the audit firms employing more than fifty persons be taken over by the Government and by doing this, we feel that both the unemployment problem and at the same time, the social purpose would be served. This is because of two reasons.

Firstly, a large audit to be effectively carried out must be handled by several assistants, so that each aspect of the workings and functions of an enterprise could be studied in detail. We submit that the big established firm of Chartered Accountants have developed to their present size and form by carrying on the practice of the profession over the course of several decades. Firms like ours, we would stress employ a large number of assistants—Chartered Accountants, Cost Accountants, Taxation experts, experts in secretarial matters, experts in liquidation matters etc.

Secondly, a degree of stability is required for faster growth and development of the profession. We humbly submit to the hon. Members that the above objectives can only be attained through concentration of expertise. It so happens that in the past decades the concentration of expertise, so necessary to foster the growth and development of the profession and at the same time to give it a certain degree of stability has resulted in the emergence of established firms of Chartered Accountants. We hope, we have been able to make it quite clear to the hon. Members that without concentration of expertise the growth and development of the profession will be seriously harmed. By the take over of the control of established firms of Chartered Accountants, the concentration of expertise will not be shattered. Unemployment will be eliminated, stability will be achieved and above all the concentration will be in the hands of the Government, being more in tune with the present thinking on social responsibility.

MR. CHAIRMAN: Now the Members will ask you certain questions and you may give your answers.

SHRI S. R. DAMANI: Mr. Bhattacharya, you are an experienced Chartered Accountant. In your Memorandum, you have only confined to one amendment, i.e., Section 224. May I know, why you have not mentioned anything about the repercussions which other amendment will bring.

SHRI SUJIT BHATTACHARYA: It is only Section 224, which affects the employment of persons in the audit profession, so we have confined ourselves to this only.

SHRI S. R. DAMANI: According to your memorandum, you prefer nationalisation of audit business just to avoid unemployment....

SHRI SUJIT BHATTACHARYA: To prevent unemployment and to retain concentration of expertise.

SHRI S. R. DAMANI: What we see today is that after nationalization, take for example, banks etc. there is

dislocation of business, strikes etc. So, if the audit is also nationalised, what is the guarantee that by nationalisation, the efficiency will increase? If they also resort to strikes etc. where the Government will lead to?

MR. CHAIRMAN: The simple reason is that the nationalisation will not be nationalisation of the audit firms. The firms would not be nationalised. In fact, the profession would be nationalised. That means there would be a system whereby the Government would be controlling the whole system of audit and the Government would be appointing the auditors as such in the case of every firm which is to be audited; not that the firms as they stand today would be nationalised.

SHRI TRIDIB CHAUDHURI: So far as the merits of nationalisation and non-nationalisation is concerned, we can discuss it later. So far as the representation of Shri Bhattacharya is concerned, let us seek clarifications now.

SHRI HARSH DEO MALAVIYA: I do not know whether he has asked questions arising out of the representation.

MR. CHAIRMAN: He has referred to the fact whether nationalisation of the audit system would not lead to frequent strikes and thereby hamper the growth.

SHRI HARSH DEO MALAVIYA: Does the question raised by the Hon. Member arise from the submission of the witnesses?

MR. CHAIRMAN: It arises out of it, but this is not the stage we have to discuss it, as suggested by Shri Chaudhuri. These are matters to be discussed amongst ourselves; at this stage we have only to put questions to the witnesses.

SHRI MAHAVIR TYAGI: Before we proceed, it would be better if a clarification is sought on the issue of the amendment to Section 224. I want to know whether Shri Bhattacharya is in favour of the amendment or not, because this amendment is only to the effect that after three years an auditor will not be appointed without the consent of the Government. Are you opposed to this or in support of it?

SHRI SUJIT BHATTACHARYA: I am opposed.

SHRI S. R. DAMANI: I would like to know, what is the meaning of nationalisation? As we have seen, by the nationalisation of banks everybody was affected.

MR. CHAIRMAN: Shri Damani's question is whether the nationalisation of the audit system as such would not create difficulties because of the tendency to go on strikes and other things.

SHRI SUJIT BHATTACHARYA: I do not think only in the Government there is a tendency to go on strike. The tendency is there also in the private sector.

SHRI S. R. DAMANI: Now, regarding the appointment of auditors by the Government you have also mentioned and you feel that by taking over of audit and appointment of auditors by the Government, more power would rest with the bureaucrats and in that way, how is it going to serve the purpose?

SHRI SUJIT BHATTACHARYA: I am interested in the development of the profession. The point I was trying to make is how this development can be achieved and at the same time the so-called talk of concentration could also be retained—because, in my opinion, concentration is necessary for our profession and if the concentration breaks down we will not have concentration of expertise. This Section 224 in itself does not lead us anywhere; but in the objects clause relating to Section 224A it is specifically stated that the purpose is to eliminate

concentration. That is why we have tried to make the point that if we break the concentration, the whole audit profession will break down. By having the established firms nationalised, we will have concentration because the structure does not break down and at the same time concentration is in the hands of the Government. Now the feeling is that concentration may be in the hands of a few individuals which may be socially bad; but since concentration is to be maintained, let it be in the hands of Government, so that the work is not hampered.

SHRI S. R. DAMANI: Mr. Bhattacharya has said that at present these firms employ Chartered Accountants who are experts in company affairs and also in tax matters and so one party can have information regarding all the matters at one place. But he has also said that he is not against the take-over by Government. In that case, they will have to go to three or four places for taking advice—one place for the Companies Act, another place for duties and a third place for tax etc. So, it will create more confusion and more expenses. What has he to say about this?

SHRI SUJIT BHATTACHARYA: What I am saying is that under the present set-up expertise is concentrated; if the amendment goes through as it is and the Government apply it in letter and spirit in order to break down the concentration, then obviously the concentration of expertise will have to be broken down. All that I wanted to make clear is—let us not break down the concentration of expertise; and this can be achieved by Government take-over.

SHRI M. K. MOHTA: Usually nationalisation is resorted to when it is found that the present system has some weak aspects or undesirable aspects which are not in the interest of the society at large. What in your opinion are those undesirable aspects of large audit houses which you want to nationalise?

SHRI SUJIT BHATTACHARYA: In my opinion, there is no weakness in so far as the standards of audit are concerned. This is purely my opinion. Now, it is specifically stated in the objects clause that there is concentration leading to close association. I am sure this has been stated by the Government after a lot of investigation and research. Now, these two terms are not also expressly defined but what I gather from this is that there is some sort of collusion between the management and the audit firms but it is not so in my own opinion. I am just giving this based on what is stated in the Bill. Now, if that is the case, then obviously, it is not right and then something has to be done to the profession.

SHRI M. K. MOHTA: The reply of the witness is even more confusing. He does not agree with the reasons and many things in the Bill. He does not agree that concentration is bad in itself, he does not agree that close association in a bad sense is taking place, in fact between auditors and the business houses. He does not agree that there is any collusion. If that is so, in my original question I had asked whether it was necessary that the nationalisation should take place. Here the Government does not state about nationalisation. What are the reasons that prompted the witnesses to suggest nationalisation of these companies? If there are no weak spots, no undesirable aspects, no concentration in a bad sense, then why they are suggesting nationalisation?

SHRI SUJIT BHATTACHARYA: I have never said that in definite terms that there is no collusion and other things even upto now. As far as I am concerned, I have never come across of such an instance but what I am saying is that since in the objects and reasons clauses of the Bill, a statement has been made that there has been concentration and close association, I would take it that this is something which is true I am no one to comment on it. I am going on that basis. If that is the case, then obvio-

usly something is wrong and if something is wrong, we have to do something about it.

SHRI M. K. MOHTA: Smaller audit firms are not able to get more business and there is too much concentration in the hands of only a few large firms. If that is correct, what is in your opinion the reasons why these are not able to get business?

SHRI SUJIT BHATTACHARYA: I have thought a lot on this. The word 'concentration' is not very clear here. Now we have tried to collect figures but we have not been able to get as to the total number of audits and total number of audit firms available in this country. There was an article recently in the news papers about the number of audits and established audit firms available in this country. About the number of audits and the established audit firms and perhaps information on the number of audits done by the established firms might have been mentioned in that article. But I have not done any personal research on this and therefore I am not in a position to give any views about the concentration and regarding why smaller firms are unable to get business I have never been with a smaller firm.

SHRI M. K. MOHTA: They have suggested in their memorandum about the taking over the control and functions of selected large audit firms along with them. Is it the intention of the witnesses that the three year rotation as envisaged in the Bill can be avoided?

SHRI SUJIT BHATTACHARYA: No. What we have stated is that the control and functions should be taken over. If that is done then what we are trying to say, is the concentration will still remain but it will only move into the hands of the Government. And since it is moved into the hands of the Government from a few individuals, then this proposed amendment is no longer necessary, I think, in this form Then this question of 3-year term etc. does not come into the picture at all.

SHRI M. K. MOHTA: If, according to the witness, the large audit houses are taken over by the Government and there is no 3-yearly rotation as envisaged in the Bill, most of the business is diverted from these large audit houses to smaller and newer auditors so that the taken-over houses would have much less business in their hand. Would it not lead to unemployment?

SHRI SUJIT BHATTACHARYA: Taking-over of the business by Government does not mean creating unemployment problem. Government cannot just take over the audit firms and turn out all the clientale of the firms. It has to be sorted out in what manner this control can be exercised.

SHRI MAHAVIR TYAGI: One clarification from the witnesses I want, that is about the amendment to section 224. It is a very minor amendment. It says that instead of after 3 years, will he can continue for further period also but with the approval of the Government, that is all. There is nothing wrong in it.

SHRI SUJIT BHATTACHARYA: There is something wrong in it because we have to see why this amendment is being brought for consideration. This is to restrict "concentration leading to close association." I have stated earlier that Government will have to be approached when the 3-year term is expired, and then the Government will be bound to agree to the appointment of established firms of auditors like lovelock and lewes.

SHRI MAHAVIR TYAGI: So you are opposed to the idea and you are not in favour of the approval of the Government being sought after three years.

SHRI SUJIT BHATTACHARYA: If it is just a question of seeking Govt.

approval, I would say No, because if the Government feels that they have to be consulted and approval taken, it is all right. But if the purpose is to break concentration, we are affected. If the purpose is not to break concentration, then it is all right.

DR. M. R. VYAS: First. I would like to know, because he has presented the question of expertise as the basis for concentration, what kind of expertise which other Chartered Accountants would not have.

SHRI SUJIT BHATTACHARYA: When we are doing the audit of companies, there are these things which we have to see, like taxation affairs. When we go into this calculation of provision of taxation, I have to consult the tax department; I have to take their advice to see that the provision is correct. It is not under stated or over stated. In a small firm, I assume that there is no separate department etc. We maintain certain departments like liquidation, accounts etc. I do not have the facts, etc. But you would find that this particular department is probably running at a loss, but it is just maintained to help the staff and clients so that related problems could be sorted out. In my opinion, this sort of thing may not be available in the small firms. I am not saying that the small firms may not not be capable of giving this; they may be capable of giving this. It will depend on the expertise and how they use their talent.

DR. M. R. VYAS: If the concentration is broken up, there would be unemployment. Does he mean unemployment only in the clerks or a group of people that he belongs or does he mean unemployment among the Chartered Accountants in India as a whole?

SHRI SUJIT BHATTACHARYA: At present, I am worried about Chartered Accountants in these established firms. The number is considerable. I feel if this concentration is broken up and so on, such established firms will be obviously out of job. They are maintaining the staff based on the clientele they have. Obviously, there will be unemployment for the Chartered Accountants and other employees in these firms.

DR. M. R. VYAS: Does he feel that if the concentration is broken up, there will be lesser work for the audit as a whole?

SHRI SUJIT BHATTACHARYA: For the audit, as a whole, obviously, it is illogical to say. Somewhere audit has to be done. They must remain the same.

DR. M. R. VYAS: I would like to know what gurantee he has got, if some of these big audit firms were taken over by the Govt. that audit work will come to these firms there after.

SHRI SUJIT BHATTACHARYA: I have already clarified when I said that when the control is taken over, it cannot be just taken over and nothing else is done. We have to consider *vis-a-vis* the clientele.

SHRI R. R. SHARMA: Is it a fact that the big firms make several serious defaults in signing big companies' balance sheets putting the shareholders to a tremendous loss?

SHRI SUJIT BHATTACHARYA: No. I have no knowledge.

SHRI R. R. SHARMA: These cases are dealt with by their own Committees and therefore they are able to escape.

SHRI SUJIT BHATTACHARYA: Certain representatives in the Committee are nominated by the Government. One is from the Company Law Board; one is from the Central Board

of Direct taxes and one from the C&AG Office. In relation to the Committee which consists of 21 members, out of these, 3 are from the Govt. There is a Disciplinary Committee where also a representative of the Govt. is there besides some of the members of the Council. When an allegation is made against the member of the Council, it is first examined by the Council as a whole including Govt. representative and they come to the conclusion whether there is a *prima facie* case or negligence by a member. If they find that there is a *prima facie* case, then they will submit it to this Disciplinary Committee which also includes a noted member from the Govt. side. This Committee will examine the whole question and then appropriate action is taken. The words "their own Committee" is a misnomer.

MR. CHAIRMAN: That the amendment introduced in section 224 constitutes a reversal of the policy and concept of the autonomous provisions of accountancy as visualised by the Chartered Accountants Act, 1949 or the present provision in the Bill affecting adversely the independence and integrity of the institute.

SHRI SUJIT BHATTACHARYA: I would submit that the integrity must be maintained. If in certain individual cases, there is a question that he has been dishonest, then I do not know. It is an individual case. It could happen everywhere. Whether it is amended or not, the integrity is to remain.

SHRI SYED AHMED AGA: Does it not show or establish that there is really a concentration in the same firms and there is no equitable distribution among the auditors? Does it not prove? I do not want to enter into the various merits and demerits of nationalisation. That is a point for us to decide. We will take our own decision. But what I want to know at the moment is this. Do you accept that there is an unequitable distribution among the audit firms? Is that acceptable to you?

SHRI SUJIT BHATTACHARYA: I have answered the question before when I said that we do not have statistics regarding the total number of audits these big firms do.

MR. CHAIRMAN: That you have answered.

SHRI HARSH DEO MALAVIYA: I would like to ask the witness one question. In view of the likely complication which may arise, will he not favour a complete nationalisation of the audit profession as a whole throughout the country?

SHRI SUJIT BHATTACHARYA: Yes, Sir. This should certainly be considered by the hon. Members. But why we have suggested big firms is this. We have also taken into account the practicability and other things that there are so many audit firms. This will depend on the hon. Members who should be able to decide.

SHRI HARSH DEO MALAVIYA: You are in favour of nationalisation as a whole of the audit profession?

SHRI SUJIT BHATTACHARYA: If instead of putting in through this amendment if it could be done otherwise, we are in favour.

SHRI P. R. SHENOY: Have you come across any instance where the auditors have pointed out the defects in the accounts of the Companies and the Company Law Board has not taken any action?

SHRI SUJIT BHATTACHARYA: We have come across instances of irregularities, where we have qualified the audit report. The procedure is that we report to the shareholders. In our report to the shareholders there if we have certain qualifications to make, we do so. It is expected that these will be taken up by

the Company Law Board. But we cannot say as to whether they do take up or not. This is a different matter. I have got a booklet here which has been published by the Institute. This is titled "Qualifications in Auditors reports" In this booklet, they have given the types of qualifications which the auditors have been making over a number of years and when we see as to how much of these audit reports are qualified by the big firms, which are included in the booklet, we find that quite a substantial portion comes from them.

SHRI P. R. SHENOY: Have you taken care to see whether the Government has taken any action or not?

SHRI SUJIT BHATTACHARYA: It is not for us because Government do not feed us back with information. We are in the dark about it.

SHR H. M. PATEL: Mr. Chairman, May I ask the witness this question. He has said very clearly that the main reason for his suggestion that the large firms should be taken up by the Government is the prospect of unemployment. Government has come to the conclusion that concentration, for whatever reasons, is undesirable. He feels that concentration is something which is desirable. Viewed from the professional point of view, he feels that taking over would be a better proposition than breaking up of concentration. In other words, you Mr. Bhattacharya, had no reason to think that concentration as such has resulted in no harm to the economy or to the running of the companies from the professional point of view. Am I right in saying like that?

SHRI SUJIT BHATTACHARYA: I agree with that.

SHRI H. M. PATEL: I think this is perfectly understandable when you say that in order to overcome the problem of unemployment, this can be done. But did you consider as to what will happen if only some firms are taken over and others left out? The other firms which do not come under the category of large firms will remain outside to take care of such business as remains after these large firms are taken over. Will that not mean—since the profession is growing and more and more chartered accountants are being trained and passing—unemployment among chartered accountants?

SHRI SUJIT BHATTACHARYA: Frstly, if I may come to the point which I mentioned earlier, have suggested that the established firms of chartered accountants should be taken over because in the Objects and Reasons of the Bill, it is stated that there is concentration which has led to close association between established firms of auditors etc. So, I have assumed that there is no close association with regard to the smaller firms, there is nothing to be done about these smaller firms. In the light of what has been stated in the Objects and Reasons of the Bill it is assumed that the smaller firms are supposed to be honest people, they have never been in collusion and they have not done anything wrong. So, we have concentrated in our memorandum only on the big firms.

SHRI H. M. PATEL: I think, Mr. Chairman, the witness is very clear in this. He says that Government has made no reference to the smaller firms as such. Logically, I do not think it follows that the smaller firms would not be in collusion with those in the business. It stands to reason that they would also be, for the purposes of carrying on their business, in close association.

SHRI SUJIT BHATTACHARYA: If I may answer this question, I would say that this will depend on the Government.

SHRI H. M. PATEL: I would like to know his own opinion.

MR. CHAIRMAN: Have you anything, from your personal experience or knowledge, to say about it? Of course you have said—Mr. Patel I am just making your point more clearer to him— repeatedly that because of the preamble because of the Government's intention as referred in the preamble, you suggest that such and such things should be done. But the hon. Member wants to know your personal reaction, your personal experience. Am I correct, Mr. Patel?

SHRI H. M. PATEL: The Government does not necessarily consider itself omniscient. It has come to certain conclusions on the basis of certain facts and therefore brought forward this Bill. Government, as well as Parliament feel that such Bills should be considered in conjunction with those who may be in a position to give their opinion as to how the business is run. Therefore, we have invited you and are trying to obtain from you your suggestions. I would like to know whether you agree that there is always close association between companies and established firms of auditors, whether they are big or small.

SHRI SUJIT BHATTACHARYA: We accept the fact that there is close association. This close association should not be interpreted as being something derogatory and it should be interpreted only in relation to professional matters. I am not interpreting it in that way where it will mean something that favours management and then I do accept that there is close association. The best thing is to leave them as it is. But if the term 'close association' is supposed to mean as something favouring management, and if this is the same in the case of small and big companies, then, I submit that Government should do something about it.

SHRI H. M. PATEL: I am glad you have expressed yourself very clearly. Your profession, i.e. chartered accountants, has certain rules and code of conduct and you know that you have to function in close association and yet you retain your independence and integrity. Now, is the Institute of Chartered Accountants not most vigilant in regard to this, ensuring that its members adhere to the code of conduct that is prescribed for them and function with independence and integrity?

SHRI SUJIT BHATTACHARYA: Yes, Sir. They do.

SHRI H. M. PATEL: If that is so, I have taken it that you yourself have taken the view that things as they are, should not be disturbed.

MR. CHARMAIN: Yes, now Mr. Bhagat.

SHRI H. K. L. BHAGAT: If I have understood the witness correctly, he has not come across any case of collusion between the auditors and the management. I think that is what he has said. Never heard of any case of collusion? Now, I would like to know from his whether, when they audit the accounts, they are coming across irregularities being committed by the companies. I am talking in a general way. Does the witness feel that there is any scope for improvement in the working of the system of auditing accounts of these private companies? If so, what are his suggestions, so that the work relating to auditing of accounts of these companies can be improved; and secondly, are there any employer-employee problems in these audit concerns? Or here also it is all heaven?

SHRI SUJIT BHATTACHARYA: I could not get your second question.

SHRI H. K. L. BHAGAT: I am acting on the presumption that the witness has never come across any case of collusion between audit firms and management of any company, to cover up irregularities. Acting on the presumption that it is the experience of the witness, I want to know whether he has come across cases of irregularities

being committed by the companies, or not. If so, does he think there is any scope for improvement in auditing of these accounts? And, in improving the system, what are his suggestions? Also, I would like to know whether there are any employer-employee problems in the auditing concerns or not.

MR. CHAIRMAN Irregularities committed and improvements possible thereon....

SHRI SUJIT BHATTACHARYA: We have come across such cases; and we have qualified our report. Regarding employer-employee relationship, this is for the partners of the firm to answer.

MR. CHAIRMAN: What about your experience, as an employee?

SHRI SUJIT BHATTACHARYA: You mean, as a qualified accountant?

MR. CHAIRMAN: Our firm is there and you are employed by that firm of chartered accountants. Have you no problems with the owners of the firm.

SHRI SUJIT BHATTACHARYA: As chartered accountants in a firm, we do not have any union or anything like that. If these are individual problems, there are discussed between the individual assistants and the partners concerned. I can only speak for myself in this case.

SHRI H. K. L. BHAGAT: Don't you represent any union?

MR. CHAIRMAN: That is all. Now, Mr. Chaudhri.

SHRI TRIDIB CHAUDHRI: I have another memorandum in my hand from an organization called the Young Chartered Accountants' Forum. The chairman of this Forum, Mr. Bhandari is also very well known. He has carried on this agitation against these firms. I find that he is equally apprehensive, even on behalf of the small proprietory firms and partnership firms, about this question of rotation. As the principle of rotation. of audit will also be applicable to young chartered accountants' firms, whatever small number of audits they have got, may be lost by them by following this process of rotation. He also says that big firms will also suffer. His apprehension is that both big and small firms will suffer, if the principle of rotation is practised. So far as the bill is concerned, it does not say anything about rotation. Even in the Statement of Objects and Reasons, nothing is stated. It touches only upon complaints of monopoly. It appears that in the mind of the Government, this thing might be working, that the auditing should rotate among all firms and it should be distributed equitably. But I find that both the big firms and small firms are apprehensive. Apart from the views you have expressed, could you give us the benefit of your opinion so far as this principle of rotation is concerned? Of course, you are against it, because of the reasons you have already state. Of course, rotation needs only Government approval; but wat is your judgement about this principle and the form in which the preface of the bill has been couched? We would like to have your observation on this aspect of the matter.

SHRI SUJIT BHATTACHARYA: You want my opinion whether this principle of rotation is good or not? I feel that rotation is not desirable from the professional point of view, because, in my opinion, to build up certain expertise and the calibre to carry out certain audits of big firms, we have to be associated with those companies for a number of years. If we have this principle of rotation which in fact is applied in Government undertakings, we find that it is considerably difficult to carry out the audit effectively and efficiently, without spending a lot more time than what we would normally do. To this extent it becomes a burden and I think it is quite unnecessary and not really called for. My point is with regard to big companies. If it is a very,very small concern, there is no

question of rotation or otherwise. It would not affect very much, but certainly, in the case of big undertakings and big commercial houses and big public sector undertakings, certainly rotation is not very desirable.

SHRI S. G. SARDESAI: There is collusion, though it is not a happy word, with the auditing firms by the companies whose accounts have to be audited and there also occurred certain kinds of irregularities and negligence. May be, sometimes malpractice are committed by the auditing firms. That is a point that I would like to raise. Now with regard to certain irregularities or malpractices committed by the auditing firms, there is a disciplinary committee. Why is it there? That clearly shows that there is irregularities committed by auditing firms. Otherwise there is no need of this disciplinary committee. It means that such cases have arisen. I am pointing out this thing only because some of the members of the committee are of the view that you have no knowledge of such kind of malpractices. Very recently there was an article in the 'Economic Times, in which series of malpractices have been reported. They may be true or may not be true, but they have been published. So, I think that this problem needs to be dealt with. I hope you will agree with me.

SHRI SUJIT BHATTACHARYA: These are referred to the disciplinary committee and they have been exonerated. So, I do not think there has been malpractices.

SHRI S. G. SARDESAI: But my point is that such cases have been referred.

SHRI SUJIT BHATTACHARYA: Yes, certainly.

SHRI S. G. SARDESAI: Now the small industries or firms apart from auditing firms, they are definitely at disadvantage in developing their busness in comparison with the bigger industries. I am not saying that some auditing firms have been there for hundred of years and gathered experience and naturally for that reason they get business. That is apart from that. If we have a public authority, more equitable distribution may also be brought about, because this public authority is answerable to Parliament and Parliament is there. Therefore, it would also bring about a more equitable distribution of auditing firms. Not actually the Government takes over. I am not saying that. But some kind of a legislation is introduced in which cases as far as the smaller firms are concerned, they will have the opportunity to grow with the size of the companies, I mean, big firms.

SHRI SUJIT BHATTACHARYA: It is not only their problem but it is question of competition. All these factors also come. It is a question of competence shown in the initial years of investment and not only getting big money. If I invest and I can go and show them the man and material, may be after five years or ten years I will not be out of pocket. I mean to say that it is a matter of policy.

SHRI BEDBRATA BARUA: The question of expertise which you have raised is a very important question. But I would like to know whether this expertise is used for rendering other services and not merely for statutory audit.

SHRI SUJIT BHATTACHARYA: I do not have statistics. But quite often there is a lot of consultation with us in taxation, liquidation and other matter besides matters relating to the Companies Act.

SHRI BEDBRATA BARUA: Are there other services rendered by auditors which have nothing to do with statutory audit? Is it not possible for these people to render those other services, by setting themselves up independently and giving advice in their personal capacity without any loss of efficiency?

SHRI SUJIT BHATTACHARYA: That is possible, but as I have clarified, in our profession, there are many matters which are inter-related; something which will affect taxation may also affect the Companies Act or affect other matters as well. So, if they are put in one association it would be helpful; if there is an established organisation, it helps, because there is a roof under which these people can meet and give advice.

SHRI BEDBRATA BARUA: What about the question of collusion? Of course, collusion can be prevented by the disciplinary jurisdiction which exists today, and your Institute should be able to prevent it. But supposing there is collusion which may be of an order where it is not possible or it may not be possible to prevent it, what is to be done? What do you think of the allegation or rather the fact that some big audit firms have turned into house auditors, in the sense that they get almost their entire audit work from one particular big house? We do have some material to show that it is a fact today in many cases. Do you not think that the independence of the auditor is greatly compromised if that kind of thing happens?

SHRI SUJIT BHATTACHARYA: First, let me make the position clear about big houses. If big firms are doing audit of big houses, it is not that one particular house or one particular businessmen engages them as their auditors. There are a number of houses from which they get their audit work.

SHRI BEDBRATA BARUA: The number of companies may be large, but all the companies belong to the same house.

SHRI SUJIT BHATTACHARYA: It may not be the case; it may be that some may belong to 'X' and some may belong to 'Y' and some may belong to 'Z'.

SHRI BEDBRATA BARUA: I am not talking about your particular firm.

SHRI SUJIT BHATTACHARYA: Then, I would not have any information.

Regarding the independence of the auditor, even if they are related closely, we have a system where audit is done at various stages. In order to have some sort of collusion between the audit firms and the management, in a big firm there would have to be collusion between the various grades of staff and the various qualified accountants and amongst those who are going through the accounts and between the various partners who would do the work. That would involve a big collusion. So, in my opinion, the independence is retained by established big audit firms. If we have a small firm and there is only one man, then it is much easier for him to get into collusion.

SHRI M. R. VYAS: The witness had mentioned in reply to an earlier question that he represented himself. But the memorandum before us contains ....

MR. CHAIRMAN: He said that there was no union and that he was not representing any union.

SHRI M. R. VYAS: The memorandum contains the signatures of so many. There is an item in the memorandum called membership. What does that number denote?

SHRI SUJIT BHATTACHARYA: We are members of the Institute, and each one has his membership number.

MR. CHAIRMAN: We are thankful to you for the views that you have expressed and the trouble that you have taken to come here. I hope that your evidence will benefit the committee in their deliberations and in arriving at proper conclusions.

SHRI SUJIT BHATTACHARYA: We thank you for your patient hearing.

[The witnesses then withdrew]

II. **G. Basu and Co. Employees' Association, Calcutta.**

Spokesmen :

1. Shri Utpal K. Sarkar
2. Shri Nilkantha Ganguli

III. **Ray & Ray Employees Union, Calcutta**

Spokesmen :

1. Shri Sunit Nandy
2. Shri Nirmal Maitra

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: We have received your memorandum and gone through it. I would like to draw your attention to the Direction which states that the withnesses may kindly note that the evidence that they would give would be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential; and even though they may desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

So, you have to keep in view this Direction. The committee and I are thankful to you for having come here. I would like you to state your views on the memoranda and then hon. Members would ask questions. Any one of you may start with your views and then any one of you or all of you to turn may reply to the questions, and that is for you to decide.

SHRI UTPAL K. SARKAR: Hon. Chairman and hon. Members, allow me first to express my heart-felt thanks to you for granting us an opportunity of being heard.

We welcome wholeheartedly the Bill in general because it is going to curb monopoly in the private corporate sector, which is a bold step towards socialistic development in the country right after the abolition of the managing agency system. While we welcome the very underlying spirit of the amendment to section 224 which tends to improve the honesty, integrity and efficiency in the audit profession, we are equally very much in doubt about the feasibility of the enactment for all practical purposes. We are very much constrained to draw your attention to the bare fact that the job security of thousands and thousands of employees in the audit firms is going to be jeopardised the moment this enactment comes into force, defeating the very spirit of the amendment and introducing the unfair labour practice in its ugliest form.

Since neither the auditors nor the companies in general are saints, the scope of corruption is always there. What we want and what we insist on you is that all the inherent evils should be uprooted forthwith and at the same time, the job security of thousands of employees of the audit firms should be equally safeguarded. In our opinion, the remedy sought in the proposed amendment would not in any way cure the disease, rather the remedy will be worse than the disease. We feel that nothing short of nationalisation of the profession will be able to combat the evils inherent

in it. The nationalisation of the profession at the same time is to be complemented with the national inspectorate having participation of the employees' unions in it.

The scope of powers and duties of the auditors at present is quite inadequate to combat the inherent evils. We strongly feel that the powers of the auditors should be extended and in going into the depth of the transactions sale and purchase to see and report whether the same is prudent or imprudent, proper or improper.

In other words, the proprietary audit system has to be introduced forthwith which will uphold the independent character of the audit profession. In the discharge of this function lies the good or evil of the economic development of the country. Since there is every possibility of powers in the hands of people in the private sector being abused, it is our considered opinion that nothing short of social control of the profession will uphold the independent character of the audit profession in the strict sense of the term. Job security can only be guaranteed through this.

I would like to conclude by reiterating that nationalisation of the audit profession itself along with the formation of a national inspectorate with employee participation in it and the introduction of propriety audit are the only ways by which we can move forward in the path of socialistic development of our country.

SHRI MAHAVIR TYAGI: I find that three memoranda have been submitted covering more or less the same points. Instead of three, they could have submitted a single memorandum.

In para 3 they say:

"We, however, strongly feel that the amendment could tend to strengthen the close association not only between the auditors and a group of companies but between the existing bureaucracy and the above parties in the process of seeking and granting approval in the matter of reappointment of auditors".

I could not follow it. How will it come?

SHRI UTPAL K. SARKAR: When there is a closer association, they will try to safeguard their vested interests. They will catch up with the bureaucrats and some now manipulate and get vested interests safeguarded.

SHRI MAHAVIR TYAGI: If the management and the bureaucracy could join together, they could finish everything. It is not a question of doubting everybody's intention. After three years if an auditor is to continue, government approval is necessary. Only for that purpose, Government comes in. How they become party to these things?

SHRI UTPAL K. SARKAR: Since there are no rules laid down how the actual consent to reappointment will be given, it will be arbitrary consent on the part of Government. Actually it will be the officials of the bureaucracy who will deal with the matter. So the abuse of power is quite natural. All the companies those who have vested interests will be keen to see that their vested interests are protected. They can easily manage this with the collusion of the government officials who will be the deciding authority.

SHRI MAHAVIR TYAGI: There are certain contradictions in the memorandum. You say in para 9(a):

"The proposed amendment to section 209, by introducing a new section 209A, would empower the Government to inspect without prior notice and at regular intervals the books of account of these groups of companies with whom 'the established firms of auditors'

are supposed to be closely associated. Therefore, the proposed new section would be a check on lapses, if any, on the part of these auditors in conducting proper audit".

This shows you are in support of the amendment.

SHRI UTPAL K. SARKAR: Yes.

SHRI MAHAVIR TYAGI: In para 10 you say:

"As the proposed amendment to section 224 imposes a restriction on the reappointment of auditors after three consecutive years, we would strongly urge that this approval should be refused in the fourth year to those audit firms whose lapses come within the purview of the provisions specified as per the above items (a), (b) and (c)".

You agree that if this authority is taken by Government, it will be a healthy move.

SHR UTPAL K. SARKAR: No. What we mean is that under section 209 some powers are given to Government.

SHRI MAHAVIR TYAGI: You say Government would be doing the right thing in refusing approval. Again in the next para you say:

"As a result of the restriction on reappointment of auditors after consecutive three years, the independent character of the auditors will be seriously affected making them entirely dependent on clients (companies) and bureaucracy".

On the one hand, you support the idea; on the other you oppose it.

SHRI UTPAL K. SARKAR: I am sorry you could not link it up. I will try to link it up. This is altogether a different issue. In para 10 we are suggesting some guidelines under which refusal should be made. That is altogether different.

SHRI MAHAVIR TYAGI: Refusal can be made only when Government is authorised in that behalf. That can be done only by amendment.

SHRI UTPAL K. SARKAR: In para 9, we said these are the criterian. In case these are not complied with, then and then only the companies seeking reappointment for the fourth year should be refused. In 11(1), we said that the restriction will restrict the independent character of the auditor. It has nothing to do with the other thing.

SHRI MAHAVIR TYAGI: In the case of those auditors whose lapses come within the purview of the provisions, you agree that they should not be reappointed for the future.

SHRI UTPAL K. SARKAR: Obviously.

SHRI MAHAVIR TYAGI: In that case, there comes the question of unemployment.

SHRI UTPAL K. SARKAR: No, it cannot come.

SHRI S. R. DAMANI: I also, feel there are some contradictions in the memorandum. On the one hand, they do not like power being given to the bureaucrats for appointment or reappointment. They are afraid it may be misused. On the other hand, they want that the auditors should be continued so that there may not be any unemployment. Articled clerks and new comers may get a chance of getting experience in firms; so they want continuity. But they also say that government interference will be harmful to the audit profession. What is their object? Do they support this amendment or oppose the amendment?

SHRI UTPAL K. SARKAR: The amendment seeks to give arbitrary power to bureaucracy which we oppose. That is why we have sought

some guidelines for the bureaucracy to follow. As regards unemployment of articled clerks etc. That is not our point. We have dealt with the provisions on merits. In my introductory remarks I have said nothing short of nationalisations is the solution. The solution contained in this amendment is worse than the disease itself.

SHRI S. R. DAMANI: What do you mean by nationalisation?

SHRI UTPAL K. SARKAR: Audit service is a national service, is a social service. The public sector is growing and gradually the private sector will have to merge with the public sector. Unless Government has expertise in the subject, how can they have effective control over their finances? That is why we feel that the audit services in India should be nationalised and the knowledge and expertise should be taken over.

SHRI MAHAVIR TYAGI: They will also become bureaucrats.

SHRI UTPAL K. SARKAR: We have also asked for participation of the employees' unions in national administration; otherwise it is useless. You have not followed my opening lecture. I have said that a national inspectorate has to be formed with the participation of the employees of the audit firms.

SHRI S. R. DAMANI: It is not yet clear what is your concept of nationalisation. Anyway, the Institute of Chartered Accountants of India takes action against the auditors involved in any irregularity or misconduct. Anyway, have you come across any case where auditors had colluded with the audited concerns to deprive the exchequer of its legitimate revenue?

SHRI UTPAL K. SARKAR: On this question we cannot comment with any authority; I think it would be better to ask the Institute of Chartered Accountants. If still you ask me to comment on it, I would only say generally that neither the auditors nor the managements of these companies are saints.

SHRI S. R. DAMANI: Suppose audit is nationalised, their concept of nationalisation is still not clear to me, and they all become Government servants, will not the experience of bank nationalisation repeat itself namely, strikes and hartals? What will then happen to the companies to be audited?

SHRI UTPAL K. SARKAR: It is a subject on which I can comment only generally. The invention of dynamite is not bad, simply because of the bad use it was put to during the World War. So, it is not nationalisation that is responsible for it. You have to deal with these things properly. Besides, hartals, etc. are rights guaranteed under the Industrial Disputes Act. The law allows me to do that.

SHRI S. R. DAMANI: I am leaving this matter to my other colleagues. A suggestion has been made about proprietory audit. Have you any definite ground to believe that shareholders are deprived of their legitimate share or the Government is deprived of its earnings. Even the present auditors are pointing out all the irregularities. What additional advantage will you have by introducing proprietory audit. For purchase, for any sale, for any appointment there will be questions. Therefore, Management will not be in a position to take any decision at a proper time and on account of that the efficiency will suffer and the working will be effected.

SHRI UTPAL K. SARKAR: Before answering this I would like to refer to some general idea and some accepted principles, for example very recently Jayanti Shipping Company, Mundra's case. These Accounts were also audited but nothing could be unearthed.

A jute company has an auditor. I am satisfied if a jute company submits

its purchase voucher @ Rs. 500 per bale but it could be achieved from the market at Rs. 50 per bale. In the present statute if the entry is made in the cash books, ledger, and if there is a voucher in support thereof, I am satisfied with it. I have no right to enquiry whether it is available at Rs. 50 or Rs. 500. I have no authority to enquire into it. That is why we ask for the introduction of proprietory audit where the auditors will have the right to go into prudency of it.

SHRI S. R. DAMANI: Will these proprietary Auditors not join the Management and take the advantage?

SHRI UTPAL K. SARKAR: We have not only suggested proprietary audit but we have suggested nationalisation and we have already pointed out that the scope of the abuse of the power is there, but nationalisation can prevent this and can advance the cause of socialism in this country.

SHRI S. R. DAMANI: Is such a practice anywhere in any other country?

SHRI UTPAL K. SARKAR: So far as my information goes it is there in Sweden. It matters little whether it is there or not. If it is proper, why not introduce in our country?

SHRI M. K. MOHTA: In reply to a question regarding close association between the auditors and the audited companies, you said that nobody is a saint. I would like to know is it widely prevalent malady which we must take cognisance of? What is your assessment of situation?

SHRI UTPAL K. SARKAR: While answering that question I said I can only comment in general term and not in an authoritative term. We have got some idea of saints and that is not reflected in these persons. So, we say that they do not look like saints.

MR. CHAIRMAN: Can you say that this malady is a malady which is on a very large scale or there are just a few stray cases?

SHRI UTPAL K. SARKAR: I cannot comment on it because of the fact that I am not competent to answer the question so categorically and authoritatively.

SHRI M. K. MOHTA: If they are not competent, they should not have made the first comment regarding saints and sinners.

The witness while commenting on the Bill expressed their grave apprehension regarding employment situation and they have also grave apprehension regarding utility of the particular provision in the Bill regarding the representation of the auditors. Instead of outrightly opposing that provision they have gone a step further that the entire profession should be nationalised. Their anxiety about employment could have been understood if they had simply opposed this, but what are the reasons behind their suggestion that the entire audit profession should be nationalised and that will, according to them, ensure employment?

SHRI UTPAL K. SARKAR: The question of employment, unemployment, introduction of labour contract arises in this case which we doubt and not only we doubt we have got very substantial reason to believe that the moment this enactment as has been introduced is passed actually the permanent job structure in the audit firms will be totally shattered. The employers the auditors there just put us this question. "If it comes we won't be able to have our total budget and unless you have got a total idea about your future budget, we would not be able to maintain the future establishment." And as such to maintain their standard of living they will have to

go straight on the establishment i.e. employees rights, duties, privileges, salaries, etc.

Already in Calcutta there is a system of contract labour some sort of sub-contract, casual labour. An auditor of a particular firm has been offered with 25 clients. He has not been able to audit them. He lends it to other to audit them on his behalf. Already exploitation of labour is there. This would introduce exploitation in ugliest form. If audit service is nationalised and an Inspectorate is formed, that will serve the purpose.

SHRI JAGANNATH RAO: Government wants to take over the power of appointing and reappointing auditors for a firm in which Government (Central Government) solely or collectively has financial interest upto 25 per cent of the subscribed capital.

SHRI UTPAL K. SARKAR: We have not commented upon it in our memorandum, so it implies that we accept it.

SHRI JAGANNATH RAO: You have given your opinion whether the auditing firms should bet or should not get reappointment. Don't you think that there should be some guidelines for the Govt. for giving or refusing approval?

SHRI UTPAL K. SARKAR: We have asked for nationalization and if nationalisation at the present stage is not possible, at least the big audit establishments should be nationalised. If that is not possible, we have already said, under which conditions, reappointment should be refused or should not be refused.

SHRI JAGANNATH RAO: The Government wants to have control over audit. Nationalisation is not within the purview of the present Bill. You have mentioned about the unemployment. How many audit firms are there in the country?

SHRI UTPAL K. SARKAR: I have no information. Institute of Chartered Accountants may be able to tell you.

SHRI JAGANNATH RAO: You are worried about your unemployment. Now there are some firms, who do not have any work. Don't you think that those audit firms should also get some work?

SHRI UTPAL K. SARKAR: That is none of my business, Sir.

So far as I understand, the very spirit behind this Bill is not to solve the unemployment problem, but to raise the standard, efficiency and integrity of the audit profession. We say that in this way, the breaking of concentration will not be possible. The remedy would be worse than the disease itself.

DR. M. R. VYAS: Do you apprehend that the present owners of big audit firms are exploiting the fear complex of the employees to set a kind of black-marketing to motion against enactment of this Bill? Is it a method to stop the Parliament from enacting such a step?

SHRI UTPAL K. SARKAR: I think, it is a sort of aspersion to my association, to my unity and my integrity. Mr. Chairman, if this sort of questions come, I humbly submit, that it actually hurts me.

MR. CHAIRMAN: The Member has a right to ask a question. It is no aspersion on your part. It is an apprehension in the mind of the Hon. Member which he is expressing.

SHRI UTPAL K. SARKAR: I would request the hon. Member to go into the details of the Department concerned, and we have been working in this direction for the last four|five

years, and fighting for this. If this question comes in the mind of an hon. Member, I am sorry, I do not feel happy at his observations.

SHRI R. R. SHARMA: I would like to refer to a statement:

> "In the performance of duties at all levels, whether the duties are performed by members of the audit-profession or by administrators, whether in the private sector or in the public sector the question of close association must as a matter of fact, arise because for an efficient service being rendered, the relation between the persons concerned must have basic characteristic of mutual faith and confidence. If these characteristics are lacking and the close association which can give good results is absent, the very performance of the duties in respect of various facts and various levels may stand affected adversely."

Do you agree with this proposition? If not, what are your comments?

SHRI UTPAL K. SARKAR: Sir, unless there is close association between the auditors and the clients, no audit could be taken up. Close association is not a bad thing. If by close association, mal-practice or disintegrity has crept in, then it is culpabale, otherwise close association is not a culpable one. And, as I said, it varies from person to person.

SHRI S. R. DAMANI: One point has not been clear all along in his reply. He has said that the Audit officers should be part and parcel of the bureaucracy; at the same time he has spoken against the bureaucracy and its working.

SHRI UTPAL K. SARKAR: I have already answered and if you insist, I will answer again. So far as the bureaucracy is concerned, under the present enactment it is arbitrary power given to the bureaucrats. We said that there should be guidelines on which the bureaucracy should move and there should be participation of the employees in it so that the bureaucrats' activities can be checked.

SHRI H. K. L. BHAGAT: You have said that you welcome this Bill. I would like to know the peculiar features of the Bill which you welcome.

Secondly, you said that there are certain inherent evils in the present system of auditing of accounts of companies by the firms. I would like to know what these inherent evils are. I would like you to particularise some of these evils and suggest how they can be removed.

Lastly, you said that if the bureaucracy comes into the picture "vested interests will manage it". Do you mean to say that if, today, the dish is cooked or de-cooked by two, tomorrow it will be cooked or de-cooked by three? I want to understand broadly what are the present evils and what are the present problems. Do you find that there is any collusion, that there is any attempt to cover up irregularities of the Management by the audit firms and so on?

Again, you used the words "social control"; you said that social control is necessary. What precisely do you suggest for having social control in this situation?

SHRI UTPAL K. SARKAR: So far as evils are concerned . . .

SHRI H. K. L. BHAGAT: My first question was, what are the various features of the Bill which you welcome?

SHRI UTPAL K. SARKAR: We welcome the very underlying spirit. We welcome the spirit of the Bill—that something better can be done.

SHRI H. K. L. BHAGAT: So you only welcome it in a general way. I have absolute confidence in you and am asking you this question in that spirit. I would like to know what are the precise features of the Bill you welcome. I would like you to clarify what are the peculiar features you welcome, specifying them.

SHRI UTPAL K. SARKAR: We have already said that we welcome the very underlying spirit.

SHRI H. K. L. BHAGAT: So you cannot specify any particular features. So then we go to the next question—what are the inherent evils. May I ask you to specify these evils?

SHRI UTPAL K. SARKAR: So far as the inherent evils are concerned, these are but well-known facts.

SHRI H. K. L. BHAGAT: What are those well-known facts?

SHRI UTPAL K. SARKAR: The well-known facts are that neither the companies nor the auditors are saints.

SHRI H. K. L. BHAGAT: You say that neither the companies nor the auditors are saints. I would like you to specify what the saints do and what these 'non-saints' do.

SHRI UTPAL K. SARKAR: So far as saints are concerned, they are supposed to have certain traits of character; they will be honest, for one thing.

SHRI H. K. L. BHAGAT: And what do these so-called non-saints do. which you classify as evils.

SHRI UTPAL K. SARKAR: If you want to drag me into.

SHRI H. K. L. BHAGAT: I don't want to drag you into anything. I am putting this question because you are here to assist the Committee. You belong to the profession and you understand things better than me because I am not in that profession. Therefore I want you to very frankly tell us, so that we can apply our minds to it. That is why I am persisting with this question.

SHRI UTPAL K. SARKAR: The fact is, my position does not give me the authority . . .

SHRI H. K. L. BHAGAT: I see; so I will put to you another question. How far is your service secure?

SHRI UTPAL K. SARKAR: I myself am not quite competent to answer authoritatively on this point. I may only say that you can take the case of the Jayanti Shipping Company where there was a drainage of millions of rupees without the auditors finding it out.

SHRI H. K. L. BHAGAT: It is very good that you have mentioned it. Now, I want to know this. You have said that you want social control. I would like to know in what form you want the social control to be exercised. Please indicate at least three steps towards social control or nationalisation.

SHRI UTPAL K. SARKAR: Social control is distinct from nationalisation.

SHRI H. K. L. BHAGAT: You used the words "social control" as a sort of nationalisation. I just want to know what are the precise steps you would suggest for social control.

SHRI UTPAL K. SARKAR: I have already answered. I was urging the formation of a national inspectorate having employees' participation in it.

MR. CHAIRMAN: The witness does not mean that social control is nationalisation. He said that this social control will come after nationalisation. That is a form of social control; it would be a control on the society as a whole. That is what the witness means. I think the suggestion which is there in your Memorandum that is about the proprietary audit, is a very good suggestion. Would it not be possible for you to

give us a more concrete, rather a more detailed memorandum, precisely about the various issues which should be covered by this what you call 'the propriety control'? You please give us a memorandum on this which will be very useful to us.

SHRI UTPAL K. SARKAR: We have submitted a concrete memorandum on this particular point containing about 5 or 6 pages.

MR. CHAIRMAN: You have not given it to us, you can submit it now.

SHRI UTPAL K. SARKAR: Then in that case I can submit it after a fortnight or so.

MR. CHAIRMAN: You can submit it even after 20 days.

Mr. Sarkar and friends, the Committee is really thankful to you for your views expressed on various points that have been raised during the course of the meeting. The Committee is certainly going to benefit from this and you have been forthright in your answers. I hope the Committe would benefit from the answers given by you and we are thankful to you for the trouble taken in coming over to Delhi for giving evidence. Thank you very much.

SHRI UTPAL K. SARKAR: Thank you very much, Sir.

[The Committee then adjourned.]

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972.

Wednesday, the 25th October, 1972 from 11.00 to 13.10 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Tridib Chaudhuri
6. Shri Khemchandbhai Chavda
7. Shri C. Chittibabu
8. Shri S. R. Damani
9. Shri G. C. Dixit
10. Shrimati V. Jeyalakshmi
11. Shri Popatlal M. Joshi
12. Shri Ramachandran Kadannappalli
13. Shri D. K. Panda
14. Shri Narsingh Narain Pandey
15. Shri S. B. P. Pattabhi Rama Rao
16. Shri R. Balakrishna Pillai
17. Shri Jagannath Rao
18. Shri Bishwanath Roy
19. Shri R. R. Sharma
20. Shri P. Ranganath Shenoy

Rajya Sabha

21. Shri Salil Kumar Ganguli
22. Shri B. T. Kulkarni
23. Shri Harsh Deo Malaviya
24. Shri S. S. Mariswamy
25. Shrimati Saraswati Pradhan
26. Shri K. Srinivasa Rao
27. Shri Mahavir Tyagi
28. Dr. M. R. Vyas
29. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection*
4. Shri Ch. S. Rao—*Deputy Secretary*
5. Dr. (Mrs.) Usha Dar—*Joint Director (Research and Statistics)*
6. Shri C. R. D. Menon—*Under Secretary*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

WITNESSES EXAMINED

Northern India Share holders Association, New Delhi.

1. Shri Premjus Roy—*Member, Executive Committee*
2. Dr. K. B. Rohtagi—*Dean, Faculty of Law, Delhi University*
3. Shri L. N. Modi—*Member.*

(*The witnesses were called in and they took their seats*).

MR. CHAIRMAN: On behalf of the Committee and myself I welcome you to this Committee. I hope your views would benefit the Committee and the Committee would be in a position to formulate its own views.

Before you say anything about your memorandum, may I draw your attention to Direction 58 which states that the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them has to be treated as confidential. Even though they may desire their evidence to be treated as confidential, such evidence is liable to be made available to Members of Parliament. You may keep these directions in mind.

If you want to emphasize any of the points mentioned in the memorandum or supplement them, you may do so. Then hon. Members would be putting questions to you, which you may freely answer.

SHRI PREMJUS ROY: So far as we are concerned, we do not wish anything to be treated as confidential; our views can be made public.

We have, in our memorandum, formulated the views of the Association on particular clause which we considered to be of direct and great importance. For instance, you will find that we have not commented upon the provisions regarding company auditors, company secretaries and so on, and that is because the Association did not consider it necessary to formulate its specific views on those clauses.

So far as the Shareholders' Association is concerned, from our point of view there are three or four provisions which are of very great importance. One is about clause 6 relating to company deposits. In our view, the provision that before accepting deposits companies should be required to issue a prospectus is a very expensive procedure and should be deleted

in the interest both of companies and of investors. The investors should be left free to choose the companies which they consider safe and sound for giving them a reasonable return. Also we do not desire that the companies should be put to the expense and bother of having to issue a prospectus for taking deposits for a short period like one or two or three years. We would like that the Reserve Bank should exercise proper control on companies taking deposits; if necessary, quarterly or six-monthly returns should be called for from companies and the Reserve Bank should scrutinise the financial position of those companies, the extent to which they have taken deposits and look at it from the point of view of shareholders, whether it will be safe for those companies to be allowed to take further deposits. If the Reserve Bank is of the opinion as we have expressed in our Memorandum that it is unsafe from the point of view of depositors that the company should be accepting more deposits, then the Reserve Bank could direct the companies not take any more deposits.

Another suggestion which we have put forward for your consideration is that there should be security; there should be insurance of deposits as we have in banking deposits. Our suggestion is that the insurance premium in respect of these deposits should be paid by the companies accepting the deposits.

This is so far as clause 6 is concerned. Already there are restrictions to the extent of 25 per cent of capital plus reserves; further restriction has been imposed since December last year, i.e., loans from shareholders—loans based on the guarantee of Directors—are also restricted to 25 per cent of capital and reserves. In the view of our Association, these restrictions are not adequate to safeguard the interests of depositors. They may remain. But the Reserve Bank should exercise more supervisory powers and if necessary the information which the company is required to give before inviting deposits could be elaborated to give more financial information which could be of interest to depositors and which could enable them to find out whether the company in which they wish to make deposits is safe and they are in a position to repay the amount of deposits or not.

So far as Clause 10 is concerned, one suggestion which we have offered is that when there is a likelihood of change of control, Government should have the power to make it a condition that it will sanction the change of control subject to the proviso that the buyer, the buying interest, would make an offer to the others—other than those who are selling their interests; an offer will be made to the minority shareholders as well as to financial institutions who may hold shares in the company, offering it at the same price, so that the minority shareholders are not left high and dry.

Another point is this. Where a company holding more than 10 per cent of the capital of another company wishes to sell even a very small number of shares, say, 100 shares, it should intimate to the Government. In our view, this might be a little difficult to administer in practice. Therefore, what we have suggested is that unless the transfer proposed to be made of shares by a company involves a certain percentage—we have said 5 per cent; it could be even a lesser percentage—it should not be necessary for the company to intimate to the Government about the proposed sale.

Another suggestion that we have offered is this. The requirement that the particulars of the buyers and so on should be given to Government may be difficult to administer in practice because if shares are sold in the market through stock-brokers in the ordinary course, then the company

is not in a position to know who the buyers are; the shares change hands from person to person and the names of the buyers may not be known to the company.

Regarding clause 13—the proposed amendment 187(C)—the view of our Association is that the requirement that any benami holding—even one share—should be communicated to the company would be a little difficult to administer in practice. In our view, a minimum of Rs. 5,000 worth of shares may be fixed; if the benami holding is Rs. 5,000 or more, then the holders, both the registered and the benami holder, should be required to intimate to the company.....

MR. CHAIRMAN: Rs. 5,000 or more altogether or in one single transaction?

SHRI PREMJUS ROY: Suppose today I am a benami holder of Rs. 2,000 worth of shares and after six months I acquire another Rs. 3,000 worth of shares in benami. As soon as my total benami holding reaches Rs. 5,000, I should be compelled to notify to the company because the difficulty is that not only the registered holder and the benami holder are required to intimate to the company, the company in turn is required to notify it to the Register. If day-to-day petty holdings of 5 or 10 or 100 shares are required to be notified to the company which in turn has to notify it to Registrar, it will involve unnecessary their breach than in their observance. botheration both to the company and to the shareholders, and many of these provisions will be honoured more in So, in our view, a more practicable thing would be that certain minimum should be prescribed and if the benami holding exceeds that minimum, then it should be notified to the company and the company will in turn notify it to the Registrar.

So far as notification to the Registrar is concerned, our suggestion is that the company should be required to file quarterly returns and not about every single transaction every time because in the normal course the company would be receiving any number of notices from day-to-day and for the company to notify to the Registrar day-to-day is quite impracticable. So, the purpose behind these provisions would, in our view, be well-served if the provisions are modified in this manner.

The question of conflict between the registered holder and the beneficial holder—that we have brought out in the memorandum and may be that these provisions in practice may lead to some difficulties. We have even suggested that there may be collusive transactions, the registered holder and benami holder both notifying the company that his share is benami. Where they dispute between themselves, a notice is served upon the company by the registered share-holder, 'I have sold the shares' and the benami shareholder gives a notice to the company, 'Well, you have already noticed that I am the beneficial holder and the registered share-holder is only a benamidar'. Now the company is put into difficulty. If the company gives effect to the request and transfer it or if the company does not give effect to the transfer, the registered holder says 'I will sue you for damages'. So the company may find itself in real difficulty even in regard and to trivial things. Equally there would be difficulty about the dividends. The registered holder may claim and the beneficial share-holder may claim and the company will be put to difficulties. If the claims are genuine, perhaps the company could deal with them. But, here even collusive claims may be put forward and the company may be put to real difficulties in having to decide who is the registered shareholder. That is why we suggest that these provisions may required a little more scrutiny.

One of the most important things we would like to urge before this august body is the provision about

the dividend warrants. Under the existing law dividend warrants are to be sent out to the shareholders within 42 days and all the good companies try to send the dividends as soon as the General Meeting takes place and approves of the dividend and it is usually sent out within two or three days of the General Meeting. The provision here is that within seven days the company will be required to deposit all the amount of the dividend in a Scheduled Bank. What we have submitted is where you are asking the company to deposit all the amount in a scheduled bank within seven days, the period within which the company should be required to post out the dividend warrants should be correspondingly reduced from 42 days because we are aware of certain companies which would post the dividend warrants exactly on the 42nd day, even though the share-holders are 400 or 500 in number. Certainly it is within their means to post out the dividend warrants the day following the date of the meeting. In fact, I am aware of many Coimbatore companies where after the general meeting is over, they make a declaration that those share-holders who are present may kindly collect the dividend warrants. They keep them ready at the General Meeting and as soon as the meeting is over and the dividend is passed, they hand over the dividend warrants. According to the provision in the Bill the companies would be required to deposit the amount of the dividend in a scheduled bank within seven days to which we have no objection. The suggestion is that the companies in turn should be required to post out the dividend warrants within the maximum period of 14 days after the date of declaration of the dividend or not more than 22 days instead of 42 days.

The next thing is about unpaid dividends. Here, we would submit that the provisions appear to us to be a little too harsh because even as it is, the companies keep the unpaid dividends separately in an unpaid dividend account and even after the period of limitation expires and the unpaid dividends have been transferred to the reserves, almost all the good companies, I know of, do not hesitate to pay the amount of unpaid dividends when claimed by the rightful claimants—may be it is after 10 years or 15 years.

MR. CHAIRMAN: Only good companies.

SHRI PREMJUS ROY: In my experience almost all companies. I do not know of any company which refuses to pay the amount of unpaid dividents which have been taken to reserves after the limitation period expires. In any case the money goes to the reserves and it belongs to the shareholders. It is kept for the share-holders' benefit and the management cannot do anything with it. Therefore, my submission is that the amount of unpaid dividends should fairly belong to the share-holders and it should remain the property of the shareholders instead of it being appropriated by the Government because the Government has absolutely no justification for claiming the amount of unpaid dividends. It rightly and properly belongs to the shareholders.

Another suggestion that we would offer is not mentioned in our memorandum. The dividend warrants are posted out. Now, for one reason or the other, either due to postal miscarriage or maybe that the shareholder received the dividend warrant but he was away at the time when the dividend warrant was received and in his absence it was lost sight of or it may be destroyed, 101 things may happen, where the share-holder may not be aware that there is any amount standing to his credit with the company. The company never reminds him that this is the amount standing to your credit, would you claim it? If there is any difficulty, would you let us know? After 3 or 6 years the company takes it to reserves. This is very unfair to the shareholders and, therefore, it would be proper if the company is required to remind the

share-holder to whom the unpaid amounts are due, saying 'that such and such amount of dividend remains unpaid as shown by an account books. Would you please let us know if we could help you? ' If it is due to oversight or forgetfulness, it should be paid because it is the obligation of the company to pay the amount due to the shareholders.

The suggestion which we have made is that the companies should be required to remind the shareholders regarding any unpaid dividends and after the expiry of the period of six months or whatever it be for the payment of the warrants, send a notice and, alternatively, we have suggested that if it is not convenient for the companies, to send a notice in the intervening period, let them do it along with the notice for the succeeding general body meeting.

A very important provision in this Bill which we would like you to reconsider is regarding the payment of dividends from reserves. As we have submitted in our memorandum, may be, particularly with regard to companies which are not so well off it is usual for companies to keep apart some amount for creation of dividend equalisation reserves. It is more often the usual practice for good companies to declare only a reasonable dividend and try to appropriate some amount for dividend equalisation reserve and pay the normal dividend in the lean years. There are many people depending upon dividend income, e. g. minors, widows, many persons of small means. It is necessary that they should be assured of reasonable dividend from year to year. If it is provided that in case companies have to draw upon reserves they should be required to take permission of Government the result would be that some companies will make good profits, they would like to distribute as much of the amounts as possible and when the company does not do well. they will naturally declare a small dividend or pass over the dividend and there would be cases where erratic fluctuations take place in the share prices. It is not in the interest of company concerned nor shareholders. This provision that they should take Government's permission for drawing amount from accumulated reserves should be deleted.

And regarding clause 24 it is our view that this explanation defining substantial interest is rather too comprehensive because this refers not only to individual but holdings of various relatives within the definition of companies Act. One does not know all my relatives, one does not know what their holdings are. If I write to my relative, please tell me about your holdings, your number of shares, etc. he wll turn round and ask me, who are you to ask me about this. Therefore this explanation of substantial interest needs to be either deleted or redefined. There will be lot of practical difficulties in administering these things.

Regarding Clause 25, the provision is put in that if the company has paid up capital of 25 lakhs, if any director wishes to enter into any contract, they should be required to take the previous approval of the Central Government. But this is a little difficult to administer in practice. This imposes a blanket ban. The particulars only should be required to be communicated to the Registrar of companies and he may go into those contracts. If any further contracts come to his notice, being not in the interest of the company, he may get further information from the company. If Registrar feels that any contract is not in the interest of the company it may be reffered to the Dept. of Company Affairs and the Dept. should take appropriate action instead of imposing such a blanket ban like this on all contracts.

Under section 297 the suggestion which we have offered is that Registrar should be required to scrutinise contracts and satisfy that they are in the ordinary course of business and not intended to benefit the director at the cost of the company. If there is anything of a suspicious nature, no

doubt, the Department should move in the matter.

Regarding Clause 26, this is one last small point which we would like to bring in. This is regarding technical services or legal advice. There is the legal adviser or technical adviser about whom Government agrees that he has necessary expertise and knowledge for being appointed as legal or technical man and the matter should rest there, instead of having a provision like this. This appears to be suprefluous. These are our submissions.

DR. K. B. ROHATGI: I will touch upon those points which my friend has not dealt with. Clause 6 says that every time they should issue prospectus. There are various practical difficulties. Depositors deposit money in the normal course, for short durations, 3 months, 6 months, etc. They may, withdraw after 6 months. Prospectus is issued only once. Every time when they make deposit you cannot issue a prospectus. Because, prospectus must be made uptodate. After one year, some depositor comes forward and if you issue prospectus, it is the same old prospectus and it may not contain all required information and it will create practical difficulties. If the idea is this, that those who deposit money with company should be aware of financial position of the company, those who are shareholders get all the information. It should not apply to shareholders because they are aware of the financial position; they get the annual accounts and everything related to the financial position of the company.

Clause 10 says no individual or group should have more than 25 per cent of the nominal value of the equity share. The paid up capital is 25 lakhs. Many companies would bypass this because when they exceed this, they would form a number of other companies and they will never plough back the money or surplus or the accumulated profits over the years. They will avoid bonus issue. To evade this no company would like to have more than 25 lakhs capital. The provisions of clause 10 would hinder growth of industries and legitimate right of shareholders. The company would like to have larger reserves than capitalise them.

Regarding Section 107(b) the position is this. There is one company worth lakhs of rupees; there is another having ten thousand rupees. They will be required to get permission of Central Government before transferring shares. I agree with my friend that the propsed section would not serve any useful purpose if they apply this to small shareholdings. The limit should be 5,000. There are many complications.

With regard to Clause 16, dealing with the payment of dividends, I would endorse the views of my friend, Shri Premjus Roy. If there is a restriction on payment of dividends only out of profits, there would be many complications. The small investors who invest in the shares of the company with a view to getting constant return would be at the mercy of the Government and management. They would say, there is no profit and they will not pay any dividend. Preference shareholders should be out of the purview of this. Sometimes a company follows a very conservative policy in not paying dividends every year, because there may be leaner years. Now there would be a tendency to pay large dividend in the year of huge profits so that the company would not be in a position to plough back the profits. This clause should be deleted. Companies would like to distribute whatever, profit they have got, because if there is no profit next year, they may not be able to distribute out of the reserve. This provision should, therefore, be deleted.

The proposal that the unclaimed dividends should be transferred to Government revenue account is also not justified. That money belongs to the shareholders. A small shareholder will have to approach the Govern-

for refund of the dividend which has been transferred to Govt. It is much better that the Company keeps that amount in a separate account. As you know, Sir, income tax refund takes a long time. It will be very difficult for a shareholder to get the money.

Clause 23: The existing provisions are that the approval is given at the time of first appointment of a Director. Now approval would be necessary for reappointment also. In the explanation it has been said that a person who is in the whole-time employment of the Company will be covered by this. In many cases, the Companies have labour participation in the management. Some employees are selected as Directors. If they are covered under this clause, it may create complications. Some safeguard is called for.

SHRI K. V. RAGHUNATHA REDDY: It is only a Director in whole-time employment. Labour representative is not a whole-time Director.

DR. K. B. ROHTAGI: He gets payment from the Company and complications may arise.

Section 224: This provision lays down that a person should not be appointed as an auditor for any company for more than three years. This can be easily evaded. If there is a firm of five or six auditors, they may form 4/5 firms with different partners in different audit forms, and they may transfer the audit after three years from one firm to another. Therefore, a provision should be made to say that if the audit of a Company is transferred to another firm after three years, none of the partners of the earlier firm should be a partner of the second firm.

Section 294A. My friend has already said about the 'substantial interest'. That requires elaboration.

We welcome the provisions of Sections 380, 408 as also provisions relating to foreign companies.

I would only submit the Government has to give approval with regard to the terms and conditions of Managing Director, Whole-time Directors etc. I presume, they will send notice in the papers etc. In such cases, the views of the shareholders must be taken into considerations. They can offer very good suggestions. Whenever the appointment of a General Manager is to be decided, you may consider the desirability of taking into consideration the views of the various share-holder organisations.

SHRI L. N. MODI: Regarding the registration of shares in the name of minors, although under other Acts the property can be transferred in the name of minors, if a provision is made that they may register shares in the name of minors, quite a lot of problems will be solved.

In regard to the payment of dividend, the law applies to the final dividend; it does not apply to interim dividend—within what period the interim dividend is to be paid to the shareholders. So, the same provision as applicable to final dividend should apply to interim dividend also.

With regard to unpaid dividend, instead of transferring it to Government, it should be kept in a separate Bank account by the company and should not be appropriated by the company or the Government. After some years it should be paid to the shareholders by way of extra bonus.

With regard to transfer, a provision of Rs. 25 lakhs is made. If it is reduced to Rs. 10 lakhs, most of the problems will be overcome.

SHRI MAHAVIR TYAGI: May I know when your Association was formed?

SHRI L. N. MODI: In 1958.

SHRI MAHAVIR TYAGI: Shareholders of how many companies are there approximately?

SHRI L. N. MODI: The membership would be about 200 to 300 .

SHRI MAHAVIR TYAGI: Belonging to how many companies?

SHRI L. N. MODI: I personally would be holding shares in about two dozen companies. Most of the people would be holding shares in about six companies while some may be in 60 companies; we would not know. But it is a fairly cross-section representation; we have Chartered Accountants, Medical Practitioners, University teachers, Company executives and so on.

SHRI MAHAVIR TYAGI: Regarding Clause 13, it creates a lot of mischief; excise is avoided and many other things are done. Why should it not be done away with altogether? What will be the effect of it?

SHRI L. N. MODI: On the face of it, I would say that though the name of a shareholder is registered as shareholder, he may not be the real beneficiary of the shareholding. Therefore, I do agree with you that large-scale evasion of taxes and other things can go on. But how do you find it out? It depends on the morals of the people. They do not want to give information.

MR. CHAIRMAN: For what reason do they not give information? The only reason is that they benefit by the omission.

SHRI L. N. MODI: If a provision is made that shares will be transferred only in their names, there will be no problem.

SHRI MAHAVIR TYAGI: Clause 34 is regarding sole selling agents. Sometimes sole selling agents are appointed and normally their appointment is for the purpose of earning commission. But they do not do anything at all. It is actually the retail agents etc. who conduct the sales. The appointment of sole agents is mostly misused for the purpose of giving employment to one's relations or something like that.

SHRI L. N. MODI: In our view, there should not be a blanket ban. But if there are cases of abuse which have come to the notice of Government, the Department has certainly power to investigate and try the company.

SHRI MAHAVIR TYAGI: In cases where the sole selling agents are relations of the Managing Agents etc., it is obvious.

SHRI PREMJUS ROY: We are at one with you in regard to the type of sole selling agency you refer to. But in small towns, stockists are appointed, and they are also termed as sole agents of the companies. Therefore, a distinction is necessary. Where the total production is given to a sole selling agent and a small retailer or stockist is appointed at a particular place, that retailer does not come under the definition of "sole selling agent" and only the person who takes the entire production for the purpose for which Shri Tyagi has mentioned should come under the purview.

You can have a provision like the one you have in Section 214 regarding a person appointed to a place of profit.

SHRI S. R. DAMANI: I would like to ask them to intimate what is the percentage of companies which have not utilised the public funds deposited with them. The intention of the Government to bring this legislation is to safeguard the public funds. Another witness told us that the deposits made with the Companies would remain safe.

SHRI PREMJUS ROY: The experience is that most of the investors are shrewd enough to judge which are the companies sound and safe.

SHRI S. R. DAMANI: The time limit of 30 days is given for refund of deposits. Then in this case a lot of hardship will be caused.

MR. CHAIRMAN: Deposits must be paid by company on the day on which they are due. There is no question of 30 days or even 7 days for refund of deposits.

SHRI S. R. DAMANI: My intention of asking this question is that according to Management, those companies which could not follow the practice, they will have to refund the money within 30 days, otherwise they would be penalised.

MR. CHAIRMAN: He says that there is no reason for a good company to delay the payment of the deposit even when it is due. Therefore the question of extension would not arise

DR. K. B. ROHTAGI: The hon. Member is referring to the refund of the excess deposit. In this connection, I may say that the R.B.I. has certain regulation formulated and they have put a 25% of the paid up capital and the excess has to be refunded in three years on the basis of 1/3 part each year. And therefore if this provision is adopted, all the companies will be put to difficulty and there may be staggering of refund.

SHRI S. R. DAMANI: This is what I meant. The intention of the Government is very clear. They want to refund it to those persons who are holding the shares in their name or on behalf of certain persons. Now the shares should not be held by other persons, it should be held by the owners themselves. Now, the question of husband and wife does not arise. If it is clarified that trusts shareholders are solely in the main books, then in that case there is no difficulty. Do you agree with this?

MR. CHAIRMAN: This is what they have suggested. They have already said this.

SHRI PREMJUS ROY: The people who actually own the share, whether it is a Trust or anybody else, they should be registered as such in companies. If we wish to impose any ban on them.

MR. CHAIRMAN: That is there.

SHRI S. R. DAMANI: About payment of dividends, B.M.C. gave some advice. They are paying huge amounts from the reserve and the money is being remitted out of the country. So in order to prevent this, this restriction is imposed. Now, if the Government confine the limit of foreign remittance, have they got any objection to this?

SHRI PREMJUS ROY: Well, we have no objection if the restriction is only in respect of foreign companies. We have absolutely nothing against this restriction. We want only to safeguard the companies' interests.

SHRI S. R. DAMANI: Sole selling agents are useful. Government is in favour of selling agents but they wanted the approval. So in what commodity, selling agency should be allowed and in what production of commodity or whether there must be selling agents only for selected commodities?

SHRI PREMJUS ROY: Our submission would be that it should be left to the company concerned. Only thing is that the Government should have the power to stop any malpractice.

SHRI L. N. MODI: If there is excess demand, they should not appoint the selling agents. Now, I agree to this demand and supply. There should not be any selling agents. Supposing in another year, demand goes down and there is glut in the market, nobody is lifting the goods. What will happen? Therefore we are saying that this provision should serve the purpose. This particular part should be deleted and it should not be possible to see whether the demand exceeds or goes down. The restriction should not be with regard to the commodities. Nobody can judge whether the commodity is in short supply or in glut.

SHRI S. R. DAMANI: Now, the restriction is on the selling agents. But

I want to know whether they are in favour of restriction on both the categories that is sole selling agents and the selling agents who looks after certain agency.

DR. K. B. ROHTAGI: There is no restriction in regard to other selling agents.

MR. CHAIRMAN: There is no provision for it. Why should we enter into it?

SHRI S. R. DAMANI: According to the present management, there are certain difficulties and there are certain restrictions. Do you think that it will come in the way of development of industries?

MR. CHAIRMAN: The function of some management as envisaged in the amending Bill would not hit the industry or industrial growth.

DR. K. B. ROHTAGI: The Act permits that the person may become director of 20 companies. Therefore, in such cases where they have no connection, this restriction would certainly apply.

SHRI L. N. MODI: Let us those who are affected by this provision come and defend.

SHRI S. R. DAMANI: If certain percentage of the production is allowed to be sold to the relatives of the Directors on the same terms and conditions as others will have.

DR. K. B. ROHTAGI. I do not agree.

SHRI SALIL KUMAR GANGULI: At page 7 of the Bill, I am reading out: "58B. Except where the provisions of this Act relating to prospectus are inconsistent with the rules made under section 58A; the provisions of this Act relating to prospectus shall apply to an advertisement referred to in the said section 58." I would like to know whether these rules are intended to override that.

DR. K. B. ROHTAGI: This is a major point which usually contains all the points.

SHRI K. V. RAGHUNATHA REDDY: That is the situation to come. But, so far as the prospectus can be made use of, at least some of the regulations can be made for the purpose of dealing with this type and we got to the extent we can make some rules whatever rules we may be having under the prospectus, because perspective is a wider subject.

SHRI SALIL KUMAR GANGULI: Over-riding the provision of the Act relating to perspective by the rules.

SHRI K. B. ROHTAGI: You have a law and then you may have rules under the law and rules can over-ride. The idea is that in the rules you may provide certain information need not be disclosed. Therefore, it only provides that the rules may provide certain information need not be disclosed.

SHRI PREMJUS ROY: I disagree with this.

SHRI H. K. L. BHAGAT: I would like Mr. Rohtagi to tell us. I have gone through his memorandum section 58A. Now, let me ask him whether he agrees to sub-section (1) of section proposed 58A. He seems to be aware of the conditions in which a very large number of depositors make their deposits and they have been going from door to door. Why should they get knowing obviously? It may be that there are many companies which may be good. But there are some bad companies also. When you are controlling two companies you have to make a provision in the legislation. In that way, you cannot make a distinction. I want to know whether you feel the necessity of preventing these depositors. If so, have you got any objection to sub-section (1) of 58A. The section, as it is, you accept it.

DR. K. B. ROHTAGI: Yes.

SHRI H. K. L. BHAGAT: Let us come to sub-section (2). It only says that the company must disclose its financial position. You think that the depositors should not know through the newspapers the financial position of a company.

DR. K. B. ROHTAGI: The depositors know it very well.

SHRI H. K. L. BHAGAT: But the point is some people go by name. Therefore, are the depositors not entitled to know through a newspaper advertisement at least what is the basic financial position of a company. If they do not know, they will go by name.

DR. K. B. ROHTAGI: Under the existing law as framed by the Reserve Bank, whenever a person has to invest with a company, there is a book which contains all the information and existing rules are there. My only plea is that they have not been implemented properly.

SHRI H. K. L. BHAGAT: There may be rules. But how is it possible for a member of the public to know those rules?

DR. K. B. ROHTAGI: The practical difficulties are there because the deposits are flowing constantly due to advertisements.

SHRI H. K. L. BHAGAT: Would you agree that the depositors at large, members of the public at large are entitled to know precisely what the financial position of a company is and then they would be taking risk somewhat knowingly?

SHRI PREMJUS ROY: There are rules framed by the Reserve Bank requiring the companies to give the names of the Directors and so on. They have to indicate the dividend declared last year. Before any investor can be approached to make a deposit, he has to be furnished with all the information. That requirement is already there. Now, in this case, if it is felt that some more information is needed, well, there is no objection of it being provided by modification in the Reserve Bank rules. The basic objection is that it needs to be advertised is not going to make any man to know who does not understand. If I may say, if I am to make a deposit without trying to ask myself about the financial position of a company and its Board of Directors and so on, well, I am taking my own risk. My humble submission is if there have been some bad cases, let us accept those bad cases arose because the Reserve Bank has not exercised sufficient supervision over those companies. If I want to make a deposit, I will ask the company to give me a copy of the balance-sheet. I would like to enquire from my friends whether that company has defaulted in any particular case. It is only after I have myself satisfied those points, then I will make a deposit.

SHRI H. K. L. BHAGAT: You think it is not at all necessary to inform the public at large about the financial position of the company. That is what I am asking you. You think it is not necessary at all?

DR. K. B. ROHTAGI: If the Companies are required to give more financial information for the benefit of depositors, they could certainly be required to do so by a simple amendment of the rules framed by the Reserve Bank. The Reserve Bank of India should exercise greater supervision.

SHRI H. K. L. BHAGAT: With due respect, I should say that you are side-tracking the question. I am asking you a simple question. A Member of the public should know about the financial position of the Company through a newspaper or even periodical.

SHRI PREMJUS ROY: As regards shareholders, of course, they are already aware of the financial position of the Company.

SHRI H. K. L. BHAGAT: Apart from the shareholders?

DR. K. B. ROHTAGI: This Clause is ruled out. There can be handouts when they invest. How many people read advertisements in newspapers. They will be interested only when they invest.

SHRI H. K. L. BHAGAT: Even so, some people read. I would like to know if there is any serious difficulty in this.

MR. CHAIRMAN: What is going on today is this. When you are likely to deposit a particular amount with a practicular company, you may go to the Company or some agents of the Company may come to you, canvass for the deposit and the deal is finalised. But, here, the position envisaged is altogether different. Here, the position states that whenever a company wants funds to be raised by deposits, then, an advertisement to that effect containing certain particulars is necessarily to be preceded before any deposits are accepted. That is the position and with regard to that position, I think you cannot object on any of the grounds.

DR. K. B. ROHTAGI: We are really opposing this Clause. You are clubbing it with things like raising money through debentures. It is not practicable.

SHRI H. K. L. BHAGAT: I would like to know as to what is the practical difficulty in issuing an advertisement?

SHRI PREMJUS ROY: The point is that it would be unnecessarily expensive and time consuming and without any benefit to the shareholders.

SHRI JAGANNATH RAO: Generally you have referred to certain Clauses of the amending Bill and you have not referred to the other Clauses. May I take it that you are in agreement with the other Clauses, generally.

SHRI PREMJUS ROY: As I submitted in the beginning, our organisation has formulated its views on certain matters which we thought were of practical and immediate concern to us. On other matters, we have not formulated our views. So, we are not in a position to say whether we are in agreement with those Clauses or not.

SHRI JAGANNATH RAO: You have an open mind with regard to the other Clauses.

SHRI PREMJUS ROY: Yes, Sir.

SHRI JAGANNATH RAO: You represent the Shareholders' Association. But excuse me, if I say this, I have an impression that both your memorandum and your evidence are in favour of management.

SHRI PREMJUS ROY: It was not intended to be a pleading for the management. We look at it entirely from the point of view of the shareholders and the public and that is what we are expected to do. Well, if some provisions indirectly benefit 'X' or 'Y' or 'Z', or any particular interest, well it is there. It is not that it was intended to be of help to the management. We do not hold a brief for the management. Let me make it clear. We have absolutely nothing to do with pleading the cause for any particular management.

SHRI JAGANNATH RAO: Regarding un-paid dividends you have said that this belongs to the Company —to the shareholders. Am I correct? I am a shareholder of a Company and I do not take my dividend. You say that my un-paid dividend belongs to the rest of the shareholders.

SHRI PREMJUS ROY: The position is that unpaid dividend amounts are in the account of a particular shareholder. If a perticular shareholder, for some reason or other, is not able to collect his dividend, we have suggested that it should be required by law for the Company to

issue a notice to the shareholder whose amounts remain unpaid, telling him and informing him that the amount is lying to his credit and he should let the Company know as to what the Company should do. The second point is that after the expiry of the period of notice, companies are entitled to take these amounts to reserves. As I submitted, our experience is that and I would also say that Companies good or bad, have invariably paid the amounts of dividends appropriated to the general reserves even after 10 or 15 years. Supposing if there is a dispute arter the registered shareholder dies without any heirs, and the claimants go to a Court of Law and when finally the matter is settled, and when the rightful claimant claims the amount of unpaid dividend from the Company it will be paid to him. I know of not a single Company which declined to pay the dividends because it is something which legitmately and fairly belongs to the shareholders and the companies regard this as their duty to pay to the shareholders the unpaid dividends. But when it is taken to the reserves, the Company has something to do with the same, may be for capitalisation or issue of bonus shares etc. It belongs to the shareholders and it goes to the benefit of the shareholders and the Government does not come into the picture. They have no legal or moral right to appropriate the amount which belongs to the shareholders.

MR. CHAIRMAN: Do you know of *escheat*. What happens in *escheat* is this. If a man dies without heir, the property reverts to the State. There is jutsification for the Government—both moral and legal—to have a hold on that property.

DR. K. B. ROHTAGI: There is the Payment of Wages Act. Unclaimed wages do not go to the Government.

MR. CHAIRMAN: I was just referring to moral and legal difficulties.

DR. K. B. ROHTAGI: We were pointing out the procedural difficulties.

SHRI JAGANNATH RAO: They are not going to hold on to them as the trustees. Therefore, question of limitation of shareholders' right is not there. Then, regarding the sole selling agents, *i.e.* Section 294AA, your objection is only to the substantial interest. You have not seriously contended the right of the Government in determining the products in respect of which there may be sole selling agents.

SHRI PREMJUS ROY: Our submission is that there should be no blanket ban. That, in our view, is not a practical proposition. It should be left to the judgement of the companies *i.e.* which product to be sold in which areas, through sole selling agents. However, we do not hold any brief as representatives of management. Specific items may be blocked. But we are not able to support the kind of blanket provisions that are provided in the bill.

SHRI JAGANNATH RAO: Even when the demand is in excess over the supply, especially where a man has got the access to the suppliers, this arrangement becomes necessary, because every manufacturer has to push up his own sales. Take the other case, when there is a glut in the market. Then, it is all the more necessary for the manufacturer to push up his sales.

SHRI PREMJUS ROY: We agree with this, with the addition, that the market position may change from time to time. To-day, it may be that the amount of supply and demand may be different; but it may not be so always.

MR. CHAIRMAN: They have already opposed this provision....Yes, Mr. Chavda.

SHRI K. S. CHAVDA: Foreign firms repatriate a lot of money to their countries by way of royalties etc. Would you subscribe to the view

that a firm which has more than 26 per cent shareholding, should be called a foreign firm? Do you agree to this change of definition regarding the foreign firms?

SHRI PREMJUS ROY: Quite frankly, we have not crystallised our views on this.

MR. CHAIRMAN: Now, Dr. Vyas..

DR. M. R. VYAS: I would preface my question. You must have read the entire bill, though you have not expressed your views on other matters. One of the very important provisions of this bill is Section 2; and there is mention about a group and the implications of being a group, or exercising control. Would you say something about it? What is your conception about the implications of this particular clause?

SHRI PREMJUS ROY: Frankly, the Association has not applied its mind to it.

DR. K. B. ROHTAGI: As far as the definition of the word "group" is concerned, I agree; but there will be some difficulty with regard to the same management.

DR. M. R. VYAS: You stated that you have about 200 shareholding members; about 200 or 300. What would be the per centage of this representation to those who are non-members, but who are individually subscribing to shares, roughly? What would be their proportion?

SHRI PREMJUS ROY: The number of people who subscribe to shares would be lakhs; but we cannot compel anybody to become members of our Association.

MR. CHAIRMAN: The proportion can be detected otherwise.

SHRI PREMJUS ROY: It is entirely a voluntary association.

DR. M. R. VYAS: I quite agree. I was trying to arrive at a proportion and the type of representation.

DR. K. B. ROHTAGI: The Bombay Shareholders' Assocatiion does not have more than 300 members. But it does not depend upon their interest.

DR. M. R. VYAS: That is precisely the point. Do your companies represent the interest of permanent shareholding investors who are major partners affected by the present bill?

SHRI PREMJUS ROY: None of our members, to our knowledge, has any interest in any company in any managerial capacity, or in any dominating capacity. We are just a cross-section of shareholders. Many of our members are chartered accountants, teachers, nurses, lecturers etc.

DR. M. R. VYAS: You have mentioned about the insertion of advertisements in publiactions, before accepting deposits. Would you agree that defalcation of funds deposited by casual depositors, does take place?

DR. K. B. ROHTAGI: Yes, Sir.

DR. M. R. VYAS: In that case, you are asking that Reserve Bank should keep a watch. It is impossible to keep such a watch on any institution. Do you have any other alternative means to stop defalcation of these funds?

SHRI PREMJUS ROY: We have suggested compulsory insurance as in the case of bank deposits and the premium to be paid by the company.

DR. K. B. ROHTAGI: I made a distinction between shareholding depositors and non-shareholding depositors.

SHRI L. N. MODI: If the deposits are covered by insurance, there will be no mischief.

DR. M. R. VYAS: Who will be the insuring party?

SHRI L. N. MODI: The company will be the insuring party; and the premium will be paid by the company.

SHRI D. K. PANDA: With regard to unpaid dividends, you have suggested that the companies are also taking advantage of the interest etc., and suppose it is held to be company's money till then; and after 3 years, it goes to the Central Government and from the Central Government, when a shareholder claims his dividend, what are the practical difficulties they are faced with; or, you visualize that the shareholder will be confronted with?

SHRI PREMJUS ROY: As I said, we basically disapprove of the idea of unpaid dividend amounts being appropriated by Government; because, in our view, these unpaid dividends belong to the shareholders and the company should help shareholders get it. Tnerefore, periodically, the companies should issue notices to the shareholders. Finally, the payments come to the company after the period of limitation and companies always pay. We had no difficulty on that score. The practical difficulty which we visualise is that in respect of small amounts of dividends, viz., Rs. 50 or Rs. 100 or Rs. 200, it will be practically impossible to claim from Government. It will be much easier to get it from the company.

DR. K. B. ROHTAGI: For example, if the shareholder is in Madras and if he has to get it from Delhi, it will be difficult.

SHRI D. K. PANDA: There should be some device to make the payment there. You have used the words, that it is the intention of the Government to appropriate the amount to itself, instead of the money being kept in the company. If the right of claiming that money is also given to the shareholders and if the method is made easier, then what is your objection?

SHRI PREMJUS ROY: The position is fundamentally different, when the amount is credited to the accounts of the Government and when it is paid into the reserves of the company. If the money belongs to me, would I like it to be given over to the Government, if suppose I have not recovered my dividend during the last few years, for any reason? That is the point.

SHRI D. K. PANDA: My point is very simple. The dividend remains unpaid for continuously three years. Then, the question of transfer to the Central Government arises. So, the money has already been with the company for three years; and the shareholder could tolerate this. The company uses that money and collects interest and takes so many advantages. Then, after three years, when it is transferred to the Central Government, the shareholder does not lose his right of claiming the same dividend; but simply, instead of approaching the company, he will have to approach the Government. So, except, as you say, that a shareholder from Madras will find it difficult to approach the authorities at Delhi—wheras from the compnay, it would have been easy for him to get the money. But if the right of claiming that money from Government is given, and if the method becomes easy, then what is the problem?

SHRI PREMJUS ROY: So far as the unpaid amount remains with the company, it remains so for the benefit of the shareholders.

SHRI BEDABRATA BARUA: That is the legal point. How does the company make claims for the money again?

SHRI PREMJUS ROY: It does not claim it. It uses the money as in the case of unpaid wage, which remains as part of the Company's Funds and is used for the benefit of the existing shareholders. That is why we suggest that the companies should be asked to give notice to the shareholders. They should collect the money. We would like all the amounts to be paid. Only in particular circumstances, they should remain unpaid.

SHRI D. K. PANDA: My question remains unanswered.

MR. CHAIRMAN: Of course, it has been answered, but not in the way it was desired.

SHRI D. K. PANDA: My direct question, in that case, will be this. Suppose the money comes to the Central Government, do you consider it to be unsafe?

DR. K. B. ROHTAGI: It is a question of principle.

SHRI D. K. PANDA: Instead of the company holding it, the Central Government will be holding it. Where is your apprehension? What are the reasonable grounds for your apprehension?

DR. K. B. ROHTAGI: It is a matter of principle. We feel that the amount rightly belongs to the company; and not to the Government.

SHRI BEDABRATA BARUA: How do you feel that way?

MR. CHAIRMAN: Next question.

SHRI S. R. DAMANI: I do not want to ask many questions. Now, we are the shareholders. There is no investment market in India, I mean, a well-established one. Now, Clauses 5 and 6 of the proposed Bill seeks to amend Section 43A. Now, in that amendment the percentage of holding of company has been reduced from 25 to 10. I only want to know the repercussions of these clauses on the prices and on the investment climate —I mean if this is reduced.

DR. K. B. ROHTAGI: We have already a provision saying that if the share capital is 25 per cent. the company concerned will become a public company.

MR. CHAIRMAN: He does not agree with it.

SHRI S. R. DAMANI: What would be the repercussions of this amendment on the prices of shares and on the management in the new companies?

DR. K. B. ROHTAGI: You mean, prices of shares of companies which will be converted into public companies?

SHRI PREMJUS ROY: There will be less number of buyers of shares.

DR. K. B. ROHTAGI: We think it is a good provision.

MR. CHAIRMAN: They support the provision.

SHRI S. R. DAMANI: My point is clearly this. At present, any company can purchase upto 25 per cent of the capital in shares. According to the present amendment, this will be restricted to 10 per cent.

DR. K. B. ROHTAGI: The whole idea behind this is that companies, which employ funds to a greater extent, should be converted into public companies. It should not be a close preserve; but should become amenable to public scrutiny.

DR. K. B. ROHTAGI: It may not have any effect.

MR. CHAIRMAN: They welcome the provision.

SHRI S. R. DAMANI: Another thing is this. There were questions about deposits; and I will ask one question more thereon. Now, according to my own experience, the system of acceptance of deposits by the companies has come into force in a large way during the last 5 or 6 years. What are the reasons? Are the companies not getting finance from the banks? Why are they paying high interest to the public?

SHRI PREMJUS ROY: If money is easily forthcoming to the extent required by a company's management, it would obviously be foolish on their part to accept public deposits at higher rates. It is obvious that company managements, when they are required to borrow from financial institutions, have to face a number of difficulties. Now, there is the conversion of loans into equity etc. So many questions have to be answered, before the financial institutions would agree to give any loan to a company. Many company managements feel the exercise to

be completely frustrating. Secondly, in the case of the companies which find that they are not able to borrow funds from banks to the extent needed for the purpose of their business, they have to seek alternative sources. They only will have to seek an alternative source of finance otherwise. It is ordinary business prudence.

SHRI S. R. DAMANI: It is because the banks and financial institutions are not giving finance to them, they are going to the public. This means that there is no proper security for the depositors.

SHRI L. N. MODI: That is why we are suggesting that if the deposits are insured, all the difficulties will be solved.

SHRI BEDABRATA BARUA: In regard to benami, you have said that benami should be allowed to the extent of Rs. 5000. Personally, I am not convinced that it should be allowed. I do not see why any benami should be allowed at all. You have given certain arguments in favour of this in respect of certain classes, namely Hindu undivided families minors etc. They may be allowed to hold benami shares. So far as I understand it, a trustee can hold in the name of the trust, but that is a valid legal thing and not a benami. Similarly, in the case of the Hindu undivided family, the *karta* can hold property in the name of the HUF, and the relation between the *karta* and the other members of the HUF are governed by the Hindu law. So far as minors are concerned, minors can also hold fully paid-up shares. If there is any hardship in these cases, that can be looked into. But why do you object to the abolition of benami as such?

DR. K. B. ROHTAGI: What we are saying is that you may make provision to the effect that this should be permitted in these cases, namely trusts, HUF and minors; further, if there is a small benami holding, information need not be given to the comapny that it is a benami holding. Thus, there is a distinction between supplying information to the company and to the public.

SHRI PREMJUS ROY: Speaking for myself, the suggestion which we have made is that benami holdings to the extent of Rs. 5000/- need not be reported to the company. It is not that we say that it should be permitted in all cases.

SHRI BEDABRATA BARUA: Suppose a man holds Rs. 5000 benami in 50 companies, to that extent, it may be any amount.

SHRI PREMJUS ROY: So far as the holding by a trust is concerned, there is already a section in the Act which says that a company cannot take cognisance of the fact that it is a trust and so on and likewise in the case of the HUF, the present position is that the company will not register HUF as a shareholder; so also, there is a circular issued by the Company Law Department which says that the company will not register shares in the name of minors. They have contested it in a court of law, but the circular is there.

SHRI BEDABRATA BARUA: Supposing that is secured, you would have no objection to the provision?

SHRI PREMJUS ROY: We do not support benami holdings.

DR. K. B. ROHTAGI: We do not support benami holding. We are only saying that petty benami holdings need not be intimated to the company.

MR. CHAIRMAN: This provision was made when the position was not clear.

SHRI K. V. RAGHUNATHA REDDY: What are the circumstances under which a minor is likely to be a benami?

SHRI PREMJUS ROY: When a shareholder dies and he laves a minor son or daugther.

cally is not given. Naturally it means that there must be efficient control over the large number of organisations and that is what this legislation seeks to do but in the process it should be so done that the Corporate sector should not be strangulated. That is what it meant, it does not mean that 'this is a strangulation Bill'. If you mean it like this, then I submit that is wrong. Of course, the Bill seeks to achieve certain objectives but should not be in the manner in which it proposes to do. Then in that case we may tell that the 'Corporate Sector' will not perform, particularly when we are lagging behind in the development of important sectors of economy, its duties in the nation building and therefore some sort of incentives should be given to the corporate sector. Otherwise development in many fields will be impeded and progress will be retarded. Any amount of control would not help healthy progress. So far as the word 'strangulating' is concerned, I agree that the Memorandum could have been better worded.

SHRI S. G. SARDESAI: I want to take up only a couple of points. I do not go into the aspect of development of monopoly, etc. I know that there are Acts like M.R.T.P. Act, various Companies Acts are there and here I am not speaking on behalf of my party resolutions or something like that. But what is your starting point? All the provisions are there and the very idea according to me is that it should be socialised. But the position is this that if that is so, the Act has to be strengthened. That is the starting point, whether you support the main purpose of the Bill or not. The definition of the group as I understand as an Economist and as a Trade unionist, is that we have to go to Court of law but however it escapes finally. And therefore if the definition is more comprehensive, then I would definitely welcome your Memorandum because the shortcoming of the law is not proved and it is not defined comprehensively. Now the point is that the idea of the group which has been attempted to be defined here is not to intervene in *post facto* matters for which something has already been done but you refer the question of intention which is there in the original Bill.

Now, this is the point. Even if you take the M.R.T.P. Act, it is provided that there should be intention before a certain act is done. As far as I can make out, I find that the Bill attempts to prevent a wrong thing before it is done. If we take your definition, then it becomes *post facto*. It will mean that Government will come in only when the whole act is done. From that point of view, the definition as envisaged in the Bill, appears to be more comprehensive. It prevents the doing of a wrong thing.

SHRI A. C. MITRA: The definition is very vague. You cannot possibly make out any meaning.

SHRI S. G. SARDESAI: What about earlier definitions?

SHRI A. C. MITRA: With due respect, I should say this has been a headache. If you want to include it in the Companies Act, it will mean further headache. This may be a laudable object. I have no objection in that respect. But if I may say so with utmost respect, the person must know what it is. One has to know what offences are going to be committed We cannot leave this in the air.

SHRI S. G. SARDESAI: Law cannot clarify the question of purpose.

SHRI A. C. MITRA: You cannot define this suitably. My point is why present it in a definition.

SHRI S. G. SARDESAI: There is no such provision. Here, the provision is for an enquiry to know what the purpose is. That is the provision. A certain act may be done in good spirit. The same act may be done for some wrong purpose.

SHRI A. C. MITRA: That is why I pointed out to the Chairman that some provision with regard to *mens rea* should be there. A person might have done a thing in good faith. But the Central Government may take another view of the same thing and may say that the person should be jailed.

SHRI S. G. SARDESAI: My point is that what you are making out cannot be defined in terms of legal definitions. It is a matter of investigation for which the provision is there. That is all I have said. What you are calling a vague definition, to me, it appears to be really more comprehensive.

MR. CHAIRMAN: Mr. Mitra, if I understand you correctly, what you mean to say is this. There may be different purposes for the same act. That is what you mean.

SHRI A. C. MITRA: And *alibi*.

SHRI S. G. SARDESAI: I think legislation is a question of discretion. But so far as executive power is concerned, it will always be there.

SHRI A. C. MITRA: Discretion is that, if I may say so with respect, it will have to be defined. In the course of definition, you have to lay down certain criteria.

SHRI S. G. SARDESAI: You have expressed a fear that small companies will also be affected. The purpose of this Bill, which is there before us, is to restrict and control the expansion of monopoly purely from the legal point of view. So many powers have been given to the Government like appointment of auditors etc. But obviously, the entire spirit of the Act and the purpose of the Act is not to utilise all these powers with regard to all sort of small companies. The whole purpose of the Act is to use these powers to prevent the development of monopolistic trends.

SHRI A. C. MITRA: The difficulty is this. If there is small private company worth one lakh, then, it will become a public limited company even if 10 per cent of its paid-up share capital is held by another private company.

MR. CHAIRMAN: Sometimes one has to agree to disagree.

SHRI JAGANNATH RAO: Mr. Mitra thank you for your views which you have expressed explicitly and with clarity. You gave an impression that you want that there should be a certain amount of flexibility and freedom for the Corporate Sector. But, at the same time, I think you will agree with me that Government should have the right to control the Corporate Sector.

SHRI A. C. MITRA: It should be only guidance and not control.

SHRI JAGANNATH RAO: Guidance can be there only when there is control. You cannot have guidance without control. That is the principle in this Act also. Even with regard to Acts like Industries Development and Regulation Act, the intention is that everything should be regulated. Now, I am not going to repeat many things. You wanted that definitions of the rules should be more precise. Take or example, Section 43 A. In Clause 5 of the amending Bill this section is now being sought to be amended. As per the original section, unless a public limited company has 25 per cent of the subscribed share capital, a private company does not become a public limited company. What happens is this. The public limited companies subscribe less than 25 per cent and give other monies by way of loans so that a private company will never become a public limited company. That is how, the law is being evaded. That is why, in the amending Bill, this has been made 10 per

cent. Do you think that "25 per cent subscribed capital" should remain or the definition should be so worded as to include loans etc?

SHRI A. C. MITRA: Then the bonafide loans will be implicated. The trouble will be that bonafied loans will also be roped in. Then Companies will not be able to get loans.

SHRI JAGANNATH RAO: You want that this should be raised to 15 per cent?

SHRI A. C. MITRA: It should be raised further.

SHRI JAGANNATH RAO: Have you ever seen the speech of the Chairman of I.F.C. He said that he cannot lend to the private limited companies. Therefore, you say that one private company investing in another private company, both should not be made public limited companies. Then I come to the general clause which takes away the power of the court. Supposing a tribunal, say for example, Company Law Advisory Board is constituted, would it serve the purpose?

SHRI A. C. MITRA: My point is that it should be an independent body completely, like the Income-tax Appellate Tribunal.

MR. CHAIRMAN: It means you would like to give an administrative body the judicial function.

SHRI A. C. MITRA: Actually the Income-tax Appellate Tribunal is a judicial tribunal.

MR. CHAIRMAN: Would it satisfy if a precise judicial tribunal is there?

SHRI A. C. MITRA: Well, I can't say that. My point is that we should have an independent body.

SHRI JAGANNATH RAO: Your complaint is punishment proposed in the Bill more in the nature of penal code. Therefore you insist that the definition should be more precise.

SHRI A. C. MITRA: I would seriously ask for setting up an independent body.

SHRI D. K. PANDA: Under clause 18 in your memorandum you suggested that the inspection which was merely a preliminary enquiry has now been convered into full-fledged investigation. You will agree with me that it is the common experience that there are malpractices going on in these companies and, therefore, to put an end to these things the previous act has to be amended. In the previous act they have given one thing that there must be a notice to any of the officers of the company or to the company only that is not there. Therefore, safeguard means, as you have suggested, that the entire procedure of investigation has been now abridged and in a short time inspection can be over.

SHRI A. C. MITRA: If there are companies which are behaving in a fraudulent manner then if the Central Government makes that opinion, it is good and right. But the powers that you are giving under section 209 are so vast that even a company that has not done anything of the kind also comes in it. That is my point.

SHRI D. K. PANDA: Why should we assume or presume that in any company which are only carrying on their business satisfactory, these inspectors or officers will cause harassment to them. The entire purpose is only to put an end to all malpractices. Under section 209 the provision is made for issuing a notice to any officer of the company. From our common experience we find that actually such malpractices, corruption and nefarious activities are being conducted by some even without the knowledge of such companies who are suffering from these things. So, why should they not investigated?

SHRI A. C. MITRA: I entirely agree with you but that opinion must be

formed by the Central Government that a particular company is doing such kind of thing.

SHRI D. K. PANDA: Regarding clause 15 relating to appointments, it has been found from experience in the past that the managing agency system has resulted in certain inherent evils, and, therefore, that system was abolished. By some back-door methods or by entering into contractual arrangements their services were requisitioned. Though in a different form, the same managing agents are found to have been continuing; you may call it control or exercise of skill or call it anything else or call it that their rich services are being utilised. But such a thing has come to common notice. Clause 15 seeks to get rid of that evil caused by the managing agents.

The purpose has been clearly mentioned, and you have also elaborately dealt with it. In the notes on clauses, the purpose has been spelt out. And yet you say that this will result in depriving the companies of the advice and skill of many eminent persons who had vast knowledge and experience of company affairs and management.

I would like to know what concrete suggestions you have got to take the help of such experienced persons at the same time, the evils caused by certain persons with rich experience to the development of the nation etc., have also to be combated. Have you got any concrete suggestions with regard to the eradication of such evils emanating from the managing agents who have come back to the companies under different agreements?

SHRI A C. MITRA: If I may explain what has been prohibited directly cannot be allowed to be carried out indirectly. That is the fundamental maxim of all law. The managing agency having been abolished, it cannot be allowed to function through the back-door. But what is happening is this. During the time of the managing agents, on the board of directors, there were certain highly qualified technical people and their services were allowed to be utilised. These days we are suffering from want of managerial talent. What will be the result of this provision?

Take, for instance a man who has been with the company from the very beginning. We may be having a small percentage of shares. But he has built up the company from the very beginning. If his services are not allowed to be utilised, who will build up the company? I do not think that it is the intention to bar such people from being there.

SHRI D. K. PANDA: With regard to clause 5, you have clearly stated and you also agree with the purpose of the amendment which is meant and designed to protect public money. In this connection, do you not know that almost all the private companies are having their shares in bigger companies or in another company which has borrowed money from Government or from public financial institutions? In some way or the other, the public money has been taken advantage of by a private money. Though his entire money belongs to his family, still he is taking advantage, by virtue of his being a shareholder or a member of another company which has borrowed some money. In such a case your suggestion is that it is absolutely his own money and, therefore, he has not taken advantage of public money and, therefore, this provision would not be applicable to him.

Secondly, have you got any instance of companies which are not taking advantage of such public money but which are entirely dependent upon their own money even though they are members of another company or they are holding shares in another company?

SHRI A. C. MITRA: I think that this would be a question of carrying the vicariousness to the nth degree. Let

me give you an example. Suppose I am a private company, and the company has been entirely financed with the funds of my family. Suppose I happen to purchase by way of investment a certain small amount of shares in a public company which happens to have borrowed from a public institution. Then I become a public company under this provision. Does it mean carrying vicariousness to the nth degree? How do you make me a public company? You can certainly control the public company which has borrowed money from the public sources. But why do you make me a public company?

SHRI D. K. PANDA: My question has not been answered.

MR. CHAIRMAN: The hon. Member may draw his own conclusion. He has answered it as he would like to.

SHRI D. K. PANDA: My question is whether a person who runs a company with the funds of his own family or his own funds has taken advantage of public money by having his shares in another company which has borrowed some money.

SHRI A. C. MITRA: The point is this. When I buy Rs. 5 share in a public company, am I taking advantage of it? Or is it investment? As I say, you are carrying vicariousness to the nth degree. I am a private company; the entire capital of mine is my own family capital. Since I have got extra money, I go and buy certain shares in a public money. That public money may have borrowed some money from a public institution. I also become a public company becames the public company seems to have borrowed from a public institution?

SHRI K. V. RAGHUNATHA REDDY: I quite appreciate the way in which you have answered the questions and the clarifications that you have given. We realise that you are now appearing for the Industries Organisation and not for the Department of Company Affairs.

SHRI A. C. MITRA: I have had the pleasure of appearing for your department on a number of occasions, as Mr. Menon himself knows.

SHRI K. V. RAGHUNATHA REDDY: As far as inspection is concerned, under the existing provsions of section 209 there is no need for any notice.

SHRI A. C. MITRA: I entirely agree with you. I was only venturing to submit that now that you are in doubt....

SHRI K. V. RAGHUNATHA REDDY: The purpose of inspection under section 209 is not to launch any criminal proceedings, but it is only for a report to be made to Government for the purpose of the Government understanding whether the company is being run well or ill, and a good company can be inspected by of a routine inspection and even a good certificate can be given to a company which is being managed well.

SHRI A. C. MITRA: The point is this. I am only referring to the dangers and evils of a roving inspection by an officer of the Company Law Administration. A person of Mr. Menon's eminence may not be there, but any officer may go and do it, and so this power is liable to be abused.

SHRI K. V. RAGHUNATHA REDDY: You are only worried about his status and experience.

SHRI A. C. MITRA: Not only status. They should have some reasons which justify inspection. Suppose it is a well-run company. Why should there be any inspection at all?

SHRI K. V. RAGHUNATHA REDDY: As an experienced counsel, you know that even though the balance sheet may look very well when inspection is done, so many evils are brought to light which would otherwise not have been known.

SHRI A. C. MITRA: I do not think it is the duty of the company law

administration to act as a CID. If certain objective facts are brought out which would merit a further probe into the matter, that is a different thing. These objective facts must be there.

SHRI K. V. RAGHUNATHA REDDY: Under the Income-tax Act, the ITO has power to inspect any documents, any office and call for statement etc.

The other question is this. You have been referring to private limited companies. Suppose it has got a certain participation in a public limited company. It invests 10 per cent or whatever it may be. The private limited company also gets a share in the public money in a public limited company.

SHRI A. C. MITRA: You are putting the converse of the case put by the hon. member. It is one case where the private company is buying shares in a public institution and another case where the public company is buying shares in a private company. Suppose a public company buys shares in a private company, then the public company may have the advantage of borrowings made by that company. But that would be only where the shareholding is substantial.

SHRI K. V. RAGHUNATHA REDDY: 10 or 20 per cent.

SHRI A. C. MITRA: The acquisition of shares should be to a substantial extent.

SHRI K. V. RAGHUNATHA REDDY: What is the purpose of a private limited company? To avoid the provisions for inspection etc. under 370, 372, inter-corporate loan, investment etc. In a country where we are speaking about reduction of disparities in income, would you have any objection if the salaries paid by private companies to their own directors are not fabulous?

SHRI A. C. MITRA: Government have already ensured that that this does not go beyond Rs. 4,000 or so.

SHRI K. V. RAGHUNATHA REDDY: You must have come across in your experience of small private companies with a capital of Rs. 200 or Rs. 300 or even Rs. 1 lakh being made use for making inter-corporate investments because the private limited company does not come within the purview of 372; they buy shares in a big public limited company where there is a big public stake and then tilt the management of the company.

SHRI A. C. MITRA: The provisions of law have, are and will continue to be exercised by a group of individuals. But you cannot tar everybody with the same brush. If some misbehave, certainly pull them up, but why should *bona fide* people be accused?

SHRI K. V. RAGHUNATHA REDDY: It is not a question of a rare case. In your experience you know that most of the big business groups have got their own private limited companies and also investments in which they operate.

SHRI A. C. MITRA: I know more than is good for you. But the point is: because certain companies have erred, will you tar all companies with the same brush?

SHRI K. V. RAGHUNATHA REDDY: We are not giving any bad conduct certificate to anybody. What we say is that if such companies want to operate, they must also be regulated by the provisions of the Companies Act. There are very good companies, but we have come across certain cases where having a capital of Rs. 300, they take a loan of Rs. 40 lakhs from others, indulge in share market operations and upset the very well managed companies.

SHRI A. C. MITRA: There have been abuses and there will be abuses. You cannot plug all the loopholes.

SHRI K. V. RAGHUNATHA REDDY: At least in such glaring cases, Government may have the power to intervene.

SHRI A. C. MITRA: Could not something be done to punish those who are guilty of this in the way known to the company law administration?

SHRI K. V. RAGHUNATHA REDDY: After the event only the company law dept. would know. As long as you cannot control inter-corporate investments of private limited companies, we do not know what happens.

SHRI A. C. MITRA: The object of the Bill is to regulate. While doing so, the corporate sector should be permitted to function within the limits.

SHRI K. V. RAGHUNATHA REDDY: In other words, in the exercise of the powers going to be conferred by this legislation, Government should act with caution, care and circumspection.

SHRI A. C. MITRA: Remembering that powers given to certain types of executive officers should not be abused. I know of glaring cases of abuse.

SHRI K. V. RAGHUNATHA REDDY: You are against takeover bids.

SHRI A. C. MITRA: I would certainly resist it unless it is a case of the company wanting to sell away and leave the country.

SHRI K. V. RAGHUNATHA REDDY: For control of interest, the percentage of shares may be 2 or 3. It is the strategic holding in relation to the company that matters. You may have 40 per cent, still it may not give control.

SHRI A. C. MITRA: In Muir Mills, 20 per cent shareholding was enough to control because the shareholders are farflung and could not meet together. It all depends on the nature of the company.

SHRI K. V. RAGHUNATHA REDDY: With the wider distribution of shareholders geographically and their incapacity to exercise any kind of inspection or control, 2 or 3 per cent would be enough to control. There cannot be any mathematical preciseness about the figure. We have taken 10 per cent only for this reason....

SHRI A. C. MITRA: I know the reason. I am also aware of the difficulties of Government being a government counsel myself. But what I am saying is: those who try to keep to the right side of the law should not be punished.

SHRI K. V. RAGHUNATHA REDDY: Your proposition is: the law is all right but it must be administered well by those who have a sense of justice, understanding of the facts and so on.

SHRI A. C. MITRA: And safeguard should be there . People should know what is the law. Otherwise, they would inadvertently transgress it. Sometimes even I find it difficult to give an opinion whether a company is an inter-connected company. This is with all my experience. What to talk of a poor company executive. He may do something and then go to jail.

SHRI K. V. RAGHUNATHA REDDY: With your experience you also know that as far as the present position about investigation under 237 is concerned, it is like Alice in Wonderland.

SHRI A. C. MITRA: This is nothing new.

SHRI K. V. RAGHUNATHA REDDY: There must be some provision by which at least information can be got.

SHRI A. C. MITRA: I am merely saying this.

Power may be given to senior officers like the Registrar. Secondly, he must have some objective facts, something to bite on.

SHRI A. C. MITRA: I am only saying that at the time he operates he

must have some facts that some transactions were speculative, etc.

SHRI K. V. RAGHUNATHA REDDY: There was a company whose balance-sheet was healthy; you could not know anything; it has been inspected. The company had been supposed to be purchasing stocks from a company which did not at all exist in our country and on the supposed stock loans were taken from the banks on the strength of the stocks. Unless inspection was there this fact could never have been revealed.

SHRI A. C. MITRA: Roads were supposed to have been built by the CPWD but when inspection came there were no roads; but the money from the public exchequer has gone. There are departments like that.

SHRI S. R. DAMANI: In the memorandum they say that the Bill would adversely affect the normal working of company management but would also retard the tempo of industrial development. There are States like M.P. and Orissa where more industries ought to be set up. I want to know precisely the main reasons for this statement: the penal clauses, restrictions on investment or restrictions on incentive.

SHRI A. C. MITRA: Perhaps the hon. Member has never driven a car himself; otherwise he would know the dangers of somebody dictating to the driver from the back seat. Your attention is not focused on the road and you run over people. Mr. Damani ought to know what the difficulties of the corporate sector are. Today the private sector does not get finance; all sources of capital such as banks and insurance companies have been taken away. Every single step of the private sector is suspect. In these circumstances it cannot function or progress. The main reason is too much grandmotherly control on the part of Government, lack of finance, lack of trust in your own people and countrymen. These are the three basic factors retarding economic development.

MR. CHAIRMAN: I want to know whether you agree with me that we should give much greater emphasis on social and economic offences than before. A man who steals Rs. 5 from somebody's shop gets a month's imprisonment; a man who steals millions of rupees through misuse of licences gets a meagre punishment. Socio-economic offences are of a grave nature and have a wider impact on our country's economy.

SHRI A. C. MITRA: If there is violation of law, unless you meet out adequate punishment you are not doing your duty to society.

MR. CHAIRMAN: Do you agree with me or not that you should give greater emphasis on social and economic offences and provide for more punishment?

SHRI A. C. MITRA: I entirely agree with you. I also add that just as you have provided for punishment for offenders, you must also see that the economy expands and unnecessary restrictions are not there.

MR. CHAIRMAN: You are objecting to inspecion without notice. I am talking to you in the language of a common man who puts the question to me. I also happen to belong to your profession: he asks: you have a surprise inspection of a shop and get a petty shopkeeper who is selling some article of food subjected to surprise inspections: he is a small man who may be making some small money. Or there may be a clerk who has received Rs. 5; somebody complains and he is punished; or there may not be any foundation for the complaint. I want to know this. You must have come across lawyers. Some companies, whatever be their number, may be there who may be indulging in malpractices and grave acts of swindling. Suppose your reasoning is accepted, then there should be no surprise inspection; you must give notice, ask him to explain it. You and I as lawyers know that nothing will re-

main if a notice is given. As the hon. Minister said leave aside that we are making any surprise inspection as such; there is routine inspection where we go and inspect the accounts. Why should inspection always be accompanied by a notice?

I find that the tenor of your argument is based on the preciousness of individual liberty, which is very valuable in a certain context. But should the individual liberty be guaranteed to that extent that it clashes with or harms the interests of the community as a whole? Should our concept of individual liberty in that context change or not? That is why we are changing even the fundamental rights mentioned in the Constitution. If the individual liberty conflicts with the interests of the community, should we not frame legislation in such a way that the welfare of the community at large overrides the individual liberty?

SHRI A. C. MITRA: Perhaps I have not made myself clear and there is some misunderstanding. I am not averse to a surprise inspection. Circumstances may exist in which such surprise inspection may be justified; may be the information is false but the person must have in his possession material which, on the date he makes the surprise inspection, justifies his action.

MR. CHAIRMAN: Why should there not be general inspection of every company as provided in section 209?

SHRI A. C. MITRA: One is inspection and another is investigation. You are talking of investigation. Suppose the Company Law Administration staff descend on a company suddenly with a large number of staff. What will be left of the prestige of that company? I am saying that even such an investigation is justified in the large interests of the country, provided the registrar has material before him to justify such a course of action. Take the case of section 96, Cr. P.C. which says that no police officer can search my house without a search warrant from the magistrate. But he can do so under special circumstances, and those special circumstances are laid down in the Code of Criminal Procedure. Here also some safeguards should be there. I am not suggesting that the surprise inspection should not be there.

MR. CHAIRMAN: A food inspector goes to a shop and takes a sample. When he goes to the shop he has not got any *prima facie* material with him whether the shopkeeper is selling adulterated material or not. He is checking a social evil.

SHRI A. C. MITRA: I have no objection to your having an Inspector. But where you want an inspection of the type envisaged in this Act, it is an investigation. In such cases you must have materials to justify that. You cannot suddenly descend upon my company and keep investigating the accounts. The Registrar must have in his possession material that these people are indulging in some objectionable practice.

MR. CHAIRMAN: Suppose there are persistent complaints that in a house in a certain locality something illegal is going on. Would you insist that in such a case also prior notice is necessary?

SHRI A. C. MITRA: There is provision in the Code of Criminal Procedure for such contingencies. But there should be safeguards. Take a case of a company like Bird and Company in Calcutta, which is a very big company. Suppose one fine morning hundreds of people belonging to the Company Law Board descend on that Company. What will be the prestige of that company? So, it should be done only when you have sufficient reason; but not without reason.

MR. CHAIRMAN: What about our emphasis on economic offences?

SHRI A. C. MITRA: I entirely agree with you that if a person has stolen Rs. 20 lakhs, he should not be allowed to escape with a mere fine of Rs. 5,000. That is not a punishment at all. The

punishment must be commensurate with the offence.

MR. CHAIRMAN: Should our conceptions and definitions of individual liberty be the same even in the changed context?

SHRI A. C. MITRA: If I may say so with the utmost respect, there is no question of any change. They are always subject to the collective good. If we take the Cr. P.C. or I.P.C. the individual liberty is always subject to collective good, collective security. So, there is nothing new that you are saying.

MR. CHAIRMAN: So, you do not agree that the conditions have changed which call for a different interpretation?

SHRI A. C. MITRA: No, Sir. They are already there; only they are magnified.

MR. CHAIRMAN: I thank you and your colleagues for the assistance given to the Committee.

(The Committee then adjourned)

ACCORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972.

Friday, the 27th October, 1972 from 11.00 to 13.25 hours.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri G. C. Dixit
6. Shrimati V. Jeyalakshmi
7. Shri Ramachandran Kadannappalli
8. Shri D. K. Panda
9. Shri Narsingh Narain Pandey
10. Shri H. M. Patel
11. Shri S. B. P. Pattabhi Rama Rao
12. Shri Jagannath Rao
13. Shri Bishwanath Roy
14. Shri R. R. Sharma
15. Shri P. Ranganath Shenoy

Rajya Sabha

16. Shri B. T. Kulkarni
17. Shri S. S. Mariswamy
18. Shri M. K. Mohta
19. Shrimati Saraswati Pradhan
20. Dr. M. R. Vas
21. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection*
4. Shri Ch. S. Rao—*Deputy Secretary*
5. Dr. (Mrs.) Usha Dar—*Joint Director (Research and Statistics)*
6. Shri C. R. D. Menon—*Under Secretary*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary*

WITNESSES EXAMINED

The Young Chartered Accountants' Forum, Calcutta

Spokesmen:

1. Shri M. C. Bhandari—*Chairman*
2. Shri K. M. Azad
3. Shri I. P. Khanna
4. Shri H. K. Chowdhury

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: I welcome the witnesses on behalf of myself and the Committee. I hope your views would help us in our deliberations.

Before we begin our deliberations, I would draw your attention to Direction 58 which states that the witnesses should be informed that the evidence they give would be treated as public and is liable to be published unless they specifically desire all or any part of their evidence to be treated as confidential. Even that part which they want to be treated as confidential is liable to be made available to Members of Parliament.

Your memorandum has been circulated to the members. If you want to mention any new points or emphasize what you have already mentioned, you may do so.

SHRI M. C. BHANDARI: At the outset, I would like to express our gratitude for giving us an opportunity to appear before the Committee and tender oral evidence on the momorandum we have submitted on the Companies (Amendment) Bill, 1972.

We very much welcome the move the Government of India, Ministry of Company Law Affairs, has taken in trying to amend the relevant provisions of the Companies Act to break concentration in the profession of audit and to create a healthy professional atmosphere in the interest of the corporate sector. We quite agree with the government when it says that there is concentration in the hands of a few established audit firms in our profession and that a close association exists between the auditors and a group of companies. We whole-heartedly with this conclusion of the government which they might have come to after going through a large volume of papers, representations memoranda and other things submitted to them from time to time during the last four or five years.

The amendment suggested for section 224 by clause 20 is that if a person or a firm of auditors has been auditing the accounts of a company consecutively for three years, the same firm would not be appointed auditor unless it has the approval of the government. In our opinion, this would not serve or achieve the objectives of the government, to which we fully subscribe. Therefore, we have come out with some alternative proposals. If you introduce the system of rotation, any business house may rotate the same few auditors among its group of companies without any control of the government, because the companies are required to come before the government only if the same firm of auditors is being appointed.

Secondly, this does not also break the close association of auditors with the company management. It can very

well happen that the three leading auditors' firm may rotate among themselves all the major companies and maintain the same close association. Therefore, in order to break concentration we suggest that one auditor should not be allowed to work for more than what one can professionally do. We suggest a provision in the Companies Act that a person shall not be appointed as an auditor for more than ten companies either incorporated under the Companies Act or under the various Acts of Parliament. Secondly, the appointment should be in one's individual name.

Ours is a noble profession. Therefore, it should be set on par with other noble professions like legal or medical profession. In these professions it is the personal case and attention which is dominant. Whereas what happens in most of the leading firms of auditors is that one partner simply signs the balance sheet and almost all the work is done by other people working under him. To avoid all this, under the statute itself an auditor should be appointed in his individual name. Then the shareholders will also know what is their auditor and appoint one in whom have confidence.

Then we suggest that for such an auditor certain limitation must be placed under which he could justify the work of audit that he does. In case of other professions there are natural limitations. In the case of legal profession, for example however eminent an advocate may be, he cannot take up more than one case at a time. If he is to appear in the Supreme Court, he cannot at the same time appear in Calcutta or Madras High Courts. In the case of doctors also, however, efficient a doctor may be, he cannot see more than a limited number of patients. But, in the case of Auditors, the practice has so grown that one single Auditor by commercialising his firm, may be appointed as an auditor of any number of companies in the whole country. Therefore, professionally and also from the view point of efficient auditing, it is not perhaps justified that he should do the type of unlimited amount of work that he has so far been allowed to do. Therefore, we suggest that, in our opinion, 10 audits would be a sufficient and reasonable audit work for a Chartered Accountant who is practising and whose appointment is being made in his individual name. If he has kept a big organisation to do that, he can select 10 big audit and retain them. If his organisation is a medium one, he will naturally get medium sized companies. When a provision for such limitation was introduced in the case of Directors, a limit of 20 was placed—that is a person cannot be appointed a Director for more than 20 companies, the big Directors then selected 20 big companies and released the smaller ones. So also, in our case, if a ceiling of 10 is prescribed, persons who have got big organisations would retain 10 big audits as we have no grudge against them. Now they can take all sorts of companies, big, medium and small. Therefore, the problem of the utilisation of the professional audit talent available in the profession has arisen. From the national point of view also it is essential that all economic transactions of the country should be put under the scrutiny of a large number of auditors which amount to about 6,000. Now actually, only 20 audit firms do 80 per cent of the audit work. Therefore, the talent and professional expertise of about, I should say, 5,000—6,000 Chartered Accountants are remaining idle or unutilised or are being utilised for some other purpose and not for the purpose of audit. Therefore, to utilise the national resources and the national talent it would be very much appropriate that this Committee consider some effective means as to how this can be achieved.

The second point is as to how to break the close association of business with auditors. We have submitted three proposals in this regard. Firstly, an Auditor should not be eligible to be appointed as an auditor for more than three companies belonging to the same management as defined under

the proposed Sec. 4B of the Companies Act, 1956 which is the subject matter of amendment. If an auditor is only appointed to not more than three companies under the same management, he may retain his independence. Now the situation is: take the Mafatlal Group. Almost all companies auditors are the same Audit firm. If the auditor qualifies one company's balance-sheet, his total audit work in that group is lost. To ensure independence it is not only necessary to be independent but it should also appear to be independent. It is therefore, necessary that there must be restriction that an auditor should not be appointed as auditor of more than three companies under the same management as has been defined under section 4B of the Companies Act, 1956 under the proposed amendments.

Our second proposal is: no auditor should be allowed to act as a management consultant of the same company of which he is the auditor. This is a very peculiar position where an auditor is himself advising the management and at the same time he is auditing whatever the management has done. Therefore, although the Chartered Accountants are best qualified to do the management consultancy work, but the same Chartered Accountant who is the auditor of that company should not be permitted to be the management consultant of the company of which he is the auditor.

The third suggestion to break close association of the auditor with the business which we have submitted is to introduce proprietory audit. At present what you find in the Audit Report is whether the Auditor has seen the books of accounts or whether he is in agreement with the presented balance sheet or the profit and loss account or whether he has received all the explanation that required in the case of audit and he has that the accounts show a true and fair picture according to the provisions of Schedule VI. This kind of audit report does not serve the new socio-economic purposes of audit. The society now expects that the Auditor should not merely say that the books of accounts and the balance-sheet and the profit and loss account are agreeing with each other but should come out with certain concrete proposals, concrete ideas and concrete facts and figures whereby the company may also be assisted and at the same time national resources are put to better use. Therefore we have submitted in our memorandum that statutory guidelines for audit should be prescribed under Sec. 227 and I would read out four important objectives that the auditor must be required always keep in view:

(1) Avoidance of wastage and proper utilisation of resources.

(2) Minimisation of manipulations and malpractices by those in control of company's affairs.

(3) Reduction in tax evasion.

(4) Fair payment to labour and fair prices to consumer.

If these four basic objectives for audit are prescribed, the auditors will be doing a national service and the auditors would themselves be ensuring their long-term existence in the society. Otherwise, the society may one day say, 'If what the audit does is to only certify the correctness of figures, then we would accept them as certified by Directors'. What is the professional expertise needed to certify the balance sheet and the profit and loss account at present? Any ordinary Commerce Graduate can give the present audit certificate. Therefore, if our professional training and expertise is to be put to national use, the auditors must be given powers and be required to look into the companies affairs objectively from propriety angle and should be required to report that all the material transactions of sales, purchases, etc. entered into by the company during the year stand the test of propriety and the accounts have been kept in accordance with sound accounting principles. I think these three suggestions would achieve the second objective which the Government has in view.

I would like to say two or three new points which we have not covered

in the memorandum. A new section 224A is proposed to be inserted and it is provided there that where the Government or financial institution is holding 25 per cent share capital in a company, the appointment of auditor of such a company shall be approved by the Central Government. We would also like to add that apart from the criteria of share capital, one more criteria in case where the Government and financial institutions give huge advances and loans to companies should also be prescribed. We, therefore, make a suggestion here that in addition to the present criteria, the second criteria should be that where the share capital and loans given by the Government and other financial institutions to a company amount to 50 per cent or more of the total capital employed by the company, the appointment of its auditor should also receive the Government's approval. I think if the second condition is also kept, that would protect the public interest more than what is does now.

MR. CHAIRMAN: It would be in addition to what is there. That is what you mean?

SHRI M. C. BHANDARI: Yes, that is so. Another suggestion is this. Under the proposed section 383A, under clause 29, each and every company of a prescribed size is required to appoint a Secretary with prescribed qualifications. These qualifications I find have not been prescribed. Many of the Chartered Accountants are quite young and qualified for the same. They are already acting as secretaries of many companies. There is the apprehension that while prescribing qualification, the qualification of chartered accountants may not be included. Therefore in Clause 29 it should be specifically stated that a C. A. would also be eligible to be appointed as a Secretary of a limited company provided he satisfied all other conditions which might be prescribed.

Lastly we whole heartedly support the contents of the provisions of the Bill, which you, Sir, in your individual capacity has introduced in the Parliament. And there we also agree with what you have suggested in regard to Govt. companies under Section 619.

We are not in sympathy with the present provisions of rotation of audits. But if after full consideration of your committee, these are retained then certain necessary safeguards have got to be takn to see that they do attain the objective of breaking concentration. So we have suggested in our memorandum that all companies, whether private companies or others, having share capital of Rs. 25 lakhs or less should be exempted from the provision of rotation. We have also suggested that where-ever there is common arrangement between different audit firms for mutual rotation they should be treated as the same auditing firm for that purpose and if there is any common partner amongst them they should also be taken as the same auditing firm and once an auditor has audited for 3 years the same auditor should not be reappointed before the lapse of a period of at least 9 years. We are suggesting this if the rotation provisions if at all, are retained they should be retained with these modifications. I would now thank all the Committee Members for giving us this patient hearing.

SHRI JAGANNATH RAO: I am glad at your remarks regarding the appointment and reappointment of the auditors. We found the shareholders association speaking on behalf of the management. I am glad of your remarks where in you confined yourself to these items. You have confined yourselves to the clauses of the Bill. How many firms did you audit? How long did you audit?

SHRI M. C. BHANDARI: I am auditing about 50 companies. I am senior partner of M/s. M. C. Bhandari and Company. I am in practice since 1958.

SHRI JAGANNATH RAO: Are you aware of auditing firms connected with management in any other company?

SHRI M. C. BHANDARI: Fortunately, I do not at all control audit number of companies belonging to the same group of business. I therefore do not have any personal experience in this connection.

SHRI JAGANNATH RAO: You said 20 auditing firms or so control about 80 per cent of the auditing transactions of the whole country. That is what has happened. Now, in regard to that, what is being done is this. Government is fully justified in trying to break this concentration so that young chartered accountants can get their due share. Clauses 20 or 21 do not serve the purpose, you say. Suppose I say, appointment of auditor should be left to Govt. itself. It should not be left to the general body of the company but should be left to the Government. Will that be more effective or not? What do you say?

SHRI M. C. BHANDARI: Theoretically perhaps this suggestion is all right, but in practice what we have seen is first the reverse. Even in case of public sector companies where the Central Govt. appoints auditors in consultation with the C. & A. G. there is concentration. In those cases of Govt. companies also what we have noted is that there is great amount of undue concentration. So, from the experience we are not convinced that in the hands of the Government at this moment justice would be done to the problem.

SHRI JAGANNATH RAO: That is why Govt. has come forward with this particular provision. After three consecutive years reappointment will be with the Government. It does not mean the same firm will not get. They will be given due consideration. It depends upon performance of the firm, integrity of the firm, what work it has done, so many things like that. It might be reappointed or not reappointed depending upon all these factors.

SHRI M. C BHANDARI: My submission is Sir, that the company would not come to the Government at all. Why they should come to the Government for approval, when they can make arrangement with only a few big audit firms for rotating the work.

MR. CHAIRMAN: Although provision is there, he argues this way. He says provision is there. But he says this will happen. Companies would not come to Government in a different manner. They would be appointing a person, the same person, who is a partner in another firm. The same auditor would be in some partnership of some other firm. Same person auditing the company would be again taken in another way by appointing another firm in which he joins as a partner. This is what would be happening and in this way the purpose of the Act would be defeated and proposed amendment would be defeated. That is his argument.

SHRI JAGANNATH RAO: When firm is given audit, is it possible to name an individual like that? Anybody may be a partner in any particular firm.

SHRI M. C. BHANDARI: Even at present, it is only an individual partner who is responsible for the audit work, although the appointment is in a firm name: He signs in firm's name but the person who signs is only accountable or liable for default under the Institute of Chartered Accountants of India Act. The same persons with different firms may be engaged by rotation. That is why what we have suggested is that this should be looked into, and safeguarded and the appointment should be made in individual's name. Otherwise this will not serve the purpose.

SHRI JAGANNATH RAO: On 24 you said loan capital should be taken into consideration. Subscribed capital and loan capital comes to 50 per cent or more. Is it 50 per cent including loan capital?

SHRI M. C. BHANDARI: I said, that both the criteria should be fixed up

SHRI JAGANNATH RAO: Public sector has 25 per cent of capital of private company. The company subscribes 15 per cent and the rest it gets by loan.

SHRI M. C. BHANDARI: I said both share capital and loan. So clause 24A will be applicable if either the share capital held by the Govt. etc. is 25 per cent or more or, if the share capital and loan combined is 50 per cent or more.

SHRI JAGANNATH RAO: You are acting as secretary to some companies. There are some Secretaries, management secretaries and all that. There are professions which have got employment avenues. Should you encroach upon them?

SHRI M. C. BHANDARI: That is not so. They are not so much in numbers to fill up all the positions required for secretaries. Chartered accountants are equally qualified. Our syllabus and training requires full knowledge and experience of company law, secretarial law practice. We are fully acquainted with provisions relating to company law and secretarial practices. We feel that the secretarial responsibility could well be discharged by chartered accountants even better.

SHRI JAGANNATH RAO: That is, those persons now acting as secretaries should also be considered for the appointment. If such a provision is made that will be better you say.

SHRI M. C. BHANDARI: Yes, Sir.

SHRI M. K. MOHTA: In page 2, you said about appointment of auditors. You said this should be made in his individual name. What purpose will be served by the appointment of auditor in his individual capacity instead of appointment of the auditing firm? When a firm signs the balance sheet, there is a joint responsibility. There are serveral partners, several employees, who have gone into several aspects of the working of the company. The firm jointly is reasonsible for auditing the accounts of the company and stands responsible as such and therefore I want to ask whether it would not be in the interest of the company that a firm with joint responsibility signs instead of just an individual.

SHRI M. C. BHANDARI: We would support this argument if all the partners sign that and assume responsibility. It is not so. Appointment is made in the name of the firm but only one partner signs it. Only that partner is responsible uner the Institute of Chartered Accountants of India Act for any misconduct. The advantage in making the appointment in individual name would be that the shareholders to whom the accountability is to be discharged would know precisely as to who is the actual auditor. He does not know now because firms with such names exist where the partners are different. If auditor 'X' is appointed as in his individual name, the shareholdres would know that man 'X' has been appointed as their company's auditor.

SHRI M. K. MOHTA You said about concentration of audit. Let us accept for the purpose of argument that there is concentration. If so, what are the reasons for such concentration? An auditor is awefully busy. Still the company, instead of appointing somebody who is comparatively free, appoints the same person as auditor who is already overworked. Some reason must be there. There is a certain expertise available with such big auditing firms. They can afford to have partners as experts in different branches, one in company law, another in taxation and so on and so forth. This point of view was placed before us the other day. With such availability of experrtise there is more confidence in the partners of those audit firms to do justice to the work. This is what was said by one of the witnesses. Now, what I would like to ask is this. What are the reasons here? Why should concentration take place at all?

SHRI M. C. BHANDARI Concentration is there for historical reasons

and for reasons of convenience of management. Managing agency houses appointed the same set of auditors for all the companies they managed. The groups of managing agencies houses had the same set of auditors for years together. They have thus acquired goodwill; they have acquired some glamour of the name. All the big companies now follow the same practice. This is what has happened. The other reason for concentration is this. Foreign collaboration agreements are there. These big firms have some connection with some audit firms outside the country. Those outside connected firms suggest the names of only those audit firms in India with whom they have some arrangements. By this there is leakage of foreign exchange also. If foreign agency sets up some industry in India he makes it a condition that some particular audit firm should only be appointed as auditor. In 99 per cent of the foreign collaboration agreements almost you would find that the same three or four auditing firms have been appointed as auditors. While we want to ensure that everybody qualified under the Chartered Accountants Act work as independent auditors, we find this tendency namely, that only a few persons are favoured. This is what happens, Mr. Mohta's argument is, may be clients find their services better and therefore they are appointed. My argument is this. It is because of the convenience of the management to deal with one auditing firm that the work is given to the same audit firms. But as I had submitted already, independence of outlook is jeopardised in so far as his position as auditor in these companies is concerned.

Therefore concentration of this type is there.

Another thing is concentration which contains a bad element is that most of the audit work is being done by unqualified staff. Now, conditions and qualifications have been prescribed by the Companies Act for an auditor but in effect the work is done by most of the unqualified people or employees, who are not responsible to the shareholders or to any other authority. You will find that in Western countries there are audit firms which consist of a large number of partners. For example, in U.S.A., Price Micheal and Marwick have got more than 600 partners. Here, we do not have more than 13 partners. So, the whole lot of 500 people in one single audit firm may be unqualified staff and therefore the whole purpose of independent audit by a professional firm is being damaged.

Mr. CHAIRMAN: You have stated that the reason for some firms appointing the same audit firm is concentration of expertise. Mr. Mohta's argument is, since expert opinion is available in bigger firms and because the bigger firms are in a position to give all the expertise at one place or in one group, is it not the reason for the firms appointing bigger audit firms so that they may have all the services. That is the background which has led to concentration of audit. Do you agree with his views in this regard or not?

SHRI M. C. BHANDARI: I would make a distinction between audit functions and other services of expertise like expertise in taxation Management, expertise in Company Law, etc. An auditor is the guardian of the shareholders and he must be a person independent and acting in a judicious capacity, unattached and unbiased. That is all the more reason why concentration should be broken because if all the various services are rendered by the same audit firm, the auditor's independent view point and objectivity is hampered.

SHRI M. K. MOHTA: Referring to the last para on page 2, it seems to me that the argument is based on the premise that bigness is the same thing as badness. It appears that if

a small audit firm is appointed, there will be no close association with the Management and there will be better safeguarding of the interests of the shareholders and better safeguarding of justice and so on and so forth.

Another point that has been made in this para is that anybody who is an auditor of ten companies should be debarrred from taking up any further audit. These ten companies may be very small companies which may not have adequate reason or necessity for the employment of experts or may not even be able to give a reasonable remuneration to the auditor himself. What are the reasons behind the suggestion propounded by the witness that there should be a ceiling of ten companies when there is no such ceiling in the case of other professions? The witness said that a Doctor is limited by the time at his disposal. Similarly, an auditor is also limited by the time at his disposal.

MR. CHAIRMAN: Not by the time but by the nature of his work; that is what they have stated.

SHRI M. K. MOHTA: All right; but an auditor is also restricted by the time and his capacity to render service to his clients. Why should any restriction be placed on a citizen of free India in doing as much work as he is capable of doing? There are contracting firms which take contracts for crores of rupees; there are not restricted. There are no such restrictions on citizens of India; why should the auditor be singled out for such kind of restriction?

SHRI M. C. BHANDARI: We want to differentiate our profession from the profession of contractors. We want to render professional service and, as you have said, the nature of the work is such that we can delegate 99 per cent of the work to the staff. We have not made any distinction between big and small audit firms. We are saying that whether it is a small audit firm or a big audit firm, if it has got ten companies for audit it should be disqualified. Therefor, there is no distinction between a small and big firm and your problem will be solved if a big auditor retains 10 big audits.

MR. CHAIRMAN: It is not a question of a personal problem being solved; it is a question of a system which we want to evolve for the benefit of the country.

SHRI M. K. MOHTA: If an auditor has got ten small companies which give him a revenue of Rs. 15000 a year he would not be able to employ experts.

SHRI M. C. BHANDARI: Is it your suggestion that all small firms should disappear as they cannot employ experts? As far as small companies are concerned the expertise require is also and therefore they do satisfy the requirements of the small companies.

SHRI M. K. MOHTA: So, there should be a monetary ceiling of about Rs. 20,000 or so.

MR. CHAIRMAN: It may lead to the same thing—ceiling—in some form or other. If it is limited to ten companies and if they are big firms each paying Rs. 20,000, it would mean Rs. 2 lakhs. If they are small companies it would be less.

SHRI M. C. BHANDARI: It is not ceiling on income if one auditor wants to increase his income, he can increase his fee. One can retain the same clients if he is an auditor of high status.

SHRI M. K. MOHTA: Regarding propriety audit, under para 4, page-3 of your Memo. it has been submitted to the Committee that auditors are already qualifying their reports and a publication of it has been given to us on a quite a number of calculations in respect of all the accounts of a company. Is it not a fact that with the system of qualifying balance sheet, as it is already prevalent as far as

manipulation and malpractices are concerned as mentioned in para 3, the auditors are already doing so and as regards tax evasion the auditors are even today expected to know it and in fact bring it to the notice of Tax Collection Authorities? Regarding the internal regulations of the company in respect of sales, purchases of raw materials, utilisation of plant capacity, employment of personnel, etc. how does the witness justify that the auditors should be the sole judge of a question on which even the Government or Supreme Court would perhaps find it difficult to pronounce judgement on it. Who is going to judge whether an auditor would be a fit and proper person to pronounce a judgement on a very thorny question of fair price to labour? My opinion is that the labour price is Rs. 1000 as fair wage.

SHRI M. C. BHANDARI: In regard to the first point regarding the auditors qualifications and the publication, I would like to make one point clear. I did not say that auditors are not discharging their duty as they are at present required under the present rules in force. In fact, the said publication was published by myself when I was the President of the Institute of Chartered Accountants of India. But in this only those qualifications of auditors are covered where they have not been able to satisfy the terms or terminology of the present report which the auditors are required to give. For example, where the balance sheet does not agree with the books of account and so on the auditor will qualify his report. But we have never come out with qualifications on the matters we have now suggested. For example. where the Directors have appointed a particular relative who has no basic qualification but the company is paying him Rs. 10,000/- the propriety aspect should be looked into. In case of Government companies, we have got a power to do so and a right to say so. In private sector also the auditor should be given power to go into the question of propriety and report where any transaction entered by the management of the company is not in accordance with sound business principles.

Now, the question of fair payment to labour or fair price to consumers may ultimately be decided by the Supreme Court but despite this final verdict, the Management do decide what is the fair price that they should fix. In the same way the auditor should form his own view about the price. May be that the same is subject to Supreme Court's scrutiny. Similarly an auditor can examine that the payment to the labour has been made in such a way that it protects the interests of the employees. In such cases, the auditor must of course have his objective view point and guidelines.

SHRI M. K. MOHTA: My question is whether under the present system the auditors are in fact bringing to light cases of manipulation and tax evasion.

SHRI M. C. BHANDARI: At present we do not accept responsibilities of such things. In course of audit if we find something, we give our comments and we bring it to the notice of the shareholders but it is not the objective with which we proceed. Therefore, we do not look into this aspect at all but if such things come to our notice we certaintly bring it to the notice of the shareholders.

SHRI R. R. SHARMA: Do you suggest nationalisation of audit business?

SHRI M. C. BHANDARI: No, sir. We feel that it need not be nationalised.

SHRI R. R. SHARMA: Regarding the rotation, do you think that it would bring harmful results and the practitioners working in the morussil would be affected by this?

SHRI M. C. BHANDARI: Yes, sir, because by reason of rotation other

the small auditors in the mofussil would lose the business and that will go to somebody else.

SHRI H. M. PATEL: The witness said that he audits some 50 odd companies. So, he should know why those companies prefer him to anybody else. Is it because he is said to be efficient and good or is it because he does his duties satisfactorily? What are the reasons, why he is preferred and why is he given 50 companies while others are getting less?

SHRI M. C. BHANDARI: My simple answer to this is that he is qualified and the more important fact is that the companies and the management find him suitable.

MR. CHAIRMAN: It is too personal a question.

SHRI H. M. PATEL: My question is not personal. I am only saying that he is one of the larger auditors in the country. He is enjoying certain reputation and that is why the companies go to him. What are the reasons for his getting this preference from the companies?

SHRI M. C. BHANDARI: I would have been hundred per cent with you that if in the reports of these big audit firms you would have found some material which would be of some use to the society and the shareholders. The audit reports given both by big and junior audit firms contain the same material. It is because of this also that we come to the conclusion that it is because of the convenience of the management that the same auditors are appointed.

SHRI H. M. PATEL: You said in answer to a question that it is due to historical reasons, you could have foreign collaboration. Now, you will know that the companies came into existence about 100 years ago but you came into existence 15 years ago and yet you have been successful in attracting a large number of businesses. That means there must be something to do with the quality of the audit and the reputation that he has achieved. These factors play a part in preferring his services.

SHRI M. C. BHANDARI: In audit profession, the assessment of professional quality can not be assessed so easily. But in case of other services this is easier. For example, if a CA is appearing for tax case, there by his talent and quality, he wins a case or brings some relief to his client his is considered to have done a good case. Whereas in the case of an audit, where he has to certify the things in the way that I have mentioned earlier, how his professional quality could be assessed. The same true and fair certificate for all accounts. Therefore the tool of assessing the quality is not available with us. If, however, the balance-sheets signed by big audit firms would have shown us something extraordinary than those signed by other junior firms then we could have said that these big audit firms perform their work better. But if the same thing is there then what is the extra hitch which we get from these firms. That was the real question.

SHRI H. M. PATEL: You yourself said that audit is a profession and as a profession if you say that nobody outside the profession can assess how good a work an auditor does, then it seems to me that it is a strange demand that the profession cannot be assessed by the persons who give him work. However, I may infer that the other services that an auditor renders on account of that, on which his value to the company is assessed.

SHRI M. C. BHANDARI: I said that not only outsiders who took work from him, but nobody can assess quickly as to the quality which he had put in doing the work under the present system.

SHRI H. M. PATEL: You referred in your printed pamphlet to one of your former Presidents of your Institute.

He is highly respected. He receives plenty of work. His is not an historical company. He has not done anything of that kind. So, still, I would like to know from you whether companies are not influenced by the reputation of a firm of auditors before he gives business to that firm.

SHRI M. C. BHANDARI: One can give the reason of reputation. But, in the case of audit, as I said there is no way to assess the quality or the reputation.

SHRI H. M. PATEL: How else you expect a company which wants audit business to be given to an auditor? What should be the criterion that should govern that company?

SHRI M. C. BHANDARI: First, each CA under the Act of Parliament is competent and qualified equally. There is no question of lesser or larger competence to audit the accounts of a company, unless, of course, some complaint, some defect some disciplinary action has been taken against him. Otherwise all the CAs are equally competent to audit the accounts of a company. That is why the Management is free to choose anyone.

SHRI H. M. PATEL: Is this your experience that a youngman who has just passed his examination of the CA, is he fully qualified to audit the accounts as satisfactorily as the experienced CA audits. His experience is of no consideration?

SHRI M. C. BHANDARI: In fact, there are very young CAs who have got big business. But they are very solitary instances. In audit profession it is not much a question of talent; it is a question of organisation. In our profession, even some big audit firms take small work also. They charge Rs. 50/-, 100/-, and Rs. 300/- also.

Shri H. M. PATEL: My point should not be missed. Would anybody who has a choice go to a person who has got some experience or to a person who has got no experience?

SHRI M. C. BHANDARI: He will go to a man of his choice. There are many choices open.

SHRI H. M. PATEL: There are two reasons why this particular amendment has been taken up, that is, concentration and close association. What is the type of close association, according to your knowledge and information, that exists between companies or auditors and their companies which you have found, which you think is not in the nation's interest? Your profession as an auditor is expected to be quality of integrity. It is only such persons who would also qualify for that regard in the profession as well as outside, that have a lot of business, if such people have close association do they have that close association at the cost of their independence and integrity? Is that your experience?

SHRI M. C. BHANDARI: Yes, Sir.

SHRI H. M. PATEL: If your firm has 50 audits. Would you not say that you also come in close association with the company which you audit? Do you lose your independence and integrity because of that close association?

SHRI M. C. BHANDARI: I would have, but fortunately, I do not have audits of companies pertaining to the same group of management.

SHRI H. M. PATEL: Is is only in regard to companies with the same group of management that this difficulty arises.

SHRI M. C. BHANDARI: Yes.

SHRI H. M. PATEL: Your objection is to companies of the same group being given to the same group of auditors. That condition is interesting. But would your point be served if a company does not do auditing of more than 3 companies of the same group?

SHRI M. C. BHANDARI: Yes.

SHRI H. M. PATEL: One of the suggestions is that it may be limited

to 10 companies. You felt that it would be perhaps a solution of the problem. Would you not say that 10 companies would bring in income to the auditor of something like a lakh of rupees?

SHRI M. C. BHANDARI: We are not putting a limit on the income.

SHRI H. M. PATEL: Why I am saying this is that companies that you audit, it does depend upon the auditor . It is for the firms to decide which company which auditor will go. Supposing an auditor gets 10 companies which are relatively small and therefore not capable of giving him more in terms of fee. The young man does not want to remain at that level. He wants to grow. Therefore even if you do not wish to put a limitation, would you not have a limitation of income?

SHRI M. C. BHANDARI: Our suggestion does not put ceiling on income, as one can quote larger fee or could retain larger audit and release smaller one.

MR. CHAIRMAN: He does not mean that. He says whether a celing on the income would be desirable with a ceiling on the number of companies.

SHRI M. C. BHANDARI: It may not be desirable.

SHRI H. M. PATEL: Ten companies for one audit firm may result in a number of auditors not getting even reasonable income because it does not depend upon the auditor which company he will audit until he becomes a very important man in the profession.

SHRI M. C. BHANDARI: If he is having ten and he is stopped taking more firms, then it is good of course, he has choice to take up bigger works. Otherwise, the existing system is not fair. 99 per cent of the practising firms do not have full practice or optimum practice not to speak of 10 audits. Therefore by your own argument, we are saying that these small firms should get audit.

SHRI H. M. PATEL: The object of your proposal is that more auditors may get more business and we will be able to work satisfactorily. It is from that point of view that you have suggested ten. Now if you limit ten companies, a number of young people may suffer. If not, say so.

SHRI H. K. CHOUDHURY: Presently more than 40 per cent of the Chartered Accountants' firm who are in practice their main income is from the taxation and not from the audit work. Besides, even presently those young or small and medium firms, they do not have even ten per cent audit income. Naturally, they will get more income.

SHRI H. M. PATEL: The present position is not relevant with our discussion.

SHRI M. C. BHANDARI: The point of concentration is there and certainly our suggestion is to remove the concentration.

SHRI H. M. PATEL: If the audit is given in the name of an auditor and the limit is fixed as ten and the parteners are also ten, so would that serve the purpose?

SHRI M. C. BHANDARI: Our point is that there must be some limit in the profession.

SHRI H. M. PATEL: I am putting it to you that these additional suggestions which you have given may not achieve your objective of solving the problem of 'concentration' and 'close association' because concentration may still remain in the larger firms.

SHRI M. C. BHANDARI: Our suggestion is also that the appointment should be made in the individual name. If audit firm takes a number of partners and the work increases proportionately, there is no objective from our side

SHRI H. M. PATEL: At the end of your concluding remarks you said that there are three suggestions, and one of them was that the provision of appointment of an auditor who has held office for three years, should not apply to small companies and no auditor should be appointed for 9 years. I am not clear as to what that was.

SHRI M. C. BHANDARI: Our submission is that there must be certain safe-guards to ensure that the objective which is sought to be achieved is actually achieved. With that end in view, we say that in case the proposed provision of rotation is retained the auditor should be considered as the same auditor for conducting the audit if there is any common partner in audit firms or they have some kind of arrangement for conducting audit on one other's behalf. They should be considered as the same auditor for the purposes of provisions relating to rotation. Further the companies with less than Rs. 25 lacs capital should be exempted from this provision.

SHRI H. M. PATEL: Why an auditor should not be re-appointed before the expiry of 9 years? Why not 6 or 12 ?

SHRI M. C. BHANDARI: Under the proposed system, a compay can appoint an audit firm for three years consecutively and after lapse of one year can re-appoint them again for further three years and so on. There has therefore to be certain safeguard.

SHRI H. M. PATEL: Is that a practical proposition for a company? It is for the company to choose which audit firm does his work satisfactorily and naturally it will re-appoint him.

SHRI M. C. BHANDARI: Many other practices might also grow. They would suggest one person of their own staff to do the audit work, but actually they would be doing the audit work. Therefore, our suggestion is that these safeguards may be kept. There is no harm in that. If the companies are going to select some other auditors, there is no harm in keeping these safeguards.

SHRI H. M. PATEL: A new company can also work only for three years accordng to the present pro-provision...

SHRI M. C. BHANDARI: The same audit firm should not be appointed again in the same company before the expiry of 8 years after it has worked for three years.

SHRI H. M. PATEL: That means that a company will have to have four different auditors before it can get back to the same auditors and they must really go on having new auditors all the time, and therefore, there is no question of returning after nine years

SHRI M. C. BHANDARI: The period is sufficiently long to break the close association and forget about the original auditors.

SHRI S. S. MARISWAMY: Are you suggesting this in order to provide more business to the auditors, or do you have any other reasons for this suggestion?

SHRI M. C. BHANDARI: We are suggesting this from two important points of view of natonal importance. Firstly, proper professional attention should be paid to the work which a chartered accountant is required to do. Secondly, the professional talent which is available in the country is not now being utilised. Therefore, if concentration is broken it would be of help to utilize the talent available. These two important national aspects have to be taken care of or looked after.

SHRI S. S. MARISWAMY: Supposing a law is passed tomorrow to restrict the professon of doctors and providing that a doctor could treat only two members in a family and not six, how would you react to that suggestion?

SHRI M. C. BHANDARI: If the society finds that a doctor is giving innumerable prescriptions without properly seeing the patients, then Parliament may and is perfectly entitled to come forward to put a restriction. But at the moment perhaps Parliament has not made up its mind that the doctors are giving prescriptions without properly examining the patients.

SHRI S. S. MARISWAMY: May I know whether a chartered accountant is also giving a certificate without properly going through the accounts?

SHRI M. C. BHANDARI: The nature of the work is such that you cannot assess it and say if it is being properly looked into or not.

SHRI S. S. MARISWAMY: Does your remark in regard to doctors giving indiscriminate prescriptions without seeing the patients not also apply to auditors namely that they also give certificates without going into the accounts?

SHRI M. C. BHANDARI: According to the present system we feel that the position does not reveal that the partners of the audit firms are devoting sufficient time to the signing of a balance-sheet as they should devote.

SHRI H. M. PATEL: One of the witnesses that came before us suggested that the larger firms may be nationalised or that Government might take them over. What is your view on this suggestion.

SHRI M. C. BHANDARI: In case the rotation provisions are kept, the position of the employees who are not qualified would be very precarious, and in that case it may be necessary to protect the interests of such employees and to nationalise the big audit firms where this problem would arise. Otherwise, in other cases, it is not necessary.

SHRI H. M. PATEL: In other words if it is done in the way you have suggested there would be no necessity for it, because all people will be employed and nobody will have to be discharged from his present employment.

SHRI M. C. BHANDARI: No, Sir in what we have suggested, the overall employment situation would improve and not worsen, because if the work of audit firm A is given to audit firm B, the employees may go over to that firm. But if rotation is there, there is no certainty.

SHRI H. M. PATEL: If it is done the way you have suggested, then that would ensure that nobody is displaced.

SHRI M. C. BHANDARI: That is right. Ultimate result will be that there will be more employment.

SHRI P. R. SHENOY: Do you not think that putting a ceiling on the number of firms which a firm can audit will actually encourage closer association amounting to a sort of collusion between the managements and the auditors, especially in the case of big managements and small auditors?

SHRI M. C. BHANDARI: I could not follow your question how a ceiling of 10 would lead to closer association. In fact, it would be lesser association because most of the companies would go over to some other audit firms.

SHRI P. R. SHENOY: The association that exists between the management and the auditors will continue because there will not be any rotation. You are not for rotation?

SHRI M. C. BHANDARI: But I am also giving an alternative suggestion for breaking the concentration.

SHRI P. R. SHENOY: Your suggestion is to break concentration, not for breaking the closer association.

SHRI M. C. BHANDARI: It will break closer association also. We say that there should be not more than three audits under the same management. The other suggestion is propriety audit, namely to check the propriety of the transactions entered by the management. We also say that he should not be a management consultant if he is the auditor.

SHRI P. R. SHENOY: The same auditor would be continued every year. But your suggestion would not result in breaking the close association that exists.

SHRI M. C. BHANDARI: Under the present law, we are not required to report on all matters from the propriety angle etc. But if we are required to report on propriety of transactions, for example, if a company had provided an air-conditioner in a director's bungalow, if we are asked to report on it, then we may say that it is an improper transaction, and then our indepenence would be protected by law.

SHRI P. R. SHENOY: If you cannot audit more than ten companies, you would not like to lose the right of audit of these ten firms. If you lose one, it may be difficult for you to find another one.

SHRI M. C. BHANDARI: That is also the case today. But we would be bound to look into these matters as required under law. Now, we are breaking no law, because the law does not require us to look from these angles; it only requires us to certify that it is true and fair according to schedule VI.

MR. CHAIRMAN: His point is that if a ceiling of 10 is imposed, you would not like to use any of the ten, lest your company may have only mine and have reduced income. In order to retain intact those ten companies, would it not increase the close association that exists?

SHRI M. C. BHANDARI: How would it increase close association? The number of audit with average auditor is not large now, deconcentration of work will enable them to have more.

MR. CHAIRMAN: So, you do not agree with it?

SHRI M. C. BHANDARI: No, Sir.

SHRI P. R. SHENOY: Let us say that a person cannot be a director of more than 20 companies. Similarly, we can put a restriction that an auditor should not be allowed to audit more than ten companies. In the case of directors, they can work in other fields; the restriction is only on directorship of companies, but there is no restriction on their following other professions.

But in the case of auditors, they have to carry on only one profession and they cannot follow any other profession. Do you not think that putting a restriction of 10 in such cases is unreasonable?

SHRI M. C. BHANDARI: Similarly, for a chartered accountant, audit is not the only work. In fact, audit work is only a small fraction of his total work. If you calculate the total work that a chartered accountant does, he does work in regard to taxation, sales tax accounting, costing and so on, the audit work will appear to be very small.

SHRI P. R. SHENOY: They are all incidental. Can an auditor be a businessman? Can he be a contractor?

SHRI M. C. BHANDARI: The chartered accountant under the Chartered Accountants Act is basically a practising accountant. He renders accounting service, consultancy service, costing, taxation and management advice, company law services under the Companies Act, 1956 and soon the

Parliament has given him also the power that he is also qualified to audit accounts because he as an expert in accounts. But auditing is a fraction of his total accounting practice. Therefore, if under law you are creating an institution of audit, you can also under law prescribe the conditions under which that institution would function. If it had been that there had been no compulsion for company managements to get their accounts audited, I would have said that there should be no restriction. But that is not so. Therefore, it can also provide, safeguards that the audit would be done justifiably.

SHRI H. K. L. BHAGAT: You naturally want to reduce the concentration of work in big firms for better utilisation of talent etc. Would you include in this a further purpose, a ceiling on income? Does your Forum believe that there should be a maximum and minimum income? If so, under present economic conditions, what is the minimum and maximum which you would suggest for a chartered accountant?

SHRI M. C. BHANDARI: No, we do not believe in a ceiling for chartered sonal opinion?

SHRI H. K. L. BHAGAT: Does your Forum believe in the principle of a ceiling on incomes in general?

SHRI M. C. BHANDARI: That does not come within our objectives.

MR. CHAIRMAN: What is your personal opinion?

SHRI M. C. BHANDARI: My personal view is that there should be some ceiling for all individuals and there should be a relation between the lowest income and the highest income of a citizen.

SHRI H. K. L. BHAGAT: Under present economic conditions, what should be the maximum and minimum?

SHRI M. C. BHANDARI: My personal view is that one should not be allowed to have an income of more than 15 times the *per capita* income.

SHRI H. K. L. BHAGAT: What should be the maximum and minimum?

SHRI M. C. BHANDARI: It has to be linked relatively. With a per *capita* income of 400, it would be Rs. 6,000.

SHRI H. K. L. BHAGAT: What should be the minimum in your opinion that should be given to a chartered accountant?

SHRI M. C. BHANDARI: I have not given full thought to it.

SHRI H. K. L. BHAGAT: I very much like one or two aspects of your memorandum where you say that audit should have some kind of national and social purpose. Most of the companies you audit are engaged in activities of vital interest to the economic and social development of the country. You suggest enlargement of the scope of audit to see if there is wasteful expenditure, evasion of tax etc. All very good. In view of the importance of your prefession, would you also agree that this profession should have some stricter control over the practices of companies in regard to accounts. Suppose there is negligence or collusion. Some people are chosen for convenience. Would you agree that there must be stricter provisions for control and punishment?

SHRI M. C. BHANDARI: That may be necessary.

SHRI H. K. L. BHAGAT: You have said that companies having a share capital of Rs. 50 lakhs should have an internal auditor appoint. In view of the importance of the work of the company and the irregularities committed in some cases, should the internal auditor be appointed by the C. & A.G. functioning under his control?

SHRI M. C. BHANDARI: No, then the purpose of internal audit would be defeated.

SHRI H. K. L. BHAGAT: How?

SHRI M. C. BHANDARI: Because for that, the C.& A.G. or Government depend on the statutory auditor.

SHRI H. K. L. BHAGAT: Leave aside the statutory auditor. Suppose the internal auditor is appointed by Government or the C. & A.G. for the bigger companies with a share capital of Rs. 50 lakhs or even a crore of rupees, how would it defeat the purpose of internal audit?

SHRI M. C. BHANDARI: If an internal auditor having prescribed qualifications and liable to professional discipline is appointed by C. & A.G. or Government, to such a person we have no objection, but if anybody else is appointed, the purpose may not be served.

SHRI H. K. L. BHAGAT: Not anybody, only a man with the prescribed qualifications. He is under the control of the Auditor General, directly answerable to him, appointed by him. You agree?

SHRI M. C. BHANDARI: No, not that type of blanket power, because that would be interference in the company's management.

SHRI H. K. L. BHAGAT: Some employees of bigger companies appearing before us have represented that if the present provisions in the Act are implemented, it will cause a good deal of unemployment in the profession. Do you agree?

SHRI M. C. BHANDARI: Yes, that is why we have suggested some changes.

SHRI H. K. L. BHAGAT: You also feel that this would cause unemployment?

SHRI K. M. AZAD: It will not, it will create slight dislocation for the time being. The accounts will be audited by the chartered accountants only so that the flow of work will be among the chartered accountants. Those employees can be shifted to other chartered accountants.

SHRI H. K. L. BHAGAT: You have said that some bigger companies find some big auditors as convenient. Why are they more convenient than small audit firms?

SHRI M. C. BHANDARI: We have not made that comparison.

SHRI H. K. L. BHAGAT: Certain firms find it convenient to appoint certain firms as their auditors. Why?

SHRI M. C. BHANDARI: Convenient from many angles.

SHRI H. K. L. BHAGAT: What are those angles? Kindly specify at least some.

SHRI M. C. BHANDARI: If for instance they have to deal with only one audit firm, they could suggest how to make the accounts, how to regularise things. It is convenient to deal with such confidence with a limited number of persons.

SHRI H. K. L. BHAGAT: In the light of your knowledge could you tell us whether the dominent intention of the management in appointing auditors is to cover up deficiencies and irregularities and to provide them points for defence? Or is the dominant intention to do everything according to the company law and comply with the provisions straight? You have yourself said that it must serve a national purpose.

SHRI M. C. BHANDARI: It is an admitted fact that managements in India are not ideal managements.

MR. CHAIRMAN: So, you can infer from that further.

DR. M. R. VYAS: According to representations already made, a lot of

employees fear about their job safety and this includes some chartered accountants employed by big firms. In your analysis you say that the proposals contained in the Bill would not break concentration while the proposals put forward by you will break concentration. You also say, the provisions of the Bill will cause unemployment and your proposals will not do so. Is this a genuine fear or is it inspired by the firms who are going to be affected?

SHRI M. C. BHANDARI: Our proposition would mean transferring the employment of the very same persons to other firms. But if rotation is introduced, certainly employment would not be certain. Because the work which had been transferred would again be transferred after three years. Therefore the position of employees under the system of rotation would be precarious.

DR. M. R. VYAS: It does not break concentration then.

SHRI M. C. BHANDARI: Qualified chartered accountants are joining these big firms or industry; if work is taken away from these firms, they would leave service and start their own practice. In the case of lower category of employees, they could not do that.

DR. M. R. VYAS: You suggested nationalisation might have to be done. What part of it has to be nationalised?

SHRI M. C. BHANDARI: Our idea is that if rotation is there, the employees of big audit firms would be dislocated. So, their services should be nationalised. Government may form a national audit bureau consisting of employees of those firms and utilise their experience for doing inspection, audit, investigation, etc.

DR. M. R. VYAS: Do you suggest that there should be a provision that of the employees in big audit firms so many should be chartered accountants, they should be in certain proportion?

SHRI M. C. BHANDARI: That precisely the outcome of our suggestion. One partner will emerge for every 10 audits.

DR. M. R. VYAS: The expertise required in the big firms has been referred to. Does the chartered accountant require any other expertise for his normal work other than his own knowledge?

SHRI M. C. BHANDARI: Every chartered accountant does possess the qualifications for doing audit work.

DR. M. R. VYAS: Do you agree that the so-called expertise being required is for purposes other than auditing the firms, for the purpose of helping out the company?

SHRI M. C. BHANDARI: Actually expertise and training is given only for audit purposes. Their audit expertise is remaining idle and hence our suggestion for deconcentration. In other spheres you do not require much staff or training. A lawyer has to appear before an income-tax officer or a doctor has to give consultation. They require very small staff. Only in the case of audit we require audit clerks, staff etc.

DR. M. R. VYAS: A suggestion has been made that the bigger firms supplied expertise on company law, labour law, etc. Is this expertise helping the auditor helping the auditor in work other than audit?

SHRI M. C. BHANDARI: Other than audit. They charge for each and every service.

DR. M. R. VYAS: Probably to help them out of certain difficulties.

MR. CHAIRMAN: That is the interference.

SHRI SYED AHMED AGA: I presume you have very intimate knowledge of company affairs. I shall ask a few general questions. Do you confirm that there is need to safeguard the interests of the non-controlling shareholders and for preventing managing agents entering through the back door by accepting jobs? Do you confirm that there is need to prevent utilisation of resources for purposes which are not proper. Do you confirm that it is a questionable act to have sole selling agencies for doing propaganda which is not really needed; Do you also confirm that it is questionable to have appointments of relatives without a resolution of the shareholders? Do you confirm that there is need for effective control of the foreign companies?

SHRI M. C. BHANDARI: The things which the hon. Member has pointed out do exist but we cannot say generally. Therefore we have said that proprietary audit should be introduced. At the moment if there is a sole selling agent even though his services are not required we cannot object because they have complied with all the provisions of the law.

MR. CHAIRMAN: He means whether you agree that these malpractices exist?

SHRI M. C. BHANDARI: They do exist.

SHRI SYED AHMED: AGA: Since you suggest proprietory audit, does it mean that the audits that are being conducted at the moment are not so effective that there is real need for proprietory audit and this need has not been met so far?

SHRI M. C. BHANDARI: Today we are not going into the other question—the propriety of the transactions.

SHRI SYED AHMED AGA: That means the interest of the shareholders is not really safe?

MR. CHAIRMAN: That is what we have to infer.

SHRI D. K. PANDA: Most of the suggestions you have made are welcome and you have made valuable contribution to our discussions. You have enumerated certain things in page 3 of your memorandum, in para 4. You have also suggested certain amendments to enlarge the functioning of the auditors. You want certain things to be incorporated and secondly you want the auditor should merely report on some matters. The existing lacunae in the company law are taken advantage of by monopoly houses. The big business in some cases diversify their activities and have new units. They get large amounts from the government financial institutions. We find inter-company financing and inter-company trading. Auditors have a role to plays in the progress of society. Could you suggest any further methods to overcome those difficulties and how to detect those things? There is violation of company law. For instance in Kanpur some textile business people have taken enormous funds from the government institutions and they started new units though they took money in the name of modernising old plants. Thereby they get some development rebate and evade tax also. No labour law is applicable to new units. These malpractices help in the growth of monopoly houses. With your rich experience, could you suggest any measures?

SHRI M. C. BHANDARI: Thank you very much for the appreciation. We were concerned only with audit provisions and so we suggested these things. I am the President of the National Forum of shareholders and had submitted another memorandum to your committee where we have suggested many such measures which would take into account such malpractices such as inter-corporate investments diversification and so on. I think your Committee will give the National Forum

of Share-holders an opportunity for tendering oral evidence when you come to Calcutta and we shall explain the matter further.

SHRI D. K. PANDA: You have worded the memorandum properly by saying 'minimisation of manipulations and malpractices'. What type of statutory provison should be there for enlarging the functioning of auditors to detect malpractices by big business?

SHRI M. C. BHANDARI: We have given our suggestion about proprietory audit.

MR. CHAIRMAN: It will be covered by his suggestion.

SHRI D. K. PANDA: You do not want that they should be categorised?

SHRI M. C. BHANDARI: It is for our profesison to make detailed studies how it could be detected. Qualified people would be there who would be by their tools and implements able to detect these things; it is for the professional body to do justice to this new responsibility.

SHRI BEDABRATA BARUA: If a big firm is to be audited properly, there is need for experts. Do you think your accountancy training enables the auditor to have enough apparatus for auditing big firms?

SHRI M. C. BHANDARI: It does, as far as audit is concerned. In case of big audit, there is only the question of organisation and not of talent and is big organisation available only with the big audit firms.

SHRI BEDABRATA BARUA: It does not involve any other expertise?

SHRI M. C. BHANDARI: Not very much so far as statutory audit is concerned because it is not proprietory audit. After all 99 per cent of the audit work is done by the boys at present.

SHRI BEDABRATA BARUA: You have said that one who does statutory audit should not be doing the other service in the interest of independence of the auditor himself in the same company. One argument has been that the auditor who is actually in that company, who is auditing that company has got inside knowledge about the company. I am not in entire agreement with that. But having that knowledge he is the fittest person to advise on such other matters so far as that company is concerned. Have you got anything to say about that point?

SHRI M. C. BHANDARI: So far as the companies are concerned, he is the fittest person to do it. But certainly he is not the fittest person as far as society or community or share-holders are concerned. Just like a judge, an auditor should deals with the case. He should not be interested in any matter of the companies of he is the auditor. Our objection is only about management consultancy.

SHRI BEDABRATA BARUA: About foreign collaboration, do you suggest that they should require our approval even when there is no public interest involved?

SHRI M. C. BHANDARI: We are supporting the Bill of Mr. Sharma.

SHRI BEDABRATA BARUA: About the other question, you may not feel inclined to answer it, that is, about the question of disciplinary action jurisdiction of Chartered Accountants.

SHRI M. C. BHANDARI: At the moment, I would say, it requires a review for stricter control is we are to discharge our responsibilities.

MR. CHAIRMAN: Mr. Bhandari and other friends, we are thankful to you for a free and frank discussion that we have had. That will help the Committee. Your views are going to influence the deliberations of the Committee. You have been quite frank in your views. Thank you very much for the trouble you have taken to appear before the Committee and to give your evidence.

SHRI M. C. BHANDARI: Thank you, Sir.

[The Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972.

Saturday, the 28th October, 1972 from 11.00 to 14.30 hours.

PRESENT

Shri Syed Ahmed Aga—*In the Chair.*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri H. K. L Bhagat
4. Shri Tridi[illegible] Chaudhuri
5. Shri S. R. Damani
6. Shri G. C. Dixit
7. Shrimati V. Jeyalakshmi
8. Shri Ramachandran Kadannappalli
9. Shri D. K. Panda
10. Shri Narsingh Narain Pandey
11. Shri H. M. Patel
12. Shri S. B. P. Pattabhi Rama Rao
13. Shri Jagannath Rao
14. Shri Bishwanath Roy
15. Shri R. R. Sharma
16. Shri P. Ranganath Shenoy

Rajya Sabha

17. Shri B. T. Kulkarni
18. Shri S. S. Mariswamy
19. Shri Jagdish Prasad Mathur
20. Shrimati Saraswati Pradhan
21. Shri Habib Tanvir
22. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. SHRI C. M. Narayanan—*Di rector of Investigation and Inspection.*
4. Shri Ch. S. Rao—*Deputy Secretary.*

5. Dr. (Mrs.) Usha Dar—*Joint Director (Research and Statistics).*
6. Shri C.R.D. Menon—*Under Secretary.*

SECRETARIAT

Shri K. K. Saxena—*Under Secretary.*

WITNESSES EXAMINED

The Institute of Chartered Accountants of India, New Delhi.

Spokesmen:

1. Shri G. P. Kapadia—*First President—Leader of the Delegation.*
2. Shri R. K. Khanna—*President-elect.*
3. Shri S. K. Gupta—*Vice-President-elect.*
4. Shri A. B. Tandan—*Retiring President.*
5. Shri P. Brahmayya—*Past President.*
6. Shri V. B. Haribhakti—*Past President.*
7. Shri C. Balakrishnan—*Secretary.*

(*The witnesses were called in and they took their seats*).

MR. CHAIRMAN: The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

I might now request you to comment briefly on the papers and then the Members of Parliament may like to put some questions.

SHRI G. P. KAPADIA: On behalf of the Council of the Institute of Chartered Accountants and on my behalf, I express our grateful thanks for the opportunity provided to us to place our views before this Representative Body of the Supreme Parliament of the country. This has given us an opportunity of not only stating our views and placing them dispassionately but also understand the whole situation. We have given very thouhtful consideration to the contents of the Bill. Sir, we have come to the conclusion that the objectives that the Government have in mind, may not possibly be achieved if the amendments in the present form become law. At the same time, we do realise that we have to fulfil a social purpose. This body was created by an Act of Parliament for which we owe our obligation to the State and the Legislature of the country.

To spell out something which is rational, it should not only be in the interest of the profession but also in the larger interest of society and public in general. We have spelt out an alternative scheme which would have been received by this august Committee. As I read the Statement of objects and reasons I find that the objective spelt is that the task is to tackle the question of concentration in the main part of the Statement of Objects and reasons; there is nothing else stated. When we come to the statements of Objects, that is the objective spelt out in particular clauses we find that concentration is mentioned and in addition there is a mention of the close association in respect of a group of companies. Therefore, if we read the two clauses together, it would come to this that two things will have to be tackled. One is the question of concentration and the other is the question of close association or relationship that is developing now in so far as the group companies are concerned. So far as the

question of concentration is concerned, Sir, the Council has given active consideration to this matter and came out with self-regulatory measures which, of course were not found to be quite adequate. The reason was that the suggestion then was in relation to the number of audits which should be permitted after taking into consideration also the number of qualified assistants working in the firm.

Now, here, the solution is not by linking the qualified assistants because it is a personalised service which the members of the profession should give and personalised service can be given by partners of the firm and not by assistants. Otherwise it would come to this that a firm having 100 or 150 assistants can do audit of 500 or 750 companies. In spelling out that on the basis of the number of audits, we have in mind two view points—one of them would be that there must be a complete distribution of the available work between the Chartered Accountants. As such this proposition cannot act against the interests of the profession because, the professional services are not only personalised service but are "intellectual service", so, that was the question is not one of distribution. At the same time, the Council is impressed with the question of providing more avenues to the young Chartered Accountants who have come forward and with that end in view we have tried to spell out a scheme permitting a particular number of audits, partner and here we have fixed a particular number. The important factor is this that to enable young Chartered Accountants, if they have to function efficiently and fruitfully, there must be a particular number of audits available as a continuous flow of work. Otherwise if this characteristic is lacking, the very purpose of the fulfilment of the functions of auditors would be defeated; unless some sort of continuous work comes in they will not be able to do justice to this and unless we are sure to manage this, we may not be in a position to do justice. There must be at least some minimum number of audits to meet the demand for a fuller distribution of the work, otherwise it would automatically result in a complete deterioration of the quality of work because after all the persons in the profession should work not only in terms of earning but also efficiency and fruitful service to the entire community.

Now, considering the scheme which, under the Bill, has been visualised, it conforms to a scheme of rotation of company audit. This scheme is our view may possibly throw out of gear the working of companies; apart from that it may create unnecessary confusion in so far as the audit firms are concerned. If this sort of continuity is not maintained and ultimately the decision is to apply the system of rotation, sir, to companies of only a particular magnitude, it will result into such a position that it will lead to a condition of utter confusion, if I do not use the word 'chaos'.

Sir, we have tried to summarise all the arguments in our Memorandum which will show the inherent weaknesses of the scheme envisaged in the Bill and, Sir, our appeal to this august Committee would be that the Government may kndly give a dispassionate consideration to the formula enunciated in this Memorandum. I shall, with your kind permission, take certain portions of the memorandum and highlight them separately.

Now, the inherent difficulty which we faced was as to the number of companies which are there with the paid-up capital exceeding Rs. 25 lakhs. In spite of our best efforts, we were not able to get any information from any source including the Department. Then I myself made an effort to work out the data because I had a tabulated data in respect of the audit of public companies and concentration previously worked out by me. This was further processed to find out how many companies are there with a paid-up capital of Rs. 25 lakhs and

how many companies are there with a paid-up capital below that amount. Now, there are two separate sets of statements prepared. One is the summary in respect of distribution of work of listed about 2242 companies and the other is in respect of the paid-up capital exceeding Rs. 25 lakhs. I have brought copies of these two sets of statements and with your kind permission I should like to make them available to the Members of the Joint Committee. With your permission, shall I comment on the papers circulated.

MR. CHAIRMAN: Yes. Please do.

SHRI G. P. KAPADIA: Taking the first compilation regarding the summary of statistics relating to the audit of public companies which is a different compilation, you will notice that 40 firms had nearly 61 per cent of the work. The Work Council is accepting the proposition and there is concentration and it is not proceeding on the basis that there is no concentration. This analysis was made by me from the listed companies only because it was difficult to get any further information in this respect. Then after having worked out the average of these companies, at page 4, I have given a final analysis showing average per partner at present obtaining in respect of particular firms also. It means minimum and maximum in respect of that average which will show at a glance the present position. On the basis of the proposals made, a number of firms will have to shed off work to regularise matters in the manner in which we have visualised. Then the second statement gives us particulars. I could not jump to come to a conclusion about the present position, because it would be a task of analyses involving two to three months. I had the basic data of 1971-72 with me. I have worked out the position so far as the data of capital is concerned This makes a revealing analysis. In this respect, I have made analyses both in respect of paid-up capital basis and total capital basis. The analysis shows 50 per cent is the percentage. Therefore, the number of companies which are not listed need not necessarily contain very high percentage of companies with a paid-up capital which could exceed 25 lakhs. Having made this comment, I should like to make a mention of the previous background of Company Legislation. A time was when the authority and the legislators of the country thought about making a vital qualification against the wrongful removal of an auditor. A peculiar position arose when an auditor of a company was removed by holding an extraordinary general meeting and with the majority control which the Directors had, they achieved this objectve. Then a vital matter was considered by the Company Law Committee of 1950 which is popularly known as the Bhabha Committee of which Committee I had the privilege of being a member. At that time, the thinking was to provide more protection to the auditor against a wrongful removal for making a qualification in the Audit Report. With your permission, I propose to make some vital observations in respect of qualification made in Auditor's Report. The law provides that the auditor of a company cannot be easily removed and if the removal is effected, then the auditor of the company has a right of sending his representation to the share-holders of the company at the expense of the company. He is also gven a right to attend not only the general meeting but any meeting where matter re: his removal as an auditor is to be taken up. Now, this is the background in which the whole concept was made and even today cases may not be wanting where under the guise of taking a decision, some resolution may be proposed stating that a particular firm be appointed and the majority share-holders may deliberately refrain from voting so that auditor is out of field. If at all, the provision should try to seek further and more protection against a wrongful removal. That is what we were aiming at. I would like to quote from the Company Law Committee's Report over the vital

issues which have some bearing on the legislation, which is now being contemplated. I am reading paragraph 176 of the Report on that Committee.

Position of Auditors vis-a-vis the Management and shareholders

"As we have already stated, a retiring auditor whom it is proposed to remove must duly receive a copy of the special notice of the appropriate resolution to be moved at the next Annual General Meeting of the Company. He will then have the right to make a representation in writing to the Company and to call upon it to circulate this representation to the shareholders of the Company. If for any reason, this representation cannot be so circulated, the Auditor shall have the right to require that it should be read at the General Meeting. This right which we propose to confer on the Board will be, of course, without prejudice to his right to be heard orally at the Annual General Meeting of the Company. These provisions will, we trust, go far to secure the independence of auditors. It was represented to us that these provisions may not always prove to be adequate in this country, and that is, as the Millin Commission in South Africa suggested, the Central authority should have the right to intervene when it was suggested that an auditor had been unjustly remove from his office. The Millin Commission, recommended that in these circumstances, the Minister in-charge should have the right to appoint a co-auditor. We appreciate the project underlying this recommendation, but consider that, in practice it will be extremely difficult to work this arrangement. But to audit a Company's accounts by two Auditors —one appointed by the Company and the other by the Government, is likely to engender friction and mis-understanding and thereby to affect the smooth working of the Company. The truth is that there is objection, in principle, to any proposal which directly or indirectly undermines the fundamental position of the Auditors as agents of the Company. This does not mean that an Anditor must be subservient to the Company—much less to its management. It only means that an Auditor's duty is first and last to the Company he serves. After he has submitted his report to the sharehoders, his duty stands performed. The safeguards that we have now suggested should make the removal of independent and conscientious auditors difficult. For, any attempt by unscrupulous managements to secure their improper removal is bound to give rise to oral and written representations, which in turn will justify a detailed investigation into the affairs of the Company concerned (*Vide* proposed Section 145 in Item 23 of the Addendum to the Annexure of our report)".

This rally forms the genesis of the present Company Law legislation, as incorporated in the Companies Act 1956 which is the basic Act. Of course, the Act has been amended a number of times.

Coming to the vital question of the performance of the duties of Auditors, the question arises whether the matter of close association should be viewed from a particular angle. In the opinion of the Council, we see nothing wrong in close association developing because, after all in any working, whether it is Government or administration of a local body or any profession, unless there is mutal faith between the persons working, you cannot achieve results. What are reprehensible are collusion and malpractice. If there is collusion and malpractice, the Council is one with the authorities to ruthlessly put it down. We should have nothing to do with it. In fact, Sir, the record of the disciplinary jurisdiction of the Council has been crystal clear. That is

what I can say with humility. From the very inception of the Council, the Council has been very vigilant in the exercise of the disciplinary jurisdiction and I will give you only some statistics to show that practically in all cases, the findings of the Disciplinary Committee of the Council have been invariably accepted by each and every High Court in the country and the Supreme Court. I can highlight two particular types of instances in regard to this matter. The Council has not hesitated to take disciplinary action against one of its own office-bearers, the Vice-President of the Institute, and for which the Council merited a word of praise from the then Finance Minister Shri C. D. Deshmukh. In another case, which was a case of considerable interest to all concerned, one chartered accountant submitted some sort of a report to the Income Tax authorities and his defence was that I do not owe any responsibility to the Department for that report because I submitted that report to my client and not to the Department. The Council, after giving a very careful consideration to the issues, came to the conclusion, and I would respectfully submit that it was a right conclusion, that a chartered accountant in such cases has a two-fold function. One is that when he acts as a financial expert where he studies something and gives a report. The other is where he acts as an advocate arguing his client's case. But when he is chosen to act as a financial expert and has given a report to any authority, his representation is likely to be relied upon and therefore, whether he has submitted the report to the Income Tax authorities or to his client or to any body, he must be bound by that. The Council came to the conclusion that having given that report—whether the Department relies on the report or not and in ninety nine cases, the Department does not rely on the reports—he is definitely responsible and he must owe the responsibility and the Council accepted the recommendation of the Disciplinary Committee to say that he should be found guily. Crucially enough, he was acquitted by the High Court and there was no appeal by the Government to the Supreme Court of India. This is the background. I am trying to put the bona fides of the Council. We have been ruthless against any mis-deed by the persons concerned.

Now, in this connection, Sir, with your permission, I should like to circulate a booklet which is titled "Qualifications in Auditors' Reports". This booklet contains only a few of the qualifications that the Auditors have made. If we have to put all the qualifications, the size of the book would be 4 times. This booklet covers only audit reports of 2,000 companies and nearly 25 per cent. have qualifications and a mere perusal of this should convince the hon. Members of this House to the effect that the Auditors have never failed in their duty in making these qualifications. I am at the moment only too aware of the position that there may be some technical lapses, some sort of lapses made, which we could not consider meriting a qualification or meriting disciplinary action. Some years back, if I remember right, it was in 1966, when the Secretary to the Board and Deputy Secretary to the Department, as a Member of the Council, of the Institute, raised certain issues that there were lapses on the part of chartered accountants in respect of particular matters. An analysis has been made and I have got a summary made which, with your permission, Mr. Chairman, I would like this to be circulated to the Hon. Members. Now, the number of items is not a formidable one. 67 cases have been mentioned by the Department as lapses on the part of the chartered accountants. I take it for granted that the information which was given in 1966, would naturally cover the period from which the profession attained autonomy, that is, 1949. In a period of 17 years, as many as 67 items were there. The average would be something about 3 or 4 . Even if we take this as 4, taking the number of members at

10,000, if 4 lapses per year were to be found, I think this would not mean anything formidable. They are not lapses of a character which would entail disciplinary action, because out of the 67 cases, 13 cases relate to the payment of remuneration to the Managing Directors far in excess of the maximum statutory limits and in respect of provisions entitling 11 per cent remuneration. There are other minor lapses, in particular sections, of a technical character. Now it is a fact that in respect of qualifications, it is my information and knowledge, no action appears to have been taken by the authorities. This fact may be checked up. I am open to correction. Because in a number of cases the method adopted by the directors of the company is to produce a counsel's opinion. What matters is the opionion of the auditor. If the auditor is wrong the department must tell the auditor that he should behave. If, on the other hand, the qualification made by the auditor is justified, he should be encouraged. Now, Sir, having said that I would come to the vital question that under the Chartered Accountants Act there is a positive provision to the effect that if there was a complaint filed by or on behalf of the Government the Council of the Institute had no option but to refer to the Disciplinary Committee. If it was a Government complaint it was a must for the Council to go into the matter. In respect of cases of misdemeanour by the members of the profession and these could be brought to the notice of the Council, why is it that a complaint of a formal nature was not filed. The Council could have have compelled to go into those questions, and therefore, this criticism cannot survive. Now coming back to the close relationship, as I commented, what is reprehensible is that some sort of malpractice in close relationship should not be there. I do appreciate the fact that some special consideration is to be given. Now for the group companies, what the definition should be, is a matter for the House to decide. The Council has restricted its attention only to matters affecting the profession and let the other issues be discussed by commerce and industry and by the other interests concerned and by the corporate sector. Having touched these issues, with your permission I shall now make an effort to go through some of the important statements placed in the memorandum and highlight some of the points.

MR. CHAIRMAN: May I bring to your attention that the members would like to ask questions and far that they may be given some time to go through your statement and seek clarification.

SHRI G. P. KAPADIA: I am entirely in your hands.

SHRI TRIDIB CHAUDHURI: I would suggest the Institute is a statutory body and so the most representative institution. So, I think they should be given the opportunity to make their views heard by the Committee in full. If necessary we may request the Committee for questioning and clarification to come on some other occasion because we are not going on deliberation at this session. So I would request you to consider whether Mr. Kapadia and the Institute must be given as much time as they would require.

MR. CHAIRMAN: I have already said but I do not understand how they will be questioned. That is not possible.

SHRI H. K. L. BHAGAT: If they do not mind, they may again come. Or we should sit late and finish it today.

MR. CHAIRMAN: We can sit half an hour late.

SHRI G. P. KAPADIA. I am entirely in your hands. The Council has all along been saying that it owes a duty to the society and the State and that it must cooperate. At the same time, being the autonomous body created by an act of Parliament, it

should have the opportunity of placing its views before this representative body of the Supreme Parliament.

MR. CHAIRMAN: Now continue your speech.

SHRI G. P. KAPADIA: On page 1 we have highlighted the question of objectives and have quoted from the Statement of Objects and Reasons "Constinuation of the same auditors for a company for an indefinite period has given the rise of complaint of monopoly of audit work." This is what emanates from the general statement of objects and reasons. Then we have analysed the position. So far as the question of the report of the committee is concerned, at page 3, para 3 we have made all the facts clear that it would have been much better if Council of the Institute were consulted before the amendments came. We do realise that no Government can afford to reveal the contents of the legislation which it is intending to introduce but perhaps at the same time it would have been appreciated if there had been a detailed examination and prior discussion to a regulation in respect of the appointment of auditors. I believe, Sir, that if the authorities had shared the thoughts with the Council of the Institute, the Council could certainly have made an effort to straighten out things. Now, Sir, because the Bill having been referred to the Select Committee and the authorities having considered the matter the Joint Committee will certainly bestow all attention and we have the unique opportunity of placing our views for due consideration and we believe that every aspect of the matter as has been commented upon will be thoroughly examined. We have referred to the disciplinary jurisdiction and other matters and about the contribution of the Members of the Institute.

I may also make a mention of the fact that whatever may be the transitional difficulties or problems arising, the authorities and the legislature have to an extent reposed confidence in the members of the Institute. This is proved by the fact that a number of members of the institute have had the unique privilege of being members of Government committees and commissions, and the latest example is that the wanchoo Committee consisting of five members included two charterer accountants. This is the recognition bestowed upon the members of the institute and that recognition would not have been bestowed if the members of the profession had not acquitted themselves quite well.

In para 5, we have made a mention about the real objective of Government, and with your kind permission, I would like to read it out. It is as follows:

> "The Council is gratified to observe that the Statement of Objects and Reasons for clause 20 does not make a generalisation of an all-out character but refers only to a tendency to create close association between the auditors and a group of companies which close association would flow from concentration. The Council is pleased to observe that the Government appear to be satisfied that while the allegations which have been made about collusion and malpractices are not based on facts, Government have thought it appropriate to bring in legislation with a view to dealing with the question of concentration and the consequential close association developing between the auditors and a group of companies. The reference to group of companies leads the Council to believe that Government are satisfied that the question of close association cannot arise where a company does not belong to a group.".

I would request the Committee to bestow considerable thought and attention on this aspect.

Then, we have discussed the paramount question of the independence

and integrity of the auditors, and in this connection, I have given certain papers and figures which may kindly be taken into consideration and examined on merit.

Another aspect highlighted under para 9 is that by statute it is provided that further information may be disclosed and auditors have been given the power as well as responsibility in this behalf. If such powers and responsibilities of an extra character are to be bestowed upon the profession, the profession would still be able to discharge its duties, in fact, not only discharge its duties but would be able to acquit itself much more admirably. With your permission, I may be allowed to touch an additional issue here.

The Council also thinks in terms of bestowing its attention on the question of propriety audit. By introducing the propriety audit concept, not only the managements will have to behave in a much better manner, but the performance of the audits and the information available will be of a much better and a superior character. In principle, while this is acceptable, any scheme relating to propriety audit can only be spelt out by the Council of the Institute, and the Council would seek the permission of the authorities to evolve such a scheme and place it for due consideration by the authorities. If such a scheme is ultimately spelt out, it must simultaneously provide for rights to be given to the chartered accountants to question the management, so that the performance of audits relating to propriety audit can be made in an adequate manner. The way in which it should be done and the method and the manner in which the scheme should be evolved are matters of high intricacy and technical planning, and for that purpose, this Committee should have the assurance of the Council of the Institute that it will bestow the best of its attention and consideration on the issue and it will have a proper examination of it. That is what I have to state regarding the performance of the auditors.

A general observation regarding the number and the difficulties involved is highlighted in para 10 at page 7 of the memorandum, which reads thus:

> "The Bill seeks to embrace all companies including private and smaller public companies. Obviously, therefore, the process of approval will arise in the cases of all the 30,000 and odd companies and this process itself would prove to be a time-consuming process even if some guidelines are laid down in this respect. The scheme which entails an approval would automatically put extraordinary powers in the hands of Government officials. The result may be an extension of patronage and the natural consequences may be to bring into existance undesirable practices.

This is an aspect which the council would like to stress to an extent and would request the Committee to examine in depth.

So far as the question of rotation of audit and its inherent drawback are concerned, we have listed various items, and according to us, it is necessary to read this paragraph and make a short comment in respect of particular items where the need for such comment arises. We have stated:

> (a) It will undermine the independence of the members of the profession and also affect adversely the quality of service of a sustained and continued nature being provided to the corporate sector. The system of rotation of auditors has been attempted in respect of public sector undertakings and bodies corporate brought into existence by Acts of Parliament and such a system, in the opinion of the Council, has not at all proved to be success-

ful. This will be borne out by the experience of these undertakings."

(b) The system of rotation would be undesirable for the reason that in practically all industrial and business undertakings there is so much to learn about the past history of the company and its operation that when a job is undertaken for the first time, considerable work would be required to be put in for understanding the same, so that the conduct of the audit becomes more effective and meaningful. However, this does not have to be repeated in the following years, if the same auditor were to continue.

I can give you a concrete example in respect of the banks which had been nationalised, where this principle of rotation does obtain now. We have ourselves experienced practical difficulties. In respect of the banks, the previous auditors were allowed to continue for one year; then, there was a wholesale transfer by the banks, and then without waiting for three or five years, there was a sudden change made within one year. This increased the costs of working, and these matters have had to be discussed. We have a standing advisory committee for banks for the purpose, and we are bestowing our attention on this. Even there, with whatever experience we have, we feel that the system of rotation has created inherent drawbacks, and it has not given fruitfull results. As regards the experience of the authorities, it is for them to say what it is.

SHRI B. T. KULKARANI: Were the difficulties felt by the auditors or by the banks also?

SHRI G. P. KAPADIA: By the auditors definitely. I cannot judge what the authorities have felt about it. But my impression is that they have also found it difficult, but I cannot speak on behalf of the bank authorities or custodians.

Then, we have said:

"(c) The argument in favour of rotation based on the possibility of collusion between representatives of the practitioner and company employees, if there is continuity, has practically no validity.".

Here, some arguments have been made in a stray manner that this may happen. But how can such a thing happen? If you are doubting the *bona fides* of the practitioner as a chartered accountant that he will act in clique with an employee of the company and commit fraud, that is a very reprehensible thing for which he can be dealt with under common law.

It may even be under a criminal law.

(d) The policy of periodical replacement or change of auditors would certainly result in increased auditing costs. On account of the fact that initially it takes the new auditor two or three years to acquire close familiarity with all the accounting phases of the client, fees, in the first instance have necessarily to be higher than in the subsequent years. It would, therefore, be not in the public interest or of the profession to rotate the auditors as a matter of routine.

Again take the example of banks. The performance of banks entails a huge consideration in respect of bad debts. If the same auditor is continuing he has a complete gauge of the particular type of debts which the bank has, how they have operated, what has been the profit, what has been the attitude of the parties etc. In respect of particular banks, the auditors have known the background history for over two decades or even more. With such auditors continuing, it takes very little time to determine whether the amount is secured or not, whether it should be treated as doubtful or whether adequate provision is

made. If you went on displacing the auditors from time to time, how will the auditor who comes into the place of the erstwhile auditor get a complete gauge of the position unless he goes through the records of the last five, six or seven or even ten years! That is the reason why we are not in favour of rotation of auditors as a matter of routine.

(e) A system of rotation would, in the very nature of things, not make any allowance for the profession to give and maintain quality of service and what might have been thought as a statutory maximum may in effect become a statutory minimum thereby entrenching any incompetent auditor for a period of three years.

(f) A system of rotation would have a deleterious effect upon the profession as a whole. The policy of rotation cannot by itself ensure the independence of an auditor which has to be thought of in terms irrespective of the question of rotation. It may be added that independence as associated with objectivity is the hallmark of any profession. Without independence any attestation is of little worth to the investing public as also to the community in general. It is the considered view of the Council that rotation leading to widespread canvassing would adversely affect both the independence and the integrity of the profession.

(g) Another contention advanced in favour of rotation is that the errors of commission and omission of previous auditors could be detected by the new auditors. This proposition is based on a hypothesis which is not at all tenable. To change an auditor on a mere suspicion of his having failed to detect mistake is as naive as dismissing a family doctor or a lawyer without cause.

(h) Rotation, in fact, would bring harmful results of a permanent nature to the younger members of the profession and to smaller firms and practitioners in the mofussil areas, because what would be lost as a result of rotation would be very doubtful of reaquisition by them.

This, according to us, is a very important aspect. It will be more harmful to the younger members of the profession.

(i) A scheme of governmental approval for reappointment after three years may place a virtual premium on periodical change of auditors since, in that case, no approval would be required.—

This is an aspect I have already committed upon earlier.

"Instead of strengthening the hands of the company auditors, this would undermine their position by making it easier for company managements to remove 'inconvenient' auditors.

MR. CHAIRMAN: You are just reading from your own memorandum.

SHRI G. P. KAPADIA: I am reading and also offering additional comments.

MR. CHAIRMAN: It would save time if you offer only additional remarks. Your additional proposals might be explained in great detail.

SHRI G. P. KAPADIA: Then instead of reading, it shall be my endeavour to make verbal observations, in respect of the scheme as enunciated, about which I made a submission in my opening remarks.

We have evolved a scheme which has two wings. One relates to a ceiling on company audits. This should apply not to private companies, not to deemed public companies but only to public companies having a paid up capital exceeding Rs. 25 lakhs. This, according to us, would be a reasonable proposition to tackle the question of concentration. Once you tackle the question of concentration, the consequential question of close association will be split up and group companies,

to some extent, would be sorted out. We have worked out a formula of permitting 15 companies per partner and where it is a firm, the multiple of 15 in respect of the number of partners. There may be suggestion of a full distribution of audit work, but this does not appeal to us and the formula we have given you will fit into the two statements which I gave, one about concentration and the other the question in respect of paid up capital of public companies. What we have in mind is that by adopting this formula, a considerable portion of work will have to be slashed by the bigger firms. It will automatically percolate below and each firm being subject to a ceiling, it is bound to percolate to the lowest rung. This is our thinking. We are not, of course, thinking in terms of equal distribution of work. I would put it, if I may, in a very blunt manner. Let us say, there are 6,000 companies and there are 1,000 firms; so let there be 6 audits per firm. Then the principle can be extended to divide the companies into six categories A, B, C, D, etc., so that no firm has an audit from any category which is more than one.

The Council does not visualise such a thing. It visualises a scheme which slashes down the work and removes concentration; at the same time, it provides a base so that efficient and fruitful service by the members of the profession can continue to be rendered. In the opinion of the Council, 15 per partner is a proper yardstick. That is the first part of it.

The second part of it is that in respect of companies having a paid up capital exceeding Rs. 25 lakhs, you have another auditor, a joint auditor, who will be chosen not from the persons who have audits up to the ceiling or beyond but who has an audit below the ceiling so that such audit can go only to the persons who do not enjoy the benefit of having reached the ceiling or having a higher number of audits.

We have visualised this scheme in a different manner., as mentioned in the Bhabha Committee Report and also enunciated in our communication. The right of appointment should vest in the shareholders who are the owners of company, but as a safeguard, because we are making a special type of appointment, the Council's suggestion is that in respect of the choice of such an auditor from the junior ranks, the votes of the directors and their associates should not count. Such appointments should indirectly be made by a vote of the minority shareholders.

This is the gist of the formula we have in mind. How it can be made fruitful, how it can work, what is the mechanism of it—these can be worked out; but our approach is of this nature so that the two-fold objective can be taken care of.

So far as group companies are concerned, beyond stating that it is a matter for consideration in a rational way, how far group companies could be regulated is a matter for Government to examine and submit it to the Committee for consideration. Beyond this, for the present, we have no other particular comments to offer in respect of group companies. I now come to para 15. We do not accept the proposition that the firm's entity should be ignored. If one individual is practising and if you permit him 15 units, there is no reason why two individuals combining together should not claim 30; in a like manner if there are ten partners there is nothing wrong in their collecting together and putting in a common effort so that there is saving in expenses and also sharing of the intellectual capacity of the parties concerned and there is also insurance against illness, going out of the country, etc. When the shareholders think in terms of appointment of a firm they find out how many partners are there. Suppose something goes wrong, if there are seven partners, they will be financially responsible instead of one.

In our Legislation under section 11 of the Companies Act, partnerships exceeding 20 are not permitted. In our country there have been no such fantastic increase in the number of

partners. I want this House to take cognisance of the legislation in United Kingdom where they have made an exception under the Companies Act in respect of partnerships of professionals, such as lawyers, accountants, etc. Section 434 of their Companies Act of 1948 prohibits formation of partnerships with more than twenty members. Now, section 120 of the Companies Act of 1967 of the United Kingdom reads as follows:

"120. (1) Section 43 of the Companies Act, 1948 [which prohibits the formation of a company, association or partnership consisting of more than twenty persons for the purpose of carrying on a business (other than the business of banking) for gain as therein mentioned unless it is registered as a company under the Companies Act, 1948, or is formed in pursuance of some other Act or of letters patent, or is such a company as is therein mentioned working mines within the stannaries] shall not prohibit the formation—

(a) for the purpose of carrying on practice as solicitors of a partnership consisting of persons each of whom is a solicitor;

(b) for the purpose of carrying on practice as accountants, of a partnership consisting of persons each of whom falls within either paragraph (a) or paragraph (v) of section 161(2) of the Companies Act, 1948;...."

It is because if we were to put a restriction on the maximum number of partners in such firms, it will stifle the growth of the profession because collective wisdom is certainly preferable to individual wisdom.

We have in paragraph 16 suggested some transitory provisions as a safeguard. The intention is not to throw out of gear the existing firms and machinery. They have their establishment; they have their practice. If the scheme of rotation were to prevail it will completely erase out a number of firms. Even under an scheme, we propose to give them sufficient time to make adjustments. The time we visualise is five years within which these should be regularised. We have stated that we do not give this extension of time of an indefinite character and that the regularisation should be made at the end of five years. We say: you determine the present strength; what is the number today. You ascertain the number according to the ceiling and find out the difference. One-fifth of that should be shed off; so you must regularise that every year. There is a further stipulation that there must be a ten per cent margin, marginal cases should be provided for adjustment. These transitory provisions in our view will enable practically all the firms to regularise matters over a period of five years.

Coming to clause 21 of the Bill, previous approval of the Government is needed in respect of companies, if 25 per cent of their capital is held by Centre or 50 per cent by the States. The word used in that section is 'subscribed' capital. I do not know whether it is oversight. It should be paid 'paid-up' capital. 'subscribed' capital is not the phrase which is used. I wonder whether the word 'paid up' capital could not be substituted here.

In respect of companies where the investment by financial institutions is entailed, they have shown faith in their corporate enterprise and have either voted or refrained from exercising their negative vote so that the management or the directors have been able to pursue their schemes. We suggest that instead of having a veto provision of a negative character, let it be said that in respect of such concerns, the appointment shall be made by an extra-ordinary meeting at a special resolution so that automatically 75 per cent majority will have to be taken.

SHRI S. K. MAITRA (Legislative Counsel): In the existing section 372(2) you will find the word 'subscribed capital'; it has been used there.

SHRI G. P. KAPADIA: Our only objective in mentioning that is that it is much better to focus our attention on paid-up capital because that is the proper yardstick.

The next important question is cost audit. There is a lot of history behind this. Even when the Cost and works Accountants Bill was mooted the Council and a number of Chambers of Commerce showed their opposition to the move. Somehow the intention of the authorities had ultimately to be translated into action and that Institute came into being. The matter was taken up at the level of the then Minister for Commerce, the late Shri Lal Bahadur Shastri, and the issue made before him was "here are some existing rights and privileges pertaining to the profession which are being taken away" and Shri Lal Bahadur said that by introducing the scheme of Costs and Works Accountants Bill "we are not taking away anybody's privilege; we are wanting to start a separate Institute; so, where is the question of taking away the privilege?" One of the Members of Parliament, who happened to be on the Select Committee, took up the matter with the hon. Minister and he wanted to submit a note of dissent, but Shri Lal Bahadur told him not to do such a thing. We have with us a communication containing what was discussed with the Minister in writing. The name of the Member of Parliament is Shri Babubhai Chinai He wrote a letter to Shri Lal Bahadur and that letter was addressed on the 9th February, 1959. With Your kind permission, I should like to tender this letter, which is a signed copy, which says that there must be some provision in the Act, or by way of arrangement, that the senior mem-members of the Institute of Chartered Accountants who are doing cost audit should not be deprived of it and they should have the privilege of being honorary members of the Institute of Costs and Works Accountants.

Apart from that, even before the Costs and Works Institute in its non-statutory form came into existence, during the war period a number of chartered accountants were entrusted with cost audit work and costing relating to defence and other services, and they performed this work with distinction. A number of chartered accountants were called upon to make enquiries into the cost structure of a number of industrial units and they submitted their reports. Later, the Institute in collaboration with the Research Foundation of the Indian Merchants Chamber brought out a publication Price Fixation for Indian Industries which is a study purely and mainly bearing on costing.

If this is the background, there is no reason why the members of the Institute of Chartered Accountants of India, or at least senior members, should be disqualified. Actually at one stage by notification the chartered accountants with a standing of 15 years were allowed. Then a further change was made in this.

I respectfully submit that whatever might have been the genesis of this legislation, whatever might have been the background, is it not a fact that even after this legislation came in, they have performed their work properly? We want to be judged by our performance. We have no objection to other people doing this work. It is the result which is important and it does provide an answer to the question whether we, as a profession, are able to discharge this service.

It is not very true to say and emphasize the fact that the only reason for introducing this amendment was that the number of cost accountants was lesser. There were a number or other factors which can be borne out by the latter Shri Chinai addressed to Shri Lal Bahadur and the negotiations which have taken place between the two institutes on the one hand and the government on the other. I would

submit respectfully that a re-examination of the matter should be made and if the House feels what the Institute is proposing is reasonable then, let the privilege of the Institute of Cost and Works Accountants continue in any form, but do not deny the inherent right of the Institute of Chartered Accountant of India. The Institute of Cost and Works Accountant can be brought into existence by legislation, but when we are performing our duties in a proper manner, when we have performed them in the past, when we have performed them even after the cost audit provisions have come into being, what is it that has created an atmosphere where we, who were capable of discharging this service, are now being understood as incapable of undertaking cost auditing and so should be permanently disqualified? We are making an appeal to this august body representing Parliament that this issue may be kindly re-examined deeper thought given to this aspect and justice may be done.

There are two more points. One relates to the appointment of company secretaries, where I have some general observations to make. Here, again, the members of the Institute of Chartered Accountants have performed the duties of company secretaries admirably. If I may be permitted to say so, a large number of companies today go in for chartered accountants to appoint them as company secretaries because in the opinion of the corporate enterprise they are the best-fitted for the purpose. In the opinion of the corporate sector, the two learned professions, the legal profession and the accountancy profession, are of such a nature that by their very set up they should be recognised in this field of company secretaryship. Therefore, I would urge upon the Committee to bestow attention on this aspect of the matter, which is quite important. The Institute of Company Secretaries may be recognised and its members may be eligible for being appointed as company secretaries That is a matter of policy with which we have to fall in line. But we would earnestly appeal that the legislation itself should spell out that if the intention is to recognise by statute a persons who is a member of the institute of Company Secretaries to occupy the position of company secretary, the two additional categories, namely, the categories of lawyers and chartered accountants, who by their very nature are the fittest persons to become company secretaries should also be there. Their recognition should come through the statute and not through the notification.

We have dispensed with managing agents and secretaries and treasurers. If the intention is to bring into existence an independent agency of persons who would serve as professional people giving secretarial and administrative service, then I would readily concede that it is a set-up of a profession and the exercise of a professional activity, but it can certainly not be the intention of the Government to think in terms of independent agencies of this nature to substitute managing agents and secretaries and treasurers. The intention is to have full time employees. If they are full-time employees, in the opinion of the Council these full-time employees can best be stated to be persons exercising or following an avocation. You cannot say that they are exercising an independent profession because they are serving in particular concerns. This being the position, the question of describing them as independent professions as such is something which does not fit in within the structure of the definition of the profession as such. Subject to this, the detailed aspects which have been mentioned by me may kindly be examined.

Then, if you recognise Company's Secretary by a statute, why not as the natural outcome or follow-up action consider appointments relating to the discharge of accountancy functions of a Financial Controller or a Chief Accountant? The Companies Act must provide that both the Financial Controller and the Chief

Accountant of a Company shall be chartered accountants. We request you to examine this aspect. If a legislation in respect of Companies Secretary has to be there, then follow that in respect of appointments to be made in respect of accountancy personnel also.

SHRI K. V. RAGHUNATHA REDDY: That is a very welcome suggestion.

SHRI G. P. KAPADIA: Now, in fairness to the existing personnel, there are hundreds and hundreds of people today occupying positions as Company Secretaries or Deputy Secretaries. They have risen to those positions by sheer hard work and merit. They should not be disqualified. The details may be left to the authorities to be spelt out after the Joint Committee has made up its mind. But these are the persons who should not be parcelled out and disqualified. This is an aspect of a practical nature which requires to be examined because the corporate sector will suffer considerably with regard to the continuity of service.

These are some of the general observations that I have made. Once again I would assure this august Committee that the Council sincerely believes in extending the fullest cooperation to the Government and that it will not fail in its duty to society.

MR. CHAIRMAN: Thank you very much for the general observations you have made. The Members will now put questions.

SHRI JAGANNATH RAO: The impression that I get from your remarks is that close association is a qualification not a disqualificaton.

SHRI G. P. KAPADIA: That is so. There is a distinction between close association and collusion.

SHRI JAGANNATH RAO: Close association arises on account of mutual confidence between the two, the auditing firm and the company. You want to single out collusion and mal-practice. In that case, do you suggest that the Government should have the power to intervene? Where there is a case of collusion between the auditing firm and the Company and the mal-practices in respect of a particular Company are brouht to the notice of the Government, let the Government have the power to replace the auditor and appoint a new one.

SHRI G. P. KAPADIA: Here, the judicial process will come in. If the Government thinks that collusion is there, the proper remedy will be not to remove the auditor but to take action aainst the parties concerned, first, to prove the proposition that there has been collusion. Collusion cannot be just imagined or subscribed to without being proved. It may be that in a particular case there may be a strong suspicion. But actually the collusion as such may not be established.

The other patent remedy will be that when the Government suspects collusion, let it come out with a direct and forthright complaint to be made to the Council for taking disciplinary action. A full inquiry can be made. The Government could be represented on the inquiry. I can give an assurance on behalf of the Council that if any collusion or malpractice is brouht to the notice of the Council, it will not hesitate to take the most ruthless action.

SHRI JAGANNATH RAO: Who should have the power, the Company itself or the Government to take action?

SHRI G. P. KAPADIA: There, you are dealing with a person who has misbehaved. He cannot be reappointed. There is no question of that. But to say that the Government should step in would again affect the inherent right of share-holders. Why can they not appoint a person

who is above-board? If a Company has indulged in any mal-practice, the Company can be dealt with. The company can be compelled to take proper action or proceed against the person concerned both under civil law and criminal law. There is a power of investigation given in the Companies Act under which the culprit can be dealt with. But that should not give a handle to give powers to the Government to appoint an auditor. The two things are totally different.

SHRI JAGANNATH RAO: Therefore, clause 20 is redundant.

SHRI G. P. KAPADIA: It will be presumptive on my part to make such a mention. I would certainly make a distinction between close association and collusion. As I have said, collusion can be dealt with in a ruthless manner. We shall certainly give the fullest cooperation to the authorities to deal with cases of collusion.

SHRI JAGANNATH RAO: Reading clause 21, you are not agreeing with the proposition that the Government should have the riht of appointing or re-appointing auditors.

SHRI G. P. KAPADIA: I am virtually agreeing with the proposition. But instead of negative vote being there, I do not want to rule out the treatment which financial institutions will give. In some cases, it is my experience that financial institutions have such faith in the corporate enterprise that even if a special resolution has to be passed, the financial institutions become a party to this because they know that it will help the productive capacity and the progress of the company. To enable this process to be carried to a logical conclusion, we are suggesting that you have the power but in cases where you feel bona fides are there, the financial institutions will allow a special resolution to be passed. But in cases where the financial institutions think that there should be a curb, they will vote against the resolution and automatically throw it out.

SHRI JAGANNATH RAO: On the same principle of inherent right of shareholders, you want share holders to act.

SHRI G. P. KAPADIA: We want to give some sort of latitude to the financial institutions to be help fully in productive capacity and progress.

SHRI JAGANNATH RAO: If we accept that proposition, then clause 21 also is redundant.

SHRI G. P. KAPADIA: I would not talk of something being redundant.

SHRI JAGANNATH RAO: If we accept your contention, clause 21 also becomes redundant.

SHRI G. P. KAPADIA: I have given my humble arguments. It is for this august Committee to decide what should be redundant in the clause and what is not.

SHRI S. R. DAMANI: Mr. Kapadia, you have explained in detail the points mentioned in your memorandum. At the outset, I would like to say that their Institution is confined only to the audit work. It would have been much better if they had expressed their views on other amendments also. Sir having the experience and the knowledge of the effects of various amendments that may have on the corporate sector, their views would have helped the Committee to a great extent. I still feel that they should consider our suggestion and express their views on other amendments also.

The intention of the Government is to plug the loopholes and not to create confusion or retard the growth of industry. As to how the loopholes can be plugged, they are in a better position to explain to the Committee. I hope they will consider our suggestion and allow us to put questions on various matters.

SHRI M. M. PATEL: If at all we accept that, it would be fair to the Council that we ask them to sumit a separate memorandum on other items. Let us not mix up the two. Here they are discussing the audit aspect. If we want their views on other points, we may request them to submit another memorandum.

SHRI S. R. DAMANI: We want their views. This is a suggestion. If they accept, it is allright.

SHRI G. P. KAPADIA: The President and other members of the council have agreed that we should abstain from making any comments on any other clauses. The fundamental reason was this that, without close association with other aspects, we should not comment on these and should leave these aspects to be commented upon by the corporate sector itself. Therefore, we would desist from making comments on any other clauses of the Bill.

MR. CHAIRMAN: You may have no objection to answer any particular question?

SHRI G. P. KAPADIA: In view of the Council's specific position of a policy nature, we refrain from making any comments on any other clauses. This is my difficulty.

SHRI S. R. DAMANI: I would like to give my views about close connection. The intention here is, close connection with the work of the company whose audit work is undertaken and not with the personnel. Close connection means familiarity with, and knowledge of, the work of the company.

SHRI G. P. KAPADIA: Close association bodering on collusive practice and close association for proper performance of duties are two different things.

SHRI S. R. DAMANI: As I have stated, the intention was, they are familiar with the work of the companies which they audit; close connection is not with the party but with the work. They should take it like that.

I have hurriedly gone through the scheme that has been submitted. There is one thing which I want to be explained. Audit work is based not on the number but on fees. The audit fees range from Rs. 100 to Rs. 1 lakh. In that case, what is the meaning of 15 cases? You say 15 cases per partner. They may bring Rs. 100 or Rs. 50,000 or Rs. 10,000. How can keeping the number be justified? How can the work be distributed?

SHRI G. P. KPADIA: We are not viewing the matter on the basis that we have to distribute the total income. Taxation takes full care of this and a sizable portion of that automatically goes to the coffers of the revenue authorities. We think in terms of efficient service being maintained and continued. I can provide a short answer to this. Under the Companies Act itself, 20 directorships are permissible. There is no mention that these companies shall be of a particular size or below a particular size. You are permitting, under the Companies Act, choosing of 20 companies to the director himself.

SHRI S. R. DAMANI: You have given a scheme. My only point is whether, by keeping the number, there can be proper justification in the distribution of work.

SHRI G. P. KAPADIA: If you are thinking of equal distribution, you have to take the total number of companies and the total number of firms and then divide equally. But that is not a proposition which is acceptable. We bestow attention on removing concentration and at the same time providing work to the younger members of the profession. At the same time we want to put our feet firm on the ground so that the very base of profession, the strength and quality of the profession, do

not suffer. It is with this objective that we have made the approach. It is not a question of emoluments, how much fees anybody gets. Today people appoint particular people or firms in respect of any service because they know that the man or firm will do justice to the matter. Forget about audit; take any other service. Particular fees are paid to a person or persons because of their inherent capacity and the exercise of the brain power that they have. Ours is a profession which is an intellectual pursuit and, thehefore, we cannot think in terms of that sort of equal distribution which you have hinted.

SHRI S R. DAMANI: There are many chartered accountants. They may be taken as partners and the monopoly may continue.

SHRI G. P. KAPADIA: There is a fundamental distinction between a persons being a paid employee and a partner. A partner acquires all the rights under the Partnership Act.

SHRI S. R. DAMANI: Regarding propriety audit, I would like to know whether such audit is being done at present by the Institution.

SHRI G. P. KAPADIA: From my little experience I have found that in the corporate sector people go in for propriety audit because they want a full check on their organisation; if there is a gigantic organisation, they want this sort of check to be exercised; there is a separate arrangement mad between the professional firm of auditors and the Board of Directors as to the exact scope of inquiry to be made. But these cases may be few and far between.

SHRI R. R. SHARMA: Do you have any apprehension that the Government is going to nationalise the audit profession by these provisions—by amendment of section 224 and insertion of section 224A—without saying that in so many words?

SHRI G. P. KAPADIA: I cannot speak about the intention of the Government because I am somebody working to help the Government. I am not the Government. That is point No. 1.

Regarding nationalisation, I my respectfully submit that there is no proper concept of what we mean by nationalisation. What is nationalisation? Are you going to take away the firms, their property, their assets and compensate them for that? What is exactly intended? If the entire corporate sector is nationalised, then the power of appointment automatically vests in the Government. But nationalisation which some people have in mind cannot be easily implemented.

SHRI R. R. SHARMA: Is your Council of the opinion that there should be a ceiling—maximum and minimum for the auditors, junior or senior and if so, what should be the ratio?

SHRI G. P. KAPADIA: Here it is a question of intense examination because this will have some bearing on the appointment of joint auditors. Supposing there are two firms and the third is appointed. There my Council says that this is a matter of detail, we have provided the principle and we leave the details to you.

SHRI JAGDISH PRASAD MATHUR: A member of your profession was also on the Wanchoo Commission. They have made recommendations on unearthing black money. They say it is difficult to unearth the black money. So, there is this apprehension of collusion of auditors with these big firms. So, what is your reaction to the nationalisation of your profession so that all of you can become part and parcel of the Govt. so that the work may be done?

SHRI G. P. KAPADIA: In the first place there is a wrong assumption of the effect that it is because of want of check in respect of the

corporate enterprises by the audit that black money has arisen. Black money is something which has permanently remained out of the purview of the books of the Companies concerned. It is something which is totally outside and it has no bearing. Persons in charge of companies have utilised their position and amassed black money and it is something which they do not show in the books of accounts. What passes below the table has no record whatsoever and no human-being can probe into the hearts of these people and find out what is happening. I will give you an example of this. An attempt was made in an earlier period to pinpoint the responsibility on authorised representatives to say that the returns of income submitted by the individual is complete and correct in all respects. We took objection to this for the simple reason that it is only the person who makes the return who knows all about it.

So, black money is a disease of such a nature that unless something revolutionary is done in respect of the unscrupulous people and they are completely ostracised from the society, nothing will happen and it is a vicious circle. If anything goes wrong, it is the auditor who is blamed. That is not a healthy approach. Some years ago a complaint was made to the effect that the reports auditors were not reliable as they were the employers auditors. We reported the matter to the Finance Minister saying that this is what is happening and then he came out with a notification that in respect of a particular company for which this dispute has arisen, he made a Chartered Accountant a member of that very Industrial Tribunal. Here is an example that the profession it self has provided. So, all this loose talk of non-performance or lesser performance of duties by the members of our profession, all these charges were inquired into at the level of the Finance Minister—Mr. C. D. Deshmukh was then the Finance Minister—and we were able to acquit ourselves and prove to him about *bona fides*.

About nationalisation, I have given you an answer that if your intention is to nationalise the profession, let us not indulge in the loose talk of nationalising the profession, nationalise the whole corporate sector and automatically the profession will get nationalised.

SHRI JAGDISH PRASAD MATHUR: On page 9 of your memorandum. you have said that rotation would bring harmful results of a permanent nature to the younger members. We find that some Chartered Accountants who are practising on the income-tax side do not get any audit work because the small firms which are established in small towns have no offices in big cities like Bombay, Madras and Calcutta. The big firms which have their headquarters in these big cities employ these big firms but these poor follows who are working in small towns never get any chance of this audit work. You too have submitted a scheme, I think, in order to benefit people who are in the small towns. So, if the Government take this view that the Government should not give permission beyond three years and only for three years, then only these follows will have nothing you say there will be loss, they will not lose anything but they will gain something. They will get some work as you have said in para(h).

SHRI G. P. KAPADIA: They have got the existing work to do—some of the juniors also. If this three year scheme comes into operation, it will apply to all the cases including the younger Chartered Accountants because once he loses, he will never get it back. After all, it is only after putting in a lot of affort that he gets some audit work.

The other thing is of primary importance. On page 13 of the memo-

randum we have stated that if a joint auditor is to be appointed, preferance should invariably be given to the local man. We have highlighted that issue deliberately and I can tell you that as a result of the self-regulatory measures initiated by the Council, we have taken an active interest in the career of the youngsters and we want to build them up. To give you an example, bank auditors are appointed. Some of the youngsters do not know what bank audit is. Then we began thinking what we should do about it. Then we decided that it was our bounden duty to initiate them into the A B C of the bank audit and train them up so that in course of time they become our equals. That is the healthy approach of the Council and we want to continue that process.

SHRI H. M. PATEL: It has been pointed out that this has resulted in concentration of audit in a few established firms of auditors and has tended to create close association between auditors and groups of companies. This is what you have said, and I wanted to know how to get down and precisely get at this idea of concentration and close association with group of companies. I would like you to clarify if possible.

SHRI G. P. KAPADIA: Unless you have a clearer definition of what you mean by the term group, a clearer picture cannot emanate. We can't venture any comment of a hypothetical nature. This is subject to my observation of close association.

SHRI H. M. PATEL: I follow that. We heard from one learned witness that what he understood by group of companies was this. He said not more than 3 companies of a group shall be audited by an auditor. What would you say?

SHRI G. P. KAPADIA: This would be negative approach. If there is collusion between auditor and the group of companies, deal with the matter ruthlessly. One group may consist of 10 companies or 20 or 30 even. One can't be sure of the position. Your committee may go further into the matter.

SHRI H. M. PATEL: You have said close association has to be if the auditor has to do the work and you might assure that the audit functions are discharged independently and with integrity and so on. There has to be close association even with small companies as with group of companies. I take it, for close association, in itself, there should be no objection.

SHRI G. P. KAPADIA: That is the exact point the Council has made.

SHRI H. M. PATEL: In your scheme you said this. About Junior Auditors how do you look after them? A question was asked. In your scheme in a way you have provided for it in this way. You mention companies with capital of less than Rs. 25 lakhs.

SHRI G. P. KAPADIA: And also public companies.

SHRI H. M. PATEL: There is scope in that way. So far as concentration is concerned you have said, merely because partnership firm will have large number of companies, it does not mean concentration in any wrong sense of the word.

SHRI G. P. KAPADIA: Not a generalisation. But I would say this. If the partnership is of 10 and it has 150 audits it should be considered all right.

SHRI H. M. PATEL: I think you have made a review of the present position. There are firms of small numbers of partners. Still they audit large number of companies with the help of their employees and other staff. You have suggested partners should be 15 maximum will be that. You also suggest we may put a limitation of 20 on it.

SHRI H. M. PATEL: Average number of partners in a firm is 4 to 5. It is 15 in some cases. In no case it is more than 16. This is the present position. Even if they go to 20 there is no objection under company legislation. This is another proposition which the Council will take up separately with the Government, whether existing Act should not be amended to permit partnership exceeding 20 persons on the line of U.K. legislation. This is a matter which I could not mix up with the present amendments.

SHRI H. M. PATEL: In order to check concentration you suggested propriety audit. That is why section 227 is brought in. It does not go far enough you say.

SHRI G. P. KAPADIA: That is not adequate and enough. It should be fully expanded. That is what we have said.

SHRI H. M. PATEL: You said chartered accountants could do cost accounting. Is it the case that cost accountants have some special training which chartered accountant does not ordinarily have? Cost accountancy is different from ordinary accountancy. That is what they say.

SHRI G. P. KAPADIA: Chartered accountancy, financial accountancy, cost accountancy, secretarial services etc. are part and parcel of the same united function. We endeavoured to have an integration in regard to the accounting profession in India. In many fields, the services are of such a nature that you cannot divorce one from the other. Whatever may be the present pattern, the fact remains that even for income-tax purposes, cost accountants are being recognised. We have no quarrel with this. The Chartered Accountants have rendered these services from the very beginning.

SHRI H. M. PATEL: The Cost Accountants go through the courses—special ones—which the Chartered Accountants have not.

SHRI G. P. KAPADIA: If you take the syllabus and the courses great emphasis is being laid on costing and the basic impression is to provide Cost Accountancy Service and not Cost Auditing Service. Cost Accountancy Service is different from the Cost Audit. I may be permitted to digress a little and say when the Cost Works Accounts Bill was introduced, cost audit did not find any place in the whole legislation at all. Therefore, basically the Institute was formed to provide the cost accountancy service, maintenance of cost accounts and full time service to be rendered. When it comes to audit, it is a special exercise of function for which practical training is necessary and in our humble opinion we are equally fit to render that service.

SHRI H. M. PATEL: It is quite right that the Council should look after the Chartered Accountants and that the Chartered Accountants should have more scope. When you organise a separate provision of Company Secretaries, would it not be doing some injustice to those who go through training as Company Secretaries to have some others coming into their reserved field?

SHRI G. P. KAPADIA: I speak without hesitation that the Corporate Sector appointed lawyers Chartered Accountants as Secretaries. There must be some competency in them. It is not a wishful thinking. I would say that the Corporate Sector will certainly comply with the legal requirements of the statute but so far as the utilisation of service is concerned they will certainly look to the competent persons—lawyers and the chartered accountants. We possess the quality. We are not wanting encouragement in the profession. We have created the position for ourselves on the basis of ability and performance. We want that to be recognised by the statute.

SHRI H. M. PATEL: You mean to say that the Chartered Accountants and the lawyers should be treated as qualified Company Secretaries.

SHRI G. P. KAPADIA: That is my plea.

SHRI H. M. PATEL: What sort of experience would be sought for, what sort of status should they have and in what way such a person will be appointed? am talking of joint audit.

SHRI G. P. KAPADIA: It will be the same which the existing auditors perform. It is no use thinking that they are the only people capable of rendering this service. Over a period of time the younger member also will certainly come upto the standards and it should be an endeavour of all concerned and particularly the Council of the Institute to so build up the profession that over a period of time the juniors take their rightful place in the profession.

SHRI H. M. PATEL: You said that the Joint Auditors should be appointed by the minority share holders. How will that be worked out?

SHRI G. P. KAPADIA: I am not saying minority share holders. What the Council has stated is that in the passing of this resolution the Directors and their Associates shall not vote.

SHRI S. S. MARISWAMY: Have you come across any monopolist control in support of majority business that they have collided with the management to indulge in mal-practice and anti-social activities?

SHRI G. P. KAPADIA: I have not come across with this. My experience is of a different nature and I have got reports to the extent that where there have been differences of opinion between the Management and the Auditor concerned and when the Manager or the chief authority in the Company referred the matter to the Chairman, his considered advice was that whenever there is a difference of opinion between you and the auditor, the auditor's opinion should prevail.

SHRI P. R. SHENOY: How many complaints were received by you against the Auditors in the year 1971-72 and the number of cases in which action was initiated and the number of persons found guilty?

SHRI G. P. KAPADIA: Total number of complaints received .. 641

Cases referred to the Committee	196
Cases referred to the High Courts for final orders	.. 121
Cases ready for filing in the High Court	.. 3
Cases disposed of by the High Court	.. 119
Cases where the Chartered Accountants were not found guilty	.. 45
Cases where the High Court agreed with the findings of the Council—without punishment	.. 22
Quantum of punishment enhanced	.. 2 cases
Quantum of punishment was reduced	.. 20 cases

The record is clear.

SHRI P. R. SHENOY: Can you give us the number of complaints received from the management against their auditors?

SHRI G. P. KAPADIA: I am told that there are some cases. During the first year, there was no case.

SHRI P. R. SHENOY: You have suggested the appointment of joint auditors I think, it is good suggestion. Will you be satisfied if this is done in rotation system. Or are you very particular that ceiling should be put on the number of audits? I think, if the ceiling is put on the number of auditor, they will lose their independence, because they will always be anxious to retain their work with the existing companies. What is your opinion in this matter?

SHRI G. P. KAPADIA: I do not accept the proposition that the ceiling on company audit will result in independence going away. What we have suggested in our Memorandum, without making an approach of that nature, you just cannot get out of the question of concentration. Joint auditorship by itself would not be a good replacement. With the present atmosphere, even the larger firms have realised and seen the writing on the wall and they would themselves shed off a good deal of their work.

SHRI P. R. SHENOY: Ceiling on the number of audits will being ceiling off income also. Don't you think that concentration by itself is bad. One witness said that concentration is necessary for the profession.

SHRI G. P. KAPADIA: I will put it in a different way. If I give personalised service and render expertise, it is the exercise of a profession. In fact, without giving that pereonalised service, I would not be rendering the profesisonal service. Mere reliance on qualified assistants would not be personalised service.

And then ceiling on income is a different issue, and does not come within the purview of this Bill. It can be dealt with and considered differently.

SHRI P. R. SHENOY: Why do you want the ceiling on the number of audits?

SHRI G. P. KAPADIA: So that the younger people can be provided more opportunities.

SHRI P. R. SHENOY: There are auditors who are not having the audit work, whereas others have plenty of work.

SHRI G. P. KAPADIA: As I put it, it is the expertise and the brains which are exercised to give personalised service. It is not the fruit of the work done by some other entities for which the benefits goes to the proprietors of the firm.

SHRI H. K. L. BHAGAT: You gave us some figures, which you said, you could not get them compiled completely. When I put my question to you, I am putting it with the only intention to understand the position clearly. Please do not take my remarks as any reflection on your profession. This is only because I want to understand the position objectively. Do you come across in your institution any cases of collusion between the management and the auditors?

SHRI G. P. KAPADIA: No, Sir.

I am now told that there was one case of this nature and before the enquiry could be completed, the auditor died.

SHRI H. K. L. BHAGAT: I am a practising lawyer. People say so many thing about my profession in a general way. Our job is to assist the people in the administration of justice and thus help the clients. But people say so many things. As I said earlier, please do not misunderstand me. In a general way, I would like to know your impression, whether you believe that any collusion between the management and the auditors exists and if so, to what degree. I want this in a general way. Do you believe that there is collusion between the Management and some auditors, which results in certain things like evasion of tax? I want to know your impression because you are a very seasoned man and your experience can be of immense help to this Committee in coming to a conclusion.

SHRI G. P. KAPADIA: These are things which are very difficult to assess, but I will give you my own impression. In the present context of things, we as citizens of this country are all worried about the atmosphere that is prevailing. Up to a period of time, I myself believed that the extent of evasion may not be of that high order but, with the things I see happening, I have come to the conclusion that there is collosal evasion going on in this country. Evasion cannot be possible without corruption and

corruption would not arise if there was no collusion.

But as far as our profession is concerned, we have not come across any collusion. It is possible that the collusion may be of a totally different nature which may have no relationship with the performance of the Auditors; but I shall just make mention of an observation which I made several years back, that I do not take the stand that there is no deterioration of moral standards in my profession. We should not be complacent about it, but we can say that it cannot be of that high order as may be found in other spheres. There are black sheep everywhere in society and there is no use in claiming that the integrity of my profession is crystal-clear. There may be black sheep, but as regards what may be the extent of it, it is only the authorities who, with their profuse powers, can find out whether there is collusion and, on behalf of the Council, I can give an assurance to the authorities that if they are able to pin-point some sort of collusion and if some complaint comes before the Council, the Council will be very grateful about it and will give its utmost co-operation and will extend its services in such a manner that these wrong persons are brought to book—and brought to book in an appropriate and proper manner.

SHRI H. K. L. BHAGAT: I very much appreciate the reply given. So, it is obvious that just as in other professions there may be collusion, here also, everybody is not good and everybody is not bad; and you feel that Government should find out such cases and bring it to your notice so that you can take action. So, to that extent perhaps you mean that the present law regarding vigilance is not adequate. Would you agree with me that some more steps are necessary to check this collusion?

SHRI G. P. KAPADIA: A general observation I may make with regard to this matter is this. In any legislation, the attempt should be not to increase paper work and enquiries, but the effort must be to achieve fruitful results. The proper course would be to find out, in respect of the amendments already effected in regard to Company Law and other legislations, what were the objectives, what was the implementation made, and what were the results. It is only then that we can assess the actual working of these measures.

As for tackling the question of collusion, where necessary, Government can certainly issue orders in a particular case. Wherever they find that there is collusion and there is a prima facie case, in addition to filing a complaint they can certainly come up with additional suggestions that it should be a case for investigation either by Auditors appointed by the Government or by additional Auditors to be appointed for the specific purpose of carrying out a detailed investigation into any such case.

SHRI H. K. L. BHAGAT: In any case, you think it requires more careful consideration.

Now, I will put to you this question. Would you agree with me that the corporate sector—whether it is public sector, private sector or joint sector and whether private money is involved or public money is involved—in any case public interest is involved very much. In that case, the purpose of audit, you would perhaps agree with me, must be to serve a national and social purpose at a given time in the sense that the money invested in the companies is not wasted and the best possible returns come. So would you agree that the present scope of audit is to be enlarged and if so to what extent should it be enlarged. Another question which is inter-connected is, don't you think that the purpose of audit being more important in the national interest, the audit profession also needs more regulation and control than at present? Do you agree that much stricter action than is provided at present by law should be provided. Summing up, my question is, would you agree that the scope of audit should be enlarged and at the

same time some kind of greater control on this profession is necessary falling short of what is called nationalisation? In fact, some people advocated nationalisation. There is a feeling in some sections that this work being of national importance, audit should be completely taken over by the Government. But supposing the profession is nationalised, then the expertise and all those things will have to be taken over along with it. So, to meet the shortcomings of the present legislation, would you agree that that some kind of enlargement of the scope and at the same time, some greater degree of control and supervision by the State in the interest of the nation is necessary?

SHRI G. P. KAPADIA: There are two parts of the question. The first part is regarding the extension of the scope of audit which has already been dealt with by me under the heading of Propriety Audit. Now, in respect of this the scheme can only be worked out, if the Council bestows its full attention on this. That being so, it is no use....

SHRI H. K L. BHAGAT: I want to know the broad idea of this scheme. I am not asking about the detailed scheme, I do not know accountancy.

SHRI G. P. KAPADIA: I agreed that the scope of audit should be enlarged.

SHRI H. K. L. BHAGAT: For what purpose and in what directions, they should be enlarged?

SHRI G. P. KAPADIA: Those directions will embrace the entire field and cover even 20 items and we will have to bestow our attention to focus our view points and policy on this. But for the second part of the question—whether the profession requires to be regulated—my emphatic and very clear answer is 'no'. You would be doing the greatest injustice to this profession, if the amendments in the present form are incorporated.

SHRI H. K. L. BHAGAT: I did not say that it should be controlled. I say that the matter is one of national importance, for example, we have taken over certain functions.

SHRI G. P. KAPADIA: We are a creation by an Act enacted by the supreme Parliament of the country. You have bestowed confidence on us because you desired so. I would therefore request this august House that whenever some sort of loose criticism comes in, a plea for regulation and control over the Institute comes in, you should give us necessary protection because of our past record and we want to continue our service to the country and want to contribute towards peace to the community in general and to the State in particular which is a moral obligation to us.

SHRI H. K. L. BHAGAT: You also said that for the last some years, certain attempts have been made to make the profession more independent, so that they could do that job more independently. On the other hand, you feel that the profession should be more independent and function independently. And you said if a provision should be aimed against the decision of the management to remove an auditor, he has got to go for a right of appeal to the shareholders. I would like to know in how many cases during the last one or two years the bigger audit firms had been removed by the management.

SHRI G. P. KAPADIA: At least I have no information.

SHRI H. K. L. BHAGAT: You said that if there was some kind of ceiling, it would give an opportunity to the youngesters to work. Now I would like to know whether it is possible or not. I would like to know if it is possible for you to say either on behalf of the Institute or on your own behalf, whether you believe in the ceiling of income or not.

SHRI G. P. KAPADIA: Well, Sir, neither on my own behalf nor on behalf of the Council I would venture to give an opinion on this because the question of ceiling on income is a subject to be decided as a policy matter by taxation measures. I have no scope of argument over this.

SHRI BEDABRATA BARUA: It is made known that the Council is considering to make certain suggestions regarding Propriety and all that. I would like to know during what period you can give your suggestions for the benefit of the Committee.

SHRI G. P. KAPADIA: Well, sir, our initial difficulty is this. We had to request the Select Committee to give us time to submit a Memorandum in this regard and the simple reason was that the Memorandum could not be finalised without holding a meeting of the Council which is held once in six months. I can give you this solemn assurance on behalf of the Council that we need business and we want to come up with a very specific formula and after discussion between the Council Authorities and the Government, a fruitful formula is bound to emerge.

SHRI BEDABRATA BARUA: I hope that if you are able to give us some sort of suggestion within one month, we could do something or discuss further on this.

SHRI G. P. KAPADIA: The President of the Council tells me that the matter may be considered at a special meeting of the Council which will entail a colosal expenditure; otherwise, the Committee may have to wait up to the end of March '73.

MR. CHAIRMAN: We cannot wait till such time.

SHRI G. P. KAPADIA: Then Sir, we will find it a bit difficult. But as a general principle we stand committed to it.

SHRI D. K. PANDA: I have carefully gone through your Memorandum. Now with regard to the second aspect, I want to know whether you subscribe to the view that this kind of concentration of business on a few audit firms, like monopoly houses, would lead to certain malpractices.

SHRI G. P. KAPADIA: There is a distiction between the word monopoly and the word concentration.

SHRI D. K. PANDA: In monopolistic concentration, there is a greater degree of such mal-pactice and because of this close association rather than you have put it collusion in mal-practice.

SHRI G. P. KAPADIA: If the auditors are performing their duty in a proper manner, the mal-practice of one monopoly house cannot and should not cast reflection on the performance of the duty of the members of the profession as such.

SHRI D. K. PANDA: It is not a question of aspersion. The point is whether you have come across such cases.

SHRI G. P. KAPADIA: We have not.

SHRI D. K. PANDA: Have you come across cases where auditors of the big companies were removed?

SHRI G. P. KAPADIA: There have been a number of cases.

SHRI D. K. PANDA: What are the causes that led them to remove?

SHRI G. P. KAPADIA: The management will not naturally give such reasons.

SHRI D. K. PANDA: Suppose some companies have got auditors and they have gone beyond their limit. Suppose, he has investigated into every malpractice which he is not entitled to, for example, tax evasion. In such cases, if the auditor just makes his own comment and submits the report to the Government. Whether any such company has taken any action.

SHRI G. P. KAPADIA: The Council has not come across such cases.

SHRI D. K. PANDA: I have gone through Survey Reports about mal-

practices. There is a general remark. Whether that thing has been brought to your notice. If you want I can send it to you. I do not remember the exact message.

SHRI G. P. KAPADIA: The initial difficulty of the Council will be that unless a formal complaint comes to it, it cannot enter into it and conduct an enquiry because there will be no cause. Nobody will give any co-operation; nobody will have any reply. Under the authority vested in the Counil, an action can be taken.

SHRI D. K. PANDA: In (g) you have made certain remarks about confidence. There must be mutual confidence and trust for the efficient working of the audit. You have made a distinction between close association and collusion in mal-practice. The very fact that you have mentioned that a distinction should be made that is also based on the tangible facts. So, you have concrete cases of close association for general performance, for efficiency and also collusion in mal-practice. They are also based upon certain facts. May I understand in that way your collusion in mal-practice is based upon your hypothesis?

SHRI G. P. KAPADIA: These are two different propositions. If you link close association with mal-practice and collusion, then the words may be taken as synonymous identification. Close association is something which should be encouraged. Now, taking the case of administration, general administration, whether it is Govt. administration or otherwise, in respect of setting up of a Govt. organisation or the organisation of any public sector undertaking or any other entity, unless there is mutual confidence between all the entities working right from the top to the bottom, fruitful result cannot be achieved. The close association has to be there; mutual trust has to be there. If the confidence is absent, then it may take ten days to clear matters in a proper manner. If there is mutual confidence between the two, better result can flow. I can give you an instance of a particular enlightened industrialist who told the management to accept the advice of the auditor; whatever their views, because they will be going in the best interest of the company as a whole.

SHRI D. K. PANDA: You have stated earlier that close association has to be distinct from collusion and mal-practice. If there is a collusion and mal-practice, it has to be directly dealt with. Therefore, whether collusion and mal-practice are also based on hypothesis as you have put it. This proposition is based on hypothesis in (g) under 11.

> "Another contention advanced in favour of rotation is that the errors of commission and omission committed by previous auditors could be detected by the new auditors. This proposition is based on a hypothesis . . .

These words you have used.

SHRI G. P. KAPADIA: Because such cases have not come to the notice of the Council. That is why we say 'hypothesis'. If they have come to our notice, we would have taken cognisance of the same.

SHRI D. K. PANDA: While making that suggestion, you had in your mind —rather from your experience—about certain facts, certain occasions and certain events.

SHRI G. P. KAPADIA: That may be. I have already replied to another hon. Member. I cannot generalise. You cannot estimate that the entirety of a profession or a service is of a particular order.

SHRI D. K. PANDA: The main purpose of the rotation of auditors, is to secure social justice and to help in the social and economic progress. Can you just agree with me that the new auditors who will be entrusted with the job, will be able to find out the errors of omission and commission committed by the previous auditors including cases where they might have

joined hands with the monopolistic or other forces. So, in order to detect that, if the new auditors are entrusted with that sort of work, they will do their work more enthusiastically and more honestly. In line with the social objective, they should be able to find out what actually the position is and they should be able to detect the whole thing fearlessly.

SHRI G. P. KAPADIA: I do not concede that proposition that the performance of the auditors at present is of such a low order that it requires some sort of an over-inspection and that too by another entity which can set matters right.

SHRI H. K. L. BHAGAT: I asked you as to whether any cases have come to your notice where the management gave notices to auditors or agreed to remove them. You said no such cases came to your notice, but in reply to Mr. Panda's question as to whether any cases have come to your notice where notices for removal of auditors have been given, you said 'yes'. But in reply to my question—my question was with reference to big firms—you said 'No'. So, I would like to know whether you meant that provision in cases of big firms or with regard to some other firms. Two questions of the same nature have been put. In one, he said 'Yes' and in another he said No'.

SHRI G. P. KAPADIA: Recently, there were some cases of this nature. That is why, I modified my answer to this question.

SHRI H. K. L. BHAGAT: You modified it when Mr. Panda put the question? Are there any cases relating to big firms where they have received notices? Now, I have put a more specific question.

SHRI G. P. KAPADIA: I am told that there is one case which may be considered to be partly *sub-judice*. You should not embarrass.

SHRI H. K. L. BHAGAT: Not at all. I do not want to ask that. I would like to know about another thing. You said that there is no need for any supervision because the audit work is being done smoothly. Assuming that the audit work is done properly. I would like to know whether you have come across any cases in respect of audit work, where certain things have been detected by the Department and there are certain prosecutions and other things pending. It may be that they must have done the work honestly Assuming that, don't you think that there is scope for improvement?

SHRI G. P. KAPADIA: These cases have to be singled out to find out the factual background of the cases. You think that they relate to the performance . . .

SHRI H. K. L. BHAGAT: I am not talking about that. I am not attributing any motives.

SHRI G. P. KAPADIA: I am concerned there with the performance of my duties and to provide answers as regard the responsibilities of the Members of my Institute and the profession. If there have been some cases for which some proceedings have been taken up, against the management or the persons in-charge of the Companies concerned, that should not by itself cast a reflection on the performance of duties of the members of the profession.

SHRI H. K. L. BHAGAT: It is not that. It may be that managements might have succeeded in deceiving them by not disclosing the facts to them. Don't you think that in these circumstances, something more is requerd to be done by the audit than is being at present?

SHRI G. P. KAPADIA: In deference to the statutory requirements and the code of ethics of my profession, we issue even guidance notes. If difficult situations arise, we guide the members and say 'in particular these things have happened. Please see that hereafter no such thing is allowed to happen'. The point is that when the Institute members perform their duties

conscientiously and sincerely, if there are certain cases of malpractices, it should not cast a reflection on the members of the profession.

MR. CHAIRMAN: Mr. Kapadia, on behalf of the Committee and myself, I thank you for giving us your valuable opinion which the Committee will take note of and consider at the appropriate time. I thank you once again for having come and given evidence.

SHRI G. P. KAPADIA: I convey my grateful thanks on behalf of myself, my colleages, the Institute and the Council, for the very patient hearing which this hon. House has given. We have submitted our views and we leave it to the good judgement of this august House representing the Supreme Parliament to do justice to all the issues. We are most grateful to the members of the Committee. Thank you.

[The Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Monday, the 11th December, 1972 from 15.00 to 18.15 hours

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri H. K. L. Bhagat
4. Shri Somnath Chatterjee
5. Shri Tridib Chaudhuri
6. Shri Khemchandbhai Chavda
7. Shri S. R. Damani
8. Shri G. C. Dixit
9. Shri Popatlal M. Joshi
10. Shri Jagannath Mishra.
11. Shri Surendra Mohanty
12. Shri H. M. Patel
13. Shri S. B. P. Pattabhi Rama Rao
14. Shri R. Balakrishna Pillai
15. Shri Jagannath Rao
16. Shri P. Ranganath Shenoy

Rajya Sabha

17. Shri B. T. Kulkarni
18. Shri Harsh Deo Malaviya
19. Shri Jagdish Prasad Mathur
20. Shri M. K. Mohta
21. Shri D. D. Puri
22. Shri Mahavir Tyagi
23. Dr. M. R. Vyas
24. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri Ch. S. Rao—*Deputy Secretary*
4. Dr. (Mrs.) Usha Dar—*Joint Director*
5. Shri C. R. D. Menon—*Under Secretary*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

WITNESSES EXAMINED

Associated Chambers of Commerce and Industry of India, New Delhi.

Spokesmen:

1. Shri N. M. Wagle
2. Shri N. A. Palkhivala
3. Shri M. H. Mody
4. Shri S. H. Gursahani
5. Shri M. M. Sabharwal
6. Shri R. L. Mehta
7. Dr. S. Chakravarty

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: Representatives on behalf of the Associated Chambers of Commerce & Industry, Mr Palkhivala, Mr. Mody and others, on my own behalf and on behalf of the Committe I extend our welcome to you and I hope that the Committee will be benefitted by your views; particularly Mr. Palkhiwala, an eminent lawyer, is there to enlighten us on the subject.

Before we start, I would draw your attention to this direction. The witnesses may kindy note that the evidence they give will be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even if they may desire the evidence to be treated as confidential, such evidence is liable to be made available to Members of Parliament.

With this direction for your benefit, may I request one of you to give the salient points, besides the memorandum which you have submitted or anything in the memorandum which you think to be more important? Later, I would request the Members of the Committee to put questions to you. I hope you will reply to them frankly and fairly. I would now request you to begin.

SHRI N. A. PALKHIVALA: Mr. Chairman and hon. Members of Parliament, you have rightly said that we have to give our evidence frankly because then alone will we be utilising your valuable time properly. I have no doubt that the objective underlying this Bill is a laudable objective; in other words the idea is that public interest should be served. With that particular objective all of us here who represent the Chamber have no quarrel at all. The only question is whether this laudable objective will be achieved for the public good.

May I request the Hon. Members to approach this Bill basically bearing in mind five questions? I would submit that the answers to the five questions would decide whether we

have substantial variations made in it.

The first point is that the different provisions in this Bill make a confusion between what is appropriate to the Monopolies Act and what is appropriate to the Companies Act. If I may say a word about this question before I go to the second, there are some objectives which are sought to be served by the Monopolies Act and there are other objectives which are sought to be served by the Companies Act. If this is introduced in the Companies Act you have not only a blurring of the vital line demarcating one public objective from another; you impose a number of serious restrictions on companies which by no stretch of imagination could possibly come under the ambit of the Monopolies Act. It is going to be my submission to the Hon. Members that quite a few of the provisions of the Bill which, under the Monopolies Act would serve a public interest could find no place in the Companies Act.

The second question is whether the draftsman of the Bill has taken into account the inevitable normal results and consequences of the abnormal provisions he has chosen to propose. These provisions which are sought to be introduced in the Companies Act are abnormal by any standards. 90 per cent of them are provisions which you will not find in any other Company Law jurisprudence. You have the same objective which can be achieved elsewhere by other provisions but not by the type of provisions we have here. It is my belief that the Hon. Members of this House would undoubtedly try to weigh the consequences of every measure that they support. If the normal implications and consequences of these provisions were to be pointed out to them, they would have a different approach towards the provisions—of which, may be, the technicalities and implications they have not been made aware of, and it would be my endeavour to satisfy the Hon Members that the inevitable and normal consequences of these abnormal provisions have not been taken into account by the proposer of the Bill.

The third question is whether the provisions of the Bill would not cause more injury to public interest than the public good which can possibly be achieved by it. Every law is always a compromise between the conflicting interests, and the main job of a wise law maker is to see that it serves public interest without causing public damage. An amateur law maker does not mind Public damage, but a mature law maker than the public good which can tries to see that public damage is kept to the minimum.

My respectful submission to the Hon. Members is that, speaking purely as a citizen who has nothing but the interests of the country at heart—I would like this country to grow and take its place among the great nations of the world—I have no doubt that more public damage would be caused by the provisions in the Bill, taken in the aggregate, than the amount of public good that can reasonably be expected to be achieved.

The Fourth question is, Sir, that the Bill mistakes interference for control and regimentation for regulation. It is my submission that the Bill virtually blurs the line between control on the one hand and interference on the other and between regulation on the one hand and regimentation on the other. There is some point beyond which control becomes interference and there is a point beyond which the regulation becomes regimentation. The Bill makes no distinction between these concepts which are completely different and distinct. It provides for interference in 9 cases in order to control the 10th case; it provides for the regimentation of 9 cases in order to regulate the 10th case. Before any damage is caused to the economy of the country, it is better if one is on the safe side of the line.

The last and the fifth question is that the provisions of this Bill violate the established principles of jurisprudence accepted by the mature democracies of the world. For example

the Bill proposes punishment of 3 or 5 years imprisonment for a man, when he may have caused no damage to anybody whatsoever. Purely technical offences made punishable with imprisonment. You will realise that this kind of provision may occur in certain continents, in certain parts of Asia but they are not consistant with a mature democracy and the mature jurisprudence of the democracy. And it is my respcetful submission that we cannot provide penalties which amount to barbaric sentences. It is all right in other countries of the world where you may chop off the hands for stealing or you may have the death penalty for trying to contravene a certain regulation. But the concepts of the Bill do not appear to be reasonable by the standards of a civilized democracy.

In the light of these 5 questions I would request you—hon. Members—to apply your minds to this Bill and decide for yourself whether you think that the Bill should be enacted in the form in which it is today. With these preliminary remarks, may I now request ahe hon. Members to turn to some of the clauses of the Bill which deserve special consideration. I am omitting those clauses which by comparison are not so dangerous to public interest as these clauses which I shall presently deal with.

First, you would be good enough to turn to clause 2 of the Bill which proposes to define a 'group'. Now, just consider how completely unsatisfactory this definition is. You will kindly bear in mind that the Secretaries of companies decide whether a company should follow certain formalities when the company makes a certain investment or makes a certain appointment. Now, the Secretary has to decide for himself and advise the Board whether a particular line of action should be taken or another line of action should be taken, and whether two companies are in the same group. The definition of a "group" is so vague that no Secretary can advise the company correctly and no board of Directors can be sure of acting legally. You have got to give some clear guidance by which the Secretary could advise properly and the Directors can act confidently. For example, if two companies are in the same group and if one company wants to give a loan to the other, then a limit applies which is different from the limit applicable to companies which are not in the same group. Now the Secretary has to make up his mind whether he will advise the company to give a loan upto 'X' limit or 'Y' limit. No Secretary can confidently advise the company in this respect. So nebulous is the definition of "group".

MR. CHAIRMAN: Have you any suggestion to plug the loopholes?

SHR N. A. PALKHIVALA: If you will permit me—because my evidence will take a little time—I shall give it in writing as an alternative which may be considered by the hon. Members before submitting their report to the Government.

MR. CHAIRMAN: But I thought you might be keeping ready with your suggestion and that is why I asked for it.

SHRI N. A. PALKHIVALA: Each clause has to be very carefully considered and formulated. I am not having anything ready to submit now. Regarding definition of a group, the clause says if two persons are jointly managing a trust, then the two become a group. Let us consider the normal consequences of this abnormal provision. There are two trustees of a public trust One of them is man from the north and the another man is from the south. They have come together. Each one of them is running his own company. One company is in U.P. and the other company is in Kerala. The two companies find themselves treated as companies under the same management.

Kindly look at Section 4B at page 3 of the Bill. No two companies, can ever know in advance whether

they are under the same management. Surely, we want that companies should know in advance. I tried to do an exercise and I found that companies which have never heard of each other would be under the same management. Under the definition, you can keep on adding one category after another. What purpose does it serve? Only the honest man will be hit. No dishonest man will be hurt by this. Any dishonest man will find a simple way out. Our whole object is to hit the dishonest man. According to my experience, none of your provisions will ever cover several companies which are in reality under the same management and they will continue to enjoy all the benefits of the companies which are not under the same management. Let me give you another example. Take the public financial institutions. The way in which the definition has been drafted, it means two companies which have never heard of each other, will come under the same management because public financial institutions have share-holdings in both. How can you administer such a law? There is a new entrepreneur. This man has just started and one-third shares are taken by the public financial institutions. One-third shares in another company are also held by the same public financial institutions. These two companies come under the same management. I am pointing out that the mind has not been applied to the consequences. Are the day-to-day affairs of the company to be regulated by the new law of which the cossequesces have not been worked out even in the minds of those people who proposed this Bill?

Clause 4.—Amendment of Section 17. This clause is very dangerous in a democracy like ours. When a company wants to shift its Registered Office from one State to another, it can today do it with the approval of the court. In the new clause Central Government will decide the matter. Central Government does not mean at the level of the Minister; it means some Deputy Secretary will ultimately make the decision. Just consider the consequences. If you leave it to a politician, surely, he will have all kinds of pressures. He cannot avoid them. I have never heard of a case where the court has wrongly refused to sanction transfer of the Registered Office from one State to another State. Why subject the interests of Companies and your economic development to political pressures? Why cannot sound economic principles play their part? This is virtually throwing to politics something which can be decided in the calm and dispassionate atmosphere of the court room. I can tell you from my personal experience how absolutely disastrous it will be. I am giving two examples both of which are subject matters of recorded judgements of the Maharashtra High Court, and they were delivered by two different Judges. In one case, a Mafatlal Company wanted to diversify and do something which was expected to be extremely beneficial to India and which was expected to earn foreign exchange. The Company asked the shareholders as to whether they would like it. All the shareholders unanimously agreed to that, and the shareholders included the Life Insurance Corporation of India, the Unit Trust and other financial institutions. They all agreed unanimously that diversification should be done. They went to the Registrar of Companies and said 'Kindly approve of this; We are going to Court also'. The Court asked the Registrar as to whether he had any objection. The Registrar did not approve of the enlargement of the objects clause and he engaged a counsel to oppose it. The Court said "What is your justification for opposing? Here is an honest enterprise trying to develop the country".

(The Monopolies Act is different. You have your powers under the Monopolies Act. I am not dealing with that. I am only talking about the Companies Act.) The Court gave a strong judgement in favour of the Company and the Government accepted the decision. Now, Sir, if the same case were to arise hereafter, the Com-

pany will not be able to give employment, give revenue to the Government, develop the country and save foreign exchange by producting articles, because, we are at the mercy of some bureaucrats who will say 'your application for alteration of objects clause is rejected'.

There is also another example. Today, there is a great shortage of steel rolling. We wanted one Tata Company to do this. Everybody approved of this. Government institutions approved of this, as shareholders. They unanimously said 'Please do it'. They said 'It is in the interest of the country; it is in the interest of the Company and it will give employment to so many hundreds of people who are still unemployed'. It went to the Registrar of Companies, who said 'No'. This time, there was another Judge. Again, we won and the Government had to accept the decision. Now, this is a case of diversification which has given employment to thousands, which has saved foreign exchange and it must have generated millions by way of taxes for the Central Government as well as sales tax for the State Government.

In the present conditions, small companies will not be able to expand unless they are able to get round some civil servants. Now, with this type of laws if everything is to be regimented from Delhi, how can you have economic development? Everything in this country is being regimented instead of being regulated. You can have regulation by all means. But this new provision will apply to every Company. It will apply to even to small business because it applies to every single Company which wants to change its objects. This has nothing to do with monopoly and big houses. For that, you have got separate powers under the Monopolies Act. I submit this is detrimental to public interest. There are some persons who will not be affected. They will know how to get round the law. Let the Government point out one case where the jurisdiction exercised by the Courts has ever gone against public interest. Why change it? For whose benefit, are we making these changes? Now, Sir, this Clause 4 is one of the most objectionable features of this Bill. What will happen to a smaller company? It will have to start another company to do a new business. The smaller companies which are subject to enormous interference and inconvenience, may have to start new companies, one for this product and another for another product etc.

These two examples which I have given, are matters of recorded judgements. If you like, I will send them to you. This shows to what extent bureaucratic interference has prevented the growth of economy in this country. My submission, Sir, is that it will result in compounding the injustice which has already been done to business and to enterprise as a result of the existing restrictions which are severe enough. We do not have to multiply them.

There are two other provisions of the Companies Act which are sought to be changed with a view to ousting the jurisdiction of the Court. One is the existing Section 79 which is sought to be changed by Clause 8 of the Bill and the power of the Court is sought to be given to the Government, that is the power to permit the issue of shares at a discount. Here, let me tell you how it works. Very few shares are issued at a discount. But the simple question is, why change it? Not that I am very much concerned about the issue of shares at a discount. They are not issued at all and if they are at all issued, they are issued in rare cases. In such cases, the Courts have given full consideration to all points of view including the point of view of the Registrar of Companies who is entitled to appear before the Court. But, what is the purpose of making these changes? If we have such laws, then, in ten years time, we will have complete regimentation at Delhi, with the result, that the economy will be completely suffocated and throttled. We are already faced with that. That is the main reason why our economy

is not moving. We are taking one slow step after another which is retarding economic development. These are small things. But these small things will get accumulated. As I stated earlier we are mistaking regimentation for regulation. Where the Court's function has been performed for so many years, what is the difficulty about it? I would like the Government to point out to the hon. Members in this regard—as to in which cases the Court's jurisdiction was exercised, against public interest. Already, there is a piling up of files in the Central Government. Do you want to add to these piles? What purpose will be served by having more powers, when the Government is unable to cope with the existing volume of work.

The other clause under which the Court's jurisdiction is sought to be removed, is Clause 11, under which Section 141 is sought to be amended. Now, Section 141 says that if there is a register of charges or mortgages, the Court has the power to rectify the same. This power is sought to be given to the Government. Does it need to be given to the Government?

So, there are three areas in which the Courts' jurisdiction is sought to be taken away. The proposed amendment with regard to change of the Registered Office and change of the Objects Clause of the Company, which would be detrimental to public interest.

Then, Sir, I come to Section 43A, which is sought to be change by Clause 5. This is a clause which deals with the fiction of law, of converting a private company into a public company. Consider here also, the implications. A distinction has to be made, as I said, between the Companies Act and the Monopolies Act. As regards monopolies, you may have your own reasons for trying to curb them. In the Companies' Act, the real distinction between a private company and a public company, should be really this. The public company is one in which public monies are involved, and the private company is one in which a private individual's money is involved, and not the money of the public. Bearing in mind this essential basis, we have a very good definition to-day, which is very satisfactory. The present definition is that if there is a private company where 25 per cent of the share capital is held by a public company, then the private company is deemed to be a public company. After all, here is a public company which has a 25 per cent stake in the private company. Therefore, you can deem the private company to be a public company. Now, what is suggested is that a 10 per cent holding in a private company is enough. In other words, you dilute it; and, in the next amendment, you may dilute it to 1 per cent. You can as well declare all companies as public companies. We are skating on very thin ice. What kind of legislation is this, where you say that 10 per cent share-holding makes a private company into a public company? Here again, the draftsman has not understood this simple thing. The net result would be that if a small man wants to start a business tomorrow and goes to a public financial institution and asks them, "would you take 10 per cent shares" and the institution takes 10 per cent shares, this man's private company becomes a public company.

There is also another provision which is logically incapable of being given effect to. If the turnover of the company reaches Rs. 50 lakhs, "the first day" on which it reaches Rs. 50 lakhs, the private company becomes a public company. First of all, we should remember that no turnover is based on a particular date. The draftsman has not appreciated this, that no turnover is reached on a particular date, but only over a period of time. It is a contradiction in terms. Logically, it makes no sense. But apart from the obvious mistake in drafting, assuming that it should be at the end of the year, when Rs. 50 lakhs-figure is reached, even then it is illogical. There is a company with a normal turnover of Rs. 30 lakhs. And the turnover goes over to Rs. 52 lakhs.

This private company automatically becomes a public company, on the basis of the turnover. When the turnover goes back to Rs. 30 lakhs next year, what will happen? There is no provision for re-conversion of a public company into a private company. We are miles and miles away from the basic concept of a public company. No public money is involved, if a turnover increases; it is there only when public moneys are invested in the share capital. There is muddled thinking in this particular drafting. To convert any company from private into public, depending on its turnover, is not only irrational, it would also deter small companies from expanding and developing. Which company would be interested in taking a defence order exceeding a particular amount, if this will result in its convenience into a public company? How do you develop a nation's company by doing this? If a company is a public company already, it does not matter. If the company is only a small company this question does not arise. But if a country or an individual is not allowed to improve for this reason, it is so gravely detrimental to the national interest. Forgive me for saying this. I feel so strongly about it. The Hon. Members may reject what I say. We have reached a situation where foreign countries have more confidence in Indian business than the Indian Government has. We go to Malaysia, Singapore, Greece and Argentina; and we find the governments welcoming us. They say, "you are men of integrity and great enterprise; and you will develop and create wealth for us. It makes us bow our heads in shame, when we realize that our own government does not recognize all these things. The Indian's capacity is unbelievable. We make ball bearings—I mean the SKF ones. People say that the ball bearings made in India are of the standard attained in the factories of America and other countries of Europe after many years. The Indian enterprise is such that you will find Indians doing business all over the world; but in their own country, they cannot expand and thus enrich their own country. That is the reason why we have reached a grave economic situation. Forget the big business houses; but don't prevent the small man from developing. And then take this provision about paid-up capital of Rs. 25 lakhs. This amount of Rs. 25 lakhs is just equivalent to Rs. 3 lakhs before the War. A person may like to start a business and he may go to his friends for help and may thus raise Rs. 10,000 or Rs. 20,000. Friends may give him money; it may be the money of his frends or his own money; but public money is not involved. Yet you say this company will be deemed to be a public company. How are you helping the small man? This has nothing to do with the theme of restraining monopoly houses and big business, which is being bandied about these days. This will prevent the economic development of the country. My submission is that this provision, which is embodied in Clause 5, Section 43A, deserves to be rejected; and let the existing provision remain.

SHRI MAHAVIR TYAGI: I would suggest to Mr. Palkhivala to keep all this.

SHRI D. D. PURI: I suggest that we should hear Mr. Palkhivala fully.

SHRI N. A. PALKHIVALA: I am saying things that I honestly believe to be true. It is my duty; otherwise, I will be wasting your time. Let the Honourable Members understand and let them then reject. I mean, reject after understanding. That is my submission. The other idea is just to show you how carelessly the whole drafting has been done. If you look at the provision of Clause 5, sub-clause (1), you will find it on page 5, line 9— "the aforesaid share capital for turnover was first held by it." The word "by" means, by the company. It is not only bad logic, but bad grammar. You cannot hold the turnover. There is nothing like a company holding a turnover.

MR. CHAIRMAN: It is not, 'or", but "and".

SHRI N. A. PALKHIVALA: Even with "and", it is wrong.

MR. CHAIRMAN: For your information that correction has been issued. Please continue.

SHRI N. A. PALKHIVALA: The proposal on page 5 line 29 is to omit the existing sub-clause (6) and (7) of section 42. My respectful Submission is that this amendment serves no useful purpose. What is the public injury that the existing sub-clauses are causing. Today if they are removed, a number of private companies would be converted into public companies. And, Sir, if at all you make any change in section 43A, my submission is that change should not extend to the deleting sub-clauses (6) and (7).

Then look at clause 6. Quite frankly I wonder that mind has not been applied to the consequences of this Bill. The depositors are the source of funds to public companies and to private companies. By all means have restrictions in the public interest so that depositors may not be cheated. But asking the company to issue a statement like the prospectus is not the way to provide for it. And just consider, does it make a sense? The share capital is issued once. You do not keep on getting share capital every week. What is relevant and appropriate to the issue of share capital and debenture which are issued only once or after periods of time, it sought to be applied to deposits which are taken everyday. And how many did you ask the prospectus to be issued? The simple provision should be that before you take any deposit, please tell your depositor in waiting what the facts are regarding certain particulars and you may prescribe the particulars. And you may ask companies to give these particulars to the would be depositors. This clause No. 6 does not make any sense. Then it says "If you have already taken a deposit, you must return it? Sir, I do not know if the persons who have conceived of the provision are aware of the crisis in the economy which this clause will bring. How will the company will be refunding the deposit because the deposits are all used. To ask the company to refund the money, does it make any sense. You will have a crisis first of the magnitude. Is this the way our democracy can function? You allow a man in law to take deposits. He is an honest man. Every depositor is satisfied that it will be refunded. Just imagine the situation. The depositor who is satisfied that his money is safe, is yet to get a refund of his money what kind of regimentation is this. What public interest does it serve? And if you do not refund, imprisonment for three years and fine. There may be no injury to any citizen or to the nation and yet you ask the man to go to jail, Not only fine, but jail and fine.

I now come to clause 7, section 73. Here also even the hon. Members would not be knowing what it means. Let me explain its implications. Today the law is this. Under section 73, when a man wants to float a new company, he tells his would be share-holders, "It is my idea to apply to the Bombay, Calcutta, Delhi, Ahmedabad Stock Exchanges. I shall apply to them for listing my shares". How today the law is that if he makes such a representation, he must make application to Stock Exchanges. Once he makes all application, if one Stock Exchange refuses to list the shares even then the allotment is not bad. Now that is a decided case. There a director was sought to be held liable for refunding of the allotment moneys on the Company Law. Department's interpretation which was patently wrong and which was that even if one Stock Exchange refuses to list the shares. your whole allotment is bad. Now take Delhi. An entrepreneur wants to start a company. He says: "I will apply to Delhi, Ahmedabad, Calcutta, etc." Now, Sir, the Delhi Stock Exchange accepts his application and 90 per cent of the people from Delhi apply. It is a good company. But the Bombay Exchange says; "No, we do not

want to list you." Bombay may say 'not just now' According to the preposed new legislation, all the allotted money will have to be refunded. That is the provision. If he goes listing from three exchanges and from one he dones not get it why deprive mm of the change of getting money subscribed from different parts of the country. In other words, you are not promoting the economy this new law.

Clause 8: I have already dealt with it.

Clause 9: I am not objecting to that.

Clause 10, page 9: This is a set of clauses, 105-A to 105-G. I have no objection to the Government exercising their regulatory powers to prevent bids for taking over of companies by undesirable elements. It is in the national interest. They must intervene and they must stop any damage to the public interest. My comment however, is that these amendments are not well calculated to achieve those results; matters would be delayed for two-three years or alternately, you will have the economy bogged down further.

The intention is to avoid take-over bids of companies by undesirable elements, which would adversely affect the interest of the minority shareholders. This has happened in Maharashtra, particularly in Bombay. But this clause does not protect the minority which remains where it was. Further, the minority shareholders would not be interested to be share-holders where the Government is interested. They may never get dividends. Although people have respect for the Government, they do not regard it at a good businessman. When it comes to business, profitability is not there. Take any State Corporation which deals in exports. It is not told to the public that these exports are the exports of private business houses, which are compelled to route their exports through the public Corporation. Credi goes to the public Corporation. The poor shareholders may not be much interested in being in a Company where the Government is the main-shareholder. They will not get any dividend at all. Their interests are not protected at all. If yours object is to protect the minority, that is not achieved. The Government will become a share-holder instead of the minority share-holders. All that is provided is that it can take over the interests of the majority shareholders. The minority shareholders who would like to get out is offered no such opportunity.

In England. they manage this problem much better. Suppose there is a person who has 40 per cent of the share and somebody wants to buy them. The U.K. Law says that the buyer must buy 4/10 of the holdings of every share-holding. In other words, he will get 40 per cent, not from one single share-holder, but from various shareholders. If a person has got ten shares, he will give four shares to the purchaser. That makes a sense.

Further, there is no provision as to what would happen. If the Government does not give its approval. The share become immobilised, they become frozen. Government will not take them and nobody else can take them. It is unconstitutional. Does it make sense to the hon. Members?

A young man starts a new business. After some time he finds that he is not fit for it, or he does not like it. He wants to sell his business, but he cannot do that. What does he do in the meanwhile? Government will now allow it. That will not affect big companies, it will affect only small companies. Is there any law in the world, where a man cannot sell his own shares? I can follow a provision that if the Government does not give its approval within six months, it would be taken as if the approval is there. But this pure regimentation will not serve any public interest. It will affect the new entrants more adversely.

Look at the amount of bureaucratic control. How many thousands of

businessmen are there in this country? And what would be needed to cope with the magnitude of the work? The point I am making is that the honest would find impediment after impediment.

The minority remains shareholders where they were. Their interest is nowhere protected. They are left high and dry. The only option is to have the Government or public financial institutions as the main shareholder. How many of the hon. Members themselves would buy shares with their own money in any Government Corporation? You are impeding the development of this country.

As regards share in foreign companies, you may have justification, I am talking only in respect of Indian companies. If a foreign company wants to sell its shares, some people take the foreign exchange abroad and sell the shares here. That must be prevented. I am only talking with regard to the application of this Section to Indian companies. There must be a time limit, within which the Government approval should be obtained and they must give reasons for disapproval. The shares must not get frozen. It is not in the interest of the country.

Under 108(E), some penal provisions are proposed. Suppose some shares are sold and a person acquires some shares. That may be in contravention of the provisions. He is punishable with imprisonment for a term which may extend to five years. Imagine, he may have voted on the proposal that the next meeting of the Company might be held on such and such date, he is punishable with this imprisonment as also fine. Is this civilised jurisprudence? What kind of bureaucratic tendencies are these? I can understand this, if a person has cheated anybody. That an innocent man having voted as to when should be the next meeting, should be imprisoned and fined, is something unheard of.

Now, you will notice another curious thing. The draftsman has deliberately omitted normal words that occur in the Penal Code like "whoever wilfully does it" or "whoever knowingly does it" etc. All these words which are found in the Indian are called absolute offences. That is not civilised jurisprudence. All these words which are found in the Indian Penal Code are omitted and the proposed clauses talk of imprisonment and fine. In India, hereafter, if this is made into law, people connected with companies—at least 80 per cent of them—have a fair chance of ending up in jail, however honest they may be before he goes to the end of his business life.

Then I go to clause 13. So far as this is concerned, I am not objecting to the principle at all; but please avoid this paper work, as there is already paper shortage in this country. Let us not have a company first get a declaration and then ask the company to make another declaration to the Registrar. The declaration of beneficial interest can be either to the company or to the Registarar, but please let the matter end there. All this means engagement of clerks and doing of useless work which does not create any wealth for the country. My point is that Hon. Members may make up their minds whether it should be the Registrar or the company, but there is no use in having both.

Then, I go to page 15, clause 16. This is also an unprecedented interference with the companies' right to declare dividends. Now, Section 205A says that a company, once it declares a dividends, must immediately put the amount of dividend in a separate account within seven days. What does it mean in practice? It means that, so far from serving any public interest, it is grossly detrimental to the interests of thousands of share-holders most of whom are middle-class people. Take, for example, a big company. The dividend declared may come to Rs. 3 crores. If Rs. 3

crores are immediately immobilised and put into a separate current account, the company will have to borrow from the Banks at 10 to 11 per cent interest. A big company would lose millions of rupees in interest charges as a result of this provision. I can understand a law which says that within six months, if dividends are not paid out, then they should be put in a separate account; but to ask a company to put it away within seven days of the dividend being declared is not only unnecessary but unjust. If you ask a company to put it in a separate account, there are two difficulties. One is that the company will have to have so much cash immediately after the declaration of dividend. I am not aware of any company which can have so much money in cash which can be put immediately in a separate account. Secondly, the company has to borrow from banks at 11 per cent interest. Are you serving the shareholders' interest by this? A company like Tata Steel would lose, according to my calculations, some millions of rupees if this provision is enacted. Those companies which pay over dividends to shareholders honestly must suffer losses of millions—and for whose benefit? I am not aware of any law in any country of the world where you have such a provision.

Then page 16, clause 18 relates to inspection of book accounts. There are existing powers for inspection conferred by Section 237. This will result in grave injustice and loss of reputation in a number of cases. Imagine an honest company which is raided suddenly by Company Law Officers. Nothing is found, but everybody will know that this company has been raided today. I can understand it if you say that it should be done on some warrant from somebody like a Magistrate; I can understand if you say that under Section 237 it can be done if there is reasonable ground for belief that it is being mismanaged etc. But what kind of democracy will this be if an honest company suddenly finds itself raided by Company Law Officers, without any safeguards being provided in any way. If even in the case of honest companies the Government takes to itself the power to raid them leading to loss of reputation, how is the Government going to compensate them for that loss of reputation. It is not the corrupt persons who will be affected by it,—for they will konw how to prevent a raid or escape it—but it will be only the honest who will be the sufferers. This kind of police powers are unknown to a well regulated democracy. Further the raid—which is uncalled for—is to be unannounced, without any prior intimation. A company may find itself raided all of a sudden without any prior notice and anyone can be asked to give evidence. It says that at the time of raid any man may be asked to give evidence; please consider the demoralising effect of it. Is it jurisprudence? Are there similar laws elsewhere? My submission is that it is inconsistent with the standards of public administration. I am not talking of those big business houses where corruption might go on, but please think of the honest houses.

The next one is clause 22. This is about auditors. Today, the hon. Members are dealing with auditors; tomorrow they may deal with engineers, journalists or other professionals like lawyers, doctors, surgeons, architects, etc. What is good for one profession is good for other. The well-established principle of jurisprudence is that every honourable profession, every learned profession, must have its regulations done by its own autonomous Institute. Leave autonomy to your Universities, to your professional institutes. Where political interests come in all hope of a well-regulated system for the profession is gone. But here is a Government making the decision that no auditors will remain as auditors of one company for more than three years. Let me give you examples from my own experience. Let me

take the example of a company whose directors are not known for their integrity. They had made certain entries in the balance-sheet and profit and loss account which were of doubtful accuracy. A big auditors firm had refused to certify the balance-sheet as they had to keep up their reputation. So, the big firm of auditors would not sign the accounts where there was hanky-panky.

MR. CHAIRMAN: You have already taken more than one hour and Members would like to put questions to you. We have other witnesses also who have to be examined. I know the witness is intelligent enough to make the points brief. I would therefore ask you to be brief.

SHRI D. D. PURI: The only thing is that we need not put a lot of questions to the witness if 9|10th of the questions we may like to put are already explained

SHRI N. A. PALKHIVALA: Sir I have always belived and I cay publicly that if everything is placed before the hon. Members, they can come, in most cases, to the right conclusion The only difficulty is that all aspects are not placed before them.

The example which I was giving was this. I was giving one typical example which happend very recently. A company had fraudulent entries into its accounts. The well-known auditors firm refused to certify the balance sheet of the company. But an unknown auditors firm certified the balance-sheet and the balance sheet was placed before the share-holders and was passed. This is not in fact a way of encouraging the small auditors firms and such small men do not deserve to be encouraged.

Here I may quote the procedure adopted in the case of vocates. Any advocate can enrol himself as a senior advocate it is his own choice. If there is any case which is of a small nature, he cannot take up such a case, he leaves it to the junior advocates. The senior advocates get work which is suited to their standard.

Likewise the institute of Chartered Accountants can certainly have such a system—the category of senior auditors. These auditors would have certain types of work but not other type of work. By this system you can find work for all the professonals. But you cannot compel a company not to have a particular auditor for more than three years. Take a Company I am connected with. We have 17 factories. Now the auditors firm we have engaged has got 400 employees out of which almost half are qualified Chartered Accountants. That firm is able to cope with the company's work. Now if I am asked to change the auditors firm, what will happen is that the audit will suffer and the standard will go down because proper supervision over the company's audit will not take place.

Now, if you change the auditors firm every three years, do you think that it will be easy for every new firm to verify various records of the company and certify the entries without any difficulty? On the contrary he will take little interest in the audit work because he knows he will be leaving after a period of three years. Moreover it takes almost one year for the auditor to settle in the work and by the time he starts working, he will begin to think of having to leave the company. So, Sir what purpose will be served by including this clause?

If you want to find work for small auditors, then there should be a division between the senior auditors and junior auditors which the Institute can work out. It is not for the Government or the Companies Law Act to provide work for auditors. The function of the Companies Act is to see that the public interest is safeguarded by high standards of auditors, and if you compel the Company to change auditors once in three years, you will definitely lower the standard of audit. What about lawyers, doctors, engineers etc.? Are you going to make a law for these people also and ask companies not to engage them for more than 3 years.

The point is whatever standards are remaining in this country at present will be destroyed by this. This would go against the public interest. It would lower the standards of audit beyond question and it would make the auditor himself to lose interest.

The other provision is that whenever the Government have 25 per cent of the share capital, there the auditor will be appointed subject to the approval of the Govt. Is it not a negation of the very principle of democracy? It is not done at the highest level; it is not the hon. Members who will decide the matter. This matter will be decaded at to low level. If it is decided by some civil servant contrary to the wishes of 75 per cent share holders, what kind of standards will it be maintained; what are the safeguards? Are you sure that nepotism will not prevail; somebody's nephew will not be put in? Do we want that type of audit work? Then what mischief are you preventing?

Now the time has come when the Government and the people must work together as one national sector. I make no distinction between public and private sector. There are honest persons in both. Let us put our efforts together. The concept of the joint sector is something like that. I want that is should be expended. My intention is that this country must become a great country one day by the efforts of the Govt. and the citizens together. I go to many public sector corporations. I do their work without any fee at all. I want to encourage the public sector and save them money. I may tell you about one case where a public sector man came to me the other day. That was a case of development rebate which amounted to million of rupees to which the company was clearly entitled. But it had not been provided in the accounts at all for four years. The auditor of the company had never drawn even the attention of the company that the development rebate had to be provided. The company was entitled to get the development rebate under the law. Ultimately, we had to make a petition to the Govt. I am telling you that the standard of the people who are chosen by the Govt. has gone down. The mischief which you are trying to remedy will remain where it is. If the Govt. have got 25 per cent share capital, they say they will appoint the auditor. Here the small man will be hit on the head. If a small man goes to public financial institutions and says I have no money, those institutions buy his shares. But the power to appoint an auditor is not with them; it is with the Govt. So the money is of the public financial institutions; but the appointment is to be approved by the Central Govt. The entrepreneur cannot have a good auditor of his own choice, where the public financial institutions or the Govt. take 25 per cent of the share capital. There are so many small companies. In all of them, you are going to have the auditors recruited by the Govt. But we know cases where the auditor is not nominated by the Govt. for months after his the appointment is overdue. You can take the case of the nationalised banks. They had been functioning for the last 2½ years without any Board of Directors. You can just consider the delays which are involved here. Is the company going to wait for its auditor till the Govt. decides? What public purpose will it serve? These difficulties arise and that is why I want that the Govt. should not interfere with the appointment of the auditors because in practice it will never work in the public interest. There will be enormous delays.

Then clause 23, Section 269. If you go through it, you will find where the mischief lies. If any Managing Director or whole time director is reappointed on the same terms even then you have to take the permission of the Govt. You can just consider what security is there. Suppose, a director is a first class qualified man. He is young. He has just started his career. Naturally, he does not want to be out of job after three years. But an absolute unguided power is sought to be to the Government to decide whether he should be reappointed or not? Can you imagine that a civil servant in Delhi is so full of wisdom and so omniscient that he knows everything

concerning all the firms? How can he know and how can he make a decision while sitting in Delhi and for whose benefit? Unless you have a man who is able to see everything that is happening in this sub-continent, how will he be able to give his judgement? We are trying to get more and more power for the bureaucrat. There is no incentive left anywhere. The young man would not be prepared to work if he knows that after three years, he will be kicked out. What is the safety and security of a professionally competent young man after three years? Now, these are the tremendous powers unheard of in any Company Law of the world, which are sought to be given to the Government.

I come to Page 21, Clause 24. I have no objection to the idea that selling agents should be appointed subject to Government approval. I have no objection to that. My only objection is that the proposed amendment provides that the Government can say that in certain industries selling agents will not be appointed. It will take a long time before the category of such industries could be revised by the Government. There is an interval of many years between the perception that a change is needed to be made and the making of the change itself. Delay of several years intervenes very often. Thinks keep on changing all the time. Where selling agents are not needed now, they may be needed after three months, and, where they are needed now, they may not be needed after a year. Business circumstances fluctuate and change all the time. If you make a provision that in certain categories of industries selling agents should not be apponted, it will work unfairly. If you moke a general provision that selling agents should be appointed subject to Government approval, it makes sense. If selling agents are not appointed, the cost is frequently much higher. Take our TELCO. We make trucks and excavators. Now, these excavators, that we make, if we are going to sell them, it would be much more costly. We give them to M|s Voltas, who make the airconditioners, and since they have got country-wide marketing operations, they are able to spread their overheads over a number of items. Our excavator is only one of them. They have their Engineers on the job. They have many centres where they sell. If TELCO were to have its own centres, it would be much more expensive. The poor consumer will have to pay much more if we are to have our own selling points. Voltas have got very many selling points and the overheads are spread over a large number of items. The difficulty arises when you have a rigid classification. My submission is that there should be no such classification in Clause 24.

Now, I come to Clause 25. This is regarding amendment of Section 297, which says that certain contracts with Directors and their relatives should be approved by the Government, by a special resolution. The existing provision is good. The existing provisions is such that, if any malpractice takes place, it can be checked. But, what is proposed now is that, every contract must be approved by the Government, where the paid up capital is Rs. 25 lakhs. This will mean a flood of applications. As I said, there will be thousands of new applications made to the Company Law Board, on which, you will employ, I do not know, how many more civil servants and on what salary. All these applications are to be made and they come from all types of industries. How can any person sitting in Delhi know what are the real requirements of that Company, what are the qualifications of that particular man who is sought to be appointed. My submission is that the present provision is enough, namely, special resolution of the Company in General Meeting, and in odd cases, where the Government feels it necessary, they can take powers to interfere. It is not necessary in the public interest that in every case, their approval should be first taken.

Then, I come to Clause 26 amendment of Section 314. It says that if any relative of a Director is appointed on a monthly remuneration of Rs. 500 or more, you must take the Government's approval. I have no strong

objection to this except that, it will enormously increase the amount of paper work that is required to be done. The existing provision is enough.

MR. CHAIRMAN: It is Rs. 3000 and not Rs. 500.

SHRI N. A. PALKHIVALA: That is for the Government's approval. For the Company's approval in general meeting it is Rs. 500.

SHRI MAHAVIR TYAGI: Does it apply to a Private Company?

SHRI N. A. PALKHIVALA: No, Sir.

MR. CHAIRMAN: It has been said not less than Rs. 3000.

SHRI N. A. PALKHIVALA: That is for the Government's approval I am mentioning about the amount which is there on Page 22, line 38. Rs. 500 is the limit for taking the special resolution of a Company. Special resolution at an extraordinary meeting means, a lot of money would have to be spent. If it is to be an extraordinary meeting, it will mean thousands of rupees as expenditure. The existing provision is all right. Let the Government point out to the hon. Members as to why a change is needed.

Then, I come to Page 23, Clause 29. This is about Secretaries. The real effect of this will be that it will add to the inflationary pressures, which are already existing in the economy. It is proposed that there will be one Secretary for every Company, where the paid up capital is not less than Rs. 25 lakhs. This is a provision which does not make any sense. You are only adding to the inflationary pressures. You are increasing the cost of products, manufactured in the country. Why should every Company have a separate Secretary? It is said that every Company must have a Secretary. But there may be a Company which may need only an Accountant. If a Company has an Accountant, it can do without a Secretary. Again, it is not the function of the law to increase, as I said, the cost of production in this country. The ordinary laws of demand and supply should be allowed to operate. By this, you are not giving productive employment to the people. You are creating unproductive employment. If a Company can do with an Accountant, if you ask them to have both a Secretary and an Accountant, you are creating unproductive jobs in the country and you are not increasing the wealth of the country. Then there is a mention about prescribed qualifications. From my personal experience, I can say that there are secretaries who have worked for many years in Companies, and who are possessing as much experience and competence, as an academically qualified Secretary. The fact is that degrees are obtained so cheaply, and people who do not know the ABC of law, are able to get LLB. People who cannot write English are able to take a B.A. degree. People who do not have any notion of any subject, are able to become Graduates. These days, even by dishonest means, you can take a degree. If these are the conditions, my point is that, if you say prescribed qualifications, please be sure that those who are already Secretaries are at least treated as qualified to be Secretaries. When the Income Tax Act came they had to prescribe a qualification....

MR. CHAIRMAN: Have you any suggestions to make in regard to qualification?

SHRI N. A. PALKHIVALA: I am coming to that. When the Income Tax Act came, they provided for Income Tax Practitioners, and they said that those who had practice....

MR. CHAIRMAN: About prescribed qualifications, have you any suggestions?

SHRI N. A. PALKHIVALA: So far as the Bombay Chamber is concerned, it has made the suggestion that the

the institute of Company Secretaries and the Institute of Chartered Secretaries.

MR. CHAIRMAN: Have you got your own suggestions to give us?

SHRI N. A. PALKHIVALA: I have looked at the sugestions of the Bombay Chamber of Commerce; and I approve of them.

The next Section I would take up is 408. What is suggested therein, is this. To-day, if people complain to the Government that the affairs of a company are not properly managed, the Government has a right to nominate one or two directors. Now, the proposed amendment says that the Government will appoint any number of directors. If you want to appoint or give jobs to 12 people, then you can appoint them as directors. Public interest is not served this way. To all these people, the company must pay; and all of them may attend the Board meetings and they may create any number of troubles. There is no safeguard for an honest company. You are treating everybody as dishonest and corrupt. You consider that the only repository of wisdom and honesty is the Government. Therefore, the widest powers are given tc the authority, and no freedom is left to the citizen, even if he is honest. This provision is incomprehensible. Once the Government appoint even one director, they have a right to give directives to the company. The Central Government has power to give directives, not to its director, but to the company. It will mean interference with the affairs of the company. Here is a bureaucrat, sitting in Delhi and giving directives, without any fetters on his discretion. The widest possible powers of issuing any directive, have been provided. This is most extraordinary. It is not be fitting a democracy, to have powers like this.

MR. CHAIRMAN: Next point, Mr. Palkhivala.

SHRI N. A. PALKHIVALA: I would now like to reply, if any Hon. Member wants to ask any question.

MR. CHAIRMAN: Now, Tyagi Ji, or Mr. Mohta.

SHRI M. K. MOHTA: May I ask a question on the last point touched by Mr. Palkhivala, viz. the appointment of directors by Government on any company? It was pointed out by some witnesses earlier, that it would even amount to backdoor nationalization, or take-over; and the Government directors would really be in control of the affairs of the company, without Government having to pay any compensation, or even without the Parnament having to say anything about it. Would Mr. Palkhivala say that this particular provision means to by-pass even the Parliament in matters of taking over the management of a particular company by the Government: and, if so, is it constitutional?

SHRI N. A. PALKHIVALA: My own view is that this is an unconstitutional provision. It is an unreasonable restriction, which is not in public interest; and, therefore, ultra vires. The second point is that Parliament is by-passed. One day, the Parliament may be so completely bypassed, that it will become too late then. The powers are frightening in their amplitude.

SHRI M. K. MOHTA: Mr. Palkhivala is not only an eminent lawyer, but he is also connected with the management of certain companies. Has he in his knowledge, any cases of such grave misconduct by various people in respect of various matters? For instance, in matters connected with the auditing of a company? It has been said that there had been quite a number of cases of collusion between company managements and auditors, which necessitate a drastic change in the law, by the Government. Based on your knowledge, what do you think, has been the general state of affairs as regardss auditing? Has there been such a large

number of collusions that a drastic measure is called for?

SHRI N. A. PALKHIVALA: In fact, I will not say anything about my own experience. I can say quite truthfully that the cases of collusion are odd cases. They are not the general run of cases. There is a greater tendency to pick out odd cases and make a law applicable to everybody, because of it. These odd cases are those where the collusion has not been with reputable or big firms but with the smaller firms. There is an example of a very big charitable trust bearing the name of Mahatma Gandhi. A very well-known auditors firm refused to do the auditing. You have no idea as to what you want to prevent mischief will be done by the proposed amendment. People who have no reputation will be very happy to do things and get money by putting their signatures. It will happen in larger and larger number of cases. There are two things to be borne in mind by Hon. Members. This is not a widespread evil; and a law cannot be made for everybody on the basis of odd cases. A big firm of auditors has a reputation to keep. If a man has no reputation to lose, he will be ready to do anything. I am not aware of a single case of collusion between a reputatable and well-established firm of auditors and a company. Not a single case.

SHRI M. K. MOHTA: I would ask one last question. If a company fails to refund the deposits, then imprisonment is also provided for, for the officers of the company. So far as my knowledge goes, in England, perhaps in the 18th century, if a man could not pay his debts, he was liable to be sent to prison. Why should we not have a similar provision in India also?

SHRI N A. PALKHIVALA: This amendment is not in keeping with mature jurisprudence.

SHRI P. R. SHENOY: You said that you knew all the companies which are under the same management, but were not covered by the proposed definition of management. Can you tell us, in what manner are the companies under the same management?

SHRI N. A. PALKHIVALA: Honest companies have genuine directors. Dishonest business houses will have one company started with three directors, A, B and C and have other companies with stooges as directors. These three directors will have nothing to do with any of the other companies. Under the existing definition, and under the new difinition, these would not be companies under the same management. That is what happens in practice. The dishonest business houses are not troubled by your definition, even if you enlarge it.

SHRI P. R. SHENOY: Can you name such companies?

SHRI N. A. PALKHIVALA: No, Sir: I cannot name them.

SHRI P. R. SHENOY: You were critical of bureaucrats and civil servants and said that they should not be allowed to take decisions. Do you have any objection if an advisory committee is formed consisting of some Members of Parliament and some experts and some public men for this purpose?

SHRI N. A. PALKHIVALA: So far as bureaucracy is concerned, I would like to make my position clear. Today the bureaucracy is burdened with duties and functions which it should not really be called upon to bear. So my criticism is levelled not so much against the bureaucracy as against those who increase mounting the burden on the bureaucracy. Therefore, I do not blame so much the bureaucracy as the system. As regards the second important point whether I am in favour of an independent body who can make decisions, I think it is a far reaching and thought-provoking suggestion. In the Bombay Chamber of Commerce we

have made this suggestion and the hon. Members can give their decision on it. Do appoint an appelate board with some hon. Members and other persons. If there is a man to whom justice has been denied there must be some forum where he can go.

MR. CHAIRMAN: You mean that it should be an appellate type of body.

SHRI N. A. PALKHIVALA: Yes.

SHRI H. M. PATEL: This last point I would like to ask about the suggestion that you made that a Parliamentary Committee or Advisory Committee might sit against the judgment. Would it be possible? It is a practicle suggestion having regard to the work and having regard to the references that have to be made? Time and again you referred that this whole thing became impracticable and lot of delay occurs. Putting another Advisory Committee means further delay.

SHRI N. A. PALKHIVALA: In the event of hon. Members rejecting my suggestion with regard to having no increase in Governmental interference, then my submission is, please have an independent body.

MR. CHAIRMAN: Finally, it should not be left to the Government.

SHRI H. M. PATEL: That suggestion is a good one in the sense that there is somebody at the head. You have to provide that every decision that is taken in each provision, there shall be recorded reasons in writing and only then an appellate tribunal can sit upon it.

SHRI N. A. PALKHIVALA: According to the law already laid down by our Supreme Court in any statute where right of appeal is provided it is implicit in such statutes that the lower authority making a decision must give its reasons for the decision. And if the hon. Members provide 'X' authority to make the decision and if you have a right to appeal, then it is inherent and implicit in such a scheme that the lower authority making the decision should give reasons for it.

SHRI H. M. PATEL: Supposing in the case of change of Managing Director, Government has a right to do so. What kind of reasons the government will record?

SHRI N. A. PALKHIVALA: If you have to say only yes or no, you can say very easily, but when it comes to reasons it becomes difficult. Therefore, I stress on the point of recording reasons.

SHRI H. M. PATEL: Is it not advisable that we do have this provision —Reasons be recorded in writing?

SHRI N. A. PALKHIVALA: Yes, Sir, it is very necessary in the interest of natural justice and in the interest of the justice to the citizens of the state.

SHRI S. R. DAMANI: Under section 5, don't you think that in a company the turn over of Rs. 50 lakhs should not be increase to one crore of rupees?

SHRI N. A. PALKHIVALA: I am basically against the principle itself. If a principle is clear, instead of mesing up the principle by compromising and tempormising (As you would be increasing from 50 lakhs to 50 crores) the basic principle should be adhered to. I am against the proposed amendment on principle. I think there must be no compromise, because that would go against the integrity of the law.

SHRI S. R. DAMANI: That by restricting the investment from 25 per cent to 10 per cent is it going to affect the small entrepreneur getting funds and will it bring discouragement to small entrepreneurs?

SHRI N. A. PALKHIVALA: Yes, it is bound to slow down.

SHRI S. R. DAMANI: You have not said about the investment of a private limited company into other private limited company making both companies public limited companies. Do you agree with this principle?

SHRI N. A. PALKHIVALA: What I have said is that suppose a private company invests in another private company, that second company becomes a public limited company and the first also becomes a public company. Frankly there is no rational process of thought on which you can justify this conversion of 'private company into public company'. There is no rational process at all. My third question deals with the Directors and their relatives. Will it be possible to know the list of all Directors?

SHRI N. A. PALKHIVALA: The honest man is handicapped whereas the dishonest man flourishes because of all your technicalities. I have seen a number of cases where the dishonest man goes scot free. Your Company Law does not touch him.

SHRI S. R. DAMANI: If margin is that 10 per cent of the products can be sold or purchased at the same terms and same price to the relatives of the Directors, then there will be no harassment and purpose will be served.

MR. CHAIRMAN: Are you referring to the Sole Selling Agency?

SHRI S. R. DAMANI: I am referring to the amendment No. 25—Purchase and sale to the Directors and their relatives.

There may be misuse and also harassment to the Company in which there are relatives and others. Some percentage of the products is fixed to be sold on the same price and same conditions as to others, then the purpose will be served.

SHRI N. A. PALKHIVALA: The existing provision says that you must have a special resolution of the Company. It is a good provision. The correct thing is to provide that Government may call upon the Company to justify the commercial nature of the transaction. In other words, if there is a suspicion, the Government should have the power to ask for the justification. Let there be the power to control. You have only to look to the Company Act and there are enough powers. You have got all the sticks. The only thing is that the existing sticks are not being used and more sticks are sought to be brought on the statute book. Already there are enough powers.

SHRI HARSH DEO MALAVIYA: In the beginning, in your comments you said that you agree with the laudable objectives, but you said that it should be consistent with the public interest. May I ask you how to define and think of 'public interest'?

SHRI N. A. PALKHIVALA: Public interest means the interest of the nation as a whole, as distinct from the private interest of an individual citizen. It is the duty of the Parliament and the Executive to protect the public interest. The attempt I have made at the expense of considerable part of your valuable time is to show that this public interest is not being served. If, it could be served, I would have been all for it.

SHRI HARSH DEO MALAVIYA: According to the reply given to Parliament the other day, that 50 per cent of the population has income of Rs. 20 per month. Will something which suits these 50 per cent of the people who are living below poverty be done and considered 'public interest' or the Monopoly Houses and others who control these companies will be considered 'public interest'?

SHRI N. A. PALKHIVALA: It is not as if by this law you are going to benefit this 50 per cent. Unless there is development in the country which can be only if the economy kicks it up, the lot of these 50 per cent cannot improve. I have all sympathy for them since I have myself

seen hard days. I am keen that they should become more prosperous. But the right economic policy is not being pursued. How can you raise their level unless you create wealth? Wealth can be created by means of ability and skill. This country could be one of the great nations of the world, as it has all the potential, but it is being kept back as a result of its ideology. Let this ideology take a holiday and let these 50 per cet have the chance to see brighter days.

SHRI HARSH DEO MALAVIYA: Your suggestion that ideology may be given a holiday is asking for something impossible in the modern world. You know that in these companies, 75 per cent monopoly houses, large houses, big houses, contribute from Public Finance Corporations. You have mentioned the National Policy, Life Insurance Corporation, etc. You are aware and I am sure that in these companies and enterprises 40 per cent and sometimes even 50 per cent of the finances, assets are contributed by the public finance institutions. We regard the will of the people by virtue of the democratic process, democratic election. And ultimately, these funds which are invested by the public finances are developed by the people as such. You know the people, the public as you call it—the people as a whole. Government representing these people have contributed these huge amounts through the Public Finance Corporations and if the Government seeks to control the functioning of these enterprises, what objection have you got?

SHRI N. A. PALKHIVALA: If your laws affected the productive capacity of private wealth only there would not be so much objection, but your laws affect the productive capacity of public wealth, because it is the public wealth which is invested in these enterprises. It becomes less productive because of more and more interference from the Government. This wealth could bring more for the country, and the country could develop its economy and more foreign exchange could be earned if you give a chance.

We talk of fertilizer shortage. If an enterprise wants to start a fertilizer factory, Government refuses or delay approval on ideological considerations. If you do not start a factory, what productivity of public funds can you look for?

Take an instance of automobiles. It has had a set back on ideological considerations.

Let soda ash be produced in larger quantity. 80 per cent is going in black market. Whose interests are you protecting. whose interest are you serving? As public funds are invested, one should be even more vigilant to see that they are put to best use. If the proposed law enables that, I would be all for it. It is, on the other hand, going to hamper the productive capacity of public funds.

SHRI HARSH DEO MALAVIYA: We want increase in production. Have you thought of the vicious circle? Productivity cannot increase unless starvation is removed and starvation cannot be removed unless productivity increases. The whole problem is to break this vicious circle. And for that, change in the production system is necessary, change in the ownership pattern is necessary. Make the actual producer as the owner, that is the principle that guides this Bill.

You have pointed out certain very serious defects in the way, the bureaucracy works, but the defects in the working should not mean that the whole basic way of going about the business should not be improved.

SHRI N. A. PALKHIVALA: The fault is not with the bureaucracy, but the way it has been used. If you put angels in the place of bureaucrats, they will not do better. How can one man deal with hundreds of applications? The fault is not with him, but

with the system. We want to introduce, the system of regimentation.

SHRI HARSH DEO MALAVIYA: You have used the word 'regimentation' very frequently. I started counting it; I counted upto 24, but thereafter, I gave up. Actually what do you mean by this?

SHRI N. A. PALKHIVALA: Take for example the question of productivity and hunger that you have mentioned. This is a vicious circle, as you said, Sir. I think, it is hardly possible to suggest that this Bill will ever increase productivity or diminish hunger. The vicious circle remains where it is. Regulation and regimentation are two different things. In a country, where there is regulation and the evil is sought to be detected and if it is detected, the wrongdoer is punished. In a country, where there is regimentation the evil-doer and the honest are treated alike. Therefore, in a well-regulated economy, the evil-doers will come to grief, while in a country where there is regimentation, the evil-doers and the honest people will be treated alike. The honest people cannot get the fruits of their labour, dishonest will be happy.

Under our existing law, the provisions are more of a regulatory nature, the wrong-doer will be punished by the Government or the Court. But under the new set of rules under consideration, the honest and dishonest would all be treated alike.

SHRI HARSH DEO MALAVIYA: You made certain suggestions and I quote: "Let us keep what standards are remaining in this country".

SHRI N. A. PALKHIVALA: I said, "Standards of decency".

SHRI HARSH DEO MALAVIYA: Maybe. Then you said, "the whole thing has been so cheapened today." What I felt all along was that you had, somehow or the other, an attitude of condemning things which are going on.

SHRI N. A. PALKHIVALA: Far from condemning everything. I feel the deepest concern in what is going on. I do feel sincerely as an honest citizen that if only we could make more material available to the hon. Members of Parliament and there were more of dialoughes of this nature, I am confident, we would have quite different laws and a different system. I am deeply involved in the future of this country. I belong to this country and I treat it as my own. I really feel pained when I see certain things happening which are not in the interest of this country.

SHRI H. K. L. BHAGAT: I have very great respect for your eminence and briliance. Your views on various matters are, so far at least I am concerned, are more or less well known to us and I do not propose to enter into argument with you on that. I would only like to understand a few things.

As far as I understood, your impression is, that by and large, this Bill provides for a lot of interference by the Government or its agencies in the affairs of the Companies. In this Bill, there are more curbs and restrictions which will result in loss of production and so on. That is the basic tenor of your argument. Of course you have said that you consider the Bill has laudible objectives and so on and so forth, but by and large your impression that the Bill will not do any substantial good but will do more harm. In that connection you mentioned a few things. You said that barbaric sentences are provided in the Act. Now, I want to ask you one or two things. Our concept of social and economic offences so for, in giving punishment say, for mis-utilisation of funds etc.—is to let him off with fine. He is let off with a fine of Rs. 500 or a thousand. I would like to ask you this question. Suppose a man becomes a willing party to a resolution which has the net result of mis-utilisation of funds of the company to the advantage of

some individuals of the company and thus harming the interests of the shareholders, do you not think that the man deserves more than a fine. If a man steals ten rupees or a wrist watch we say he is a thief and we want him to be punished severely; but if a man circumvents the law and steals lakhs of rupees, does he not deserve more than a fine? You said you can imagine a situation where a man says he does not want his deposit back but Government says that he must have it back and if he does not take it, he will be sent to jail and so on; now I am asking you, if a man becomes a party to a resolution knowing fully that it goes to the advantage of A, B or C and not to the company, does he not deserve more than a fine?

SHRI N. A. PALKHIVALA: He deserves much more if he abuses the powers of a Director and mis-uses the funds. I am all for punishing him severely and much more drastically than is being done now. I think that sufficient number of people are not punished and I think a much more severe punishment should be meted out; in fact, if you sentence him to transportation for life, I would be happy.

But, I am afraid, I have not made my point clear to the Hon. Member. I said that under this law, technical offences which do not involve any public injury of any magnitude, will be severely dealt with. There is a vast difference. There are some socio-economic offences which must be drastically put down. If a man has adulterated food, I would like him to be put to death because he has no right to injure the health or lives of a multitude of people. What I was pointing out was something different. Here, technical offences which do not involve any social injury at all are sought to be punished.

SHRI H. K. L. BHAGAT: I must confess that I have not done half as much study of law as you have done; and I am happy to know you want severe punishment for a man who has committed an offence like mis-utilisation of funds etc. Now, I would like to put another question. Do you really believe that most of the companies are working very well and the funds of the companies—which are taken either from banks or private depositors or from the State Governments in the shape of loans, etc.—are utilised to the advantage of the shareholders as a whole. Do you really believe that, by and large, companies are working for the good of the shareholders and not for the good of the Management?

SHRI N. A. PALKHIVALA: A majority of the companies are working well, and in the public interest. Assuming the contrary were right, you will then have a dilemma which is inescapable. Suppose you start by assuming that the majority of the people who are doing business are doing bad deeds or are wrong-doers; the same opinion can be held of civil servants, of politicians, of bureaucrats and so on. Citizenry and the Government comes from the same stock. If you condemn one, how can you have a good opinion of the other? We are of the same flesh and blood. And I have sufficient respect for the nation to say that every politician or businessman is not a wrong-doer. There are some; but you will find them in every country in the world.

SHRI H. K. L. BHAGAT: There are some impressions about people in all walks of life including politicians and including advocates also You might be knowing that there is a very, very strong public opinion against advocates and there are strong feelings that something should be done about people in this profession. Now, we are not making confessions here, but I may say that about politicians also there is a demand for control. However, we make laws not because every citizen is a thief; there is no presumpton that every citizen is a thief. How many cases of thieving have we got? Still we make laws for them. So, laws are made not because the majority are bad.

Now, another question is, you said that the objectives of the Companies Act are now mixed up with the objectives of the Monopolies Act. Now,

I want to know one or two things. Firstly, do you agree in principle that concentration of wealth, at some stage, should be cut? Point No. 1 is whether concentration should be cut at any limit or stage; point No. 2 is whether laws should be there for serving a certain national purpose in a given situation; and point No. 3 is whether laws must be laid down to run in different directions—that is, if one law creates a situation, another law has to cover it.

SHRI N. A. PALKHIVALA: My Monopolies Act deals with Monopoly houses and the Companies Act deals with all companies—small and big. Whatever you introduce in the Companies Act will affect the small man and whatever you introduce in the Monopolies Act is intended to affect the big companies—not small men. Therefore, there is no justification for mixing up the two.

SHRI H. K. L. BHAGAT: My first question you have not answered. Whether you agree, as a principle, concentration of wealth in a person or group of persons should not be allowed and there should be some limit, in the interest of the country.

SHRI N. A. PALKHIVALA: My answer is that well-regulated democracy must provide for a fair distribution of wealth. That is the first principle I believe in. I say that if concentration of wealth is detrimental to public interest, then it should be curbed. For example, if you have the concentration of wealth in a group of politicians or in the executive, and if the wealth or fund used is to the public detriment, to my mind it is equally objectionable. The real point is not concentration, but the point is whether it is used to the public detriment. Suppose there are a few people in the country and they control the country's wealth and, they are misusing it. That must be checked whether the concentration of wealth is in the hands of a few individuals or in the hands of the executive, is or in the hands of private sector or in the hands of public sector. I believe in only one sector—the national sector—and that wealth should be used for the public interest.

SHRI H. K. L. BHAGAT: You said about the poor depositors. Can you tell us whether there are instances of depositors having suffered at the hands of the Companies proprietors?

SHRI N. A. PALKHIVALA: A large number of instances are there. There are a large number of depositors who have been deprived of their money.

SHRI POPATLAL M. JOSHI: You said about the executive and its works should be reviewed. Suppose this reviewing body is a Court, don't you think that the burden of the Court will be heavy due to this? There is already so much work that the appeals made to the High Court come after three or four years.

SHRI N. A. PALKHIVALA: I think I have some ideas as to how the judicial administration should be reformed. I think one day the administration in this country will crack up—both the judicial administration and civil administration. It is already cracking in certain cases but just we are putting a wall paper on it. In order to see that the administration does not crack up, we have to change our judicial system and political and economic systems.

SHRI POPATLAL M. JOSHI: Those things are well-known today. There are so many companies which are owned by a few people—by their relatives and so on. Don't you think that it is bad in the public interest?

SHRI N. A. PALKHIVALA: Yes, it is. In fact I am for professional management. In other words, a man of high calibre should be in charge of the Company, though he may not be related to the main share-holders. My experience with professional managers is quite extensive because I am concerned with a number of Companies. What I find is that your laws like these will hamper the professional managers, technocrats, etc. as much as they will hinder dynastic succession in this country. That is why I said that you should regulate

those things and there should not be regimentation.

SHRI POPATLAL M. JOSHI: The problem here is that one company passes on the goods to the other company, and this company again passes on the same goods to another company.

SHRI N. A. PALKHIVALA: My contention is to catch hold of the man who is anti-social but do not catch a man who is honest. The whole of the new scheme is to interfere with the citizen before he does a wrong whether he does any wrong or not being wholly irrelevant....

DR. M. R. VYAS: Since the witness has stated that the private sector is discouraged at home and finds good scope abroad, I would like to know whether the witness considers that all the regulations which the Government of India made during the past 15 or 20 years are to prevent expansion of the private sector or to have control over the private sector or they have been made due to expediency.

SHRI N. A. PALKHIVALA: The real point is not that so much has been achieved but what could be achieved. It is a matter of great distress to honest people in this country that our honest businessmen are permitted to enrich foreign countries but they are not permitted to create wealth for their own country. I said that Indians have enough skill to make the country strong and powerful.

DR. M. R. VYAS: Would, in the opinion of the witness, the test audit system meet the requirement of the legislation of controlling the companies' malpractice? I do not presume that there is always a collusion but if there is suspicion of collusion by engaging the same auditors, does he believe in the kind of additional test audit by the Government which would meet the requirement?

SHRI N. A. PALKHIVALA: Yes, Test audit is a reasonable way because honest companies have nothing to lose by the Test Audit.

DR. M. R. VYAS: He has mentioned that only big houses can do the auditing. But the provisions here do not say that if an auditor is replaced by another auditor, the second audit has to be a small audit. When objection has he got in that case?

SHRI N. A. PALKHIVALA: If you change the auditor in three years, you will completely make a mess. Because when you appoint an auditor, he will take at least one year to understand everything. So, it will not serve any public purpose in that way.

SHRI D. D. PURI: I invite attention of the distinguished witness to clause 6, sub-clause (2), which lays down restrictions on the acceptance of even uninvited deposits. The clause draws a parallel between the issue of a prospectus for subscription of shares and acceptance of uninvited deposits, making it obligatory to publish certain data in the draft even when the deposits are uninvited. Even in respect of shares the Law provides statement in lieu of prospectus where no invitation to the public is involved, whereas there seems to be no such provision in respect of deposits which come unsolicited. Having regard to the fact that if in the last eventuality deposits rank prior to equity capital, what are the views of the witness to the proposed provision?

SHRI N. A. PALKHIVALA: The hon. Member has pointed out a clear anomaly and a clear confusion implicit in this particular clause. Suppose, a man is incharge of his own company. He wants to put his own deposit. He cannot put his own money. You will not allow. At whose risk this is done? What you are saying: "No company shall accept all deposits." If the man knows. In other words, for whose benefit, all this is done. I said, "if there is a subsidiary company, it can always do."

SHRI D. D. PURI: Does the witness agree that the most desirable thing about an auditor is his independence and therefore, if any change in the law is called for at all, it should be in the direction of laying down restrictions when a change of auditor

is to be affected and not the other way round.

SHRI N. A. PALKHIVALA: I agree with him.

SHRI D. D. PURI: The Government have the power under the existing Law, under certain circumstances, to appoint upto two Directors in a Company. Does the witness and the Chamber that he represented have any experience, in fact do they know of a single instance where the Government nominees on a Board of Directors were outvoted to the prejudice of public interest.

SHRI N. A. PALKHIVALA: I am not aware of any case

SHRI B T. KULKARNI: I want to know whether the views which have been expressed by Mr. Palkhivala in this note are his own views or the views of the Chamber of Commerce?

SHRI N. A. PALKHIVALA: So far as I am concerned, I am constitutionally incapable of being incincere. What I say you must take to be my own views. But these are also the views of the Chamber.

SHRI B. T. KULKARNI: I am more interested to know Mr. Palkhivala's views. If you can take the trouble of writing down your views and then send them to the Committee, I shall be grateful.

SHRI K. V. RAGHUNATHA REDDY: Suppose, the judges themselves have advised the misapprehension that this power should not be given.

SHRI N. A. PALKHIVALA: I would not agree with that. When the Supereme Court makes a recommendation, it is on the basis of the material placed before it I am confident, if it is placed before the Committee of Judges, they would come to different conclusions.

SHRI K. V. RAGHUNATHA REDDY: The Committee of the Judges presided over by the Chief Justice has recommended this thing.

SHRI N. A. PALKHIVALA: It is completey contrary to what is being put to you by the Department. What the judges must have said is that approved of change in objects clause or place of registered office should be done as a matter of course. In other words, if the company wants to shift its office, let it do it. Even, the court should not have the right to reject the share-holders' decision "if all the shareholders agree, what is the objection?" So, this recommendation of the judges completely supports what I am saying. It does not support what the Govt. said.

SHRI K. V. RAGHUNATHA REDDY: Unfortunately, you are not correct.

SHRI N. A. PALKHIVALA: You please give me the reference.

SHRI K. V. RAGHUNATHA REDDY: As far as deposit is concerned, it is still to be prescribed what will be the nature of the deposit in consultation with the Reserve Bank? The Bill does not say what is your depoist exactly? Therefore, it is premature to say what would be the connotation of the expression of deposit as far as law is concerned?

SHRI N. A. PALKHIVALA: It is already defined in the Bill.

SHRI K. V. RAGHUNATHA REDDY: Do you think that the public will have more confidence in the public Ltd. company than in the private limited company?

SHRI N. A. PALKHIVALA: I think it would be beyond controversy, that it depends on the persons behind the company.

SHRI K. V. RAGHUNATHA REDDY: Do the public have confidence in the public limited company or in the private limited company?

SHRI N. A. PALKHIVALA: The answer it depends on is who runs the

company. In other words, public confidence is inspired by the individual.

SHRI K. V. RAGHUNATHA REDDY: I am not imagining the situation. I have cases where one private limited company invests in another private limited company and that private limited company invests in another private limited company and there will be a chain of investments. As far as capital investment is concerned, there is no enhancement. Will it be in the interest of the public?

SHRI N. A. PALKHIVALA: You pick up an odd case and you make a law applicable to anybody.

SHRI N. A. PALKHIVALA: This is the very point I have been urging. You cite an odd case and you make the law for all. The simple point is this. It there is an odd case, you always have the powers to interfere in such an odd case. There are 25,000 companies in India. Because some 5 Companies behave like this, You cannot make the law for all the 25,000 Companies. In certain odd cases, you can deal with them.

SHRI K. V. RAGHUNATHA REDDY: There is nothing like an odd case.

SHRI N. A. PALKHIVALA: How many cases are there your making a law for all Companies. Out of 25,000 Companies how many Companies have behaved like this? Let those statistics be given to the Hon. Members.

SHRI K. V. RAGHUNATHA REDDY: I will come to the next question. We have been speaking about Government Directors. In how many Companies, Government have wrongly appointed Government Directors? Section 408 is an unfettered Section. This Section presribes certain conditions under which the power of the Government can be exercised. This power can be exercised only when the Government feels that it is in the interest of the Company or it is in the interest of the public. One of the two tests must be satisfied. Otherwise, under Article 226, you can go to the Court. I would like to know. in how many cases, Government have appointed Directors wrongly.

SHRI N A. PALKHIVALA: If I was asking for deletion of the existing Section 408 and if I was saying that the Government's power to appoint one or two Directors should be removed, that is a different question. I am not asking for the deletion of Section 408. My limited point is this. In how many cases, the Government's existing power to appoint one or two Directors has been found to be insufficient to achieve the objective desired? That is the limited questions.

SHRI K. V. RAGHUNATHA REDDY. In a number of Companies, where the Government appoints Directors, and if there are 12 or 13 Directors in the Company, two Directors will not make any impression on the Board of Management.

SHRI N. A. PALKHIVALA: In fact, Sir in a Company, where a Government Director is there, he commands the greatest respect and we give very special attention to him, because, we understand, after all, he represents the Government and it is completely wrong to say that, because in a Company, Government have only one or two Directors.....

SHRI K. V. RAGHUNATHA REDDY: We are very thankful for the respect you have shown. In many cases, where Government Directors were appointed, we have got reports that they are completely helpless. A few Directors cannot make any impression at all.

SHRI N. A. PALKHIVALA: You have got the power in the other provisions to see that the Management is changed. You have got powers under the existing provisions to change the Management.

SHRI K. V. RAGHUNATHA REDDY: It will take ten years to change

the Directors in a Company, if we go to the Court. You have said it.

MR. CHAIRMAN: You have just said that for odd cases, you should not change the whole law. I do not know whether the instances of these odd cases are there, and you would certainly like to detect these mal-practices in these odd cases. If any action is taken without the change in definition, is it ever possible to take any action under the present law?

SHRI N. A. PALKHIVALA: This is a very important point. The answer is Yes. If the non, Minister is referring to litigation and the Courts holding up.....

MR. CHAIRMAN: I am talking about the Private Company. Unless we change the definition of group, I think, we cannot take any remedial action. Can you, within the frame-work of the law, as it exists, suggest any remedial action?

SHRI N. A. PALKHIVALA: Any mis-feasance and any mal-feasance even in a private company can be checked.

MR. CHAIRMAN: The result would be that the parties will have to go to the Court. Excuse me if I say that with the present volume of work with the Courts, it is impossible to get a decision quickly. It may take 4 or 5 years. I am not particularly referring to Mr. Palkhivala, I am putting a question and I am posing a problem and I hope that if you can make any suggestions, not now, you can look to the relative provisions, and without the delay which is being caused because of the interference of the Court, the delay which is being caused because of the heavy work pending with the Courts if such remedial measures can be adopted, I think that suggestion would be acceptable.

SHRI N. A. PALKHIVALA: May I, M.r Chairman, with great respect point out one thing. I can tell you of instance, where, under the existing law, whether it is a Public Company or a Private Company, for reasons best known to the Government, the persons concerned are not prosecuted. In other words, there is nothing wrong with the existing law. I think hon. Members do not really know as to what is really happening on the other side. They are under an impression that enough powers have not been given to the Government. The point is that, while enough powers are already given to the Government, they are not exercised.

MR. CHAIRMAN: What about a Private Company floting another Private Company and the creation of a chain of Companies, and what is the way to restrict it?

SHRI N. A PALKHIVALA: In fact, hardly in one company out of a hundred, is this done.

MR. CHAIRMAN: That is a different thing.

SHRI N. A. PALKHIVALA: Because some 5 Companies mis-behave, how can you make a law for all the Companies?

Mr. CHAIRMAN: Can you point out the relative provisions of the law in which this can be checked?

SHRI N. A. PALKHIVALA: We will point that out in a note

MR. CHAIRMAN: Mr. Palkhivala and other friends I on my behalf, and on behalf of the committee express my thanks for the trouble you have taken in coming over here and tendering valuable evidence, which I think, would benefit the committee. Thank you very much. I think there is nothing personal against you.

SHRI N. A. PALKHIVALA: I regard it as a privilege and honour to be of some use to the hon. Members.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Tuesday, the 12th December, 1972 from 15.00 to 18.45 hours

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Somnath Chatterjee
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri S. R. Damani
7. Shri Madhu Dandavate
8. Shrimati V. Jeyalakshmi
9. Shri Popatlal M. Joshi
10. Shri Baburao Jangluji Kale
11. Shri Muhammed Sheriff
12. Shri H. M. Patel
13. Shri R. Balakrishna Pillai
14. Shri Jagannath Rao
15. Shri R. R. Sharma
16. Shri P. Ranganath Shenoy

Rajya Sabha

17. Shri B. T. Kulkarni
18. Shri Harsh Deo Malaviya
19. Shri M. K. Mohta
20. Shri D. D. Puri
21. Shri S. G. Sardesai
22. Shri Himmat Sinh
23. Shri Mahavir Tyagi
24. Dr. M. R. Vyas
25. Shri K. V. Raghunath Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. *Shri R. Prasad—Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection*
4. Shri Ch. S. Rao—*Deputy Secretary*
5. Dr. (Mrs.) Usha Dar—*Joint Director*
6. Shri C. R. D. Menon—*Under Secretary*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

WITNESSES EXAMINED

Federation of Indian Chambers of Commerce and Industry, New Delhi.

Spokesmen:

1. Shri Madanmohan Mangaldas—*President*
2. Lala Charat Ram—*Vice-President*
3. Shri M. L. Khaitan
4. Shri C. C. Chokshi
5. Shri J. P. Thacker
6. Shri G. L. Bansal
7. Shri P. Chentsal Rao
8. Shri N. Krishnamurthi

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: The witnessess may kindly note that the evidence they give would be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Now, Mr. President, Vice-President and members of the Federation of Indian Chambers of Commerce & Industry, I welcome you all here, on my behalf and on behalf of the Committee. I hope the evidence tendered by you will be of some avail to the Committee in arriving at a conclusion. A memorandum has been submitted by you and it has been duly circulated to the members of this Committee. But, if you have any specific point, one of you may speak on the memorandum., or something extraneous to the memorandum, which you want to make. You would kindly make your points first, and then the Hon. Members would put certain questions. The answers you give, I hope, would also be of some avail, would be candid and given fairly and for the benefit of the Committee. Before we start, I would request you to make general comments, if you have any; and if you so like, you can deal clause-by-clause.

SHRI K. S. CHAVDA: The memorandum which is submitted to t! Committee, is confidential.

MR. CHAIRMAN: Whatever may be the position, Mr, Chavda, since I have drawn their attention to the direction, the objection which you have raised, does not stand.

SHRI MADANMOHAN MANGALDAS: With your permission, Mr. Chairman, I would like to make a few general observations. My colleagues and I are thankful to you for giving us this opportunity to tender oral evidence on the Companies (Amendment) Bill. We have already submitted a written Memorandum where we have outlined the approach of the Federation to the law regulating public and private companies, and have also, after analysing the Clauses of the Bill, have offered concrete suggestions which, in our judgement, would further the basic objectives of the Bill.

With your permission, Sir, I shall broadly state our position, and my colleagues will make supplementary remarks in regard to the major provisions of the Bill. Thereafter, we will be available to you to answer any question you may choose to ask.

Let me start with the areas of agreement between the Federation and the framers of the Bill. Firstly, there is no difference of opinion that Company Law may require amendments from time to time, to meet the changing circumstances. Secondly, in the event new abuses come to light, the law must certainly take remedial action. Having said this, I should like to submit that the Company Law, as any other piece of legislation, must be simple, easy of compliance and effective in implementation. If these tests are applied the Company Law, even as it stands today, will not pass these tests. It runs to 500 pages and 658 sections—almost impossible for those who are in charge of small and medium enterprises to understand and comply with the numerous and complex provisions. Some of the amendments will make the position worse. Those who are in charge of both small and comparatively bigger companies run the risk of attracting severe penalities even for acts of omission and commission that may inadvertently occur. This is not all. In our judgment, if the amendments are passed in the present form, the larger objectives of broad-basing entrepreneurship and bringing about effective and healthy functioning of the corporate sector for the advancement of the economy will be defeated.

I shall now come to the amendments which seek to bring about a closer integration between the Company Law and the MRTP Act. We fully support that part of the MRTP Act which seeks to regulate restrictive trade practices, but to the extent this Act defines 'monopoly' in terms of assets and not with reference to, the commonly accepted malpractices, such as rigging of prices, curtailing production, and the like, we must record our disagreement. This narrow definition of monopoly becomes very relevant now in that the concept of 'group' is being introduced for the first time in the Company Law. As the definition of 'group' is very pervasive, it is our apprehension that almost all companies, whether big or small, will get inter-connected and thereby attract the provisions of the Monopolies Act for the purpose of clearance of licences for substantial expansion, setting up new units, etc. Permit me to draw attention to the definition of 'group' clause 2 of the Bill. The wording is such—and my lawyer friends say that it is both totalogical and subjective—that any two or more individuals, firms or bodies corporate or in combination thereof are implicitly supposed to be acting in concert. This, we submit, begs the question. One of my colleagues will further explain the awesome implications so far as the working of the corporate sector is concerned. Let me now take up the concept of "same management", which is already embodied in the present Act and which is sought to be widened. The amendment can be divided into two parts; one, its retrospective operation. In our view, opportunity

should be given to the companies after the amendment of the Act, comes into operation, to make the necessary changes in the Boards. Second, the enlarged definition of 'same management' is such that companies with separate identities and not at all connected will be deemed to be under the same management. For instance, a person 'A' is on a three strong Board of Directors of a Company 'X' and if he is also on a 12 strong Board of Directors of another company, both the companies will get interconnected. The short point is that the new definition does not take into account the financial interests of the Director. For some obscure reason, it is only related to the numerical strength of the Board. My colleagues will further elucidate this point. The working of companies will become extremely difficult by another new provision contained in clause 25 of the Bill, which amends section 297 pertaining to directors' contracts with the company. Under the present Act, if a public company enters into contract with a private company where the directors are interested, then the contract should be approved by the Board of Directors of the public company and the interests of the concerned directors should be disclosed. According to the amendment, the approval of the Central Government will now have to be obtained. Sir, as everyone knows, it is not easy to get clearances from Government departments. There will be inevitable delays and such delays can give rise to situations where in times of urgent necessity, the public company will not be able to make its essential purchases and production will suffer. While some of the amendments are vague and pervasive, the sanctions are very clear. They often carry penalties ranging from 1 to 5 years imprisonment and fine ranging from Rs. 500 to Rs. 5,000, in addition to fine for every day of default. The punishments are more severe than those prescribed in the Indian Penal Code involving moral turpitude. May be, some economic offences also require severe punishment. The point, however, is that the infringments under the Company Law are not economic offences is such, but can only be of a civil and technical nature. In addition, these offences may occur unwittingly, for, as I said nature. In addition, these offences operative definitions and provisions are not precise and clear and there are no criteria or guidelines incorporated in the Sections either. Let me cite one concrete instance. Every company is required to see that the shares lodged with it for transfer have not been acquired or sold in contravention of Sections 108A, 108B or 108C these Sections place restrictions on acquisition or transfer of shares by individuals or companies. The company which has to register the transfers would not know whether the person lodging shares for transfer belongs to any group and who the other constituents of the other group are, and in case of bodies corporate, which other bodies corporate are under the same management. If there is a transgression by the company, the company and every officer of the company who is in default is punishable with fine which may extend to Rs. 5000 or with imprisonment for a term which may extend to three years or with both. This is an impossible provision. I would therefore, request the Joint Committee to give special thought to this matter of penalties. I have done with my general observations and I call upon Shri Chokshi to take up other clauses in detail.

SHRI C. C. CHOKSHI: Mr. Chairman, I am grateful to you for permitting me to offer a few preliminary observations Sir, I propose to confine myself to the provisions of clauses 2,3,15,18,23,24 and 36. However, my observations are in the context of five main principles which I respectfully submit should be borne in mind by all concerned with company administration, be they on the side of the Government or on the side of the corporate bodies. The first principle should be that in a good company if

there are any defects or lapses but observing good practice, the same should be controlled; if any loopholes are there, the same should be plugged. Another principle is that in Company Law we are dealing with commercial matters, commercial decisions, commercial transactions and, therefore, any delay in respect of these decisions, if they are to be effectively implemented, the same should be removed; the delay should not be allowed to occur and the decision taken quickly. If there are going to be any delays on account of a large number of provisions which would be required under the proposed legislation in addition to what are required under the present legislation, it is bound to bring about stagnation and it is bound to create even frustration on the part of professional company management.

The third point we have to remember is about the unproductive expenditure it will lead to. This in the long run goes to increase the cost of production.

The fourth one is that as the President of the Chamber mentioned that Company Legislation should be in simple terms and it should be effective. These are the two tests which he has mentioned in his opening remark. I would like to add two more tests—that there should be clarity in Company Legislation and the Company Legislation should in precise terms bring out what is meant to be conveyed.

The last point or test which I would like to submit is that if there are any defects in the provisions of the MRTP Act which in any way makes the MRTP Act less effective, then the remedy should be to amend the provisions of the Monopolies Act so that the effect of these restrictive provisions will be on those companies which are under the Monopolies Act and not on all companies, irrespective of their application or irrespective of their being subject to the provisions of the Monopolies Act. These are the five principles which I respectfully submit should be borne in mind.

In the context of these preliminary observations, Sir, I first refer to the definition of the word 'Group' to which reference has been made by the President. This definition, as mentioned by him, is very vague. It does not clearly specify what is meant to be conveyed. There are two points. One is at what point of time will a person be told that he belongs to a particular group? A person might be supporting at the General Meetings of the Companies the Management, or any other group of persons. He may be supporting not because he belongs to the group of that Management but because he feels honestly that the management is doing good work. Does it mean because of his voting with the Management, he is to be classified as a Member of that Group? Certainly not. That should not be. But the intention is—that the person may at any time be told that he belongs to that group. The definition of the group is—"Group means a group of two or more individuals, etc." In the Income Tax Legislation there is a similar provision—that if a person is to be appointed as an agent of non-resident, then the Income Tax Officer has first to give him notice of his intention to treat that person as an agent of non-resident and after hearing him he will pass an order that he is to be treated as an agent of the non-resident and then the person is to be on the guard. Here the definition of the word 'group' is so vague that the person does not know whether he belongs to that group but the consequences are very severe. As pointed out by the President, if he is told that he belongs to the group and subsequently inadvertently if he acquires even one share of the Company, the consequences are that he gets penalised to the extent of Rs. 5,000/- or he can be sent to jail for three years.

The second part of this definition is not clear. It says it has an object of exercising power, exercising control. This expression is also very vague. At what point of time are we

going to say that the person or group of persons has the object of exercising control? It deals with the Company Law. We must deal with items which are statement of facts that you have exercised control. You have become a Member of that group. You have done something and therefore, I am treating you as a Member of that group. The object is very vague.

The third point is object of exercising control over any body corporate. That is all right. But firm or trust does not give any meaning at all. This 'firm or trust' may please be deleted. Then probably it can make some sense. Otherwise 'firm or trust' does not give any clear idea.

These are my observations on the definition of the word 'group' *i.e.* Clause 2.

I refer to Clause 3 and section 4B. Clause 3 introduces Section 4B. This Section gives the definition of the expression 'same management'. This has already been defined under Section 371B. That is proposed to be deleted from there. That is brought here with a view to define 'same management'. One point which I have mentioned was that this is sought to be introduced here and this definition has been extended with a view to help in the MRTP Act, but it is not observed that in doing that all companies will be covered under this definition and therefore, a small company will also be covered. Why should we create a problem for the small companies? If persons are there in big companies, they know that they are in the same management. Let MRTP Act define the expression 'same management' instead of bringing such a complicated definition here.

My second point is, here it is said about same group in clause I which says—if one exercises control over the other or both are under the control of the same group. Again it is not clear what is meant by group or any of the constituents of the same group.

Under Clause 4, the President has already mentioned that if one is a Director of one Company and he is also the Director of another company, one company may be a big company—say Tata Iron and Steel Co., and he happens to be the Director of the small company, a family company, he may not have any interest in the Tata Iron and Steel Company but because in a small company he has his brother or the wife of his brother, the three are the Directors. He himself will form 1|3rds and according to the definition, he along with the relatives, all three will be covered and small family company will be deemed Company under the same management. Therefore, it is a provision which will create a great hardship. Probably the intention is to start with the words that where 1|3rds of the Directors of the Body Corporate form 1|3rds of the Body Corporate, then one can understand that it makes some sense.

The third point is that all the time in other clauses it says and it tries to group up the equity capital and the preference capital together. It says, if 1|3rds of the shares of these companies both equity and preference are held by the same person or controlled by the same person, then the two companies will be deemed under the same management. Now it is well known that preference shares in all cases do not have voting power. Therefore, it should be clarified that where preference shares carry voting powers or where preference shares become entitled to voting power, it is at that point of time only that the holding of preference shares should be taken into account for determining whether the two companies are under the same management or not.

Clause 15: This clause adds another Section 204-A. I will confine myself only to cases of hardship in respect of that clause. Broadly speaking, this Section states that if an erstwhile Managing Agent subsequently occupies the position of a Secretary, or an

office of profit, then in such a case, that person occupying the office of profit. shoud come up before the Government for its approval. That may be a fair proposition, although it will create hardship. A person might have occupied the offce of Managing Agent, and if today he occupies an office of profit in the Company, that should affect him. This would create hardship, but I am on the point, where it will create hardship to an ordinary person.

This section also talks of an associate of the Managing Agents. I know for certain that there are a number of cases, where associates of Managing Agents are being appointed not because they were associates of Managing Agents only, but because they were qualified people also, as employees, clerks or officers of the Company, and they have their experience of ten or fifteen years. The way the provision is put here, it appears that even such people will have to go to the general body for a resolution being passed and then go to the Central Government for approval. Surely, the intention is not to create hardship to such people, who are being employed for positions of Rs. 500 or Rs. 1000 per month and they are giving proper service to the Company.

Clause 18: This clause deals with the right of inspection of the books of accounts of the Company by Government. The reasons given in the Notes on Clauses appear to be manifeld. Firstly, it says that at present, the Registrar has no power to compel production of books of accounts. If you kindly refer to section 209(4) (b), it is very clear that the Registrar has the power to take inspection of the books of accounts. There are, therefore, ample powers with the Registrar today for the inspection of books of accounts.

The second reason given is that it is also intended to evaluate precisely the level of efficiency in the conduct of the affairs of the company concerned. This means carrying out an investigation into the affairs. Already there are powers under section 233-A to investigate into the efficiency. Section 237 and section 238 also give powers of inspection. It is difficult to understand, why the Government would like to have so many powers under various sections.

The third reason given is, to ascertain the quantum of profits which have accrued and not adequately accounted for taxation purposes. There are already taxation officers. They have ample powers, perbably more powers than being given under this Law, and rightly so, because it is their business. They should find out, what is the real income of the company, and whether they are paying income tax or not. Powers of the Income Tax Officer are very wide. They have information of all the assessees concerned. They are in the best position to find out the quantum of income.

It is also mentioned that the role of inspection has to be much wider and have the object of ensuring that transactions have been validly entered into in accordance with the rules and procedures of the comany and also ascertaining how far the statutory auditors have discharged their functions and duties in certifying the true and fair view of the company's accounts. This is a sort of castigation on my profession. It means that the Company auditors are not good. Then it is better that they should be done away wih. The way, ilt has been mentioned here, means a very severe criticism.

The Government wants to have powers of inspection, powers of investigation, powers of super audit etc. time and again under various provisions of the Law. It is not justified, it will creat lot of harassment.

Clause 23: The Government is taking powers to decide whether a particular person is fit and proper to be appointed as a Managing Director, or a chief excutive of the company. These powers already exist under section 269 and the Government has been

exercising these powers for the last several years, perhaps since the days Companies Act was passed. In spite of that these powers are being taken, so that the Government should review whether a person is fit to be reappointed or not. May be that the Government has reasons to take these powers but we must look at it from the point of view of the professional managers. When a professional manager gives up his profession and joins a Company to offer his services, he wants to be assured of his employment, so long as he renders satisfactory services to the share holders and the Board of Directors. But this brings about such a serious sense of insecurity to good managers that it is not fair to them. Every time the man has to go to Government and persuade them that he is a fit and proper person. Therefore, I would respectfully submit that, if at all, they may have powers of review at any time when they find that a person is not behaving properly and they may give him a Show Cause Notice as to why his services should not be terminated. But giving them powers of review every five years will give a serious sense of insecurity to good Managers.

MR. CHAIRMAN: You want to give the review powers to Government?

SHRI MADANMOHAN MANGALDAS: Where the Government finds that Selling Agents have been appointed on excessive remuneration, they have powers of review under section 294.

The point which I was trying to submit is that there are three tests which are laid down here. One is, where it is in the interests of the company to have a whole-time managing Director; the second is that the proposed Managing Director should be a proper person in the opinion of the Government; the third is that the terms and conditions should be reasonable. In addition to that under section 637AA, which has now been introduced, further powers are sought to be given regarding the commission of the company or remuneration etc. This is duplication of the same powers.

Another point is about professional qualifications. There are two things here. One is that Government would be taking away whatever little power of discretion is there in the shareholders or Board of Directors. Secondly where the matter comes before the Central Government that a particular person is proposed to be appointed as Managing Director, at that point of time Government may decide whether he is a proper person or not.

Regarding the professional qualifications, actually it cannot be accepted that in all companies there should be professionally qualified persons. There might be persons who may not be holding professional qualifications but who may be having vast experience and knowledge. To say that he must have professional qualifications would creat hardships and mis-understandings because thereafter, the officers would only say "what is your professional qualification"? There are a number of people how are acting as Managing Directors in a really efficient manner but they do not hold professional qualifications as such. They may be Economics Graduates or may not be Graduates at all. It is not necessary that one must have professional qualifications.

The last one is Clause 24. This clause 24 gives power to the Government to decide whether a company should have Sole Selling Agents or not under section 294 AA(1) that is sought to be introduced. Not satisfied with this power, again in sub-section (3) it is stated that no company having a paid-up capital of Rs. 50 lakhs or more shall acquire Sole Selling Agents expect with the approval of the Central Government. This is bound to creat a lot of hardships. And how is the Central Government to know, unless and untill it has laid down a particular criterion which can be discussed with the companies or business community, whether a com-

pany should have or should not have Sole Selling Agents. It is stated in the Notes that "if the market conditions are such". Market conditions are not always the criteria; there is something like an after-sales service. When technological developments are taking place every day, even ordinary things like the use of fertilizers are becoming more complicated and there are some materials where you require expert guidance for the purpose of proper and economic use of the product. Therefore, for this type of technical services, many of the well-organised business houses make use of Sole Selling Agents who have built up an expertise in these matters. I am referring in this context, to clause 3. If a company, although it is a big company, is not able to sell its products in the market effectively because it might not have built up an all-India sales organisation, it must give the sole selling agency to a well organised sole selling agents. Now, therefore, this is a commercial decision; it is not a decision which can be taken by setting in an office and saying that there is demand for this product. Because this product requires application in a particular manner, you must give the selling rights to somebody who has developed expertise in rendering service after sales. Therefore, in that context, under sub-section (3) to give that power to Government that if a company's paid-up capital is Rs. 50 lakhs or more it should, in all cases, pass a resolution and then obtain the permission of the Central Government, is going to create hardships.

In that context, I am referring to sub-section (5) of section 294 where Government has already got powers to find out whether the sole selling agency terms, remunerations etc. are reasonable or not in the interests of the company and there are cases where Government has interfered. Where the Government found that the terms and conditions were not reasonable, they have laid down other terms and conditions. That shows that already the powers are there and Government is exercising these powers. So, I am not going to add anything more except to say that already the powers are there, so where is the need to have so many powers in duplicate and triplicate form?

With regard to clause 24 I would submit that if at all it is necessary to introduce section 294AA, then the question of going to the Government or obtaining Government's sanction should arise only if the company fails to pass a resolution and if the Management feels that sole selling agents should be appointed, then Government may go to the help of the Management and approve the appointment of the sole selling agents so that if there is a recalcitrant minority of shareholders, then hardship is not created for the management.

SHRI J. P. THACKER: I will confine myself to a few points. General observations have been made by my President regarding the curbs these provisions would bring on promotion. Therefore, I will confine myself to a few clauses of the Bill. I will start with Clause 14.

Now, Clause 14 seeks to amend certain sections by which some of the powers which are now exercised by the Board are sought to be transferred to the Executive and it is sought to be done on the ground that the Administrative Reforms Commission has recommended such transfers. Now, so far as these provisions are concerned, I think no one can quarrel with some of these powers which have been transferred, namely at the moment, the power exercised by the Board to order meetings to be called, which is sought to be transferred to the Government and the rectification of registering charges can also be safely transferred to the Executive. But one important power sought to be transferred is the power of the Court to confirm alteration of the memorandum. Now, Sir, it has been held in courts that to confirm a power is a judicial function. Despite this the power is now to be transferred to the extent possible. As a matter of fact, the present position is, after the Memorandum is chang-

ed—Object and reasons, viz. shifting of the registrar Office—the matter must go to the Court for confirmation. In England this was the same position that a confirmation by the Court was necessary. But in, amendment was made and today the English Act. on which our Act is based, does not require any confirmation by the Court. If dissenting shareholders or a group of shareholders feel aggrieved by amendment to the Memorandum, then they have the right to seek cancellation but otherwise the supremacy of the shareholders has been recognised. I am not going to the lenth of asking for such amendment. But this is the soverign right of shareholders and it is for the shareholders themselves to determine what business that company will carry on and that has been recognised.

In the case of Tata Steel Company Mr. Justice Chagla has delivered a very enlightened judgement, otherwise a very curious position arises in this that the Central Government will be the deciding authority on the one side and on the other side it decides that the Central Government will be represented by the Registrar of Companies. Even today when the Court issues notices to the Registrar of Companies, the Govt's point of view is placed before the Court. Here a situation arises that on one side the Government is supporting it and on the other it is the Government who would be sitting on judgement. Then, when the power is with the Court, notices are issued to the minority share-holders and the creditors, they can come and make their submission before the Court. The result will be that if this power is taken away instead of giving it to the local High Court, if it is given to the Supreme Court, they will have to come all the way to Delhi which will be expensive and time-consuming process.

Another important consequence which may flow is that a very important right of appeal to the superior courts will be denied to the company, to the dissenting shareholders and the minority and the creditors who are often affected by this. At least this power—the confirmation of memorandum—should be given to the Court and other parts should be taken away.

Then the other point is regarding the acceptance of deposits. Section 58A is sought to be introduced to check Companies taking deposits. Now, the Section provides that within 30 days of the Act coming into force, all the companies which have got these deposits-and deposits also include loans as deposit is defined and all that which is in excess of the prescribed limit-shoud be refunded within 30 days.

Now, Sir,there are many companies who are doing business on private loans. If these loans are to returned to them with such a period—30 days—many companies will collapse. Even today similar provisions do exist in the Reserve Bank of India. There it is permitted to refund in two or three years period, Therefore, I consider here as a reasonable period, that three years should be allowed so that the companies may be in a position to refund the loan in a way of phased programme. These deposits coming from the Directors and relatives and those who are in the know of the financial position of the companies should not be barred or prohibited by this provision because the whole object was that the Members of the public who are unaware of the doings of the Directors are sometimes duped. While it is a very laudable object, one cannot dispute this but so far as the deposits from Directors are concerned why should these deposits be prohibited? So this part of Directors deposit to the company should be exempted because many banks and financial institutions do take time to give loan. When monies are urgently required by the companies, these directors can come and help the companies immediately by depositing their monies.

SHRI K. V. RAGHUNATHA REDDY: One private company has taken Rs. 11.0 crores.

SHRI J. P THACKER: Then, sir, I may like to add that I have the report of the Banking Commission. If you like, sir, I will pass it on to you.

MR. CHAIRMAN: You can send it later on.

SHRI J. P. THACKER: Then, sir, there is a provision that so far as the deposits are concerned, one must give advertisement in the prescribed form. Well nothing wrong about it. But there is further one Section which says that you must comply with the provision of the prospectus. Now, here what has been overlooked is that acceptance of deposits is a continous process, intermittent process. You call for deposits when you are in need of money and return it when you no more require it. Then the question of prospectus for the issue of capital, for the issue of debentures or share arises, at a particular point of time. Therefore if a company requires deposits for a period of three months but it does not require it after two months, it should be allowed to return the money. You cannot except cumbersome procedure to be followed. Therefore all provisions which deal with the acceptance of deposits should be deleted. Our submission, Sir, is that the Section 58B is the section which embraces it this should be omitted.

Then, I come to the next topic regrading the "takeover bids". This "take-over bids" really deal with three separate topics. I will take up first 108A clause 10 which says that excess shares should not be acquired by any individual or groups without the prior approval of the Central Government. The object, of course, is to prevent the control being passed on to undesirable hands and the reason given is that the public financial institutions who are kept in the dark while secret negotiations are entered into with those having control of a company. Now, this is the decision and the Stock Exchanges have complained about the inadequacy of the existing provisions to prevent such anonymous and clandestine take-overs. This is to protect the small share holders who acquired the small shares but it is totally wrong. It is only the financial institutions who are to be protected. Now the financial institutions are involved in this and they can look after themselves. The objective of protecting the small savings is completely ignored. Our suggestion is that shares of a company which are quoted on the stock exchange should be brought within the purview of this legislation. But in respect of other companies beginning with only ten shares of the members of the family, if these shares change hands, then probably there is nothing that can seriously damage the public interest. I do not know why 25 per cent has been hit upon. Then very often sick units are in need of money. It is only someone who is financially sound can come to the rescue of the sick units. Sick units cannot be taken over because unemployment problem will become very acute. Before nationalisation, small banks which were considered never viable, they were all taken over by the banks which were financially sound. On the same footing, if someone who is financially sound takes over the sicks units, why there should be any objection. The expression used about 25 per cent jointly and severally, it may cause hardship. They cannot jointly and severally acquire even a single share which would hit with the result that the marketability of the share would be in serious doubt.

108B deals with inter-corporate investment. The new provision seeks to provide that when a body corporate or bodies corporate holding ten per cent or more equity in another corporate body, they must give prior intimation to the Central Govt. before transferring any shares. Here it is already 10 per cent. But I will not deal with that point at the moment. Then regarding intimation, you must give an intimation to the Govt. and on receipt of that intimation, it is for the Govt. to tell, well you come to us for approval. Without our approval, you shall not transfer any shares. Then if it is held in a company engaged in any industry specified in the Schedule then

the Govt. have the power to say that these shares will stand transferred to the Central Govt. or to any of the financial institutions at the market value. This should be done when the direction is given and not when the intimation is given. So, there is a time lag and the market is depressed. My suggestion is if there is any possibility that there are several companies which are composite companies in the sense that they are engaged in iron & steel industry and also in non-schedule industry, it should be made clear. If we are going on like this, then, so far as composite companies are concerned, the provision of the Govt| taking over can only apply if predominantly the company is engaged in a schedule industry.

Now, we come to the payment of market value. My submission is when a controlling block of shares changes hands, it can never be at market value. Controlling interest has something loaded on to the market value. Otherwise, you will find that a block of shares will change and the management will go . The position is that instead of market value it should be at a value which should be negotiated or in the alternative the value the party has made in his offer. But the man who has negotiated it, he must have applied for shares at a price which is more than the market value as a contravention of missing block. He is made to part at the market value. But he is not given the option to say this is my price at which I was prepared to sell it. If the market value goes down, the person who is selling the shares, he is bound to transfer to the Govt. or to the financial institutions. Here my submission is that it is not a fair commercial proposal. It should not be made into a law. As far as 10 per cent transfer is concerned, when the transfers are between bodies corporate under the same management, then Section 108B should not be applied.

Whenever there is a transfer by way of pledge, when the shares are not sold, when the full ownership does not pass, then again the words as they are in the Act would be also applicable to the transfer by way of pledge. So, pledge should be excluded.

As far as restrictions are concerned, they should apply only to those shares which are equity shares and those shares which are not equity shares, should be kept out of this. As the wording stands, even a single share out of that block of 10 per cent can be transferred from that block So, really speaking, if the idea is to control and check undersirable transfers then when the entire block is to be fought, then this provision should come in. Otherwise, a number of complications will arise. Sometimes shares are sold to pay heavy taxes. Whenever you sell them, it is a long procedure. If you do not pay within a time, then you pay penalty. My submission is that single share should not be transferred. If 108A which deals with transfer of 25 per cent is to be enacted, then, 108B is totally superfluous. In view of the provisions under the proposed section 108A, the provisions under the proposed Section 108B would be, to some extent, superfluous.

Then, I come to Section 108D. It is perhaps the most difficult section difficult in the sense, that it imposes severe curbs on the transfer of shares and it is this. Here, the Government if it is satisfied that the transfer has already taken place and the Government is satisfied that it is not in the interest of the public, then, the Government has a right to freeze the transactions and to reverse it and if the Government comes to the conclusion that the transfer is not in the interest of the public, it will pass an order that the shares which are already transfered be re-transferred in the name of the original seller and the price be refunded to the purchaser. Here, let us see what the consequences would be. It has been provided that it will be an order on

the purchaser to give back the shares and the seller who has received the price must refund the price. The order will be treated as a decree of the Court. Merely having an order or something like a decree of the Court is meaningless. This means the powers of the Government may be exercised after any length of time and after any lapse of time It may be 2 or even 5 years. There is no point or limitation laid down with the result that in the interrugnum during that period the new Management or the new individuals who might have taken over may have incurred some capital expenditure etc. What happens to all that? For this there are no provisions The man who pays his money might have made long-term commitments like capital expenditure, deferred payments. For all these no privisions have been made. Our suggestion is this. It the Government wants these provisions, there must be a specific time limit within which the Government must make up its mind whether there should be transfer of the shares.

The next item which I want to deal with, is regarding dividends which are the subject matter of clause 16 section 205A and B are sought to be introduced. Now, Sir, there, the object or the reasons stated is to prevent Companies from declaring dividends in a year in which the profits are not adequate, secondly, that large amounts are declared as dividends and large amounts declared as dividends are unclaimed for several years, and thirdly this is to prevent mis-use of the amounts due to the shareholders. Now, Sir, it is difficult for one to appreciate these objectives and how these objectives can be achieved by reason of these amendments. The first objective is to prevent the Companies from declaring dividends in a year where there are no adequate profits. Here, it is also proposed that the total amount to be distributed to the shareholders as dividends should be transferred to a separate account. Then, as regards the unclaimed dividends, the ground is that, they are misusing this. If this is the theory, then, the Managements may also misuse the capital and they may also misuse the other amounts. The object given is not one which really convinces us. After all, unclaimed dividends can either be the property of the shareholders or of the Company. How can the Government say that these amounts will be transferred to the Central Government. The other thing is that, dividends should not be paid out of the reserves without the prior approval of the Government. This will only mean that the Companies which have large profits will be dissuaded from carrying the funds, their amounts, into the reserves and distribute their dividends, fritter away their assets, instead of ploughing back into the Company. Therefore, this is only penalising the Companies which have conservative policies and encourage those who are inclinded to fritter away their assets. The most important part is, that the unclaimed dividends should be transferred to the Government. Of course, there is provision that the shareholders can come forward and claim. But, the fact is that the Government machinery has got a number of other things to look after and we cannot also blame them. Some delay is understandable. But, it is unfair to ask the small shareholders to go to the Government and go through this cumbersome and delayed procedure. Again, it will be for the Government to insist upon a probate or a succession certificate being taken up. So far as the Companies are concerned, mostly, they pay over the amounts to the shareholders. Even in the interest of the shareholders, it is but fair, that the amounts should remain with the Companies. It must be the experience of all of you gentlemen here, that unclaimed dividends are mostly the amounts of the deceased shareholders. There is no one to come forward. No representations have been taken up. No probate has been taken up. If you go to the Court it takes many years. In the meanwhile, the amounts would have been taken over by the Govern-

ment. The shareholders have to run and claim their amounts. Our submission is that this provision should not be incorporated at all. The best thing is that the Companies should be asked to keep this amount in a separate account and this account must be audited and this should be shown in the balance sheet. But, turning over the amounts to the Central Government would mean legal hardships and above all, it would not be proper on moral grounds.

The next thing is about the contract by the Directors. Section 297 is sought to whether amended by adding a provison that contracts company with the Directors or their relative whatever be the amounts, will require the approval of the Government. Now, it will be recalled that this Section was amended in 1960; and it was to the effect of examining certain kinds and categories of contracts, viz., those made in the ordinary course of business and in cases of urgent necessity. The legislature, after careful consideration, made this provision. This provision means that the legislature had realized the importance of this. We are again going back on the amendments and the proposed amendments will hamper the work of the company, because contracts may involve a simple contract of supply of raw materials, services and even day-to-day affairs. Sometimes, raw materials are to be supplied on credit. It is the Director who can supply on credit. If we do not want the company's work to be hampered, let us not go back on what the legislature did in 1960 and, therefore, if at all the approval is necessary, because of the existence of certain mischief and malpractices, let the contract be made and the matter may be reported to the Government. If the Government feels that the contract is disadvantageous to the company, then the Government has certainly power to order reimbursement to the company on account of the wrong action of the Director.

MR. CHAIRMAN: Do you think that with some provision being made there, it could be done?

SHRI J. P. THACKER: Some provision can be made, as in the case of selling agents.

MR. CHAIRMAN: You are talking of the blanket provision. Without a provision being there, how can a blanket provision be there?

SHRI J. P. THACKER: In case a company misbehaves, you can do it. In any case, if a company goes wrong and the contract is reported to the Government, Government can say that the particular contract is not good for the company, as it does in the case of selling agents. By preventing a director from entering into a contract, the company's business is affected. I am sorry to have tried your patience. Next is Clause 26, which seeks to amend Section 314. Under section 314 as it at present stands, no relative of a director can hold office of profit, without a special resolution being passed by the company in its general meeting. The recent amendment is that the special resolution and Government's permission will be necessary, even for the appointment of a director as a technical or legal adviser and as one who holds any office of profit of Rs. 3,000 or above; and Central Government's approval will be needed. So far as the posts of Technical Adviser and Legal Adviser are concerned, our submission is that there are very few instances one can think of, where there is an abuse made of this. There should be no prohibition on the post of a Legal Adviser or a Technical Adviser or a mere directorship; and for this purpose, Central Government's approval need not be taken. As a matter of fact, it has been the experience of many, that when a Legal Adviser is on the Board, his services are cheaper and more readily available than when he is consulted as a legal practitioner. So far as a mere directorship is concerned, it should not require the approval of the Government at all; and secondly, this monthly remuneration of Rs. 3,000 is too low a limit. As a matter of fact, even to-day's limit of Rs. 5,00 needs an upward revision. Our submission is that Rs. 3,000 is very low

because, together with perquisites and other allowances, Rs. 3,000 cannot be regarded as a very high limit.

Then, Sir, the last topic with which I am going to deal, is clause 30, Section 408, regarding appointment of Government directors. To day, the Government has the powers in a mismanaged company, to appoint two directors; but now it is suggested that these two directors have not been found to be effective. And, therefore, Government can appoint any number of directors. And the strange part of it is that not only any number of directors but each for a successive period of three years—which means that the Government's directors will be in a majority perpetually. It is also a way of nationalization of a company. Well, it is there. I would, however, like to point out that if the two directors have not been able to act effectively, I am sure it is not the fault of anyone else but those nominees. They can certainly report to the Government that they could not be effective. It does not mean that Government should have a majority. It is rather harsh on the corporate sector.

SHRI M. L. KHAITAN: I will deal with only one clause, namely, Clause 5. This clause deals with the amendment of Section 43-A which deals with the the private companies. I would like to draw your attention to the notes on clauses at page 33. I would like to repeat it, because I am advancing my arguments on this basis. "The Shastri Committee had recommended that the exemptions available to private companies under the Act, should not apply to those private companies in which public money, directly or indirectly, is employed to a considerable extent." These are the words to which I would like to draw your attention, viz. "public money," "directly or indirectly" and "to a considerable extent." Accordingly, Section 43-A was introduced by the amending Act of 1960, under which where not less than 25 per cent of the paid-up capital of a private company is held by one or more bodies corporate such a private company shall become a public company. At that time, 25 percent of share ownership by bodies corporate, was considered necessary. But now, it is stated that "But it is found from experience that it is possible for bodies corporate in which public interest is considerable to control private companies with very much lower percentage of the paid-up capital of such companies." What is stated is that where the public interest is considerable, then even 10 per cent can control a private company. That is what is stated in the memo., "In order to widen the scope of regulation of companies in which though, incorporated as private, the public interest involved is of a considerable extent, it is considered reasonable to reduce the percentage aforesaid from twenty-five to ten per cent." The Shastri Committee has further recommended that indirect employment of public money in a private company should also be a criterion for making a private company subject to the same restrictions and limitations as a public company. This aspect, it says, has not been reflected in section 43A. You would like to gather whether this provision has been recorded in the proposed amendment. If you look at the proposed amendment clause 5 amendment proposed that 25 per cent is to be reduced to 10 per cent. Now leaving aside at the moment whether it is 25 per cent or whatever it is, we have to see what is the effect of the amendment. The amendment means that if no less than 10 per cent of the paid up share capital of a private company having a share capital is held by one or more bodies corporate, that private company will become a public company. Now may I ask if a small company of one lakh of rupees invests 10 per cent of its shares in another private company of over one lakh, where is the public interest considerably involved? No: 2 it is not that this company alone be comes a public company but the other company also becomes public company. So the recommendations of the Shastri Committee are not applicable. Further all these small entrepreneurs will have onelous duties of comleting all the formalities of public companies. More or less, you want to

give up the concept of private company. Now in the memorandum it is further stated because of the Shastri Committee report that where in a private company there is considerable amount of share capital and the turn over is very big, it should be deemed to have public interest. Now I would not like to quarrel on that idea. But may I ask whether in today's circumtances 25 lakhs of rupees of share capital, does it involve sufficient public interest? Certainly not. Rs. 25 lakhs today is nothing very much at all. If you start a small concern perhaps the machinery will itself cost Rs. 25 lakhs. So Rs. 25 lakhs capital is too low. We are not going to quarrel over that. All that we are suggesting is let it be practicable and reasonable amount.

MR. CHAIRMAN: How much do you suggest here?

SHRI M. L. KHAITAN: 25 per cent to 50 per cent and Rs. 50 lakh turn over to Rs. one crore. Now, Sir, as you know that this provision of 25 per cent was more or less supposed to be for a public company getting interested in a private company. Now why that is so? It is because there is an exemption provided in the same section under sub section 6 which I have presently read it to your honour. It says: "that nothing in this section shall apply to a private company of which the entire paid up share capital is held by another single company." Supposing there is a private company started with Rs. 1 lakh share capital and another private company with Rs. 2 lakhs. How does the public interest involve? We are not able to understand the reasoning behind deleting this.

MR. CHAIRMAN: In other words you want clause 6 and 7 and section 43 to be retained.

SHRI M. L. KHAITAN: Yes, with certain modifications. Now there is exemption. Clause AA to the section will not apply to a private company in which shares are held by one or more bodies corporate incorporated outside India. If you will refer to our memorandum wherein we have stated why the Joint Select Committee had advanced reasons in 1966 for this particular provision. The reason mainly was there were small entrepreneurs. There was shortage of foreign exchange. There was shortage of technical know-how, they could get cooperation of a small company. He may be an Indian with foreign company who can invest a part of the amount and that that company should not, therefore, be treated as a public company if, however, the foreign company would be deemed to be a private company by the Government if it was incorporated within India. Therefore, this exemption was obtained. We are saying that let this exemption be retained with a proviso provided the foreign company do not hold more than 49 per cent of the shares Otherwise the small company and small entrepreneurs will be in great difficulty in getting technical know how or foreign exchange. Now the third exemption. This section will not apply to any other private company for the following conditions and the conditions are that there should not be more than 50 people including the membership of the company as well as the members of any other company who can be members of this company. But we are suggesting in order to safeguard some of the proposals of the Government that a further provision may be introduced into that section, namely, that the total paid up capital of the private company together with other private companies held shares in the private company does not exceed Rs. one crore. If you will notice the notes again of the clause, what is the reason given for the deletion of these exemptions. The note says, page 33 sub-clause 3:

Sub-clause 3: 'The exemptions conferred by the existing sub-section 6 of the Section 43A of the Act are withdrawn and hence the said subsection as well as sub-section 7 which is consequential to it, is being deleted.'

There is no reason whatsoever as to why sub-section 6 and sub-section 7 should be deleted. On the other hand in our submission to-day there is more reason to maintain this sub-section in order to encourage smaller companies otherwise more or less every company will become public.

The other amendment that has been sought in this Section is: 'Where not less than 10 per cent of the paid-up share capital of the public company having the share capital is held by the private company, the private company shall become a public company'.

We have no quarrel. Really speaking it is not the intention of the private companies to hold share in the public companies. But as you may have seen, in this amendment there are quite a number of a companies who are not public companies but will be deemed public companies technically. Why then should there be a provision that any private company holding 10 per cent shares in such a deemed company should become a public company? I can understand a provision that if the private company helds 10 per cent of shares in a public company whose shares are quoted in the market and which are really in the public interest.

MR. CHAIRMAN: It will be only a fiction of law which will make them public company. If shares are held in it, then obviously it is so.

SHRI JAGANNATH RAO: We are building fiction on a fiction.

SHRI M. L. KHAITAN: Unless it is the concept of the Government that all the public companies should be completely eliminated and all the private companies whether they are manned by the intelligent people or manned by illiterate people or semi-illiterate, all these people must go through these onerous provisions of the Act. I would certainly submit that you should protect because they are more or less in the shape of partnership companies, domestic companies and hon. Members should pay special attention to the fact that the smaller people should not suffer.

MR. CHAIRMAN: I think that is all.

Shri Mahavir Tyagi, you may ask question.

SHRI MAHAVIR TYAGI: I would like to seek one or two clarifications. To what extent do the owners of private companies suffer, if their companies become public companies? What are the undue restrictions on the private companies?

SHRI M. L. KHAITAN: I thought everybody is aware. I will read certain observations of the Banking Commission in regard to the registration of the rural subsidiary banks under Section 43A of the Companies Act which are as follows:—

"Rural Subsidiary Banks if registered under the Company Law would have to comply with the requirements applicable to public company *vide* Section 43A of the Companies Act. The legal requirements to be observed by the public company are too many and the time, the expertise and the expenses required to comply with those requirements simply make the Company Law framework unsuitable for a small banking institution having as its prime objective the meeting of the banking and credit needs of the rural area. It may be readily seen that these requirements are too onerous when contracted with the expertise available and the resources that would be moblised for setting up such undertakings."

You would realise for yourself that a book containing 500 Sections and more onerous provisions now proposed to be introduced, how can a small private company who has neither the

resources nor the intelligence nor the expertise available can help itself and further the penalty that the private company will suffer for not complying with the restrictions?

We have already mentioned in the Memorandum that these Sections should not apply to the private companies.

SHRI J. P. THACKER: Hon'ble member has asked about the disadvantages that will be suffered by the private companies. Small and medium sectors will be in hardship and from an administrative angle a number of complications and obligations and delays will be there.

MR. CHAIRMAN: That has been explained by him very well.

SHRI MAHAVIR TYAGI: What is your reaction to the proposal about the change of the auditors of the company after three years?

MR. CHAIRMAN: Clause 22.

SHRI MADANMOHAN MANGALDAS: I do not think that this change should be there. Most of the companies consider that their auditors are above board and most of them are really above board. If there is any report against the auditor, then I see no reason why there may be change after every three years but who knows the next auditor may be worse than the first one? I think the bigger companies and the honest companies always choose the best possible auditors. I for one feel that this change of auditors after every three years would create such repurcussions as would come in the way of working of the company properly. I am totally against this sort of interference. The share holders have to pass the auditor's Report. I see no reason why unnecessarily this interference should be there with the company. All these 101 clauses on top of the existing numerous clauses would only create paralysis in the private sector and public sector. It is like bansi in the horticulture in Japan where roots are cut, and the tree does not grow at all. Private sector will not grow. Most of us will be behind the bars. The honest entrepreneurs are frightened—three to five years imprisonment for no fault. To have the corporate sector with these clauses is unheard of. I am very sorry to say I am very much excited and feel very bitterly about it. I feel the honest management will go out of the corporate sector. How can you follow all those sections? I needed three lawyers to interpret what they meant.

SHRI MAHAVIR TYAGI: Suppose there is a provision made for appeals.

SHRI MADANMOHAN MANGALDAS: How many appeals would be there? Whatever you do, it should be rational. You want production to grow in this country, but by binding hands and feet would mean nothing, but death.

SHRI M. K. MOHTA: My first question is relating to the definition of 'group'. The witness has suggested that the 'group' should mean, 'a combination of two or more individuals, associations, firms, trusts or bodies corporate which exercise control over any body corporate.' I would like to ask, whether two or more individuals, exercising control over a company by means of their voting rights, working independently, come under the definition of 'group'.

SHRI C. C. CHOKSHI: Two or more persons voting independently would not come under this definition. We mean group by a combination of two or more persons working in concert.

SHRI M. K. MOHTA: My second question is with regard to conversion of a private company into a public company. In the present context of economy and the necessity for speedier development of the country, holding of shares in a public company by a private company is desirable or not? If it is desirable, then why should the private company which is holding shares in a public company be converted into a public company?

SHRI M. L. KHAITAN: We have been talking about the private com-

panies on the basis that these private companies serve a particular purpose. The purpose mainly is to have more industries and not really investing companies. Therefore, we are of the opinion that if a private company holds 10 per cent or more shares in a public company, whose shares are registered in the stock exchange, that may be deemed to be a public company. So far as we are concerned, we would like to encourage private companies to confine themselves not to invest in other companies such as these undertakings, but to form a company by itself with the help of other smaller private companies and give more attention to the growth of industry. That is why, so far as the Federation is concerned, they have not seriously objected to any private company becoming public if it holds more than 10 per cent shares in a public company, provided that public company is really a public company.

SHRI M. K. MOHTA: The witness has objected to Section 6 and Section 7. The exemptions conferred earlier are being withdrawn. He has objected to that and, therefore, wants deletion of this provision.

It has been brought to the notice of the Committee where one private company holds all or most of the shares of another company, the second private company holds the shares of the third company and like that it goes on for 8/9 companies. This is being done for personal aggrandisement, for empire building, for inviting more deposits from the public etc. I would like to know, how widespread is this kind of state of affairs? What objectionable feature is there in the state of affairs? Should the Government do something in this respect?

SHRI M. L. KHAITAN: It is not widespread at all, but the amendments that we have suggested will take care of this. We have stated that the total shares of all the companies must not exceed one crore of rupees.

SHRI M. K. MOHTA: It may not be one crore of rupees. But it has been brought to the notice of the Committee that this way more deposits are attracted from the public banks and financial institutions and this should be put to a stop.

SHRI M. L. KHAITAN: Certain proposals can be made to further amend the Companies Act to protect against this kind of affairs, but it is not really widespread.

SHRI MADANMOHAN MANGALDAS: Sir, I would like to know, what really the hon. Member means by this.

MR. CHAIRMAN: Even if it is a hypothetical case, the hon. Member wanted your opinion and on your behalf, I think, Mr. Khaitan has dealt with it.

SHRI K. V. RAGHUNATH REDDY: What the Hon. Members have in mind is this. In the case of Public Companies there is a greater degree of control and regulation by Government and a greater chance of Government looking into matters and if there is anything wrong, to rectify it or punish. In the case of Private Limited Companies, they enjoy better privileges. There is no great degree of control as far as private limited companies are concerned, as long as they remain absolutely private—because, the idea is that one should not interfere with private companies because even if they lose, they lose only their own money and not public money. Now, on the contrary, even the private limited companies with either a small share capital or a big share capital indulge in a lot of economic operations. For instance, a private limited company may be a holding company and it may have a number of subsidiaries; one subsidiary may be having another subsidiary. Now, the paid up capital of the holding company is distributed to the subsidiary companies. As far as paid up capital is concerned, it is not being enhanced but what happens is that a holding company can take deposits or loans from public financial institutions or the public; the subsidiary companies can also do the same. That means, here there is public participation or public money participation. In such a case if the

private limited companies are not regulated, we would be dealing with an extraordinary situation because the public is paramount.

SHRI CHARAT RAM: If they are taking advantage through public financial institutions . . .

SHRI K. V. RAGHUNATH REDDY: Not necessarily. For instance, there are depositors; when you take money from depositors, that is also public money and not private money.

SHRI CHARAT RAM: But within the regulations, how can they take more? They cannot.

SHRI K. V. RAGHUNATH REDDY: As far as the regulation is concerned, it is only 25 per cent of the paid-up capital. Though it is 25 per cent, a subsidiary company has got paid-up capital and a holding company has also got paid-up capital. The total amount remains the same, but the capacity to take this 25 per cent is different. That is one situation.

Now, according to the Reserve Bank regulations, it is 25 per cent of the paid-up capital, but if a Director gives a guarantee, the sky is the limit. I do not want to express some of the companies here; I do not want to bring other matters before you, but there are companies who have taken in this manner, not one or two crores, but anywhere from seven to eleven crores. Then, do you want us to keep quiet?

SHRI CHARAT RAM: But now the sky is not the limit because the whole thing has changed according to the new regulations.

SHRI K. V. RAGHUNATH REDDY: We have drafted this only with the concurrence of the Finance Ministry—not without their knowledge.

SHRI CHARAT RAM: We cannot take more deposits than this 25 per cent and another 25 per cent, i.e., a total of 50 per cent with the signature of the Director. No company can take more deposits unless the deposits are the Director's own money.

SHRI K. V. RAGHUNATH REDDY: The position is that with the guarantee given by a Director, the sky is the limit.

SHRI MADANMOHAN MANGALDAS: I am sorry to say that it was so before a few days. But now it is not the case.

SHRI M. L. KHAITAN: In the meantime an amendment has taken place for R.B.I. Regulations.

SHRI K. V. RAGHUNATHA REDDY: That is why we said that the entire Regulations will be done in consultation with the R.B.I.

SHRI M. K. MOHTA: Coming to Clause 10 of the Bill, the stated objective for bring forward this clause is to have some kind of regulation of takeover business. But so far as I have been able to understand the meaning of the Section here is that a group already holding more than 25 per cent shares of the public limited company would not be able to buy even a single share of that particular company. But the same people who are already in control of the company are debarred from purchasing a single share from the market. Considering the present state of the capital market and considering that the investors and shareholders have more confidence in the shares of the company if the amendment is to control or prevent from buying its own company's shares, do you think that such provisions would be conducive to the growth of the industry?

SHRI J. P. THACKER: That is our understanding of Section 108 that if a group is already holding 25 per cent of the shares, it cannot acquire any further shares and if those in management are prevented from buying their own shares of the company, certainly public will look askance at the shares of such companies.

SHRI M. K. MOHTA: Regarding the provision made on the declaration of dividend, it would appear that when there is a restriction on the declaration of dividend from reserves, there might

be a tendency on the part of the management to declare such dividends out of the current profits instead of ploughing back as much as possible. Would that be desirable in the present context of economic situation, *viz.* to give much dividends as possible and not to plough back for the purpose of the business of the company or expansion of the company?

SHRI MADANMOHAN MANGALDAS: This has been very clear when this particular Section was referred to and I think there should be consistant policy for declaring dividends. I think it must be allowed for the company to use the reserve funds for maintenance of dividends from year to year. I think that was made clear by Mr. Thacker.

SHRI S. R. DAMANI: Mr. Chairman, as I was a little late, I could not benefit from the views given by Mr. Thacker on various provisions suggested in the Bill. Well, my first question is about the definition "object of exercising control". In their Memorandum they have omitted the words "as to the object of exercising control". Now I want to know whether there is any necessity of defining precisely the word 'control' in order to avoid any confusion or vagueness. If so, what would they suggest in this connection?

SHRI C. C. CHOKSHI: I had already explained in my observation that the expression object of exercising control 'should be deleted because that expression brings in vagueness in the concept of a group. I also mentioned that when we defined an expression in a legislation like that of the Companies' Act, similar to the legislation like that of the Income-tax law, the words expressions should be very precisely defined and this expression as to the 'object of exercising control' is a very vague expression and it will not be possible for persons who are subsequently classified as belonging to a group, to find out the persons belonging to a group.

Now, you have asked me the question of the definition of control. This expression 'control' itself is not defined anywhere in the Act and therefore we have to rely upon the definition of the expression 'control' as given by various Court decisions. Courts have stated that the expression 'control' is normally defined where one has or is contemplated where one has about 51 per cent control—of a majority control—over a company, or if there is no majority control, then the control which enables him or to exercise control. Now, here control has not been defined. Therefore we will have to rely upon the other provisions of law and find out what kind of control is contemplated. It would be better if this word was very precisely defined but the manner in which it has been used does not show or give any precise definition. Therefore, the word 'control' may be left aside. But the more important thing is to delete that expression 'object of exercising control'. If we delete that, then we are left with the words 'which exercise is control'. That will be a factual position and as it would be a factual position, the control would then be safe to decide.

As I submitted earlier that it need not be defined and it should not be defined.

SHRI S. R. DAMANI: Mr. Chokshi, you know very well about the reason given by the Government for putting this word 'as to object of exercising control'. That means it is to prevent any illegal thing happening. Therefore in order to keep this objective, we wanted to suggest something like that.

SHRI C. C. CHOKSHI: I have seen the reasons given by the Government in the Statement of Objects and Reasons. Those reasons will not be diluted because of the other provisions. Actually, the definition of the word "group" does not by itself help the Government to prevent the passing of controlling interest. There are other provisions which give the power to the Government to exercise control either over the transfer of shares or

contolling interest. This power has been exercised by the Central Government in a selective manner. Therefore, the Government have already this power under the present law to prevent passing of control. No individual can purchase shares by himself. He has to purchase the shares through body corporate. When he wants to purchase a large number of shares, he has to go to the Central Government and only after getting their approval, he can purchase the shares. By defining the word "group" in this manner, people might be taken in. That is why I have mentioned in my observation that there is a fear that before a person is told that you belong to a particular group, he should be given a notice. Just like in the case of income tax. Therefore, only after giving him a notice, he should be treated as a person belonging to that group.

SHRI S. R. DAMANI: You have mentioned about the fear regarding the proposed amendment of Section 4B.

SHRI C. C. CHOKSHI: Regarding fear, let me explain. The point is that the fear will be shelved. There are three points: (1) That it should not be brought retrospectively into effect; (2) that the concept of companies under the same management, that concept is sought to be enlarged for two reasons: (1) to see that the control of companies does not pass from one hand to another without the approval of the Government; and (2) to make the provision of the Monopoly and Restrictive Trade Practices more effective. For this purpose, the proper way is to amend the provision of the Monopoly Act because the Monopoly Act applies only to few business houses and not to all. It does not apply to small industry etc. The way in which this particular concept has been brought out is that it will affect even the small man. Therefore, surely, the intention of the Government is not to hit the small man; the intention is not even to hit the small scale industry or medium size business houses. (2) In this regard, clause 4 says if one or more Directors of one body corporate along with his relatives from 1/3 of the Board of Directors of another body corporate, then the two will be deemed to be under the same management. Therefore, we should delete the whole clause 4 or amend it in such a way that if 1/3 of the Board of Directors of one company forms 1/3 of the Board of Directors of another company, then the two companies will be deemed to be under the same management. That will bring some sense. (3) In considering the holding of 1/3 of the monopoly, it should not be 1/3 equity and preference capital, but it should be only equity capital. With regard to preference share capital, it may be included in the concept of 1/3 holding provided the preference share capital has the voting power. In certain cases, where the preference shareholder has not been paid dividend for a period of two years, then the preference shareholder has become entitled to voting right. In such case, if 1/3 is held by one individual or same individual, it may be considered to be a company under the same management, but not in all cases of preference share capital. That will create a hardship for genuine investors, if you take all preference share capital.

SHRI S. R. DAMANI: In your memorandum, you have expressed a fear that by reducing the investment from 25 per cent to 10 per cent, small entrepreneurs will suffer. But you have suggested that instead of 10 per cent, it may be raised to 15 per cent. May I know, if we make it 15 per cent, whether there will be such hardship for entrepreneurs?

SHRI M. L. KHAITAN: I do not find that we have expressed any fear about it. What we have simply stated is that the reduction from 25 per cent to 10 per cent is very drastic one. It is only for that reason that we have suggested. We have suggested 15 per cent, not out of fear of any kind.

SHRI S. R. DAMANI: 43(a) & (b). Your suggestion is that instead of 25 lakhs, it should be increased to 50

lakhs. As far as turn-over is concerned, it should be increased to one crore of rupees. That means you are agreeing that a private limited company can become a public limited company on the basis of turn-over.

SHRI M. L. KHAITAN: We are not merely agreeing. We have been rather realistic that since so many eminent persons feel that a Company of that magnitude should really be understood to be a public Company, we rather gave in. We have not agreed to it. As a sort of a gesture, as a sort of a compromise, or as a sort of cooperating with the Government, we have agreed that it may be treated as a public Company. But really, on principle.....

SHRI M. K. MOHTA: It has given an impression that you do not object to the principle of it but only to the amount of Rs. 25 lakhs.

SHRI M. L. KHAITAN: Really speaking, in all the sessions of our Federation, we have been fighting on principles and we have found that we did not make a headway with it.

SHRI S. R. DAMANI: I come to amendment of Clause 16, about dividends. I have gone through the arguments. May I know that by this restriction, according to them, being much more experienced in business and industry, floating of new capital and setting up of new industries is going to be affected?

MR. CHAIRMAN: He wants to know whether these provisions are going to affect the setting up of new industries.

SHRI MADANMOHAN MANGALDAS: It is very apparent that it will affect. Even the less experienced person will be very easily convinced about it.

SHRI S. G. SARDESAI: The point is, how do we ask questions.

MR. CHAIRMAN: I would request the Members to be brief with their questions.

I have given them full latitude. I know that many points are repeated. Still, I am not stopping them. I want that, in fairness, they should be heard.

SHRI S. G. SARDESAI: We also want to ask questions.

SHRI HARSH DEO MALAVIYA: May I make my submission? They are very important witnesses. They represent a very important organisation. I think every Member would like to ask questions, and therefore, since it is already time, I suggest that we may ask the witnesses, if they agree, to come on some other day.

MR. CHAIRMAN: If the witnesses agree, of course, they might come tomorrow at 3 PM.

SHRI MADANMOHAN MANGALDAS: We can stay on till 6.30.

MR. CHAIRMAN: I would request the Members to be brief.

SHRI S. R. DAMANI: Regarding deposits, much has been said about hardships. I want to know only one thing. Recently, many Companies have started taking deposits at a very high rate of interest. Recently, it has come to our notice and we see the papers that some Companies have started taking deposits offering very high rates of interest. I think you know about this. In order to prevent such malpractices and in order to protect the funds of the public, what kind of suggestions you would like to make?

SHRI J. P. THACKER: We have already made a suggestion. It is necessary to protect the funds of the public. So, we have said that certain limits which have been laid down by the Reserve Bank of India should be adhered to. But, from those limits and restrictions, certain kinds of deposits should be excluded, for example, deposits by the Directors and their friends and relatives. They should pour in money. There is also

a provision that an advertisement in the prescribed form, can be made. The only objection we have taken is to put a bar on the Prospectus.

SHRI MADHU DANDAVATE: I will begin with the areas of disagreement and shortly put questions. Our objective is to put an end to concentration of wealth and power. This problem was dealt with by the Vivian Bose Committee and on the basis of their recommendations, 1965 amendment was made. Is it not true that inspite of the provisions, we find that concentration of wealth and power cannot be removed effectively, and therefore, don't you think that the provisions which have been made are absolutely necessary?

MR. CHAIRMAN: He has referred to the Vivian Bose Committee and he wants to know whether in order to put a check on concentration of wealth and power, these provisions are desirable or not. This is what he says.

SHRI C. C. CHOKSHI: His question is that the intention of the Government is to check increase in the concentration of economic power. I take it that the intention of the Government is not to break the corporate sector. The effect of the present legislation, as pointed out by the President, is to break up the corporate sector and not merely to check the increase in the concentration of economic power. This is the first point. Secondly the hon. Member said that inspite of certain provisions which were introduced by the Companies Amendment Acts of 1960 and 1965, there is an increase in the concentration of economic power. With great respect, I submit that after 1965, there is no fresh increase in the concentration of economic power without the approval of the Central Government. Whatever increase which has taken place, has taken place after receiving the specific approval of the Central Government. These approvals have been given under Section 372 of the Companies Act, under the Industries Development and Regulation Act, and under the permission of the various financial institutions, namely, the Life Insurance Corporation of India, which is also Government body, the Industrial Development Bank, the ICICI, IFC and similar other institutions.

SHRI C. C. CHOKSHI: Therefore, it is not correct to say that the recent concentration of wealth is because of the lacuna in the provisions of the law. The provisions of the law are very rigorous and they are such that no concentration of wealth can now take place, without the approval of the Central Government.

SHRI MADHU DANDAVATE: I was not holding the opinion that Government is not responsible for concentration of economic power. I would, however, ask you whether the existing provisions are adequate to end the concentration.

SHRI C. C. CHOKSHI: The present provision is enough to prevent further concentration. No company can be started today, with a capital of a reasonable size of say, Rs. 1-crore, until and unless the Government's approval is obtained under the Industrial Development Regulation Act. The financial institutions have to agree to finance it and the Controller of Capital Issues gives his consent and then again, the Company Law department should allow the corporate bodies to make the investment. There is thus a four-fold control of the Government. There is no need to complicate matters to hit the small and medium industries.

MR CHAIRMAN: Is it required for the priavte companies too?

SHRI C. C. CHOKSHI: In their case, the permission is not required of the Company Law Board for investment ; but permission is required of the Controller of Capital Issues, if the issue is for more than Rs. 25 lakhs. The approval of these three remaining organizations are required.

SHRI MADHU DANDAVATE: About the system of management of companies by the same management, how is it removed by the amending Act of 1965? I think it still continues. Therefore, don't you think that the provisions contained here are necessary to deal with the ex-managing agents again trying to manage the ex-managed companies?

SHRI MADANMOHAN MANGALDAS: No law, however, complicated, can completely eradicate the evils in a certain system. In the past also, certain laws were made, forbidding companies from making donations etc. Whatever you may say, if the back-door methods are to come into play, they will do so. We can control to the extent possible; but no law, however, complicated, can ensure 100 per cent control.

SHRI MADHU DANDAVATE: Is not that lacuna fully utilized?

MR. CHAIRMAN: The Hon. Member wants to know whether you have any experience of cases where this lacuna is not fully utilized.

SHRI J. P. THACKER: To put the point very clearly on record, I have mentioned in my observations of this provision, that is, the introduction of Section 204(a). I have not objected to the approval required for the erstwhile managing agents coming as Financial Advisers or as Secretaries, etc. I have said that that is a point which may be considered by the Government. What I objected to, is the second part of it, where the difficulty is created in respect of the employees who were associates of the erstwhile management, which position they are keeping now. Their position should not be jeopardized and they should not be required to obtain the permission of the Central Government. That is all.

SHRI MADHU DANDAVATE: In regard to the inadequacy of the credit law in relation to corporate investment, there is a lacuna existing. Of course, from a different angle, you have put forward your point of view. Do you think that this concept has vitiated the position?

SHRI J. P. THACKER: The concept of same management, has relevance to the Monopolies and Restrictive Trade Practices Act, rather than for the Companies Act. 'So far as the Companies Act is concerned, this concept, as it appears to-day under Section 371(b), is effective. It brings about effective control of the Government; so, it is not at all necessary to change that definition. The difficulty is only about the Monopolies and Restrictive Trade Practices Act; and, therefore, the amendments should be made there.

SHRI MADHU DANDAVATE: Even in the operation of the Monopolies and Restrictive Trade Practices Act, don't you find that old definitions come in the way of effective control?

SHRI J. P. THACKER: No, Sir. That is not correct. It is because the management was done by the managing agents; and as the managing agents were able to exercise control, without holding 25 per cent voting power, there was a bigger area which should be controlled under the Monopolies Act. For that purpose, you have to change the inter-connected companies in the Monopolies Act.

SHRI MADHU DANDAVATE: One of the members of this Commission himself elaborated this.

SHRI J. P. THACKER: Even we are not discussing the Monopolies Act, with due respect I submit that they did not realise when they framed that legislation, that the managing agencies will cease from a particular date. When the members of the Monopolies Enquiry Commission held the enquiry, they expected that the managing agents' system will continue. If that system has been abolished, they should re-frame the Monopolies Act so as to bring in such companies which have gone out of it.

For that purpose, it is not fair to amend the Companies' Act and create hardships for innumerable other persons.

SHRI MADHU DANDAVATE: Don't you think that the concept of this bill will help them also?

MR. CHAIRMAN: He has said "no" already. Yes, Malaviya Ji.

SHRI HARSH DEO MALAVIYA: On page 29 of your printed memo., you do not approve of the appointment of Government directors. As you know, today, the public financial institutions, *viz.* LIC, the nationalized banks and the industrial credit corporations have contributed considerable amounts of public funds to private companies. And if my figures are correct, talking of the 75 big houses, in many cases, as much as 40 to 50 per cent of their funds is contributed by the public financial institutions. Because of the contribution they make to the company, the Government, which is, of course, responsible for the public funds as the elected representative of the people, might decide to have a greater say therein. Now if the Government decides in order to safeguard public contribution to these companies to appoint more directors, what possible objection you have? The only objection you referred to is it will mean perpetual control by the Government.

MR. CHAIRMAN: It is a form of nationalisation.

SHRI HARSH DEO MALAVIYA: The joint sector idea is also welcomed by you in which the capital is invested by public finance corporations. The Government by appointing its directors will exercise its right and there will be more Government directors. Why do you object to it? Is it not fair?

SHRI MADANMOHAN MANGALDAS: You want the private sector to function and at the time of taking loans it will take loans from the public sector undertakings including the banks who give the loans. As you know no private individual can finance these big complexes. It is true that public funds are required to produce wealth in the private sector. From the very beginning the private sector which is creating a unit, for expanding the unit has taken the money with full knowledge of the public sector undertakings that they are creditworthy and that management is good and all of a sudden with no reason to add to those directors who are already there. A few directors are already appointed. They are taking care of the finance of the public sector. I see no reason why the provision should be more complicated.

SHRI HARSH DEO MALAVIYA: As we understand the joint sector is not merely individual contributing fund. You said that you have reservations about the applicability of the act to foreign companies and the reason that you advanced is that it will discourage foreign capital and setting up in India of subsidiaries of multi-national companies. It means otherwise you want the multinational corporations to take a nice good place in India. I think you realise how dangerous these multinational corporations are. Even in the latest studies by American scholars themselves have pointed out the tremendous dangers of this growing menace of multi-national corporations. I would ask whether you would like these multi-national corporations which have assumed menacing and dangerous proportions in the context of development problems of developing countries. Would you like to give them a place here?

SHRI MADANMOHAN MANGALDAS: We do need foreign aid and foreign technology and it all depends upon each case.

SHRI HARSH DEO MALAVIYA: Perhaps you are not fully aware of this new development in the international economy. The question of allowing foreign capital is different

but allowing multi-national corporations which are growing up today to have their subsidiaries in India is rather dangerous, if I may submit.

SHRI MADANMOHAN MANGALDAS: But this has to be done on merits of each case and this has to be very selective. So far as clause 31 is concerned and the applicability of foreign companies is concerned where Indian citizen has more tnan 50 per cent of the shares and where any Indian citizen has a holding in a foreign company that company has to comply with certain requirements of the Company Act. With great respect to you turn to clause 31 of the Bill. This clause only brings within the requisite powers of the Government corporations in which Indian citizens hold equity capital. Therefore, what we are saying is that such corporations Government must take care to see that the foreign corporations do not shy from coming to India.

SHRI HARSH DEO MALAVIYA: Coming to the appointment of sole selling agents, don't you know that they have used market conditions to corner goods to enter into shaddy black-market deals and fleece the same and earn huge profits? Would you like this continue?

SHRI C. C. CHOKSHI: While discussing this clause 24, first of all clause 24 gives the power to the Government to notify the industries and the companies in which it will not be necessary to have sole selling agents. That is clause No. 1 of new section 294AA. Clause No. 3 says that no company having a paid up capital of Rs. 50 lakhs or more shall appoint sole selling agents except with the consent of the company accorded by a special resolution and the approval of the Central Government. Actually considering these two clauses it would be clear that if clause 3 is to remain then clause 1 would become unnecessary because normally speaking, Government would be interested in exercising this power where the companies are sufficiently large otherwise it would amount to duplication. That whole of this clause is unnecessary because of a provision at present existing under section 294 sub section 5 which gives already power to the Government that where the Government finds that there is a sole selling agent and the terms and conditions of his appointment are unreasonable or unfair against the interest of the company, Government has the power to reduce those terms, modify those terms and conditions and bring them in accordance with such terms which are in the interest of the company. There are many instances where Government has already exercised this power and the companies have succeeded in persuading Government that the terms and conditions are necessary. It is not always correct to say that because of a particular commodity is in short supply, you don't require agent. You should not consider that a sole selling agent is sinocure job. Today we are living in a very technologically advanced country of the world where apparently a commodity may be chemicals, items like fertilisers, polythene, PVC are in short supply. Everybody knows that they are in short supply. But in spite of that good company practice requires that there should be a selling agent who will educate the consumers for the proper use of those articles and see that these articles are used economically and effectively in the larger interests of the country. This is a commercial and business decision and it is not a decision which can be taken by a stroke of pen that in the opinion of the Government these items are in short supply and should not have selling agents.

SHRI HARSH DEO MALAVIYA: On page 23 about the appointment of auditors you questioned the suggestion of audit profession. You have obviously given a very clean chit to the auditors but I would like to ask whether a Memoranda, continuous campaign, bitter campaign and agitation—is going on in the country from the small chartered accountants they have published books, pamphlets. They are writing to us and giving serious charge about the

concentration of audit and the painful effects of the concentration of audit on the national economy. Are you aware of it and if you are aware, what is your answer? I may point out that there is a Viven Bose Report of 1963-64. In that report, which was a damaging document there is a clear mention of not very happy role played by the auditors. Have you got these things in mind when you give a very clean chit to the auditors?

SHRI MADANMOHAN MANGALDAS: Where the small auditors take charge of the bigger companies, how are you sure that they will play a better part than the existing ones?

If you want to avoid concentration of audit work, there are other ways by which you can have a ceiling on the number of audit which an audit company can do. I think it may be under consideration of this august body to consider on these lines.

SHRI HARSH DEO MALAVIYA: Talking about Clause 90 in regard to remuneration, you have made out a case that it should be raised from Rs. 3,000 to Rs. 5,000 a month.

MR. CHAIRMAN: They have not specified as to what it should be.

SHRI HARSH DEO MALAVIYA: It is written here. You make out in favour of raising it to Rs. 5,000 and opposing the suggestions of the Amending Bill it is said that it will be repeated in the Directors Report year after year making the report bulky and entailing the cost of printing. It is on page 23 of your Memorandum on para 2 or 3.

SHRI MADANMOHAN MANGALDAS: It is over-emphasised.

SHRI HARSH DEO MALAVIYA: You have talked about the transfers. Do you not realise that one of the very healthy aspects of the present amending Bill which we are discussing now is to prevent relatives and hereditary control of companies and on the basis of lineage to extend the new groups to appoint new people? That is a general complaint. Would you like this system to be broken?

SHRI C. CHOKSHI: That has been broken on the 3rd April, 1970. I do not suppose it survives. So far as relatives are concerned their appointment to an office requires special resolution.

SHRI HARSH DEO MALAVIYA: About the share-holders and the interests of the shareholders, may I ask you is not the shareholder to-day a faceless person? Ultimately in any company the decisions are not taken by Rs. 10/- or Rs. 100/- shareholders but by the Directors who control big shares.

SHRI MADANMOHAN MANGALDAS: I do not think, Sir.

SHRI J. P. THACKER: Most of the institutions are public sector institutions.

SHRI HARSH DEO MALAVIYA: What you have said in 1(1) about the Corporate Sector, you welcome this. I am sure you know that one of the primary things put in the objectives of the Constitution is that the economy of the country should not work in a way as to be detrimental to the people, etc., and prevent concentration of economic power. It is not merely a question of allowing economic power, concentration to remain hereditary and not allowing it to increase; it is also a question to stop it. Do you agree with it?

SHRI MADANMOHAN MANGALDAS: The whole point is that the Monopoly Act is dealing with the economic power of particular groups and I think this is going to really affect the creation of wealth which is needed in the country. The smaller sector and the medium sector will not be affected in a big way.

SHRI HARSH DEO MALAVIYA: May I humbly submit that the Monopoly Act and this Act and the Company Act and all other Acts are

ultimately to be viewed not in isolation?

MR. CHAIRMAN: Do not try to convince each other.

SHRI HARSH DEO MALAVIYA: I am trying to say that they are not to be viewed in isolation. They are part of the same process going in the country—the same people, the same Government, the same Parliament. You cannot isolate them.

SHRI H. M. PATEL: I find that no reference has been made by you either in your Memorandum or during oral evidence to clause 4, which vests the power for alteration of the memorandum in Government instead of in Court as hitherto. I would like to know your views in this respect.

SHRI J. P. THACKER: We have dealt with it at length in our Memorandum. It is on page 8, at the bottom.

SHRI H. M. PATEL: Then my second question is with regard to audit. We have been told by various people regarding unemployed auditors and finding work for them. In respect of that two ways were suggested. One was that either the Institute of Chartered Accountants might themselves evolve some system of senior and junior auditors, so that the work could be divided among them. The other alternative suggested was to put a ceiling on the number of audits to be done by a particular firm or its partners. That was suggested as a possible way of retaining the present system and yet providing work for the larger number of auditors. I would like to know what your views are.

SHRI MADANMOHAN MANGALDAS: We certainly prefer the second suggestion if it is absolutely necessary. The alternative with certain ceiling on the number of audits by each partner, I think, would be the lesser evil.

SHRI H. M. PATEL: You are still talking of evil. The whole thing proceeds on this basis that there is close collusion between the Company and the Auditors; that is not desirable. I take it that you do not accept it. You would prefer the second suggestion. This leaves the choice with the Company themselves.

SHRI MADANMOHAN MANGALDAS: Yes, Sir.

SHRI S. G. SARDESAI: I want to be very clear about a general question which, in fact, is a basic question. Here you say in your written memorandum that you fully appreciate the objectives of this Bill. You reiterated that point in your opening remarks when you said that in the furtherance of the basic objectives of this Bill, you have made certain suggestions. In the printed memorandum, however, on page 3, paragraph 1.5, you have made another statement which reads:

> "The theory that the aim of a large company is maximisation of profits is giving place to the factum that it is a creater of consumer demands, and, therefore, of employment opportunities."

You said subsequently that the actual effect of this Bill would be to eliminate the private sector altogether. In fact, you went further and said that it meant death of the private sector. It is in open contradiction between the two positions taken by you, one in your Memorandum and the other in your oral evidence. If you agree with the objectves of the Bill, how do you jusfify your statement made in para 1.5. If that is your viewpoint—and you have a right to hold that—how can you say that you agree with the aims and objects of this Bill and your recommendations are to strengthen it? I want you to explain this.

SHRI MADANMOHAN MANGALDAS: I think, there is no contradiction. We agree to the objectives of the Bill subject to our suggestions.

SHRI S. G. SARDESAI: The viewpoint of the Bill is the very opposite of your views expressed in

para 1.5. You cannot simultaneously hold that view and also argue that your suggestions are made to strengthen the Bill. I am pointing out your contradictions. You cannot hold these two views at the same time.

SHRI C. C. CHOKSHI: I submit that there is absolutely no contradiction in our statement in paragraph 1.5 and in the statement the President made that if the provisions of this Bill are carried out, it will mean a considerable death blow or handicap to the private sector which is making a contribution in the increase of production and employment opportunities. That is what we are trying to say. Now, sir, you say that there is contradiction between what we have said in the memorandum and what we have said now. What we are trying to explain is, even today—and it is going to be in the future also—the aim of larger companies is to increase production and therefore increase their size. If you are bringing in this sort of restrictions and if you are trying to see that the companies in the private sector become smaller companies, then we will not be able to either create more consumer goods or create more employment opportunities.

SHRI S. G. SARDESAI: I am not referring to the provisions of the Bill. May be, I will even agree with you that this kind of provisions make the issue more complicated; but I am referring to the aims and objectives. I am not referring to the fact as to whether the provisions of the Bill will effectively achieve the aims and objectives. What you are pointing out is that the provisions will not achieve the objectives.

SHRI C. C. CHOKSHI: That is exactly the point. They will run counter to the aims and objectives.

SHRI S. G. SARDESAI: Let us not discuss the provisions at all. I am talking of the aims and objectives and so far as the aims and objectives of the Bill are concerned, what you have said here is the very opposite of what you have stated in the para. Therefore there is contradiction between them.

SHRI C. C. CHOKSHI: Regarding the aims and objectives, there is not one aim and objective; there are several aims and objectives.

SHRI S. G. SARDESAI: Anyway, I have two more questions to ask. One is this. From my point of view, the general observations which you were mainly with regard to control. When you spoke about control, you referred to the fact that the court's decision is that 51 per cent holding gives effective control. Is that your view-point?

SHRI C. C. CHOKSHI: That is what the court decision said. I would say that effective control depends on the facts and circumstances of the case. There may not be 51 per cent voting power in the hands of a group of persons but in spite of that the Courts may decide that there is control for the purposes of the Companies Act. Therefore, this expression 'control' is such an elusive expresion that it is better left to the courts to decide under what circumstances control is exercised and under what circumstances control is not exercised.

SHRI S. G. SARDESAI: That is different; but do you agree that 51 per cent holding gives effective control? Is that your view-point.

SHRI C. C. CHOKSHI: That is what the courts have said.

SHRI S. G. SARDESAI: I am referring to your view-point, not the courts' view-point.

MR. CHAIRMAN: They do not agree to the idea. They say that the term should be left to be interpreted by the courts.

SHRI S. G. SARDESAI: My next question is this. This is one point on which you may have a positive point of view. The existing system of audit provides really for financial audit. But a case has been made out that we

should also have, in India, obligatory cost auditing in all private and corporate companies also. Now for the private sector cost auditing is not obligatory. They may be doing accounting of their own; sometimes correct entries are not made. Would you at least agree that so far as auditing is concerned there should be a statutory provision not only for financial audit but a statutory provision should be there for cost accounting also—which, at certain times, has been referred to as proprietary audit? Would you agree that cost accounting should be made obligatory?

SHRI C. C. CHOKSHI: Actually, this question should be divided into three parts. The first part is whether cost auditing is necessary or not; the second is whether cost audit means proprietary audit or not; and the third is whether all companies should be required to be cost audited.

Now, regarding the first point as to whether cost audit is advisable or not or is necessary or not, the Act provides that a Cost Auditor shall be appointed by the Board of Directors if such a direction is given by the Central Government. So, that is already there in the Bill. What we have tried to say with regard to this provision is that the way in which it is worded, it will create a lot of hardship to companies in that the cost auditors will go to the Central Government and it is left to the Central Government to give a directive to the company to circulate the cost audit report to the General Body of shareholders; and that is what we have strongly objected to. The Central Government can have the cost audit report under the provisions of the law. Section 233B already gives these powers and these powers are already exercised by the Central Government of asking a company to get cost audit done by a cost auditor and the cost auditor has to submit a report to the Central Government. That is already prevailing under the law. Now they want more powers. At present the General Body of shareholders have the power to appoint a cost auditor. Now the Central Government feels, rightly or wrongly (and we feel it is wrongly) that this power should be transferred to the Central Government and taken away from the General Body of shareholders. This is not fair to the General Body of shareholders.

Point No. 2 is that cost auditing does not necessarily mean proprietary audit. Proprietary audit is entirely a different concept. That is already there on the statute book. Section 233A gives power to the Central Government to appoint a chartered accountant to carry out proprietary audit; but these powers of the Central Government are subject to two conditions, namely that the Central Government *prima facie* thinks that there is need for proprietary audit because the company's position is an insolvent position, or that the company is not carrying on business in accordance with the established or sound commercial principles. First, the Central Government has to come to that decision and then order a proprietary audit. Therefore, proprietary audit and cost audit are different concepts and we should not confuse them.

Point No. 3 is, if the Report comes to the Central Government, then the Central Government could discuss that report with the Board of Directors and exercise its powers over the Board of Directors. But if this report is circulated to the General Body of shareholders, it will do unimaginable harm to the good of the company. It would also mean disclosing of certain facts or secrets of the company which may not be available to the competitors and also to foreigners. Once it is circulated to the General Body, it is open to everybody. We do not want to hide anything from the Central Government, but why give publicity about the cost audit report to the General Body of shareholders? That is our main contention.

SHRI D. D. PURI: I will start with page 5 of your Memorandum dealing with private and public companies. It has been urged before us that the sound basic principles is whether the public at large is interested in the investment and that neither turn-over nor the paid up capital are at all relevent factors in so far as the private company or the public Companies are concerned. And then if a partnership can have no restriction either on the capital employed or on the turn-over, it has been urged before us that this is not relevant at all. What are your views on this?

SHRI M. L. KHAITAN: Basically that is correct situation. Now the partner can deal with crores and crores of rupees.

SHRI D. D. PURI: My second question is at page 6 in regard to the definition of groups. The suggestion made is that the words "combination of two or more individuals" etc. etc. should be introduced. Here I want to ask you whether we should not prescribe the maximum in the absence of which even one thousand could be considered as a group. Where two or more persons are involved, it would be called a group but one thousand people interested in a measure. they may vote and constitute a group. Is the introduction of the word 'combination' is going to take care of the situation?

SHRI C. C. CHOKSHI: The introduction of this word 'combination' of two or more individuals' would certainly—individual association, firms a body corporate—clinch the issue and would be enough to say that this body of porsons may form a group provided they exercise control over any body corporate.

Now the word 'control' has not been defined. The contention is whether there should be a limited membership, whether it should be 200, 500 or thousand. Now, therefore, when we think of control over a body corporate, we would say that if the Government or the party concerned says that these thousand people are to exercise control and therefore these thousand persons should be one group. The most important point which the courts will have decided is whether the thousand persons can be said to have exercised their control or can be said to have exercised voting power. We should not confuse between exercising control and exercising voting power. A thousand persons may vote together on one issue. From the way in which this has been provided, it should be left to the courts to determine and not to Government.

SHRI D. D. PURI: Sub clause 9 of Clause 3. If the Directors of the one company are accustomed to act in accordance with the directions of one or more of the directors etc. . . . Now, I see no comment in the Memorandum in regard to this clause, particularly at what point of time does customs can come in. Have you got any comment on this?

SHRI C. C. CHOKSHI: We have applied our mind to this and what we find is that unless and until it is a clear case where it can be proved that Mr. 'X' is accustomed to act in accordance with the direction of 'Y', it will be impossible for anybody to make off-hand allegation that Mr. 'X' is acting in accordance with the direction of Mr. 'Y'. It has to be proved with sufficient amount of evidence and if there is evidence certainly the court will decide whether it is so or not.

SHRI D. D. PURI: In regard to the clause 8 (a), (b) and (c)—in regard to 'take-over'—it has been put forward here that there is a law in the U.K. that if any person wants to buy say 40 per cent of the shares of any company or 30 per cent of the shares of any company than every shareholder has the right to sell the same percentage of his own. What is your view on this.

SHRI C. C. CHOKSHI: We do not agree that the present provision will

at all help the small shareholders. On the contrary, we are afraid that the small shareholders will be left high and dry.

SHRI D. D. PURI: On page 17 of the Memoranda in the middle paragraph—under Clause 10 para 2—"It is also to be noted that when the shares are transferred, the transferee would be liable . . . relevant Act."

How would the transferee be liable to the payment of capital gains?

SHRI MADANMOHAN MANGALDAS: It is a mistake. These are minor points.

SHRI D. D. PURI: There is a provision that if the company dividend is not deposited in the bank or whatever it is, the interest will be paid. To whom will the interest will be paid? Supposing in a company, dividend declared amounts to Rs. 50.0 lakhs and the company deposits Rs. 40.0 lakhs. Nevertheless all the shareholders receive the dividend in time but there is a provision which says that there is an interest on the dividend. Who will receive the interest?

SHRI MADANMOHAN MANGALDAS: Of course, the company.

SHRI D. D. PURI: In your evidence, you have conceded that in so far as the rectification of the register is concerned, that might be left to the Govt. without any harm. It involves the titles to the shares, as to who is the actual owner of the share? Should this be left to the Government?

SHRI MADANMOHAN MANGALDAS: We have no objection if the existing state of affairs continues.

SHRI D. D. PURI: According to your experience, where two Govt. Directors have been appointed in any of the companies, whether these two Directors have ever been out-voted to the deteriment of the Government.

SHRI MADANMOHAN MANGALDAS: I have not heard of a majority decision.

DR. M. R. VYAS: There are roughly 23,000 private limited companies registered in India and about 4000 are public limited companies. May I ask you, whether they feel that this corporate sector is going to be liquidated gradually. How many companies, do you feel, will be affected by the provision of the new Bill?

SHRI MADANMOHAN MANGALDAS: It is very difficult to say. But I say a large number of them would be involved, directly or indirectly.

DR. M. R. VYAS: You made an inspection of the books. You mentioned that the present law takes care of it. Are you aware of the fact that a large number of companies have resisted by going to the court to a simple inspection of books by the Registrar of Companies and others?

SHRI MADANMOHAN MANGALDAS: We do not support that.

DR. M. R. VYAS: The provision has to be changed because of this particular handicap. Then the question of the payment of dividend from reserves came up. You make reserves not to satisfy the Govt. but for the welfare of the company. Are you aware that dividends which are paid from the reserves are not very often from the point of view of keeping the dividends, but to ensure the share value of the company before being sold out?

SHRI MADANMOHAN MANGALDAS: I am sorry I do not agree with that point of view. I do not think it is going to make any evaluation of the share.

DR. M. R. VYAS: There is an objection to the increase of the number of Directors by the Govt. They have mentioned that two Directors are quite sufficient to look after the interest. Would it not be true, *vice versa*, that two Directors of the private sector would be enough to balance 10 Directors of the Govt.?

SHRI MADANMOHAN MANGALDAS: Well, I think, it does not need any answer.

MR. CHAIRMAN: Mr. President and other friends, I am glad that you have taken the trouble of coming over here and appearing before the Committee. I am thankful for the views that you have expressed before the Committee and hope that the Committee would be benefited by these views.

SHRI MADANMOHAN MANGALDAS: I thank you very much for the interest which this Committee took in listening to our views and the keen interest with which you have listened to our views and suggestions in depth. I do hope that our explanations and suggestions would convince the Members on such aspects of the Bill and improve the matter so that we create greater wealth in this country and this question of *garibi hatao* may be a fact and not only a slogan.

MR. CHAIRMAN: Thank you very much.

[*The Committee then adjourned*]

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Wednesday, the 13th December, 1972 from 16.00 to 17.00 hours

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Tridib Chaudhuri
4. Shri Madhu Dandavate
5. Shrimati V. Jeyalakshmi
6. Shri Jagannath Mishra
7. Shri Muhammed Sheriff
8. Shri H. M. Patel
9. Shri S. B. P. Pattabhi Rama Rao
10. Shri R. Balakrishna Pillai
11. Shri R. R. Sharma
12. Shri P. Ranganath Shenoy

Rajya Sabha

13. Shri Jagdish Prasad Mathur
14. Shri M. K. Mohta
15. Shri D. D. Puri
16. Shri S. G. Sardesai
17. Shri Himmat Sinh
18. Shri Mahavir Tyagi
19. Dr. M. R. Vyas
20. Shri K. V. Raghunatha Reddy

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
4. Shri Ch. S. Rao—*Deputy Secretary.*
5. Dr. (Mrs.) Usha Dar—*Joint Director.*
6. Shri C. R. D. Menon—*Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

WITNESSES EXAMINED

Yuva Krantikari Parishad, Jaipur

Spokesmen:

1. Shri R. D. Sharma
2. Shri L. R. Agarwal
3. Shri Gopal Behari
4. Shri R. P. Sharma

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Agarwal, Mr. Sharma and Mr. Gopal Behari I on my behalf and on behalf of the Committee welcome you all. I hope the evidence tendered by you will be of some avail to the Committee. The Committee has to decide certain issues. You have submitted a memorandum on that respect. I would like you to state your case in brief wholly or if you so like you can deal clause by clause. But before you do this, I would like to draw your attention to the direction which states that the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even if they desire the evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament. So with this direction I would like you to start with your points. I hope that you would state your views frankly so that the committee may be benefitted. I think anyone of you may start or you may after making your comments reply to the Members questions individually. So I would request you now to start.

श्री गोपाल बिहारी : अध्यक्ष महोदय, सब से पहली बात तो मैं यह कहना चाहता हूं कि होम मिनिस्ट्री, गवर्नमेंट आफ इंडिया के यहां से एक लेटर रजिस्ट्रार, राजस्थान यूनिवर्सिटी को भेजा गया था, जिस में उन्होंने वह लिखा था कि कोई भी डिग्री या डिप्लोमा, जो किसी भी यूनिवर्सिटी से जो कि कानून के द्वारा स्थापित की गई हो दिया जाता है, मान्य है ।

दूसरी बात जो मैं कहना चाहता हूं वह यह है कि कास्ट्स एण्ड वर्क्स एकाउन्टेंसी का जो डिप्लोमा जोधपुर और जयपुर यूनिवर्सिटीज द्वारा दिया जाता है, उस को आई० सी० डब्ल्यू० ए०, कलकत्ता द्वारा दिये गये डिप्लोमा के समकक्ष माना जाए क्योंकि जो सिलेबस आई० सी० डब्ल्यू० ए०, कलकत्ता और राजस्थान यूनिवर्सिटी द्वारा चलाये गये कोर्सों का है, वह काफी हद तक समान है । दोनों में 18 पेपर्स होते हैं ।

SHRI S. B. P. PATTABHI RAMA RAO: In Hindi we will not be able to understand.

SHRI TRIDIB CHAUDHURI: I think whatever they are saying that is not concerned to this Bill.

MR. CHAIRMAN: They are talking about diploma in cost and accountancy. Apart from whatever provisions we consider they have a valid case. Let them say their points of view.

SHRI M. K. MOHTA: They have submitted a memorandum to the Committee and it is quite clear to all the members. If something more which has not been covered in their memorandum, they want to say or add to this, they may be allowed to make a mention here.

श्री गोपाल बिहारी : मैं यह कहना चाहूंगा कि दूसरा जो मेमोरेन्डम दिया ह उसमें कुछ और फैक्ट्स हमने दिये हैं ।

मैं यह कह रहा था कि सिलेबस दोनों का बिल्कुल समान ही ह । फर्क केवल इतना है कि राजस्थान विश्वविद्यालय द्वारा जो कास्ट एण्ड वर्क्स एकाउन्टेन्सी का डिप्लोमा दिया जाता है उसके कोर्स में वाइवा बोसी होता है और आई० सी० डब्ल्यू० ए० के डिप्लोमा में वाइवा बोसी नहीं होता है । केवल 18 पेपर्स होते हैं जो कि वेरियस टेस्ट्स द्वारा क्लियर किये जाते हैं । हमारे यहां तीन पार्ट्स में यह कोर्स डिवाइड किया जाता है जब कि आई० सी० डब्ल्यू० ए० के डिप्लोमा में दो पार्ट्स में यह डिवाइडेड है ।

दूसरी बात यह है कि जहां तक व्यवहारिक ज्ञान का प्रश्न है, मैं समझता हूं कि रेगुलर कोर्स पढ़ने वाले विद्यार्थी को ज्यादा व्यवहारिक ज्ञान होता है बनिस्बत कोरसपोंडेंस कोर्स से परीक्षा पास करने वाले विद्यार्थी से ।

तीसरी बात यह है कि आई० सी० डब्ल्यू० ए० के डिप्लोमा के लिए क्वालिफिकेशन इन्टरमीडिएट है जब कि कास्ट्स एण्ड वर्क्स एकाउन्टेंट्स के डिप्लोमा के लिए ग्रेजुएट होने के बाद ही एडमीशन मिल सकता है ।

तो मैं आपसे यह अर्ज करना चाहूंगा कि कास्ट एण्ड वर्क्स एकाउन्टसी का कोर्स करने के बाद जो हम व्यवहारिक ज्ञान प्राप्त करते हैं और आई० सी० डब्ल्यू० ए० के कास्ट एण्ड वर्क्स एकाउन्टेंसी के कोर्स को करने के बाद जो ज्ञान प्राप्त किया जाता है, उस को ध्यान में रखते हुए कास्ट आडिट करने के लिए हमें भी आथेराइज किया जाए ।

मान्यवर, सेक्शन 209, कम्पनीज एक्ट, 1956 को मैं आपके सामने पढ़ कर सुनाना चाहता हूं । वह इस प्रकार है :

Section 209 of the Companies Act of 1956 provides:

(d) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of account.

When a company is required to include in its books of accounts the above particulars, the Central Government may, whenever it is necessary so to do, direct that an audit of cost accounts of the company should be conducted, the conduct of audit will take place in such a manner as may be prescribed in the order. The auditors shall be either Cost Accountant, within the meaning of the Cost and Works Accountants Act 1959 or any Chartered Accountant within the meaning of Chartered Accountant Act, 1949, or other persons as possess the prescribed qualification.

मैं आपसे दरख्वास्त करूंगा कि इसका मतलब क्या है ? क्या आप हमें बताने का कष्ट करेंगे । मैं समझता हूं कि यदि इस के अन्तर्गत कास्ट एण्ड वर्क्स एकाउन्टेंसी के डिप्लोमा को मान्यता प्रदान कर दें, तो कोई आपत्ति की बात नहीं होनी चाहिए ।

आखिर में, मैं आप से यह निवेदन करना चाहूंगा कि भारत में बेरोजगारी बढ़ती जा रही है । यह किसी से छिपा नहीं है कि राजस्थान एक ऐसा प्रदेश है जहां पर बेरोजगारी सब से ज्यादा बढ़ी हुई है और गत वर्ष के आंकड़ों के अनुसार राजस्थान में 67 प्रतिशत से ऊपर बेरोजगारी है और वह दिन प्रति दिन बढ़ती जा रही है । ऐसी स्थिति में यदि हम समाजवाद की ओर कोई कदम उठाना चाहते हैं और बेरोजगारी को कम करना चाहते हैं तो जो भी लड़का कास्ट एण्ड वर्क्स एकाउन्टेंसी का डिप्लोमा लेकर निकले, उस को कम्पनी ला के सेक्शन 233(बी) में एमेंडमेंट करके उसके अधिकार को दिलाया जाए । इस से देश की बेरोजगारी की जो जबरदस्त समस्या है, उस का भी काफी हद तक निवारण हो सकेगा ।

मैं यह भी अर्ज करना चाहूंगा कि इन डिप्लोमा होल्डर्स को स्टेट होटल्स, हाउसिंग बोर्ड्स, स्टट एन्टरप्राइजेज आदि में भी एबजोर्ब किया जाए, जिससे इन की समस्या का समाधान हो सके। "or other persons as possess the prescribed qualification."

इस का तात्पर्य क्या है ?

सभापति महोदय : हम से पूछने का सवाल नहीं है। आप अपनी बात कह दीजिए। आप अपना व्यूप्वाइन्ट रख दीजिए। पूछने का काम तो हमारा है।

श्री एल० आर० अग्रवाल : "other persons as possess the prescribed qualifications" जो इसमें लिखा है, उस का तात्पर्य जहां तक हम समझ पाये हैं, वह यह है कि कास्ट एण्ड वर्क्स एकाउन्टेंसी के जो डिप्लोमा होल्डर्स हैं, वे भी इसमें आ सकते हैं। इस परिस्थिति में यदि यूनिवर्सिटी द्वारा कन्डक्ट किये जा रहे डिप्लोमा कोर्स को इसमें क्लियरली स्पेसीफाई कर दिया जाए तो उचित होगा।

श्री महावीर त्यागी : यह जो कम्पनीज के एकाउन्ट्स के आडिट की बात है यह ऐसी चीज नहीं है जो कि स्टूडेंट्स यह कोर्स पास करने के बाद जिम्मेदारी से निभा सकें।

MR. CHAIRMAN: The only point is that they are interested in their diploma to be included as a recognised qualification for Cost and Works Accountants and for that purpose they want it to be specified in the definition.

श्री महावीर त्यागी : आप चाहते हैं कि हिन्दुस्तान भर के डिप्लोमा होल्डर्स के लिये यह हो जाये। चार्टर्ड एकान्टेंट्स जो कि बहुत तजुर्बेकार होते हैं और करोड़ों रुपये वाले एकाउन्ट्स की आडिट वगैरह करते हैं, इतनी बड़ी जिम्मेदारी को इन डिप्लोमा-होल्डरों को उनके मुकाबले में कैसे दे दिया जाये। ऐसी हालत में कोई आल्टरनेटिव ऐसा हो सकता है कि जो चार्टर्ड एकाउन्टेंट्स हैं उनके अन्डर में इनको थोड़े दिनों की ट्रेनिंग दे कर यह काम किया जा सकता है ?

श्री गोपाल बिहारी : हमारा कहना यह नहीं है कि आप हमें चार्टर्ड एकाउन्टेंट्स के समकक्ष मानें। हमारा कहना तो यह है कि आई०सी०डब्ल्यू० ए० जैसी जब हमारी क्वालिफिकेशन्स हैं, तो उनको आपने आडिट का अधिकार दे रखा है, उसी तरह से कास्ट आडिट का अधिकार हमें भी दे दिया जाये।

श्री आर० डी० शर्मा : हम यह नहीं कहते हैं कि चार्टर्ड एकाउन्टेंट्स की तरह हमको फाइनेन्स आडिटिंग दी जाये। हम तो यह चाहते हैं कि आई० सी० डब्ल्यू० ए० की तरह हमको भी कास्ट आडिट का अधिकार दिया जाये क्योंकि हम यूनिवर्सिटी से डिप्लोमा प्राप्त करते हैं।

श्री एम० के० मोहता : मैं यह जानना चाहूंगा कि आडिट की जो दूसरी परीक्षायें या कोर्स करने में आपको क्या कोई विशेष दिक्कत है ?

श्री आर० डी० शर्मा : जब राजस्थान यूनिवर्सिटी, जो संविधान क तहत बनी हुई है, के द्वारा डिप्लोमा दिया जा रहा है और उसको गवर्नमेंट आफ इण्डिया ने रिकगनाइज भी कर दिया है, तो फिर हमें आडिट करने का अधिकार क्यों न दिया जाये।

श्री एम० के० मोहता : जो लोग डिप्लोमा हासिल किये हुये हैं, उनके लिये कुछ एम्प्लाइमेंट आपोर्चूनिटीज हैं या बिल्कुल ही नहीं हैं ? अगर नहीं हैं, तो इसके लिये आपका क्या सुझाव है ?

श्री आर० डी० शर्मा : इस सम्बन्ध में यह हो सकता है कि जिस जिस कार्य के लिये आई० सी० ए० डब्लयू० ए० के डिप्लोमा को मान्यता दी जाती हैं और उन के लिए क्वालिफिकेशन्स प्रेस्क्राइब्ड है, वही राजस्थान

यूनिवर्सिटी के डिप्लोमा होल्डर्स के लिए भी कर दिया जाए ताकि प्राइवेट सैक्टर या पब्लिक सैक्टर में जहां भी कास्ट आडिटिंग का प्रश्न आए, वहां पर हम लोगों को भी सर्विस मिल सके। जो प्रिवेलेजेज और फैसैलिटीज आई० सी० डब्लयू० ए० वालों को मिली हुई हैं वही हमें भी मिल तो एक बहुत बड़ी समस्या हल हो जाएगी।

श्री डी० डी० पुरी : मेरा मश्विरा तो इन लोगों को यही है कि बजाय कम्पनी एक्ट को एमेंड करने के ये लोग गवर्नमेंट को रेप्रेजेन्ट करें कि इन के डिप्लोमा की भी उसी तरह से ट्रीट किया जाए जैसा कि आई० सी० डब्लयू० ए वालों के डिप्लोमा को। इस एक्ट में, इस चीज़ को लाने में तो कमेटी को काफी दिक्कत होगी। मुझे और कोई प्रश्न नहीं पूछना है बल्कि यही मश्विरा देना है।

श्री जगदीश प्रसाद माथुर : आप ने अपने मेमोरेण्डम में बहुत से डिपार्टमेंट के विषय में लिखा है जहां पर इन डिप्लोमा होल्डरों को एबजोर्ब किया जा सकता है। राजस्थान गवर्नमेंट का डिप्लोमा होने के नाते क्या स्टेट गवर्नमेंट ने रोडवेज में या दूसरे कार्पोरेशन्स में इस को रिकगनाइज किया है।

श्री एल० आर० अग्रवाल: स्टेट सर्विस के लिए राजस्थान गवर्नमेंट ने कास्ट आडिट करने के लिए इस को मान्यता दे दी है। उन्होंने वहां के सर्विस रूल्स को एमेंड भी किया है।

The amendment is:

"In the said Rules, in rule 12 after the words "Chartered Accountant" occuring at the end the words or must have passed the final examination of Cost Accountant of the Institute of Cost and Works Accounants of India or must hold a diploma in Cost Accountancy of University established by law in India, or of a Foreign University declared by Government in consultation with Commission to be equivalent of a diploma of University established by law in India shall be inserted."

श्री गोपाल बिहारी : एक दो डिपार्टमेंटस हैं जहां पर आडिट एसिसटेंट्स की पोस्टस भी क्रियेट की हैं।

श्री आर० आर० शर्मा : कास्ट एकाउन्टेंट्स के लिए तो कास्ट एण्ड वर्कस एकाउन्टेंट्स एक्ट, 1959 है और चारटर्ड एकाउन्टेंट्स के लिए चारटर्ड एकाउन्टेंट्स एक्ट, 1949 है, जिन की प्रेस्क्राइब्ड क्वालिफिकेशन्स के आधार पर वे आडिटिंग का काम करते हैं। तो मेरा ख्याल यह है कि आप को बजाए कम्पनी एक्ट के एमेंड करवाने के, उन एक्टों में इस एमेंडमेंट को करवाना चाहिए और उनमें अपने आप को शामिल करवाना चाहिए।

श्री गोपाल बिहारी : हम तो यह चाहते हैं कि इन डिप्लोमा होल्डरों को 1959 के एक्ट के तहत या किसी और दूसरे एक्ट के तहत मान्यता प्रदान कर दी जाए, जिस से कि कास्ट आडिट का अधिकार इन को मिल जाए।

SHRI K. V. RAGHUNATHA REDDY: How many persons are there who are having this diploma from the Rajasthan University?

श्री एल० आर० अग्रवाल : करीब 150 केन्डीडेटस इस डिप्लोमा कोर्स को पास कर चुके हैं और अभी भी यह डिप्लोमा चल रहा है और उनकी संख्या बढ़ती जा रही है।

सभापति महोदय : कितने लोग हर साल निकलते हैं।

श्री एल० आर० अग्रवाल : इस समय तो संख्या कम हैं। फाइनल इयर में 8–10 हर साल पास कर लेते हैं।

सभापति महोदय : अच्छी बात है, हम इस पर विचार करेंगे।

श्री आर० पी० शर्मा : इस समय तो कास्ट आडिट के लिए इस डिप्लोमा को मान्यता नहीं दी गई है, इसलिए कम ही लड़के इस को पास करते हैं। जब कास्ट आडिट का अधिकार मिल जाएगा, तो इसकी वैल्यू बहुत बढ़ जाएगी और काफी लोग इस तरफ आकर्षित होंगे।

श्री गोपाल बिहारी : जहां तक स्टैन्डर्ड का सवाल है, मैं आप को बता दूं कि 1967 के पार्ट 2 का रिजल्ट मिल रहा था।

डा० एम० आर० व्यास : कास्ट एकाउन्टेंट्स तो सारे हिन्दुस्तान के लिए ही चाहिएं। मैं जानना चाहूंगा कि इन की पढाई का माध्यम क्या है ?

श्री गोपाल बिहारी : अंग्रेजी और हिन्दी दोनों हैं।

सभापति महोदय : आप का बहुत बहुत धन्यवाद। हम आप के मामले पर विचार करेंगे।

(The Committee then adjourned.)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Monday, the 1st January, 1973 from 10.15 to 13.30 hours in Council Chamber, Assembly House, Calcutta

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri H. K. L. Bhagat
4. Shri Somnath Chatterjee
5. Shri Tridib Chaudhuri
6. Shri Khemchandbhai Chavda
7. Shri G. C. Dixit
8. Shrimati V. Jeyalakshmi
9. Shri Popatlal M. Joshi
10. Shri Ramachandran Kadannappalli
11. Shri Jagannath Mishra
12. Shri Muhammed Sheriff
13. Shri Priya Ranjan Dass Munsi
14. Shri D. K. Panda
15. Shri Narsingh Narain Pandey
16. Shri S. B. P. Pattabhi Rama Rao
17. Shri R. R. Sharma
18. Shri P. Ranganath Shenoy

Rajya Sabha

19. Shri Salil Kumar Ganguli
20. Shri Harsh Deo Malaviya
21. Shri S. S. Mariswamy
22. Shri Jagdish Prasad Mathur
23. Shrimati Saraswati Pradhan
24. Shri D. D. Puri
25. Shri S. G. Sardesai
26. Shri Himmat Sinh
27. Shri Habib Tanvir
28. Shri Mahavir Tyagi
29. Dr. M. R. Vyas
30. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri Ch. S. Rao—*Deputy Secretary*
4. Dr. (Shrimati) Usha Dar—*Joint Director*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

WITNESSES EXAMINED

I. *The Bengal Chamber of Commerce and Industry, Calcutta.*

Spokesmen:

1. Shri A. W. B. Hayward—*Vice-President*
2. Dr. S. Chakravarty
3. Shri D. K. Basu
4. Shri S. K. Ganguly
5. Shri M. Ghose—*Deputy Secretary*

II. *The Institute of Cost and Works Accountants of India, Calcutta.*

Spokesmen:

1. Shri Shyamal Banerjee—*President.*
2. Shri M. R. S. Iyengar—*Vice-President.*
3. Shri G. K. Abhyankar—*Past-President.*
4. Shri N. K. Bose—*Past-President.*
5. Shri V. Kalyanaraman—*Council Member.*
6. Shri S. K. Mitra—*Council Member.*

III. *Chartered Accountants' Association for Nationalisation of Audit Profession and Services, Calcutta.*

Spokesmen:

1. Shri Arun Kumar Mukherjee
2. Shri Indra Nath Das
3. Shri Susrut Mukherjee
4. Shri Manas Kumar Banerjee
5. Shri Samasendra Nath Pathak

I. *The Bengal Chamber of Commerce and Industry, Calcutta.*

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1. Shri A. W. B. Hayward—*Vice-President.*
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5. Shri M. Ghose—*Deputy Secretary*

[The witnesses were called in and they took their seats]

MR. CHAIRMAN: I on my behalf and on behalf of the Committee welcome you, wish you a hapyy good New Year. Before you start I would draw your attention to the direction which states that the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. With this direction I would request any one of you to give a brief summary of the salient point which you want to make and then if you want to deal with clau by clause, you are free to do so keeping, of course, in view the time available at our disposal. After you make your points I would request members of the Committee to put a few questions which you might reply to. With this remark I would request you to start.

SHRI A. W. B. HAYWARD: Thank you very much. At the outset I would like to thank the Chairman and the Honourable Members of the Joint Committee of Parliament for giving the Bengal Chamber the opportunity to make submissions on the provisions of this Bill on this New Year's Day 1973. The Bill if it is enacted in its present form will undoubtedly affect the operation of all companies irrespective of their sizes and is bound to have a marked effect on the growth of corporate enterprises in general. Legislative measures undertaken by Government are required to be amended certainly from time to time in the light of experience gained in administering them but major amendments to the company laws in this country as well as in other countries, particularly, U.K., are generally preceded by an expert and independent study of the legal position in the light of the prevailing business practices. The Bhaba Commission and the Daftary Shastri Committee were set up by the Government of India for this purpose before the previous Acts were passed. We are particularly happy and gratified to note that on this occasion also instead of rushing through legislation, Parliament has decided to refer it to the Joint Committee to examine the situation in depth and assess its impact on the operation of corporate enterprises. I am confident that some of the provisions which might have been included in the Bill without realising their full implications, will either be deleted or possibly suitably amended so that the functioning and the growth of the corporate sector is not unduly impeded. The Bengal Chamber is a constituent of the Associated Chamber of Commerce and Industry of India. Mr. N. A. Palkiwala who led the Assocham's team which tendered oral evidence before this august body has, I am sure, dealt with those features of the Bill which if passed would give rise to great difficulties for companies in general. I cannot hope to match Mr. Palkiwala's eloquence or his enormous grasp of company affairs and taxation generally but the Chamber has already submitted a memorandum of the Bill and we now have the honour to place before you the Chamber's suggested alternative drafts of some of the more important provisions of the Bill for your consideration and in preparing these drafts we have tried to ensure that the broad regulatory measures are retained and at the same time the effective functioning of the corporate sector is not unduly hampered by rigid controls.

Before giving our detailed submission on the Bill clause by clause I would like to state for your kind consideration that the Companies Act should not be drastically changed with a view to achieving some of the objectives which are already fulfilled by the MRTP Act as the essential purposes of the two Acts are completely different. A very far-reaching degree of control and regulation has already been imposed on the companies in the private sector, particularly, those which are large or which have

any foreign share holding by the MRTP Act and also by the Industrial Licensing Policy. The present Bill, in our submission, seeks to intensify the control to such an extent that the desirable flexibility in the conduct of the company's affairs is bound to be seriously affected. We believe that if the limited companty system is to continue to play its part in India's economic development and if private enterprises are to assist in the economy growth of the country it is essential that there should be some flexibility in the company law. We respectfully ask whether the rigid control sought to be exercised under the present Bill will not deprive a limited company of its capacity to make a unique and possbily irreplaceable contribution to the nation's economic prosperity.

It is against this general background that we submit, for example, that the definition of "group" under clause 2(1) requires to be thoroughly reviewed. Again, the criteria sought to be laid down under the new section 4B (clause 3) for determining whether or not two or more bodies are under the same management, are so extensive and so involved that cumulatively they may make it virtually impossible to decide which bodies are under the same management at a given point of time. This definition is extremely important because it is the basis for restrictions on the sale, purchase and transfer of shares imposed by the new sections 108A to 108B. In our submission, these new sections require thorough examination and simplicaton.

Under sub-clause (3) of clause 16, the new section 205A proposes to prohibit a company from declaring a dividend out of accumulated profits transferred to reserves except in accordance with rules made by Government or with the previous approval of Government. It is submitted that these rules will have to be carefully framed so that the provision does not act as an obstacle to self-generated investment. since it is the common practice in industry to finance development temporarily out of retained profits and thereafter to release the profits for distribution once the long-term finance has been arranged.

On the question of reappointment of an auditor—who has held office for three consequtive financial years with the approval of Government under clause 20 we propose to make detailed submissions for meeting Government's objectives without affecting the efficiency and promptness of audit work by a person or persons having adequate resources and a sound knowledge of the business of the company.

On the question of take over we feel that the protection for the minority share-holders is not automatically granted by the provisions of the Act and we wonder whether a code somewhat in the line taken in U.K. might not have more advantageous effect. Under this provision if a take over is made the same opportunities have been offered to all shareholders regardless of big or small.

The Bill also seeks to take away the powers of the courts in various fields and vest them in Government. We respectfully submit that it is not a step in the right direction. We strongly feel that the parties should continue to have the opportunity of a fair and judicial determination of issues in the last resort.

Lastly, we submit that the various penal provisions sought to be incorporated in the Bill are much too rigorous and even out of proportion to the seriousness of the offences. Punishment should be commensurate with the offence and, in any case, in conducting the affairs of a company, a person may inadvertently contravene a particular provision of this very complex legislation. We feel that the mischief of the penal clause should be attracted when an offence is committed knowingly or wilfully.

That concludes my opening submission on behalf of the Bengal Chamber, and with your permission, Sir, I would now like to invite my colleagues to

comment on particular provisions of the Bill.

DR. S. CHAKRAVARTY: Mr. Chairman, Sir, at the outset, on behalf of the Bengal Chamber I would like to reciprocate your good wishes for 1973 and I hope that it will be a very good year for each individual present here as also for the country as a whole.

From the Bengal Chamber we have suggested certain alternative drafts of the clauses and I would like to hand over 3 copies to you. Now, within the time given to us, I would like to discuss briefly why these amendments have been suggested, but before I do so I would like to observe the general principles which have guided us in making these alternative suggestions.

Firstly, Sir, we accept generally the basic objectives of the Bill. Let there be no doubt about it, but we feel, in attaining these objectives the Company's Act should not be made administratively and physically very cumbarsome reminding us all the time that this Act applies to all companies in this country, from the largest to the smallest—according to a recent statement in the Parliament, I think, we have got over 30,000 companies in this country. Therefore, in certain matters we have broadly accepted the provisions of the Bill but suggested a more restricted application mainly on criteria of size. We also think, Sir, that as long as there is a private sector in this country, the shareholder's right should not be interfered with unduly and, therefore, in a relatively small number of cases we have suggested that previous approval of the Central Government sould be dispensed with and a decision should be left largely with the shareholders. In view of the fact that so much more power is intended to be taken over by the Central Government we have also suggested that at at least to give some solace to the parties who may feel aggrieved there should be a tribunal of at least 3 persons headed by a retired High Court Judge to review Government decision. As I have already mentioned, the aggreived person should have a right to appeal. And lastly, as our Vice-President rightly pointed out, punishment should be comensurate with the offence. Now, Sir, if I can take you through the amendments which we have suggested you will find that we have suggested amendment of the definition of "group". The present definition as we understand it makes more than two bodies members of the group while they have got no common intent at all and a situation may arise when a Govt. or public financial institution and a vast number of speculators will both be in the same group. Therefore, we have suggested introduction of 2 elements, firstly, there should be a common intent to exercise control. If they are already exercising control then they must do so with common intent but if they are not exercising control there should both be common intent and they also have to act in furtherence of the common intent. We have further suggested that for the purpose of the Act "control" means control of not less than half of total voting powers. You will notice, Sir, that in the numerous provisions of the Act nowhere it has been defined. So we suggest that this explanation should be included. We have also suggested that persons who become constituents of a group should be considered to be so only in respect of the body or bodies corporate which they actually control or of which with common intent they seek to achieve control. And for the sake of easier drafting without comprehensive reference to individual, association, firms, bodies corporate etc. we have suggested two or more persons; this will cover all individual, association of persons whether incorporate or not. Then our next suggestion is in respect of clause 2(2) about explanation relating to managing agents. There is no limit of time—it can go to the year 1910 and still one will be under the elastic provisions of the Bill. So, we have suggested that any reference to man-

aging agent shall be construed as references to any individual, firm or body corporate who, or which, was managing agent at any time during a period of five years prior to the 3rd day of April, 1970, and I think with reference to another sub-clause of the Bill this is also the intention of the draftsman. In any case this is our submission that the restrictive provision should apply to managing agent who hold office as such during 5 years prior to 3rd April, 1970. We have also made a similar suggestion with regard to the definition of Secretaries and treasurers. We have given a alternative definition saying, Secretary means any individual or firm appointed to perform the duties which may be performed by a Secretary under this Act and any other ministerial or administrative duties if such individual or each partner of such firm possesses such qualifications as may be prescribed. I think it is the intention of the Govt. to promote the profession of company Secretary and there should be no difficulty in accepting this suggestion. In Clause 3 the proposed Section 4A(2) we have suggested a minor amendment. The present provision reads that the Central Govt. may in the official gazette specify such other 'institutions' as it may think fit etc. but we suggest that for the sake of clarity it should read as such other financial institution. Then coming to the more important provisions in Sec. 4B we have given a complete redrafting of the clause. We want to highlight the difference between the bill and our draft. Bill says, not less than one-third but we say more than one-third. Some of us feel that since we live in a democratic country where everything goes by majority there should not be any deviation; because of practical consideration one-third itself does not become substitute for majority. In sub-clauses (i) and (ii) we have made no alternation. But when we come to sub-clause (iii) the thing which strikes us is that one-third of the share means whether equity or preference or partly equity and partly preference. This is somewhat misleading because preference share cannot ordinarily carry voting right. I think for clarity our suggestion in this respect should be accepted. In sub-clause (iv) which brings in a concept of common management based on the number of directors we have made 2 suggestions . The present corresponding clause should be retained and therefore they should be deemed to be under the same management if the same individuals constitute a majority of directors in both cases. In sub-clause (v) and (vi) apart from draft changes on the basis what I have already indicated, we feel that question of common intent becomes important because these 2 sub-clauses refer to members of the group. In one case it is the individual members of the group and in another it is the bodies corporate who are members of the group. Therefore, to be consistent with definition of group we have said that they should be deemed to be in the same management, if the same two or more bodies corporate belonging to a group who hold more than one-third equity share capital in one body corporate also hold such share capital and in the other with common intent to exercise control over it. The only other change which we have made in sub-clause 7 and 8 is that the question of 'relative' should go. I do not know whether it has been the happy experience of many with regard to the 'relative' as envisaged in the Act. We have not amended any other provisions which deal with bodies corporate under the same management. There are many other cases but we have taken out this reference of 'relative'. Now, Sir, we have submitted that sub-clause (2) should be deleted because it is already covered by our other amendments. Then we come to clause 4 which takes asay from the Courts certain powers and vest them in the Central Government. We have agreed to this and similar provisions of the Bill but only

in respect of this provision, but we have urged that in so far as this clause is concerned, which deals with the transfer of registered office, the aggrieved party should have a right of appeal to the Court. In other cases we have not made any such recommendations. Now, we come to Clause 5 dealing with section 43A. Here we have suggested that this clause should be deleted because the existing section 43A, according to our view, is quite adequate. But when we say this it may be pointed out that there is nothing in Section 43A about the concept for automatic conversion of private companies into public companies on the basis of turnover, paid-up share capital and equity or on the basis of private company holding shares in a public company. So far as we are concerned we do not see any logic for automatic conversion of private companies into public companies unless public money or interest of the public is very much involved. So far as the question of private companies holding share in public companies our submission is that Section 43A is not the right provision for a check on that type of practice. You have got Section 372 and the scope of that section can be extended for this purpose. Then we come to Clause 6. Clause 6 deals with this practice of companies accepting deposits from the public. Now, the main requirement is that documents in the nature of prospectus should be issued regularly. Prospectus is issued once after a few years, but, the deposit is a continuing process and so we have made necessary suggestions on the nature of the directives issued already by the Reserve Bank of India. It was published in the Calcutta newspapers only a couple days back. Our amendments follows that line and we have said that, 'No company shall invite or accept or cause to be invited or accepted, on its behalf, any deposit unless (a) the company issues along with the application form for deposit a statement containing such particulars as may be prescribed by the Central Government, and (b) such deposit is invited or accepted or is caused to be invited or accepted in accordance with the rules made under sub-section (1).'

Now, Sir, there is one consideration —what about the existing deposits. It has been suggested in the Bill that an existing deposit should automatically be refundable unless this is prevented by the rules made by the Central Government. But from the practical point of view it may be very difficult to comply with, and many companies may go into liquidation. We have left out the existing companies from the scope of this clause and the Reserve Bank of India and Central Government may deal with the future deposit cases. We have said, Sir, that if any deposit is accepted by a company in contravention of the law of the land i.e. against the rules made by the Central Government then this deposit will become refundable and we have also said that the provision of punishment will still be there. But where it is punishment we have used the words, 'knowing or wilfully' whether he is company official or he is a man from the stock market. Considering the question of guilt to be of paramount necessity we have done it. Another change we have made in Sub-clause (4). There it is provided that punishment should not be less than twice the amount of the deposit. What we have said that it should not be less that the amount of the deposit as it does not prevent the court from imposing higher fines if the Court feels so.

Now, we come to clause 7. This clause relates, as we understand, to the text of the judgment passed by a Court. We are not disputing that Parliament has got power to take care of any judgment which is against the intention of the Government or the Parliament. What we feel is that in actual practice this clause would cause difficulty. So we have suggested that

this caluse should be deleted. It should be left to the companies to use the best of their endeavours to secure enlistment in more than one stock exchange. It will be more in the interest of the investing public. Then I come to the most important section viz., Section 108A to 108G. As we have already said that we have no quarrel with the basic objectives of these provisions and we think that these are desirable objectives. These are desirable for our country, for our economy but we find that there is a lack of uniformity in the provisions of this Bill because in certain cases 10 per cent equity participation is considered substantial whereas in other cases it becomes 25 per cent. In sub clause 1 where it says that...

MR. CHAIRMAN: Would you kindly confine your argument to the salient features, because the time at our disposal is too short and the most of the points which you are making have already been made by Mr. Palkiwala?

DR. S. CHAKRAVARTY: Sir, We have submitted a draft. We would like to submit on it because, so far as I remember, Mr. Palkiwala did not submit any draft. Therefore, I am called upon to justify and I will be very brief.

In sub-section 108A, we have suggested that the applicability of it should be on companies with paid up capital of not less than Rs. 50 lakhs instead of Rs. 25 lakhs.

In sub-section 108B, instead of restrictions being put the persons who hold 10 per cent or more of the nominal equity above value, we have suggested, this should be applicable to those who hold 25 per cent or more. We have suggested because it will otherwise cause undue hardship—that transfer of shares within 5 per cent in any calendar year should be exempted. We have said that this curb on investment should not apply to the companies which are now under the same management. In sub-section (4) of 108B you will see that whereas a time limit has been given in the Bill for the Government to exercise the power but under sub-section (2) there is no time limit for completion of the transaction thereunder. In sub-section (2)(a), no such share shall be transferred except with previous approval of the Central Government, i.e. there is no indication as to how long this instruction will remain valid. We have, therefore, to safeguard the interest of the persons who must sell their shares because they must get the money. They cannot wait indefinitely. The Government should exercise powers similar to those applicable to the companies covered by 2(b) and the persons should get money. In sub-section 3, we have said that whether it is under (a) or (b), there should be a statutory time limit for completing all the transactions. We have no material comments on 108C. We have also no material comments on 108D except to point out that the scheme of the proposed sub-section (b) of section (i) seems to be quite redundant because where the transfer has not at all taken place, the question of permitting a nominee to exercise the vote does not arise. So, we have suggested the deletion of it. Further, in sub-section (3) of section 108D where it is said that in the case of default in refunding the amount this can be enforced as if it were a decree made by a civil court, we humbly submit to the honourable members after such an order is passed if money is still outstanding for a period the Central Government should pay the balance of the amount and when the refund comes that should also vest on the Central Government.

Our comments on Clauses 12 and 13 are that instead of asking for declaration from both the holder and a beneficial holder, there should be a single return signed by both of them in place of two returns.

In sub-section (6), which we refer to promissory note, we have stated to delete the same because any decree on the sale of promissory note will not affect the share in question.

We have got no other comments on clause 13.

In clause 15, in accordance with what we have already suggested in our explanation regarding the Managing Agents, Secretaries and Treasurers, we submit that this restriction should apply only when somebody is holding office of the Managing Agent, Secretary and Treasurer during a period of five years prior to the 3rd April, 1970 and that restriction should not be extended beyond five years from 3rd April, 1970.

In clause 16, our main suggestions are that the dividend amount should not be required to be transferred to a special account within the time limit as envisaged here. There are some firms whose dividends become payable to their foreign shareholders, but they are not getting the foreign exchange clearance to pay the dividends to their foreign shareholders. We are suggesting now, Sir, that this provision should apply only for the amount of dividend which remains unpaid after a period of six months. As to sub-section (3) about the reserves, we have suggested that this can be accepted. The other major change is that the amount which lies in the unpaid dividend account, should not go to the Government, but should remain with the company and the company will pay this to the shareholder. This is necessary not only in the interest of the company but also to redress the hardships of the ordinary shareholders.

As to section 205B, our suggestion is for its deletion because it has become quite redundant Sir, we now come to clause 18 which relates to powers of inspection. We do not see why this clause has been considered necessary because under section 209 and section 234 onwards there are powers in the Government to have investigations anywhere. If this clause is to be retained, my humble suggestion is that, it is overlapping with the existing provisions of the Act. Secondly, when it says "such time" and "such place" then there should be a reasonable time. An inspection was started in Indian Iron & Steel Co. They were asked to produce papers to the inspecting staff. It was given to understand that 3-wagon load of papers would have to be produced and so, it was suggested that the inspection should be carried out at Burnpur. The papers and other books should be inspected at the places where these are maintained. In sub-section (5), it says that the same powers shall be vested in the inspecting officer as in the civil court. We feel that such power with all responsibilities should be given only when there are some reasonable causes to believe that there have been some offences relating to company administration. Therefore, we have suggested that this power should vest only wherever any person, making inspection under this section, has reasonable cause to believe that the company or any officer of the company has committed an offence in connection with the management of the company. He should submit a report to the firm concerned so that the company knows where such offence has been committed and can take corrective measures. Now, as regards punishment, in case of a default a person shall be punishable with fine which may extend to Rs. 5,000/- or with imprisonment that may extend upto one year. Sub-section (9), in our opinion, should be deleted because a person should not be punished twice in two different ways.

Our comments on clause 19 where it has been stated that the Board of Directors' report should include a statement showing the names of every

employee of the company whose average monthly income comes to not less than Rs. 3,000/-, is that we should respect the people's right of privacy about their income. I do not see why it is advisable that the company's executives' salary should be disclosed any more than that of any other salaried employee.

As to clauses 20 and 21, we have a feeling that there are some sort of misgivings in certain quarters i.e. if there is long association between one audit firm and one company this is not desirable. We have suggested that in the case of company whose paid-up equity share capital is not less than Rs. 1 crore and in the case of a company of which not less than 25 per cent of equity share capital is held by specified Government and other institutions a new section 224A be introduced that Government should have a right to appoint one additional auditor once in every five years.

Clause 23 deals with section 269. It should not be necessary to obtain the Central Government's approval for re-appointment of a man whose initially appointment has been approved by the Central Government. However there provisions are retained a right of appeal should be incorporated in the Bill for cases where the Central Government rejects the proposal for re-appointment of a man or reduces the proposed term of tenure of appointment from any five to 3 years. We have suggested that there should be a tribunal of not less than three persons headed by a retired High Court Judge. We hope that this clause will be omitted by the Parliament.

Now, Sir, we come to clause 24 dealing with the Sole Selling Agent. Here, our main objection is on para No. (1) where it is said that in respect of certain goods there may be a declaration that no sole selling agent will be appointed. There will always be difference of opinion about availability of goods or need of creating market. We submit that this sub-section should be deleted.

SHRI MAHAVIR TYAGI: Dr. Chakravarty, I think you should be brief in your argument. I am afraid that you are repeating the same argument on most of the cases.

DR. S. CHAKRAVARTY: Sir, though we have submitted our memorandum we feel that we should give some explanations or our amended drafting of on the provisions of the Bill. Now as to concept of substantial interest we suggest, in terms of money this should be 10 lakhs, in terms of equity capital this should be 25 per cent whichever is higher.

Clause 25 relates to section 297. I think that this is an unworkable provision. We have suggested that the Government should be given an opportunity of going into the contracts of the companies and we have said that in every company where such contracts are entered, an annual return should be filed within three months from the close of the financial year, to the Registrar of Companies and the Registrar, if he thinks fit, can institute an enquiry or investigation. Let not the ordinary administration be burdened with the requirement of obtaining the prior approval of the Central Government.

We next come to clause 26—section 314. Here we submit that the existing clause is quite adequate. As these appointments can only be made by special resolutions and special resolutions are filed with the Registrar, we have made a suggestion that let it be provided in section 314 giving right to the Central Government to carry out the investigations and modify the appointment and other related things as in the case of sole selling agents under section 294(5).

We now come to clause 29 dealing with section 383A relating to Secretaries and consistent with our sug-

gestions relating to the definition of secretaries we have said that this provision if whole-time secretaries should not be there. We have also suggested that an individual should not be allowed to act as a secretary of more than five companies and no firm shall hold office as secretary of more than such number of the said companies as will exceed ten times the number of its partners.

Then in clause 30 dealing with section 408 we have suggested in our memorandum that authority should not be used to appoint any number of directors and make it unwieldy. But we have made a compromise and suggest that it can appoint as many directors as the company appointed. These are our submissions.

MR. CHAIRMAN: I would now request members to put questions, if any.

SHRI HIMMAT SINH: I don't think there seems to be any serious objection from your side in regard to the amendment that is proposed. I would just give a few instances which have been commented upon by you. In regard to the payment of dividends you say that a company should be free to pay dividend from any resources that are available to the company. If that be so, then it is quite conceivable that a company would intentionally in considerable circumstances pay dividends from resources which in the opinion of the shareholders or in the opinion of people who have a serious approach to industry be utilised for purposes other than payment of dividends. It can be conceived that the resources in this manner can be frittered away. What is your provision to ensure that the resources are not frittered away in this manner?

DR. S. CHAKRAVARTY: We have said that so far as question of declaring dividends out of resources is concerned, we accept those provisions. And all that has remained are the two questions—whether the amount of dividend should be immediately transferred to a separate account....

MR. CHAIRMAN: That is not the question. So you agree with the provision with the Bill. No provision arises there.

SHRI HIMMAT SINH: My next question is that you have suggested that punishment being commensurate with the offence. Now, punishment to be really effective has to be deterrent punishment. Why should it be commensurate with offence?

DR. S. CHAKRAVARTY: With all respect to you, Sir, I cannot agree with your view, as an ordinary humble citizen. Punishment has to be deterrent. But it should also be commensurate with offence. If punishment is to be made deterrent only then it will be hanging for all crimes. I cannot agree with your view. I suggest that punishment should be always commensurate with the offence.

SHRI HIMMAT SINH: My last question is in regard to the question of auditing. We know that auditing is undertaken in respect of certain terms of reference which are before the auditors and therefore I would like you to give your reaction about the question of cost audit because in my opinion costs are inflated in many industries because there is no control on costs and therefore, because auditing has now become something which cannot be dispensed with I would like to know whether you favour a separate cost audit system or not.

DR. S. CHAKRAVARTY: I am very much in agreement with you in this respect. Cost audit is very necessary. A company wants to increase the price of its products and it is not uncommon for the Ministry of Finance to go through the papers of the company. So I am one with you that there should be cost audit of companies to see that the prices they have been charging to the consumers are not unduly high. These

provisions are there in various laws of the country.

SHRI HARSH DEO MALAVIYA: You say that the Companies Act should not be drastically changed to achieve some of the objectives which are already fulfilled by the MRTP Act. What do you mean by that? Will you kindly clarify?

SHRI A. W. B. HAYWARD: We believe that company laws should regulate the actions of companies within a particular framework so that the companies can be properly administered within the law and we believe that the elimination of monopolies and undesirable concentration of economic power can best be dealt with by separate Acts.

SHRI HARSH DEO MALAVIYA: Would you agree that all company functioning in India is under the overall guidance of the directive principles of the State policy?

SHRI A. W. B. HAYWARD: Yes.

SHRI HARSH DEO MALAVIYA: Once there is a State in India, the State has got an industry, the industry has been defined in the objectives and the directive principles of the State Policy. Don't you think that all enactments of the governments have to have those basic objectives of the Constitution in mind and therefore, whether that objective is sought to be achieved by this Act or that Act is a matter for us. Cannot be objected to?

SHRI A. W. B. HAYWARD: I think the Acts should be in more or less watertight compartments because otherwise you will have conflicts between one Act and another. The Companies Act seeks to define the companies and regulate their operations. The MRTP Act seeks to define the nature of monopolies and to prohibit concentration of power in certain cases and we think that the two should be kept separate.

SHRI HARSH DEO MALAVIYA: About the provision for auditing, you object to the proposal to the appointment of auditors by government. Is that your objection?

DR. S. CHAKRAVARTY: No, Sir, we have gone out of our way to suggest that Government should have the right to appoint an auditor but not more frequently than once in five years. We have suggested this auditing in case of companies with a paid up capital of one crore or more but not in the case of smaller companies because they will be burdened with additional expenditure.

SHRI HARSH DEO MALAVIYA: The matter of auditors was gone into in great detail some time ago during the Vivian Bose enquiry in Mundhra affairs and all that. There, a very specific charge was made and, if I remember aright, in the Rajya Sabha Shri Khandubhai Desai said that the Company Law depends upon the honesty, integrity and independent judgment of the auditors. But from practical point of view we know that auditors are more or less the creatures—however much they may boast the other way about—of the Board of Directors. They have got to carry out what the Board of Directors or the Chairman or the Managing Directors direct them. But for the collusion of the auditors....

MR. CHAIRMAN: What are you reading, Mr. Malaviya?

SHRI HARSH DEO MALAVIYA: I am giving a quotation from the speech of Shri Khandubhai Desai in the Rajya Sabha on 14-8-1963. He said, but for the collusion of the auditors such large scale frauds and manipulations could not have been possible. This is a very clear charge. What have you to say about this?

DR. S. CHAKRAVARTY: Sir, if that be the charge against auditors it is an extraordinary thing that this provision has been brought before the Parliament. All that the provision says is that you cannot appoint an auditor for more than 3 years

without Government's sanction. This provision will not take care of that situation. Secondly, in all activities there are some people who are not so good and, I think although the Minister must have good reasons to make that remark, one should not cast a slur on the entire profession of auditors.

SHRI R. R. SHARMA: Company Law was codified in 1956. Since then and before this amendment several amendments have been made to remedy the evils. Are you of the opinion that the present enactment, or, rather, the amendment fulfils the expectation and, if not, what are your suggestions?

DR. S. CHAKRAVARTY: I certainly do not think the present enactment is adequate. Had it been so, we would not have submitted so many amendments. So, we expect that the present law needs to be changed in view of the situation that has developed in the country.

MR. CHAIRMAN: You want that this should be done in accordance with the suggestions that you have put.

DR. S. CHAKRAVARTY: Yes, Sir.

SHRI D. D. PURI: You have made a distinction on the payment of dividend out of resources. Would it not inhibit the creation of reserves by companies?

DR. S. CHAKRAVARTY: Withdrawal from reserve for the purpose of declaring dividend will be according to the regulations framed by Government. If these regulations are reasonable, I do not see why it should inhibit creation of reserves.

SHRI D. D. PURI: Would you agree that the only thing that leads to independence of audit is the stability of appointment of the auditor and, therefore, if any restrictions are called for it should be in the direction of making it obligatory to obtain Government permission before an auditor is changed, rather than the other way round.

DR. S. CHAKRAVARTY: We have not said that the auditor should not be compulsorily changed. We agree with you.

SHRI H. K. L. BHAGAT: I would like to know what particular part of the objectives they accept? The objectives are mentioned here—that there is a tendency to combine and clique together and resort to certain practices for taking over companies to the detriment of non-controlling shareholders and there have been abuses of this kind. The Bill proposes to provide safeguards against such abuses.

DR. S. CHAKRAVARTY: We have accepted that substantially.

SHRI H. K. L. BHAGAT: With regard to the penal provisions for offences you said that mensrea should necessarily be there. I think the witness is conscious about the fact that in certain other matters also, e.g., Food Adulteration Act, Essential Commodities Act and certain other legislations such penal clauses are provided where it is not necessary to mention mensrea. Under the present enactment the emphasis is on punishment for economic and social offences. Now, the time has come when social and economic offences should be punished very heavily. Do you agree with that? If a person could be punished without proving mensrea in a case under the Food Adulteration Act, why a person responsible for misutilisation of fund should not be punished heavily?

DR. S. CHAKRAVARTY: My answer is that, had I had the good fortune of appearing before the Members of Parliament, I would have equally forcefully stressed that at offence should be with mensrea. By introducing those offences with men-

srea, have those offences been curbed in this country? I do not see that it makes any difference. After all we look to you for certain protection and one of the fundamental protections is that one should not be punished unless one is guilty.

SHRI H. K. L. BHAGAT: Why do you want this? We find a number of cases in which a man gets things done and escapes. What do you do in such cases when damages have been done?

DR. S. CHAKRAVARTY: I am not aware of the circumstances which you have in mind. If somebody has committed a mischief I being an ordinary citizen do not see how it can not be proved.

SHRI H. K. L. BHAGAT: You said that jurisdiction of court should not be taken away. I hope you are conscious of the fact that even small matters relating to Companies Law are pending in courts for years and in various cases Judges themselves said that such matters should not remain in court. What is your reaction to this?

DR. S. CHAKRAVARTY: I am certainly not clear because we have not said that jurisdiction should not be taken away. We have accepted the provisions of the bill regarding transfer of power from court to Central Government in all cases. Only in respect of one particular clause dealing with object clause and transfer of registered office—only in those cases the right of appeal court should be provided.

MR. CHAIRMAN: They have not objected.

SHRI S. G. SARDESAI: You said that in order to determine whether an individual or groups of individual exercises control over a comapny the definition should be that those who control more than 50 per cent of the voting strength. As a business man I think you know that much less is needed to exercise control. So, I want to know why do you insist on 50 per cent voting power necessary for control?

DR. S. CHAKRAVARTY: Firstly, we say that control should be defined like that. For section 4B substantially we have accepted the principle of one-third, the bill provides not less than one-third but we propose that it should be more than one-third. Since control has not been defined anywhere else so we have tried to define it.

SHRI SOMNATH CHATTERJEE: I find there were disagreement among the witnesses themselves about jurisdiction of the court—whether it should be retained or not. The gentleman who spoke first said, he was against abolition of court's jurisdiction, if I have understood him correctly, but the next witness said that he did not object to the taking away court's jurisdiction. I would like to know what is the experience of the members of the Chambers of Commerce, whether applications before the Company Law Board are decided more expeditiously than matter which are before the High Court. Why do you want this, why you are of the view that it should be taken away? What is the difficulty that is being felt now?

DR. S. CHAKRAVARTY: So far as our own experience goes it is that court tends to take long time to decide and secondly there is the element of cost also which makes a problem to many companies to go to court. We are not oppose to the proposal of transfer of power from court to Central Government but we only feel that in certain cases the right to appeal to court should be there.

SHRI SOMNATH CHATTERJEE: That means, you want judicial intervention.

AN HON. MEMBER: If there be more control of the Government will not production of the companies hamper?

DR. S. CHAKRAVARTY: There will be more control by the Government—that is obvious. But so far as the provisions of the Bill are concerned I don't think there is any direct relation between production and Government control because it is not only this Act but there are other Acts and one who works for companies will say that this particular provision of the Bill are not going to affect production. There are many other laws affecting production.

AN HON. MEMBER: In course of evidence one witness made a reference to Mr. Palkhivala's view about keeping separate MRTP Act from the affairs of the Company Laws. I would like to know, do the witness not feel that it would be better to prevent formation of monopolies as it is planned under this Act?

SHRI A. W. B. HAYWARD: MRTP Act is already existing and it is adequate safeguards for the prevention of harmful monopolies. My submission is, MRTP as it stands now is adequate for the purpose of preventing harmful monopolies.

SHRI S. S. MARISWAMY: Would the provisions of the Act help the corporate setcor or it would adversely effect investment market in the country?

DR. S. CHAKRAVARTY: Provisions of the Bill will not promote the investment atmosphere—it will act as a disincentive rather. But even then we have accepted many of the provisions of the Bill because of the other developments which are taking place for example, reference has been made to undesirable take-over and other things. There are 2 evils and we accept the lesser evil.

SHRI JAGDISH PRASAD: MATHUR: Is it your view that personal involvment in technical offence in which mensrea is not involved or it cannot be proved should not be punished at all or that he should not be punished severely?

DR. S. CHAKRAVARTY: Our submission is that if he has got no knowledge then he should not be punished at all.

SHRI K. S. CHAVDA: Regarding the new section 383A you have said in one of your suggestions that (i) the existing holders of the office of Company Secretary, whether qualified or not in terms of the notification to be issued by Government, should be allowed to continue to hold the position until their retirement.

(ii) in prescribing the qualifications, Government should bear in mind that holders of special qualifications such as solicitors, chartered accountants, law graduates, etc. have rendered distinguished service to the corporate sector and their ability to discharge the duties of Company Secretary should not be overlooked.

(iii) it is considered unnecessary to provide that the Secretary of a company shall be wholetime, . . .' Now, my question is that if the word 'wholetime' is deleted then would you agree to this new section?

DR. S. CHAKRAVARTY: No.

SHRI KHEMCHANDBHAI CHAVDA: But it is in your memorandum.

DR. S. CHAKRAVARTY: What we are now suggesting is that there should not be the question of wholetime Secretary. We agree that there should be a limit to the number of offices of Secretaries that an individual or a firm can hold.

SHRI SALIL KUMAR GANGULI: What is the minimum remuneration of a wholetime Company Secretary?

DR. S. CHAKRAVARTY: Well, that varies from Company to Company and I do not know what is the minimum remuneration.

MR. CHAIRMAN: Gentlemen, I thank you all who have taken the trouble of coming over here. I hope your deliberations would be very much valuable to the Committee. I thank you again.

MR. A. W. B. HAYWARD: We also thank you.

(The witnesses then withdrew)

II. The Institute of Cost and Works Accountants of India, Calcutta.

Spokesmen:

1. Shri Shyamlal Banerjee— *President.*
2. Shri M. R. S. Iyengar— *Vice-President.*
3. Shri G. K. Abhyankar— *Past-President.*
4. Shri N. K. Bose— *Past-President.*
5. Shri V. Kalyanaraman— *Council Member.*
6. Shri S. K. Mitra—*Council Member.*

(The witnesses were called in and they took their seats).

MR. CHAIRMAN Mr. Banerjee, Mr. Iyengar and other friends of the Institute of Cost and Works Accounts of India, Calcutta on my behalf and on behalf of the Committee I welcome you here. Since it is at January, 1973 I welcome you and wish you a happy New Year.

SHRI SHYAMAL BANERJEE: We heartily reciprocate our thanks also.

MR. CHAIRMAN: I hope that your views would greatly help the Committee in its deliberations. Now, I would like to draw your attention to the routine may kindly note that the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. With this direction I would now request you to make your general comments and after that I would request the Hon'ble Members to ask you questions which, I hope, you would reply in a straightforward manner. With these words I would request you to begin.

SHRI SHYAMAL BANERJEE: Thank you, Sir, we from the Institute are most grateful to you that this august body has given us the opportunity to come here and give evidence on this most important piece of legislation. Sir, on the general issue *viz.*, this draft Bill and the contents of this draft Bill which have come to us, we are greatly encouraged by this very highly progressive piece of legislation. From the Institute we have discussed the various provisions of this Bill at great length, we have debated the various provisions among ourselves and among our colleagues everywhere in the country and we entirely agree to the general provisions of this piece of legislation which has come before us today. This morning we wish to concentrate our submissions on three or four significant areas where we wish to add our observations. In fact, in our memorandum we have said something on these points but having had the opportunity to be present here I would like to place our viewpoints and observations on those three or four areas and, thereafter Sir, if you will desire us to give our views on certain other points and other general provisions of this Bill we would be glad to do so to the best of our ability and in a straightforward manner as you have asked us.

MR. CHAIRMAN: Kindly be brief.

SHRI SHYAMAL BANERJEE: Sir, I should begin by saying that the maintenance of cost accounting records by certain selected industries has already been accepted by the Parliament and also by the Government. It

is already in the Act. The only point that we would observe on behalf of the Institute is that so far we find that 14 industries have been covered by this provision in the last 5/6 years and we would only request the Select Committee to kindly consider whether the pace of introduction of cost accountancy in the various industries should not be expedited.

We from the Institute of Cost and Works Accountants of India, and also as citizens of the country, have come to a conclusion that unless cost accounting records are maintained by various industries, which are engaged in production,—the services are important for the national economy and the community of this country,—the efficiency and the fulfilment of the objecives that we have set for our industries both from the Government as well as other institutional levels may not be fulfilled to the fullest extent. After all we have seen that the cost accounting rules have been promulgated by the Government so far as their task of the assessment and operation of any industry is concerned. I am saying that we associated ourselves with the Government or in the Parliament in this subject. We dedicated ourselves through the industries and economic activities in this country for better efficiency through the instrument of control and appraisal of performance. We specialised ourselves through the Institute of Cost and Works Accountants of India and this will be ensured if more and more industries are brought under the purview of Cost Accounting Record Rules. This Cost Accounting Record Rules that have been introduced and the way they have got to be operated are to be carefully watched periodically or continuously in the sense that where a company is operating the cost accounting system as has been brought into operation by the Cost Accounting Record Rules the Government would have no direct access or opinion unless there is a cost audit report. The cost audit system has been introduced by the Government and it is already being operated in 14 industries where the Cost Accounting Rules have been introduced. So, this is not a new point. The cost audit of these companies where Cost Accounting Record Rules have been introduced in our judgement, is the 'must'. Now this 'must' has got another reason, *viz.*, the cost accounting, maintaining accounts and the verification of the cost accounting records that have been introduced in the various companies is only one part of the work of the cost audit, but the cost audit as we have conceived, and when the Parliament introduced the cost audit under the Companies Act, we have broader objectives carefully gone through the debates during the years 1964-65 when this Bill was being enacted, and we have also seen the proceedings and the rules of instructions issued from time to time in these matters. Our judgement is that unless the cost audit is done continuously, that is, from year to year, it would not be possible to ensure the operation of the cost accounting system and the fulfilment of the appraisal and the efficiency of industrial units, which have been the objectives of introducing both these provisions of cost accounting and the maintenance of records as well as the cost audit, Sir, we submit that at present the cost audit is being ordered for only one year and then, it is necessary to order again for its continuance.

There are compulsions as to how the control system is to be improved today because the conditions in most of the industries there are no systematic appraisal system. I submit that there is no difficulty in introducing the cost audit or maintenance of cost accounting in industries which can only be done by the members of the Institute of Cost and Works Accountants of India.

SHRI MAHAVIR TYAGI: What is the difference between cost audit and cost accounting?

SHRI SHYAMAL BANERJEE: The cost accounting is really the basic system on which the system of cost audit can work, *e.g.*, cost accounting is that where you may get records of analysis

of the internal operation of a particular unit. The cost accounting will give analysis of the cost or expenditure on the various activities of the company. Cost accounting will also indicate whether you are spending too much money on your establishment which are of a continuing nature and which cannot be changed with the volume of operation or whether you are spending much more money which will ultimately change the volume of your output. The cost acccunting system will give the basis on which we can judge the capacity utilisation use of resources and productivity through different factors of production like labour material or machines. The effectiveness of the management process can be brought out only when there are sufficiently systematic and co-ordinated records of cost. The cost audit will do two things. The cost accounting system and the cost accounting records as prescribed for a particular company should be maintained as they should be. This is the first check or the first verification. These are matters of expert verification and internal checking. Unless there is such a system as has been outlined above, whereby the Government has got an access into the operation system of the companies, whether it is managed efficiently or not, cannot be brought out. Unless there is an audit system, the Cost Accounting Record Rules will not be effective, and Government, as we have understood, will want to have an access or at least a supervisory control over the operation of the industries. Whether it is in the state sector or in other sector, it is the intention of the Government and that cost auditing would give the Government a powerful weapon to examine the internal operation of the company both quantitatively as well as directionwise. The cost audit will give, as we have said, an independent appraisal, which will be I should say an independent instrument of assessment of the operation of the individual company. Unless one is a full-fledged cost accountant and cost auditor and has gone through the entire syllabus and curriculum, in our judgement one will not be able to do the cost auditing and cost accounting in a proper way.

SHRI S. G. SARDESAI: Wha tis the meaning of non-practising cost accountant?

SHRI SHYAMAL BANERJEE: Person after having passed the examination of the Institute and after having 3 years' experience become a Member of the Institute. He may be a self-employed cost accountant and cost auditor or in the employment of the Government industry. We have about 300 to 400 practising members and we think in another 3 to 4 years the number will become double. So, there will be more cost auditors than the number of available jobs. When the Cost Audit under the Company Act was enacted in Parliament in 1965, an alternative provision was adopted, that other than the members of the Institute of Cost and Works Accountants, Chartered Accountants suitably qualified could undertake the job. This situation does not exist to-day. We should therefore come back to the original old thinking that only the cost accountant will do the cost auditing.

MR. CHAIRMAN: Is there any question from any member?

SHRI HIMMAT SINGH: This is the one area about which there seems to be hardly any controversy. You have rightly said in your memorandum that cost accounting will not only be for ascertainment of cost but also for controlling and reducing costs by locating points of wastages and leakages. We find in the industries generally that there is a tendency to inflate the costs and that is being done effectively by overcharging on various items which enter into the production itself. How do you propose to control that?

SHRI SHYAMAL BANERJEE: I am heartened to hear your point which fully supports our case. Now, I would try to answer your question. In any cost accounting system we first of all divide the entire expenses into different groups. For example, we recognise that there is labour cost, then

there is the material cost—we call them direct cost because that goes directly into the cost of the product. Similarly, there are the ancillary expenses like the administrative expenses, establishment expenses and we call them overheads, i.e. they are indirect costs. Then in our accounting system we have a further controlling machinery. We have got a system of further subdividing these expenses.

SHRI HIMMAT SINH: Perhaps I can make the matter a little more clear. Take the case of the automobile industry. The Hindusthan Motors Ambassador car is available to the consumers at a cost of Rs. 24000/-. Now, we think that in order to reduce the selling price of this car it would be necessary to go into the various items which go to make up that car. For instance, we are told that there is a question of putting a bolt or nut in the car. Now, if the price of that bolt or nut is only 5 or 10 paise, it is charged in the account by the manufacturers at Rs. 5 or Rs. 10/-. How does your cost accounting method control that?

SHRI SHYAMAL BANERJEE: In any cost accounting system the individual items of materials such as the bolts and nuts in the present case, which go into the total cost of the material, are listed out completely with the prices. Right from the smallest pin up to the basic materials all prices are given. We see that each car requires so many bolts and nuts and we link up their prices with the prices of other materials. Now, these materials may be either manufactured items—manufactured by the firm which produces the car—or they may be purchased items. If the material is a manufactured item, then we take into account the real manufacturing cost of the material. If it is a purchased item, then we find out by a procedure what is the ruling market price of that material. In this matter also we conduct an enquiry with the help of engineering staff, technical personnel and others who are intimately connected with the industry and then fix the price. That answers your question as to how the price of the bolts and nuts can be controlled.

SHRI HIMMAT SINH: Now, another question. Would you say that the Cost Audit Act of 1965 failed in its objectives?

SHRI SHYAMAL BANERJEE: It has not failed in its objective at all. It has got certain shortcomings and they have to be removed. One way in which there shortcomings can be removed is that the cost audit has to be done on a continuous basis. Incidentally I should say that as we are doing progressive audit in more and more companies we are also improving our system. After all, in this country it is a system which has come very recently and there will be a period when we have got to develop the cost audit method and secure better results.

SHRI HIMMAT SINH: My last question is about the subject of capacity utilisation factor. You have said that your method of cost accounting would also enable you to determine whether the capacity utilisation factor is being undermined or not. I will give you an instance. For example, in this country we have the biggest cement manufacturing unit in Asia. The installed capacity is X but the production of that factory is X minus something and the production is probably less than 40 per cent or so. It may be due to genuine reasons but the reasons are attributable to other factors also. Very often it is found that they have been able to create artificial scarcity which enables them to send their production to markets which are not authorised markets and thereby they make a higher profit. How are you going to stop the creation of artificial scarcity and control the price?

SHRI SHYAMAL BANERJEE: This is one of the core factors of controlling in any cost accounting system. A factory has got certain capacity which is in terms of installed plant and machinery. We study the capacity of individual machinery that is given when the machine is installed. When the rated capacity is not

there, there is an achievable capacity. These things are studied. In the accounting system periodical data are thrown out. In a plant there are certain imbalances between the various machines and processes. We go to the total operational capacity and see what is the shortfall. There is a time study that we have included in our system. All these things are studied and then we analyse them.

SHRI HARSH DEO MALAVIYA: In para 7 of your memorandum you suggest that Central Government should appoint cost accounting men directly and not on the advice of the Board of Directors. You say that this will help in impeding the growth of monopolies. But in para 6 you suggest that the Government should not appoint directly a cost accounting man. There should be a firm of cost accountants and Government should appoint them through the firm. Why do you insist on this? You know, creation of the audit firms led to concentration of audit. If Government has to go by firms, it may also lead to concentration.

SHRI SHYAMAL BANERJEE: To my mind there is no problem. What can be done by an individual cost accountant, can also be done by a firm. The point is that the individual cost accountant may not have the resources necessary for staff and maintenance of an establishment which are required for doing effective work. As to the question of concentration, Sir, we are conscious of that and we have tried to meet this point by saying that there should be a rotation system. We have said, after a few years, cost auditors of a company can be rotated. There will not be any occasion for vested interest developing. Auditors will know that they have nothing to do with the company—whether he is an individual or a firm—they know that they are working here for a limited period. And this provision will not interfere with the necessity of avoiding concentration.

SHRI HARSH DEO MALAVIYA: Concentration of audit is an evil, you agree, and you say, if there are cost accounting firms, they may not necessarily yield to evil and, there is a demand in the country for nationalisation. Would you like the nationalisation of cost accounting?

SHRI SHYAMAL BANERJEE: I should say, the Institute of Cost Accountants is already a public institution, a Government Institution. It is already nationalised. Even after nationalisation Government has to develop some wings through which it can function and we will not fail the Government. We consider ourselves already a public institution, an institution which is in the Government sector.

SHRI R. R. SHARMA: If I understood rightly, you only want that Chartered Accountants may be omitted along with other persons from sub-section (1) of section 233B. Perhaps you have gone through the proviso appended to the proposed amendment in which it has been provided that if the Central Government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act, 1959 are in practice and are available.....shall conduct the audit of cost accounts of any company. Do you think it will not suffice?

SHRI SHYAMAL BANERJEE: Our submission is that within the next 10 or 20 years there will be no dearth of cost accountants to do the available cost audit. So, this provision is not necessary.

SHRI D. K. PANDA: As you know, some mills are sick and there are also cases where the scrap is mixed with the finished goods and highest charge is being made. Do you propose any special provision in the rules or in the Act to check these things?

SHRI SHYAMAL BANERJEE: We do not need any special or extra provision to check these difficulties. In

our system of cost accounting—any basic system—we will include audit of the consumption of raw material and scrap. Our investigation will include examination of scrap.

SHRI D. K. PANDA: There are 400 companies which are appointing the cost auditors and there are perhaps 230/232 practising cost accountants. So, to break the monopoly and also to eliminate any type of apprehended collusion between managements and cost accountants whether you will agree if there be rotation of works so that if one cost accountant is entrusted with one company or industry then after 3|4 years he should not be again allowed to have that work in the same very company?

SHRI SHYAMAL BANERJEE: Sir, it is absolutely our point. It is already taken care of to see that there is no concentration of works in a few hands.

SHRI D. D. PURI: Accepting that determination of cost is absolutely desirable for any sound business, as a matter of fact, vigilance on the cost of production of any industrial unit is hard. I would like to ask as to the exact area where the cost accountants or cost audit will stop and the finance audit will come into operation. Essential factors for determining cost are many *viz.*, capital employed, financial position of the company, power shortages, shortage of raw materials, productivity of labour purchasing power of the unit—these are the major factors—and you cannot determine cost till you take into account all those factors. In determing cost you will have to examine depreciation of the entire operation of the company. Now where exactly you say your function starts? And to what extent you duplicate the function?

SHRI D. K. BASU: In the cost accounting system the cost of finance, for example, cost of capital, cost of utilisation are there and nothing goes to the finance audit system, and there is no duplication. So, Sir, the areas are completely different and cost accounting is completely specialised.

SHRI D. D. PURI: Is the witness not aware of the fact that frequently auditors do draw the attention of the shareholders to the fact that cost of raw materials is high or the labour cost is already high even if it is in accordance with the books of the company.

SHRI D. K. BASU: This is a question of measuring if the cost of a particular material is high or low and this is not included in any system. But if the finance auditor finds that last year balance-sheet showed 2 lakhs worth of consumption and this year it is five lakhs then they can ask the company to be careful and this kind of linking of costing does not come within the finance accounting system.

SHRI D. D. PURI: Would you agree that depreciation is an item or cost?

SHRI D. K. BASU: Yes Sir.

SHRI D. D. PURI: Is the distinguished witness aware of the fact that the nationalised industries in Britain and Germany have accepted that the only scientific method for working out the cost is by providing depreciation at full replacement value?

SHRI SHYAMAL BANERJEE: Yes.

SHRI D. D. PURI: Is he aware as to how the difficulties in the income tax rules could be overcome.

SHRI SHYAMAL BANERJEE: I am not aware of that but I can suggest how they can be overcome.

SHRI D. D. PURI: Will he point out the area which the cost audit will not cover but will be left to the financial audit?

SHRI SHYAMAL BANERJEE: The financial audit will do the authentication of the expenses and incomes i.e. if there is any expenditure whether that expenditure has been incurred

properly and with due authority. There will be vouchers and vouchers will have to be seen by the proper authority.

SHRI D. D. PURI: So, if there is voucher the Financial Auditors are not required to do anything.

SHRI SHYAMAL BANERJEE: Yes, that is so.

SHRI D. D. PURI: You have stated at page 10 of your memorandum that, "Cost accounting, on the other hand, with its highly developed techniques, aims at and assists in achieving maximum economy in the production of goods and services." Don't you think that the appointment of cost auditors should be left to the shareholders of the company?

SHRI SHYAMAL BANERJEE: The shareholders' autonomy and sovereignity in the present situation in the country is constitutionally correct. But in practical operation the company is controlled or managed by certain groups. There are also shareholders—may be minority shareholders' group. The real autonomy of the shareholders is understood in a community sense and it is not clearly in operation. We, therefore, thought that Government has to come with its superior judgment and superior controlling authority.

SHRI H. K. L. BHAGAT: You have said that financial audit will be required to do only a little bit of purpose for expenditure and income and authentication of those and all that. Don't you think that this work can also be done by the cost auditors and that the system of financial audit can be done away with?

SHRI SHYAMAL BANERJEE: These are two different systems of auditing. If you ask whether I can to the other work I will say that this is a specialised work and it cannot be done by me.

SHRI H. K. L. BHAGAT: You said that you are a separate public institution. Apart from that for other reasons why should this profession not be nationalised? Secondly, if it is possible for you to answer as to whether any ceiling is desirable in incomes and if it is desirable what would be the ceiling of income of an individual auditor?

SHRI SHYAMAL BANERJEE: Apart from my professional career, as a citizen, I entirely agree that there should be ceiling on incomes.

SHRI H. K. L. BHAGAT: What should be the limit?

SHRI SHYAMAL BANERJEE: I am not very sure of the arithmetical answer to this question as to what should be the income of an auditor. I believe it can be anywhere between rupees one thousand and three thousand. There should be a maximum per month.

SHRI S. G. SARDESAI: In the initial stage of your explanation you said, as I understood it, that the main purpose of having proper cost accounting and cost auditing is to see that cost of production is actually shown. In course of your evidence you also elaborated that in one or two cases it would be open to the cost auditor or cost accountant to give a report saying that the wages paid by a particular industry are too high, and that the workers are not working properly and that the wages should be cut down. Is that the proper sphere of recommendation for cost accountancy?

SHRI SHYAMAL BANERJEE: The cost audit will report on relative terms. Higher wage is related to the productivity. After all if the production is matching with the wages paid no cost auditor will ever suggest that wages are very high.

SHRI S. C. SARDESAI: There are various factors. The machines used

by a company 15|20 years back may no longer be used now. Besides the cost of the indentical machines may be higher. Meanwhile productions are also made at a rising price. So the price of the products will rise along with the rise in price of the machines.

SHRI SHYAMAL BANERJEE: You are absolutely right, Sir. That the cost auditing or cost accounting will suggest reduction in wages merely because the wages are very high—there is no such apprehension at all.

SHRI S. G. SARDESAI: By your explanation it is seen that the proper cost accounting would necessarily involve financial accounting. What is your opinion?

SHRI SHYAMAL BANERJEE: The linking between the cost accounting and financial accounting or auditing as you have stated is not exactly the way you feel. You are right in one sense. When the cost accounting is completed then there is a cross-check between the cost records and financial accounts *i.e.* profit and loss account and balance sheet.

SHRI MAHAVIR TYAGI: I would like to have your reaction about the idea, which according to me, not the Government's idea. How could you react on the idea of merging the cost accountant, chartered accountant, cost auditor, financial auditor and the professionals together and make the people to undergo a common course of training so that one person can do the job independently?

SHRI SHYAMAL BANERJEE: In fact, we have discussed and analysed this concept at great length for several years. Our very firm conclusion is that it will completely destroy the basis of the cost accounting specialisation which has already developed in the costing auditing system and there should not be any combined method.

SHRI M. R. VYAS: There has been a suggestion for properiety auditorship. What suggestion can you make in it?

SHRI SHYAMAL BANERJEE: Sir, this propriety audit concept, I say, started 10 years ago while I was associated with Government of India. You know, the Comptrolled and Auditor General of India of the Government side, is the supreme authority in the audit system. Some years back the C.A.G. started switching over the entire audit system to appraisal or performance.

SHRI K. S. CHAVDA: What would be the total number of cost accountants in our country?

SHRI SHYAMAL BANERJEE: Today, the total membership is about 3,000 and the practising member is nearly 300. We are adding up six to ten monthly. There are still 1400 qualified people who are not members.

MR. CHAIRMAN: Thank you very much for the discussion you have made with the members present here. I thank you on behalf of the Committee and on behalf of myself.

SHRI SHYAMAL BANERJEE: I thank you on my own behalf and also on behalf of the Institute of Cost and Works Accounts of India, Calcutta.

III. *Chartered Accountants' Association for Nationalisation of Audit Profession and Services, Calcutta.*

Spokesmen:

1. Shri Arun Kumar Mukherjee
2. Shri Indra Nath Das
3. Shri Susrut Mukherjee
4. Shri Manas Kumar Banerjee
5. Shri Samasendra Nath Pathak

MR. CHAIRMAN: Mr. Mukherjee, on behalf of the committee I welcome you all and wish you a happy new year. I hope, your views would benefit the committee and the memorandum which you have submitted has already been gone through by the members of the committee. Before I start I would like to draw your attention to the directions that the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. With this direction I would request you to begin with the salient features of the proposed Bill. I would request you to be brief.

SHRI ARUN KUMAR MUKHERJEE: We have submitted in our memorandum, that the difficulties which may arise if this rotation scheme is introduced, particularly about the small firms. Now the structure of the provision happens to be such that practically 90 per cent of the consolidated audit firms is in the hands of not more than six or seven firms. They are practically enjoying all the public companies' auditing and thereby they are collecting the largest part of the fees. About the other firms, which if counted, would number about 6,000 all over the country. A difficulty will arise, if rotation is introduced, in fluctuating the audit work whatever it may be. It will be fluctuating in such a manner as, that suppose today, a firm like my own firm that enjoys some audit works, i.e., we depend on four or 5 grms, will have to wait for new works due to the rotational system, but in the next rotation, it may happen that we would not get enough or sufficient work so that we can continue the practice and the result will be that we will not be able to maintain our staff as a whole. There is another side also. Supposing we go through the rotation, and a firm which never audited any huge undertaking like Hindustan Steel Ltd. and Martin Burn have got the job of auditing, then how can that firm can perform this duty efficiently. If things go on like this and we have to wait for sufficient work through the rotation system there is every likelihood of retrenhment of audit staff. But you can imagine, Sir, that we cannot go on recruiting people and ask them to go away when the audit goes. In the newspapers and in the preamble of the amendment it is suggested that monopoly must go. Now, we do not understand how by this method of rotation, this will be effectively tackled. We have already found that the big firms are splitting themselves up. They are opening branches and are entrusting these branches with audit works as new ones. Therefore, Sir when the rotation is introduced what will happen is that while one big firm

gives up auditing the branches that have been opened will be tackling the auditing work because they are, in the eyes of law, treated as separate firms. So, the monopoly holding remains there. We have discussed in many symposia that we were not very much satisfied about what is being done in the name of audit. The provision of the Act does not offer us, complete scope of bringing to the fore the difficulties in the Company amendment. Practically the audit profession is entirely dependent on the Company Board of Director. We must depend all the time for appointment from the Board of Directors. We feel that the audit work has now developed and in this perspective we like to carry on our profession to the best interest of the country. Sir, the amendment has now raised this issue before the public and we are very much happy to find that this object of curbing the monopoly business is going to be attempted.

SHRI HIMMAT SINH: What do you think that the audit can be done in the real national interest?

SHRI ARUN KUMAR MUKHERJEE: Sir, there are many ways, particularly there are several countries where auditing is being conducted through Government. Incidentally, in Soviet Russia, so far as I have been able to follow, the system of audit is not merely taken as a simple finding of defects in the accounting system. but the results of the auditors' report are taken to the highest level to find what improvement can be done. But in the instant case, in the present system of audit that is followed in this country, the auditor's report, even if the auditor has reported well, is forgotten readily and nobody cares to remember it. Secondly, as I have already submitted, that being entirely dependent about the reappointment on the decision of the board of directors what else can an auditor do than satisfying the board of directors?

SHRI HARSH DEO MALAVIYA: I would seek a clarification from you on one point. People who have opened the system of auditing the firms and the spokesmen of the Merchants' Chamber who have come before us say that if you once appoint an auditor, he should be there for three years and if you change him and bring another auditor then the second man will take a lot of time to understand things and the whole thing will be upset. Their argument is that changing auditors for one, two or three years would lead to inefficiency.

SHRI ARUN KUMAR MUKHERJEE: I do not find any substance in that argument. Under the present system an auditor is appointed for one year. There is no guarantee that the auditor for the next year will be the same person. It so happens and the practice is such that year after year the same auditor has been and is being appointed. In this connection I may mention that there is stock exchange guide book published every year and most of the quoted companies are mentioned there and a summary of their capital as well as their auditors are also named there. If we refer to that book we can easily find out who are the auditors of the different companies for the last thirty years.

MR. CHAIRMAN: You have already said that they have to please their masters.

SHRI D. D. PURI: I would like the witness to distinguish very briefly between the relative sphere and scope of cost audit and financial audit. What is the sphere of cost audit and what is the sphere of financial audit?

SHRI ARUN KUMAR MUKERJEE: In my mind the distinction has never been very clear. I am practising for twenty years and within this period cost audit has been provided for in the Companies Act. Personally I don't think that cost audit serves any purpose. After all, we are required under the Companies Act to certify a fair view of the company's balance sheet. That includes everything—all the aspects.

MR. CHAIRMAN: Including the price structure?

SHRI ARUN KUMAR MUKHERJEE: Including everything. Price structure is reflected in the sales. In my mind there is no distinction between the cost audit and the financial audit. I welcomed one move when the Cost Institute and the Chartered Institute were going to be amalgamated by our Mr. Kapadia but the move unfortunately failed. If it takes place again I will be very happy. If I may digress a little, I find that in the cost structure itself we are placing so much importance on overhead cost that the production itself is being neglected.

SHRI D. D. PURI: Sir, it has been stated that as long as a voucher is made available, there is no scope of the financial auditor to go beyond that at all. What is your reaction to that?

SHRI ARUN KUMAR MUKHERJEE: That is not correct. The voucher is after all a legal document; it is not merely a written piece of paper, it cannot serve a fair and honest auditor and he will certainly reject it if necessary. Suppose the management have purchased 10 tons of coal at 10 thousand rupees and only a voucher is produced to that effect, that would hardly be a correct vouching.

SHRI D. D. PURI: Regarding the independence of audit, if the removal of an existing auditor was not possible without the sanction of government, if instead of appointing an auditor for one year only he is appointed permanently and if for his removal the sanction of government would be necessary, would that lead to the independence of Audit?

SHRI ARUN KUMAR MUKHERJEE: That will practically amount to nationalisation of audit.

SHRI D. D. PURI: The question is whether that would conduce to good audit.

SHRI ARUN KUMAR MUKHERJEE: That will ensure good audit.

SHRI S. G. SARDESAI: I am afraid that in your reply to Mr. Puri you have raised a hornests' nest as far as I have been able to understand you. In your written memorandum you have said that auditing should become a national service because the existing audit does not serve the real purpose of audit which it ought to serve, namely, the real assessment of the cost of production, true accounts, no falsification, curbing of monopolies and all these kinds of things which have been stated in the Bill. If you are of the opinion that the existing audit does not serve any real purpose, then how is it possible that the existing audit system if nationalised will serve the purpose of audit because you have said that the auditors are dependent on the board of directors and all kinds of abuses, malpractices and undesirable things exist?

MR. CHAIRMAN: No, he does not say that, he only advocates for the nationalisation of the present system and he is running down the cost accounting method.

DR. M. R. VYAS: Some fears have been expressed by witnesses that nationalisation would mean democratisation of profession. How would you suggest that such fears may not come up?

SHRI ARUN KUMAR MUKHERJEE: I would like to meet this point in this way. After all, we do not know of any system which can be away from democratic nationalisation. If it is coming, it will mean that the entire country becomes a bureaucracy. But one very important point will be that such a bureaucracy will be subject to the control of the Parliament, i.e., the people's representatives.

MR. CHAIRMAN: Thank you, very much.

[The Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Tuesday, the 2nd January, 1973 from 10.00 to 13.30 hours in Council Chamber, Assembly House, Calcutta.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri H. K. L. Bhagat
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri C. Chittibabu
7. Shri G. C. Dixit
8. Shrimati V. Jeyalakshmi
9. Shri Baburao Jangluji Kale
10. Shri Popatlal M. Joshi
11. Shri Ramachandran Kadannappalli
12. Shri Jagannath Mishra
13. Shri Muhammed Sheriff
14. Shri Priya Ranjan Das Munsi
15. Shri D. K. Panda
16. Shri Narsingh Narain Pandey
17. Shri S. B. P. Pattabhi Rama Rao
18. Shri Jagannath Rao
19. Shri R. R. Sharma
20. Shri P. Ranganath Shenoy

Rajya Sabha

21. Shri Salil Kumar Ganguli
22. Shri Harsh Deo Malaviya
23. Shri S. S. Mariswamy
24. Shri Jagdish Prasad Mathur
25. Shri M. K. Mohta
26. Shrimati Saraswati Pradhan
27. Shri D. D. Puri

28. Shri S. G. Sardesai
29. Shri Himmat Sinh
30. Shri Mahavir Tyagi
31. Dr. M. R. Vyas
32. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

WITNESSES EXAMINED

I. *Bengal National Chamber of Commerce and Industry, Calcutta.*

Spokesmen:

1. Shri T. P. Chakravarti
2. Shri G. Saha
3. Shri Milan Kumar Mookerjee
4. Shri M. C. Poddar
5. Shri R. M. Mitra
6. Dr. B. N. Ghose

II. *Institute of Companies Secretaries of India, New Delhi.*

Spokesmen:

1. Shri R. Krishnan
2. Shri L. R. Puri
3. Shri T. V. Ramachandran
4. Shri P. A. S. Rao
5. Shri K. V. Suryanarayanan
6. Shri T. P. Subbaraman

III. Shri S. S. Kothari, *Ex-M.P.*

I. Bengal National Chamber of Commerce and Industry, Calcutta.

Spokesmen:

1. Shri T. P. Chakravarti
2. Shri G. Saha
3. Shri Milan Kumar Mookerjee
4. Shri M. C. Poddar
5. Shri R. M. Mitra
6. Dr. B. N. Ghose

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Chakravarti and other friends of the Bengal National Chamber of Commerce and Industry, I on my behalf and on behalf of the Committee welcome you here. Before you proceed with the evidence I would like to draw your attention to the directions that you may kindly note that the evidence that you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

I would now request you to state your case in brief and, then, the honourable members of the Committee would have a right to ask you questions. I think you would reply to the questions put by the honourable members. With these remarks I would request you to begin.

SHRI T. P. CHAKRAVARTI: We have already submitted a memorandum, Sir. I think it is with you. Now, we will raise some salient points. I would request Mr. Saha, our Vice-President, to speak.

SHRI G. SAHA: Mr. Chairman and honourable members, Bengal National Chamber of Commerce is one of the oldest Chambers in India. It is practically 85 years old. This Chamber represents the small medium sized industries and trades. This Chamber, as you will find in our letter head—'Buy Swadesi'—started functioning from the time of the non-co-operation movement—when independence movement started in India. This Chamber is determined to stop any malpractice or any irregularity of any sort. We never encourage our members to indulge in malpractices or irregularities. The members of our Chamber are engaged in business, trade and commerce and, therefore, we want them to be free from all these things. With these few words, as our President already stated, we have already submitted our memorandum giving our views on the various provisions of the Bill, we want to highlight a few points for your kind consideration.

In clause 2, we have put our observations, but we want to draw your kind attention to the word 'control' which has not been defined, nor has it been explained. Unless and until this explanation of the word 'control' is properly given or defined, it will create lot of difficulties.

MR. CHAIRMAN: What is your suggestion?

SHRI G. SAHA: We do not understand the mind of the Government as to what actually they want.

MR. CHAIRMAN: That is all right.

SHRI G. SAHA: In clause 4, certain powers of the courts are proposed to be taken away by the Government regarding alteration of the provisions of Memorandum with regard to objects of the company, shifting of the registered office and calling company meetings, etc. Firstly, if it is the intention of the Government that the different High Courts are overworked

and are unable to clear pending cases and also the new cases, we welcome this proposition with one proviso that the right appeal to the High Courts should be there.

MR. CHAIRMAN: Do you mean that right of appeal should be provided in the Act?

SHRI G. SAHA: Yes, Sir.

Clause 5 is regarding deemed public companies. The present provision wants to make further amendment of the provision of section 43A. If a private limited company has a capital of Rs. 25 lakh, and if the turn over of a company is Rs. 50 lakh, that private limited company will be deemed to be a public limited company. Our objection is that the criteria of Rs. 25 lakh capital and Rs. 50 lakh turn over are not very much in view of the inflation in the country. There may be Rs. 50 lakh turn over in a particular year, but in subsequent years the turn over may be Rs. 15 lakhs or even less. In that even, how is it possible to treat that company as a public limited company? So, Sir, this criterion put here as 25 lakhs paid up capital and 50 lakhs turn-over is not appropriate if the intention of the Government is to control the big houses who want to do this by making a private Ltd. Co. with a view to avoid the provisions of the Companies Act and even then we submit that in the MRIP Act this definition may be changed. There is another point given here that if a private Ltd. Co. holds 10 per cent share capital of a public Ltd. Co. that private Ltd. Co. will be deemed as a public limited Co. If you permit me I am giving an illustration. Suppose a private limited Co. with one lakh paid up capital holds 10 per cent shares of another company whose capital is only 3 lakhs Then in view of this holding of 10 per cent shares i.e., 30 thousands rupees worth of shares by a private Ltd. Co., the private Ltd. Co., will be deemed to be a public Ltd. company. We submit that this type of deeming of private Ltd. company to a public limited company will be very much difficult for the private limited company. We, therefore, suggest that this provision of 10 per cent holding of share by a private limited company in the shares of a public limited company should be deleted. Apart from this, there are roughly 20 thousand private limited companies and if this criterion of 25 lakhs paid up capital and 50 thousand turn-over is there then will it be possible for the administration also to administer this? According to us it will not be possible to administer this. Therefore, before something is done on this it should be seriously viewed from the administration point of view whether this can be administered apart from other impossibilities.

Then we refer to clause 6 regarding public deposits. Before we proceed in this particular case we like to draw the attention of the honourable members that regarding the public deposits the Reserve Bank of India are now already having restrictions regarding acceptance of deposits by non-financial non-banking companies. Then, if the Government have already given the power regarding the credit structure of the country to the Reserve Bank of India will it be desirable to have a dual power given to another department, company law department when the power has already been given to the Reserve Bank of India and who are already exercising that power? If this dual power is given then that will create complications. When the Reserve Bank of India are in charge of credit structure it will not be perhaps desirable that dual authority should also be given to the Company Law Ministry. Apart from this acceptance of deposits by non-banking companies are regulated by the Reserve Bank of India and so there is no necessity for giving this power to Company Law Authority. Then, Sir, assuming that you do not accept our proposition our further point is that this should not be applicable in the case of private limited company and secondly this should not be made applicable in the case of priority industries. By priority industries we mean the industries on the 6th schedule of the Income Tax Act. We think these priority industries should

be allowed to accept deposits. Sometimes it so happens that priority industries find that their requirement is 10 crore but on account of inflation it has gone up to 20 crore. So, to have the normal facilities from the banking institutions will take time they may accept deposit from the public and in view of this they should be allowed to raise fund by public deposits. And secondly, Sir, there should not be any restriction in the case of any company whether public and specially private companies having deposits received from the shareholders or from the Directors. Specially in the case of private limited companies the shareholders give money in the shape of share capital but there is no harm to have the money in the shape of loan. So, this restriction should be deleted. Next we want to draw your attention to Clause 16 regarding the dividend. Now regarding the proposed restrictions or proposed amendments going to be made under clause 16 the first restriction is that the amount of the dividend as and when declared should be kept in a separate bank account within seven days from the date of declaration of the dividend. Sir, the purpose of this restriction is not very clear to us. But the main objection is perhaps that some of the companies do not give the dividends in due time and, therefore, the Company Law authorities want that this money should be kept in a separate bank account within seven days. Our point is, Sir, that there is already a provision that when a dividend is declared the dividend warrant must be posted or dividend within 42 days from the date of declaration of the dividend. And, when dividend warrants are required to be posted within 42 days it means that dividends must be paid within the stipulated period. Where there are any statistics from the Department that there are irregularities on this count that dividends warrants were not issued by the Company within the statutory period of 42 days then action could be taken according to the existing provisions. But, Sir, if there are no specific irregularities on this count and the dividends warrants were issued within 42 days then in that event this restriction is unnecessary. Secondly, Sir, our submission is that if the Department comes forward and says that there are irregularities then it must be ensured whether any step has been taken by the Department to prosecute with the offender or to impose any penalty on the offender. Therefore, two things, according to us, should be taken into consideration before giving effect to this clause. One is whether there are large scale irregularities i.e. whether dividend warrants were posted within 42 days from the date of declaration of the dividend and, secondly, whether the Department came forward with the irregularities, and if so, whether the Department had taken any step by virtue of the existing provision against the offending companies. According to us there are very few of such incidents which should not be the index for having this type of restriction to deposit the money in a separate bank account within seven days from the date of declaration of dividend. This apart, if the money is deposited in a separate bank account then there will be one account in the credit balance and another account in the debit balance and the Company will have to pay high amount of interest. Unless there is the pooling system as in U.K.—in India there is no such system—this system of depositing the money within seven days in a separate banking account will have a great hardship on the companies. Therefore, Sir, before this clause is considered please look into all these things.

In this connection, Sir, the other points to be considered by the hon. Members is that in certain cases I may have a very good profit, and, therefore, I would declare dividend. But immediately if you ask me to deposit the money within seven days I may not have the liquid money because there may be huge stocks. Besides, I may have outstanding amount due from the parties which

I expect to be realised within 15 days or one month. So, I may not have sufficient balance to deposit the money within seven days in a separate bank account. Therefore, where I have no money on account of huge stocks or huge outstandings which I expect to reeeive within the 30 days, in that event this type of restriction will again create great hardship on the Companies.

Then there is another restriction if there are any unpaid amounts for a period of three years then this unpaid amount must be transferred to the Central Government or the Reserve Bank of India. We do not have any statistics with us but before you consider this you should take into consideration whether there are any large scale irregularities with the company which refuses to pay the money to the shareholders within a period of three years. If the statistics show that a particular company or companies are not regularly paying the shareholders even after three years then there is justification for having this type of restriction. But so far as our experience is concerned there are no such large scale irregularities. Even there are many cases where the shareholders themselves come after 5|6 years and company makes payment to them.

Sir, the third restriction is that the Government is going to make rules on the payment of dividend out of past profits kept in the reserves. Sir, as you know, there are many companies in this country who pay a standard dividend of 10|12|15 per cent so that the shareholders can get regular returns on the capital which they have invested in the Companies. There are many widows, many pensioners, and many retired people who solely depend on this income to maintain their livelihood. If there is a restriction that the dividend cannot be paid out of the reserves then there will be great hardship. There are certain foreign companies who like to take away whatever reserves they have got. We fully appreciate this and we fully agree with the government on this particular point that if these foreign companies drain out money from the country we will be put into difficulties. So, is there any justification for the Government now to say that subject to the permission or subject to the rules made by the Government no dividend can be paid out of the reserves? There are many good companies, they are making crores of rupees but they do not increase their dividend. They think in the line that when there will be insufficient profit they can fall back upon the past profit in the reserves to pay the dividend. If this is so is there any justification for imposing a restriction on payment of dividend out of reserves? We agree with the Government that there may be certain restriction regarding foreign companies when they declare dividends out of the reserves and not in the case of Indian Companies. So, our submission is that this restriction which is going to be imposed by this proposed amendment should not be taken into effect. There may be certain restrictions regarding the foreign companies when the dividends are going to be taken even out of the reserve fund.

We now draw the attention of the honourable members to clauses 20 and 21, *i.e.* regarding the auditors. So far as we can understand from the proposed amendment, Government wants to decentralise or deconcentrate the audit profession and the removal of alleged relationship existing between the auditors and the group of companies. The point of view of the Chambers is that by this rotation, the auditors if after three years is reappointed, then they require Government permission etc., the disease of concentration between the auditors and the group of companies cannot be cured. We do not understand, Sir, what is the harm in the relationship between the auditors and the group of companies because without certain sort of relationship you cannot allow the auditor to render a good professional service. Even there is a good relationship between the

auditor and Government public sector companies. The department can tell you whether there is any malpractice or irregularity due to such relationship between the public sector companies and the auditor. If there are cases where there are malpractices on account of this relationship, then definitely the company law board can refer the matter to the Chartered Institute for taking disciplinary action. I may cite that this relationship also exists between auditors and public sector undertakings and we find no harmful results arising from that. Regarding concentration, if you want to do fair justice to the medium-sized firm or the small firm for the better distribution of work, we have submitted in our memorandum, that you can put a ceiling like the Directors in the different companies by reducing the number. A particular ceiling can be introduced that a particular Chartered Accountant must not have got audit work for more than 10 to 15 companies. We have suggested that the concentration cannot be removed by the rotation system; on the contrary, rotation will do a great harm to the new or the junior Chartered Accountants. If this is done, it will have a serious repercussion and had effect on the junior and medium sized chartered accountants' firms. Therefore, my submission is that, the purpose for which it would be introduced i.e. three years confirmaton by the Government is necessary, it will do more harm to the junior and medium-sized firm. Regarding the other point, if the Central Government or the nationalised Insurance Companies or the banking system have got 25 per cent on the share capital, we have no comments; on the contrary, we do not mind, instead of 25 per cent share capital if you take also a long term capital given by the financial institutions like I.F.C., L.I.C., Unit Trust, etc.

With regard to clause 30, we feel that it must give power to the Government to prevent oppression and mismanagement and therefore they want to appoint any number of directors. In our practical experience we have seen that financial or other institutions have also given directors and the directors given by these financial institutions etc., with due respect to them, are not effective. They do not give any advice regarding the policy matters of different companies. We do not know what experience Government have got in this connection. They also, from time to time, nominate directors to the different companies, but what type of effective measures they have taken in these different companies, we have no idea. Whatever idea we have got, in the case of directors nominated by the financial institutions etc., is very poor. If this procedure of appointing the directors by the Government continues, we feel, this nomination will be more hamful than to make any good. So, before you put this clause as an Act kindly try to find out whether the Government can have effective persons who will be in a position to do something in the Board of Directors of different companies. In conclusion, the department, on the basis of the existing provision,—you should also consider whether the department can execute these different provisions—hundreds and thousands of returns and petitions are fined every year. Now, you can find out the statistics of this from the department, if it is maintained there. You can also find out what steps or how many of these cases have been scrutinised and what are the results of their scrutiny and how quickly they disposed of these petitions and applications, and if it is so, then upto how much period? If the department feels that more powers are to be given to the competent officers or other competent persons will they be able to administer this? So, this thing may also kindly be taken into consideration. We have a pamphlet, issued by the institute of Chartered Accountants of India in which it is mentioned that they have scrutinised 2000 companies' report given by the auditors out of which 20 per cent were qualified. Will you kindly find out that out of 20 per cent in how many cases they have taken action?

SHRI M. C. PODDAR: Sir, I would like to draw your kind attention to clause 18. This is in connection with the inspection of books of accounts etc. of the companies. Now, our Chamber feels, before sanctioning the powers, there should be some reason to believe that the inspection of the books of the companies i.e. their records, are at all necessary. Subsequently it should also be supported by a senior officer of the department to justify the facts that the inspectors of the department can ask for the books for inspection. Now, Sir, we have got experience also that so far as the inspection of the books of accounts is concerned we find that it is always a routine matteer for asking the books of accounts and keeping them in a place like cold storage for years together without taking any effective steps whatsoever and in such matters when the permission of a senior officer is necessary it should be incorporated in the section that within some reasonable time all the books must be inspected and the same should be returned without any delay.

SHRI R. M. MITRA: Sir, I now deal with clause 10. It is about clause 108A(1). I think, the paid up equity value should be substituted by the subscribers' capital otherwise it will be confusing and meaningless. If I may read clause 108A (i) we see, 'Except with the previous approval of Central Government, no individual, group constituent of a group, firm, body corporate, or bodies corporate under the same management, shall jointly or severally acquire or agree to acquire, whether in his or its own name or in the name of any person, any equity shares in a public company, the total paid-up capital of which is not less than rupees twentyfive lakhs, or a private company which is a subsidiary of such a public company, if the total nominal value of the equity share intended to be so acquired exceeds, or would, together with the total nominal value of any equity share already held in the company by such individual, firm, group, constituent of a group, body corporate, or bodies corporate under the same management, exceed twentyfive per cent of the paid up equity share capital of such company".

I think, the relationship between the nominal value and the subscribers' paid up value will be the same.

As regards clause 108C, it seems to be duplicating provision of the Foreign Exchange Regulation Act. Though the provisions of these two Acts are different it will create great conflicts between the two provisions of these two Acts.

As regards clause 108B, it confers power on the Government regarding the transfer of shares. In that case the Government does not take the responsibility of refunding the money to the transferee. I think, the Government should take responsibility for recovering this money.

DR. B. N. GHOSH: Sir, when we take loan from the banks or other financial institutions, a question remains there that there should be guarantors or the Managing Director as guarantor. When any loan is given it is given 50 per cent on the capital invested. Even then we require guarantors.

SHRI M. K. MOHTA: In pages 21 and 22 of your memorandum you have stated that the Government control over appointment or reappointment will curtail the existing right of the shareholders under section 224 to appoint auditors of their choice etc. etc. but at the same time you have stated that wherever the Government finance to a company exceeds 25 per cent. of the share capital also, Government must have a power to appoint auditor. Is this not contradictory?

SHRI G. SHAH: This has been stated on the assumption that the government is not agreeing to the shareholders' sole right to appoint auditors.

SHRI M. K. MOHTA: In other words you would not like the government to appoint auditors?

SHRI G. SAHA: Yes:

SHRI M. K. MOHTA: Then on page 23 of their memorandum they have stated that the optimum size of an audit firm may be determined beyond which an audit firm should not be allowed to expand. Will that mean a ceiling on a person— that a person would not be allowed to do more than a particular quantity of work? Would you say that is fair or reasonable to fix a ceiling on auditors when there is no ceiling on the work of doctors, businessmen, politicians and others?

SHRI G. SAHA: Sir, this right to appoint auditors is coming from the provisions of the Companies Act. The right to practise as an engineer or doctor is not coming from any statute. Therefore, as the right is coming from the particular provisions of the Companies Act, the Companies Act can make a provision regarding the restrictions on the work of an auditor. We know there are so many chartered accounts in practice and there is no fair distribution of the work among the practising chartered accountants and therefore we have suggested there should be a ceiling. As there is a ceiling in the case of individuals to become directors of the company, so there should be ceiling on the auditors' work. This is quite constitutional.

SHRI M. K. MOHTA: What I wanted to ask him was not about the legal implication or constitutional implication but simply the principle of the thing. The principle behind this would be that a person should be allowed to work so much and no more. So this principle would be applied in the case of a particular group of persons, a particular profession but would not apply to any other profession for want of any other law in force in the country. Would that be fair?

SHRI G. SAHA: The chartered accounts in practice have not only to do auditing of the company accounts but they have also got other professional services in taxation which they render to the companies. That is why we suggest there should be a ceiling on their work of auditing.

SHRI M. K. MOHTA: Sir, it has been alleged in certain quarters that there is some kind of unholy alliance between some auditors and some company management and therefore it is necessary for the government to impose so many restrictions including rotation and so on and so forth. May I ask the witnesses whether this kind of ceiling on work will abolish any of the malpractices which may be prevalent at present and what in their opinion is the extent of such malpractice?

SHRI G. SAHA: Sir, the Department of company law can give statistics as to whether on account of such relation between the auditors and the group of companies there are any malpractices. If there were any malpractices, certainly the department of company law would have brought some cases before the Institute of Chartered Accountants of India. We submit that there is no such malpractice and no such case has been brought before the Institute in the disciplinary committee.

SHRI M. K. MOHTA: Sir, on the question of receiving of deposits by limited companies, it has been suggested that a situaton may arise particularly in the case of small companies, whether public or private, where unforeseen liabilities have to be met at a given moment and the companies have no funds of their own to fall back on to meet such a liability and the only alternative before the companies to outright bankruptcy would be to accept loans or deposits. In view of this, what should be the provision in the Company law to allow such a company to remain in business and at the same time remove any malpractices which the government has in mind regarding the taking of the much deposits?

SHRI G. SAHA: We have already submitted in our memorandum that financial mismanagement of any company and the necessary steps to correct such financial mismanagement is always welcome. Now, the

particular illustration given by the honourable member that to save a company from bankruptsy they should be allowed to take deposits or loans, we are not a party to such suggestion that if the financial management is so bad that the company is going to be put into bankruptcy unless they take deposits, it is better that the company should be put into liquidation.

SHRI M. K. MOHTA: If I have understood the witness correctly, it would mean that if there be some unforeseen liability—say, the stocks are not moving or the purchases have not come—and the company is not able to find any money of its own, then it should immediately go into bankruptcy.

SHRI G. SAHA: If there are genuine difficulties, say, that the stocks are not moving, there is a railway strike or a strike in the shipping business, the companies can always go to the bank.

SHRI M. K. MOHTA: You mean, you go to the bank and by mere asking, you got the money?

SHRI G. SAHA: Not that. After all, the banks are there to finance companies. During the Indo-Pak war, the stocks of many of the companies did not move and whenever they approached the banks, they got the money.

SHRI M. K. MOHTA: And if the bank should not give the money, the directors would be faced with the alternative of either putting the company into liquidation or going to jail for taking deposits over the limits as provided in the Act?

MR. CHAIRMAN: No arguments, please put the question.

SHRI M. K. MOHTA: Regarding the right of the Government to appoint directors on the board of a company without any limit as to the number of such directors, what is your opinion? Would it not amount to nationalisation by the backdoor and also taking over the board without any responsibility?

SHRI G. SAHA: We do not apprehend that the Govt. by making this provision will nationalise the companies by the back door. As far as we can understand, the intention of the Govt. is to stop certain types of irregularities in the case of certain mismanaged companies. This is our correct assumption. We do not think that Govt's intention is to nationalise such companies by the back door.

SHRI M. K. MOHTA: Whether you are aware of any instance where Govt. directors have been inaffective because they are in a minority.

SHRI G. SAHA: It is true there are instances they could not act effectively because they are in a minority. But it is also extremely difficult nowdays to bet good and effective person to be put by the Govt. on the board.

SHRI M. K. MOHTA: In the preamble the Chamber has said that they are interested in the problems of the State. What effect this Bill is going to have on the industrialisation as well as on the state of economy of the state of West Bengal.

SHRI G. SAHA: This is not for a particular State. When you consider an Act it should affect all over India.

SHRI HIMMAT SINH: In your memorandum you have very rightly pointed out that you are in one with the object of the Bill but then you go on contradicting yourself completely when you make your observation in clause 4, page 5. You seem to object to this. You regard the steps as either judicial or quasi-judicial. This is a matter to be decided on the merits of administrative requirements.

MR. CHAIRMAN: There is no necessity of any reply.

SHRI G. SAHA: The only exception is that there should be a right of appeal.

SHRI POPATLAL M. JOSHI: In your opinion, more powers are being vested with the Govt. and that will be detrimental to the growth of companies' advancement.

SHRI G. SAHA: As far as administration of the companies and other things are concerned, this should be

subject to some sort of exercise of powers by Govt. but if you find any malpractice it is always desirable that it should be controlled by Govt.

SHRI POPATLAL M. JOSHI: You appreciate the present amendment and again you condemn exercise of powers by Govt. which you think will jeopardise the administration.

SHRI G. SAHA: According to general principle we like to submit that as far as administration of different companies are concerned, this should be left to the shareholders through the board of directors but if there are cases of irregularities, in such an event some power should be kept by the Government against such companies.

SHRI POPATLAL M. JOSHI: In cl. 39 powers have been taken over by Govt. I think there are certain misgivings. One misgiving is that the lethargic administration would not be efficiently run. What's your opinion in regard to that?

SHRI G. SAHA: I do not like to be involved in this controversy—between the court and the executive. I like to be excused.

SHRI JAGADISH PRASAD MATHUR: In your memorandum you have stated that the perforamnce of the present auditors is very poor. If the majority of the Directors are appointed by Government, do you still think that the performance will not be improved?

SHRI G. SAHA: I have already stated that our reading or presumption is that it is not the intention of the Government to nationalise such companies by the backdoor by appointing Directors by virtue of this provision. These Directors are put in the Board with a view to guide the company properly and to see that irregularities and malpractices are stopped.

SHRI JAGADISH PRASAD MATHUR: Will enactment of this Bill hamper investment or growth of industry? What is your view?

SHRI G. SAHA: To a certain extent, yes, but at the same time we would submit that some of the provisions are good for administration of the joint stock companies.

SHRI S. S. MARISWAMY: There is a feeling in some section in the country that the overall picture or effect of the Bill, if passed, will not be very, very helpful to the industry as such and this will also be harming Government too much. What is your view?

SHRI G. SAHA: I want to answer this by a counter question. Credit policy and finance in the country are controlled by the Government directly or indirectly. The business community is more concerned with the finance and credit policy of the Government. This provision is not coming as a priority over the finance. Therefore, I think they should put more importance on the credit policy and finance.

SHRI R. R. SHARMA: In page 14 of your memorandum, regarding section 108B, you have said that the defective definition of the expression "same management" suffers from same defect. Can you give the correct definition of the expression "same management"? Have yo uany alternative definition for 'same management'?

SHRI G. SAHA: Our observation in this respect are given in pp. 3 and 4. We have not given any alternative suggestion.

SHRI M. K. MOHTA: Are you opposed to the clause?

SHRI G. SAHA: We have not given any alternative definition.

MR. CHAIRMAN: They have come out with certain suggestions which they want to be incorporated in the Bill. That is their view.

SHRI R. R. SHARMA: On page 6 of your memorandum, regarding secions 17, 18 and 19, you have stated that Government are saddled with a heavy load and they are not in a position to handle always judiciously and promptly matters that are to be referred to them. Are you of the opinion that if the Central Government are given powers under sections 17, 18 and 19 of the Act there will be abuses of powers and justice will not be administered

and that it will be delayed and denied?

MR. CHAIRMAN: They have not alleged that.

SHRI R. R. SHARMA: My question is whether they have any such apprehension.

SHRI G. SAHA: Mr. Chairman, Sir, we have submitted that in the past, since the inception of the Companies Act, these powers were administered by the courts. If these powers are taken over by the administration we have got basic objection. Secondly, assuming that these powers are taken over by the executive, we have stated that the right to appeal should be there. But we have no apprehension that there will be abuse. There may be delay on account of the fact that the administrative structure is not sufficient to cope with all these things more expeditiously, but we never suggest that there will be injustice.

SHRI D. K. PANDA: On pages 20 and 21 you have stated that the inspecting officers are given more powers, powers which are given to the civil courts and they will make comprehensive investigation. Thus you are going to be affected. But from the fact that you have stated that the company may not be entitled to have a copy of the report of the inspecting officers, perhaps that is the only grievance that you are placing. So, if the copy is supplied, there will be no difficulty because except that there is no other allegation or difficulty. Am I correct?

SHRI M. C. PODDAR: Sir, we have supplemented our written statement by saying that this assumption of power will be very much arbitrary if it is not okayed or if prior sanction is not taken from senior officers of the administration. Only the wishes of the Inspector should not be allowed to work in the matter of having books of accounts of the companies which are gone through elaborate process, and secondly, it is our experience also that once the department get possession of certain books of accounts they do not look into them at all and usually keep them in cold storage for years together. In such matters there should be some reasonable time limit which should be incorporated in the Bill.

SHRI D. K. PANDA: How it becomes arbitrary when you supply copies of those records?

SHRI G. SAHA: Our submission is that before investigation is started some senior responsible officer should give consent.

SHRI D. K. PANDA: Then again, at page 18 you have said, "With the proposed restriction, however, it may not be possible for the company to pay dividend to their shareholders at a more or less constant rate and regulate ploughing back of profits for development" etc. In most of the companies controlled by the monopolies—they declare the mills sick and take out some of the parts, and the main charge against them is that they are ploughing back of the profits and even depreciation charges are deducted. So, can you give some example that really in most of the cases ploughing back of profits is done?

SHRI G. SAHA: Sir, this is a question of political nature and for us it is difficult to answer. What we wanted to submit is that normally good companies where profit is good or normal or even bad they want to maintain a steady dividend....so that shareholders who may include widows, pensioners, retired people they get a steady amount of return of their capital. This is only our points. Therefore, declaration of dividend out of the reserve—there should not be any restriction.

SHRI D. K. PANDA: As our friend has already pointed out that they are at one with the object but actually in clause-wise analysis they have contradicted in toto. Therefore, keeping in view that you are at one with the object, can you give some proposal after analysing the facts that there is really concentration of economic power or mis-use or abuse of power by big companies and can you give some concrete example of how such types of specific cases can be dealt

with and whether some further provisions can be made?

SHRI G. SAHA: Mr. Chairman, according to us, we submit there are no contradictions, and about the particular question, I am afraid, we want to be excused.....

MR. CHAIRMAN: It is again a political question and it is difficult for them to answer.

SHRI D. K. PANDA: If you agree with the objects which are based on certain facts and developments—and you are at one that such things are taking place—at least how those specific causes can be dealt with and whether any provision in the bill is necessary?

SHRI G. SAHA: Mr. Chairman, we like to be excused. We are representatives of the Chambers and I think Company Law men know better than us.

SHRI HARSHDEO MALAVIYA: You have said in your memorandum "There is existing a gloomy industrial climate". Will you explain what this gloom industrial climate?

SHRI G. SAHA: These are general comments and so if you pick up one or two words then that will not give the correct views.

SHRI HARSHDEO MALAVIYA: May I submit to you that the gloomy industrial climate lies in the fact that while the capital in the private corporate sector in 1968-69 was Rs. 96.4 crore, it went down in 1970-71 to Rs. 86.7 crores and in 1971-72 to Rs. 70.7 crores, that is to say, they are making profits but they are going on strike—it is a very gloomy situation that big houses are making profit but their investments are going down, they cannot be relied on to do proper investment, and so Govt. has to intervene. Gloominess lies there that big monopolies are on strike and want to make profit.

SHRI G. SAHA: Sir, the Mmbers of my Chamber come from small and medium sized industries and trades and it is not possible for us to answer this question.

SHRI JAGANNATH RAO: Mr. Chairman, Sir, the witness has said that the expression 'control' has not been defined in the Bill in clause 2. Could the witness define the word 'control'?

SHRI G. SAHA: Mr. Chairman, Sir, we do not know what is the intention of the Government.

SHRI JAGANNATH RAO: What is your intention? Have you got anything to add to the definition of the word 'control'?

SHRI G. SAHA: What we want is that the word 'control' by itself does not mean anything. Therefore, we wanted that the word 'control' should be defined properly.

MR. CHAIRMAN: I asked the same question to the witness but the witness was unable to reply.

SHRI JAGANNATH RAO: In your memorandum you have said that the definition of the word 'group' in the Bill is vague. Could you suggest any definition to make it more definite, precise so that we can understand what group is? Could you improve upon the definition?

SHRI G. SAHA: At the moment we would not be able to give you any specific answer, Sir.

SHRI JAGANNATH RAO: You have said that a right of appeal should be given to the aggrieved party. Now, if instead of right of appeal at the High Court there is a Tribunal, quasi-judicial in character to look into this company Law affairs and the jurisdiction of the Department is taken away and given to this Board with no right of appeal then would it satisfy you?

SHRI G. SAHA: If the Tribunal is headed by a person with the rank of a High Court Judge then we have no objection.

SHRI JAGANNATH RAO: You have objection on deemed public companies. Do you press that the definition should go?

SHRI G. SAHA: We have submitted in the memorandum that difficulties will arise and we have also highlighted the difficulties.

SHRI JAGANNATH RAO: Do you think that deemed public companies should not be there?

SHRI G. SAHA: We have cited illustrations that Public Limited Companies with 25 lakhs and 50 lakhs will become deemed public company. This cannot be worked out, Sir.

SHRI JAGANNATH RAO: The Government can appoint as many Directors as they like. Do you justify the right of the government to appoint as many Directors as it wants irrespective of the interest of the shareholders?

SHRI G. SAHA: As I have submitted that perhaps it is not the intention of the Government to have the majority of the Directors or to take over a Company or to nationalise it. The Government, if my presumption is correct, wants to appoint Directors to stop the malpractices and irregularities done by the Companies so that the Companies can be run properly and on commercial line.

SHRI JAGANNATH RAO: You said in your memorandum that the right of appointment of Directors must be with the shareholders.

SHRI G. SAHA: Normally it is the right of the shareholders to appoint the Directors but in special circumstances there can be occasion when the Government may like that the minority shareholders may invite Government to intervene. We have submitted that we have no objection to it in certain circumstances.

SHRI JAGANNATH RAO: But there are no special circumstances in the Bill by which the Government can appoint as many Directors as it wants to.

SHRI G. SAHA: As a general rule we have no objection that it is the shareholders who should appoint the Directors and not the Government.

SHRI JAGANNATH RAO. As I understand, you want to limit the general setatement to this effect otherwise the right of the shareholders should not be interfered with

SHRI G. SAHA: Yes.

SHRI K. V. RAGHUNATHA REDDY: This amendment cannot be separated. This should be read with other clauses.

SHRI JAGANNATH RAO: That interpretation is not open.

MR. CHAIRMAN: This point is to be discussed when we discuss clause by clause.

SHRI TRIDIB CHAUDHURI: I understand that the Bengal National Chambers of Commerce mostly represents medium houses by Bengali business men. So cannot a different view be taken of the Bill that so far as the Bill is directed against taking over big monopoly houses it provides some kind of safeguard to smaller and medium houses?

SHRI G. SAHA: We welcome this proposition.

SHRI P. R. SHENOY: I am of the opinion that most of the Directors appoint by the present day management that is, the real management, are found not only ineffective but also they are inefficient. What is your opinion?

SHRI G. SAHA: We have seen in the last few years that financial houses appoint Directors on behalf of the financial institutions. They have not taken keen interest. So, the policy may be corrected according to correct line.

SHRI K. S. CHAVDA: The Chamber has stated in their memorandum that a proposed section 108C is discriminatory because it prohibits Indians, instead of foreigners for buying and transfer of shares. Now it is stated in the Clause 31 which concerned foreign companies, that if not less than 50 per cent of the paid up share capital of the foreign companies are held by the Indian citizens then such provisions of the Act shall apply to the foreign company. May I know whether this is a discriminatory provision? I would also like to know one thing more that there is no provision

according to the present companies Act to have a check on the activities of the foreign companies. Would you like to suggest anything more in order to have a more check in the operation of the activities of the foreign companies?

SHRI G. SAHA: The foreign companies having activities in India have to submit certain returns, annual accaccounts, etc. to the Companies' Law Board. Therefore, the Companies Law Board have got control over the activities of the foreign companies. There is also the Reserve Bank of India for the remittances by the foreign company which require also the approval of the Reserve Bank of India. In view of this we submit Sir, that the Reserve Bank of India and the Companies' Law Board both have got control over the foreign companies having activities in India.

SHRI H. K. L. BHAGAT: What is your opinion when the half of directors of the companies are appointed from amongst the workers if they are suitably qualified?

SHRI G. SAHA: We have got an experience that even today in some companies they take representatives from the employees. We do not subscribe to the views that 50 per cent of the total number of directors should be taken from the employees of the company.

SHRI H. K. L. BHAGAT: Do you accept this principle that there may some directors from amongst the workers of the company?

SHRI G. SAHA: In suitable cases the representative of the employees are taken in the Board.

MR. CHAIRMAN: The question is that whether your Chamber agrees to the proposal that there should be some compulsory provision that certain number of directors are to be taken from amongst the workers of the companies.

SHRI G. SAHA: We do not agree to this proposal.

SHRI H. K. L. BHAGAT: Would you kindly tell me whether there should be any ceiling on income or not. Give us your personal opinion if you can.

SHRI G. SAHA: Sir, we want to be excused because ceiling on income does not come under the provisions of the companies Act.

SHRI MAHAVIR TYAGI: I would like to draw your attention to the comments on clause 16 where you have said that the restrictions imposed on declaration of dividends out of the reserve funds may jeopardise the interests of the shareholders and the country as a whole. I could not follow as to whether the provision requires in transferring the whole amount of dividend within seven days would go against the interests of the shareholders. Would you kindly clarify this?

SHRI G. SAHA: We have already explained that if the dividend is transferred for various reasons then the company will be in a disadvantageous position. According to the existing provisions of the companies' Act, the company is required to pay dividend or to despatch the dividend smartant within 42 days from the declaration of dividend. There is no instance with the Company Law Board that this provision has been violated.

SHRI D. D. PURI: I would like to know whether the Chamber has got any objection to the limitation of the number of nominees to the Board of Companies. In case of an appointment of a director by the Government, whether any reason be recorded by the Government.

SHRI G. SAHA: The reasons should be recorded. We think this is implied.

SHRI D. D. PURI: It has been stated in your memorandum on page 26 relating to new amendment which virtually empowers the Government to appoint any number of directors without safeguard provided under the Industries (Regulation &

Development) Act. Is it their opinion that some procedure as has been laid down in the Industries (Regulation & Development) Act should be followed before this clause is utilised by the Government?

SHRI G. SAHA: We understood the Industries (Regulation & Development) Act have good reasons. So, here also, when the directors are appointed the reasons and other things should be complied with.

SHRI D. D. PURI: According to the experience of the Chamber, they are not satisfied with the quality of persons appointed to the Board. I would ask specifically whether they have any knowledge that the nominees of the Government have been over-ruled because of their minority position to the detriment of the interest of the Government or to the detriment of the public.

SHRI G. SAHA: We have no such instance.

SHRI D. D. PURI: Is it your suggestion that the Pooling System should be provided in the Act?

SHRI G. SAHA: We have objected to the companies amendment provision regarding the transfer of funds within seven days. We have said that when a company would have more than one accounts in the same branch of a bank, some in debits and some in credits, a separate Pooling Sheet may be maintained by the bank. This system is now prevailing in U.K. If it is introduced in India it can have a good effect.

SHRI D. D. PURI: In page 17 of your memorandum you have stated that the holding companies set up by the Government for running steel mills is the replica of the Managing Agency system.

SHRI G. SAHA: When the Managing Agency system was prevalent they used to control 10, 15 or 20 companies. From the newspaper, comments, if it was correct, we understood that the Government wanted to have the holding companies under their control.

SHRI C. CHITTIBABU: Do you know that the directors appointed by the Government may indulge more in the favouratism and nepotism in politics than in the affairs of the companies?

SHRI G. SAHA: I cannot say anything about this.

MR. CHAIRMAN: I thank you very much for the troubles you have taken to come over here and to give your valued evidence which, I think, will be much beneficial to the committee.

[The witnesses then withdrew]

II. Institute of Company Secretaries of India, New Delhi.

Spokesmen:

1. Shri R. Krishnan—*President*
2. Shri L. R. Puri—*Council Member*
3. Shri T. V. Ramchandran—*Council Member*
4. Shri P. A. S. Rao—*Council Member*
5. Shri K. V. Suryanarayanan—*Council Member*
6. Shri T. P. Subbaraman—*Secretary*

(The witnesses were called in and they took their seat)

MR. CHAIRMAN: Mr. Krishan and other members of the Institute of Company Secretaries, I on my behalf and on behalf of the Committee welcome you. Now, before you start I would like to draw your attention to a direction which states that the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the members of Parliament. With this remark, I would request you to make in brief the salient points that you wish to make. We have already got your memorandum.

SHRI R. KRISHNAN: Mr. Chairman, Sir, we in the Institute of Company Secretaries are grateful to the Committee for giving us this opportunity of placing our points before you. We have already submitted our memorandum on the 10th October and as the honourable members would have observed we have briefly dealt with two important clauses of the Companies (Amendment) Bill, 1972. These two clauses relate to clauses 2 and 29 of the Bill. We feel that we in the Institute of Company Secretaries are vitally concerned with these two clauses and we have therefore not touched in our memorandum the other provisions of the Bill which are the concerns of the Chambers of Commerce and Industry.

Now, the first point we wish to make is that we feel that under section 2(45) which has been proposed, a firm should be included in the definition of company secretaries. We submit before this committee that apart from an individual a firm of practising company secretaries should also be allowed to function as company secretaries. The reason for making this submission before the committee is that there are several provisions not only in the existing Companies Act but also the provisions contemplated in the Amendment Bill will affect many companies—companies which may be of a size of less than 25 lakhs paid up capital, of smaller companies, these companies would also require the services of trained and qualified company secretaries. These small companies cannot afford the services of a whole-time company secretary and therefore, if there is a firm which can be appointed on a retainer fee, their problems would be solved and it will also mean that the firm will be able to have a number of retainer appointments. Apart from that, as I will explain in my observations later, there are quite a number of company secretaries who are not properly employed in the sense that they are not functioning in the secretarial departments of companies. Therefore, these individuals will have the opportunity of forming into small firms and drawn into the profession for which they are qualified and have the requisite background. We presume that by deletion of the words "where the secretary is a body corporate" government's intention is that a firm or

company secretaries should be allowed to function as company secretaries. Again, referring to the notes in clauses dealing with this particular clause, it reads "This provision is consequential to the provision in subclause (vii) prohibiting any body corporate from acting as secretary of a company". We presume, therefore, it was the intention of the government that a firm should be allowed to act as company secretaries. Therefore, our suggestion is that companies with a paid up capital of Rs. 25 crores should have a whole-time secretary as proposed in the amendment Bill and other public limited companies with below 25 crores paid up capital should be allowed to appoint firms of company secretaries. The second thing in the definition is about the definition of company secretary. We in the Institute are grateful for the deletion of the word "purely" but we are of the opinion that the words "purely administerial or administrative" should also be deleted. We very strongly submit before this committee that the company secretary performs a variety of functions. His duties are not confined to secretarial or legal matters, not merely filing of returns or preparing some reports but his functions are of a more important nature. He functions in the nature of a coordinator he is the principal officer of the company, recognised by the Income Tax Act as well as by the M.R.T.P. Act; he is the principal spokesman of the company, he is the link between the management and the shareholders. He communicates the policy decision of the board of directors to the shareholders. He is the liaison officer between the Board and the management and all these functions establishes the importance of the position of company secretaries. Therefore, our recommendation is that the words "purely ministerial or adminstrative" be deleted from the provsion because the words "any other duties" are comprehensive enough to include all kinds of duties of company secretaries.

It would simplify the matter. Therefore if the definition is left with the word that the Company secretary is to perform 'any other duties' without specifying ministerial or administrative duties it would be better. We like to submit that the words ministerial or administrative' may also be deleted and 'any other duty' may be retained which should include 'all other duties.'

Now, I would like to submit the professional background of this Institute. In 1953 when the Company Bill was being discussed before the Parliament there were suggestions—suggestions from various quarters of the country—that on the lines of U. K. Companies Act where the provision is made for the compulsory appointment of a company secretary in their companies, the Indian Companies Act should also include the provision similar to U. K. Act. There was considerable discussion within the Parliament, outside in the industry circles and ultimately it was decided that it would be premature to make that provision. The reason as stated by the then Finance Minister was that there were not adequate number of qualified company secretaires in the country but the Hon'ble Finance Minister gave the assurance before the Parliament that let the Act be passed as it is but Govt. will take steps to create sufficient number of company secretaries. Immediately thereafter Government took steps in this regard and an advisory body for the growth of company secretaries was initiated by the Department of Finance. This advisory body did a laudable job. They worked out a very elaborate and practical syllabus for conducting the examination of the professional secretaries by laying down the norms of practical training, and how the people will be employed in future. This advisory body set out a very high standard of examination. Govt. then accepted in principle the formation of a statutory

body and the first step was the consitution of this advisory body. They are now awarding GDCS diplomas and after 18 years Govt. come to the conclusion to entrust this job to a professional body—something like the Institute of Chartered Secretaries. Government decided to set up an Institute of Company Secretaries of India. The first council was nominated entirely by the Govt. of India. It consisted of the members of the Govt. of India as well as senior members from various parts of the country. The chairman of the council was the chairman of the company Law Board. In 1970, for the first time, the council was elected.

MR. CHAIRMAN: These are not relevant to us. We are concerned with the clauses.

SHRI R. KRISHNAN: We feel that the amendment must provide that a qualified secretary means an Associate or Fellow Member of the Institute of Company Secretaries of India. As regards cl. 29 we are grateful for this provision. It is also necessary that the secretary of every company whose paid up capital is not less than Rs. 25 lakhs should be an Associate or Fellow Member of the Institute of Company Secretaries of India. And as the managing director is allowed to act as managing director of two companies, company secretary should also be allowed to act as such. This is due to the fact that relationship exists between the two companies. There is a chapter called 'Secretaries & Treasurers.' Since the institution of 'Secretaries and Treasurers' has been abolished it would be better if the title of the chapter be changed to company secretaries only. We also find that a company secretary is not allowed to sign the statutory declaration form under the existing Act amendment though he is vitally concerned with the administration of the company. We request the members to take this into account and, if possible, to incorporate the provision that the Company secretary will also be allowed to sign the declaration.

As regards the definition that private limited companies henceforth will be converted into public limited companies if its capital exceeds Rs. 25 lakhs, we would suggest that those private limited companies who have substantial borrowings from financial institutions, say, 50 per cent of their paid up Capital such companies should also be deemed to be public limited companies.

SHRI R. KRISHNAN: These are the main points with which we are vitally concerned as an institute. There are other points with which we would be generally concerned and if the honourable members would like to give us time we would like to deal with them.

SHRI M. K. MOHTA: The Institution would like every company having a paid up capital of not less than Rs. 25 lakh to have an individual as wholetime secretary. Now, there may be companies having a paid up capital of Rs. 25 lakh but have not much work where a wholetime secretary would have to work for not more than a couple of hours. Why should not they accept that a part-time man may be appointed there?

SHRI R. KRISHNAN: In case of such companies, the honourable member is right, there may not be a whole-time secretary. These companies should have the right to have men on a retainer basis. In smaller companies there may not be adequate work but what we submit is that the secretaries now a days do not perform only routine nature of duties. The role of the secretaries in today's conditions in every company has changed considerably. Most imporant function of the secretaries is to play a co-ordinating role. This function has increased considerably in today's conditions—it may be placed next to the role of the Chef Executive Officer.

SHRI M. K. MOHTA: I am talking of a company having more than Rs. 25 lakh as paid up capital but the business is such that a wholetime secretary will have no work. Would you still insist that a whole-time secretary should be there?

SHRI R. KRISHNAN: Whatever be the size of the company, the secretary does not deal with only secretarial work, complying only with the provisions of the law.

MR. CHAIRMAN: The suggestion is that if a company having a paid up capital of Rs. 25 lakh has not much work for a wholetime secretary, can't a part-time secretary do the job?

SHRI R. KRISHNAN: In a company of any size the work is so much that the secretary is usually doing not only company work. Under the Companies Act the secretary is a link between the various functionaries. A part-time secretary will not be useful.

SHRI M. K. MOHTA: On page 6, the Institute has talked of the grave injustice to the institute and its members. I would like to ask how do they propose to safeguard the interests of the unqualified secretaries who may have amassed qualifications and are as good as any secretary?

SHRI R. KRISHNAN: Membership of our institute is not confined to those who have passed the examination of this institute. Majority of the members of this institute today are not those who have passed from this institute. We are conscious of this point. Based on the applications from the socalled unqualified secretaries we have enrolled a number of them as our members. There may be quite a few who have been left out because they have not applied to us. Our intention is not that they should be thrown out of employment. They may be given protection. Such people who are working for two or three years on the date the Bill was introduced in the Parliament may be given protection, but whenever they retire their successors should be members of this institute.

SHRI POPATLAL M. JOSHI: In para 14 of page 5 of your memorandum it is written—a number of Government companies continue to appoint deputationists as secretaries of companies in the public sector. What objection have you to this?

SHRI R. KRISHNAN: In the first instance, this is an institute which has been promoted by the Government. The Public sector itself has to set an example to the private sector and to all others in the matter of professional management. If the public sector wants deputationists only to be Company Secretaries, it is better to wind up this organisation. But this institute was given an assurance in the Parliament, in view of the fact that we have got so many members numbering about 680, that this matter will be given due consideration.

SHRI POPATLAL M. JOSHI: When you say this ,don't you think that the body which passes the law, has the right to break it? What is your objection?

SHRI R. KRISHNAN: We recognise the supreme right of the Parliament. Our point is that we have so many people who are trained in the profession and if deputationists are brought in, it will pose a problem.

SHRI POPATLAL M. JOSHI: Do you fear that the Government will continue to favour their favourites?

SHRI R. KRISHNAN: Government has already accepted the principle based on the recommendation of the Administrative Reforms Commission that the system of deputation should be stopped. I humbly submit that this should apply in this case also.

SHRI HIMMAT SINH: You have said that 685 qualified secretaries are unemployed and in your opinion, their problem is likely to increase. Therefore, unless it is made obligatory on the companies, this will pose a problem. So, would you also not suggest that special manuals should be drafted in their functions which are largely compliance with statutory requirements and that there should be a liaison between secretaries and Company Law Ministry to thwart these statutory requirements?

SHRI R. KRISHNAN: We agree that some kind of protection should be given to Secretaries so that management cannot arbitrarily dismiss them.

SHRI JAGDISH PRASAD MATHUR: You want that some definition of the Secretary as also the qualification should be prescribed in the Act. The proposed amendment bill is enough to cover that and so why do you want that the definition should be such? Government will be in difficulty to prescribe?

SHRI R. KRISHNAN: That is for this august Body to decide. This Institute has been formed and patronised by the Government of India. We feel that the qualification i.e. Membership of the Institute there should be some specified in the Bill.

AN HON. MEMBER: Is there any objection to appoint a lawyer as the Secretary.

SHRI R. KRISHNAN: We feel that we are the professional Body, a body formed and petronised by the Government and so our members should ultimately act as Secretaries. Our present membership strength includes chartered accounts and lawyers who are functioning as secretaries. The position is that the profession of company secretary should be developed as a profession. Therefore, members who are subject to disclpline of our institute should be the Secretaries. This is not an association of company secretaries—we are people coming from here and there. Position is that we want, and I think Government also has in its own mind, that the Institute of Company Secretaries should be developed as a profession.

SHRI HARSH DEO MALAVIYA: You have rightly claimed that appointment of secretaries in the public sector undertakings should be from your Institute. But may I ask you, in your syllabus which you have given here you have included advanced accountancy, company law, mercantile law, Secretarial Practice and so on and there is no provision for giving social understanding as to how and why we have come to the concept of public sector—the whole background of national movement. Don't you think this is a lacuna?

SHRI R. KRISHNAN: Well, Sir, the papers you have mentioned are specialised papers. There are also papers like Economics etc. where public sector concept is included and students who study those papers will be able to distinguish public sector and private sector companies—the concept of public sector undertakings.

SHRI TRIDIB CHAUDHURI: What is the difference between your Instute and the London-based organisation? Do you maintain any relation with them? In find from a memorandum submitted by the Association of Chartered Secretaries that they are being patronised by Government so far as public sector companies are concened. So, I would like to know actually what is the relation between the two and whether you had any discussion with the Government as to why your Institute is not being utilised for public sector, and why that other London-based organisation is being utilised.

SHRI R. KRISHNAN: We on behalf of our Institute feel that it is rather unfair to compare our Institute with any other Institute such as the one you have mentioned. Ours is a nationl Insitute formed by Government and we do various functions and we are not a branch of any other organisation.

SHRI TRIDIB CHAUDHURI: Do you maintain any relation with them?

SHRI R. KRSHNAN: We have about 200 members of them as members of our Institute and as far as the question of patronising by the Government is concerned we have taken up the matter with the Department of Company Affairs.

SHRI JAGANNATH RAO: Do you think that the Private Limited Companies will also have Company Secretaries?

SHRI R. KRISHNAN: Many Private Limited Companies have already Company Secretaries.

SHRI JAGANNATH RAO: In a public limited company a Company Secretary has to do various jobs.

SHRI R. KRISHNAN: Yes, his functions are varied. It is of a co-ordinating nature, he is the spokesman of the Company, he has to maintain a liaison between the Management and the Company and the Government.

SHRI JAGANNATH RAO: What should be the minimum Salary of a Company Secretary?

SHRI R. KRISHNAN: It varies from company to company. It is fixed according to his functions. An ideal Company Secretary who has real responsible work starts with Rs. 1200 to 1500 a month in a small company.

SHRI JAGANNATH RAO: Some companies can appoint part-time Secretaries.

SHRI R. KRISHNAN: I have suggested that.

SHRI JAGANNATH RAO: Do you know that private limited companies are not given loans by public financial institutions, and by the State Financial Corporations. There were amending Bills before the Parliament but till to-day the private limited companies did not get any substantial loan.

SHRI R. KRISHNAN: It is based on those proposed amendments which will enable financial institutions to give loans to private limited companies that I suggest such companies be deemed public limited comapnies.

SHRI JAGANNATH RAO: What limit do you suggest?

SHRI R. KRISHNAN: About 50 per cent of their paid up capital.

SHRI MAHAVIR TYAGI: You have stated in your memorandum at paragraph 10 that the subjects for examinations included advanced Accountancy, Company Law, Mercantile Law, Secretarial Practice, English, Economics etc. Similar are the subjects also in Chartered Accountancy and Cost Accountancy and the Audit. Could not all the three sections be taken up together forming one cadre out of which appointments could be made according to qualifications?

SHRI R. KRISHNAN: About the first part of the question that the subjects are identical it may be said that it might look so on papers but the emphasis given by each of these Institutes is different. Our emphasis is mainly on Company Law, Secretarial Practice and Mercantile Law.

SHRI MAHAVIR TYAGI: My question was could not there be any possibility of joining the three branches together?

SHRI R .KRISHNAN: It is just like Medical profession. There may be general physician and there are specialised doctors in surgery. E,.N.T.etc. We are not in favour of merging the three branches.

SHRI D .D. PURI: Is paid up capital according to the distinguished witness a correct yard stick of secretarial work load ?

SHRI R. KRISHNAN: I would not say so but it is a fair indication.

SHRI D. D. PURI: Apparently, the Institute has very strongly recommended the definition to include firms. In case this is not accepted for various reasons would you object to a Secretary's doing other ministerial work?

SHRI R. KRISHNAN: Secretaries are already being given ministerial work and none of us is objecting to that. We are doing it and we would continue to do this. The Secretaries of a Company are to do variety of work which cannot be laid down by any law or any regulation.

SHRI D. D. PURI: Would you kindly explain your point at paragraph 6(b) of your memorandum?

SHRI R. KRISHNAN: In any case, in practice, it is understood that a Company Secretary has unlimited authority functions.

SHRI D. D. PURI: I am only talking of responsibility and not of authority.

SHRI R. KRISHNAN: It is not at all our intention that we do not want these functions. As a matter of fact we do all these functions and we would be glad to continue with these functions.

SHRI D. D. PURI: Unqualified persons are also admitted as members of this Institute. Now, who exactly, in point of fact, who decides whether any individual should be admitted to its membership and whether it is your view that your Institute should be sole body in the country to decide whether any unqualified people should become a Secretary.

SHRI R. KRISHNAN: Since this is the only Institute which has been formed by the Government, we think, we should be only Institute which should have this authority.

SHRI K. S. CHAVDA: While giving the evidence the witness said that the Secretary and the personnel working in the companies should be protected. Yesterday the Bengal Chamber said that they should be allowed to continue to hold office until their retirement. May I know whether the witness agree to the sugestions made by the Bengal Chamber yesterday?

SHRI R. KRISHNAN: We are in agreement of their suggestion. We submit that the company's Secretary should not be arbitarily dismissed by certain unscrupulous management.

SHRI P. R. SHENOY: Do you think that the companies under the same management should have a particular common Secretary?

SHRI R. KRISHNAN: We agree to this suggestion. In the case of different companies under the same management, one Secretary may be allowed to function.

MR. CHAIRMAN: Thank you very much for the troubles you have taken to come over here and to give your valued evidence which, I think, will be much beneficial to the Committee.

(*The witnesses then withdrew.*)

111. Shri S. S. Kothari, *Ex-M.P.*

The witness was called in and he took his seat.

MR. CHAIRMAN: Mr. Kothari, on behalf of the Committee I welcome you and wish a happy new year. I hope, your views would benefit the committee and the memorandum which you have submitted has already been gone through by the members of the committe. Before I start, I would like to draw your attention to the directions that you may kindly note that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire that your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI S. S. KOTHARI: I appreciate the objective of the government, particularly with regard to the checking of concentration of audit *i.e.*, close association between the auditors and groups of companies. But I feel, if the proposal is passed in the present form, it will reduce the viability of the chartered accountancy profession, which will be a very serious matter. The audit should be strict and efficient; but the new provisions would have some adverse effect on the quality of audit. If there is any provision that after every three years the auditor will lose his entire audit practice, the quality of audit would deteriorate. It would also harm the junior and young auditors whom the Government would like to help. I have certain propositions which I would like to place before the committee. Companies, with a capital of Rs. 50 lakhs or Rs. 25 lakhs, as the Select Committee decides should be exempted from the rotation provision; but with regard to the bigger companies whose capital is 50 lakhs or above, if the Select Committee wants to introduce the rotation system, the auditors periodically may be changed. The new system may be introduced with certain checks and balances but the period of rotation should be five years and not three years so that the auditors may get some opportunity to settle down. Three years is too a little period for obtaining experience. Besides, the auditor himself should be entitled to approach the Central Government for his reappointment. Instead of the company approaching the Government, the auditor must have the right to approach the Government for his reappointment, and the Government should agree to his reappointment except where the auditor has not performed his duties properly or where Government would feel that there is some collusion between the auditor and the management.

I feel, instead of making any drastic provision, Government may take in its own hand the power of appointing additional auditors who could be junior auditors; and thereby the junior members in the profession would be benefited. If the Government appoints additional joint auditors the consequence would be that at the expense of the companies more and more young and junior auditors will get employment. This suggestion may kindly be considered by the honourable Committee. There is another suggestion in regard to the limitation. Auditors' firm may be prohibited from accepting more than 15 or 20 large audits per partner. But chartered accountants may go to the Supreme Court and say that when there is no such prohibitive measure for any other profession, then why their work is limited to 15 or 20 big firms at a time for auditing. Instead of introducing this rotational system by law why should not the Government make an appeal to the industrial community to voluntarily introduce the rotation system in res-

pect of audit. There is another aspect also. Tata Iron and Steel Company requires a large number of audit assistants to perform their audit, and it may not be possible for a junior auditor to provide requisite personnel for conducting that audit. Hence, auditors have to be matched to the audit. If such an appeal is made to the industrialists, it would have, I feel, substantial results while causing least disturbance with regard to the profession; but if the provisions as indicated in section 224A, are passed, then I would not advise young and talented persons to come to this profession, because they will loose their entire practice every three years and they would be wholly dependent upon management of work.

Clause 5 of the Bill—section 43A of the Principal Act: The object of the new provision in the Bill is that where public funds are involved, the private company should be converted into a public company. This is in order. But it also provides that any private company holds 10 per cent shares of a public company, it would be converted into a public company; this is not rational and should be deleted.

With regard to clause 6 of the Bill-New section 58 (a), the obejective of the Government is laudable Companies may not be allowed to collect deopsits on sundry accounts, if they misuse the money. I am absolutely in unisom with the objectives of the Government, but certain safeguards are necessary. In times of crisis, there should be some provision that friends and associates of directors other companies in the same group can come to the assistance of the company which is in difficulty, to the extent of paid up capital and reserves.

New sections 108 A, B and C: With regard to restrictions on transfer of shares, where 10 per-cent the equity capital is controlled by a group of companies. I would submit that the objective of the Government is quite laudable, but it is necessary to have a provision that in the event of transfer of 100/200/500 shares, they need not come to the administration for sanction. I feel if less than 2½ per cent of the equtiy capital is to be transferred, central Government sanction should not be required.

MR. CHAIRMAN: Honourable Members, if you have any questions?

SHR M. K. MOHTA: regarding the appointment of auditors, Mr. Kothari says that he would not advise any talented young man to enter the profession of auditors if these provisions in corporated in to law. Perhaps he would advise them to become politicians.

SHRI S. S. KOTHARI: I have been guilty of that lapse.

SHRI M. K. MOHTA: I would like to ask him as regards point (c) mentioned on page 2. Reading the comment of Mr. Kothari I tank it that he is not opposed to rotation at all and that he wants the period not to be one of three years but one of five years. Am I right?

SHRI S. S. KOTHARI: Yes I am not in favour of rotation as spelled out in the Bill.

SHRI M. K. MOHTA: Quite a lot has been said regarding the so called collusion between the auditors and the management. Would you think that any of the provisions this bill would curb this malpractice to any extent? My point is that if anybody is guilty of malpractice he should not be allowed to do audit of any other company, and then why should there be rotation of five years or three years at all? That man should be removed immediately, as long as there is no malpractice, there should not be any restriction on the profession of auditors or on their appointment.

SHRI S. S. KOTHARI: With regard to collusion, may I point out that there is more of propaganda than actual fact. In most cases, there is no malpractice and responsible auditing

firms would not do countenance that. If there is collusion, it is for the Institute of Chartered Accountants to take disciplinary action against the auditor concerned. My point is that let us not make the auditor a slave to the management.

SHRI M. K. MOHTA: Regarding clause 6 of the Bill—page 4 of the memorandum—it is considered sound financial management that long-term outlays should be financed by long-term capital either in the form of share capital or deposits, whereas short-term requirements may be financed by short-term resources. If we take that as the criterion, then would you not say that there should be any restriction at all on the short-term deposits that might be imposed by the government and also in respect of such long-term unsecured deposits which are ultimately used by the companies for primarily long-term investments?

SHRI S. S. KOTHARI: That distinction in my opinion is necessary deposits from public and deposits from friends and associates. My point is that government should come with a heavy hand on those people who take deposits from public and misuse them. If these deposits are not returned, I think strong action should be taken against the companies. But where a company needs funds—short-term deposits—from friends and associates for two months or three months, they should be permitted to do that. Therefore, I am in full agreement with the honourable member.

SHRI M. K. MOHTA: Regarding clause 10, Mr. Kothari has said that he is broadly in agreement with the objectives of the Bill as stated. The objective is to have some control over the transfers. It appeared that the section as worded would go much farther than that. It would appear that one of the consequences of this section would be that even the present management would not be able to buy single more share in its own company. What kind of effect would this kind of situation have on the investment market?

SHRI S. S. KOTHARI: I agree with the honourable member that it will have a deleterious effect on the investment market. I think that for small transfers or small purchases the sanction of the central government should not be necessary at all.

SHRI M. K. MOHTA: Mr. Mothari has commented on the definition of the group of the same management. It would appear that the company management would really be in a fix to determine as to whether a transfer is allowable where the transferee is a member of a particular group or under the same management. How exactly would that function if the same management definition is not clear and if the transferee is liable to very heavy punishment including imprisonment. How these two sections read together apply in actual practice?

SHRI S. S. KOTHARI: I think probably the Minister would explain that to the committee. I have already made my position clear.

SHRI G. C. DIXIT: The auditors are appointed by the management and the general board every year and the auditors have continued for many years in a company. Can you give an example where an inconvenient or harsh auditor is not maintained by any company for more than a year?

SHRI S. S. KOTHARI: Inconvenient auditors can still be changed under the present law. A strict auditor may lose one or two per cent of practice but then he would retain 98 per cent of his files. It is quite natural that if the auditor finds that he would lose his business entirely every three years he would go to the management and ask for replacement audits.

SHRI G. C. DIXIT: How do you say that every auditor will lose his practice because every auditor will be changed after three, five or ten years? According to you the harassment will be caused only in the initial stage but not at the later stage be-

cause every three years an auditor is being changed according to law.

SHRI S. S. KOTHARI: If an auditor feels that he is losing his practice, he will go to the management and ask for something.

SHRI G. C. DIXIT: Can you give me any example where an auditor has lost his practice for being harsh and strict?

SHRI S. S. KOTHARI: I would say that good management does maintain even a strict auditor. If I may be permitted to strike a personal note, we have made qualified reports in many cases and we are still existing and doing not too badly.

SHRI G. C. DIXIT: That means, you agree with me that for being strict and harsh, an auditor may not always lose his practice.

SHRI S. S. KOTHARI: I feel that in the long run if the management feels that the strictness of the auditor is in its interest, certainly the auditor will not lose his practice.

SHRI HIMMAT SINH: Mr. Kothari has expressed his surmise that the viability of the chartered accountants would be disturbed if auditors are changed frequently. But I suppose he is also aware of the fact that there are half a dozen auditors in the country who do ninety per cent of the company auditing. Is that viability you want to be considered?

SHRI S. S. KOTHARI: I have suggested a number of alternatives which may be considered. For public companies where public funds are involved with capital over 50 lakhs and which are quoted on the stock exchange, you could have rotation, but not in smaller companies.

SHRI HIMMAT SINH: That would boil down to this that the auditors are beholden to the management and vice versa.

SHRI S. S. KOTHARI: I would not agree to that.

SHRI HIMMAT SINH: About deposits, you have said that in times of crisis the management should be free to have deposits and what is the time of crisis has to be determined by the management. Now, the so called friends, associates or relates may appear there in the form of ghosts in times and this is also a method of drawing black money.

SHRI S. S. KOTHARI: That is for the department to take action on.

SHRI HIMMAT SINH: One of the measures suggested is that before a company is allowed to accept deposits, there should be certain checks and balances which the country should impose.

SHRI S. S. KOTHARI: I am fully in agreement with the honourable member in this respect.

SHRI D. K. PANDA: You have said that only a little percentage of the management take serious objection to strict audit and in such cases the auditors are losing their practice. To completely eradicate any such apprehension if a suggestion is made for nationalisation of auditing along with nationalisation of the monopolies to get over all these difficulties, would you agree to such a suggestion?

SHRI S. S. KOTHARI: I would prefer to remain independent; I would not like to be a government servant.

SHRI MAHAVIR TYAGI: Mr. Kothari, you have been a member of the Parliament and you know all the difficulties in the matter. If an auditor has any collusion with the management and there is an unholy alliance between the two groups, why should not the aditor, apart from being debarrred by his association or from the parent body, be criminally prosecuted by the government?

SHRI S. S. KOTHARI: I do not want to make the penalty harsher but if you take away the power of certification, that is penalty enough.

MR. CHAIRMAN: Thank you, Mr. Kothari.

(The witness then withdrew)

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Wednesday, the 3rd January, 1973 from 10.00 to 13.15 hours and again from 15.00 to 17.00 hours in Council Chamber, Assembly House, Calcutta.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Somnath Chatterjee
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri G. C. Dixit
7. Shri Baburao Jangluji Kale
8. Shri Jagannath Mishra
9. Shri Muhammed Sheriff
10. Shri S. B. P. Pattabhi Rama Rao
11. Shri R. Balakrishna Pillai
12. Shri Jagannath Rao
13. Shri R. R. Sharma
14. Shri P. Ranganath Shenoy
15. Shri R. K. Sinha

Rajya Sabha

16. Shri Salil Kumar Ganguli
17. Shri B. T. Kulkarni
18. Shri Harsh Deo Malaviya
19. Shri S. S. Mariswamy
20. Shri Jagdish Prasad Mathur
21. Shri M. K. Mohta
22. Shrimati Saraswati Pradhan
23. Shri D. D. Puri
24. Shri S. G. Sardesai
25. Shri Himmat Sinh
26. Shri Mahavir Tyagi
27. Dr. M. R. Vyas
28. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

WITNESSES EXAMINED

I. *Indian Chamber of Commerce, Calcutta*

Spokesmen:

1. Shri R. B. Shah
2. Shri Ranadev Chaudhuri
3. Shri P. M. Narielvala
4. Shri J. Singhi
5. Shri R. S. Lodha
6. Shri C. S. Pande
7. Shri Manab Chaudhuri

II. *Merchants' Chambers of Commerce, Calcutta*

Spokesmen:

1. Shri B. S. Kothari
2. Shri D. M. Kothari
3. Shri B. P. Agarwala
4. Shri H. R. Bose

III. *Association of Chartered Accountants, Calcutta.*

Spokesmen:

1. Shri N. Ganguly
2. Shri S. S. Samanta
3. Shri K. P. Bhaumik
4. Shri A. K. Chakravarty

IV. *Incorporated Law Society, Calcutta.*

Spokesmen:

1. Shri P. D. Himmatsingka
2. Shri R. C. Kar
3. Shri B. P. Khaitan

V. *Chartered Institute of Secretaries of India, Calcutta.*

Spokesmen:

1. Shri Y. Verma
2. Shri S. K. Basu
3. Shri S. Raha
4. Shri P. K. Ahluwalia
5. Shri A. De.
6. Shri B. Sen

VI. *Association of Practising Cost Accountants of India, Calcutta.*

Spokesmen:

1. Shri A. K. Biswas
2. Shri B. L. Mishra
3. Shri S. N. Ghose
4. Shri R. K. Bose
5. Shri A. K. Mitra

VII. *National Forum of Shareholders, Calcutta*

Spokesmen:

1. Shri M. C. Bhandari
2. Shri Chandravadan Desai
3. Shri Hari Gopal Acharya
4. Shri Jagmohan Sharma
5. Shri Banshi Mohan Chatteraj

I. **Indian Chamber of Commerce, Calcutta.**

Spokesmen:

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5. Shri R. S. Lodha
6. Shri C. S. Pande
7. Shri Manab Chaudhuri

[*The witnesses were called in and they took their seat.*]

MR. CHARMAN: Mr. Shah and other friends of the Indian Chamber of Commerce I on my behalf and on behalf of the Committee welcome you here. Before you start I like to draw your attention to the direction that the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

SHRI MAHAVIR TYAGI: We have gone through their memorandum. Only on specific points they might lay stress.

MR. CHAIRMAN: I hope they will keep in view your suggestion.

SHRI R. B. SHAH: Mr. Chairman, with your permission I would like to make a few observations. My colleagues and I are thankful to you for giving us an opportunity to tender oral evidence on the Companies Amendment Bill. We have already submitted a written memorandum where we have outlined the views of the Chamber on the proposed legislation on Companies—public and private, and have offered concrete suggestions on several clauses of the Bill which in our opinion would meet in a large way the objectives that the Government have in mind in framing the legislation.

With your permission, Sir, I shall restrict my observations to the broad aspects of some of the important changes in the legislation and my colleagues will make detailed comments in regard to the major provisions of the Bill. Thereafter, we shall be pleased to answer any question you may choose to ask.

In a developing country like ours small investors have to be encouraged to participate in the development of the economy through the corporate sector and we are in agreement with the objedtives of the government that there should be a larger diffusion of the shareholding of the companies. There is no difference of opinion between the government and ourselves that the corporate sector should function in the best interest of the society and a large number of shareholders and if any abuses are noticed in the functioning of companies such abuses should be checked and loopholes plugged by legislation. I however beg to submit that isolated instances of malpractices should not lead to stringent provisions in law which would act as a curb on the initiative and efficient functioning of companies. Even as it stands the company law wth its 658 sections is a complex legislation and it is almost impossible for those in charge of small and medium enterprises to understand and comply with various provisions and they run the risk of attracting penalties for in advertant acts of omission and commission. Our submission is that the company law is a commercial law, to be operated from day to day involving decisions regarding commercial transactions, decisions for which are to be taken quickly and as prior approval of Government is required according to number of provisions under the proposed legislation, in addition to what are required under the present legislation, obtaining of such permission is bound to result in delay in addition to the costs involved therein.

I submit that the company legislation should be simple and bring out with clarity and precision what is meant to be conveyed. Further, in our opinion, the proposed legislation involving increasing controls and restrictions would retard the growth of new enterpreneurs, medium and small and effective and efficient utilisation of scarce factors of production *viz.* management and finance, essential for advancement of economy.

I now come to the proposed amendment which for the statement of objects and reasons is sought to help proper implementation of the concept of inter-connected undertakings within the meaning of section 2 (g) of the Monopolies and Restrictive Trade Practices Act, 1969. I beg to submit that if there are any defects in the MRTP Act which makes its functioning less effective, the provisions of that act should be suitably amended rather than the Companies Act.

The definition of 'Group' is very pervasive and it is our apprehension that many companies big, medium and small, will get interconnected and attract provisions of the Monopolis Act for substantial expansion, setting up of new units etc. even though they may have nothing to do with commonly accepted monopoly concept or restrictive trade practices. The term 'Group' in the Bill has been very vaguely defined. So much so that it could include persons who are not even remotely connected with e ach other with the object of exercising control over any body corporate, firm or trust. As it stands even giving a proxy at a

time may make a person a constituent of a group even though there may be no intention or agreement to exercise control. One of my colleagues will deal in detail with the definition of group and the same management, I however beg to submit that application of the definition of the concept of 'same management' should not be made restrospective and the company should be given opportunity to effect changes in the board. The constitution of Directors resulting in same management' would have adverse effect on the utilisation of services in the board of directors of experts and technical persons. Under the definition, for example, as it stands, a small company of consultants with three technically expert directors would be treated as under the same management of a big company if one of te directors of the former company is a technical director on the board of the latter. The new definition takes into account the numerical strength of the Board and not the financial stake of the directors.

I have also to submit that holding of shares by relatives for constituting of a group should not be taken into account as it is common knowledge that many relatives act independently of each other and sometimes in a competitive manner. This might result in contravention of the Act in knowingly and for want of information about relatives which is often difficult to abtain.

I also beg to point out that the penal provisions under the Bill ranging from one to five years' imprisonment and a fine ranging from Rs. 500 to Rs. 5,000, in the opinion of the Chamber are unduly harsh and out of proportion with the nature of defaults. The offences under the Company Law are more or less of a technical and civil nature and should not be treated as criminal offences involving moral terpitude.

As pointed out earlier, many of the provisions of the Act are not clear and precise in their meaning and some breaches may occur unwillingly. I would, therefore, request you, Sir, to give special consideration to the question of penalties.

Sir, I have done with my general remarks and I will now request my other colleagues and Mr. R. Choudhury to take up other clauses in detail.

SHRI RANADEV CHAUDHURI: Bulk of it is of course already included in the memorandum. I am only mentioning a few points. The first thing is about the groups. A lot has been said but what we should insist on is that there may be a proper and adequate definition. It has not been defined in the Statute and, in view of the penal provisions that are provided, this definition is absolutely essential.

Memorandum of Association is intendel to be altered by the department without any reference to the company. In England also more or a less a similar thing prevailed. You must be knowing by now that so far as this is concerned, England also had the same provisions but today, in England, if the memorandum is altered it can be challenged and if anyone is dissatisfied he can go to the court. It is not a simple administrative matter. The repercussion is tremendous. A memorandum consists not only of objects clause. It contains conditions and powers. All the three are part and parcel of the memorandum and the alteration only relates to the objects. And condition of the memorandum under the Statute can never be altered. Similarly, the Company Law Board stands on an entirely different footing Board gives the right to interpret. So, we would suggest that a technical matter of this type must be dealt with by the court. Therefore, our submission is that you should retain the power of the court in some form or other so that there can be a check. Apart from that, of course, the administration dealing with that may find further difficulties. To-day in the existing statute he is served with notice and the Registrar of Joint Stock Companies comes and makes submission to the court. The department has got certain views and in

deciding that imparial approach is necessary. I would think part of court's power should be retained as far as possible. Another provision which you have got to consider is regarding inspection and search. My own view is that this particular section would take away powers of the court. You are well aware of the 2 decisions of the Supreme Court in regard to Rohtas Industries and Barium Co. These companies wanted to invoke section 237 and you are aware of the decisions. To-day the particular section is going to be enacted in such a way as to get out of those two decisions. In terms of those decisions the norm must be retained and court's power should be there to find out what is actually happening. On the question of violation of natural justice you do serve any person with a notice and you can just come and make inspection at any place and at any time. You can call him to produce any record and the report has got to be submitted to the Government but not to the persons who are already affected. So, you are to decide this important matter of giving the persons copies of the report so that they get opportunity to agitate about it. My view is that existing provisions are more than sufficient to deal with this and there is no justification to introduce a section of this type. In this connection I would like to refer to the cases reported in the Supreme Court about Barium and Co. and Rohtas Industries—one is 1967 Supreme Court 295 and another is 1969 Supreme Court, 707. If you go through those cases you will feel that there is no necessity of introducing this new section.

Then the question of audit. What we feel is that it is an approach of the legislature which really determines the issue. Recently, a few years back it was decided that auditors cannot be changed on the ground that the particular auditors know ins and outs of the companies and so persons with such knowledge are helpful. Now your approach is to change auditors as soon as possible. My view is that auditors who know ins and outs of companies are better than new men for whom it will not be possible to know the misdeals of the companies. Rather, you make auditor an independent person.

MR. CHAIRMAN: That point has been made out by so many other persons and so you need not go into it in detail.

SHRI RANADEV CHAUDHURI: Then about penal clause we feel that penal consequences are extremely harsh because the words 'knowingly' and 'wilfully' have then omitted, and a man who has got absolutely no knowledge has been made equally liable. This section should not be enacted in the present form. There must be the expressions 'knowingly' or 'wilfully' so that you give him an opportunity of making representation that he is not directly responsible, he never knew, and penal consequences should not be attracted. But as it is penal consequences are automatically attracted. This is a matter which should be looked into. Besides, the extent of punishment is also heavy.

SHRI MAHAVIR TYAGI: The memorandum submitted by my friends is quite revealing and some of the points are convincing. But there is one contradiction about 'group'. A few other parties have objected to the vagueness of the definition of 'group'. You have suggested that a person who may not have any relation or connection with management and who has no intention to act together, they may be deemed to be a constituent of a group. That is the view of the proposed bill and that objection you have raised. But then in your memorandum you have said that two or more persons to be held to form a group only if they among themselves own 50 per cent of the shares of the company. But suppose I collect names and get persons whose total shares are more than 50 per cent can I declare them as group? Secondly, you have said that an individual should not be recorded as a constituent

of the group unless he holds a minimum of 5 per cent shares of the company. But I can put all those shareholders who have got more than 5 per cent shares together and call them a group according to your definition. As you have said, the idea is not very specific. Will you please throw more light on it?

SHRI R. S. LODHA: In page 2 of our Memorandum, point No. (v) We said that it also be noted here that under the English Monopolies and Mergers Act, 1965 two persons may be regarded as 'associated persons' only if they combined to act together with the object to control. It is suggested that in order to treat two or more persons to be constituents of a group, it must be shown that there was some 'agreement' between them to exercise control; if there is no such agreement, such persons should not be treated as constituents of a group merely because they may have some remote inter-connections; similarly, merely voting or giving a proxy at a particular time, should not make a person constituent of a group. Sir, we would like to say that unless it is shown that they are acting together, this should not be taken that they have formed a group and therefore that alternative definition as we have suggested is that group means a group of two or more individuals, associations, firms or bodies corporate, or any combination thereof which hold among themselves more than 50 per cent of the paid-up equity capital of a body corporate and are acting together to exercise control on such body corporate.

SHRI S. G. SARDESAI: In your written Memorandum you have said that the purpose of the M.R.T.P. Act if they have not been actually achieved then that should be dealt with by the amendment of the M.R.T.P. Act and not by the amendment of the Company Law. May I know what is your positive proposal?

SHRI R. B. SHAH: It is in connection with the inter-connected companies. So far as the Monopoly Act is concerned it should be applied to only big individual industry.

SHRI S. G. SARDESAI: You said that the M.R.T.P. Act should be amended so that it can actually serve the purpose. You have put some objection that something is wrong. Can you suggest anything so that we can have clear views of your Chamber?

SHRI R. S. LODHA: I would like to emphasise that in the case of minority share holders they should be given some protections and the Government's objective is in this line. The financial institutions invariably have representatives in the board and they have much more access than in the non-controlling unorganised group. The Bill should provide for protection of non-controlling shareholders wherever Government acquires the shares or the management of a company.

SHRI D. D. PURI: May I know from the witness whether the malpractices will be rectified or checked if the proposed amendment of the Company Law comes into effect. specially when the M.R.T.P. Act deals with the large groups of Monopoly houses.

SHRI P. M. NARIELVALA: The M.R.T.P. Act applies to the small minority and monopoly houses whereas the Company Act has wide application. A small company may be inter-connected with a big monopoly house with whom it has got some connection through supply of some small components, *e.g.*, M/s. Tata Iron and Steel Co. decides to take in its Board an engineer from a small company as one of its Directors on the ground that this small company is the supplier of some components to Tata. So, here we find that a small company has been inter-connected with a big company like Tata and so the M.R.T.P. Act should not have any application on the small company.

SHRI D. D. PURI: It is seen in page 3 of your covering letter that

according to the new provision one-third of the common directors irrespective of their personal stake in a company will be treated as companies under the same management. I do not want to go into the details. It seems that your views are that, one-third of the directors should come from the same management. At page 1 of your memorandum you have suggested that two or more persons should be held to form a group. Would you not also suggest a maximum number—it may be one thousand or two thousands. It has been suggested in other memorandum which we are going to deal with later that there should be a maximum also.

SHRI P. M. NARIELVALA: But there is the provisions of 5 per cent holding.

SHRI D. D. PURI: Supposing the 5 per cent provision is not accepted, would you then leave the maximum at an indefinite number?

SHRI P. M. NARIELVALA: It will be practically impossible.

SHRI D. D. PURI: At page 6 of their memorandum they have used the word "higher courts" instead of high court. The words "higher court" would seem to indicate that the government acting under the law after this Bill is passed would also be a court. When you say a higher court, it presupposes a lower court also.

SHRI R. B. SHAH: By higher courts we mean courts which are exercising judicial powers by special orders.

SHRI D. D. PURI: At page 10 of their memorandum—at the bottom of the first paragraph, they have said 'further, there should be no restriction on companies to accept deposits from willing depositors if such deposits are within the prescribed rules. Now, deposits are always willing depositors and there cannot be any unwilling depositor. I believe by 'willing depositors' they meant uninvited depositors.

SHRI R. B. SHAH: Yes, unsolicited depositors.

SHRI D. D. PURI: At page 22 of the memorandum—paragraph 10—you have stated that in regard to the opening of a bank account, within seven days from the date of declaration of dividend, the company shall open a special account for that purpose. You have said here that opening a separate account for the deposit of dividends is a practice which has been followed by a number of companies. I believe the witnesses mean that the practice is that whatever amount is paid from one account is recouped from another account and not the opening of a separate account?

SHRI R. B. SHAH: The Honourable member's interpretation is correct. We have got a separate account only for the purpose of accounting and whenever it is necessary we replenish it from the current account.

SHRI K. S. CHAVDA: Mr. Chowdhury, I am told you are one of the eminent lawyers on company law and that is why I would like to have your opinion regarding amendment of section 591—clause 31. According to this proposed amendment very few companies will come under the purview of this amendment. You know, in drugs and pharmaceutical industry out of a business of about 300 crores, 250 crores' business is in foreign hands and they are making huge profits and ploughing back large amounts of money in the form of royalties, technical know-how, dividends and other things. In order to have a regulatory check on the activities of the foreign companies in our country I would like to know your suggestion as to how there may be some checks on these companies. If the percentage of the holdings is reduced from 51 per cent to 26 per cent, then more foreign companies

will come under the amended section. Would you agree to that?

SHRI RANADEV CHAUDHURI: I would like to know what exactly is the question of the honourable member.

MR. CHAIRMAN: As I have understood his question, to bring the foreign companies under the control of the government, would it not be better if the percentage of holding is reduced from 51 per cent to 26 per cent or less?

SHRI RANADEV CHAUDHURI: The trouble to-day is that Government is also sanctioning new companies and those companies are running on 49|51 share capital in case of foreign companies. Of course the question of policy has to be decided by the Government ultimately. Everytime a new company is sanctioned with foreign colaboration 51 per cent of shares will be with the foreigners. The policy of the Government is also to be thought of. The Indian Copper Corporation was a company registered in U.K. but the majority shareholders were in India. To-day the question of compensation has come in. There are numerous other factors. too.

SHRI P. R. SHENOY: While dealing with Clause 4 you have said that right to appeal should be given to the Companies. Now, if the right of appeal is given to the companies then similar rights should be given to the shareholders, to the depositors of the company and there will be right of appeal to the Supreme Court also. So there will be endless litigations. It may be to the detriment of the Company. What is your view?

SHRI RANADEV CHAUDHURI: Are you thinking in terms of shifting of registered office or alteration of memorandum?

SHRI P. R. SHENOY: Everything *viz.* shifting of registered office. alteration of memorandum etc.

SHRI RANADEV CHAUDHURI: According to English Act the power has been given to the creditors so far as alteration of memorandum and shifting of registered office are concerned. Suppose you are functioning in Calcutta. To-morrow you shifted the office to Bombay. In that case the creditors have the right to go to the Court and the Court will listen to their objections and will ultimately decide whether shifting is possible or not. The latest practice is that the State Government also intervenes and they have their say. So these safeguards are already there. Are you introducing some better safeguards?

SHRI P. R. SHENOY: No, I am not in favour of the right of appeal. In fact if this right is given to the Company it will have to be given to the shareholders also and to the creditors also. There will be endless litigations, which will be detrimental to the Company.

SHRI RANADEV CHAUDHURI: Litigations will always be there.

SHRI SOMNATH CHATTERJEE: So far as the penal provisions of the Bill are concerned some of them provide for very nominal punishments *e.g.* even fine of 10|15 rupees is imposed. Would you give a proposal to increase the punishment or to increase the amount of fine bringing in the concept of *mens rea* to provide for higher punishment like imprisonment?

SHRI RANADEV CHAUDHURI: You want to incorporate *mens rea* That may be considered.

MR. CHAIRMAN: It looks like that the witness is very reluctant to answer this question.

SHRI SALIL KUMAR GANGULI: Please refer to page 40 of the proposed Bill regarding Section 383A. It says."..Further, it is also considered necessary to provide that an individual appointed as secretary to any of the companies covered by the proposed

new section 383A shall work whole-time as such and cannot accept appointment as a secretary in any other company." Does it cover all the companies irrespective of the size of the companies in which a company secretary works? Is it in conformity with the object of this particular sub-clause?

SHRI P. M. NARIELVALA: There appear to be a drafting lacuna in the Bill. Whereas new section 383A restricts the appointment of a company secretary, sub-section 2(b) refers to it without any such specification. Actually part-time secretary is not at all a secretary. There is a contradiction between the clause and the object of the Bill.

SHRI M. K. MOHTA: On page 1 of their memorandum they have said "....only if they among themselves hold more than 50 per cent shares of the concerned company." The underlying idea seems to be that unless more than 50 per cent of the shares of the company are held by a group control should not be understood. But it has been pointed out to the committee that in a particular case even holding of 2 per cent shares in a company can have control of a company. Has the chamber come across any such instance. What is your comment on this?

SHRI R. B. SHAH: We have never come across such thing. Of course recently in the case of synthetics and chemicals, LIC by having 2 per cent shares did exercise effective control in provywar.

SHRI M. K. MOHTA: On page 2 they stated that a person who may not have any relation or connection with the management and who has no intention to act together with them may be deemed to be a constituent of a 'group'. But the amendment suggested by the chamber does not seem to convey this meaning. It would appear even voting or giving a proxy would be construed as exercising control. What the Chamber suggests to this.

SHRI RANADEV CHAUDHURI: We agree.

SHRI M. K. MOHTA: Re. amendment of sections 16, 17, 18 & 19 (p. 6 of the memorandum), if the matter was left to a quasi-judicial tribunal would that be acceptable to you?

SHRI RANADEV CHAUDHURI: It should be left to courts.

SHRI M. K. MOHTA: Re. acceptance of deposits of company, p. 9 of the memorandum, it has been suggested to the committee that even private companies which are normally not expected to accept large deposit from the public, they do indulge in that practice of obtaining as much as 11 crores of rupees. Whether something should be done by Government and to that extent Government should intervene in such matters.

SHRI J. SINGHI: This must be an unusaul instance where a private company takes deposits worth eleven crores of rupees. The chamber feels that in case of private companies at least the amendment should be there that loans or deposits taken from the directors, their relatives, friends and the people who are closely connected with the directors should be exempted from the purview of this clause if at all it is considered advisable, to fix a limit on the deposits. The chamber suggest that in case of a private company or proprietor of company where the *modus operandi* by the small traders or by the property owners is to take more loans to get the benefit in income-tax by way of interest deductions it is the opinion of the chamber that in such cases there should be limit placed, say, up to the extent of say 15 lakhs or 25 lakhs as the committee decide. Otherwise to relate the percentage of loans to capital reserves, the amount of deposits which can be taken by the companies will be small because we in course of our practice have come across industries where companies with Rs 2 lakh capital have taken loans from the directors and their friends and put that money in

trading and holding stocks and they have not gone to the bank for finance. Such companies will be very hard hit. The chamber suggest that in respect of such private companies or small companies the limit should be an amount and not related to only paid up capital and reserves.

SHRI M. K. MOHTA: Regarding the clause of conversion of a private company ino a public company in some circumstances, it has been pointed out that there are certain instances where company A holds all shares of company B, company B holds all shares of company C and the like and there is a chain like this Thus a sort of empire is sought to be built up. Have the Chamber come across any such instance?

SHRI R. B. SHAH: Why is this bad? After all we have no upper managerial limit. The proposed reduction in capital on account of amendment of 43A is much too drastic and that should not apply to a private company. The idea today is that a private company becomes a public company if that company is really working substantially or significantly. If a private limited company was to acquire the undertaking of another, it will still remain private. If one single company owning the same assets remain private, why does the second company becomes public simply because economic part in shares are held by another?

SHRI M. K. MOHTA: It has been suggested that by such chain of companies the money put in remains the same, but the power of the management to get more money from public or banks may increase ten-fold.

SHRI C. S. PANDE: If 10 companies each having a capital of 10 lakh have certain operating capacity, surely the company should have the same capacity.

SHRI M. K. MOHTA: Here the capital is Rs. 10 lakh.

SHRI R. S. LODHA: In effect there can be no advantage because the balance-sheet of each of these companies will be there and the bank, or for that matter any institution would definitely look into this aspect.

SHRI M. K. MOHTA: On take over the Chamber suggested that if the intending purchaser agrees to pay all including minority shareholders, there may be no need for Government permission. Another view that has been put is that if an intending purchaser agrees to purchase the same percentage of shares from each shareholder, then, more justice would be done to the minority shareholders. What is your view?

SHRI R. S. LODHA: There may be no objection to that.

SHRI M. K. MOHTA: Regarding clause 30—appointment of Government directors—it has been suggested that because the Government appointed directors in any company are at present in a minority they are unable to have any effective voice in the management of the company. Does the Chamber know of any instance where the Government directors have been

overruled to the detriment of the interest of the company?

SHRI J. SINGHI: Our experience has been that the Government directors are always asking for all the details from the company. They suggest that the accounts should be circulated earlier, say, by about a week from the date of the Board meeting and in the Board meeting they are always found to consult the companies all important matters before a decision has been taken.

SHRI JAGANNATH MISHRA: Powers for instruction which are proposed in the Bill are objected to by you. May I know what evil or evils do you apprehend in it?

SHRI RANADEV CHAUDHURI: We have referred to it in the memorandum and you will get it in detail there. Actually, when an investigation is going to be made, some basis should be prescribed in the Act which will enable the persons to know that an investigation will take place. Even the report of the investigation is not going to be made available—company will not know anything about it. It will be kept secret.

SHRI JAGANNATH MISHRA: What you say on page 4 means you are in a mood to adjust with the management of the current holdings. So, what is the harm if Government goes in for retrospective effect?

SHRI R. S. LODHA: The definition deals with last 6 months and suppose the Act comes into force within 6 months then the companies would have no change of expressing views about recomposition as they cannot foresee what is really going to come and so definite time should be given.

SHRI JAGANNATH MISHRA: You have mentioned in your memorandum that there have been cases where Registrar of Companies have opposed the cases. If the Registrar has some real group to oppose cases in the courts will it not be proper to settle the matter with Government and if in that matter an appeal is provided can there be any harm?

SHRI RANADE CHAUDHURI: We have already suggested that Court should not be eleminated from this.

SHRI JAGDISH PRASAD MATHUR: Then regarding appointment of Directors you have pleaded the case of shareholders. But is it not a fact that directors are pre-determined and companies are so formed that there is no chance of shareholders to be elected in a democratic way? So, if Govt. comes as representatives of people and appoint some directors who will look to the interest of shareholders will it not be proper. At present directors are pre-determined and they cannot be stated to be representatives of the shareholders.

SHRI RANADEV CHAUDHURI: With regard to the question of predetermination the provisions which are already there are sufficient.

SHRI B. T. KULKARNI: In the memorandum at a number of places

you have said that this is a very complicated Bill and it will add to more complications to the existing law which is already complicated. Is it the only reason why the objection is raised or would this amending Bill, in your view act as a disincentive to people to start ths and that?

SHRI R. S. LODHA: This would be a positive disincentive if the Bill in its present form comes.

SHRI HARSH DEO MALAVIYA: What is your opinion about the objects of the Bill which the Govt. has in view? Do you approve them? Government's objects are not limited to what have been given in the statements of objects and reasons but Govt. has some other objects about proper functioning of economy so that there is no concentration of economic power.

SHRI R. B. SHAH: Sir, it may be otherwise also. The regulations may be so utilised so as to curtail freedom of persons in actual management.

SHRI HARSH DEO MALAVIYA: You refered to some statements of the Wanchoo Committee regarding assumption of vast power leading to vicious circle of corruption etc. but that committee has also pointed out that in the working of the present system of economy the big Houses have flourished in such a way during the last two decades that there has been an estimated black money, according to Wanchoo Committee, of 7 crores of rupees. And the Committee also pointed out that the whole thing is not functioning in a proper way.

SHRI R. B. SHAH: Sir, one is left to live himself to reconcile these two statements according to his thinking.

MR. CHAIRMAN: That means, he has no answer.

SHRI HARSH DEO MALAVIYA: In page 11, para 7 of your memorandum you have mentioned that provisions made in the Bill will not lead to take-over bids. Don't you think that small shareholders are faceless persons so far as companies are concerned? The main decisions are taken by the Directors. So, why do you object to the privisions. You have observed that while it is a laudable objective to prevent clandestine take-overs there should not be, at the same time, any blanket ban on all share transfers. If Govt. tries to impose certain clause to stop such take-over bids why do you object?

SHRI R. S. LODHA: We agree that clandestine take-over bids should not be encouraged but as I explained earlier that when we talk of the minority shareholders' interest we feel that our suggestion go further than the provisions as contained in the present Bill. As we ourselves stated that in the case of minority shareholders option to sell off their shares should be there whenever any change of management takes place and so small shareholders will be on a better footing then in the matter of changing the management although they are not organised. I think our

proposal takes care of the interest of the minority shareholders.

SHRI HARSH DEO MALAVIYA: It relates nothing with the minority shareholders. The ultimate decision is taken by others and not by the minority share holders. What is your opinion?

SHRI J. SINGHI: My suggestion is that there should not be any blanket ban on the take-over bids. If you have a capital of Rs. 25 lakhs or more you are unable to sell your holdings without Government permission. There is no clause in the Bill which suggests that the transfer of shares within the members of a family or within the partnership can be restricted, but there must be some provision in the Bill itself so that the normal working of the company or inter-family transfer on dissolution of partnership firm can be guarded.

SHRI HIMMAT SINH: May I ask whether there is any clean record of the monopoly sector that can be brought to the court of law for search and inspection, for implementation of the policy decision of the Government.

SHRI RANADEV CHAUDHURI: The basis of the surprise inspection should be indicated before hand without which the company will be put into great difficulty.

SHRI HIMMAT SINGH: You have objected to the appointment of directors by the Government, but I think through the Government appointed directors the interest of the people would be better protected. While the other directors cannot protect the interest of the shareholders like defrauding from their earnings, the Government directors can account for their losses and can protect their interest. What is your opinion?

SHRI J. SINGHI: Whenever the Government Directors asked questions in the board meeting, these questions were answered to their satisfaction. But sometimes it happened that the Government directors were dissatisfied after attending the board meeting that their questions were not answered properly. We never said that we were against the appointment of Government directors. We only stress on the point that there should not be any unlimited number of directors. If Government appoints two directors, we will welcome that.

SHRI MUHAMMED SHARIFF: In Clause 30, Section 408, the Chamber holds the opinion that appointment of the Government directors will practically take away the powers of the shareholders in electing their own directors. May I now, Sir, know from the Forums what specific ways the appointment of Government directors will hinder the functioning of the Company?

SHRI R. B. SHAH: The shareholders, as we feel, are the proprietors of the firm. So, they should elect their directors for the proper running of the company.

MR. CHAIRMAN: Thank you very much.

[The witnesses then Withdrew]

II. Merchants' Chamber of Commerce, Calcutta.

Spokesmen:

1. Shri B. S. Kothari
2. Shri D. M. Kothari
3. Shri B. P. Agarwalla
4. Shri H. R. Bose

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Kothari, on behalf.. of the committee I welcome you. I hope, your views would benefit the committee and the memorandum which you have submitted has already been gone through by the members of the committee. Before I start I would like to draw your attention to the directions that the witness may kindly note that the evidence they give would be treated as public and it liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. With this direction I would request you to begin with the salient features of the proposed Bill. I would request you to be brief.

SHRI B. S. KOTHARI: Sir, we also thank you for giving us the opportunity of presenting ourselves before you for giving our views. I will deal with the question where the Bill seeks to give power to the Government from the Court in respect of issue of shares at a discount and the rectification of register of charges and ordering meetings of the company to be called in certain circumstances. The Chamber has got no objection to it. The Administrative Reforms Commission has suggested that such function should be transferred which are in the nature of administrative function. The sanction for changing of objects clauses should remain with the court. Regarding private companies, the multiple tests being prescribed for deeming such companies as public companies are not clear.

We also find that in the language of the Bill the intention of the government as disclosed in objects clauses does not find a place with the result that if there is an accidental increase in the turn over of a company in a particular year, it will become a public company although in subsequent years the same turn over may not be maintained with the result that the company will have to seek the approval of the Central Government again to become a private company and that will be a very time-consuming job with avoidable difficulties to the company.

Now, coming to the criterion which has been fixed we feel that apart from this criterion the Bill also seeks to delete some of the exemptions which were afforded to such private company. It is not understood why any investment in a hundred per cent subsidiary company of such a company should also be considered as an investment in a public compnay. In the case of a private company there is no separation of ownership from that of control—the same shareholders invest their money since limited partnership liability ownership is not allowed in India. Many of the persons pool together their resources and form a private

company. Uptill now the basis for deeming a private company as public is on the yardstick of shareholding but now the basis proposed is that it has held share in another company as well as the size of the company. The size of the company will be judged on the basis of turn over and the paid up capital and if the paid up share capital of a private company is not less than 25 lakhs and its turn over is not less than 50 lakhs, a private company would come a public company. It is government's declared policy that investment up to 1 crore is allowed to be made with out licensing formalities. So we submit that either the criterion should be that where the fixed assets exceed 50 lakhs or the turn over is more than a crore, then it should be taken as a deemed public company otherwise it will work as a discentive to the formation of private companies which are essentially promoted with a view to keeping it within the family.

Now, coming to the next clause 6—restriction on deposits—we feel that while we appreciate the anxiety of the government to put restrictions regard-the taking of deposits from the public, we feel that it should not be made applicable to the private companies. Private companies cannot invite shares or even debentures and therefore it is not understood why it should be made to give an advertisement inviting deposits. Usually no private company advertise for taking deposits. It is only the public companies which invite deposits but this restriction will be applicable to the private companies as well and even the loans which the private companies will take from their friends and relatives or shareholders will come within the purview of this section. We feel that private companies should be exempted from the operation of this clause.

Regarding the taking over of the company, we appreciate the anxiety of the government to control undesirable take-overs but we feel that restrictions under section 108B, on the companies holding 10 per cent shares is not desirable. Section 108A limiting it to 25 per cent may be justified but section 108B which puts only a percentage of 10 per cent is freezing practically the free flow and transfer of the shares. Moreover, in the case of section 108B no time limit has been put where the government has got the right to issue direcion not to give effect to the transfer. A time limit is very essential to be prescribed otherwise there will be uncertainty hanging on the head and the harmonious working of the company will be effected. This section has also been made applicable to private companies as well but such intentions do not appear in the section 108A. It is not understood why there should be restriction so far as transfer of shares in the case of private companies is concerned as no substantial public interest involved there.

Regarding payment of divident, the government is putting a restriction that the declared amount should be transferred to separate banking account within seven days. Even at present a company is required to pay declared dividend within fortytwo days. Now, what purpose will be served by putting this seven days' limit? Immediately the funds of the company will be blocked and they will have to plan much in advance and funds for interim period will not be utilised. Another clause which we feel is not desirable in the interest of the shareholders is that the unclaimed dividend will have to be transferred to the revenue account of the Central government. We do not understand the rationale behind this amendment. If it is prescribed that it is to be transferred to a specific account in the bank so that it is available to be paid to the shareholders, it is all right but if it is transferred to tax the Reserve Bank there will be much more delay in the procedure for clearing the dividend to the sareholders. This is all we have to submit.

SHRI M. K. MOHTA: In respect of taking of deposits by private companies the witness has stated on page 10 that no public deposits are invited and are given to private companies. May

I ask the witness under what section the private companies are debarred from inviting deposits from the public?

SHRI B. S. KOTHARI: They are not debarred except that private companies cannot invite share capital or debentures.

SHRI M. K. MOHTA: Does the Chamber know of cases of private companies actually inviting deposits from public and receiving them. It has not come to our notice that private companies have invited deposits from the public and have received very large amounts. Is the Chamber aware of any such instance?

SHRI B. S. KOTHARI: So far as the private companies with which our Chamber is concerned, they have not invited any deposits from the public by advertisement.

SHRI M. K. MOHTA: The Chamber is interested in the all India aspect of this Bill but I would ask you a question about the state of West Bengal. If this Bill is passed into law what effect would it have on the economy and industrial development of West Bengal in particular?

SHRI B. P. AGARWALA: Mr. Chairman and Hon'ble Members of the Committee, in answering the question I would like to draw your attention to the fact that the Government of West Bengal is in great need to provide more employment to the people of West Bengal. They are providing more small scale and medium scale units for giving employment to the people of the State. So if so many restrictions are put on private limited companies then there is every possibility that the result will not be encouraging so far as the desired industrial activity in the State of West Bengal is concerned and it will ultimately tell upon the employment potentiality of the State of West Bengal.

SHRI M. K. MOHTA: My next question is about the appointment of Government Directors. It has been stated that since the Government Directors at present are in a minority in the Board of Directors of some Company they are unable to be effective. Have any instances come to the notice of the Chamber where the Government Directors are ineffective merely because they were in a minority? What is the general experience of the Chamber about the effectiveness of the Directors nominated by the Government on the Boards of the Companies?

SHRI D. M. KOTHARI: The Chamber has already submitted its views and I will again submit that we feel that merely by increasing the number it will be taking over the Management which is not the intention of the Government. These Directors are to be nominated under Section 408 and are to act as watch dogs, if I may use the word. Now, if they take active interest in the company it is quite possible to check the unhealthy tendencies in those companies. But what we have to come to know is that the Directors appointed by the Government are not taking active interest in the Companies.

SHRI JAGADISH PRASAD MATHUR: You have stated in your memorandum at page 2, ".... exploitation of the people to give benefit to a handful number of persons who can manipulate to run the entire show." Do you mean to say that the present state of affairs is such that the entire show is managed by some persons and that the shareholders have no say in their business?

SHRI B. S. KOTHARI: It is not the opinion of the Chamber but in the introduction the Chamber has given a cautionary sentence.

SHRI JAGADISH PRASAD MATHUR: What is your opinion?

SHRI B. S. KOTHARI: It is not our opinion but it is just a caution. The fact remains that we have welcomed some of the provisions of this Bill.

SHRI MAHAVIR TYAGI: Which one do you welcome?

SHRI B. S. KOTHARI: There are various clauses in the Bill which we welcome. But we feel that shareholders' democracy has not been effective in India not because that they have no power but because the shareholders are separated and they are not organised. There are government supervision in many of the provisions and we have welcomed some of those provisions also where government's approval is being introduced for safeguarding the interest of the shareholders.

SHRI JAGADISH PRASAD MATHUR: The Government can appoint 5/6 Directors. But how it takes the power of the shareholders?

SHRI B. S. KOTHARI: If the elected Directors cannot be effective to run their business unless they are in a majority then it is indirectly taking away the freedom of the shareholders. That is the meaning which we wanted to convey.

SHRI JAGADISH PRASAD MATHUR: Freedom of the Shareholders?

SHRI B. S. KOTHARI: Of course shareholders can elect their Directors. But unless they are in a majority, the managerial power will not vest in them.

SHRI JAGADISH PRASAD MATHUR: From your own experience you can see that the majority of the Chartered Accountants working in mufassil or District Headquarters have no auditing work in the Company. They simply file income tax and sales tax returns. Could these persons be brought in line with the bigger auditing work of the companies by the system of rotational audit?

SHRI B. S. KOTHARI: While we appreciate the intention of the Government we say that there should be work for the Chartered Accountants merely by the rotation system will not help. Those Chartered Accountants doing the sales tax or income tax accounts in the District will not necessarily be able to get audits by rotation; some of the those practising chartered accountants are getting better remuneration than they will be getting by auditing the small companies. Moreover, if rotation is done the work may not always flow to the needy and deserving candidates. Instead it may flow to those who are well-established. He can like the case of other professions such as medical profession. If a limit is put on a doctor that he will be able to treat only 20 patients then some of cases have got to be treated by some inexperienced doctors. As such rotation will not be a proper remedy. In order to safeguard the interest of the shareholders what should be exphasized is efficiency and the integrity of the Chartered Accountants who are able to do the job. It cannot be the function of the Companies Act to provide employment. Its function should be to have a supervision and proper check with public interest. The very fact is that those who have come up had to struggle for a few years whether in medical or accountancy profession.

SHRI R. K. SINHA: What objection have you got if there are new aduitors. Don't you feel that the same auditors for the same company for quite a few years have got the chance of manipulating the accounts?

SHRI B. S. KOTHARI: So far as corruption is concerned, it depends on the question of integrity of the person concerned. The old auditor has got the advantage of having becoming well-versed with the system and maintenance of the accounts and in a lesser time he can do the job.

SHRI P. R. SHENOY: Regarding p. 10 of your memorandum, how can you object to the new provisions which are sought to be tried in the new amendment about preventing such fradulent methods?

SHRI B. S. KOTHARI: Our submission is that in the case of private

companies it should not be made applicable. There should be a limit.

SHRI P. R. SHENOY: Even with regard to private companies you want relatives and associates should be safeguarded?

SHRI B. S. KOTHARI: They know the management and an ordinary public might be duped but as far as a person who is closely connected is concerned, there is very little likelihood of being duped. They know the whole history of the company as well as its financial position.

SHRI R. K. SINHA: Are you aware of the ghost relations and friends who mobilise the deposits in the private companies?

SHRI B. S. KOTHARI: We do not hold any brief for such people.

SHRI R. K. SINHA: Regarding p. 29 of your memorandum, every manufacturer will try to push his own product. Therefore if the demand exceeds supply do you agree that there should be a sole selling agent?

SHRI B. S. KOTHARI: In that case it is not necessary.

SHRI R. K. SINHA: These sole selling agents, in my opinion, have been used by big corporate sectors for the invincible increase in their profits. What is your opinion in regard to this?

SHRI B. S. KOTHARI: This varies from company to company. There cannot be any general reply to this question.

SHRI MAHAVIR TYAGI: Clause 13 wants a declaration from a benamdar with regard to the name and other particulars and beneficial interest. You say that there is already a provision in this regard in the Income-tax Act. Therefore, it should not be brought here. How does it cause any inconvenience to company? Why do you object to this?

SHRI B. S. KOTHARI: We have given a few instances.

SHRI MAHAVIR TYAGI: The enactment will mean that the benamdar will make a statement according to the law.

SHRI B. S. KOTHARI: If there is a dispute between the benamdar and the real owner, to whom will the company pay dividend?

SHRI MAHAVIR TYAGI: Can there be no litigation in these cases?

SHRI B. S. KOTHARI: There cannot be any litigation between the claimant and the company at present such cases. If a company is to take notice of a benamdar, the company will become a battle field.

SHRI K. S. CHAVDA: The Chamber is opposed to section 408—Clause 30. If the number of directors appointed by the Government is less than the majority, would you agree to that proposal?

MR. CHAIRMAN: They have already answered that if the number of shareholders in the Director Board is in majority, they have no objection to Government appointing directors.

Thank you, Mr. Kothari, I think your evidence will be of some benefit to the Committee.

[The Witnesses then withdrew]

III. Association of Chartered Accountants, Calcutta.

Spokesmen:

1. Shri N. Ganguly
2. Shri S. S. Samanta
3. Shri K. P. Bhaumik
4. Shri A. K. Chakravarty

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: Mr. Ganguly and other friends of the Association of Chartered Accountants, Calcutta, I on my behalf and on behalf of the Committee welcome you here. Before we start the proceedings I would like to draw your attention to the direction which states as follows:

The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the members of Parliament. With this direction I would request you to begin briefly whatever specific points you have to stress. Thereafter the honourable members will put questions and I hope you will give the answers. Any one of you may begin.

SHRI A. K. CHAKRAVARTY: Mr. Chairman, Sir, respected members of the Committee, on behalf of the Association of Chartered Accountants we express our deep gratitude for giving us this opportunity of appearing before the Comittee to place our view points on the Companies Amendment Bill, 1972, particularly in regard to amendment of section 224 of the Companies Act which regulates the appointment of auditors. We observe from the notes on clauses 20 and 21 of the Statement of Objects and Reasons that under section 224 there is no restriction on the reappointment of same auditor continuously for a number of years. This has resulted in concentration of audit in a few established firms of auditors and has tended to create close association between the auditors and a group of companies. It is, therefore, proposed to regulate reappointment of the same auditors by requiring Government approval for continuance beyond three years. Therefore, the objects of the amendment are, in our opinion, to dilute the concentration of audit which exists today in the hands of a few established firms of auditors, and to stop the development of close association between the auditors and a group of Companies. Our memorandum placed before the Committee, Sir, we have expressed our view that the proposed amendment in this regard which tantamounts to rotation of audit, will fall short of fulfilling the declared objectives of the Bill, namely, "concentration of audit in a few established firms of auditors and has tended to create close association between the auditors and a group of companies."

We apprehend that the purpose for which the amendment has been sought for may become frustrated due to the following reasons among others:

(a) The proposal for obtaining prior approval for reappointing the

same auditor beyond a period of three years, has made the audit profession further dependent upon the whims and choice of the private corporate management,

(b) Concentration of audit in the hands of a few established firms will not be diluted at all as no material steps have been suggested towards achieving that objective. Moreover, at the end of every three years rotation of audit within a group of established firms by making mutual arrangements may be encouraged. On the other hand, small audit firms have been threatened with the fear of losing whatsoever company audit they have got. Thus the proposed amendment of section 224 may adversely affect the interest of a large section of members of the profession and this sort of half-hearted and piecemeal attempt should not be allowed to be passed by the honourable memebrs.

There will be great problem for the smaller firms where there is a great employment potentiality. There will be difficulty in maintaining the employment strength in these firms and the whole basis of the profession may be disturbed.

MR. CHAIRMAN: Your memorandum is of one page but you are stressing on so many things. We are interested in your suggestions only and not the theories.

SHRI A. K. CHAKRAVARTY: Sir, our suggestion firstly is to keep the independence of the profession and so third party appointment should be made to keep that independence of the auditors as well dilution of the audit concentration regarding which we have made our detailed suggestion in the memorandum.

SHRI M. K. MOHTA: But who would be that third party—the wing of the Government.

SHRI A. K. CHAKRAVARTY: There should be a national audit board comprising of representatives from different sectors of the society, i.e., the Govt., the legislatures, Chambers, Institute of Chartered Accountants and also Trade Unions, and it should have central as well as regional offices.

SHRI M. K. MOHTA: Would that not infringe the natural constitutional rights of the shareholders to appoint their own auditors?

SHRI A. K. CHAKRAVARTY: Under the Companies Act so many rights of the shareholders have been curtailed by amendments and it is a small piece of thing. In India to-day shareholders are not actually exercising their rights—it is the privilege of the management to exercise all rights because large number of share holders hardly attend the general meetings. It is actually the management who appoint us and we are to report on their account. I think this proposal will not create any constitutional difficulty.

SHRI JAGADISH PRASAD MATHUR: There is a move now that this business should be nationalised. What is your opinion about this? Will your independence to audit remain after nationalisation?

SHRI A. K. CHAKRAVARTY: I would only answer this question that at the present economic and political condition nationalisation is not necessary. Regarding independence of the profession if the appointing authority goes to a third party then independence will be there and that will solve the problem and auditors will also be able to discharge their responsibilities independently, and tell the society that they are really doing good service to the society.

SHRI MAHAVIR TYAGI: Auditing you know is a sacred thing and in the constitution also it is provided that auditors should be independent. But it has come to the notice of the Govt. that there are certain auditors who

toe with the management and they conspire with them and do not do really justice to shareholders. Under the circumstances should we have some provisions regarding changing of auditors? If you do not approve this then would you approve enacting a law whereby such auditors can be criminally prosecuted for heinous offence? What is your view as to how it can be checked?

SHRI A. K. CHAKRAVARTY: Already there is a provision in the Companies Act. For breach of trust an auditor can be prosecuted.

SHRI MAHAVIR TYAGI: Another question. At present there are chartered accounts, cost accountants, and also some other accountants. Do you think there is a possibility of mixing them together into some organisation?

SHRI A. K. CHAKRAVARTY: Under the present Companies Act so far as financial accounting is concerned it is only the chartered accountants who make the audit—no other persons are qualified to audit under section 224. Regarding cost accounting audit only cost accountants are entitled to audit. There is no other person who is allowed to audit. But I agree with you that both cost accounting and financial accounting can be grouped together—there is no difficulty.

SHRI MAHAVIR TYAGI: What is your suggestion for protecting the interest of the employees of the auditors' firm who practically do lot of auditing work?

SHRI A. K. CHAKRAVARTY: I think you are referring to employees of those big establishments. I will say that the problem will be more with the smaller firms because to-day out of 16 thousand chartered accountants 50 per cent are in practice and the rest are in employment. Out of 1000 firms only 20 firms are considered to be big established firms who do 90 per cent of the total auditable transactions. They have got qualified as also unqualified staff about 2,000 or 2,500 and so the question of employment is not a big problem. I would say there will not be much difficulty in solving that problem of unemployment.

SHRI S. G. SARDESAI: The representatives of trade unions should also be in that independent authority you referred. Do you not think that employees should also have some authority to appoint auditors?

SHRI A. K. CHAKRAVARTY: I have already suggested that so far as the company account is concerned the shareholders are the interested parties because their money is involved there, but the labourers are interested only in their remuneration or in the matter of bonus or gratuity etc. The Government is the revenue collecting authority and it is interested in the planning etc. So, there are three bodies which are directly involved in the Corporate Management and these three bodies should have representative in the matter of appointment. Therefore, the shareholders should be there. Similarly the labourers and the trade union people are there.

DR. M. R. VYAS: It has been represented to this Committee that for audit of accounts of big undertakings big establishments are required. How do you think that division of the work would be brought about by the system, as you have suggested, in the amendment?

SHRI A. K. CHAKRAVARTY: My suggestion is, Sir, there is also some solution to this problem in the sense that auditing can be divided—as in some big undertaking like H.S.L. or in certain other Govt. undertaking—into many sectors. When we prepare audit programme we make programme for different branches of the audit.

DR. M. R. VYAS: Is there any scheme of division in auditing?

SHRI A. K. CHAKRAVARTY: I am just referring to the steel auditing. In the H.S.L., at one time, one auditor had to perform the whole process of auditing, but now this system has been divided in separate units of auditing. For instance, there are separate units at Durgapur, Rourkella and Villai where different auditors can perform their duties separately and thereby different units of the firm will be responsible for their functioning. After the nationalisation of banks there was an attempt for introducing this branch auditing system by the different individual auditors.

DR. M. R. VYAS: What is your opinion about property audit for checking malpractices or other deficiency?

SHRI A. K. CHAKRAVARTY: I would like to say that this propriety audit is now prevalent in U.K., U.S.A. and in other developed countries. I feel, that this system will help the auditors to give real service to the society if it is introduced here.

DR. M. R. VYAS: There has been repeated statements from various members that by giving the authority to the management of appointment of auditors from outside bodies would be wise. But may I ask that would it not deprive the common shareholders of the right of appointment of auditors in order to strengthen the right of effective financial benefits.

SHRI A. K. CHAKRAVARTY: I suggest that by giving the authority to a third party the right of the shareholders will not be curtailed. I also suggest that the position will be improved and the reporting on the financial matters will be far better in the interest of the shareholders. In the case of big companies where there are thousand shareholders, if the third party's appointment is not accepted then there may be an appointment by the shareholders as well as there may be an appointment by the Government or from labours. In that event there will be double auditing at least for these giant companies.

MR. CHAIRMAN Thank you very much for your valued evidence which will be of great benefit for our members.

[The Witnesses then withdrew]

The Committee adjourned at 13:15 *hours to meet again at* 15:00 *hours.*

(The Committee reassembled at 15:00 hours).

IV. Incorporated Law Society, Calcutta

Spokesmen:

1. Shri P. D. Himmatsingka
2. Shri R. C. Kar
3. Shri B. P. Khaitan

[*The witnesses were called in and they took their seats*].

MR. CHAIRMAN: Mr. Himmatsingka and other friends of the Incorporated Law Society of Calcutta, I on my behalf and on behalf of the Committee welcome you. Before you begin I would draw your attention to the direction that the witness may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. With this direction I would request you to kindly state your case briefly.

SHRI P. D. HIMMATSINGKA: I thank you on my behalf and on behalf of my society for giving us the opportunity of presenting our views before the honourable members of the committee. I shall try to be as brief as possible. We have given two memoranda in connection with the views that we feel and the opinion that we hold regarding the various clauses that are intended to be introduced by way of amendments and I will refer to them briefly. First I will refer to clause 2—definition of group. In our opinion the definition is very vague and indefinite and it is likely to lead to complications in the administration thereof. We suggest that the definition should be made precise and clear and certain objective tests should be laid down so that there would be no difficulty in coming to a conclusion as to whether they are of the same group or the intention of the framers of this Bill is being carried out or not. It is very important in view of the fact that a large number of provisions that are being made—penalties, very heavy penalties are being provided for the group acting in a particular manner, filling shares or buying shares more to the extent of a little over 10 per cent and so on and therefore it is very important that the persons dealing with shares and dealing with companies should know what is really meant by this definition of group. As you will find, a number of sections provide for various penalties if certain things are done by members of the group. There is no obective test—the object of

exercising control. The trusts purchase shares, the Unit Trust of India purchase shares. Can we say that they do so for the purpose of exercising control. The L.I.C. purchase shares. They do so for the purpose of investment and not for the purpose of exercising control. Therefore there must be some objective test otherwise it is very vague and will lead to difficulties in administering the law.

Then I come to the next clause—clause 4B. Here again the same difficulty arises due to the vagueness. If one exercises control over the other or both are under the control of the same group—this is in connection with the same management. Therefore, unless it is very definite, it will lead to complications. The definition here specially must be very, very precise so that one may know whether the two groups of companies are under the same management or not. And the test of one-third is also rather very strict. You will find this in sub-clause (i). Then I will refer to clause (iv)—if one or more directors of one body corporate constitute, or at any time within a period of six months immediately preceding the day, etc. etc., constituted one-third of the directors of the other. Now, a big company may have ten directors. Another company may have three directors. If one director of the big company is also a director of the smaller company, the smaller company having no connection with the big company or the monopoly company comes under the same management because you see one-third of the directors are common. Therefore, either the principle should be such that they can exercise control or that they can have some voice in coming to decisions in the companies. There should be majority of the directors common to both the companies, otherwise a number of companies will be hit and the clause becomes unworkable. In fact, in the M.R.T.P. Act also in the Select Committee this point was attempted to be brought out by me by a note of dissent. It must be very precise. Unless there are more number of directors common to both the companies it should not be limited to one third directors common to both. Another thing is that preference shares have been included—one holds not less than one-third of the shares. One-third should be rather less, it ought to be more. But why should preference shares be included? They have no voting right and moreover these have been included in clause 10. In clause 108G it is stated that for the purposes of sections 108A to 108F the expression "equity share shall include such preference shares as have voting rights. It seems to me to be wholly unnecessary to repeat it here. On the contrary it will mean that all the preference shares are intended to be included. This will not be fair. Then I come to clause 4. Here the court's powers are being taken away. There are four clauses in that connection—Clauses 4, 8, 11 and 12. I have not been able to understand why the powers of the court should be taken away specially when

about the powers that are being given to the government there is no guideline and nothing has been indicated as to what will happen if they do not give sanction to the application and so on. Therefore, Sir, we feel that the powers of the court should be allowed to remain, as they are in any event, so far as Section 17, and 18 covered by clause 4 are concerned. Similar thing should be done in respect of Section 141 covered under clause 11. You know, Sir, that if there is a mortgage or a charge or any other account by a company that has to be registered within 30 days and if the company advancing the money or the mortgage fails to do so he will lose certain rights. Therefore, the law has given the option, rather the opportunity to make good the mistake by making application to the court and asking for extension. The Court goes into the fact whether anybody else's right has been affected or whether another mortgagee has come in between. The Court generally allows extension of time and the mortgage is registered, the satisfaction is registered and so on. So we feel that these powers should continue and there is no justification for taking them away from the Court. If these powers are taken away and the Government makes decisions then there are likely to be writs if the parties are not satisfied. Writs will be filed to the Delhi High Court and appeal will go to the Supreme Court. Writs will be filed from different States also. Therefore, we feel that the present arrangement should be allowed to continue.

Then I come to clause 5. The present law is that if 25 per cent shares of a private company are held by a public company then the private company becomes a public company. The change suggested is that even if a private company takes share of another private company to the extent of 10 per cent then the company whose shares are taken by another private company, becomes a public company. That is too drastic a step. Sir, we cannot follow the reason of this proposed measure as to why a private company who invests its own many to the extent of 10 per cent should be converted into a public company.

Then I come to Clause 6 which in my opinion should be dropped. You will realise that most of the companies have certain amount of share capital and they have other monies. They arrange or the Directors, shoreholders or other persons interested with them put their own money and they invest their own money. Now, the provision intended to be put in here is that no company shall accept any deposit unless it be according to the rules to be framed and prospectus is issued. The provision is also that if such loan is taken or accepted then it must be returned within one month after this Act comes into force or rules are framed. At present the Reserve Bank of India is taking care of these things. In fact certain instructions have been issued by the Reserve Bank for paying back certain advances that may have been taken against certain rules that they have framed. Therefore, I feel, this provision will very very seriously affect almost all the companies if it is framed in the present

manner. My own opinion is that more than half the numbers of companies will either go to liquidation or will have to close and their Directors will find place in the jails because it will be impossible for them to return the money. Therefore, this provision needs to be dropped. In any event there should be no objection to money, deposit or loans paid by the Directors, shareholders or other persons who are related to them. Sir, who else other than those persons would give the money when the Company is in difficulty? I will give you one or two instances. A situation was created only two months ago when there was a strike in one of the nationalised banks *viz.*, go slow and other sort of such things. As a result, no cheques were being cleared. Similarly there was a strike in the Reserve Bank of India and no cheques were being cleared. The Railway Receipts came and money was badly needed for the freight and for the value of the articles received. For this people had to borrow money immediately from their relatives the Directors and so on. Now, if this law be there, then they cannot even borrow the money and companies will be in great difficulty. Therefore, I feel that this provision is very very objectionable and should not be persisted with.

Sir, then I come to clause 10. Personally I feel that this amount of 25 lakhs of rupees should be raised because rupees 25 lakhs are nothing now-a-days.

MR. CHAIRMAN: Mr. Himmatsingka. I have a request to you. Most of the points which you are elaborating have already been covered by the other parties who appeared before us. So if you have any specific point you kindly deal with that because that will help us both and avoid repetition.

SHRI P. D. HIMMATSINGKA: I lay very great stress on clause 6. Difficulties will arise if deposits are going to be prohibited. Clause 10 seems to be *ultra vires section* 108 (a). Supposing Government does not give permission. Then shares cannot be transferred. A man has got to sell and Government does not give him permission. As regards clause 16, the present law is at dividend has to be paid in cash within 42 days. Now you say that the money should be deposited in a separate account within seven days. Big companies can do that but it will be a drastic clause for the small companies. As regards clause 18, powers to inspect without any notice, any search seems to be too drastic and as a lawyer I feel that it is too drastic but needs certain amount of restriction. As regards clause 23, why should permission be necessary for reappointment of a managing director or directors when all the conditions have been examined and Government has the right to reduce remuneration even when it has been sanctioned for a certain period. As reg. cl. 25, you are restricting the right of a man for giving services to the directors or their relation. You are making provision in 314 for permission of Government and all that. Why you introduce that restriction when permission has not to be obtained for any appointment beyond three thousand rupees? A man may be a director of a company or his relation may be director. He cannot be appointed as a lawyer in the court unless sanction is obtained from Government. Therefore it should not be extended to services.

As regards clause 30, this seems to be very very objectionable. Any number of directors may be appointed to make it a majority. It seems to be taking away the company without any compensation. In other places you say that one-third of the directors is sufficient to bring pressure on the company group and here you say that two directors will not be able to influence he same. Besides, there is no safeguard as contained in the Industrial Development and Regulation Act. As regards clause 29, secretary is holding office in two companies. He has to resign even if the companies are small. So far as companies having more than Rs. 25 lakhs of share capital are concerned, the provision is there

but clause (b) makes it obligatory for every company. It becomes an omnibus clause affecting every company. Besides we have given a chart of punishment which is almost a penal code.

SHRI R. K. SINHA: I think the objections basically relate to provisions of sections 17, 18 and 19. And Mr. Kar apprehends this might be due to Government being located at Delhi. Would he agree to the arrangement if there is decentralisation?

SHRI R. C. KAR: That will be the answer to one of the objections. The basic thing is that there is no justification of taking away the jurisdiction of the court and thereby making it very cumbersome and, if necessary, time consuming. In any event, as my President has already addressed this august body, the position is there may be applications and there may be rejections. Rejections are based on reasons furnished by Government which may or may not be justiciable. But so far as the facts and circumstances on which reasons are based are concerned, it would lead to litigation. To make it more complicated by taking it out to the executive at the first level and then fighting it out at the judicial level would mean lot of delay, expense, if not other consequences.

SHRI R. K. SINHA: Please refer to p. 2 regarding introduction of a new clause-clause 205(a). Your statement in paragraph 4 contradicts the argument that you have given in the previous three paragraphs. As you say, if there are rare instances then why should there be any objection.

SHRI B. P. KHAITAN: During the last 14 years I have been a Director of at least 16 companies and in no company has ever been dividend refused. Therefore, we have used the expression 'rare instance'. Statistics are there with Government.

SHRI P. R. SHENOY: You said, whenever Government is to give approval it becomes a time consuming procedure. Suppose an amendment is made that Government should give its approval within a specified time, say, one month. Will you be satisfied?

SHRI HIMMATSINGKA: This will be necessary but there is the other side. Government also gives disapproval. In what circumstances and how this will be done is not known to the applicant. In such circumstances no remedy is provided in the law. Obviously, he has to go to the court.

SHRI P. R. SHENOY: Supposing a judicial body is provided for dealing with this. Will that satisfy you?

SHRI P. D. HIMMATSINGKA: Unless you have justification for a change, a change for the change's sake will not find any support or sympathy. Even if you do this, this Bill has not gone so far as to provide for alternatives as to when the Government disapproved. There is an end of the matter.

SHRI K. S. CHAVDA: Himmatsinkaji has said that provision 108B will be *ultra vires*. I would like to know what articles of the Constitution are violated by this.

SHRI HIMMATSINGKA: It is interference with the right to deal with properties—19A, B, C.

MR. CHAIRMAN: Thank you very much, Mr. Himmatsingka.

[*The witnesses then withdrew*]

V. Chartered Institute of Secretaries of India, Calcutta

Spokesmen:

1. Shri Y. Verma
2. Shri S. K. Basu
3. Shri S. Raha
4. Shri P. K. Ahluwalia
5. Shri A. De
6. Shri B. Sen

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: Mr. Verma and other friends of the Chartered Institute of Secretaries, India, I on my own behalf and on behalf of the Committee welcome you here. I would request you to state your case briefly. Only the relevant provisions which may affect you may be stated. Before I proceed I would like to draw your attention to the direction which states as follows:

The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

With this direction I would request you again to state your case briefly and then I would request the honourable members to put questions to you.

SHRI Y. VERMA: Mr. Chairman, Sir, we here represent the Chartered Institute of Secretaries. This is the India Association of the parent body which is located in U.K., London. As perhaps most of you would know, this is the oldest professional body on this line. It was incorporated some time in 1891 and received its Royal Charter in the first year of the century. Since then in the countries of the commonwealth this has been the premier body all over the English speaking world outside America where the members of this Chartered Institute manned this profession. We started the India Association in 1952 and in course of time, in order to develop the profession in India the home body was made to hold the examinations with the Indian subjects. Members of this Institute have to study the Indian Companies Act, Indian Mercantile Law, Indian Taxation laws and most of the subjects which are of day to day use to our business and industry in India. So, up to 1952, whoever wanted to have qualifications of the profession had to go to U.K. Since 1952 the process started in India and we started conducting the examination in India. The syllabus, as I had mentioned before, contained all the India laws and everything from the point of view of Indian industry. The examinations are held from U.K. simultaneously all the world over. But the India body was responsible for screening the candidates who take the examinations on that body. The Indian body took care of selecting only such candidates who they thought would eventually fill the role of responsible administrators in the profession. So, the basic guidance was that a candidate must be a graduate of an Indian university and should be employed in the profession of a secretary or something very near

this profession. In course of time the need for a national institute was felt and again it was the Chartered Secretaries who produced the first syllabus and assisted the Government in preparing the basic literature for this profession. Thus in 1969 was born the Institute of Company Secretaries of India and since then they are prospering under the aegis of the Government. In that way all those who qualified in the profession of the Secretary are the members of the Chartered Institute of Secretaries. It is only from 1969 that we are having the Institute of Companies Secretaries operating and producing their own Secretaries. So we submit that in the light of the premier nature of this Body and the qualifications and the subjects and the fact that they are at the present moment holding very many important offices in the country's industries that while prescribing the qualifications the chartered secretaries should be placed at par with company secretaries. This is our submission, Sir.

SHRI JAGDISH PRASAD MATHUR: Yesterday we heard the Institute of company secretaries and they claimed that they were the only representative institute of the secretaries and they wanted inclusion into this Act and that a member of that Institute should be allowed to be appointed Secretary of the company. What is your opinion?

SHRI Y. VERMA: We have absolutely no difference with their contentions. We believe a National Institute in course of time must work and they are the premier national Body and they must be reckoned as members of this profession.

MR. CHAIRMAN: What is your main point? Would you like that your rights and services should be protected or that the examination as conducted by your Institute be included in the requisite qualification for appointment of secretaries or you want to make either of the two or both? And you agree to this that they are the premier organisation and so what is your contention?

SHRI Y. VERMA: I will submit, Sir, that the chartered secretaries were holding examination in India. The recruitment examination was made in India which we have stoped now from this year. At the moment we have about 1 thousand students in the various stages of the course and our submission is that their rights should be protected as and when they complete their examination they should be accepted as chartered secretaries. Sir, when you prescribe the qualifications whether in the Act or in the Rules then the chartered secretaries having been the longest in the profession should stand at par with the Institute of company secretaries.

SHRI BEDABRATA BARUA: Institute of company secretaries are holding examination and if that institute allows your members to become members that institute of comapny secretaries then may I know what would be the position? So far as I know certain conditions have been laid down and they have liberalised and now practically any chartered institute secretary can become company secretary. If your qualified people are allowed what is your objection to it?

SHRI Y. VERMA: There is no objection at all, Sir, but as far as the circumstances exist their rights should be protected. Some of our associate members applied for membership of the Indian Institute of company secretaries but they were just turned down. Sir, we are chartered secretaries and before a man becomes associated with our Institute he is not only to pass the examinaiton but he has to put in a degree of service also and then he is taken as associate and after several years he becomes a fellow member. So, all the members of the institute are qualified both in examnation and in training in the profession.

MR. CHAIRMAN: You mean the secretary should be taken to be a member of the Institute?

SHRI Y. VERMA: Yes, Sir.

AN HON. MEMBER: You have given very useful details and practical sugestions. But you have not mentioned one point and that is the definition of 'group'. If you can give your suggestions it will be useful.

MR. CHAIRMAN: You please send to us your suggestions regarding the definition of 'group'. Now, I have one question to ask. You just stated you want protection to those secretaries who are working at present as well as those 1000 trainees—I call them trainees. But how does the question of 1000 trainees arise when you have not said anything about examination?

SHRI Y. VERMA: Somebody is in the first year, somebody is in the second year, etc.

MR. CHAIRMAN: Where are these persons?

SHRI Y. VERMA: They are in India, Sir.

MR. CHAIRMAN: What is the subjects of examination and how they are conducting it?

SHRI S. K. BASU: The question is that if the Institute of Company Secretaries of India admit all our members, is it necessary for acquiring the qualifications to be prescribed by an Act or in the body of the rules? The answer to this question is perhaps not the companies Bill *i.e.* the Select Committee if I am permitted to say so, is not the appropriate forum.

MR. CHAIRMAN: Rules would be there governing the qualification which is necessary for the Secretaries.

SHRI S. K. BASU: I would like to draw your attention that in India, we started this profession like the profession of Engineering or medicine or law. We started the Institute of Company Secretaries, India, in Calcutta in 1957 because we knew if the Institute would have been sucessful we would have liquidated ourselves. In 1962, when the G.D.C.S. examination was started, it was we who helped the Government to draft the prospectus. Many of our original members were the paper setters and the examiners. In 1968, it was we who came forward to absorb ourselves in that body. May I request the honourable members' memory that when Shri Fakhruddin Ali Ahmed was the Hon'ble Minister in charge of the Company Affairs he had suggested that we should join the Institute of Companies Secretaries. At his instance we did apply, but most of our members were rejected on a mere flimsy ground. There is hardly any unemployment in our community. So, the question of full employment of qualified secretaries in the Indian context does not arise.

MR. CHAIRMAN: This is an administrative question. Since the Minister is not here to take note of it you need not say anything about this.

SHRI A. DE: Sir, there is something to add. We have made our representation so far as our members are concerned. In the memorandum we have made two more suggestions to which I would like to draw your kind attention and this is in the interest of the profession in general. Our suggestion is, whether the company's secretary will be required to pass the prescribed curriculum or not although in future, it will not be obligatory in the company Law amendment Bill to incorporate the provisions of having Secretary with a paid up capital below Rs. 25 lakhs. There is another suggestion also. In the larger interest of the profession, there are several small companies, as we have come across in our long experience in this line, where a wholetime Secretary is not required. In such case any Secretary in a practising firm can function.

MR. CHAIRMAN: Thank you very much.

[*The witnesses then withdraw*]

VI. Association of Practising Cost Accountants of India, Calcutta.

Spokesmen:

1. Shri A. K. Biswas
2. Shri B. L. Mishra
3. Shri S. N. Ghose
4. Shri R. K. Bose
5. Shri A. K. Mitra

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: Mr. Biswas, on behalf of the committee I welcome you all and wish you a happy new year. I hope, your views would benefit the committee. The memorandum which you have submitted has already been gone through by the members of the committee. Before I start I would like to draw your attention to the direction that the witness may kindly note that the evidence they give would be treated as public and it liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. With this direction I would request you to begin with the salient features of the proposed Bill. I would request you to be brief.

SHRI A. K. BISWAS: In page 1 of our memorandum, that have been submitted to the honourable members of the Joint Select Committee, we have said that for the purpose of getting maximum economy in production of goods and services for the people particularly for those 50 per cent people who are below the subsistence level and for the purpose of ensuring them minimum subsistnce, we submit humbly to the members to recommend that this thing should be incorpated in the companies Act, 1956 in the form of regular companies cost audit.

In the last page, in connection with the companies Act itself, we feel, from the association there is some anomally in the meaning of accountant and this will appear in different sections under different context. We wish that the term 'accountant' should include both the Chartered Accountants and the Cost Accountants under different sections of the companies Act itself unless specifically provided otherwise. In regard to section 235 about the inspection in connection with the minority interst or in connection with the special audit and in regard to section 233A(1), we feel that we are not less competent than the brother accountants. Most part of our memorandum is inclusive of the cost audit and other things. Now we refer to page 2 of our memorandum in connection with clause 22 of the Bill, in line 10 of the left hand side, under section 209(1)(d), there is a mention that when there will be an order from the Government, the companies would have to maintain the records for the purpose of utilisation of materials and men and other expenses, and in another section 227(3)(b), it is categorically written that whenever the financial audit is to be completed the chartered account is to certify that proper books of accounts under section 209 and under other sections are being maintained. We

feel that there is also some anomally there. Our submission is that it should be put somewhere in section 233B. There should be some direct supervision by a qualified cost accountant for all the companies to maintain books under the present section 209(1)(d). The cost accountant should file an annual return to government directly confirming the maintenance of cost records.

Now, coming to page 4 of our memorandum in connection with clause 22(v) of the Bill relating to sections 226(3) and 226(4) of the present Companies Act on the disqualification of the cost auditors. Some of the disqualifications are mentioned there. I want to submit that unless we really disqualify the people in such a way that we can stop the close association with the companies and the cost auditor, then to our mind, it appears that the closeness of association between the company and cost auditor will grow. In connection with the point No. 3 in page 6 of our memorandum, there is a question about the sufficiency in the number of cost accountants and the chartered accountants—this may be deleted. There is another point which I may like to put here. We, all the cost accountants, who are holding the certificates for cost accounting are not of equal quality. If there is any proper check on proper appointment, then ultimately we would get best people within the Institute and also we are to be appointed by the Government. Regarding departmental appointment also, we have one suggestion that it should not depend on one or two or a group of people but there should be a method evolved by the honourable members here and members of the Parliament. Our suggestion is that there should not be any bias in the appointment of any individual. In the private sector we have seen that a few people are always appointed. Our suggestion is that the method should be—there may be other methods too—drawing without repition. If I am appointed once my name should not be considered until other cost accountants get their appointment in turn. Drawing without repetition should be one of the methods and by fixing the ceiling—not the number of companies but the total fee in a year. If we can combine these two, then we can get the desired result. If there be any weakness on our part, that shoud be referred to the disciplinary committee of the Institute of Cost Accountants for action. Now, when the Government is going to appoint the accountant, naturally the remuneration should be fixed by government although that has to be paid by the company. Fixation of the remuneration cannot be a uniform one even for one class of companies. That depends upon different factors. That has to be decided by the Government. On page 7 we have said that the notes on clauses 20 and 21 of the Amendment Bill mean concentration of audit or close association. This will not be there or there will be least chance of that if we can fix the ceiling and determine the remuneration by the central government. This is our summary of the memorandum.

SHRI HIMMAT SINH: On page 7 of your memorandum, you have said that the cost auditor is fully alive to the social responsibility of rendering a socially useful service. I would like to know your conception of this socially useful service.

SHRI A. K. BISWAS: Our idea is that we should be for all the people of the country specially for that 50 per cent who are not even getting the living or who are not earning up to a minimum by which they can live. We the cost accountants can at least say that this is the minimum cost by which one thing can be produced and supplied to them. If you want, we can even add something—not a standard of 15 or 20 per cent—but depending upon the particular production, particular investment we can say that there will be different slabs of prices. That is why we are mean-

ing that we can be useful there provided the honourable member wants that our services should be taken.

SHRI R. R. SHARMA: Please refer to page 6 of your memorandum. You have said, "we therefore, submit most humbly that chartered accountants may be omitted along with other persons from sub-secion (1) of section 233B". Perhaps you have gone through the proviso to section 233B as proposed to be amended. Are you of the opinion that your purpose is not being served by that proviso?

SHRI A. K. BISWAS: No.

SHRI R. R. SHARMA: Why not?

SHRI A. K. BISWAS: We are of the opinion that cost audit must be done not only by the qualified people but also by people who can go in depth into the production system. We are practically holding experience of the shop floor but many of the chartered accountants have got no experience of the shop floor.

SHRI R. R. SHARMA: Excuse me, you have not followed me. Please look to clause 22(ii)—provided that if the central government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act 1959 are in practice and are available for conducting the audit of the cost accounts of any company, the government may by notification etc. etc. direct that no chartered accountant shall conduct the audit of cost accounts of any company. Will it not serve your purpose?

SHRI A. K. BISWAS: Our Association had a very long discussion on this point. But what has been provided here seems to be on the basis of some fact which probably was not the fact which will appear from the annexure which we have included today because the number of cost accountants was always sufficient. In 1965 there was zero cost audit and there were 8 or 9 cost auditors. In the year 1966 there was zero cost audit and the number of cost auditor was 11. In this way we can show always there was sufficient number of cost auditor and in future also it will always be sufficient because we are growing at a larger pace. So this will probably carry no meaning according to us.

SHRI S. G. SARDESAI: In course of the deliberations of this committee points have come forward that for full accounting and full auditing, financial auditing, cost accounting and propriety auditing in a firm are necessary and by and large we see that position. But one problem exists. Does it mean that in future we should have these three types of accounting and auditing and all firms should be asked to go through three types of accounting and auditing. As far as I can understand, cost accounting has necessarily got to be preceded by financial auditing. Unless first and foremost financial accounting is done, cost accounting cannot be done. That being so, why can't we combine all the three functions so that unnecessary duplication and waste of money and so much sort of burden on the concerns should not be there.

SHRI A. K. BISWAS: If I am permitted to give an analogy in answering this question, the still photograph is the father of movie photograph and movie photograph is the father of the Circarama. Here also, the financial accounts with debit and credit business is the father of cost accounting. Now if all these three types of accounting and auditing are to be introduced and that becomes the concensus of the Parliament, naturally the question will come ultimately whether the three accounting will be there or ultimately one accounting will be there. But we feel that the stage has not yet come for us to combine these three things, particularly with people who are doing different types of things. In our case it has come at a later stage but in fact it should be at a primary stage because without knowing the material

quantum, without knowing the labour quantum, it is impossible to have an accounting unless we estimate or put any figure blindfold. To our idea in many cases estimates are done and in some cases blindfold figures are given on the basis of which financial accounting is completed. You should know actual details from the shop floor viz., the total quantum of material and the value, the total quantum of labour and the value plus the expenses required for the purpose of doing cost audit. It should have been in the first place but unfortunately we have got a few and it might take some time. But the idea that there is no audit excepting cost audit is not possible at the present moment. I may be possible in the next 10 years' time. This is our view.

MR. CHAIRMAN: Thank you, very much.

[*The witness then withdrew*]

VII. National Forum of Share-holders, Calcutta.

Spokesmen:

1. Shri M. C. Bhandari
2. Shri Chandravadan Desai
3. Shri Hari Gopal Acharya
4. Shri Jagmohan Sharma
5. Shri Banshi Mohan Chatteraj.

(*The witnesses were called in and they took their seats*).

MR. CHAIRMAN: Mr. Bhandari, you are again here and I welcome you and your friends, the members of the National Forum of Shareholders, Calcutta. I hope you would kindly be brief and would only confine your remarks to the relevant points. But before you begin I would like to draw your attention to the direction which I read.

"The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament."

With this direction I would request you to begin.

SHRI M. C. BHANDARI: Mr. Chairman, Sir, I am really grateful to you and my colleagues are also equally grateful to you for giving us this opportunity to tender before you and your committee our oral evidence. I am doubly grateful to you as you have already said that I had the privilege of appearing before this august body earlier in the capacity of the leader of the young Chartered Accountants. To-day I am appearing again as the leader of a delegation of the National Forum of Shareholders, Calcutta and we are really indebted to you for giving us this opportunity. Sir, we feel that the whole corporate system is based on five fundamental principles. The principle is that of trusteeship. As in the corporate system the funds of others are used by the Company Directors as they hold them in great trust and therefore they should not take advanage of the position that they hold. The second principle is the principle of accountability, the third principle is the principle of shareholders' democracy, the fourth principle is the principle of social

responsibility and lastly, there is the principle of efficiency. Whenever these five principles are found lacking by the Government and other thinkers who are connected with the corporate system they come out with certain proposals to make up the deficiency. Now, we welcome this proposed Bill and pay our compliments to the Government of India which has come out to do this second major operation on the corporate body system to get rid of the evils which have crept in the body. Sir, from that point of view we welcome this Bill in which the Government has come out with certain proposals which would strengthen and consolidate these five principles that I have mentioned earlier. But we find that certain points have been left out, and, in the interest of the shareholders, we thought that we should bring these to your notice who are now reviewing the proposals of the Government.

Firstly, we would draw your attention to our memorandum which deals with Section 4B under which definition of the same management is being attempted to give it a wider base. Although the Government is trying to cover as many entities as possible to achieve the basic principle of trusteeship *e.g.*, that those who are in power should not try to get undue advantage from the Company but we find that still a large area has been left out. Therefore, we have suggested three major propositions in this regard; *i.e.*, (i) Wherever there is a single common Director in two or more companies, they should be treated under the same management. Secondly, sub-clauses (ii) to (viii) of clause (1) of the proposed section 4B should cover also a partner, relative or an employee and their number of shareholdings should be accounted together with others specified in the above clauses. We will also bring out to your notice that the term 'relative' which is now defined in Section 6 should be extended to include all kinds of close relations like wife's brother, wife's sister, uncle and uncle's son and daughter, and brother's son and daughter.

We think t hat the definition of the term "relative" under section 6 is also connected with the proposed section 4B because the term 'relative' has been used there, and it should therefore be widened so that all te companies which really belong to the same management are actually covered. Coming to clause 5, we deal with the major suggestions on p. 2 of our memorandum. There should be no distinction between a private and a public company. There should be no company as private company as you are giving an advantage of limited liability to both private and public companies and when public interest is involved all the companies all of them should be treated as public companies. Assuming that the Committee does not agree to our suggestion, we suggest that sec. 43A should be further widened. If there is even one per cent shareholding in a private company held by another body corporate in any company that private company should be treated as public company. We must discourage the inter-Company investment for the sake of better management and efficiency as the management often to invest in any of the company's funds in other company's shares because they have got some interest in that other company. As regards clause 10 we feel that the principle of shareholders as stated in the proposed section 108B(2) democracy has been ignored. We suggest that whenever such sale is being made by majority of the shareholders they should first offer those shares to the minority shareholders who do not form part of the majority group or do not come under the purview of the same management. They should be offered at reasonable prices fixed by the Govt. and if after that is done, some shares are left out then and then only the Government should come to take over those shares. As regards clause 15, we suggest that the proposed restriction on appointments should be

for all time to come and not for the period of five years only. Further all the companies which had managing agents or not, that is to say, all the companies irrespective of whether they had managing agents or secretaries and treasurers or not, should be debarred from appointing anybody as secretary, consultant, advisor or to any other office without the previous permission of the Govt. As regards clause 16, we feel that the Govt. is only saying that if the dividend is being paid out of profits then only section 205A would be made applicable. We would suggest that whether dividends have been declared out of profits or reserves, all the cases should be covered by section 205A. We also very strongly make a suggestion that there are by section 205A. We also very strongly make a suggestion that there are various companies which are earning huge profits, which have got to their credit various reserves but they are not declaring dividends and the investors who mostly come from the poor strata of the society, retired officers and like that, do not get dividends because these companies do not declare dividends. So it must be made compulsory for each company to declare dividend at least at the rate of 6 per cent. if the company's profit exceed 10 per cent of the share capital or such rate of dividend as may be considered reasonable by the Central Govt. If such a safeguard is provided in the Act itself then many a complaint of the shareholders would be redressed. Now coming to the director's report, we feel that there should be complete disclosure of the nature and amounts under appropriate heads, regarding all material transactions entered into during the year, either of capital or revenue nature with directors, their relatives and with concerns in which any director or his relative or his employee is a partner, co-partner trustee or is otherwise substantially interested.

We will now deal with the principle of accountability. Those who have been placed in the position of trust have to account for the affairs with which they have been entrusted. These are the provisions relating to audit and cost audit. From the shareholders point of view we have come to the conclusion that the audit system at present does not serve the purpose of the shoreholders and that audit has become an instrument to cover up the manipulations of the management. In place of serving the interests of the shareholders audit system at the present moment is serving the interests of the management. Therefore audit institution which was brought into being to protect the interests of the shareholders should be completely revitalised and it must be radically changed so that the shareholders should feel confident that their interests are being looked after properly. In this Connection ,we would refer to a pamphlet brought out by a shareholder entitled "Mystery of Big Auditors" which is a reprint of the two articles published in the *'Economic Times'* of 4th and 5th September, 1972, copies of which we have supplied to you. Various defaults of big auditors have been pointed out in this pamphlet. In view of this situation we suggest that the auditors should be asked to go into the propriety aspect of the transactions. Those who are constituents of the same group or those who are directors should not vote in the matter of appointment of auditors. There is some kind of provision of this nature. In Nepal; there is no reason why this should not be there in our law. We also suggest that auditors appointment should be made in individual name which should be made known to the shareholders so that they may know who is or are the actual person/persons who has/have audited their company's Accounts. In regard to the cost audit the Government has come out with a very commendable proposition It is proposed that the Government may have cost audit done in such industry as it may notify. We suggest that this should be made compulsory in all items of manufacture irrespective of whether Govt. does notify or not. In all manufacturing units which produce such items beyond an amount of Rs. 50 lakhs a year cost audit must be made compulsory. It

should not be dependent on the Govt. order. Further the Cost auditor's report must be circulated to the shareholders and it should not be only in those cases where the Govt. feel that it should be circulated to them. As regards clause 23, we must complement the Govt. that they are taking power to see that a person who is being appointed as the managing directors is a fit and proper person. This provision should be given retrospective effect. We suggest that even in the case of existing Managing Directors the approval of the Government should be obtained within 6 months and the companies should satisfy the Government that the persons are fit and proper to hold the positions of manaing directors.

Regarding appointment of sole selling agents, the Government has taken the power to order that in case of certain goods whose supply is shorter than the demand there should not be sole selling agents. We suggest that this may be in all the cases irrespective of the Government order that is where the supply is shorter than the demand, no sole selling agent should be appointed in that case. We also feel that all the provisions of section 294 should be made applicable in case of sole purchasing and buying agents and not only a few as has been proposed.

Coming to section 314 the Government is now coming out with a proposition that various related persons of directors should not be appointed to an office of profit without shareholders' permission. We would suggest that not only relative of directors, but no person should be appointed to an office of profit for consideration of more than Rs. 5,000 in a year without the approval of Government, unless it is a case of employee-employer relationship or of an appointment of a professional.

Because of shortage of time we would now come to our concluding suggestions. In various places in the proposed Bill fines are sought to be imposed on the company as well as on the directors and officers. We appreciate this as far as the officers and directors are concerned because they are the actual persons who run the company and are responsible for all the defaults. But why the company which is an artificial person, should be made to pay heavy fines and penalty putting the shareholders to a great loss? This is deterimental to the shareholders' interests from two angles. Firstly, directors and officers get perhaps less punishment. Secondly, shareholders' money is again wasted in paying the fines and penalties for defaults of the directors and officers. Although we have not mentioned in our memorandum, there are two more fundamental points in which the shareholders are vitally interested. First is the holding of an annual general meeting by a company in time and second is sending of its annual accounts in time. It has been brought to our notice in the capacity of our being shareholders' Association, that companies are not holding annual general meetings in time for years altogether and are also not sending the audited balance sheet and profit and loss account for years. The courts are imposing a fine of a very small amount of Rs. 200 or Rs. 250 which is very easy for the directors to pay. We would suggest that very serious punishment should be imposed for such offences, which should not be less than Rs. 5,000 per director for not holding meetings in time and for not sending audited balance-sheets in time to the shareholders. We would also suggest that if the company directors default in sending the audited balance-sheets, for 3 continous years and do not hold general meetings in time for 3 continuous years, they should be debarred or disqualified from becoming or continuing as directors of any company. We would also suggest that the annual general meetings should be held within 4 months in place of 6 months as at present and the right of extension to the Registrar of Companies should be limited to two months in place of three months, so that in all the cases the annual general meeting is held within a period of 6 months.

There are two or three other suggestions we would like to make before we conclude. As we have suggested in our memorandum, companies should be totally debarred, whose main object is not investment business or of lending funds from investing its money into other company's shares unless it is in securities prescribed under the Indian Trust Act. If any company has surplus funds for a temporary period it should invest the same either in fixed deposits with banks or in such securities as are prescribed under the Indian Trust Act. Any outstanding loan or investment not coming within the purview of the aforesaid provisions should be recovered or disposed of within a period of six months unless exemption from the same has been granted by the Central Government. Where there are investment companies, in those cases also, there should be a restriction on investment of such shares of such companies which have not declared dividends during the last two years and there should be no investment by these companies in the shares of private companies and in unquoted shares because it has come to our notice that even investment companies of various big groups are investing funds of shareholders in private companies and in shares which are unquoted because in these companies they are in a sense associated or closely connected. We would also suggest that where there are redeemable preference shares, if a company has no reserve or profit but the redemption of the preference shares have become due, in such cases the law *i.e.*, section 80 of the Companies Act, 1956, should be amended whereby it must be made necessary that such preference shares would automatically stand converted into debentures and would bear the same rate of interest whether there be any profit in the company or not.

I think this, in short are our suggestions and if the members of the Committee want to examine us, we would be glad to satisfy them.

SHRI MAHAVIR TYAGI: You must be aware that shareholders' interest is primary in the mind if Government and also in the minds of the Members of Parliament. In our view they are the first concern. Therefore, to add strength to your argument I would request you to please give us some details of your forum. How many members are there—how many companies are represented in your forum?

SHRI M. C. BHANDARI: I have not scrutinsed it—there are about 200 members and our members hold shares of almost all the quoted companies in the Stock Exchanges.

SHRI HIMMAT SINH: I think I should take this opportunity to congratulate the members of the forum who have lucidly pointed out their points of appreciation in regard to this new amendment which Govt. wishes to bring forth, and here I would like to know from you—you have rightly said that ordinary director should not be permitted to be a director of more than 5 companies and you have also said that some minimum qualification other than holding of shares should be prescribed for a person to be appointed as directors—what are those minimum qualifications you would like to prescribe and whether you would also welcome appointment of directors from amongst the workers of the company on the Board.

SHRI M. C. BHANDARI: As far as the qualifications of the directors are concerned we would suggest that one must have either qualified from some professional institute like Institutes of management or must have been in actual management of some companies of specified size for at least 3 years. We would also welcome a reasonable representation from the workers and employees on the Board of directors. And again, about disqualification we would suggest that any person who has been a director in any company which has defaulted in

submitting its annual accounts or failed to convene annual general meetings in time for 3 years continuously should be eligible for appointment as director of any company.

SHRI S. G. SARDESAI: I am making an observation. We will surely study this memorandum but meanwhile I would like to say that I am really happy that the deliberation of this forum has brought a new breeze which we did not get earlier.

SHRI D. D. PURI: Are there any other organisation of shareholders in Calcutta, Bombay, Delhi or elsewhere?

SHRI M. C. BHANDARI: There may be other shareholders' associations but the type of association which we have got here is the only one because we have debarred the following categories from becoming members *viz.*, (1) those who are shareholders controlling directly or indirectly listed any company's management; (2) an executive who is drawing a remuneration over Rs. 3,000 per month including perquisites from a listed company, (3) share brokers and (4) professional working for more than 25 listed companies. Then regarding the other point, may submit that there are shareholders associations in Bombay, Delhi, Madras, Ahmedabad and Coimbatore as well.

SHRI D. D. PURI: In regard to this memorandum I will start with page 1. It has been stated when dealing with clause 3 that even by one common director control over two or more companies could be exercised. May I know how a single individual holding qualification share in one company can control another company also wherein also he is holding qualification share?

SHRI M. C. BHANDARI: Sir, there are instances. A person is not a director of a company at all. Even their relatives, and even the employees have been put as directors there and he is controlling the company without being director.

SHRI D. D. PURI: How can you bring this under legal system or how can link between the two companies can be established that one common director is.

SHRI M. C. BHANDARI: We can define this. If there is common director, partner, relative—that company must be considered one under the same management—we can define that in law. Wherever there is a question of benamindar it is already covered by some of the proposed provisions of the Bill. But there are cases where shares are held under trusted persons' names and even in such cases a person is remaining there to see that the affairs are being run in the manner he would like to run. We can cover these cases in the definition to the extent possible. Beyond that if it is not possible to cover them under law, we can't do anything.

SHRI D. D. PURI: With regard to clause 4 you have objected to certain powers being transferred from High Court to Govt. whereas in the rest of the memorandum you seem to be more anxious to give additional power to Govt. Why is it so?

SHRI M. C. BHANDARI: There must be restrictions and control on a company either of the court or of the Govt. Wherever there is no control of the court, Govt. should control. In the case of shifting of regd. office, we feel that the courts have already got control over these things and shareholders' interests are better protected. Because in the case of Govt. in the present system, in which we are working—without any insinuation —it is easier to get things done in Govt. offices rather than in High Courts.

For example the hon. Minister of Company Affairs, issued sometime ago notification requiring companies to make many disclosures as to the licensing capacity, production of various items in their balance sheets and it was also stated that the exemptions may be granted by the Government in suitable cases. The whole purpose of this notification was viti-

ated because the companies could obtain exemption from the Government officer concerned in several cases. We feel that the exemptions can be obtained from the Government more easily than it can be obtained from High Court.

SHRI D. D. PURI: In regard to clause 10, it has been suggested that before the shares are taken over by the Government, they should obtain the minority share holders. Can you give your views what is prevalent in U.K.?

SHRI M. C. BHANDARI: We wish to bring out a similar kind of legislation here as is now prevalent in U.K. that whenever any majority group wants to sell or dispose of shares, the minority share holders should also be offered to dispose of their. Share at a reasonable price.

SHRI D. D. PURI: In regard to trustees to 'Benamdars' they are only in the interest of the company. :Would it not be better that the recognised 'Benamdars' would be entitled to receive the dividends?

SHRI M. C. BHANDARI: We support the provision as contained in the Bill in this regard because at present the share holders do not know who is actually holding the shares and controlling the company and therefore, in the interest of the shareholders all these nominees should disclose as to who is the actual owner of these shares.

SHRI D. D. PURI: Would that not involve in certain cases holding of dividends and holding to exercise vote?

SHRI M. C. BHANDARI: No Sir. As far as dividend is concerned, that would be payable to the registered share holders only, therefore the company is not worried as to the disclosure of names of beneficiaries or actual owners of shares.

SHRI D. D. PURI: So far as the payment of dividend is concerned whether it is a case that the real owner is somebody else but the company makes payment to the registered share holders. Is this not inconsistent?

SHRI M. C. BHANDARI: In sections 205 and 207 which deal with payment of dividend, it is made clear that dividend would be payable only to the registered share holders and therefore there would be no difficulty in this regard.

SHRI D. D. PURI: In regard to the distribution of dividends, there is a proposal that dividends other than those which come out of the current profits should not be declared without previous permission of the Government. Would it not lead to a difficulty that a large dividend is payable in one year and small dividend or no dividend in the following year?

SHRI M. C. BHANDARI: We feel that this proposal need not be there because elsewhere we have suggested a proposal that the Government must take power to decide what would be the reasonable dividend to be declared. If such power is given to the Government for ordering declaration of dividend, the present position regarding reserves need not be there.

SHRI D. D. PURI: It has been suggested that the directors and their relatives should not be permitted to vote in general meeting in regard to the appointment of auditor. What is your opinion.

SHRI M. C. BHANDARI: It does not matter. If there is any single outsider in that case that outside shareholder can appoint the auditor. In exceptional cases, some other ways of appointment could be found out.

MR. CHAIRMAN: I thank you Mr. Bhandari and all of you very much. I hope your evidence will be of some use to the Committee.

Thursday, the 4th January, 1973 from 10.00 to 13.15 hours in council Chamber, Assembly House, Calcutta.

PRESENT

Shri Nawal Kishore Sharma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Somnath Chatterjee
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri G. C. Dixit
7. Shri Baburao Jangluji Kale
8. Shri Jagannath Mishra
9. Shri Muhammed Sheriff
10. Shri S. B. P. Pattabhi Rama Rao
11. Shri R. Balakrishna Pillai
12. Shri Jagannath Rao
13. Shri R. R. Sharma
14. Shri P. Ranganath Shenoy
15. Shri R. K. Sinha

Rajya Sabha

16. Shri Salil Kumar Ganguli
17. Shri Harsh Deo Malaviya
18. Shri S. S. Mariswamy
19. Shri Jagdish Prasad Mathur
20. Shri M. K. Mohta
21. Shri Himmat Sinh
22. Shri Mahavir Tyagi
23. Dr. M. R. Vyas
24. Shri K. V. Raghunatha Reddy

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Bharat Chamber of Commerce, Calcutta.*

Spokesmen:

1. Shri Rajaram Bhiwaniwalla, *President.*
2. Shri S. B. Goenka, *Junior Vice-President.*
3. Shri R. N. Bangur
4. Shri B. P. Poddar
5. Dr. B. Mookerjee
6. Shri Mohan Singhi
7. Shri K. C. Mukherjee. *Secretary.*
8. Shri N. Saha

II. *Calcutta Trades Association, Calcutta*

Spokesmen:

1. Shri S. K. Maskara
2. Shri R. N. Bhaduri
3. Shri Sumermal Jain
4. Shri P. K. Jalan

III. *Bar Library Club, Calcutta High Court, Calcutta*

Spokesmen:

1. Shri S. C. Sen
2. Shri S. B. Mukerjee

I. Bharat Chamber of Commerce, Calcutta.

Spokesmen:

1. Shri Rajaram Bhiwaniwalla—*President*.
2. Shri S. B. Goenka—*Junior Vice-President*.
3. Shri R. N. Bangur
4. Shri B. P. Poddar
5. Dr. B. Mookerjee
6. Shri Mohan Singhi
7. Shri K. C. Mukherjee—*Secretary*.
8. Shri N. Saha—*Deputy Secretary*.

(The witness were called in and they took their seats)

MR. CHAIRMAN: Mr. Rajaram and other friends of the Bharat Chamber, I on my behalf and on behalf of the Committee welcome you here. The Committee members have already gone through your memorandum. I would therefore request you to briefly state the points which you specifically want to make, and then members would certainly have the right to ask questions, if they so like. But before you begin I would like to draw your attention to the direction which states that the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. With this direction I would request you to begin your observations but kindly be brief.

SHRI RAJARAM BHIWANIWALLA: Mr. Chairman, on behalf of the Chamber as also on my own I would express our sincerest gratitude for the opportunity given to us for tendering evidence before you this morning.

We have submitted a detailed memorandum underlying some of the more important provisions of the Amendment Bill. The Bill in its present form envisages structural changes in the organisation and functioning of companies. Company legislation in our country has been one of the most comprehensive enactments. Besides, since its enactment in 1956 it has undergone successive changes through amendments as passed by Parliament of which those of 1960, 1965 and 1969 deserve special mention. Besides, numerous changes have been made through executive directions also. Such frequent and far-reaching changes in a vital legislation like the Company Law often make it difficult to keep track and ensure proper compliance. If the corporate form of business organisation is preferred for future growth and diversification of the national economy it has to be carefully enquired how far the coveted purpose is going to be achieved through successive tightening of the rules and regulations of companies. It may not be out of place to mention in this context that there are already 156 clauses and sub-clauses providing government control over the companies. I may mention in this context that despite stringent regulations over the so called big companies under various enactments including the MRTP and the Companies Acts, they still command better public acceptance. This is very well evidenced by the latest record of mobilisation of resources and the working of our stock exchanges. The mobilisation of resources by small and medium sized companies has not yet been at all encouraging. The imposition of further restrictions on the big companies will slow down the pace of overall economy. As it is today the Com-

pany Law Department does not at times take a realistic view of things and objections are often raised which do not stand the scrutiny of courts. This has the effect of delaying actions along with adding to the cost of company management. Vesting of more powers to the department, particularly administrative matters, may not be to the ultimate interest of the country. This is also confirmed by the recommendation of the Administrative Reforms Commission. The concept of relations which occur under various sections of the existing Act as well as the Amendment Act have been much too comprehensive. As at present it is well nigh impossible to identify relationship with such an unduly accidental basis. Considering the practical limitations of the concept as correctly defined we would strongly urge for a fresh review and confining its coverage to husband, wife and minor children on the lines of the legislation on landholdings. Regarding deposits, the Amendment Bill stipulates certain further restrictions. There are circumstances when funds are needed immediately. To get money out of bank is no more a simple proposition. For loss companies it might be well nigh impossible. Under the system of canalisation of imports and domestic supplies through the state trading organisation, allocations are made in bulk and finance has to be provided at short notice. Acquisition of such raw materials often requires recourse to deposits. Greater stringency in receiving deposits would create insuperable difficulties for the existing companies and might lead to great sickness or even closure of many companies which is certainly not the objective of the government. The Reserve Bank has been regulating since 1966 the receiving of deposits by the non-banking companies. The provision of changing auditors does not appear to take note of the practical difficulties including proper maintenance of records on a continuous basis in the face of succession of auditors. The Institute of Chartered Accountants of India already maintains a careful vigilance over the profession. With these general observations I would now request my colleagues to offer elucidations and clarifications on points posed by you as well as by others as may be desired by you. I may mention, Sir, that after the questions we may be given ten or fifteen minutes time so that we can speak about it.

MR. CHAIRMAN: Now, honourable members may put questions. Shri Mohta.

SHRI M. K. MOHTA: On page 8 of the memorandum submitted by the Chamber there are eight suggestions regarding the definition of group. Suggestion No. (3) is that the meaning of control is to be well defined. Suggestion No. (5) is that two or more persons should be held to form a group if they among themselves hold 51 per cent share etc. They do not find any place in the modified definition given by the Chamber. Neither 'control' has been defined. May I ask the Chamber if they would like these suggestions, namely, (3) and (5) to be incorporated in the section itself or leave it to be interpreted later on?

SHRI RAJARAM BHIWANIWALLA: We would like them to be incorporated in the section itself.

SHRI M. K. MOHTA: It can always happen that some shareholders would vote for the election of a particular director on the Board of Directors of a company. As the modified definition of the Chamber stands, it seems to me that these people would be construed to forming part of the group. Is that the intention of the Chamber? Or, is it that mere voting in favour of a group would not be construed as being a part of the group?

SHRI B. P. PODDAR: Mere voting would not be construed as a part of the group.

SHRI M. K. MOHTA: It has been suggested that unless a group of persons act in consort that would not be considered as a group. Is that your opinion also?

SHRI B. P. PODDAR: Yes, Sir.

SHRI M. K. MOHTA: Regarding deposits to be taken by companies, the Chamber has given its suggestions on page 14. The correct procedure for any company which is in need of short-term funds, as the Chamber has said 'dire necessity', is to go to a bank and take money instead of inviting deposits from the public. Would the Chamber throw some light on the possibility of obtaining such loans from the banks, what are the difficulties and whether it is still necessary to go to the public for money?

SHRI R. N. BANGUR: Working capital demands are now increasing, just as you would see, the recent amendment of the Bonus Act has immediately raised the expenditure. The position is, either they do not comply with the regulation, or do not pay to the workers. The other point is that the bank will not immediately give the money if there is a limit. Further, cost of working is increasing and the company's capital is limited. You will find that all types of companies are established in eastern India and the old companies have become capital intensive and labour intensive and, therefore, demand of money has gone up. Besides that, as already pointed out, due to demand under the regulations and the allotments it becomes a dire necessity for a company to go to the public instead of going to the bankers because they will take time. When a company is losing it has to arrange for money, but at that time of difficulty no banker will give money to finance the company. The tightening of deposits started from 1966, and it has come to a stage that the companies who are working on deposits are faced with great difficulties. And now, if a company is losing, it will not get finance. The industrialists do not want that the depositors should surfer, but in case of loss or in case of immediate necessity what is to be done should be enquired into by the Finance Ministry and something should be arranged.

SHRI M. K. MOHTA: Accepting deposits from well known depositors—this is not clear to me. Who are the well known depositors we do not know. The suggestion says that there should be no restriction on companies to accept deposits from well known depositors if such deposits are within the prescribed rules. It is quite obvious that the deposits are within the prescribed rules.

SHRI R. N. BANGUR: Restrictions started even on the director's deposits and this is the intention of Government that such deposits should not be taken even from shareholders and the money-lenders or from the companies from whom the company is accustomed to take money from time to time. If there is a company which is well known, deposits can be accepted from it.

SHRI M. K. MOHTA: In clause (3) you suggest that in case of dire necessity this provision should not apply. How dire necessity is defined? Is it the intention of the Chamber that purely short-term deposits, e.g., for 2, 3 or 4 years, should be entirely excluded, but long-term deposits may come within the purview of the section? Or, as suggested, loans should be drawn or arranged privately and deposits should be obtained from public by making advertisements, etc.?

DR. B. MOOKERJEE: One Indian manufacturer was manufacturing some material in the name of a foreign firm and supplying to a foreign company who was selling this particular product after 35 per cent with the manufacturing cost and that company who was selling this product was paying to this company in cash. Now, the agreement has expired but the company was running at a loss and the company wants to sell the material directly to the market. This company, certainly, as you understand, was receiving money from this foreign company in cash against delivery, or sometimes advance against delivery. They want to market this product directly. If they approach a bank, it will take at least 6 months. Whereas, if they are allowed to take deposits either from dealers or from friends, they are not only immediately financed, but

the problem will be solved and this company will be making profit and are in a position to market this product directly.

SHRI R. N. BANGUR: A line should be drawn for the short term and the long term.

SHRI M. K. MOHTA: As regards suggestion No. 4 on page 16, what is the chamber's view regarding acquisition of shares by a group in excess of 25 per cent. of their holding. I am stating an instance where a group already holds 25 per cent. and wants to acquire more shares or the group may want to acquire shares from the market. Should that be permitted or should there be restriction as has been imposed by the present section?

SHRI R. N. BANGUR: There should be no restriction.

SHRI M. K. MOHTA: As regards clause 30, whether the chamber is in agreement with it or they want to oppose it.

SHRI R. N. BANGUR: If the company is really mismanaged certainly yes but otherwise I would respectfully submit that it should not be done.

SHRI JAGDISH PRASAD MATHUR: On p. 11 you say that it is neither the business of the court nor for the Government you say there should not be any change. You also oppose court intervention. What is your comment?

SHRI N. SAHA: It has been decided in a particular case—I do not remember the case—that it is neither for the court nor for the Government to decide. It is for the company to decide. It was stated in a revision case.

SHRI JAGDISH PRASAD MATHUR: As regards clause 30, if the Government appoint majority of the directors do you think that it is a take over by the Government?

SHRI R. N. BANGUR: The biggest association where shares are quoted is the stock exchange and the brokers and investors think that in the particular case it has been taken over by Government and Government is going to earn.

SHRI R. R. SHARMA: Are you of the opinion that Government is going to nationalise all companies without saying so many words in this enactment?

SHRI B. P. POODAR: We are not sure what the Government is going to do.

SHRI R. R. SHARMA: Have you got any apprehension in your mind in that regard?

SHRI B. P. PODDAR: We ourselves do not know what the Government's intention is. The question of apprehension does not arise.

SHRI K. V. RAGHUNATHA REDDY: Let me state here that as far as the appointment of directors are concerned, it has nothing to do with nationalisation. It is only a case of corrective measure.

SHRI R. K. SINHA: As regards sick management if the Government comes in what is your opinion? Workers might be crying, the management might also be crying for the take over.

SHRI B. P. PODDAR: Merely by taking over sick unit does not cure the unit itself. It differs from unit to unit. In this case Government as well as private investors have got to come together and devise ways and means. There are certain units which require forthright change. There are others which do not require such a change. Hard and fast rule at this stage is not feasible.

SHRI R. K. SINHA: On page 14, suggestion No. 3, you say about dire necessity. Who will define 'dire necessity'?

SHRI B. P. PODDAR: Surely the management is competent enough.

SHRI R. K. SINHA: Whether it will be for the short term, long term or for the immediate ones.

SHRI B. P. PODDAR: For the short term and the immediate ones.

SHRI B. MOOKERJEE: In this connection I have already explained to you details of a particular case and I would submit that if you kindly try to analyse the case you will get the answer.

SHRI R. K. SINHA: But that case might be a case of dire necessity. Then regarding your suggestion No. 2 the word "relative" is there. But how far you want to extend it? Do you consider wife's broher to be a relation? Or do you want any restriction?

SHRI R. N. BANGUR: We want restriction of the word relatives because under the Companies Act we do not get the definition of relatives. Relatives should be brought down to wife and minor children.

MR. CHAIRMAN: Kindly look to clause 6 of this Bill. It is an insertion of a new section. This section as such does not prohibit deposit. This clause will regulate deposit in a particular manner nor that all deposits henceforth would be allowed, and so certain restrictions are envisaged for the purpose of restricting deposits—that is the Govt.'s intention. So, the basic question is if you have any objection to what particular subclause you have the objection. Merely saying that Govt. is taking out the rights of the depositors is not correct.

SHRI B. P. PODDAR: Our apprehension is such restrictions are not realistic in several cases. I draw your attention to a recent notification issued by the Reserve Bank of India in respect of deposits. It states that in individual or a director can lend money to a company provided it gives an undertaking that it has not taken that money on loan from somebody else. Sir, in view of the present taxation it is well night impossible for a director or an individual to find the amount of money that is required on loan. So, in point of fact, you will find it is so unrealistic that a company cannot get loans and as far as money is concerned no firm or company would be interested in taking money at the present rate of interest if it can avoid it but the fact of the matter is, as our President pointed out, funds are not available when they are actually required. The banking lending rules have undergone drastic change. I respectfully submit, you just cannot get the loans and even if the loans are sanctioned it is impossible for you to see that the loans are disbursed in time. I am sure my friends will agree with we that it is nobody's interest to take loan if he can avoid it and they go to depositors when such loans are not available from banks.

SHRI R. K. SINHA: In your memorandum you have said that there were too freequent and too many amendments—in 1956, 1965 and in 1969 the Companies Act had gone through too many amendments. Then in page 4 we find that you have a feeling of uncertainty and then you have demanded a Commission or a Committee to go into the entire structure of the Company Law and administration. Then why do you object to these amendments?

SHRI RAJARAM BHIWANIWALLA: A comprehensive law was made in 1956. Since then in 1960, 1965 and 1969 amendments have been there. Besides there have been Govt. directives. In the preamble of the present Bill it ha been said that it is not a comprehensive law—it is just to start with. We think it better that there should be such a law which we can take that for 10/15 years.. This is the law, and that is why we want a commission or a committee to go into it.

SHRI R. K. SINHA: With regard to 6A you have said that if retrospective effect is given then this will cause serious embarrassment etc. What do you mean by embarrassment?

SHRI RAJARAM BHIWANIWALLA: If certain Acts are given retrospective effect then it creates embarrassment and so why do you want to go backwards. Besides there is no time limit—some time limit say, 20 or 30 year can be there.

SHRI R. K. SINHA: Sir, my last question is about punishments. This amending Bill provides stringent punishment by way of imprisonment for non-compliance with almost every clause. I would say that punishment is a bad thing which everybody fears. Now, a tenant in the rural areas might be arrested for even a due of rupees five only since a poor man he has no redress in the civil law. What is the remedy?

SHRI S. B. GOENKA: Whether it is company law or civil law there may be some *bonafide* mistakes, some irregularities for which *mens rea* must also be looked into. There is no such criminal intention in the person who just violates the law. If he has done anything wrong due to some irregularity, carelessness or due to non-observance which is not wilful or not intentional then he should not be punished as under criminal law but according the civil law. Moreover, the executives should not have the powers jut to decide the seriousness of law of the offlences in such circumstances and the judiciary should have the final say in the matter.

SHRI HARSH DEO MALAVIYA: Mr. Chairman, Sir, I am very happy that the witnesses have submitted what they call the Overall Approach. I would ask some clarifications from them on the overall approach. At page 6A of your memorandum in para 10 you have said, "The capital market in our country has been in a parlous state for the last several years creating serious handicaps to mobilisation of finance'. What does the word 'Parlous' mean?

SHRI RAJARAM BHIWANIWALLA: It means depressed condition. The activities were lying low.

SHRI HARSH DEO MALAVIYA: What is the reason of it? Is it because of the fact that the investments which are made by Chambers like you have been going down when your porfits have been going up? I can give you some figures if you do not mind. According to an official survey in 1968-69 the capital raised for the private corporate sector was 96.4 crores. It went down in 1970-71 to 86.7 crores and in 1971-72 it further went down to 77.7 crores—a regular continuous downward fall. But at the same time your profits have been high all the time. If you want I can give those flugres also. According to the study conducted by the Reserve Bank of India the private corporate sector registered a record rise of 44.5 per cent in profits in 1969-70. The study described this rise as 'remarkable'. This was in the case of 209 top enterprises. The profit doubled from 45 crores to 97 crores during the period from 1968-69 to 1970-71. So, your profits are going up but the investments are going down. Why?

SHRI R. N. BANGUR: Mr. Chairman, Sir, I believe that the hon. Members are aware that the interest rates between 1955 and 1972 have been increased three times. It was 4 per cent there at that time as loan rates of bank and now it has come to 11 or 12 per cent. Similarly the market rate of money is about 18 to 24 per cent. Sir, in the case of stock exchanges particularly in our country the uncertainty is so prevalent that people do not know where, how and why they should invest any shares. On the one side we have got surplus people who cannot be employed and on the other side we have got deposits rising with the companies. People do not want to come to industry. There is something wrong somewhere in some places. Some steps are being taken considering the economic condition but not to a fuller extent. Sir, you will be astonished to know that out of 100 per cent companies in Calcutta only 60 per cent companies pay dividend and 40 per cent cannot pay dividend from their earning. There is uncertainty in the shares, uncertainty in the dividends every now and then. So when we hear that there will be restrictions on dividends

the companies will not be able to pay general dividend according to the market rate prevalent in the country, and unless companies pay reaonable dividend things are not going to improve. Further, Sir, you might be aware that some time before—I do not remember the exact year—a company was thought to be a corporate sector but it was working as a co-operative. Some times the Finance Act was amended and refund of tax from the shareholders was increased. Taxes paid by the companies were refunded to the shareholders who were not liable to taxes. These things are not there. Previous taxes were 35 per cent but now it is 50 per cent, of course I am not quite sure of the figure. It was 2 annas 6 pice some 15 to 20 years back. Now it is 55 per cent to 57 per cent. The profits have not increased according to the interest rate. In the last 5 years starting from 1967 to 1971, uncertainty was there in the eastern India. I think that no growth is there and you will find from your own statistics that the Bankers wanted to give funds to the people, but the people did not want to receive for business purposes. The Reserve Bank also wanted to give fund to the agriculturists, but they also did not want to take it. There is something lacking somewhere, which requires careful study as to why the investors are not going to invest.

SHRI HARSH DEO MALAVIYA: Perhaps it may be stated that the fall in investment is directly result of the fact that you are getting very easily the fund from the Public Financial Institutions. I can give you some figures. According to the L.I.C's annual report for 1971-72, out of the total amount of Rs. 248.02 crores, the investment to the private sector was Rs. 94.46 crores *i.e.*, 38.99 per cent went to the 10 top monopoly houses. The Tata group of companies secured an amount of Rs. 34.99 crores from the L.I.C. The Birla group of companies secured an amount of Rs. 23.5 crores from the L.I.C. In the final analysis, we find that monopoly houses took 64.52 per cent of the total L.I.C.'s private Sector investment. Do you not think the public financial institutions are encouraging the private sector?

SHRI B. P. PEDDAR: There is a lot of misapprehension on this point. These funds were invested by the L.I.C. as a result of the approaches by these monopoly houses to the L.I.C. L.I:C: certainly looks for good investment and for which they sanction their funds to the private sector from whom they got approaches.

SHRI HARSH DEO MALAVIYA: How is it that huge amounts are lying outstanding to these public financial corporations which have to be paid back by these houses as it is seen that on March 26, 1972 the outstanding amount against 73 business houses was Rs. 491 crores?

SHRI M. K. MOHTA: Mr. Chairman, Sir, may I respectfully submit that these questions will not help this Committee to come to any conclusion regarding the provisions of this Bill. I also like to point out that this type of ideological question should be avoided.

MR. CHAIRMAN: These are not ideological questions. In fact, these are the questions of assumption. Mr. Malaviya has assumed certain facts in certain manner and he has put them to the witnesses. There is other side of the picture too. So, Mr. Malaviya, you put your questions, but do not take much time on it.

SHRI HARSH DEO MALAVIYA: Sir, I am not taking much time. In page 5 the witnesses have said in para 5 that there are already on record a number of cases where as a result of mergers and takovers the hithertofore languishing companies were brought back to new life and renewed activities. May I put it to you that this take over and merger etc. will lead to concentration of monopoly power to a fewer hands?

SHRI B. P. PODDAR: In answering this question may I take it that it is not a part of this Act.

MR. CHAIRMAN: We do not want your answer in this manner. It is very simple that if you want to answer any question you may do that, but if you do not like to answer you may also do that. We are not insisting you for your answer.

SHRI HARSH DEO MALAVIYA: You said in your oral statement, you paid tribute to the Institute of Chartered Accountants for keeping vigilance on audit etc. Are you of the opinion that the works of the auditors of the institute of Chartered Accountants are appreciated by all sections of the public? There are some serious complaints in it. We have received memorandum of the small chartered accountants. They laid very serious charges against the big audit firms. Do you think that they are neat and clean and nothing is to be said against them?

SHRI B. P.. PODDAR: I would submit that it would be best if you try to go into the details of the complaints which they have made. Our own experience is that the chartered accountants are most reliable and they are doing excellent job.

SHRI MAHAVIR TYAGI: In page 2 of your memorandum there is a mention that there is urgent need for encouraging extension of the corporate form of business to enable small scale units who at the moment are debarred from availing themselves of assistance available from most of the financial institutions. How do you say so that they are debarred, if so, how are they debarred?

SHRI K. C. MUKHERJEE: Under the existing terms and conditions of financial assistance by the financial houses like the I.F.C. or ICIC etc. the position is that in many cases they do not allow even a private limited company to seek assistance from them in making the use of institutional finance. So, if the corporate sector is to be encouraged, this limitation must be done away with.

SHRI MAHAVIR TYAGI: You are mentioning here that some companies have been brought to new life with renewed activities by taking over. Will you kindly tell us, how many companies have been revived so far?

SHRI B. P. PODDAR: It is impossible to give the number of such companies as have been taken over. The only thing I can tell you is that the particular companies which are just almost sick have been revived and they have made much improvement after this take over.

SHRI MAHAVIR TYAGI: In paragraph 6 at page 5 of the memorandum, they say that as on 31st March, 1971 there were as many as 23,655 private companies at work out of a total of 30,098 companies. What has happened to the rest? Have they been dissolved?

MR. CHAIRMAN: No, no, they may be public companies.

SHRI MAHAVIR TYAGI: Then you have mentioned that the Report of the Company Law Amendment Committee, 1948 (UK) accepted the concept of private companies in a developing country and private companies were exempted from certain obligations. What were those obligations? If you are not ready with the answer, perhaps you can communicate that to us later on giving us the details.

SHRI N. SAHA: Actually in 1948 Report the Company Law Amendment Committee, U.K. have given certain concessions to the private companies. I cannot tell you right now what are those concessions but they are getting some sort of concessions. If you want we can send the details later on.

SHRI MAHAVIR TYAGI: On page 6A you say, the Bill proposes to give retrospective effect to certain provisions. What are the particular provisions which if given retrospective effect will adversely affect your business?

SHRI S. B. GOENKA: This is about the deposit of the dividends declared which was done earlier to the proposed amendment. If this amendment is accepted, then one has to keep apart that money also according to this provision.

SHRI MAHAVIR TYAGI: About the group, many others have objected to the present definition. Can you give us some precise definition?

MR. CHAIRMAN: They have given a definition on page 8 last line.

SHRI MAHAVIR TYAGI: Then, about the private companies which are deemed to be public companies. In what way a private company suffers if it is declared a public company? I want to have the background.

SHRI MOHAN SINGHI: Private companies as such are more or less privately owned and if they have to go through the formalities of a public company, it will be a cumbersome affair and the increasing cost will also be there.

SHRI JAGANNATH RAO: I would like to know your considered opinion on a matter which has not been referred to in your memorandum or the evidence given by you today. That is regarding clause 30 of the Amending Bill which seeks to amend section 408(1) which says that for the words "not more than two persons" the words "such number of persons as the Central Government may think fit", be substituted.

MR. CHAIRMAN: They have given a reply. They have said that if the company is mismanaged then government has certainly the right to appoint directors.

SHRI B. P. PODDAR: With your permission, Sir, if I may correct myself. I did not mean any number of directors, I said only directors may be put in. If they put in more than the present number of directors, it will virtually mean taking over the company which would not be feasible for us to operate.

SHRI JAGANNATH RAO: In other words, you feel that the number of directors should be commensurate with the shareholding of public institutions. Do you mean to say that?

SHRI B P. PODDAR: Yes.

SHRI JAGANNATH RAO: Could you enlighten the Committee as to what would be total assets of public limited companies in India?

SHRI B. P. PODDAR: Very sorry, Sir, I cannot say at the moment.

SHRI JAGANNATH RAO: Can you say what would be the total loan given by L.I.C. and other financing institutions to public limited companies?

SHRI B. P. PODDAR: We can supply you the information later. These figures are not available with us at the present moment.

SHRI JAGANNATH RAO: Can you say what proportion of the loans is given by the L.I.C. and other institutions in relation to capital?

SHRI B. P. PODDAR: Sir, I do not want to make a hazardous reply straightway.

SHRI SOMNATH CHATTERJEE: I would like to get certain clarification about the comments of the Chamber with regard to the proposed clause 18. Objection has been taken by the Chamber for inclusion of clause 18 which is proposed to be put as section 209A of the Act. Now, the proposed sub-section (1) of the proposed section 209A is really bodily

incorporated from the present Act—section 209(4). Now, objection has been taken to the new proposal, with regard to the inspection. You say in your memorandum at page 22 that this is a naked arbitrary power which is being given to the Inspector. This provision of 209(4) has been in effect since 1965—it is an identical provision except that certain additional powers are sought to be given to the Inspector. The old provision of 209 (4) did not cause any difficulties so far as the companies working is concerned. Why are you objecting to the proposed provision apart from the supposed unconstitutionality of it?

SHRI SOMNATH CHATTERJEE: I would like to emphasise that this is different from investigation envisaged in sections 235 or 237. If section 209 (4) existed all through, since 1965, what is the difficulty that has been faced by the companies I do not understand.

SHRI R. N. BANGUR: Difficulties are faced by the companies. Why should there be any amendment? This new clause gives wide powers to the inspector. Without notice he can go and inspect.

SHRI SOMNATH CHATTERJEE: Section 209(4) also does not require any notice. It has been there since 1965—identical words are used here. How has it caused any difficulty to the companies for the last 7 years? I think you have not given your thought to it.

MR. CHAIRMAN: They have not thought over it.

SHRI P. R. SHENOY: Corporate bodies grow only if capital formation is encouraged and, capital formation can be encouraged only by protecting the interests of shareholders and creditors of the company. Don't you think that the provisions of the proposed Bill seek to protect the interests of shareholders and creditors?

SHRI R. N. BANGUR: They want to protect too much. It goes beyond working conditions.

SHRI K. S. CHAVDA: What is the opinion of the Chamber regarding the view held by some that a company receiving or getting deposits not more than the total amount of share capital and reserve fund should be exempted from the proposed section 58A?

SHRI RAJARAM BHIWANIWALLA: We fully support this.

SHRI R. N. BANGUR: We support it, but we want that in case of definite difficulties some provision should be there, so that immediate action can be taken. In private business we want immediate action and when the demand is due to certain reasons money should be arranged either by deposits or by the banking institutes.

SHRI B. P. PODDAR: I would like to draw your attention to the amendment of sections 17, 18 and 19 where it is sought to take away powers of the court and place them in the hands of the Central Government. If you go into past records you would find, in the case of amendment of a memorandum of association Company Law Board or the Department raised objections from time to time but in practice those objections could not stand the test of reason and the courts overruled them. In this particular case it is sought to place these powers in the hands of the officials of the Government. This would give rise to a lot of difficulties because if even a junior officer of the Government makes a noting in the file and we approach the officer, the answer we normally get is, 'well. you see, you should not forget that we are answerable to Parliament'. If there is a noting in the file it is very difficult to get the noting changed in the name of Parliament. I would like to point out another thing. Supposing, I have an industry here in Calcutta, or I have a company registered in Calcutta. I want to change my State for obvious reasons. In this particular

case, I go to the court and if the court is satisfied I get the permission. On the other hand—I do not like to mention names—supposing, our Chief Minister puts in a word to the Minister for Company Law Department that this should not be allowed, whatever be the reason, I do not get the permission. Political pressure is going to be stronger than the reason itself. So, that permission is not allowed. Therefore, I would submit, please do not take away powers from the court. Leave them to the court.

With regard to the meaning of group and same management, if you go into the details of the definition of relatives as defined in the Companies Act you would find that it covers a number of relatives and it is impossible to keep track with these relations. I must confess that I myself have lost touch with several of my relations.

MR. CHAIRMAN: You can revive it.

SHRI B. P. PODDAR: Sir, I wish I could, but in practice it is difficult. You want to restrict holding of the shares. I can tell you, in practice it will be difficult, or impossible, to keep track—how do you know what a sister-in-law holds by way of share, and a brother who is in partnership holds? How do you keep track with the holdings of a person who is related by marriage to another big house? Can you keep track with all these holdings? These things should be borne in mind.

SHRI R. N. BANGUR: I have a submission on take-overs. No question was put to us on this point.

MR. CHAIRMAN: We have your memorandum.

SHRI R. N. BANGUR: I would only suggest that under the English law there are provisions for take-over and if this can be incorporated either by listing direct in the stock exchange or in the law, it will be better than taking over or offering to the company, doing away with the shareholding. That will take a long time.

DR. B. MOOKERJEE: I want to make out a small point. Working Director of a company is also an employee of that company and he is serving the company. Under the existing provision of law, if at the end of the year you find that the profit is not adequate, or there is a loss in the company, he has to return the entire money. Then, he has to call a shareholders' meeting, get his remuneration approved and then he has to approach the Company Law Department again for sanction of this remuneration. My only submission is that for maintaining his family there should be some provision so that he can draw his salary regularly.

There is another point. Our country is already short of managerial personnel. This 'group' or 'overall' as you have suggested—the more we divide, the more shortage of personnel comes. We are already suffering. My submission is, if we could delay it a little and if we could take proper action to build up proper personnel first, and then take action on these matters.

SHRI S. B. GOENKA: I have a small submission. So far as the dividend is concerned, there is no rationale to transfer unpaid or unclaimed dividend money after three years to the general revenue or to the reserve fund when the company has paid tax on it and it is the shareholders money.

In my view, section 205A should not apply to private companies or public companies whose shares are not quoted on recognised stock exchange.

SHRI B. P. PODDAR: I would like to thank you all on behalf of the Chamber for giving us the opportunity of appearing before you and placing our views before the Committee.

[The witnesses then withdrew]

II. Calcutta Trades Association, Calcutta

Spokesmen:

1. Shri S. K. Maskara
2. Shri R. N. Bhaduri
3. Shri Sumermal Jain
4. Shri P. K. Jalan

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Maskara and other friends, I on my behalf and on behalf of the Committee would like to thank you for appearing before us. We welcome you all.

I will draw your attention to the direction that the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

I will now request you to state your views briefly.

SHRI S. K. MASKARA: We thank you for giving us this opportunity to present our views to you on this very important bill. Ours is the oldest trade association in the country established in 1830 and we are representing traders who are small and medium carrying on trade activities and we also represent manufacturers of various items carrying on under small and medium units. The association has considered the Bill in depth and has greatly appreciated the various amendments which would go a long way in plugging the loopholes that are there in the Company Law and that are being exploited by the large industrial houses. Our association would only submit that before making amendments you should consider as to how large houses, large establishments, who are taking undue advantage of the loopholes, are to be put to task so that their malpractices are stopped once for all at their end. Now, my colleague will state our view points before you.

SHRI R. N. BHADURI: About section 17, so far as the change of registered office is concerned we do not have any objection. Regarding change of objects clause, we feel that any subsequent changes should be made in accordance with the desire of the shareholders who should have the proper say in the matter. We feel that this amendment should be entirely within the jurisdiction of the shareholders. English Act of 1946 says that if holders of shares of 15 per cent are not in agreement with the proposed change they can go to court and contest it. We feel that similar provision should be there. We are also in agreement with section 19 so far as issue of shares is concerned. In regard to section 141 we do not have full agreement with the proposed change. It should not be given to the Central Government because the disputed party cannot be the decisive authority in this case.

Then I come to clause 5 relating to section 43A. In case of traders it will be difficult if this clause of 25 lakhs of capital or 50 lakhs turn-over are allowed to be deemed public company. We feel that traders should be allowed to have capital 50 lakhs and turn-over of 2 crores or at least 1 crore. And our another submission is, if there is fluctuation of turn-over in any one year then what would be the status of the company in that year? Section 43A read with proposed secton 94A under clause 9—we feel that where 10 p.c. or more paid-up share capital is held by one or more bodies corporate such a private

company will become a public company. If such company obtains loans from finance corporation which is a body corporate and if such loans are converted into equity shares then it will be a public company and this will hinder the progress of small traders. Then regarding 58 in clause 6 is concerned, about the new proposed section 58A deposits of the public, we are in full agreement with Government and we feel that there should be proper restriction imposed. But so far as short-term loans are concerned the small traders should be allowed to obtain loan for their day to day business purposes and for obtaining working capital. The system which is in vogue among small traders should be allowed to continue.

Regarding clause 10 which deals with new sections 108A and 108B about take-over bids are in agreement with the amendment. But in case of 108B where the transfer of 10 per cent or more shares to bodies corporate the intimation should be given to the Central Government we have got one submission that if a small trader or a small company feels that it is difficult to continue the trade economically and if they want in such cases to dispose of their company will it not be better if they are allowed to sell their shares to an intending buyer so that it can carry on business more economically according to their convenience? In such cases this provision will be a bit difficult if imposed so strictly on the small traders and it will not be a healthy sign for the small traders and this will help manipulation of share-price also.

Then I come to clause 16 regarding dividend to be declared out of current year's profit. We feel if this is strictly enforced then there will be manipulation of share price by the management, and the small shareholders will be in difficulty. Even in lean years when there is no dividend the livelihood of the small shareholders will also be jeopardised. I think this committee should pay some attention. to this clause and make some amendment to this. This is our main submissions, Sir.

SHRI M. K. MOHTA: On page 3 of the memorandum regarding take-over of companies the Association has welcome this clause. Now the position is, if a block of share is to be sold by a group to another party then according to this section an application must be made to Government and if the Government approves of the purchaser then the transaction can take place. In this matter you have pointed out the plight of the minority shareholders—they may not have any confidence on the purchaser. So, how would the interest of the shareholders be safe-guarded in such cases?

SHRI R. N. BHADURI: In such cases when transfer is once negotiated with some buyers if the buyer goes to the Central Government for approval there may be some time-lag between the approach and obtaining of approval—I mean there may be change in the mind of the intending purchaser—in that case the sick mill or sick organisaion which wants to dispose of their shares will not get the benefit and the company who wants to purchase the shares will also not get the benefit. Unless all the minority shareholders and majority shareholders both give consent this transaction cannot be taken into account.

SHRI M. K. MOHTA: My point is, where the shareholders too not have any confidence on the purchaser although he might be in the good book of Government, how would the interest of the shareholders be safeguarded?

SHRI R. N. BHADURI: In that case my submission is that the intending buyer need not go to Central Government for approval. When the deal is approved the purchaser should obtain the share and if they can run economically they should do it.

SHRI M. K. MOHTA: That means, you are opposed to go to Central Government for approval?

SHRI R. N. BHADURI: Yes, to that extent we are opposed.

SHRI M. K. MOHTA: This section does not speak only of take-over bids, it also says, that if a group holds 25 per cent share of a company they will be debarred from purchasing a single share from market without permission of Government, which means transfer within the same group will be restricted. Are you in agreement with this?

SHRI R. N. BHADURI: We have nothing to oppose since we are talking about the small and medium traders mainly. We do not have any comment.

SHRI M. K. MOHTA: Regarding restrictions on deposits you have said in your memorandum at page 3 that, "....it is good that the Government should prescribe certain conditions to ensure that the public is not caught into the trap of the unscrupulous company management through allurement of high returns." A trap can be set by individual also, by the firms also. I think you want clear-cut short-term loan and deposit.

SHRI R. N. BHADURI: Yes.

SHRI M. K. MOHTA: What do you mean by the word 'short term'? How many months do you want?

SHRI R. N. BHADURI: It may be 3/6 months. Whenever a Management wants some money for some immediate purpose they obtain that money on demand which is re-paid.

SHRI M. K. MOHTA: Now, regarding arrangement of loans from friends and associates not by issuing advertisements what is your views? Should that come under the restriction?

SHRI R. N. BHADURI: It should be under the restriction.

SHRI M. K. MOHTA: Now, regarding the appointment of sole selling agents you have said that this is a healthy provision which will result in plugging one of the most important leakages of the earnings of a company. According to this section the Government would decide whether certain industry would appoint the sole selling agent. But the sole selling agent should have some kind of connection with the company. Whether it is done or not the Government would simply appoint the sole selling agent in a particular industry. That is the intention of the clause. Now, would you say whether there should be such blanket power that the ban should only apply to companies in which the sole selling agent may have some kind of connection with the Management?

SHRI R. N. BHADURI: We have nothing to say about this since we are only talking about the small and medium sized traders.

SHRI JAGANNATH MISRA: You agree that cost audit is absolutely essential and that in production it should be the ultimate objective. But at the same time you suggest that the approach in this connection should be gradual. I would like to know why?

SHRI R. N. BHADURI: Because that will give some breathing time to the companies so that they can be prepared with the papers and records of these malpractices.

SHRI JAGANNATH MISRA: Regarding penalties you say that they are unusually harsh but you are in agreement with the intention of the Government that these amendments would make common man investment minded. How are you justified to say that the penalties proposed which aim at curbing and controlling the malpractices would frighten the people from taking initiatives in setting up their ventures?

SHRI R. N. BHADURI: We are actually frightened about the amount of the penalties which is a very high figure.

SHRI JAGADISH PRASAD MATHUR: You are in agreement with the proposed amendment that power should not be given to the Government regarding change of memorandum and that it should remain with the Court or with the shareholders. Do you think that this proposed amendment will help the small traders and the individual entrepreneurs to carry on their trade, and prosper, and will break the monopoly of the big houses?

SHRI R. N. BHADURI: It will definitely help the small traders. This procedure to approach the Central Government whenever there is a change of object clause will not be beneficial for the company and we think that only the shareholders should have the final authority to bring in changes in the objects clause. If necessary by a special resolution the 3/4th majority may be made 4/5th majority for passing such resolution with regard to the object clause.

SHRI MAHAVIR TYAGI: You have said in your memorandum at the first page, that, "In this connection, it might be mentioned that under the English Act of 1948, the shareholders of a company have the supreme authority and if they pass a special resolution for altering the memorandum of Association, such alteration takes effect without any reference to either the Court or any Government Body, subject only to one condition that dissenting members have the right to approach the Court for cancellation of the alteration and on an application of this nature being made the Court may not confirm or may confirm certain conditions." So you agree that this system of changing this authority should not be vested in any dictatorial power or the Government or anybody. It must be left solely to the shareholders. Is that your view?

SHRI R. N. BHADURI: So far as change of registered office is concerned we are in agreement that the power should be with the Central Government.

SHRI MAHAVIR TYAGI: Not through the shareholders?

SHRI R. N. BHADURI: Yes.

SHRI MAHAVIR TYAGI: But you have said otherwise in your memorandum.

SHRI R. N. BHADURI: And for this reason we have corrected our statement in the oral evidence.

SHRI MAHAVIR TYAGI: I think, you have not said something about your comments on benami declarations.

SHRI R. N. BHADURI: No.

SHRI SOMNATH CHATTERJEE: I believe: this association represents the small sized and medium sized traders. Can you give us an idea as to how many companies are the members of this association?

SHRI S. K. MASKARA: About 40. We have members like. The Statesman, Great Eastern Hotel, Bata Shoe Co., etc. This is a very old association.

SHRI MAHAVIR TYAGI: When this Association was formed?

SHRI S. K. MASKARA: It was formed in 1830.

DR. M. R. VYAS: How many of these companies are having capital of less than 25 lakhs or more than that,—because I want to assess the effect of the provisions of the Bill?

SHRI R. N. BHADURI: About 55 or 60 per cent of the companies in our Association will be affected.

MR. CHAIRMAN: Thank you very much. I hope that your evidence will be of much value to our Committee.

[The witnesses then withdrew]

III. Bar Library Club, Calcutta High Court, Calcutta.

Spokesmen:

1. Shri S. C. Sen.
2. Shri S. B. Mukherjee.

[The witnesses were called in and they took their seats]

MR. CHAIRMAN: I, on behalf of the Committee and on my own behalf, thank you. Since you made requests that you would be heard and since we wanted to accommodate you we have offered this opportunity to you. As you have not submitted any memorandum on the subject you may kindly make your statement briefly. Before you give evidence to this Committee, I would like to draw your attention to the directions which states "the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament." With this direction I would request you to make your statement on the relative items of the sections on which you want to say.

SHRI S. C. SEN: At the outset I want to thank you and the honourable members of the Committee for giving me this advantage without a memorandum.

Sir, we do not wish to deal with many items. We want to draw your attention particularly to one proposed amendment which, I think, is missing a great opportunity. I am referring to the amendment to section 108 which restricts the transfer of certain amount of controlling shares. The problems with the transfer of controlling shares are not been peculiar to India only. It had been a problem in the United Kingdom and long before that in the United States of America also. One point which was noticed there, was the people who were in control, while they were transferring the controlling shares, were obtaining invisible benefits by getting special high prices for controlling shares (also known as, insider trading) which the average shareholders were not getting. When this point was dealt with in U.K. both by the Parliament and later by the Stock Exchange it was corrected through a new machinery and some solution came over there. The views of the Parliament as also of the economic circle were taken and ultimately the Board of Trade as per directions given by the Parliament set up what is known as Take-Over panel and introduced a Take-Over Code. It has been followed to a certain extent by Cross Atlantic exchange of ideas between the U.S.A. and the U.K. and now a panel and code has been set up which forces the people, who were transferring the controlling shares, not only to disclose the details of the prices, but also sets up a machinery so that all the shareholders can get the benefit of the higher prices. This pattern, I believe, can be very usefully utilised in this country because the real problem is that in case of the transfer of controlling shares the higher values should be equitably distributed to all the shareholders whether they are majority—minority or insignificant shareholders. So, one of my suggestions would be that the take over code might taken into consideration in effecting the equitable deal to all shareholders and suitable provisions made.

SHRI MAHAVIR TYAGI: You have not submitted your memorandum. So can you submit it in detail by post to us?

SHRI S. C. SEN: I will certainly submit it to you, Sir if you want. I think, it will take a little time for making a draft.

Sir, my second point relates to the proposed amendment in respect of dividends which is coming up in the amendment of section 205A. Section 5A, sub-section (3) imposes certain new restrictions on declarations of dividends in a year when the profits are inadequate. This will present a problem which may not have been visualised. It is quite common for the companies to provide for dividend equalisation fund to tide over those lean years when there may not be adequacy of profits. This not only maintains the prices of the shares in the stock market where much violent fluctuation is undesirable. If it is the Employees Provident Fund or a charitable institution or an institution of that nature they have to depend on a certain continuity of dividend. These are the institutions which are not personal institutions where withholding of dividend for a particular year may lead to a lot of hardships. My suggestion is that no restrictions should be imposed in respect of years where dividends are to be declared although the profits are not adequate. In any event, an amendment may be introduced that an average of the last five years' dividend may be declared and in that case no sanction need be obtained.

My another suggestion would be in respect of the proposed amendment of section 17. I have to submit, Sir, here I am not talking merely from my point of view as a lawyer. The substitution of the rule of law by a bureaucratic mandate requires reconsideration particularly in a democratic country. The next suggestion will be not on the basis of individual section but on general questions which have arisen out of the amendments. One is that whether be it restrictions on dividend or in the change of shares or various other things, there is progressively more and more departmental control by way of sanctions or permissions. To a certain extent this defeats the growth of self correcting machinery in the commercial world and prevents healthy freedom of enterprize Encouragement of self-correcting machinery can go a long way in having things done honestly and prevent environmental pollution of commercial atmosphere. Sir, you all know that certain amount of mistakes or inefficiency would be there in any human organisation. Over the years the courts encouraged self-correcting rules in such bodies and refused to interfere except in the case of fraud or *ultra-vires* etc. It is not possible for the Government, normally, to keep eyes on the day to day activities of 580 millions. You must encourage the autonomous bodies and all machinery of self correction to a very large extent and, I think, it will give successful results. If self correcting machinery is encouraged and honesty is encouraged the commercial atmosphere will be purer and that will be the premium for the honest people. Secondly, over-restrictions retard economy by restricting freedom of enterprise. Between 1960 and 1965 the corporate statue were given to the Soviet enterprise which were of State owned. The Corporate world has been witnessing a strange phenomenon in which the communist world and the non-communist world are drawing closer. On the one hand the Soviet enterprise are given more and more freedom but on the other hand in the United States and in West Germany certain restrictions are imposed—one is going to one direction and the other one is going to the opposite direction drawing them closer. Yugoslavia and Rumania started Government sponsored stock exchange where the stocks can be sold and purchased in State controlled Companies.

Rumania has gone one step farther. It is collaborating with foreign companies setting up and autonomous corporations under the communist regime. Sir, what I am driving at is over centralisation, over direction and over control has found in today's other advanced countries as not the most beneficial and most efficient manner of running an economy. We are fighting a freedom of survival in this country. My submissions to you,

Sir,—I would put it as not more than my submissions—that it needs a little bit of re-thinking whether or not there should be further centralisation or control or whether we have to start giving more freedom of enterprise and to limit state interference only to abuse of power or control in companies. If there is no abuse of power let the honest man function without hinderance. Sir, I shall end with only one other point. This problem of control in a democratic country with the best intentioned people trying to do good and imposing control was one of the things which was commented upon by Judge Brandise, one of the best judges that the United States had known; and if I may read a passage from the book 'Brandeis Reader'—at page 31. "The makers of our Constitution undertook to secure conditions favourable to the pursuit of happiness. They recognised the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfaction of life are to be found in material things. They sought to protect the Americans in their beliefs, their thoughts, their emotions and their sensations." Now come a few lines of rather greater importance. "They conferred as against the government—the right to be left alone, the most comprehensive right and the right most valued by civilised men. To protect that right every unjustifiable intrusion by government upon the privacy of the individual whatever the means employed must be deemed a violation of the fourth amendment. Experience should teach us to be on our guard to protect liberty when government's purposes are beneficient. Men are born to freedom and naturally alert to be on guard against invasion of their liberty of even-minded rules but the greatest danger is to liberty like any insidious encroachment by men of zeal, weal-meaning but without understanding." Sir, I am reading it for this reason that it is no doubt that people in power or people in the bureaucratic set up are well-meaning but the commercial sector has rules of its own, has reactions of its own which are not learnt in a day, which are very different from what normally happens in the secretariat. By the process of over-control we might put a discount on the honest man who wants to be left alone and it might put a premium on the man who is less honest and more energetic who does not want to be left alone. This smart man should not be encouraged at the cost of honest man. Sir, as I read not only this amendment Act, large numbers of measures elsewhere, it gives me the feeling—of course, my personal views—that over-control may be discouraging to the growth of autonomous bodies and preventing the setting up of self-correcting machinery. I am not saying that we have to be protected against bad or evil people but against well-meaning people who may not know the intricacies of a rather different world as opposed to the bureaucratic world. These are my submissions.

SHRI P. R. SHENOY: In view of the fact that there is increasing volume of work and in view of the fact that judges are not business experts, is it not advisable to encourage administrative law in this country and to set up administrative tribunals to give decisions on matters involving business interest?

SHRI S. C. SEN: My answer is—no, for this reason. Administrative matters, administrative courts are of importance when there has been an administrative decision and against that a citizen wants to put a point of view. That is normally the basis of droit administrative and that type of french courts. When it comes to a battle or difference of opinion between two sets of private individuals, having different points of view, the traditional method has been going to the court because over many, many thousands of years of history, here is an institution which has been trained and has the reputation and tradition of looking at things from a completely dispassionate point of view. In a democratic set up this is the only forum because it is a question of the

average citizen's confidence. A citizen's confidence in the judiciary is still unparalleled. So far as the question of overcrowding in court is concerned, firstly, it is somewhat overrated. There is no doubt overcrowding but most of the overcrowding is because of procedural troubles or procedural dificulties which a judge cannot cure. I will give you an illustration. If a case on accounts comes, under the Evidence Act, the witness has to be in the witness box. Now, if there are three thousand entries he has to say that and repeat that those three thousand entries are true to his knowledge. We can easily have an amendment that instead of this once the witness says or affirms on affidavit that those three thousand entries may be put in subject to cross-examination have been put by me, it will save him seven days' of waste of time in work. Half a dozen small amendments might reduce the congestion in court. Otherwise in the present state of affairs, the appointment of a hundred more judges will not reduce it.

SHRI P. R. SHENOY: Then as regards the issue between the management and the minority shareholders, the management can engage a good lawyer at the expense of the company but the minority shareholders cannot fight the issue; only government can help them. Don't you think that the government should interfere in such matters?

SHRI S. C. SEN: My answer is—no, for two reasons. This proceeds on the assumption that the judge puts more weight, incontrovertible weight in favour of a good counsel. Good judges are far from being carried away by any weight. In this country judges are really dispensing justice without fear or favour. Secondly, you are also discounting the fact that young lawyers necessarily are less efficient or less effective. I can talk, Sir, about thirty years' experience here. Even as a two year old lawyer I got the same justice from the courts and judges as I am getting today without any difficulty.

SHRI P. R SHENOY: If the power is given to the Government, do you think they will get justice? If the matter goes to the court, management will engage a lawyer at the expense of the shareholders to get a decision against the shareholders. What is your view?

SHRI S. C. SEN: My answer is that a company can employ a lawyer even for appearing before the department. There is nothing to prevent that.

Secondly, I do not say that the department is not capable. They may be very good, but when it comes to giving a decision between two sets of individuals whether they are big or small, judiciary is the best equipped institution to face it. There is no other institution which can equal it.

SHRI K. S. CHAVDA: I suppose you have gone through this amending Bill. I would like to know from you which of the provisions of the Bill will be *ultra vires*, or null and void according to the Constitution?

SHRI S. C. SEN: So far as this question is concerned, firstly, it is not possible to give a categorical answer what is now being debated in the Supreme Court may considreably change the concept of *ultra-vires*. But challenges will be there as long as the lawyers are there.

MR. CHAIRMAN: Mr. Sen and Mr. Mukherjee, thank you very much.

SHRI S. C. SEN: Sir, I express a deep sense of gratitude to this commission and to the Chairman for giving us an opportunity to come here and place our views though we have not submitted a memorandum before.

MR. CHAIRMAN: Thank you very much.

MGIPND—RS. I L S—18-8-73—1600.

C.B. II No. 277

LOK SABHA

JOINT COMMITTEE
ON
THE COMPANIES (AMENDMENT) BILL, 1972

EVIDENCE

(VOLUME II)

LOK SABHA SECRETARIAT
NEW DELHI
November, 1973/Kartika, 1895 (SAKA)
Price : Rs. 3·50

Corrigenda
to
the Record of evidence tendered before the Joint Committee on the Companies (Amendment) Bill, 1972 (Vol. II).

Page 3, col. 1, line 13, for "on" read "of"
Page 19, col. 2, lines 25-26, for "on-body" read "nobody"
Page 21, col. 1, line 18, for "Accountas" read "Accountants"
Page 23, col. 2, line 17 from bottom for "seel-" read "sell-"
Page 25, col. 1, line 18, for "charcter" read "character"
Page 39, col. 1, line 21, for "candly" read "kindly"
Page 42, col.2,
(i) line 8, for "iucludes" read "includes"
(ii) after line 28, insert "controlling 25 per cent., that would not"
Page 48, col. 1, line 9, after "Committee" insert "in"
Page 52, col. 2, line 20, for "he" read "be"
Page 58, col. 1, line 34,
(i) for "naionlised" read "nationalised"
(ii) for "Briain" read "Britain"

Page 56, col. 2, line 20, for "arument" read "argument"
Page 60, col. 2, line 23, for "accounts" read "accountants"
Page 77, col. 2, line 23 from bottom, delete "must have"

Page 80, col. 1,
(i) line 16, after "files" insert "of"
(ii) line 1 from bottom for "plantation" read "planation"
Page 80, col. 2, line 5, from bottom for "companies" read "company's"
Page 96, add the following foot-note "*Not a member of the Committee and attended the sitting with the permission of Chairman under Rule 299."

....2/-

Page 105, col. 2, line 25, for "1081" read "108D."
Page 111, col. 2, line 4 from bottom, for "equality" read "equity"
Page 112,
(i) col. 1, line 18, for "unapid" read "unpaid"
(ii) col. 2, after line 38, insert "principal Act and substitute the"
Page 121, col. 2, for lines 16-17 from bottom, read "grown to full stature. In fact, the existing corporate sector nas not yet"
Page 123, col. 2, for line 19 from bottom, read "If besides that we give names and ad-"
Page 124, col. 1,
(i) line 11, for "shunt" read "shunted"
(ii) for line 17, read "to form into syndicates and work for"
Page 125, col. 1, for line 19, read "SHRI S. NARAYANASWAMY: We"
Page 130, col. 1, delete lines 24-25 from bottom.
Page 142, col. 1, line 9, for "three" read "their"
Page 148, col. 2, line 7 from bottom after "joint" add "sector"
Page 151, col. 1, delete line 18.
Page 152,
(i) col. 1, line 17, after "Income-tax" insert "Department"
(ii) col. 2, line 25, for "they" read "there"
Page 160, col. 2, line 12 from bottom, for "pany has to" read "pany's"
Page 162, col. 2, line 15 from bottom for "Var" read "your"
Page 166, col. 2, line 6, for "Section 209" read "Section 209A"
Page 168, col. 1, line 4, for "by-" read "hy-"

COMPOSITION OF THE COMMITTEE

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Somnath Chatterjee
6. Shri Tridib Chaudhuri
7. Shri Khemchandbhai Chavda
8. Shri C. Chittibabu
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10. Shri Madhu Dandavate
11. Shri G. C. Dixit
12. Shrimati V. Jeyalakshmi
13. Shri Popatlal M. Joshi
14. Shri Ramachandran Kadannappalli
15. Shri Baburao Jangluji Kale
16. Shri Jagannath Mishra
17. Shri Surendra Mohanty
*18. Shri Muhammed Sheriff
19. Shri Priya Ranjan Das Munsi
20. Shri D. K. Panda
21. Shri Narsingh Narain Pandey
22. Shri H. M. Patel
23. Shri S. B. P. Pattabhi Rama Rao
24. Shri R. Balakrishna Pillai
25. Shri Jagannath Rao
26. Shri Bishwanath Roy
27. Shri P. M. Sayeed
28. Shri R. R. Sharma
29. Shri P. Ranganath Shenoy
30. Shri R. K. Sinha.

Rajya Sabha

31. Shri Salil Kumar Ganguli
32. Shri B. T. Kulkarni

*Appointed on the 25th December, 1972 *vice* Shri C. C. Desai died.

33. Shri Harsh Deo Malaviya
34. Shri S. S. Marisswamy
35. Shri Jagdish Prasad Mathur
36. Shri M. K. Mohta
37. Shrimati Saraswati Pradhan
38. Shri D. D. Puri
39. Shri K. Srinivasa Rao
40. Shri S. G. Sardesai
41. Shri Himmat Sinh
42. Shri Habib Tanvir
*43. Shri H. M. Trivedi
44. Shri Mahavir Tyagi
45. Dr. M. R. Vyas.

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri K. K. Ray—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri C. M. Narayanan—*Director of Inspection and Investigation.*
4. Shri Ch. S. Rao—*Deputy Secretary.*
5. Dr. (Mrs.) Usha Dar—*Joint Director.*
6. Shri C. R. D. Menon—*Joint Director.*

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

Shri H. G. Paranjpe—*Deputy Secretary.*

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*Appointed on the 29th March, 1973 *vice* Shri K. V. Raghunatha Reddy resigned.

WITNESSES EXAMINED

S. No.	Name of Witness	Date of hearing	Page
(1)	(2)	(3)	(4)
1.	The Indian Merchants' Chamber, Bombay . . .	22-1-1973	3
	Spokesmen :		
	1. Shri Charandas V. Mariwala—*President*		
	2. Shri J. H. Doshi		
	3. Shri J. P. Thacker		
	4. Shri S. V. Ghatalia		
	5. Shri Tanubhai D. Desai		
	6. Shri C. L. Gheevala—*Secretary*		
	7. Shri M. K. Desai—*Deputy Secretary*		
	8. Shri N. Y. Gaitonde—*Assistant Secretary*.		
2.	Shri H. B. Dhondy—*Chartered Accountant, Bombay*	22-1-1973	18
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	1. Shri Ram Prasad Paddar—*Deputy Chairman*		
	2. Shri Pratap Bhogilal		
	3. Shri Sudhir Thackersey		
	4. Shri Tanubhai Desai		
	5. Shri R. L. N. Vijayanagar—*Secretary*.		
4.	Bombay Chamber of Commerce and Industry, Bombay .	23-1-1973	29
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	1. Shri M. H. Mody—*Leader*		
	2. Shri N. S. Phatarpheker		
	3. Shri S. H. Gursahani		
	4. Shri D. P. Mehta.		
5.	Shri N. Dandeker, I.C.S. (Retd.)—*Chartered Accountant, Bombay* Bombay.	23-1-1973	41

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24.	Central India Chamber of Commerce and Industry, Ujjain *Spokesmen* : 1. Shri S. V. Mazumdar 2. Shri M. D. Gupta 3. Shri D. N. Makharia.	16-6-1973	163

Note : The Chambers at serial Nos. 23 and 24 appeared jointly.

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Monday, the 22nd January, 1973 from 10.00 to 13.30 hours in Council Hall, Bombay

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri C. Chittibabu
7. Shri S. R. Damani
8. Shri Madhu Dandavate
9. Shri G. C. Dixit
10. Shrimati V. Jeyalakshmi
11. Shri Popatlal M. Joshi
12. Shri Baburao Jangluji Kale
13. Shri Jagannath Mishra
14. Shri Surendra Mohanty
15. Shri Muhammed Sheriff
16. Shri Priya Ranjan Das Munsi
17. Shri D. K. Panda
18. Shri Narsingh Narain Pandey
19. Shri H. M. Patel
20. Shri S. B. P. Pattabhi Rama Rao
21. Shri R. Balakrishna Pillai
22. Shri Jagannath Rao
23. Shri Bishwanath Roy
24. Shri P. Ranganath Shenoy
25. Shri R. K. Sinha.

Rajya Sabha

26. Shri Salil Kumar Ganguli
27. Shri B. T. Kulkarni
28. Shri Harsh Deo Malaviya
29. Shri M. K. Mohta
30. Shrimati Saraswati Pradhan
31. Shri D. D. Puri
32. Shri S. G. Sardesai
33. Shri Himmat Sinh
34. Shri Habib Tanvir
35. Shri Mahavir Tyagi
36. Dr. M. R. Vyas
37. Shri K. V. Raghunatha Reddy.

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. THE INDIAN MERCHANTS' CHAMBER, BOMBAY.

Spokesmen:

1. Shri Charandas V. Mariwala—*President.*
2. Shri J. H. Doshi
3. Shri J. P. Thacker
4. Shri S. V. Ghatalia
5. Shri Tanubhai D. Desai
6. Shri C. L. Gheevala—*Secretary.*
7. Shri M. K. Desai—*Deputy Secretary*
8. Shri N. Y. Gaitonde—*Assistant Secretary*

II. SHRI H. B. DHONDY, CHARTERED ACCOUNTANT, BOMBAY.

III. THE MILLOWNERS' ASSOCIATION, BOMBAY.

Spokesmen:

1. Shri Ram Prasad Poddar—*Deputy Chairman.*
2. Shri Pratap Bhogilal
3. Shri Sudhir Thackersey
4. Shri Tanubhai Desai
5. Shri R. L. N. Vijayanagar—*Secretary.*

I. The Indian Merchants' Chamber, Bombay.

Spokesmen:

1. Shri Charandas V. Mariwala—*President.*
2. Shri J. H. Doshi
3. Shri J. P. Thacker
4. Shri S. V. Ghatalia
5. Shri Tanubhai D. Desai
6. Shri C. L. Gheevala—*Secretary.*

7. Shri M. K. Desai—*Deputy Secretary.*

8. Shri N. Y. Gaitonde—*Assistant Secretary.*

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Charan Das and other friends of the Indian Merchants' Chamber, Bombay, I, on my my behalf and on behalf of the Committee welcome you here. Before we begin, I would like to draw your attention to the Direction which you have already noted. But for the benefit on the witnesses, I may again read it. The Direction states as such: 'The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

Now, I would request you to state your case briefly on the points on which you want to stress and after that the Members may like to put some questions and you have to answer them.

SHRI CHARANDAS V. MARIWALA: Mr. Chairman and Members of the Committee, I thank you very much on behalf of the Chamber and on my own behalf for having given us this opportunity to personally convey to you our views and suggestions with regard to this Bill, 1972.

As far as this Bill is concerned, we do recognise that and fully appreciate the objectives underlying the provisions of this Bill. We feel that there cannot be any difference of opinion as regards taking remedial measures as may appear to be appropriate and according to the exigencies of the situation. However, it is of utmost importance to ensure that while attempting to introduce far reaching changes in the provisions of the existing Act, a situation should not be created which is likely to cause damage and unavoidable hardship to the functioning of the corporate sector resulting in the arrest of its growth and production without meeting out any corresponding benefit to society at large. This is somewhat very vital at this juncture. Where growth rate of 8-10 per cent we have noticed due to variety of causes of slowing down of the entire industrial tempo is being rendered to about 33½ per cent, has not necessarily occurred as a result of Companies Amendment itself. As a result of variety of causes, at this stage we feel that the corporate unit is perhaps the main area where further economic growth can result and which can really push up the rate of growth. Any impediment created would definitely have a bad effect at a time when the country is faced with huge planning for a variety of industries including consumer industry; any attempt to confine the activities of the corporate sector and to create inhibitions would slow down and have the effect of further slowing down all growth. Such attempts whereby malpractices in some small area are sought to be curbed as a result of general legislation covering all and sundry would necessarily have this effect under the provision of this Bill. The concept "under the same management" is perhaps to be amended. There should be proper implementation of the concept of interconnected undertakings. The MRTP Act has been introduced for controlling the activities of the few monopoly houses. If the Govt. feel that there will be need to further regulate their activities, they may do so by amending MRTP Act. The Government have enough power even under the Monopoly Act. Therefore to bring this legislation which would affect these companies merely to further objectives which are quite laudable in themselves would definitely introduce a degree of hardship to all and thousands of others who are not necessarily monopolists. But to in-

troduce changes in that Act, it will not cause a great deal of hardship and inconvenience to a large number of companies. In view of this, I urge the Committee to give an earnest consideration and to suggest suitable way out. As it is, the existing Company Act is a complex piece of legislation and a number of provisions would help to further make it more complicated and cumbersome. I would like to stress that the provisions of this Bill lead to an inevitable impression that an attempt is being made to bring about radical changes in the working of the corporate sector. I would particularly stress this aspect because in the opinion of the Chamber, the Bill perhaps would really create a sort of hardship to small and medium scale industries. The proposals relating to take over of companies, power of the Government to prevent oppression and mismanagement by appointment of a large number of directors on the Boards, which are likely to become cumbersome, it is generally believed that these provisions may result in making the various functions of the corporate sector difficult. Private companies are essentially constituted for undertaking small business enterprises and especially for undertaking ancilliary to industries. These companies play vital role in the field of small and medium scale industries and contribute a very sizeable proportion to our national income. In fact, then it is a national attempt to broad-base entrepreneurship to see that this sector grows and yet we go into the restrictions and restraints which are being placed under this legislation. We feel that this should be avoided. Entrepreneurship will only grow if private companies are encouraged. The proposed amendment would work in the direction of defeating the objectives of broad-basing entrepreneurship. If the provisions of this clause, are enacted it would result in practical difficulties to a very large number of small private companies which are in the nature of family concerns and where no public interest is involved. A small private company having inadequate turnover holds 10 per cent in another small private company, as a result of proposed legislation, latter company will become a public company. Just because it holds ten per cent of the capital of the other will also become a public company. These small the latter inter-corporate investments between private companies, would make them public limited companies. The need for such step arises because of the indirect employment of public money in a private company. But, this objective is not reflected in the provisions as it is drafted. It is, therefore necessary to reconsider these provisions and it should be clearly spelt out and in cases where public money is not involved they should have no application. There also, the basis of turn-over to convert a private company into a public company does not carry conviction because these small trading companies which conduct business with their own resources may have a turnover of Rs. 50 lakhs. As such, this provision needs an overall review. There is enlargement of area in another place. But, before that, I would, however, like to touch upon the concept of public company. For a private company to be deemed a public company. when we think of the provision in terms of money, I think it would have been relative terms. When we see other legislations like the Industries Development Act, where up to one crore of rupees no licence is required, we see there has been an expansion and ten years ago if we had ten lakhs to start an industry, today, we would be needing more than Rs. 50 lakhs. That means, there has been expansion. But, in this relative terms alone, that you will have to fix the quantum by which a private company necessarily becomes a large company or a public company. Where public money and public interest is involved, this can be taken care by Companies Act and other regulations. The enlargement of another area which is really likely to hurt the entire corporate sector, is

the prior approval of the Government being made necessary as a result of the present legislation. I am afraid this will make the functioning of the corporate sector extremely difficult if not impossible. Provision of prior approval in respect of appointment of ex-Managing Agents as advisers, paying of dividends out of reserves, appointment of auditors of a company, reappointment of auditors after three financial years, appointment of cost auditors. appointment of sole-selling agents, these are some examples, where permission will have to be sought, and if this entire process of permission-seeking is to be enlarged, this will increase the administrative load on the private companies. Here again, the small man will be the sufferer. This would need large administrative apparatus to deal with these matters, and here there would be delays and they would certainly result in one more hurdle to be crossed, before any industrial development can be achieved. Further we find that functions which are at present looked after by the judiciary are sought to be transferred to the executive, and this in no way can be justified. This relates to the provisions regarding confirmation before amendment of the memorandum and articles can be effective. In case of provisions relating to amendment of Section 43A by this amendment, many private companies will be deemed as public companies, and they will be subject to all types of rigorous controls as it is the case in respect of any public company. This will involve tremendous amount of clerical and paper work and avoidable expenditure. Before concluding, I would say that the penal provisions of the Bill are not fully considered, but, they are out of proportion to the gravity of the situation. If a person has to be saddled with criminal liability. then, he cannot be convicted unless he has the knowledge of the commission of the offence. This concept has been totally overlooked. This has resulted in a non-recognition of all accepted canons of jurisprudence. Keeping in view the objectives of the Government, I would like to stress that there should always be an effort on the part of the Government to simplify laws so that they are capable of easy implementation and understanding. A number of provisions in this Bill do not carry forward this objective and I earnestly urge that the Committee should go into them carefully and suggest directions in which they can be suitably amended. With this comment, I would like to say that there is ample scope for improving the provisions of the Bill, in the direction of simplification and helping the corporate sector to work more efficiently. I thank you once again, Mr. Chairman, for the opportunity which you have given. Would you like to ask questions?

MR. CHAIRMAN: We will put questions and if something is left out after the questions have been asked, you may explain. I will ask Mr. Shenoy to ask questions first.

SHRI CHARANDAS V. MARIWALA: Mr. Chairman if you would permit, some of my colleagues would like to make certain observations, before Members proceed with the questions.

MR. CHAIRMAN: I think it would be better if Members ask questions and then in reply, the points that are left out, may be covered by your colleagues.

SHRI H. M. PATEL: Mr. Chairman, the idea of Mr. Charandas is that some of his colleagues, who have accompanied him, would like to make some preliminary observations I think we should hear those preliminary observations.

MR. CHAIRMAN: Mr. Patel. my idea was that Members would be asking questions and in reply to the questions. if some points are left, then, these would be covered by them.

SHRI H. M. PATEL: Some points have not been covered in the preliminary observations to help us in understanding their points of view.

It is not to cover the same ground, that Mr. Charandas is here. If this is so, I think, we should permit.

SHRI S. V. GHATALIA: We are entirely one with the Government's desire to ensure that there is proper and orderly functioning of companies. But the basic thing before the Parliament and before the public is the growing number of economic offences and the Parliament and the Government are very well seized of the fact that we must reduce the economic offences. Now, Sir, my only proposition is that what is reasonable should be permitted and if you try to prohibit it, then, what is reasonable may become unreasonable. That is where, we have got to carefully see whether it is necessary to have too much of laws. Have a law by all means. But it is not advisable to have a law for the sake of law and I do not know whether that proposition would find itself acceptable; secondly, the main justification for this Bill is that there are certain abuses and distortions which have been found in the administration of the Company Law.

There is no public document from which we are able to gather that these abuses have been of serious proportions. Therefore, our request is that this high-powered body may please ask the Government about the number of such offences committed and, if committed, why those cases have not been prosecuted.

The next point is that our Chamber has got 1800 members and also 125 trade associations consisting of several thousand members. We are mainly concerned with middle businessmen. The policy of the Government is to see that maximum business is carried in this organised sector. If the company law were to discourage a business forming into a private limited company then we are defeating the healthy trend which we want to develop.

If there is no evidence or the evidence of a serious misuse then the question to be considered is why should we anticipate a Commission of crime. Our submission is for the small businessman it becomes difficult to comply with the complicated law. This compliance is possible in regard to large business houses. The language of the amendment 43A goes far beyond the objective. Our submission is 43A should remain as it is but to implement Shastri Committee's report if a certain amount of public money by way of loan is taken by private company certainly that company should be deemed as public company.

As regards management I want to point out that the definition of company with same management talks of a group which controls ....Now in the definition nowhere it has been clarified as to what is the meaning of 'control'. This would create tremendous lot of uncertainty.

Now clause 4B—the basic objective is that two companies are in the same management only if 1|3 directors are common in both companies but unfortunately the drafting is so made that even if there is one director from outside group the two companies become under the same management.

If the concept of the company under same management is to be enlarged it is going to embrace a large number of small companies and as our President pointed out the objective is to control monopolies then that restriction should not apply to small businessmen. Let them enjoy the freedom of not getting approval of the Government now and then. Otherwise, the objective of small entrepreneurs progressing will get frustrated.

SHRI J. P. THACKER: Mr. Chairman, I had appeared earlier on behalf of the Federation of Indian Chambers of Commerce and Industry and will not cover the ground already made and confine myself to a few supplementary remarks. One particular topic which was not covered by me was 'benami transactions'. Under the amending Bill all benami holdings are to be disclosed and the company has to notify to the Registrar.

As a matter of fact today Section 153 of the Act provides that the company will not take notice of any 'trust'. Despite this 'benami' transactions are to be disclosed with the result the two provisions will conflict. Apart from that let us examine some of the practical difficulties which will come in our way. As far as benami transactions are concerned, in any event, the Wanchoo Committee has made recommendation to deal with this question. If the benami transactions are to be evaded, the disclosure of benami transactions will be of logical consequence. The legislation has brought about an amendment and Section 281(A) of the Income Tax Act has been amended which practically covers the same ground. As far as practical difficulties are concerned, when there are benamidars along with the registered holder the question will arise as to whom the company should pay the dividend. Once the company is fixed with notice, it will be difficult for the company to assume the responsibility to find out where the title is. As far as dividend is concerned, Section 207 requires that the payment must be made within 42 days. As far as voting right is concerned, the same question will arise in the case of benamidars as well as the registered holder. The company only recognises the registered holder and not the beneficiary holder. When the calls are made, one who is a registered holder cannot pay except out of the trust fund and the benamidar is not legally liable with the result that if the registered holder does not have the fund (in most cases will not have) the company will find it difficult to recover the calls which can be made.

Now the question will arise in case of dispute between the two, what should the company do? It will be landed into litigation which will be no less expensive for the company. If the company is a party to such a dispute, the company will itself be liable in damages. If your objective is not such, is necessary that the company should be asked to take upon itself this type of burden which will benefit none? If this claim can be legitimately made, it will only lead to fictitious claims being made. One can easily apprehend the collusion that may exist between registered holder and the beneficiary holder to get money out of the company.

SHRI MAHAVIR TYAGI: What is the use of wasting time in repeating what you have already mentioned?

SHRI J. P. THACKER: In any event, it is very common in this country and in other countries. There are joint holdings between husband and wife. One of them is the beneficiary owner and the other joint registered holder. The company will have a large number of files regarding joint holdings of the husband and wife and it will only lead to tremendous paper work. Then as far as take over bids are concerned, this provision deals with the person who wants to take-over the control of a company. But no attention seems to have been paid to the problems of the seller. Supposing, a seller is compelled to sell the shares or he is having tax liability, then the approval is to be sought. But what happens if the approval is not granted. There is no provision at all. Then it creates another difficulty. In section 108A the criterion is 25 per cent; in section 108B, the criterion is 10 per cent. One fails to understand what is the logic. As a matter of fact, it is being accepted by the Dutt Committee and by a large majority that it is not less than 33 per cent that brings the control. Then why we should not have 25 per cent and 10 per cent as the basic thing.

Some provisions have been made with regard to freezing of the voting rights and freezing of the transfer. The present provision, namely 4a is already there. It empowers the Government to freeze the transfer. Section 250 is still stronger and enables the Government to freeze the voting

right. This was done in Calcutta in a recent case. This power is already there. Our submission is that this new proposal regarding freezing of voting rights and other things being frozen should not find a place in the legislation.

Then section 108(B) regarding restrictions on the transfer applies to company and the reason given was that these restrictions are necessary to save or to protect the rights of the small shareholders. The right of the small shareholder is totally ignored. Just as financial institutions are finding it difficult, more difficulty will be found by those operating in the private sector. Then if any transfers are made in contravention of this provision, a case cannot be, ruled out that a person who acquires shares in the market may not know that particular holding which he acquires came from that group. Without knowing it, he acquires in the open market and yet he is penalised. Therefore, that provision, apart from being harsh, I think, is absolutely unwarranted.

SHRI J. P. THACKER: May I give....

SHRI MAHAVIR TYAGI: In that case, we shall be left with no time to examine other parties.

MR. CHAIRMAN: It would be better if Members ask questions.

SHRI P. R. RANGANATH SHENOY: You have said that we should not do anything that is likely to reduce the growth rate. Under the present system of Company Law, there are constant attempts by some undesirable persons to take over good managements by cornering of shares. Don't you think that it is in the interest of growth of industries, that we should put a curb on the take-over bids, and therefore, it is necessary to widen the definition of 'same management'?

SHRI J. P. THACKER: You have asked a very relevant and pertinent question. There has been growth in the private sector, and May I say with great respect that whatever growth there has been, has always been with the knowledge and prior approval of the Government. We have the Industries Development and Regulation Act and we have the Controller of Capital Issues. We have Section 372, which even today requires the approval of the Government, if you wish to buy something more than the prescribed percentage. Therefore, this 25 per cent or 10 per cent is not going to improve matters. All the take overs and combinations have been with the knowledge and approval of the Government.

SHRI P. R. RANGANATH SHENOY: This restriction on the acquision of more than 25 per cent applies only to Companies which have a share capital of more than Rs. 25 lakhs. So, small companies will not be affected by this provision. Please refer to section 108-A.

SHRI J. P. THACKER: This applies only to companies having a share capital of Rs. 25 lakhs. So far as big companies are concerned, Section 372 is there and if you still require Government's permission, Monopolies Act is there and now, the Bill also requires in certain cases, permission under the Monopolies Act. Therefore, this provision apart from avoidable work in the case of monopoly houses, would needlessly come in the way of small and medium sector investments.

SHRI CHARANDAS V. MARIWALA: To elaborate a little further, as I pointed out in my earlier remarks, we should see that the industrial growth rate improves. Even the Industries Development and Regulation Act has removed the stringent licensing provisions of an investment of a crore of rupees. In other words, merely fixing Rs. 10 lakhs or Rs. 20 lakhs in itself, in absolute terms, will not necessarily be a correct criterion. This is only in the relative sense, and as I pointed out, a project which can be implemented with Rs. 10 lakhs ten years ago, would need a much larger

sum, and to that extent, this limit of Rs. 25 lakhs would put an unnecessary dampening effect and would unnecessarily create complications in an area which the industrial policy requires that it should grow.

SHRI P. R. SHENOY: You said the small family concerns would be affected by widening the definition of deemed private companies. I feel that most of the private companies, more than 50 per cent of the private companies, have their share capital at below Rs. 25 lakhs and do not have any shares from public companies. Could you please let me know as to how many companies—roughly how many private companies—would be affected by the existing definition of deemed private companies?

MR. CHAIRMAN: It is difficult for them to answer. It is a question of statistics.

SHRI P. R. SHENOY: Could you give us a rough percentage?

SHRI S. V. GHATALIA: It is not not a question as to how much capital a Company has accumulated over a long period. A Company's capital grows with so many bonus shares issued. Secondly, the value of money has come down. What has been regarded as Rs. 5 lakhs share capital 15 years ago, to day, the value is about 60%. Now, the point that I was trying to make was that in regard to a deemed company, there is one provision which says that if you hold ten per cent shares of another private company, you become public.

SHRI S. R. DAMANI: I have gone through your memorandum very carefully and I have also listened to your observations very carefully. Now, I come to your first suggestion about the definition of 'group' You have omitted the words "or has the object of exercising". Will you kindly tell me as to what is the significance of this omission?

SHRI S. V. GHATALIA: This is a very valid question and I am glad you asked the question because it lays down two tests. How is a Government officer ever going to find out as to what is the state of mind of 5 persons coming together? How is an Auditor ever going to find out as to what is the objective at the back of 4 or 5 persons? So, we say that in order to see that the law is clearly understood, this question of objective tests should be considered. Unless you go into the facts, you cannot sit in judgement.

SHRI S. R. DAMANI: You have expressed, Mr. Mariwala, your views about 'same management' and you also mentioned that many inter-connected companies may be ropped up with some companies which are either monopolists or something like that. In this connection, suppose, instead of making this clause retrospective, if it is made prospective, will your problem be solved?

SHRI S. V. GHATALIA: This cannot be made prospective.

SHRI J. P. THACKER: If this provision is made prospective, it may give some relief but not fully. One of the ways in which two companies may be inter-connected is that there may be same persons in the two companies as Directors. The result would be that the Company would be needlessly deprived of the advice and wisdom of say a Director who is not financially interested, but, because of his skill, his professional management and so many other things he is there. You will be neddlessly depriving the Company of his skill, in order to bring this limit of inter-connection. Therefore, Sir, as a matter of principle to have this definition—as my President pointed out—the Companies Act will bring in its net far too many companies which need not be administered this dose of heavy restriction.

SHRI S. R. DAMANI: Here you have mentioned 1|3 equity holdings and also 1|3 directors. How do you say only by having 1|3 holdings of the equity shares this definition will be perfect?

SHRI J. P. THACKER: Dutt Committee had accepted 1|3 as the control. Even today the Monopoly Commission have taken that view. I think by and large it is true in some cases you may find even less than 1|3 gives a control but a line has to be drawn somewhere.

SHRI S. R. DAMANI: In going to court there is lot of expenditure and in going to Government the companies will be saving expenditure. What do you say?

SHRI J. P. THACKER: We have not objected to certain powers being taken away from the court and given to the Government. The only point which we want to make is that follow the recommendations of the Administrative Reforms Commission and take away only administrative functions. In the process it is sought to take away judicial functions.

SHRI S. R. DAMANI: Is it a general practice with the public limited company to make investment in the shares of a private limited company? What are the reasons therefor?

SHRI CHARANDAS V. MARIWALA: It is not a general practice for public company to invest in a private company yet we are now coming across a newer concept, that is, there is mother industry which nurses a variety of ancillary industries. This will discourage ancillary units.

MR. CHAIRMAN: Whether the *benami* transactions are frequent or rare?

SHRI CHARANDAS V. MARIWALA: According to us they are not frequent. There are only stray cases.

SHRI SYED AHMED AGA: I am talking from the point of view of the small shareholders. The deposits that you call from the small men are also not sometimes refunded. If they are not refunded, then why should not the companies borrow only from the financial institutions and let the small man invests in the financial institutions?

SHRI J. P. THACKER: This apprehension is valid. We are conscious of that fact. But the provisions which have been made are not going to save the small shareholders. In the process, they will hit the industry. So far as small deposits are concerned, by all means, have the necessary means to exclude their deposits but deposits from the Directors and their relatives should not be excluded because they are in the full know of the financial affairs of the company.

SHRI SYED AHMED AGA: At the same time, how do you say that there is a safeguard? I want to correlate with it the deposits also. At the time of investment, the control was with a different person; now, the control is with a different person.

SHRI J. P. THACKER: I have tried to understand it and I will try to answer it. Please correct me if I am going wrong. So far as small deposits are concerned, I have tried to answer. So far as take over bids are concerned, it is true that the small shareholders are left out because the transaction takes place with one party who is the acquirer and the other who has got controlling interest. For that, the provision should not be that one should not go for the transfer at all. There is a provision in the English Law. that if the small shareholders also wish to offer their shares, then a certain proportion of shares should be made available to be taken by the person who is taking a large block of shares. But to ask the people to go for the transfer and then the Govt. should have a right in the Bill to take over at a market price. It runs contrary to the concept of the freedom of contract. Here it is not at the agreed price, but the market which may then prevail which is most unfair.

SHRI SYED AHMED AGA: I am talking of those financial institutions which the small holders do not know for one reason or the other. He does not get a notice. All those financial institutions are just forfeited to the Govt. Why should it perpetually remain so?

SHRI J. P. THACKER: In a majority of cases and none that I have known so far the company does not refuse to pay an unclaimed dividend although legally it is time barred. (2) If the money is to be made over to the Govt. it will be more difficult for small holders to approach the Govt. because of legal technicalities and other things. Whereas with private companies, they do away with and dispense with all these formalities and only ask for indemnity. If it is felt that there are some companies, by all means amend the law and instead of three years make it six years.

SHRI SYED AHMED AGA: Do you agree that they should not be forfeited to the company's assets?

SHRI J. P. THACKER: That unclaimed dividend should not be forfeited. There is no doubt about it.

SHRI SYED AHMED AGA: There is a collusion between the auditors and the Directors. It is usually said. I am not aware of it.

SHRI J. P. THACKER: The instances of collusion are very few and far between. This is a reflection on auditors which I don't think they deserve or in any event justifiable. So far as we are concerned, we are of the view that the present status should continue because most of these firms are reputed firms and the shareholders have not suffered because of the collusion with the Directors.

SHRI HARSH DEO MALAVIYA: At page 4 of your memorandum you have mentioned about disincentive to capital formation. Why and how? Do you think what is capital formation related to? How do you visualise it? How do you think this capital investment is made? What affects your capital formation? Is it your profit?

SHRI CHARAN DAS V. MARIWALA: Presently, the contention is that as a result of this legislation, there will be no further growth. What we feel and what our sentence reads in this context is that it becomes relevant to consider all this. I think we gave some example earlier also. They have been able to plough back their profits. The exigency of the situation does require. The replacement parts of the equipments which we are using and the plant always needs modernisation and just because they go up to a level of 20—25 lakhs, imposing all these restrictions, it is the money value that has gone up and just because of that, it would definitely add one more hurdle.

SHRI HARSH DEO MALAVIYA: These amendments have yet to be introduced. According to an official survey, the capital raised in the private corporate sector in 1968 was Rs. 96.4 crores. It went down in 1970-71 to 86.7 crores and in 1971-72, it was 77.7 crores. This happens. During the same period, your profits, the profits of the private corporate sector increased in its very simple way and the Reserve Bank called it simple. There, the profits doubled from Rs. 44 crores to Rs. 97 crores between 68-69 and 70-71. On the one hand, profits are increasing, as indicated, and on the other, your investments are going down. Why? These amendments are not put into practice. If this is so, it may have that effect. But still ....

MR. CHAIRMAN: The question is clear.

SHRI J. P. THACKER: With great respect, the statistics that you have given do not spell out the conclusions

on which an inference has to be drawn. The raising of the capital, between 68-69 and 70-71, in three years, has gone down. Profits have gone up. Those profits do not relate to this capital working. The capital that you have raised will yield profits or 4 or ten years hence. They have gone up because the growth was really un-stricted and unhampered in the past. This should be a pointer and if you impose restrictions, then raising of the capital will go down and the effects will be felt in the subsequent years.

SHRI HARSH DEO MALAVIYA: I beg to differ.

SHRI J. H. DOSHI: May I say a few words. The fact that investments have gone down is true. This is because industries have stagnated. No licences are being issued. Hundreds of letters of intent are not being converted into manufacturing licences. So, you do not see new industries coming up. If you remember, 5 or 6 years ago, when you open a morning newspaper you will see a new prospectus and a new memorandum. Today, you hardly see one new company coming up once in a month. That is why, investment by the corporate sector has gone down and profits have gone up because new industries are not coming up and industries are being controlled. You are in fact creating monopolies. You are helping monopolists to make more profits instead of allowing new industries to come up.

SHRI HARSH DEO MALAVIYA: You mean to say that investment is going down because of the Government and not because capital is constrained?

SHRI J. H. DOSHI: No.

SHRI HARSH DEO MALAVIYA: You have said somewhere in the memorandum ....

MR. CHAIRMAN: Instead of explaining things to them, you can ask questions.

SHRI HARSH DEO MALAVIYA: I must also give some facts. One Page 8, you have said about the freedom of the corporate sector. You have referred to this thing and you have said that all these things will lead to curbing the initiative and freedom of the corporate sector. What do you mean by the freedom of the corporate sector, if you could illustrate?

SHRI J. P. THACKER: When we say freedom of the corporate sector, we mean this. For example, if a Company wants to do a new business, then, it will require amendment of the memorandum and then for confirming that amendment of the memorandum, if there are restrictions, then, it will curb or it will restrict the freedom. After all, in a democratic set-up, industries should be allowed to have their own way. Unless they are going on the wrong path, unless they are indulging in activities which are going to hamper the growth of the nation, which must come first, share-holders must be left free. England is no less a socialistic country than ours. Still, the Company Law there gives much more freedom to the shareholders than we do. That is why, we have mentioned about the freedom of the shareholders and that is what we mean when we say about the freedom of the corporate sector.

SHRI HARSH DEO MALAVIYA: At present, investments are made by the Government institutions like the Banks and the public financial institutions like the LIC. If they invest or they give 5 year loans, an amount equal to 40 or 50 per cent of the entire paid up capital, would you like or would you prefer the public financial institutions, as representing the interests of the people, to exercise its authority in the management of the firms and will you say that it will mean curbing the freedom of the corporate sector? I do not know whether you have understood my question.

SHRI J. P. THACKER: If they have equity participation, by all means, they will have the rights which the ordinary shareholders have. But, what the financial institutions want is that they will advance loans, and if the Companies do well, at the end of ten years, they will convert their loan into equity and get the management. If the Companies do not do well, the loan amounts come back to them safe and sound. This is not the same thing as the ordinary shareholder can do. If I were to give a loan, what I will get back, after the stipulated period, will be my money. If they come on the same terms as any other person, there can be no objection. On the contrary, we welcome that. But, let it be on equal terms as other shareholders.

SHRI HARSH DEO MALAVIYA: Is it not open to anybody or any financial institution, to convert its loan into equity? Is it not its freedom? Is it not the freedom of the public institutions? You are concerned about the freedom of the corporate sector. Is it not within the freedom of the public financial institutions to convert their loan into equity, as and when they desire?

SHRI J. P. THACKER: As a matter of fact, this topic is outside the present Bill. But, if there is a question, we are bound to answer and I will certainly answer that question.

MR. CHAIRMAN: That is not within the scope of the Bill.

SHRI R. K. SINHA: Please refer to page 24, Clause 30 of the amending Bill.

SHRI J. P. THACKER: At present, Government have a right to appoint two Directors and for a period of three years. What is sought to be done now is to appoint not two, but, a number of Directors and the ground given is that these two Directors have not been able to act effectively. If they have not been able to act effectively, surely, the blame is not with the private sector. The blame must be found somewhere else. But, to have a majority of Government Directors, who have no financial interest, would mean a backdoor nationalisation and a virtual confiscation of the assets of the Company.

SHRI R. K. SINHA: If they are sick business organisations, then, Government should have the power to appoint Directors.

SHRI J. P. THACKER: If they are sick organisations, there is no reason why Government should not do it. That is the duty and privilege of the Government. But, when a Company is a going concern, it is not proper to have a majority of Government Directors, when the capital and management belongs to some one else.

SHRI R. K. SINHA: You have said, while explaining that there may be one or two directors common to two concerns, that there may be people who may be qualified and who may have professional and managerial skill as well as so many other things. What is the meaning if 'so many other things'?

SHRI CHARANDAS V. MARIWALA: I would like to elucidate. Today a company requires professionals and the Board as a whole represents an embodiment of different disciplines which may be necessary to carry out a complex economic organisation. As a whole we do find some of the larger companies have very well balanced Boards and if the present restrictions are imposed then this expert advise will be lost.

SHRI R. K. SINHA: You have said judicial functions are attempted to be taken away by the amendment. Is it not true that sometimes resort to courts is made in order to postpone certain decisions of the Government. If it is an attempt to simplify judicial process what is the objection?

SHRI CHARANDAS V. MARIWALA: There is no objection in principle. The only objection is to the courts powers being taken away in approving the amendment to the

Memorandum. That kind of application is disposed of in less than 6 weeks to 8 weeks because there is hardly any contest. Petitions of this nature, I am sure, will be disposed of much quickly than what can be disposed of by Central Government.

SHRI TRIDIB CHAUDHURI: About the restrictions imposed on deposits you have quoted an observation from the Banking Commission's recommendations. Apart from that reason have you got any substantive objections as to why this should be excluded?

SHRI J. P. THACKER: The primary idea of taking deposits would be to find money immediately when moneys are urgently required. If companies are required to go to the banks it takes time. If the deposits are allowed to be taken from the directors and relations who know the position of the company there should be no objections. So, exclude those deposits where public is not involved and thereby relieve hardship to the company.

SHRI D. D. PURI: They have given a new definition of "group." Would you not like to lay down maximum number also? A "group" may even be constituted of 500 to 1,000 members.

SHRI J. H. DOSHI: With due respects there is no question of numbers here. The question is there should be no subjective test.

SHRI D. D. PURI: 108. How does an individual share-holder know when he is selling his shares or buying shares from stock exchange as to the holding of another person?

SHRI J. P. THACKER: It is a valid suggestion. I share your views. This will give rise to innocent people being victimised unnecessarily.

SHRI D. D. PURI: I would like to understand how is the company involved in the capital gains tax?

SHRI J. P. THACKER: It is a typographical error. It will be the transferer.

SHRI D. D. PURI: At the bottom—If the company is not in a position to pay how would the transfer to the Government be possible?

SHRI J. P. THACKER: With great respect what we have said is that if within 21 days the companies are not able to pay, then they should pay within 42 days. 21 days may be given to the company and a reasonable interest may be charged.

MR. CHAIRMAN: Your memorandum did not say anything.

SHRI D. D. PURI: Regarding penalty provision, you have suggested knowledge of the offence should be made essential should it not be intention?

SHRI TANUBHAI D. DESAI: No, Sir.

MR. CHAIRMAN: There is a difference between mens rea and knowledge. Would you prefer mens rea?

SHRI J. P. THACKER: We would prefer mens rea.

SHRI D. D. PURI: There are two questions which arise at page 28 Supposing my acquiring one more share would make my holding as 10 per cent. The restriction would still appply to the transfer of one share. Do you hold the view that the holding to 10 per cent amounts to control of the company?

SHRI J. P. THACKER: No. Sir.

SHRI D. D. PURI: Is it at all practical for the transferer to know the holding of the transferee?

SHRI J. P. THACKER: No, Sir. Yet provision has been made for which is something unusual in a legislation.

SHRI D. D. PURI: With this provision, do you have the market value of the product in view?

SHRI J. P. THACKER: It should not be the market price. It should be the cost to the company. The primary cost and the overheads which can be allocable to that particular product which falls within the schedule.

SHRI D. D. PURI: In regard to number of Government appointed Directors, I would like to ask from our experience in how many cases or even in a single case where the Government Directors are outvoted to the prejudice either of the company or of the public enterprise?

SHRI J. P. THACKER: I am speaking as Thacker individually and not on behalf of the Indian Merchants' Chamber. My experience is that the wishes of the Government Directors are respected; they have never been out-voted. Although their wishes are respected but when it comes to signing the balance-sheet and account, Government Directors refuse to take the responsibility.

SHRI MADHU DANDAVATE: This is regarding 1969 Act. You would be the person to know the facts. Regarding the control of these companies under the garb of agreement on the basis of services, this agreement still continues. Do you feel that in view of this experience in the past it is quite feasible to accept the provision suggested in the amendment that no such agreement can be established without the approval of the Government?

SHRI J. P. THACKER: There are cases. One cannot dispute it. After the abolition of the managing agents, some kind of arrangement or understanding has been reached which enables the old arrangement to continue. There were cases and there were companies when managing agents were abolished much prior to 1970. Today, if they will not be allowed to make their services available it would be unnecessary hardship on the company. You cannot even appoint a mere Director without the approval of the Government. I think there may be some oversight. It is a different matter. But even managing agent can be an ordinary Director, one of the many Directors. Why must you need an approval?

SHRI MADHU DANDAVATE: If you concede that this evil does exist or the present provisions are not appropriate, would you suggest some other alternative provision by which that evil can be completely eliminated?

SHRI J. P. THACKER: If there are Directors and if they hold any office of profit, section 314 requires that a special resolution is needed. That probably will be one check because there are 3/4th of the shareholders who are willing to vote for them knowing what services they are capable of giving. Government's approval may be required. Three years have already gone by. To deprive the company for eight years of the services of people who are genuinely skilled people, who know what the management was and all that.

SHRI MADHU DANDAVATE: That means ultimately it is a question of assessment.

SHRI J. P. THACKER: Yes.

SHRI MADHU DANDAVATE: If you look at the various reports and comments and the assessment of the Commission it has been considered that the working of the Act has already become difficult because of the old concept of the same management. Therefore, in view of this, do you think that the basic changes are absolutely necessary.

SHRI TANUBHAI D. DESAI: It should be incorporated in MRTP Act. But our suggestion is on the dragging of companies and bringing them in. If you want to amend for monopoly houses, do amend. We have

no quarrel. The point is why do you fear?

SHRI MADHU DANDAVATE: What I wanted to point out is that I am referring to some assessments which are connected and the administration in working of the MRTP Act. Their own assessment is that some reforms are necessary. That is why I remember well these provisions have come up. Those who are engaged in the administration of the Monopolies Act, they themselves feel that ...

SHRI TANUBHAI D. DESAI: There is no evidence that all Companies are required to be brought in, under this Bill. What we have said is that if the MRTP authorities feel that because of the definition of the same management' and by reason of the abolition of the Management Agency, there is necessity for certain changes, then, you can amend the Monopolies Act and there are suggestions for amending the Monopolies Act instead of bringing all the Companies here. This is the point.

SHRI M. K. MOHTA: My first question is regarding the definition of 'group'. The suggestion which has been given by the Chamber regarding the definition of exercising control is not very clear to me. The suggestion says that any combination of individuals, associations etc. which hold not less than one third of the equity shares in a Company would be considered to be exercising control. Now, there can be thousands of combinations of shareholders holding one third of the shareholding of a particular Company. Suppose, the definition of group is considered, the suggested definition says a group of two or more individuals etc. which exercise control over any body corporate....Here also, a group of two or more individuals, associations etc. may be acting independently of each other, yet voting for a particular resolution, let us say, or voting in favour of a particular Director. But, they may have nothing in common with each other What exactly is the intention of the Chamber in regard to these two points?

SHRI S. V. GHATALIA: I agree with the point that you have raised. That is why, we have first of all defined control in terms of one third of the equity shareholders. And, that by itself is not sufficient. One third shareholding held by a group must be such as to enable them to exercise control.

SHRI M. K. MOHTA: Is that the only criterion?

SHRI S. V. GHATALIA: By holding one third alone, you do not satisfy fully.

SHRI M. K. MOHTA: In other words, you mean that there may be one other criterion?

SHRI S. V. GHATALIA: They must hold one third of the shares and in fact exercise control.

SHRI M. K. MOHTA: If I have understood you correctly, merely holding together will not be sufficient. On the question of Clause 10, Sections 108 A B etc. all you comments are regarding take over bids. I put to you a case about a particular group already holding a stated percentage in the shares of a Company. wanting to acquire more shares in that Company. According to you, under this Section, they will not be allowed to do so. What are your views about that.

SHRI J. P. THACKER: That would not make any difference in the control. Because, they will be already holding the required percentage. Any more acquisition would not make any difference in the control.

SHRI M. K. MOHTA: Do you think that it is desirable if they are allowed to acquire more shares?

SHRI J. P. THACKER: I think it is desirable because industries will prosper and the nation will prosper.

SHRI M. K. MOHTA: Regarding Company deposits, you have sought

to draw a line, make a distinction between the deposits taken from the public and deposits taken from Directors, shareholders, their friends and relatives etc. etc. I put to you that there may be a situation where a Company has to meet unforeseen liabilities and the only way out is to take deposits available from whatever source. Deposits are available from so many sources. The only alternative before a Company Management would be either to go into liquidation or it can go and appeal for taking more deposits than what is prescribed by the Act. What is the way out?

SHRI J. P. THACKER: In a given situation, deposits in excess of the prescribed limits may be necessary in order to salvage or save the Company. In spite of these, so far as the penal provisions are concerned, after the prosecution is launched or during the pandency of the prosecution, if the bottleneck is set right, then, there should be no jail and imprisonment. That concept has been accepted in the Companies Act in Section 371. Today, inter company loans are prohibited. The Section also says that by the time prosecution is launched, if inter corporate loan is repaid, then, no imprisonment will be imposed. Some such provisions are necessary and more over that point has not struck anyone so far. I have not seen this point made in any memorandum. I am glad this point has been made.

SHRI D. K. PANDA: Please refer to Page 2 of your memorandum. You have said that the changes proposed in the Bill would seek to put down malpractices. At the same time, you have said that the provisions are going to hit the middle-scale and small-scale industrialists unnecessarily. My question is this. If these provisions are made applicable only to those 102 monopoly houses, specifically, because already it has been known that they have committed certain crimes according to you also....

SHRI J. P. THACKER: We have never said that.

SHRI D. K. PANDA: But, now, we all feel that there are malpractices. Now, my question is, if these are made applicable only to monopoly houses, because from where we all visualise these evils will you be satisfied?

SHRI J. P. THACKER: If these provisions are aimed at curbing the rights of the monopoly houses, then the right place for the amendment would be the MRTP Act.

SHRI S. G. SARDESAI: The leader of your delegation pointed out that the provisions of this Bill are indiscriminately applicable to all concerns in the corporate sector irrespective of the fact whether they are small or monopoly concerns. You also said so far as the smaller concerns are concerned if they have to pass through all these complicated things it will be burdensome. Is it your position that the smaller companies should be excluded and you have no objection if it is applied to monopoly concerns.

SHRI CHARANDAS V. MARIWALA: There are two sides to this. My reference to the hardship to the small concerns was primarily in respect of private companies being suddenly deemed to become public company, thus, getting into the various restrictions as prescribed under the Act. Secondly, our submission is why create friction and it could form the subject-matter of MRTP Act.

DR. M. R. VYAS: In reply to the question of Shri Malaviya it was mentioned that lack of growth in the capital despite the higher profits, licences being given. How is it that larger unmber of industries have been registered during the last few years yet the profits accumulated have not been invested to the same extent?

SHRI J H. DOSHI: There is hardly any relationship between the number of industries registered and growth.

DR. M. R. VYAS: There are a number of companies and investments which can be made without licensing. How is it this money is not coming to small industries?

SHRI J H. DOSHI: I do not know.

MR. CHAIRMAN: Thank you very much.

The witnesses then withdraw.

II. Shri H. B. Dhondy, Chartered Accountants, Bombay

(The witness was called in and he took his seat)

MR. CHAIRMAN: I welcome you on my own behalf and on behalf of the Committee. The Chairman then drew the attention of the witness to Direction 58 of the Directions by the Speaker.

I would kindly ask you to limit your time for preliminary observations to five minutes; then the hon. Members would ask questions and if anything is left I would ask you to explain further.

SHRI H. B. DHONDY: I have submitted two memoranda. First, I must thank you for giving me this opportunity of stressing some of the points I made in the memoranda. Since you want my preliminary observations to be brief....As far as amending section 224 and introducing section 224A concerning procedure for appointment of auditors of non-Government Companies are concerned, my submission is that the proposed changes will not achieve the stated objectives for which they are sought to be introduced. This is a matter which has to be looked at from the point of view of public interest. Secondly, the audit must be carried out honestly and efficiently. There must be the characteristics which the system of appointment of auditors ensures. As far as honesty is concerned, it involves an independent professional approach. As far as efficiency is concerned, it involves requisite professional expertise, skill and judgement as of the other qualities. I think the proposals will not achieve these two tests. The two stated objectives are the breaking of—(1) "concentration of audit in a few established firms of auditors"; and (2) "close association between the auditors and a group of companies." My submission is that there is empirical evidence to substantiate the first purpose. If so, something obviously must be done about it. I have given my reasons for my proposals. I agree that there is something that is to be changed. I have suggested an alternative. The alternative is based on my historical review of the factors leading to the situation that we have today.

Then it is submitted that it is not logical or in the public interest to permit the building up of a "Brand name" by large firms of auditors, who carry on their practice in a Firm name, and who accept appointment as auditors in that Firm name, even though none of the present partners of the Firm may actually be of that name, and even though the reputation and goodwill which was built up by the founder of that Firm, who gave it its name, may perhaps not be on merits deserved by the present partners. My proposal is that the auditor should be appointed in individual name. However, it is not my submission on that CAs should be prohibited from practising their profession in partnership. I think that would be unreasonable. The appointment should be in the individual name of the auditor. Then another submission is regarding the removal of the auditor. If there is any attempt to remove him, this is not easily permitted under the existing provisions, but may be made easier by the proposed changes. Therefore, if I may submit this as an additional point, the amendment should further and protect public interest, not defeat it.

There should be some statutory regulation of attempts at removal of an auditor in circumstances where the auditor has an honest difference of opinion with the management. The reservation or protection should be by requiring a special resolution of the shareholders and the approval of the Government to the appointment of someone else in such circumstances. The outgoing auditor who is sought to be removed by this method should have the right to receive copies of any notice and request for consent of the Government and the shareholders of and also be entitled to make representations in writing or appearing in person to explain the stand.

MR. CHAIRMAN: Of course, whatever you have said in your memorandum should not be repeated.

SHRI H. B. DHONDY: My submissions in short are: (1) The appointment should be in the individual name of the auditor. (2) CAs may continue to practise in partnership. (3) There should be some regulation of the quantum of companies that can be audited by an individual. This requires the fixing of this quantum. The quantum must depend upon the actual facts. There are only about 1250 companies—public or private—having a paid-up capital more than Rs. 25 lakhs as on 31st March 1968; of which the vast majority were public companies. If one thinks of this group, it is certainly necessary to assure independence and efficiency of audit, then, out of nearly 15,000 members of the Institute Chartered Accountants, there are at least 5,000 who claim their main occupation is practising as CAs or employed with persons who are practising, who should have equality of opportunity for appointment as auditors of these Companies. I would suggest getting the latest statistics. As far as the ceiling of audit per member is concerned. it should not be more than 20 such companies at most. You may have to consider to lowering the ceiling to ensure a reasonably equitable dispersal of such audits. Then, as regards large Companies, the only other way I could think of where you could have, rightly, in public interest, increased equality of opportunity to members, is the concept of joint audit. When I say joint audit it is not in the sense of just two auditors, but the member should depend upon the size of the Company. For Rs. 25 lakhs paid up capital, there should be one auditor, and for every additional Rs. 25 lakhs, there should be one extra auditor, subject to an overall maximum of ten joint auditors. For example, in the LIC, you have 12 auditors. 12 firms of auditors jointly. That could be a little unwieldly in practice. Therefore, I submit, as a practical measure, that there should be an overall a limit of not more than ten compulsory joint auditors, and the actual number should depend upon the size of the Companies. If a Company chooses to have more. onbody should stop them. But they should have at least ten if they have that size, based on the capital structure for example, TISCO in the private sector or Hindustan Steel in the public sector. So much in regard to appointment of auditors. My second memorandum is concerned with a few other areas. The first of these relates to this new profession of Company Secretaries. I am quite in sympathy with the object behind these measures. I have only two points in regard to matters as to who should be qualified to be a Company Secretary and the number of Companies for which an individual may be a Company Secretary. In the second memorandum, the first point that I have made is that the law should spell out as to who would be qualified to be a Company Secretary and this should not be limited only to this new body which has emerged recently, but, this should include certain categories of individuals like lawyers, members of the legal profession who have served with distinction as Secretaries of Companies, and this should cover member of internationally recognised senior bodies of Company Secretaries

and this should include Chartered Accountants also. In practice. you will find that, of the Companies which have qualified Secretaries, a substantial proportion are Chartered Accountants and they are there in view of the fact that they are Chartered Accountants. So, I say that the law should spell out in clear terms and should include these categories. If you want to have a residuary category, Government could be empowered, for the residuary category to prescribe additional qualifications. As regards Companies under "the same management", the requirement I submit, which is necessary is that when the public is going to deal with these Companies, in view of the definition which has been so enlarged, it may very well happen that there are a large number of Companies who come within the "same group" and even the auditors of the Company may not be aware of all the Companies. So, I have suggested there should be a register maintained on the lines of the Register of Members, and the Register of Contracts in which Directors are interested under Section 201, which would be available for inspection by the same people who can inspect these other registers. In regard to what is loosely referred to as benami holdings, so far as the proposed provision is concerned. I have pointed out two practical difficulties.

MR. CHAIRMAN: You have said that in your memorandum.

SHRI H. B. DHONDY: Yes, in my further memorandum, on Page 3....

MR. CHAIRMAN: That is already there.

SHRI H. B. DHONDY: As regards inspection of books of accounts my only proposal—it is for your consideration—is that if you feel that powers should be given to the Inspectors and that they should come and see whether the auditors have done their job properly then we must ensure that the auditor has the same power. because he cannot do the same job as the Inspector, without the same power. We must ensure that also. I have suggested one of the two alternatives, first, consider whether these powers are at all necessary, and if so, second whether they should also be given to the auditors.

MR. CHAIRMAN: Kindly allow Members to put questions.

SHRI SYED AHMED AGA: There is a general impression that there is collusion. There is concentration and it is so much that the small shareholders and the small depositors are not protected. I would like to understand or I would be like to be educated from you, as to how would you react to a system in which there is statutory audit by the Government or Companies should be left free to have their own internal auditors. How would you like that?

SHRI H. B. DHONDY: The first thing that I would say is that I have pointed out this at certain places in my memorandum—it is unwise to legislate either on hear-say or on exceptions. This is the principle which has been stressed by many learned Commissions. So, one has to examine facts and not go by general impression. There is sufficient data available as to who does what Company's audit, and therefore, whether there is concentration or not, can be checked by merely getting the statistics and analysing them.

MR. CHAIRMAN: His question is very simple. He wants to know whether you prefer statutory audit.

SHRI H. B. DHONDY: Today. there is statutory audit in the sense that audit of all companies is compulsory. The suggestion, as I understand, is that it should be done by the Government. The answer is also contained in the memorandum. I have given the reasons on Page 2 of my memorandum as to why Government cannot do it in public interest. With due deference, the function of the Government is quite different from the function of a public auditor. What is required is a certain professional expertise and independence.

SHRI SYED AHMED AGA: Government is certainly not going to appoint a person, who is not professionally up to the mark. I want to know as to what is the objection to the appointment or the choice of an auditor by the Company. It is the statutory obligation of the Government to appoint an auditor, of course, with proper professional expertise.

SHRI H. B DHONDY: Then there should be a panel of such qualified people.

SHRI SYED AHMED AGA: That of course is there.

SHRI H. B. DHONDY: This would be, I presume, Membership of the Institute of Chartered Accountas, created by Parliament by statute.

SHRI HARSH DEO MALAVIYA: With respect, I submit that Government as an appointing agency, would not be acting in its capacity as Government. Would you agree to the statement that big audit firms, in collusion with the Management, put the shareholders to loss and that the auditors do not report to the shareholders about various transactions and irregularities of Companies?

SHRI H. B. DHONDY: I would not agree that bigness is the only criterion This may be the case in regard to small audit firms also.

SHRI HARSH DEO MALVIYA: There have been serious charges. You do not agree with the charges.

SHRI H. B. DONDY: I do not agree because there can be chances of collusion, even if the auditor is a small man or the Company is a small company.

SHRI HARSH DEO MALAVIYA: under the present arrangements the auditors' disciplinary cases are dealt with by their own Committee. Would you like the system to be changed?

SHRI H. B. DHONDY: I would say 'No'. Every professional body must be autonomous if it is to exercise discipline over its members.

SHRI MADHU DANDAVATE: I would suggest you avoid the two extremes. Would you favour a panel of auditors prepared with definite norms fixed up? If they fulfil certain rigid norms, then only they will be appointed.

SHRI H. B. DHONDY: The only norm one can prescribe is that the man is professionally competent and not debarred by any of the disqualifications already spelt out in the Bill. The norms are already there in the law.

SHRI HIMMAT SINH: You have suggested a system of joint auditing. Would you not prefer a system of cost auditing and audit accounting?

SHRI H. B. DHONDY: We have already a system of cost audit of accounts maintained pursuant to Section 209 (1) (d). It is not universal at the moment. One has to see what is the function you want the auditors to discharge. How can you blame a man for not doing that which the law does not empower him to do. My submission is you, should carefully consider what should be the objective of audit.

SHRI MAHAVIR TYAGI: How would you react to the idea that when any auditor just conspires with the management and is found guilty for neglect of his duties he should be criminally prosecuted.

SHRI H. B. DHONDY: Such a provision can already be read in the statute for fraudulent conduct. I would not go beyond that.

MR. CHAIRMAN: Thank you very much.

(*The witness then withdrew*).

III. The Mill Owners' Association, Bombay

Spokesman:

1. Shri Ram Prasad Poddar
2. Shri Pratap Bhogilal
3. Shri Sudhir Thackersey
4. Shri Tanubhai Desai.
5. Shri R. L. M. Vipayanagar.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Mr. Poddar and other friends of the Millowners' Association, Bombay, I, on my behalf and on behalf of the Committee welcome you all here. I would like to draw you attention to the Direction which states:

> "The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless thy specifically desire that all or any part of the evidence tendered by them is to be treated as confidential Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

Your memorandum has already been circulated to the members of the Committee. Now. I would request you to say anything if you want to say and then the members will put questions.

SHRI RAM PRASAD PODDAR: Hon. Chairman and hon. Members of the Select Committee, I, on my behalf and on behalf of the Association express our deep sense of gratitude for granting this opportunity to appear before this august Committee in connection with the memorandum submitted by the Association on the Companies (Amendment) Bill 1972. I crave your indulgence to make a few ovservations regarding the said memorandum before going into some of the important questions which may be raised from the side of the Members.

MR. CHAIRMAN: It would be sheer waste of time. I would straightway ask the Members to put question to you.

SHRI TANUBHAI DESAI: Referring to clause 25 amending section 297 of the Act, in the case of companies having capital more than 25 lakhs where prior approval of the Government is required, we want to point out that exigencies of business have not been taken into consideration. After 1960 Act was amended, the Board can approve the transaction within three months. Here, you require previous approval. It would mean complete disruption of business. Supposing. you require certain cotton and stores. Today, we can buy or take temporarily from a sister company. This will not be permitted now because the previous approval of the Govt. is required and the Company Law Dep't. will have to be satisfied. It is our suggestion that this should not come into force. It seems to be overlooked that under the existing law itself, the transactions have to be approved by disinterested Directors. Their apprehension seems to be that interested directors may be doing favour to compaines or firms or directors who are their own relatives and friends. It must not be overlooked that all these transactions have to be approved by disinterested Directors. The interested directors naturally cannot vote even. This clause should not be there. It will affect very badly. There is also another aspect. It seems to be

overlooked that there are certain commodities which are being held or imported or being dealt with by certain companies, quotas are given and you can get only from those companies and still you require the approval should be from the Govt. How the officials of the Company Law Department are going to judge the exigencies of the business? This clause should not be there.

Regarding sole selling agencies, Clause 24, sub-section (1) provides that it is for the Govt. to announce that there will be no sole selling agents in certain companies because there is a surplus. This concept of surplus in business is quite different. This year, it may be surplus; next year. it may not be surplus. How it is going to judge and what is the data. After all, you are giving absolute power to the Govt. There is no provision even for an enquiry being held. Sole selling agencies should be there.

SHRI HARSH DEO MALAVIYA: I am afraid you will not allow my question. The leader of the delegation has given us a speech of four pages which is supposed to govern their whole approach. I beg to submit that it should be put on record in this Committee that the entire knowledge of history revealed on the first page about constituting of the private companies is absolutely faulty, incorrect and .....

MR. CHAIRMAN: Please come with your question and not with the observation.

SHRI HARISH DEO MALAVIYA: I would like to ask as to what objections you have to the restrictions sought to be imposed by this amendment bill, with regard to the appointment of sole-selling agents?

SHRI TANUBHAI DESAI: As I pointed out, the sole selling agents have a very important function and it is our experience in the industry that they know the market and they have the organisation and one important factor which is perhaps not very well known is this. These sole selling agents guarantee the performance of contracts. Most of the goods are sold by credit and these sole selling agents are responsible for payment and performance of these contracts. Now, if this is not so, the financial results would be affected.

SHRI HARSH DEO MALAVIYA: If you appoint more than one agent, I think it would be a preferable thing, instead of one person becoming richer and richer.

SHRI TANUBHAI DESAI: There is no question of getting richer, with the present taxation.

MR. CHAIRMAN: Sole selling agent is always one man or one firm.

SHRI TANUBHAI DESAI: It is not one man. It is a big organisation.

MR. CHAIRMAN: It may be one man or it may be one organisation.

SHRI HARSH DEO MALAVIYA: If there are more than one, how it will hurt?

SHRI TANUBHAI DESAI: He would know the market in various places. It is not correct to say that you can sell goods, without the experience of a whole organisation. This sole-seeling agency is a necessity in so far as the textile industry is concerned.

SHRI SUDHIR THACKERSEY: May I elaborate on the question of sole-selling agents? Normally, sole selling agency in the textile industry is region-wise. After all, the whole India is a very big region and normally the practice of the mills is to appoint sole selling agents for various territories.

MR. CHAIRMAN: The question which the hon. Members asked was instead of one selling agent, if so many agents are appointed, what would be the effect? What harm

would be there? This is the question. If you have a reply to this question, please give it. Do not try to explain the procedure. Please give a direct reply to the question.

SHRI SUDHIR THACKERSEY: There are sole selling agents territory-wise, and if we appoint three or four sole selling agents, in the same territory. then the functioning would be impossible.

SHRI HARSH DEO MALAVIYA: In Uttar Pradesh, with a population of more than ninety, million, if you appoint more than one sole selling agent.....

MR. CHAIRMAN: There should be no argument. They can reply and we can draw our own inference.

SHRI PRIYA RANJAN DAS MUNSI: I draw your attention to Page 36 of your memorandum. This is with regard to the amendment of Section 269, Clause 23. The proposed amendment of Section 269 *inter alia* also proposes certain powers to be given to the Central Government, with regard to the appointment of whole time Managing directors or Directors. You have cited the recommendations of the Administrative Reforms Commission and you have submitted in the memorandum that the matter should be dropped. In defence, you have said the shareholders should have the right. It is a correct approach that the shareholders should have the choice. But, in practice. it has been found that in most of the Companies, the choice has come only through the respective group of persons who have the largest consolidation of shares in the Companies and the shareholders, as such, do not get scope. What is the harm if the Government is invested with the power or it is provided that Government's approval should be obtained with regard to the appointment of whole time Managing Directors?

SHRI TANUBHAI DESAI: The point is quite different. We are not objecting to the appointment for the first time. Governments approval is required under the existing law, for the appointment for the first time. The question is whether, every time the appointment is made, there should be approval.

MR. CHAIRMAN: They say that for reappointment, there should not be Government's approval.

SHRI PRIYA RANJAN DAS MUNSI: I am disputing that point. Why, for reappointment also. Government's approval should not be necessary?

SHRI TANUBHAI DESAI: The point is that it would mean that the persons will be on probation all the time and you will have to seek approval every three or five years.

SHRI PRIYA RANJAN DAS MUNSI: What is the harm?

SHRI TANUBHAI DESAI: There will be no continuity and the persons will not know how long they will be there.

SHRI PRIYA RANJAN DAS MUNSI: In our country, whether it is administration or Government, persons are always kept on probation. Why, then, probation would not help a person?

SHRI TANUBHAI DESAI: In our submission, Sir, this is not the correct approach. If a Managing Director has been approved by the Government once, and every time we should go to the Government and if the power is to be taken that he can be appointed for a period even less than 5 years, that is not the proper way of having these Managing Directors. This is our submission.

SHRI HIMMAT SINH: The history of the textile industry is something which needs to be examined. It is the oldest industry in our country and yet you find that in the private sector, over hundred mills in the country are rendered sick today and Government has to interfare and take

over their management. In what manner the private sector can now demand corporate freedom and corporate flexibility, for running their industries, when you have reduced your industries to this position?

SHRI TANUBHAI DESAI: We do not say that there should be absolute corporate flexibility. We do not suggest that there should be absolute corporate freedom. This is not the forum to find out whether the textile industry is responsible or who is responsible for the sickness. With due respect, what we are suggesting is that, there should be only regulatory powers and there should not be any more powers of a wide charcter.

SHRI HIMMAT SINH: You have said on Page 2 of your Memorandum that only way to achieve rapid industrial development would be to give to the private enterprise corporate encouragement and facilities. But, as I said earlier, more than 100 mills are rendered sick in the private sector.

MR. CHAIRMAN: Do you expect them to answer in the affirmative?

SHRI HARSH DEO MALAVIYA: Let them answer in the negative.

SHRI R. L. N. VIJAYANAGAR: A very vital questions have been raised. We agree that a study should be made as to why the mills have become sick. I think at least two important States in whose economies the cotton textile industry occupies a pivotal position, have appointed Committees of Inquiries and it is worthwhile reading what they have said about the sickness of the textile industry.

SHRI HIMMAT SINH: Sick mills have been declared sick only after a study has been made.

SHRI R. L. N. VIJAYANAGAR: No Sir. With respect. we disagree. In this connection, I would draw your attention to the report of the Cotton Textile Committee appointed by the State Government.

MR. CHAIRMAN: This is not relevant. So far as we are concerned, this is not relevant. Neither his question is relevant nor your assessment of the situation is relevant. This is outside the scope of the Bill.

SHRI S. G. SARDESAI: Plenty of evidence is available and on the basis of available evidence people have drawn their conclusion. I would like to draw your attention to one fact. This delegation knows that the directive principles of the Indian Constitution which are embodied in the Constitution itself are categorically opposed to the concentration of economic power in individual hands.

SHRI R. L. N. VIJAYANAGAR: On the concentration of economic power there is a note prepared by the Company Law Department and there is enough legislation to take care of the concentration of economic power.

SHRI M. K. MOHTA: Please refer to your memorandum page 9. What is the view of the Association in regard to the real factual situation prevailing in the country?

SHRI TANUBHAI DESAI: The definition of 'relative' is very wide. It is not factually correct. There are so many relatives who fight with each other but still they are called relatives. No son-in-law will tell the father-in-law what he has yet both are supposed to be relatives under the law. By a mere fact that you are a relative and there is a control or group is factually incorrect.

SHRI M. K. MOHTA: Please refer to page 15 regarding 'deposits'. One view that has been expressed before the Committee is once all relevant facts and figures are revealed to the intending depositors then there should be no more controls by the Government? Do you agree to this?

SHRI TANUBHAI DESAI: Our submission is there are already restrictions imposed by Reserve Bank and

there is no warrant for having dual control—one by Reserve Bank and the other under the Companies Act. This section is very wide. It has been provided that every time a deposit is accepted by the company there should be an advertisement. It would lead to an absurd result. Acceptance of deposits are from day to day and it will be practically difficult as there should be everyday an advertisement. Reserve Bank is the best authority to judge the financial needs.

SHRI M. K. MOHTA: I would now invite your attention to the effectiveness of the Government directors on the Boards of the companies. Can it be they are ineffective merely because they are in minority?

SHRI TANUBHAI DESAI: The wishes of the Government directors are always respected and it is our experience that it is not the number that counts but their very presence is always welcome and whenever they are there, their advice is sought and nothing is done which is not approved by them. Further they are not committed to anything as made clear in the Minutes. It is a common experience that it is not the number which counts but the presence counts.

SHRI B. T. KULKARNI: He says whether they are effective or not?

SHRI TANUBHAI DESAI: They are effective because their advice is being followed. In many cases, they do express an opinion and it is always respected.

SHRI JAGANNATH RAO: Regarding sole selling agencies, there are some public industries in the country like sugar, cement and paper. Do you think they need sole selling agencies and the Govt. nearly takes 80 per cent of the products?

SHRI TANUBHAI DESAI: I don't think Government takes 80 per cent.

SHRI JAGANNATH RAO: Supposing, the Govt. purchased majority of the products. Even then you think there is need for sole selling agencies.

SHRI TANUBHAI DESAI: So far as Government purchaser is concerned, they will not get commission. So far as private sales are concerned, expertise of the sole selling agent is essential particularly in textile industries where there are thousands and thousands of varieties of cloth.

SHRI JAGANNATH RAO: I take it what you say. I understand your meaning that there will be an element of competition so that the prices would be under check. Otherwise, the purchaser may combine as is being done in the United Kingdom.

SHRI TANUBHAI DESAI: You are thinking of the Monopolies and Restrictive Trade Practices Act. There is no question of combining the functions. You cannot give sole agencies to half a dozen people and expect them to work. If you allow to half a dozen people, it is not possible. That is not the correct way of looking at a competition. The idea is to pocket the profit. There are agents like firms, like Voltas which are having sole agents of hundreds of firms.

MR. CHAIRMAN: Thank you very much.

[The Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Tuesday, the 23rd January, 1973 from 10.00 to 13.30 hours and again from 15.00 to 17.00 hours in Council Hall, Bombay

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri C. Chittibabu
7. Shri S. R. Damani
8. Shri Madhu Dandavate
9. Shri G. C. Dixit
10. Shrimati V. Jeyalakshmi
11. Shri Popatlal M. Joshi
12. Shri Jagannath Mishra
13. Shri Surendra Mohanty
14. Shri Muhammed Sheriff
15. Shri Priya Ranjan Das Munsi
16. Shri D. K. Panda
17. Shri Narsingh Narain Pandey
18. Shri H. M. Patel
19. Shri S. B. P. Pattabhi Rama Rao
20 Shri R. Balakrishna Pillai
21. Shri Jagannath Rao
22. Shri Bishwanath Roy
23. Shri P. Ranganath Shenoy

Rajya Sabha

24. Shri Salil Kumar Ganguli
25. Shri B. T. Kulkarni
26. Shri Harsh Deo Malaviya
27. Shri Jagdish Prasad Mathur
28. Shri M. K. Mohta
29. Shrimati Saraswati Pradhan

30. Shri D. D. Puri
31. Shri S. G. Sardesai
32. Shri Nimmat Sinh
33. Shri Mahavir Tyagi
34. Dr. M. R. Vyas

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary.*
3. Shri Ch. S. Rao—*Deputy Secretary.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. BOMBAY CHAMBER OF COMMERCE & INDUSTRY, BOMBAY.

Spokesmen:

1. Shri M. H. Mody—*Leader.*
2. Shri N. S. Phatarphekar.
3. Shri S. H. Gursahani.
4. Shri D. P. Mehta.

II. SHRI N. DANDEKAR, I.C.S. (RETD.), CHARTERED ACCOUNTANT, BOMBAY.

III. THE STOCK EXCHANGE, BOMBAY.

Spokesman:

Shri Phiroze Jamshedji Jeejeebhoy, *President.*

IV. THE COMMITTEE OF YOUNGER PARTNERS OF THE ESTABLISHED AUDITING FIRMS, CALCUTTA.

Spokesmen:

1. Shri P. M. Narielvala—*Chairman.*
2. Shri L. K. Ratna—*Secretary.*
3. Shri Y. H. Malegam—*Member.*

V. BOMBAY STUDY CIRCLE ON CORPORATE LAW AND ALLIED SUBJECTS

Spokesmen:

1. Shri C. C. Chookshi—*President.*
2. Shri R. P. Kedia
3. Shri J. E. Dastur
4. Shri Dinesh Mody
5. Shri N. V. Iyer
6. Shri N. C. Mehta

VI. MAHRATTA CHAMBER OF COMMERCE AND INDUSTRIES, POONA.

Spokesmen:

1. Shri G. A. Thakkar
2. Shri S. C. Chagla
3. Shri R. M. Gandhi
4. Shri M. M. Thakore
5. Shri S. R. Somvanshi
6. Shri K. S. Danait
7. Shri K. S. Bhat

VII. COMPANY SECRETARIES OF CERTAIN PUBLIC LIMITED COMPANIES IN BOMBAY

Spokesmen:

1. Shri S. S. Borker,
2. Shri N. D. Sonde
3. Shri R. S. Gandhi
4. Shri K. B. Dabke
5. Shri R. D. Kulkarni
6. Shri P. S. Kanungo

I. Bombay Chamber of Commerce & Industry, Bombay.

Spokesman:

1. Shri M. H. Mody—*Leader.*
2. Shri N. S. Phatarphekar.
3. Shri S. H. Gursahani.
4. Shri D. P. Mehta.

[*The witnesses were called in and they took their seats*]

MR. CHAIRMAN: I on my behalf and on behalf of the Committee welcome you, Mr. Mody and your colleagues.

[The attention of the witnesses was then drawn to Direction 58 of the Directions by the Speaker.]

SHRI M. H. MODY: Thank you, Mr. Chairman. We are very grateful on behalf of the Bombay Chamber of Commerce and Industry to be provided with this opportunity to give our views on what we consider to be a very important piece of legislation.

My first submission is that in contemplating an extension of the power of the Government the need for a distinction between the regulation of public sector and its regimentation has been lost sight of. We as a Chamber do not deny the need for regulation of companies in which members of the general public have entrusted their hard-earned money to professional management. It is only fair that the public should expect that these persons must act in a socially responsible manner and in so far as the Companies Act provides an institutional framework in which businessmen may operate we feel such a legislation must necessarily be welcome to us. However, in our opinion these amendments proceed on the assumption that all persons in charge of the management of companies are guilty of mis-conduct unless they prove to the contrary by bringing forward their transactions for the approval of the Government. They are not told as to what guidelines and principles will govern the question of approval, dis-approval of transactions.

My second submission is that proposals which are before the Committee involve such a heavy extension of powers of the Government that the number of matters which will come for the consideration of the Government as a result of these amendments will increase manifold. It may well be beyond the human resources at the disposal of the Government to cope with the extent of approvals required under the Act and I submit that you might well find that Government's limited resources may be dissipated in a large and unproductive area of work without any social bnefit while at the same time matters which are important from a national point of view may not receive the attention which they deserve.

It is our submission that after this extension of powers there is a greater need than ever before for a quasi-judicial body like the Income-tax Appellate Board to be set-up in order to review the decisions which the Government might make. Such a tribunal will safeguard the interests of the public as well as the shareholders.

Coming to matters of detail I would first like to deal with the acceptance of deposits from the public. It is our submission that before any drastic amendments are made Government should consider the reasons why deposits have become so popular with members of the public. If this is examined it will be found that public deposits are serving a useful purpose. As such, nothing should be done which will disrupt the manner in which the public's savings are being promoted and channelised in productive enterprises. Our submission is that the publication of prospectus in the form prescribed would be inappropriate in the case of company deposits. A prospectus might be necessary for long-term use of funds such as share capital or debentures but for short-term deposits it would be inappropriate. A more simple and condensed statement should be prescribed which could be published by the company once a year. As far as clause 16 is concerned, our submission is that it is unduly harsh. The requirement to put unclaimed dividend into a bank account should operate only after a lapse of six months.

Regarding the right of a company to distribute the amount which has been taken to reserves our submission is that this restriction will have exactly the contrary effect of encouraging the companies to distribute as large an amount of dividend as possible which they would otherwise have not done. This particular provision should be very carefully re-considered.

As far as appointment of auditors is concerned, our submission is that the amendments under the above Act are a backward step and are likely to disrupt the accounting profession. We would like to submit that no attempt should be made to change the law relating to the appointment of auditors unless the matter has received dispassionate consideration of this Committee. These proposals will have a harmful effect on all the professions. The present proposals are also not likely to serve the public interest.

As far as proposed section 224A is concerned, our submission is that the Government should consider the alternative of taking the power to appoint an additional auditor of their choice to act as a joint auditor in addition to the auditor appointed by the shareholders. In other words, the existing method of appointment may not be disturbed. Our proposal provides an opportunity for work to younger members of the profession as well as provides a countercheck on the work of the existing auditor. Our second submission is that the actual selection of the auditors should be decided by a judicial body whose members may be appointed for a fixed term of years. This judicial body should consist of not more than two persons—one of whom should be qualified for appointment as a judge

of the High Court and the other should be nominated by the C&AG.

MR. CHAIRMAN: Mr. Mody, let Members put questions first and then if anything is left out, you can explain.

SHRI P. R. SHENOY: You have stated that the transfer of dividend in seven days to a special a|c will be harsh. Why it is harsh?

SHRI M. H. MODY: It will impose a burden of additional interest cost on the company as most companies operate on overdraft account with a bank. Therefore it is a burden upon the shareholders.

SHRI POPATLAL M. JOSHI: Can you explain what is the proper definition of companies under the same management?

SHRI S. H. GURSAHNI: Sir, I am afraid, I am not able to state as to what definition will serve Government's purpose. But one can see in these several aspects which will create complications.

SHRI POPATLAL M. JOSHI: I want to know what would you propose?

SHRI S. H. GURSAHANI: The concept of majority control either through shareholding or through majority participation on the Board of Directors is a concept which must be continued and therefore this reference to 1|3 shareholding should be excluded. The concept that company under the same management would mean a company which shares with another company a common management which functions as the controller or Manager of this company is a sound one. Control is exercised where a particular shareholder is able to pass an ordinary resolution and there is no one to prevent him from doing it. I think this question of "accustomed to act" as one of the criteria in deciding whether two companies are under the same management will pose problems. After all, any one may act on the advice of some other person. But to say that at a particular point of time one can come to the conclusion that they are accustomed to act on the advice of somebody else, and therefore they exercise control is an arguable point.

SHRI POPATLAL M. JOSHI: For example, 'A' is managing one company; 'B' is managing another company; and C's relatives are managing other company. Do you think, it will be under the same management.

SHRI S. H. GURSAHANI: As long as 'A' himself does not control the first company, I cannot see why his controlling another company should make the other company a company under the same management. One should satisfy himself whether the two companies are managed by the same body corporate or by a well defined group of individuals. If 'A' is one of the Directors out of three and he has some controlling interest, let us say, elsewhere, it will not ipso *facto* make the two Companies as Companies under the same management.

SHRI POPATLAL M. JOSHI: Under the present scheme, as it is, let us say there is a textile mill and there are two or three permanent Directors who are managing the whole show. Let us say A's cousins are supplying some equipment, B's cousins are supplying some machinery and C's cousins are supplying some other thing and they are the same. Don't you think that they come under the same management?

SHRI S. H. GURSAHANI: There are a series of assumptions. Merely because 'A' is a Director and he uses his position in that Company, to see that another Company, in which some other relatives of another director are interested form, comes up, does not mean that they are under the same management. I cannot see a situation arising like this where A will favour B, B will favour C and C will favour A.

SHRI JAGANNATH RAO: About control, supposing there is one-third share holding, do you consider this to be insufficient to bring two companies in to one group?

SHRI S. H. GURSAHANI: This depends upon the circumstances of each case. In the concept of same management, there should be a kind of link which will hold good in all circumstances. The only true test of control would be the kind of control which cannot be over ruled and which cannot be defeatd, namely, majority control of voting power.

SHRI JAGANNATH RAO: We have to take the cumulative effect of all the circumstances. A company having one-third of share participation in another Company, according to me, is sufficient to bring those two Companies under the same group. Do you agree with me?

SHRI S. H. GURSAHANI: This is already embodied in Section 370.

SHRI JAGANNATH RAO: You have said that you are opposed to this Clause which takes away the jurisdiction of the Court under Sections 17, 18, and 19 of the Companies Act. In place, suppose a tribunal is created, would that satisfy you?

SHRI N. S. PHATARPHEKAR: Our submission on this question would be that any impartial judicial body would be preferable to an authority which directly or indirectly is a party to contentious issues. That would be the brief answer to this question. May I, with your permission, raise a major question? Why is it sought to do away with the functions of the Court in matters which are not of a administrative or ministerial nature and particularly, Sir, I would refer to and lay emphasis on Section 17 of the Act. A good deal of procedure and a good deal of investigation is called for, the interest of shareholders holding different classes of shares, the interest of debenture holders, the interest of creditors etc. has to be looked into and considered carefully by the Court and then the Court, in its discretion, in the exercise of its judicial discretion, grants or confirms alteration of the Objects Clause of the Memorandum of Association or grants or decides upon the petition for transfer of the registered Office from one State to another. These are powers which are of a judicial nature and they should be left to the parties which have that background and training and judicial bent of mind. Otherwise, the danger is that, and it is possible and it will necessarily happen, that extraneous and irrelevant considerations as to morality and politics and others may weigh with such persons.

SHRI JAGANNATH RAO: In the alternative, suppose an appeal is provided for against the decision of the department, will not that satisfy you?

SHRI N. S. PHATARPHEKAR: Appeal to a judicial body, that would be the second best, if I may say so. But that would only involve further delay.

SHRI JAGANNATH RAO: In Courts also, there is lot of delay.

SHRI N. S. PHATARPHEKAR: With regard to matters Under Section 17, cases are disposed off, within a couple of months or so, to my knowledge.

SHRI H. M. PATEL: Clause 25 requires all Companies to obtain prior approval of the Central Government for entering into contracts in which the Directors may be interested or concerned. What have you to say on that?

SHRI N. S. PHATARPHEKAR: If I have understood the question right, which I believe, I have then you are referring to Clause 25 of the Amendment Bill which seeks to introduce a new proviso making prior approval of the Government of India necessary to enter into contracts in which Directors are interested. My respectful submission and I am making this sub-

mission with all sincerity, is that this would be an entirely unworkable Clause. Companies which have to do business, and I claim some acquaintance with corporate business, have to enter into contracts within the shortest time possible and any delay or any procastination would mean that they may lose the opportunity of getting very advantageous rates. Now, Sir, there are sufficient provisions in the Act, as it presently stands, which empower the Government to interfere in cases where such interference is called for. They have done so in a few cases and there would be other cases, where they may seek to exercise those powers hereafter. But, this proviso will not ensure the smooth working of corporate business. Take for instance, a Company looking for land, a Company with a gigantic project in the petro-chemical field or any other field, as you may select. The land is available at a certain price and the landlord wishes to close the bargain quoting a price of, say, Rs. 50 per sq. yard or sq. feet as the case may be and it does happen that, that landlord is some relative of somebody, of some director of the Company, and therefore, that Director is interested in that Contract. If this is to go before the Company Law Board and the Government of India for previous approval, how long it will take? I am not even remotely questioning the intentions of the Government or the officials. They have been most cooperative. This is my personal experience. With the best of intentions in the world, for such a contract, it will take at least six to nine months for Government to fully investigate and accord approval or refuse it. In the meantime, I lose the land and somebody else may get it at a higher price or at a lower price or even at the same price. Therefore, so far as this point is concerned, our submission would be, and we have also mentioned this on Page 17 of our memorandum, that this entirely unworkable and unrealistic Clause should be deleted. This is our first submission. Even if for any reason, this reasonable suggestion is not found favour by yourself or your colleagues, then, you should have 4 or 5 amendments by way of additional provisos. The amendments being—the words 25 lakhs should be substituted by the words 100 lakhs. The word 'previous' should be deleted and there should also be a separate proviso that nothing in Section 297 shall apply to professional services.

SHRI H. M. PATEL: Mr. Mody said that if dividends are not allowed to be paid out of reserves it will create serious difficulty. Please explain why it should do harm?

SHRI M. H. MODY: Our basic point that is hitherto it is an important principle embodied in the Company Law that a company is free to determine what portion of profits ought to be distributed and what ought to be retained. This freedom has been conservatively exercised because any amount which are taken to reserves are distributable at a future date. The moment you take away this freedom that companies will tend to be excessively liberal in the distribution of dividends with the result the availability of resources to the company for expansion of business will be reduced.

SHRI JAGDISH PRASAD MATHUR: Your objection to clause 30 is that it is of radical and authoritative nature. What is the practice today. Actually the shareholders do not appoint directors. Do you consider it to be a nationalisation of the company without compensation or something else?

SHRI D. P. MEHTA: The existing Section 408 provides the Government has power to appoint more than 2 directors in the public interest. The new amendment contemplate that Government may appoint any number of directors and give directions to the company on any matter. The Chamber feels that the existing provisions in section 408 are quite sufficient to enable the Government move

effectively not only to regulate mismanagement but also to dismiss delinquent managers. I agree that if Government is given the power of appointing any number of directors it will amount to back-door nationalisation.

SHRI SURENDRA MOHANTY: What proportion of your earned profits you pay as dividend to the shareholders—maximum and minimum? Don't you think if a too conservative policy is followed by the company it will hamper the interests of the shareholders?

SHRI M. H. MODY: Our experience is that the majority of companies distribute between 40 per cent to 60 per cent of their profits as dividends. As far as a conservative dividend policy is concerned your question refers to the interests of the shareholders. These matters should not be looked at from the narrow view-point of shareholders. What is important in the national interest—it is in the national interests that a company should be able to retain a greater proportion of its profits in the business.

SHRI SURENDRA MOHANTY: I want to know from you since dividends are paid out of accumulated profits, why a number of companies have to take resort to overdrafts?

SHRI M. H. MODY: Overdrafts are normally used by a business for its working capital requirement which means the requirement of the business to purchase raw materials, to hold stocks of finished products and to give credit to its customers. In practice, as far as profit is concerned it is immediately put into the business for carrying on business activities. It is constantly reemployed in the business. Therefore, there is no separate distinction between funds borrowed from a bank and the funds which have come in hands by way of profits.

SHRI SURENDRA MOHANTY: After the abolition of sole selling agencies, will this result in lowering the price of the manufactured goods?

SHRI D. P. MEHTA: I don't think that result would necessarily follow. Sole selling agents are effective and forcible agents for distribution of goods. Selling and marketing is a separate branch of business actually which requires expert training, maintenance of depots, godowns, offices all over the country, trained staff and after sale service. It may not mean complete or partial reduction in the prices at all. There may be regional offices of the company and its goods are sold all over the country. There are various selling agents having an effective network. It does not mean that they sell only one company's products. They sell other company's goods too.

SHRI SURENDRA MOHANTY: What service they render in the case of paper?

SHRI D. P. MEHTA: There are other private operators, in fact, in India.

SHRI SURENDRA MOHANTY: Sole selling agents are mainly responsible for paper shortage. They have raised the prices.

SHRI D. P. MEHTA: Under the Essential Commodities Act, there is an effective instrument of control which exists with the Government. They can impose price control on paper. The abolition of sole selling agents itself will not reduce the price of paper. I am not competent to answer that question specifically. But I am talking of the general provision.

SHRI MADHU DANDAVATE: If you study the pattern of capital of private limited companies, it is often thought that the private limited companies have remained private in name. There has been very little private capital and they draw heavily from the financial institutions and even then there is very little public accountability. In view of the situation following the pattern of 1966

Companies Act in Britain, we abolished the very category of private limited companies.

SHRI D. P. MEHTA: The basic concept of a private Company really precludes public participation in the shares because by the very definition. You may not have more than 50 members. You cannot invite the public to subscribe to the shares. Participation by the public in the shares is precluded. As far as short term loan capital which is required by the companies is concerned, it does not require the approval of the shareholders. When you say public financial institutions, you perhaps mean commercial banks. Because private limited. companies by their very nature do not borrow on long term basis from financial institutions; they borrow only from banks. The Nationalised Banks give short term loans, or overdrafts, for three months, six months and nine months against proper security of stock and so on. If people who own their own business, can borrow; firms can borrow; private limited companies and public limited companies, can borrow. I do not see why the legislation should make an invidious exception. Why not restrict partnership firms from borrowing. There is a remedy both to the shareholders and to the Govt. Government have a remedy and the shareholders have a right under section 397. Even the minority shareholders have such a right. The participation by the public is impossible in the shares of a private Company. The limitation on turnover which you have imposed is so unrealistic as to make it absolutely unworkable, I would like to recommend, if you want to have a turnover ceiling at all, which I feel is not necessary, you should increase it. If a turnover of Rs. one crore is exceeded in each of three years, then and then only the actions should be exceeded.

SHRI MADHU DANDAVATE: After the implementation of the 1970 Act in Britain, it has been found that it has produced results.

SHRI D. P. MEHTA: In Britain, there is no control of the Government over private or public company. The only exemption in favour of a private company is that it does not have to file profit and loss account and the balance sheet with the Registrar.

There was no other earlier restriction on private companies as such. So, naturally, the Jenkins Committee came to the conclusion that they should abolish them. With great respect, I should say that, that consideration cannot apply in India at all. There are nearly 25,000 private limited companies in India and so far no evidence has been produced to show that they are harmful to the public interest or to the interest of the shareholders. If the participation in the capital of a mere 10 per cent should make a company to be converted into a public company, in our humble submission, this is unreasonable. In the amending Bill, it has been provided that if a private company purchases shares in another Company, to the extent of ten per cent or more. that first company becomes a public limited Company. It is difficult to understand this. By merely investing in some other Company, the other Company will become a public Company. A family of few people getting together in business. working hard, earning some profits saving something and if they invest this in another Company, suddenly they become a public Company. This is quite illogical and this cannot stand to reason. This has not been recommended by either the Shastri Committee or any other Committee. May I lastly request you to please retain the exemption in Sub-Clauses 6 and 7 of Section 43-A which says that where there is investment in a private Company by a private Company B, and the totality of shareholders does not exceed 50, then 43-A cannot apply. That was a very reasonable exemption. Our humble sub-

mission would be that we should retain such clauses 6 and 7. They serve a useful purpose. Where individuals are concerned, do not apply 43-A.

SHRI MADHU DANDAVATE: Our objective is that we should prevent concentration of corporate wealth and power. Today, the difficulty is that a number of individuals try to take control of a Company by take over bids. In order to remove this difficulty certain amendments have been suggested. In that context, these amendments are absolutely necessary. If you do not favour this, what would be your alternative proposals?

SHRI D. P. MEHTA: Surely, there should be regulation on take over bids and this is in the national interest. Take over bids do take place. By way of amendments to Section 108, you are seeking to protect the *bona fide* interests of non-selling and non-controlling shareholders. The basic concern of Company Law should be to protect the interests of the shareholders and the public.

SHRI MADHU DANDAVATE: In your memorandum, you have suggested no other alternative.

SHRI D. P. MEHTA: With great respect, we have suggested certain changes and these should be taken into consideration. On page 8 of our memorandum, we have quoted to you the rules of the London City Code on Take-Overs and bids. We have suggested that when a block of shares is sold to a buyer, the buyer must be forced to offer the same price to the non-selling shareholders. This does not find a place in the Bill. We would request that a Committee should be appointed to go into this. The take-over bids should be so regulated that they do not hurt the interests of the private shareholders. Then, there is another recommendation with regard to Section 108A. This is with regard to 'group', and because it would be impossible to identify, we have recommended that this particular sentence should be deleted. We have also suggested that the limit of 25 lakhs and the ceiling of 25 per cent should be increased to Rs. 100 lakhs and 51 per cent respectively. There should be control over the powers of the Government and there should be statutory guidelines or rules, as to how the Government should apply the principle. Then, there is another specific provision in Section 108B. Here, the limit of 10 per cent seems to be quite unrealistic. By this small businessmen will suffer. This Clause should either be deleted or suitably modified.

SHRI D. D. PURI: I refer to Page 7—Para 26 of your memorandum. You have said that the Bill seeks to take away the powers of the Court in certain matters including amendment of the Memorandum and rectification of the register etc. Here, there are two aspects, delays and costs. Is it not a fact that part of the delay is due to the fact that the Courts insist upon notices being issued to all holders of classes of shares, to debenture holders and to certain class of auditors and groups in order to safeguard the interests of the parties that they should be heard? Even if the power is taken away from the Court and vested in some other body, there also all these procedures would be desirable and they will be gone through. In that case also, there would be no saving of time.

SHRI N. S. PHATARPHEKAR: May I try and deal with this question? I have already dealt with questions pertaining to Sections 17, 18 and 19. But, this is another new section altogether.

SHRI D. D. PURI: I am dealing with this in a general way. There are two aspects—delays and costs

SHRI N. S. PHATARPHEKAR: Briefly, our submission is this We already have an organised body in the shape of Courts of Law which are presided over by Judges whose job is to render justice and to bring to

bear upon the matter of judicial mind. They follow the procedure laid down in the Act and which has been laid down by Parliament in the past. This should not be transferred to any administrative body. Already, the administrative machinery is burdened with a number of other things, and it should not be over-burdened. As far as the time factor is concerned, the experience of those who practice law, and fortunately or unfortunately I happen to be one of those, is that Courts do not take unduly long time and I do not think there is any necessity for taking away these powers of the Court which are today vested in them under Section 19 and other sections.

SHRI D. D. PURI: Is it not also a fact that the Registrar also in some cases, raises some objections and this is also a cause of delay?

SHRI N. S. PHATAPHEKAR: We would not make any general submission. But, so far as the powers of the Registrar are concerned, this should be restricted only to matters which are of an administrative or ministerial nature. For example, with regard to the incorporation of a Company, the Registrar's Office will have to carefully examine the Memorandum and Articles and see whether they have been printed. because the Law requires them to be printed and they will have to see whether they have been subscribed by all the subscribers in their own name etc. These and similar other functions may well be left to the Registrar. Our experience is that Courts do not generally delay matters and these matters are disposed off within a reasonable period of time.

SHRI D. D. PURI: Even if these were to be transferred to some other body, there also, all these procedures will have to be gone through and there would be no saving of time.

SHRI N. S. PHATARPHEKAR: It would not save time. On the other hand, it would unnecessarily add to the burden.

SHRI D. D. PURI: Please refer to page 10—para 41. Can you quote a few instances in this regard?

SHRI D. P MEHTA: Yes. National Rayon Corporation the in-fighting between the two groups of shareholders depressed the market price.

SHRI D. D. PURI: Please refer to page 17 regarding sole selling agents.

SHRI D. P. MEHTA: Sole selling agents take the goods and pay for them. They bear upon themselves all the burden of distribution and later they give the goods on credit to thousands and thousands of retailers.

SHRI D. D. PURI: In regard to deposits—would you not also recommend that in so far as the deposits not invited from the public are concerned there should be no restriction.

SHRI M. H. MODY: As a matter of fact our submission is that restriction should not apply to deposits from members of a company as well as from its directors.

SHRI PRIYA RANJAN DAS MUNSI: Please refer to page 9. The main consideration for changing this section in proposal under 18(2) is not to give punishment but also to maintain check. You have said it is severe and excessive. Please explain.

SHRI D. P MEHTA: The main purpose of the Section is to prevent anybody from acquiring 25 per cent control. The scope of the Section includes a "group" In our memorandum we have highlighted how it is very difficult to identify a member of a group. Our objection is that an economic offence should not be put on par with a criminal offence. You have put in three years jail for a so-called economic offence. In our Company Law, acquisition of more than 25 per cent shares should not be considered a heinous crime. It may be unwittingly and unknow-

ingly committed. It should be sufficient to fine the delinquent person rather than to send him to prison.

SHRI HIMMAT SINH: Why do yon object to a deterrent punishment being given in such cases?

SHRI D. P. MEHTA: I beg to differ. Let the punishment suit the crime. In my view it is not a henious crime to send a person for three years.

SHRI HIMMAT SINH: If the companies have not shown the reserves which are necessary and therefore the dividends cannot be paid out of the earning of the company. Then why should the company resort to old method of reserves and overdrafts?

SHRI M. H. MODY: There is a fair degree of misconception of dividends being paid out of an overdraft account on this subject when committee earns profit and what does it do with the money? For example, what does a trader do with his daily earnings? Out of this earnings he purchases goods for the next day. This is a continuous process. Therefore, the idea that profits must be physically available in cash, is if I may say so, totally inconsistent with business practice.

SHRI MUHAMMED SHERIFF: You have also objected to certain functions being taken over by the executive from the judiciary. Are you?

MR. CHAIRMAN: This has been replied apart from the arguments.

SHRI MUHAMMED SHERIFF: Page 18 of your memorandum. How do you accept this?

SHRI S. H. GURSAHNI: So far as the functions of the Company Secretary are concerned, We must take notice of the fact that a person who is working in an organisation over a number of years, he knows intimately all the things and this experience will enable him to perform his functions efficiently as a Company Secretary. Therefore, it is not a reasonable to suggest or these qualifications should be applied to those persons who are already engaged in performing these functions, they are doing so competently. Therefore, and are sufficiently qualified to function as Company Secretaries.

MR. CHAIRMAN: I have followed your answer. The answer is there. Why explain in so many words.

SHRI K. S. CHAVDA: Up till now, no chamber or association has given any suggestion to control the foreign firms. These firms resort to malpractices with the result we lose foreign exchange and the consumer gets the product at higher cost. I would like to know whether the witness would like to give any suggestion to control or regulate the activities of the foreign firms?

MR. CHAIRMAN: The suggestions are not to their detriment.

SHRI M. H. MODY: May I say that this question which the hon. Member has raised is not germane to the consideration of the Companies Amendment Bill There is, if I may point out, another Bill, before the Parliament namely, the Bill dealing with the amendment of the Foreign Exchange Regulation Act.

SHRI K S. CHAVDA Here also, there are certain clauses.

MR. CHAIRMAN Have you any suggestions to make? If you have some kindly, do so. If you do not have that is a different matter.

SHRI N. S. PHATARPHEKAR: The question assumes a number of things, if I may say so, and the experience of the Chamber has not been exactly the same as the experience of the hon. Member.

SHRI K. S. CHAVDA: May I say for your information. You have got so many examples. Take for instance, the pharmaceutical field.

SHRI N. S. PHATARPHEKAR: One has heard and read all kinds of reports on this subject. But, believe me, they are not very well contested and it would be unfair to suggest that all pharmaceutical Companies must be dealt with the same brush, as the foreign firms. I am also dealing with the foreign firms. I think there is sufficient control in the Drugs Control Order and the Ministry of Petroleum and Chemicals is looking into all these aspects.

MR. CHAIRMAN: There should be no discussion. If you have any suggestions to make, please do so. If you have nothings candly say that there are no suggestions.

SHRI N. S. PHATARPHEKAR: According to us, there are no malpractices. and therefore, there are no suggestions.

SHRI K. S. CHAVDA: A firm which has got more than 80 per cent equity share, is called a foreign firm. Would you like to decrease the participation of the foreign firms?

SHRI M. H. MODY: I would again submit that the question is not germane to the Companies Amendment Bill. There is a separate Bill which deals with the subject.

SHRI KHEMCHANDBHAI CHAVDA: I know that there is a separate Bill.

MR. CHAIRMAN: Please do not argue with the witness.

SHRI K. S. CHAVDA: I am not arguing.

MR. CHAIRMAN: They do not want to answer the question.

SHRI HARSH DEO MALAVIYA: I would like to know one thing. Please refer to Page 14—Para 64—of your memorandum. Why do you want the deletion of Clause 19, which amends Section 217? Why do you want that the salaries at the senior level should be kept secret? Why do you object?

SHRI M. H. MODY.: Our submission is that while we have no objection in principle to the disclosure of any additional information to the shareholders of the Company. You may also know that already a lot of information is given in the published accounts of a Company, which you will find are not necessary for an appreciation of the affairs of a Company, are given. Merely to add to this information, because some persons feel it necessary, is not desirable. Already, the accounts of Companies are becoming so voluminous that a lay man would not be able to understand them and they become extremely complicated. Our submission, therefore, is that only those matters which are relevant should be included.

SHRI HARSH DEO MALAVIYA: When you accept that the information is voluminous, what is the harm in also revealing the salaries received at senior levels? That does not cut much ice.

SHRI S. H. GURSAHANI: There are two aspects. One is that salaries in most Companies which are well managed and well regulated follow a certain pattern of professional concept and the salaries are kept confidential so that it does not generate jealously and if there are comparisons, this would become a bone of contention amongst the colleagues. Many companies do not disclose executive's salaries to each other.

SHRI HARSH DEO MALAVIYA: Do you think that in a Company a

senior Officer will not know how much the other senior Officer is drawing?

SHRI S. H. GURSAHANI: In my Company, nobody knows my salary except those who pay me.

SHRI HARSH DEO MALAVIYA: That may be your belief. You may not know that they know it.

SHR S. H. GURSAHANI: Nothing remains finally confidential.

MR. CHAIRMAN: It is a wonderful secret organisation.

SHRI S. H. GURSAHANI: It is a principle by which it is considered desirable not to disclose the salaries.

SHRI HARSH DEO MALAVIYA: In Paras 64-65 of your memorandum, you have described the allegations about collusion between the auditors and the Company Management as vague. Are you really sure that they are so pure as you want to make them out?

SHRI M. H. MODY: As far as these suggestions regarding concentration of audit are concerned, we ourselves have no evidence to think that there is such a degree of concentration. There are at present some 6000 chartered accountants practising in the country out of a total membership of 14,000 in the Institute. Remaining members are engaged in service in Government or in industrial concerns and some of them are in businesses of their own. I would also like to bring to your notice that the work of a chartered accountant is not merely the practice of auditing but, he is also engaged in various other activities like sales tax and income tax matters and various other regulatry matters.

MR. CHAIRMAN: That is not the question. The question is not as to what the chartered accountants are doing. His question is entirely different.

SHRI HARSH DEO MALAVIYA: Various allegations have been made in the Parliament by responsible Ministers of the Government of India charging auditors with collusion and some of them have been even condemned as creatures of the Board of Directors. How can you say that there is no collusion between the big auditors and the Company Directors?

SHRI M. H. MODY: I do not possess the privilege information which hon'ble Member may possess. May I say that the profession of chartered accountants has been created by an Act of Parliament. Parliament created the Institute of Charatered Accountants. Government have a statutory right under the Chartered Accountants' Act to.....

SHRI HARSH DEO MALAVIYA: In the matter of appointment of auditors of a Company, care is taken that the auditors belong to the some region in which the Company is registered. A company in Calcutta must have an auditor from Calcutta and it should be ensured that no Bombay auditor comes to Calcutta. Would you like this regional appointment of auditors? That would to some extent meet....

SHRI M. H. MODY: I would say that in so far as regional auditors are available for the purpose of performing the service, which the Company requires, they should be encouraged.

SHRI HARSH DEO MALAVIYA: In the first stage of your memorandum, you have said something about the promotion of joint sector. May I ask you as to what do you mean by joint sector and how do you want this to be promoted?

SHRI M. H. MODY: What we understand by the joint sector is, that it is the Government's desire to promote a sector in which the managerial resources of the private sector combined with the financial resources of the Government would be used for

the national good. It is also our understanding that the Government would desire that the private sector will also financially participate in the joint sector as a minority shareholders and our submission is that these suggestions which the Government at the moment are considering may be hampered by some of the proposal which are before you.

SHRI HARSH DEO MALAVIYA: In a joint sector you say that the Government should provide the finance and the private sector will look after management.

SHRI M. H. MODY: That is by and large....

SHRI HARSH DEO MALAVIYA: I am afraid that this is too simple an understanding. We do not agree. Government would not invest public money.

SHRI D. K. PANDA: On page 14 of your memorandum it has been mentioned by you, that the appointment of auditors if it is done by the Company itself, there will be continuous dialouge between the Management and the auditors and there would also be good professional guidance and there will be mutual confidence. If with the Government's approval, auditors are appointed, and continuous dialogue, professional guidance and mutual confidence—all these things are ensured. have you any objection?

SHRI M. H. MODY: Our submission is that if any system of appointment other than the present system is introduced then the whole basis on which chartered accountants profession exist will be destroyed.

II. Shri N. Dandekar, ICS (Retd). Chartered Accountant, Bombay.

(*The witness was called in and he took his seat.*)

MR. CHAIRMAN: Mr. Dandekar, you have a long experience of public life and I would request you to be kindly brief with your remarks. Your memorandum has already been circulated to the Members of the Committee. Now, I would like to draw your attention to the Direction which you are very well aware of. The Direction states:

"The witnesses may kindly note that the evidence they give would

SHRI SYED AHMED AGA: While concluding your introductory remarks you said Government could appoint auditors for alternate checks.

SHRI M. H. MODY: That we said because we have been repeatedly asked to make an alternative suggestion in substitution of the suggestion contended in the Bill.

SHRI SYED AHMED AGA: Do you agree at the present moment there are only 20 audit firms which are doing 80 per cent of the audit work?

SHRI M. H. MODY: This is not correct. The public tends to go by its impression of well-known companies. There are some 28000 companies in this country. Auditing is not the only area of a chartered accountants work. While some persons may have auditing work, the others may have taxation work. Therefore, I submit any inference regarding concentration is not warranted in so far as it is based upon a small sample of large public companies.

SHRI SYED AHMED AGA: Is it not a fact that these audit firms employ chartered accountants as their employees?

SHRI M. H. MODY: They do.

SHRI SYED AHMED AGA: Is it also not a fact that there are 5,000 chartered accountants available in the country and most of them are unemployed?

SHRI M. H. MODY: It is not a fact.

MR. CHAIRMAN: Thank you very much.

(*The witnesses then withdrew*).

be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

Now you kindly complete your preliminary remarks as soon as possible so that members may be able to put questions.

SHRI DANDEKAR: On the whole, I am in favour of the general purposes and intentions of the Bill. My main criticism is that the Bill distressingly oversteps these in many directions in relation to particular clauses. Secondly, I consider it is most unfortunate that the jurisdiction of the courts is sought to be ousted. Thirdly, I think it is even more unfortunate that in a complicated legislation of this type, over and over again it is now proposed to provide imprisonment as a mandatory punishment in regard to many matters as far as corporate behaviour is concerned. Finally, all these provisions, in their impact upon industry and trade in general, and upon small scale and medium scale companies in particular. I am afraid, have not been adequately thought out. Therefore, I have suggested that there is a case for referring the whole matter to an expert committee so that all the aspects which the Government have thought fit to legislate upon may be thoroughly examined.

As far as the concept of "group" is concerned, I am in favour of having it defined in the Act. If many of the things that are intended to be controlled are to be properly controlled, a concept of "group" must be introduced. But when I tried to make some sensible meaning out of this concept "group" as defined in clause 2(i) of this Bill ,it appears to mean that every body in this country constitutes a "group". I would suggest preferably a much simpler definition of group. I suggest a "group" should mean, quite simply, two or more persons who exercise control over a body corporate. A specific definition of "person" is contained in the Income Tax Act, and that is quite a simple definition which can be embodied in this Bill. A "person" iucludes an individual, a family, a firm and association of persons or a body corporate. The third requirement of a simple definition of "group" would be to define what is meant by "control". By effective control I mean, for instance, holding or having control over not less than 50 per cent of the members of the Board; or not less than even 1|3rd of the members of the Board, provided nobody else is also controlling 1|3rd of the Board. That is effective control. Similarly, not less than 50 per cent of the total voting power in a company, or not less than 1|3rd of the voting power, provided nobody else is controlling 25 per cent. On the whole, if any person actively controls 1|3rd voting power in any company, provided nobody else is holding or shut out any special resolution that you may have to pass. If, thus, one had a definite and clear meaning given to the concept of "group", it would make sense. Not only a definition of "Group" but all other provisions that are proposed to be introduced where the concept of group comes in, would make sense. At present, I do not know what to make of it as defined in Clause 2(i). I happen to be one of three on the Board of Trustees of a certain Trust. Naturally, three of us control the Trust. Therefore, we constitute a "group". I suggest that such a "group" is meaningless unless it also exercises control over a body corporate. Control over a trust is not relevant. Supposing, I happen to be a controlling company 'A' another trustee happens to be controlling company 'B'; the third man happens to be controlling company 'C'. I do not know, in my life, how we automatically constitute a "group" controlling those three companies. It just makes no sense. I find it impos-

sible to understand where a "group" begins and where it ends in terms of definition that is here in this Bill. I earnestly suggest two things; (1) the concept of "group" is certainly required for the purpose of this Act; of that I have no doubt; (2) but equally, I suggest there must be a very simple definite "group".

Then, I come to the definition of what constitutes "companies under the same management", which is also necessary. The existing definition of what constitutes companies under the same management is under certain situations adequate. But under the new Section 4B (1) (i), two bodies corporate shall be deemed to be under the same management....." if both are under the control of the same group or any of the constituents of the same group". Now, I happen to be a trustee on a number of trusts. I do not even know what companies the other trustees may be controlling One such company may be in Calcutta, another company in Delhi and the third company in Madras but under this definition, they are all to be deemed to be under the same management. This is plain non-sense. I suggest the expression "any of the constituents of the same group" must be eliminated. Another unacceptable definition is in sub-clause (iv) of the new section 4B(1). If one or more Directors of one body corporate constitute one-third of the Directors of the other, they are to be regarded as under the same management. It is incredible that there should be such a thing. There is a very large number of small Companies, with only two or three directors, which because of this provision would be Companies under the same management as all other companies of which any one of such directors is a director. There are two such small companies of which I am a Director. I will now so happen that if I am a Director of two such Companies, which have only three Directors, but which have nothing at all to do with a large number of their Private or Public Companies of which I am also a Director, then under this proposal those companies would come under the same management.

If these proposed definition of "group" and of companies under the "same management", and of Companies which will hereafter be deemed to "become public companies", are taken together, I reckon that out of some 30,000 Companies in the country, some 15,000 to 20,000—some such in credible numbers, would become companies under the same management. I do not think that that is the intention of the Government. You must therefore re-define the "group" concept. You must then be reasonably clear in explaining as to what Companies constitute "Companies under the same management."

I would also like to comment upon one other thing with regard to some of the other sub-clauses in that particular new section 4B(1). wherever it says "partly equity or partly preference" or "whether equity or preference etc., should be deleted. This refrain is being repeated all over in the new section 4B. Instead of that, the simplest and most direct approach that I would suggest is that, there should be the concept of one-third of the total voting power. The reason. why I suggest this voting power criteria is that some times preference shareholders have voting power, in which case they are relevant; while at most times, and this is mostly the case, they have no voting power, in which case they are not relevant. Ordinarily, they have voting powers if their dividends are withheld or if matters affecting their interests are under consideration. Secondly, I suggest the criteria should be one-third of the total voting power, provided no one else holds 25 per cent.

May I also now comment on this other Clause, namely, clause 5, which is concerned with widening the definition of those private companies which should be considered as public companies? Frankly, when I read this Clause, I was so surprised as regard

its range and comprehensiveness that I wondered why there should be all this massive jargon about this Company or that company and that they would be deemed to be public. The simpler course would be to add a simple qualification to the definition of private company. A private Company is defined in the Act under subsection (1) of section 3; and all that would be necessary, if all this in clause 5 is to remain, would be to say that a private Company must also have the following qualifications, apart from what is already stated in the Act: namely, (a) its paid up capital and turn over should not exceed 25 lakhs and 50 lakhs respectively; and (b) it should hold less than 10 per cent voting power in any other Company; and (c) no other Company should have 10 per cent voting power in that Company.

As regards the proposed amendment of section 43A by clause 5 there is a false air of plausibility about it. While I agree that there is need for widening the scope of the definition of Companies which should be deemed to be public, it is quite unnecessary to fall over backwards in this way. I suggest that a private company should be deemed to be public; (a) if one or more Companies, whether public or private, (which is the present position), hold 25 per cent or more of its share capital, or (b) if 15 per cent of its share capital is held by public companies. I such cases there is some justification for deeming a private Company as a public company. Furthermore, if this thing about a private Company's capital and turnover is to be introduced as criteria at all, then we must have regard to what is being done in the other wing of the Government, namely, in the Ministry of Industries. In the Ministry of Industries, no one now required an industrial licence if the fixed assets of the company do not exceed one crore. They, as a result of experience gained in the past, have been able to say that anything up to one crore of fixed assets is either small or medium scale industry and should require no licence. I suggest that that kind of definition should also be considered so that only a private company with paid up capital of 50 lakhs and a turn-over or fixed assets of over a crore of rupees should also be regarded as a public company.

The next question is about the acceptance of deposits by companies. Now, I should say at once that the objectives of clause 5 is something with which I am wholly in agreement. But my question is: Is it necessary to have multiplicity of regulations about this thing? I have recently had occasion to read there regulations of the Reserve Bank of India for the acceptance of deposits by companies. This applies to both private and public Companies. Quite rightly, under those regulations, all the relevant information and particulars are required to be disclosed. And so I ask: Is it necessary to add to all this again in the Companies Act at all? I fail to understand this. If it is felt that in the company Law also, we should have some such thing, then, I suggest (1) that it is only necessary bodily to adopt the Reserve Banks' regulations; and (2) that in the case of Private Companies the acceptance of deposits should be restricted to deposits from the shareholders and Directors of a private Company. Actually, I see no justification for the Companies Act to go into this at all. But if anything is to be done under the Companies Act, I suggest that there should be, first a total adoption of rules, including particulars to be disclosed, as framed by the Reserve Bank of India, so that in fact, we should not have a multiplicity of regulations. Next, a private company should not be allowed to accept deposits from persons other than its own shareholders and Directors. If they accept deposits, this should be limited only to the shareholders and Directors. In any event the question of advertisement should not arise at all. Once something of this short is advertised,

then everything is lost. Advertisements in regard to financial matters are often designed as traps mis-lead people. Even the most intelligent persons may be mis-led by advertisements concerning the financial attractions of particular proposals. As I said, in private companies deposits should be accepted only from shareholders and Directors of a Company, and here in any event, no question of advertising should arise. Supposing banks were required to advertise the attarctions of deposits. How do you advertise a continuous invitation for deposits? The purpose gets defeated altogether. The one thing that is required is not here. If there is fraudulent taking of deposits by advertisement or otherwise, there should be prosecution. That is really all that is required. But merely to add to the jungle of regulations. the ordinary man does not understand what it is all about. You will not be protecting the layman, believe me.

Next, I come to clause 10. Here again, the general principle of this clause is something I support. I do not think "under-cover" take-overs should take place. I think take-overs must be open. They must be demonstrably in the interest of company taken-over and of the company taking-over; and also in the larger public interest. I was delighted when I read the new section 108A, in its general tenor. But this new section as actually drafted, read with new Section 108D which gives to the Central Government a *carte blanche* to annual transactions retrospectively, so dreadfully over-steps the mark as to be unacceptable. Let us see first the persons it embraces: No individual, group, constituent of a group firm, body corporate, or bodies corporate under the same management shall jointly or severally acquire....If anyone here in this Joint Committee tomorrow acquires or sells shares in any of the companies listed on the stock exchange his transactions may be hit if anyone else unknown to him happens to be holding 25 per cent of the shares in that Company. It embraces an extremely wide range of potentially quite unconnected persons. Further, the expression "jointly" or "severally" makes it worse. It is crazy drafting particularly clause (2) of the new section 108A, otherwise it is a sensible provision. Now take the new Section 108B. Persons who may not be committing any offence can be sent to the jail. I do not know whether this is intended. In the first place it embodies a complete confusion of ideas. I am not objecting here to the Government acquiring shares. But there are today any number of powers already with the Government directly to acquire, and also indirectly through financial institutions to acquire shares at market prices. Also. I want to know whether this section refers to the transfer of a block of shares or any one out of a block of shares because; here the expression is 'such shares'. It concerns block of shares. In so far as the first part of 108B is concerned it is all right if it refers to the transfer of a block of shares; but it is refers to one or half a dozen shares, must the transactions come to a standstill if any company is selling shares?

The buyer would not know: the stock exchange would not know: the broker would not know. If an entire block of 10 per cent is being sold, I am in favour of the provision. But if ordinary transactions are to be stopped, it would creat such confusion on the stock exchange that you may as well close them donw in so far as transactions in shares of important companies are concerned.

Then sub-section (5) of new section 108B punishes the persons who commits a crime as well as those who do not. If anybody selling in contravention of this section....I am in favour of punishing him. But if I buy shares held by a company: if I place orders on the stock exchange: "Please buy such and such share of such and such company"; and I pay

my money and I get my shares. Then I shall be committing a sin here in contravention of such and such section if the seller held 10 per cent or more of the shares of that company. The people who do not know will be committing an offence. It does not make any sense to me.

As far as new section 108C is concerned, again the intention is a good one. As for foreign companies having an established place of business in India, if a foreigner is trying to sell the shares to an Indian citizen or to an Indian body corporate, quietly somewhere in Germany let us say, then by all means, I want this section. But it is an Indian company selling to an Indian or to an Indian Company or if an Indian citizen does it why should we be bothered by such transactions? I just do not understand. I do not know what is the meaning of this.

There is no explanation. And as far as punishment is concerned, only the person who commits a crime should be punished. That is all right. But every person who acquires any shares in contravention of these peculiar provisions shall also be punishable. What for?

New Section 108D enables the Government to wake up one morning and say all the transactions that may have taken place, after the Bill was passed, in the shares of any company, we shall set aside. I am reading 108D. "Where the Central Government.... or block of shares". No time limit. After this Act is passed, if as a result of the share transactions that may have taken place in the shares of a company over two subsequent years, the controlling interest may have changed, or a change in the composition in the Board Directors may have taken place or may be likely to take place, then the Government may set aside all those transactions. It means closing down the stock exchanges. This is not restricted to transfers from any "notified" individual. Moreover, "If the Government is satisfied.....the Government may direct the company not to give effect to the transfer. I do not know whether all this was really intended, and that people should never buy and sell shares. When I sell my shares I do not know who is buying; and when I buy shares I do not know who is selling. Thousands of people on the stock exchange buy and sell shares every day. They do not know who is selling or buying and whether controlling interest is being thereby changed. All those transactions could be set aside.

As far as consequences are concerned, if the transaction is related to selling and if that is set aside there will be complete confusion. When I sell, I have got the money. But three yaers later, Government can say you refund that money, when I don't have it. That is the provision. How is this going to operate? It just does not make sense, at least not to me. I will leave it there. The good idea is to get the Governments finger upon 'take over" bids; but please not this way.

As far as payment of dividend out of reserves is concerned, I submit Clause 16 is totally indefensible. Inadequate profit in the profit and loss account is not only the reasons for paying dividend out of reserves. It is an accepted cannon of conservative financial policy that a company must maintain a steady dividend and not fluctuating dividend. Then there is the legitimate use of profit unblocked from development rebate reserve. One of the conditions of under the Taxation Act is that on getting development rebate, 75 per cent of the rebate must be blocked in a reserve fund, and each such amount blocked in any year will be released eight years later. During this time, this is not to be used. So now, under clause 16, legitimate use of such past profits is blocked. Then there is legitimate use of reserve by way of dividend, when the reserve is no longer required. A company piles up reserves because it needs reserves. But when it no longer needs them, it must distribute

them as dividends to the extent not required. I know of a company which has slabs of money lying there because it cannot use them, for one reason or the other, mostly due to governmental policies. I definitely think that this provision about not allowing a Company to declare dividends out of reserves, except with previous approval of somebody in Delhi, is really totally wrong.

Then, Sir as regards depositing dividends into bank accounts, all good Companies, when they declare dividends, place the amount in a separate bank account,—the dividend account. This is the case with most Companies, they put the money into a separate Bank account. So far as that part of this provision is concerned, there can be no objection. But, if at the end of a period of three or five years, for a variety of reasons, if some shareholders do not come along to claim their dividend, to say that this money should be taken somewhere else, is not proper. It is the company's money. And so I do not understand this. There might have been one or two cases, where abuses might have taken place. I do not concede that abuses might have taken place. Because in one or two cases, abuses may have taken place, this does not mean that every Company should be deprived of its own funds. A Company should not be debarred from using un-claimed dividends for its own use: they should not be put in a position of being compelled to go to Banks to borrow more money than they need This does not seem to be in the interest of the Company or in the interest of the shareholders.

I turn now to Clauses 20 and 21 about auditors. I think, here, I must first make a personal explanation Right since 1930 or 1931, I have been a Chartered Accountant but not also a Barrister. But I did not practice as an auditor and I do no audit work at all. I think I should say this. I think I should also explain that I have had something like 31 years experince of auditors and their audit work, from the other side of the table. I have been in the Income Tax Department for 9 years, an industrial executive for 10 years and as Director of Companies for 10 years. The whole of this provision, clause 20, I should say is the result of a total misunderstanding about the meaning of the expressions "concentration of audit" and "close association between an auditor and Company management". Some analysis has been made in the recent past in the case of seven or eight leading firms. This was done in 1970. It has been found that out of 30,000 companies, something like only 1,400 are in the hands of seven audit firms. These firms have 60 partners 386 qualified Chartered Accountants (auditors) besides Articled Clerks amongst their staff. This makes up a total of 446. I do not know how do you regard this as "concentration" of audit work. This does not seem to be meaningful. I should also add that a group of Chartered Accountants, working together as a firm will render better service and greater benefits to their clients, rather than individual auditors, or individual solicitors or individual Doctors and so on. For example, if there is a group of doctors working together at one place, you do not have to run from pillar to post. If there is a similar thing with regard to the Chartered Accountant firms, then better results will be achieved. I can say from my personal experience, both as an industrial executive for ten, years and as Director of Companies over the last ten years, that it is in the interest of shareholders and it is also in the interest of Companies and Chartered Accountants themselves, that they should work in a group as firms. Now, that does not mean that we are not alive to the problem that a fairly large body of younger Chartered Accountants have no audit work or they have very little audit work. This is certainly a problem; and I myself, as a senior Member of the Institute of Chartered Accountants, I am also concerned with this problem. But what-

ever the answers, and there may be other possible answers, this certainly is not the answer.

I think you would be doing the greatest disservice to the Companies in this country, to the shareholders of Companies and also to the Chartered Accountants themselves. I was on the Select Committee 1964 or 1965 on the last major Company Law Amendment Bill which led to the passing of the Companies Amendment Act 1965. We were then at great pains to to ensure the independence of auditors by providing that an auditor shall not be removed except by a very cumbersome process. Now, we seem to want to go away from that in the opposite direction. We seem to want to provide that Managements can get rid of auditors automatically, every three years, by rotation. It seems to me incredible. It is for more important to strengthen the hands of the auditors, to enable them to look into, if necessary, certain other matters besides. those that are already indicated in the Act. But, by this provision, I think you are really going in the reverse direction. If a person is not to the liking of the management, he will be got rid of sooner or later, in three years, by rotation.

SHRI P. R. SHENOY: We have no objection to give more time to the witness. But, our time should not also be cut. We should be allowed to put questions and we should have time for this also.

MR. CHAIRMAN: I agree that your time should not be curtailed. I know that the witness wants to express his views. I also know that there are other witnesses. Since he is a responsible witness, I have nothing to say.

SHRI K. S. CHAVDA: Yesterday, I said that more than two or three witnesses should not be examined in a day.

SHRI N. DANDEKAR: Sir, I now come to clause 21. It has been suggested that if financial institutions have in the aggregate 25 per cent or more interest in a Company, they should have a voice as regards the appointment of auditor. This is understandable. But to suggest that after an auditor is appointed by the company the Government should have the power to remove him is unnecessarily providing for slapping the face of the auditors.

Turning to clause 25 I have been a civil servant for quite a number of years. If I was administering this clause I would get a flood of proposals from various companies. What do you think I will do? I would ask 10,000 questions, some of which the Board of Directors would be already going into. Is somebody sitting in Delhi going to deal with it? It is an incredible proposition that company managements must be brought to a complete halt.

SHRI P. R. SHENOY: You have suggested that the Bill should be withdrawn and it should be referred to some non-officials who are familiar with the working of corporate sector. Do you mean we are not capable of doing this work?

SHRI N. DANDEKAR: With great respect, a Comimttee of experts is one thing and Parliamentary Committee is another thing.

SHRI P. R. SHENOY: You have said the definition of 'group' is too wide and vague. It either means very much or very little. Is it not better to make the definition of 'group' flexible as it is and leave it to courts?

SHRI N. DANDEKAR: I am allergic to the word 'flexible'. Why should courts be left to interpret? Courts should be a remedy of last resort and not of first. resort. Ordinarily, the language of the statute should be clear.

SHRI JAGANNATH RAO: I want to know your comments on clause 30.

SHRI N. DANDEKAR: I think in this sort of thing for government to

assume power and authority without any responsibility is an incredible thing. Today with two directors as the maximum they can appoint, they are watch-dogs. They can be far more effective as watch-dogs. If they want authority as well as responsibility, they should take over the company. Why this back-door business at all? As far as appointment of Directors without any responsibilities is concerned, there are three things which are going to happen. The person who will be appointed will have all the authority to make a mess of the business. There will be no responsibility when a mess of the business has been made. The victim will be the company and its maojrity of shareholders. I think this is wrong.

SHRI JAGDISH PRASAD MATHUR: You are opposed to the ouster of the jurisdiction of the court. Will it be sufficient if the appeal is provided. If the matter is settled there and the company is satisfied that there will be no going to the court. If the party is not satisfied, then if there is an appeal, what would you suggest?

SHRI N. DANDEKAR: Let us not have this multiplicity of procedures.

SHRI MAHAVIR TYAGI: I must thank you for a very frank comment that you have made on this. Then have you any knowledge about the abolition of the private companies? How they follow the British convention?

SHRI N. DANDEKAR: I am not familiar with that. I am familiar with this, regardless of whether they have abolished them, or whether there are still any private company or only public company to every company is going to be free manage its affairs. About our other comments, Sir, my comment would be none.

SHRI M. K. MOHTA: As regards clause (2) which defined group and clause (1) which talks of same management, you mentioned that the holding of 1|3rd of the equity shares should only mean a control over a company.

SHRI N. DANDEKAR: No, Sir. If the test is 1|3rd in terms of voting power, the definition of control must be either 50 per cent voting power or if it is to be 33 1|3 per cent voting power there must be a further requirement that no one else should be holding 25 per cent. If one-third of the Board of Directors is to be regarded as controlling a company, then it must also be provided that no one else is controlling one-third.

SHRI M. K. MOHTA: If it is 1 3rd, would that mean a group will have a control over the corporation?

SHRI N. DANDEKAR: The question is simple: Whether the particular company is under the control of a particular person or group, if no one is controlling even 25 per cent.

SHRI M. K. MOHTA: You may have 1|3rd shares of 100 companies.

SHRI N. DANDEKAR: Provided no one else is holding 25 per cent in any of them. If at any time, we want to define any "group", the "group" must not only be dfined with reference to persons, but also with reference to objectives, namely, controlling a company; but the extent of control must also be defined. If I control 1|3rd of the Board of Directors and no one else is also controlling 1|3rd, I am controlling. If in a company, I hold 33 and 1|3rd of the shares and some one else is also holding 25 per cent. then no one is controlling

SHRI M. K. MOHTA: If the private companies were to take deposits from their Directors, shareholders, the Government should have no interference. Private companies should not be allowed to take deposits at all from any one.

SHRI N. DANDEKAR: Yes, Sir I am assuming that this particular clause is going to remain, particularin relation to advertisement and so on. If private companies have been

receiving deposits only from their own shareholders and Directors, then no further question should arise at all. If private companies, like public companies, were to take deposits also from outsiders, whatever regimentation that is required must be made applicable to both, but not otherwise to the private companies. Multiplicity of regulations of this kind is hopeless.

SHRI HARSH DEO MALAVIYA: To end then this Joint Select Committee and leave the whole thing to the free play to the market.

SHRI N. DANDEKER: No, Sir.

SHRI S. G. SARDESAI: In the majority of the clauses on which you have commented, you have stated that so far as the aims and purposes of the clauses were concerned, they were quite proper, but that the formulations were very defective. What is the main thing that would make matters more difficult in most of the clauses? You have made your positive suggestions which you are going to submit us later on. But the total decision of your comments is given in the very opening suggestion which you made in your written statement, namely, the need to withdraw his Bill. To come even at this stage and with regard to the proposals for the rough examination by a committee of the corporate sector in the field of industry, banking, trade and transport including finance and stock exchange. I would like to bring to your notice that representatives of these various Chambers and industries have already submitted their memoranda to us and in Delhi, Calcutta and Bombay, they have appeared before us for oral evidence. What we find in a majority of cases is that they come up against the very aims and objectives of the Bill itself. In your oral statement you attempted to improve the various clauses so that the aims may be actually achieved and simultaneously you are asking us to refer this whole question to such experts, who have definitely come out against the very purpose of the Bill. How we understand both the things? My point is that. even now, in a complicated piece of legislation like this, can be referred to a Committee of Experts, which need not necessarily consist wholly of non-officials, you can also have both officials and Members of Parliament on that Committee.

My second point is that. if the Government does not accept this proposal,—and I cannot say that this is my only proposal,—if this proposal is not accepted, then, certainly I must say something on the merits of the clauses. Therefore. I can say that there are some Clauses with which I am in agreement, there are some with which I am not in agreement at all and there are some which I think should be changed considerably.

SHRI S. G. SARDESAI: I understand your point that such a problem should be studied by experts. You know and we also know that there are two kinds of experts. One kind of experts are experts in the real sense . There are also other kind of experts. The representatives of the monopolists in India are also experts, but, they use their expertise in matters which are against the purposes of this Bill. I suppose you do not suggest that the experts should belong to the second category.

SHRI N. DANDEKER: When I say that a Committee of Experts should be appointed to make a thorough examination, I mean that Government's view-point should also be placed before it. The details as to what should be the composition of the Committee etc. can be worked out later on. But. what I am saying is that this matter should be examined by a Committee of independent competent people.

SHRI D. K. PANDA: I must thank you for the views you have expressed. It is known that malpractices exist. My simple question will be, among the malpractices which have been

brought to your notice, what percentage it constituted in the whole set-up and what is its nature?

SHRI N. DANDEKER: People who indulge in malpractices do not expose them. One suspects them. The extent of malpractice is not so great as would seem by a study of this Bill. It is not all that much. Nevertheless, it is something which in its extreme manifestations must be brought under disciplinary control. It would take me a long time to deal with all sorts of malpractices; and it would give an impression as if that is the general rule. What I am anxious to say is that there are malpractices in every walk of life in this country, and in all countries. The question is from the point of view magnitude, we should draw a line and we should see as to what should be the approach in that direction etc.

SHRI HIMMAT SINH: One of your anxieties is that there is no scope for proper mobilisation of resources for small-scale and medium-scale industries. But in the case of small-scale and medium-scale industries, it is not only a question of mobilisation of resources. That is only one part of the head-ache of setting up an industrial enterprise. In the case of an industrial enterprise, small-scale or medium-scale particularly ' medium-scale., a number of things have to be tied up. It is not only the problem of resources. In the case of small-scale and medium-scale industries, various things are involved. If it is only question of resources, I would agree with you. The small-scale and medium-scale industries above all others, are going to find it impossible to carry on with this kind of working. As regards deposits, what is intended in this Bill is that deposits should not be accepted or invited without issuing an advertisement. This will serve as a check on this monkaying etc that is going on.

SHRI N. DANDEKER: I do not know whether the hon. Member has seen the form prescribed by the Reserve Bank of India. It contains details like what is the paid up capital of a company. Who are managing it, what are its assets, what has been the profits of the Company over the last three years, what is the profit-ratio to turn over etc. Every bit of relevant information is contained and my suggestion is that the same thing can be adopted.

SHRI HIMMAT SINH: What are your views on the question of cost accounting because statutory audit is one thing and cost accounting has now become a specialised field. Would you suggest that there should be simultaneous cost accounting also?

SHRI N. DANDEKER: The question as to whether a company should have cost accounts, in what form it should be, in what degree of detail it should be. depends on the size of companies. I used to be myself a Lecturer on Management Accounting. I am all a believer in cost accounts. Any company which has to run efficiently, must have cost accounts.

SHRI HIMMAT SINH: What are your views on the question of diversification in the industrial field. We have found in practice that a large number of industries have diversified to the detriment of their parent industries. I would like to know whether there should be any restrictions.

SHRI N. DANDEKER: I myself feel that diversification is a good thing.

MR. CHAIRMAN. Thank you Mr. Dandeker. I hope your views would be of some help to the Committee. You have ightly expressed your views as an eminent person. I think your views are certainly going to help the Committee in its deliberations. Thank you very much again.

(The witness then withdrew)

III. The Stock Exchange, Bombay

Spokesman:

Shri Phiroze Jamshedji Jeejeebhoy

(The witness was called in and he took his seat)

[The Chairman drew the attention of the witness to Direction 58 of the directions by the Speaker].

SHRI PHIROZE JAMSHEDJI JEEJEEBHOY: First of all, may I thank you for the opportunity given to us to appear before the Committee and very briefly explain our point of view? We are mainly concerned with the take-over provisions in clause 10 and the subsidiary provisions contained in clause 13. Clause 10 proposes a new Section 108A as well as other sections B, C and D. As regards 108 A in principle we agree that take-overs should be controlled and regulated but it is possible to have a different aproach. We as a stock-exchange suggest that maximum possible publicity should be given to such transactions and also so far as the minority share-holders are concerned they should be given an option to dispose of their holdings if the take-over bid comes through. Here in the Bill the approach is that the department will approve or dis-ap prove take-over or proposed take-over of company. Assuming that the principle holds good, then perhaps two small modifications could be made. Before giving approval, an opportunity may be given to share-holders particularly the minority share-holders to express themselves before Government and to convey their views before final the decision is taken. Secondly a condition may be imposed on the bulk purchaser to give an option to the minority share-holders to sell off their shareholdings. There is also a technical point regarding paid-up capital etc.

Section 108B is on a different footing. While 108A relates to acquisition of shares, 108B puts a restriction on sale of shares. When a take-over takes place, it does not matter who sells. Neither in the statement of objects and reasons nor in the notes on clauses any cogent reason been given as to why put a restriction on sale of shares.In view of the complicated definition of the term "bodies corporate under the same management" if this section 108 B is made effective, it would destroy the marketability of shares registered in the names of joint stock companies. The purchasers would be nowhere.

As regards 108C we do not have much to say. But as regards 108D it is much wider. It empowers Government to refuse a transfer or nullify a transfer whenever it feels that the controlling interest is likely to change and he prejudicial to share-holders. It is not a restricted power It may be applied any time to transferers of even to shares which may be disallowed. Assuming for a moment the power remains, there is a further provision contained in sub-clauses (2) & (3) when a transfer is refused the transferer shall refund to the transferee the sale proceeds. So far as we can see. this provision would impose a tremendous hardship on investors. An investor who sells shares does not know whether the purchaser is a person who will not be approved by the Government. If the transferer is asked to give the consideration money back to the transferee, he will be in a fix. There is no reason why a *bona fide* investor should be penalised because the transferee is not approved by Government. Assuming clause (1) of this section 108 D is retained then at least sub-sections (2) and (3) should be deleted, and in order that transferee may not benefit by the purchase the ownership of those shares could be vested in the public trustee who would do everything till such time as the transferee is able to arrange for the sale.

If we delete 108B, where there is a provision that public institutions should be allowed to buy up shares whose transfer is not approved by Government, that provision could be transferred under section 108D.

Section 108A is a crucial section. It should be implemented by providing that an opportunity may be given to the shareholders to explain themselves to Govt. before a decision is taken and the power should be vested in Government to make the approval conditional on certain stipulations particularly for taking over the interest of the minority shareholders.

As far as section 108A is concerned, unless the capital of a company exceeds 25 lakhs it is not subject to any restriction. Perhaps the same limitation may be made applicable to proposed new section 187C. The operation of the section should also be limited to a benami holder who carries out instructions given to him by his principal. Amendment should be in section 187C(1) to bring out this point very clearly. A registered holder is not a benami holder. The benami holder is the person who actually acts under the instructions, under the guidance and directions of his principal. The first thing he does is to get the shares registered in his name so that subsequently he can exercise the voting right on behalf of his principal. At the time of registration, he may be asked to make a declaration whether he is a benamidar and a technical change to this effect should be made in this particular section 187C(1). Further in regard to sub-section (1) where shares have been sold. the registered holders are unaware of the indentity of the actual holders. A proviso may be therefore added as we have suggested in our memorandum.

Sub-section (2) of section 187C relates to a beneficial holder making a declaration. Here, perhaps, the scope of the clause may be limited and it can be made applicable in relation to companies with capital of more than Rs. 25 lakhs as it is under sub-section (1) of section 108A. It may be further limited by having a proviso as we have suggested. as a matter of fact, the provision is likely to involve a great deal of legal complications because the entire framework of the Companies Act is based on the registered holder and not the beneficial holder. If the registered holder is not recognised as the sole-owner, when all kinds of complications arise. It is much better to limit the operation of section 187C to those cases where it is strictly necessary so as to reduce the complications to the maximum extent possible.

SHRI M. K. MOHTA: This is regarding the declaration by benamidar. This is a hypothetical case. I have been in the habit of purchasing and selling shares. Thousands of shares are registered in my name. At any point of time. I really do not know how many shares are registered in my name in the books. There are hundreds of officers whose shares. I have been dealing. How do you expect such a person to make a declaration about beneficiary holding. I do not know how many shares are registered. How can I give a declaration?

SHRI JEEJEEBHOY: That is what exactly section 187C(1) requires. At the time when this Bill is enacted into an Act and comes into force, at that time there will be quite a number of registered holders who are unaware of the identity of the beneficial holders. You are required, as a registered holder, to make a declaration and you have to give the particulars of all beneficial holder which you are not in a position to give at all. It will be impossible to do so.

SHRI M. K. MOHTA: My point has not been appreciated. I do not know in which company my shares.

stand in my name. I have sold them off.

SHRI JEEJEEBHOY: Under Section 108(1A), there is a provision that before the closure of the register of members, whoever holds shares must get them registered in his name. If you fail to do that, then there is no way open to you to get them registered. Unless you make an application under 108D(1) and get special permission from Government after giving a reasonable ground for the delay. No body would like. . . .

SHRI M. K. MOHTA: Why should not the responsibility be devolved on me?

SHRI JEEJEEBHOY: I entirely agree with you.

MR. CHAIRMAN: Thank you very much.

[The witness then withdrew]

IV. The Committee of Younger Partners of the Established Auditing Firm, Calcutta.

Spokesmen:

1. Shri P. M. Narievala—*Chairman.*
2. Shri L. K. Ratna—*Secretary.*
3. Shri Y. H. Malegam—*Member.*

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Mr Narielwala and other friends of the Committee of Younger Partners of Established Auditing Firms, Calcutta: We are happy to have you here. Since you insisted that your evidence may be recorded at any place, as it was not possible for us to take evidence at Calcutta, we have tried to adjust you here. I think your evidence would be of some use to the Committee, but, I would request you to be brief in your general remarks, if any, because most of the points which you are likely to make, I think, might have been covered by other witness, because, we have examined a fairly large number of witnesses. So, kindly be brief. Before you begin, I would like to draw your attention to the direction which reads as follows:

> "The witnesses may please note that the evidence they give would be treated as public and is liable to be published unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament".

With this direction, I would request you to begin.

SHRI P. M. NARIELWALA: Mr. Chairman, Sir, and hon, Members. We are grateful to you, Sir, and to the Committee for giving us this opportunity of a varbal hearing. The reason why we wanted to make our submissions before you and before Parliament, was that the provisions of Clauses submissions, which are designed to indicate our views as to how the provisions of the Companies Act with regard to audit could be further improved, in order to make Company accounts more meaningful to shareholders, to the Government and to the public at large. We believe, Sir, that we have no dispute whatsoever with the underlying objectives of the Bill and we also feel that we have a duty to you and to Parliament that we should place certain concrete suggestions in order to make audit more meaningful and that is why we have placed certain suggestions in detail. We are here to answer whatever questions the Hon. Members may ask. Before that, I just want to say that the provisions of Clauses 20 and 21 have apparently been drafted with two underlying objectives. One is to remove the alleged concentration of audit and the other is to rectify the so-called closeness of association between an auditor and his client. We have carefully considered this matter. We feel

that, we have the obligation to work within the framework of these policy objectives and we have come with some alternative suggestions with regard to appointment of auditors, which we feel are more positive and more beneficial than those presently contained in the Bill. Our submission is that, instead of the provisions contained in Clauses 20 and 21, the objective could be better achieved by providing for power to appoint an additional auditor under such circumstances as Government may define. This may either be left to the Government, or Parlitment may delegate the power to the Government to appoint additional auditors as and when Government thinks it necessary to do so. In that case, the provisions would be more positive than the present one. At present, Government would acquire only a negative right. If our proposal is accepted then, they will have the positive right to appoint an additional auditor as and when they think that it is necessary to do so. This would harmonise the rights of the Government with those of the shareholders because, without disturbing the rights of the shareholders to appoint auditors of their own choice, Government will be able to superimpose another auditor. In defining the circumstances under which such additional auditor has to be appointed, Government may also take into consideration the extent of its own shareholding in a particular Company, thereby making Clause 21 redundant and unnecessary. By executive directions, it may be provided by the Government that where financial institutions own 25 per cent of the equity or voting preference shares, there should be an additional auditor every year and in other cases, say, once in three years. In the case of a Company, where Government find or suspect that something is going wrong, they can exercise the power to appoint an additional auditor every year. Where, however, the Company goes on we'l, they may exercise this right at longer intervals. We have offered this alternative suggestion after considering some other proposals, about which we have heard, and which might have also been placed before you by some other persons, like proposals for appointment of auditors by Government itself, for a ceiling on the number of audits which a person can audit and the appointment of auditors in personal names. We feel that among all these alternatives, the best from every point of view is the alternative to appoint an additional auditor under Government's powers which may be exercised at Government's discretion. This suggestion harmonises the rights of the shareholders with those of the Government. It also does not distrub the establishments of the existing audit firms. I would like to say that even under the Monopolies Act, and other similar legislation, when Government controls the operations of the large industrial houses it does not cut down the houses from what they have already achieved. No man is deprived from what he has already achieved.

What is done under such legislation is that further expansion is controlled. We would be hit much more harshly under the proposed amendment than the monopolists under the Monopolies Act and other legislation because not only there will be no further expansion but in addition, we would also be deprived of what we have built up. We are all professional men. We do not owe our present position to money, influence, etc. We have built up overselves and this is mainly because of our hard work and we now find ourselves in a position where we feel that what we have built up is in danger of being destroyed, leave alone our expansion being ruled out altogether. Our reasonable submission is that we should not be treated on a footing which is even harsher than the position of the monopoly houses under the Monopolies Act. It should be seen that our existing position at least is not affected. If our proposal for additional auditors is accepted, this would serve our purpose. At the same time, this would give a chance to other firms also. Our existing position and staff establishment would not be disturbed. In the process, the general social purpose of audit will also be better achieved because, in addition to one

auditor, there will be one more auditor and there will be an additional check.

Lastly, on the question of the so-called concentration of audi work and in regard to the statistics which have been compiled and considered by the Hon. Members, I would like to know whether distinction has been made of the fact that a firm is not one single unit. A partnership firm consisting of 10 partners cannot be equated to a firm of one practitioner.

SHRI P. R. SHENOY: As an alternative to the proposal you have suggested that additional auditors or joint auditors may be appointed. It seems to be a good suggestion. Do you have any objection if a junior auditor is appointed as an additional auditor. Secodly, what will happen if there is difference of opinion between the main auditor and the joint auditor?

SHRI Y. H. MALEGAM: There would be no objection at all to have any firm of accountants as joint auditors. Past experience indicates that difference of opinion between joint auditors can normally be resolved.

SHRI MAHAVIR TYAGI: I would like to know whether you form part of the Chartered Accountants' organisation or it is a separate organisation?

SHRI Y. H. MALEGAM: We are all Chartered Accountants. We are partners of certain firms of chartered accountants which have been in existence for 30 years or so and which we consider as the established firms of chartered accountants. We represent a committee of the younger members who have grouped together for variety of purposes.

SHRI MAHAVIR TYAGI: Sometimes the auditors are a party to malpractices in collusion with the management. Do you mind if we recommend to the Government to enact a law where such a person is prosecuted.

SHRI P. M. NARIELVALA: Already there is a disciplinary jurisdiction which is exercised by the Institute. Punishment is awarded by the disciplinary committee and Council and ratified by the Court, depending on the severity of punishment and the severity ranges from censure to removal from membership. Any provision which helps us to maintain the highest standard will be welcomed by us.

SHRI HIMAT SINH: The audited statement of accounts cannot give the true picture of the financial position of the company. You have recommended certain disclosures should be statutorily required. You have mentioned a few items also. Would you also recommend simultaneously that in addition to this statutory auditing there should be cost auditing because there is tendency to inflate the costs and it is not within the scope of the auditors to examine those cost components?

SHRI P. M. NARIELVALA: I would certainly say there is a very great need for independent examination of costing system. It is recognised in the provisions of the Companies Act where cost audit has been provided for. Our Institute would prefer that the provisions relating to cost audit should not be considered in isolation from the functions relating to financial auditing. If the functions are entrusted to two persons, the whole concept of auditing weakens because we cannot have a comprehensive look.

The Institute of Chartered Accountants and individual members thereof have all along held the view which they have recommended to the Government that the function of cost audit should be entrusted not only to Cost Accountants but also to the Chartered Accountants subject to such experience requirements as the Government may see fit to enforce.

SHRI HIMMAT SINH: It is a vast subject; it has become a specialised subject. Would you for that reason advocate a separate Cost Accountant?

SHRI P. M. NARIELVALA: Many aspects of the profession have become specialised. But specialisation can be practised within the same firm by different persons. This is one of the advantages of larger audit firms.

Within the same organised establishment it is possible to build up different specialised skills. But I do submit that within the same firms, different individuals specialised in different functions can render a much more useful service as a group than can be rendered by two or more persons individually.

SHRI HIMMAT SINH: In principle, you do accept the necessity of cost auditing?

SHRI P. M. NARIELVALA: Yes, Sir.

SHRI HIMMAT SINH: In what manner, would you suggest that the division of internal talent can take place?

SHRI Y. H. MALEGAM: It is true when you say that a certain type of audit work is being handled by certain types of audit firms. It is partly due to the fact that the audit has to be done with an organisation. It is not that one auditor is better or worse than another auditor, but the auditor who has the backing of staff establishment is more able to effect an audit than an auditor who does not have. If one looks only at the audit of, say, the first 1000 companies. it might appear that the audits of those 1000 companies are being handled by the larger audit firms, but that is because those firms have built up a certain organisation of staff.

Then there are some other points. I would like to mention about the character of these audit firms. The fact is that these firms are like co-operative institutions which are owned by the present partners of those firms; they are not owned by those who do not work there. The present partners are persons who worked in these firms and then because of their merits, they were promoted to partnership. When we talk of audit firms, we are really talking of the present partners and their qualified assistants. In the course of time, they may be promoted to partnership. There is no inter-relationship between the partners. There are not family members There is no descendent ownership. Therefore, if a firm of this type exists, it can offer a good quality of work; it can attract the best talent in the profession. When we consider the division of audit work between firms as entities, it may appear that few entities have a substantial portion of the audit work. But we should consider the division of audit work between Chartered Accountants who are either partners of those entities or are working in those entities, but later on may progress into partnership. The seven audit firms for which we have collected statistics have as many as 500 Chartered Acountants who are working. The division has to be considered in relation to these 500 Chartered Accountants. Suppose these 500 Chartered Accountants had practised individually. If you divide the number of audits among these 500 persons, it cannot be contended that a person after ten or 15 years of practice if he has 3 or 4 audits, he has the unfair advance of having a major share of the audit work. The difficulty which arises is that over the last few years, the industry has demanded more Chartered Accountants, but many of those who have qualified have gone into public practice rather than industry.

SHRI HIMMAT SINH: Do you think that in the present system, the individual Chartered Accountants, they are at the mercy of the big firms?

SHRI Y. H. MALEGAM: No, Sir. The big firms are not separate from the Chartered Accountants. The same 500 persons have voluntarily got together to practise collectively what they could have practised individually.

SHRI HIMMAT SINH: What is the average period to become a partner?

SHRI Y. H. MALEGAM: Ten years.

SHRI K. S. CHAVDA: Regarding appointment of Auditors, in various countries. I would like to know whether the Chartered Accountant can perform both the functions?

SHRI P. M. NARIELVALA: The concept of statutory cost audit to the best of my knowledge and belief is an isolated phenomenon in India alone. I do not know of any other country

where cost audit is required as a statutory requirement.

SHRI K. S. CHAVDA: That is, both these things are done by a Chartered Accountant.

SHRI P. M. NARIELVALA: In U.K. they are called Chartered Accountants. There are certified Public Accountants in the U.S.A. and so on who perform the comprehensive range of functions of statutory audit.

SHRI S. G. SARDESAI: Suggestions have been placed before us more particularly by certain organisations of employees of Chartered Accountants and Auditors that the task that an auditor does should be considered as a sort of national social service. It should not longer be looked upon. the entire country and the people are very much interested in appropriate accounting and all that. Therefore, there should be a transformation into a national service in that way. A strong argument has been put forward. I would like to know your opinion.

SHRI P. M. NARIELVALA: When you say it should be treated as a national service, I would submit that it is already a naional service because....

SHRI S. G. SARDESAI: Health services are naionalised in Great Briain also. Medical service has been nationalised.

SHRI P. M. NARIELVALA: I think this suggestion has been made by some employees' associations and others and I would not subscribe to that view. I can sympathise with the employees associations which have put it across because they have been very considerably agitated and concerned over the effect of the existing proposals on their own employment position, because, they are worried that if as a result of rotation, audit firms in which they are employed lose a substantial portion of their work, they may be retrenched.

MR. CHAIRMAN: Leave that argument of the employees. They had their say.

SHRI P. M. NARIELVALA: I can understand their arument but I do not accept that nationalisation is the correct approach.

SHRI S. G. SARDESAI: What is the alternative?

SHRI P. M. NARIELVALA: No sufficient case has been made out, if I may say so, for your basic proposal. There have been many instances of Company audits being performed, many of which have been later investigated. It is not as if in the majority of cases errors or abuses of the present system have come to notice.

MR. CHAIRMAN: Thank you very much.

(The witnesses then withdrew.)

V. Bombay Study circle on corporate Law and Allied Subjects.

Spokesmen:

1. Shri C. C. Chokshi—*President*.
2. Shri R. P. Kedia
3. Shri J. E. Dastur
4. Shri Dinesh Mody
5. Shri N. V. Iyer
6. Shri N. C. Mehta

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Mr. Chokshi and other Members of the Bombay Study Circle. I on my behalf and on behalf of the Committee welcome you here. Your memorandum has been circulated to the Members of the Committee and as the time at our disposal is very short, I would request you to be brief and finish your general observations within a couple of minutes, if possible, and then, Members will be asking questions and you will have to reply. Before you start, I would draw your attention to the following direction.

"The witnesses may kindly note that the evidence they give would be treated as public and is liable to

be published. unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

With this direction, I would request you to begin with your general observations, if any.

SHRI C. C. CHOKSHI: Mr. Chairman and hon. Members of the Joint Select Committee. We are greateful to you for giving us this opportunity to appear before you in giving this evidence. As desired by you, we will take only a short time-say 5 minutes to make our preliminary observations. I wish to lay down five or six points, which, with respect, I submit should be borne in mind in finalising the provisions of this Amendment Bill. It is recognised that Company Law is not a static law. It is a dynamic law. However our respectful submission is that it should function like a vigilant onlooker, rather than a continuous supervisor. The objectives should be consistent with the need for economic development. The law should not put shackles on the normal economic activity. A proper balance should therefore struck. One does not plead for total freedom particularly in the context of planned economic development. The second point which I wish to submit with respect is that controls should be such as can be effective. It is futile to have a large number of controls which the Administration will not be able to enforce effectively, and therefore, it will merely turn into paper controls. The third point which I wish to submit is that such plethora of controls as would throw an undue burden on the administration should be avoided. It is better to build around the corporate system a self-regulatory mechanism, so that the Company Law Administration can serve as an effective policing force. The Administration can function as an external controling agency rather than getting involved in the internal functioning system of the Companies. The fourth point which I wish to submit is that Law should not likewise render the task of small Companies very rigid out of 30,000 Companies which are registered, over 23,000 Companies are private Companies of which a substantial majority are very small Companies. By conversion to private Companies. under the proposed legislation, a large number of such Companies will be affected. The fifth principle which I submit is that Law should not be used as a piece of legislation to retain other Government objectives. For example, control of monopoly houses etc. There are other direct laws on that point like the Income Tax Law, Monopolices Law and similar other laws like the Industries Development and Regulation Act etc. Lastly, Law should command respect For example, we should know how Income Tax Law has endangered its respect for it and brought about open violation. From all these principles, emerges one consensus. Let the Law attempt to evolve and lay down standards of good Company practice. The Government should thus see that the corporate sector confirms to such disciplines. There are a couple of safety mechanism like the control by the Board of Directors, shareholders in a general meeting. auditors and the public disclosure of information. Where cases of violation of law and a departure from good Company practice are observed, Government should take stern action without fear or favour. That alone will command respect for the law. In this context, it is prudent to observe that the Government operations in the corporate sector are now assuming significant proportions. Out of a total paid up capital of 4301 crores in the corporate sector, Government Companies alone have 2065 crores, that is about 48. To this, should be added Government holdings in non-Government Companies like the Gujarat State Fertiliser Corporation, Joint sector Companies like the Public Corporations and the Banking Corporations, State

Bank of India, Life Insurance Corporation of India etc. Further, voting power available to financial institutions, Banks and Public Trusts would also be effective force to reckon with. In fact, they have controlled some of the important Companies in the private sector. All these would serve to demonstrate the ideals of good Company practice. The Companies should set the lead in this direction for others to follow. So far this trend has not been very encouraging. Our observations on specific provisions in the Bill are based in the light of these principles.

I want to highlight three provisions. Clause 5, his clause deals with conversion of a private company into a public company. If it is found there is deployment of resources from outside to the extent of more than 10 per cent or 25 per cent of the investment in inter-corporate bodies then only the conversion of a private company should become a public company. It should be laid down that if a private company has done borrowings to the extent of 50 per cent of its finances or 25 per cent then such company if it invests in shares of other public company it should become public company. The concept of public interest should be a paramount condition which should be satisfied before converting a private company into a public company.

Secondly, if a family has invested from its own funds and has turnover of Rs. 50 lakhs-simply because it has turnover of 50 lakhs it should not become a public company.

Clause 10 sections 108A to 108E: New section 108A will give practical difficulty. It should be changed to give an indication when the provisions of that clause will be attracted and made applicable to a particular person he should know in advance that the provisions of this clause are likely to be made applicable. 108D deals with sale of shares. The form of this clause will create practical difficulties. It does not lay down any period of time within which provisions of that Section could be invoked by the Government. Secondly, Government coming to the decision that control is likely to pass in undesirable hands the provisions of sub-section 2 and sub-section 3 may be brought to 108D so that the action government wishes to take on controlling undesirable hands by government taking over those shares.

Now, I come to appointment of auditors. We have pointed out in our memorandum that the proposal to rotate auditors will create difficulties both for the auditing firms as well as for the corporate bodies and particularly when their appointment is restricted to three years. Therefore, we have suggested if the Government feels there is concentration and that there is not sufficient work for the younger chartered accounts let there a provision that there will always be two firms of auditors. I understand the Institute has suggested the other firm of auditors should be appointed by minority shareholders. It may be accepted by the Select Committee but in order to remove the doubt of close association, assuming there is scope, let there be two firms of auditors appointed by two different interests. Let these firms do the auditing assuming the appointment of second firm of auditor. 48 per cent of the practice is controlled by the Govt. If the Govt. takes power to appoint an additional auditor, 60—70 per cent of the appointment will be under its control. The charge of any concentration would not be levelled against the existing firms. On this point, I wish to submit that at present the law gives a certain amount of protection to the auditor. An auditor is a small man compared to the big company management or Managing Director or the controlling authority. He has been specifically given the protection because he has to sit on judgment on the accounts of these big and powerful person. If this protection is taken away in the manner in which it is suggested in the Bill, the position of the auditor will be precarous. The profession will

not grow and the auditor will not be able to discharge his duty in an independent manner in which he has seen doing so far. It will also stultify the growth of the profession. So far as the appointment of auditor by the majority shareholders is concerned, it should not be taken away from them. But in addition, if the Govt. so desire, they may have a right to appoint any additional firm of auditors.

SHRI P. R. SHENOY: I agree that the law should not hit the small companies. Most of the proposed amendments to the Companies Act do not touch and hit the small companies at all particularly the small companies which have nothing to do with the big companies or public limited companies. What do you say to this?

SHRI C. C. CHOKSHI: A large number of small companies will be affected by converting them into public limited companies on account of inter company investment.

SHRI P. R. SHENOY: Do you mean to say that the private limited company below 25 lakhs of capital is a small company?

SHRI C. C. CHOKSHI: If one company is less than 25 lakhs of capital. There are a large number of family members who have less than 25 lakhs of capital. They do hold shares of another family company or another company to the extent of 10 per cent. Naturally, they want to expand and they want to have their independent business. In case of such companies, the effect will be that both will become public companies.

SHRI P. R. SHENOY: You can solve the problems. Why should they have two companies

SHRI C. C. CHOKSHI: Because they want to have independent management. After all two brothers cannot become two Managing Directors of one company.

SHRI H. M. PATEL: What exactly is the harm if the small private limited company becomes a public limited company? In what way are you going to be adversely affected if they become public limited company.

SHRI C. C. CHOKSHI: It will not do any harm as such so far as these transactions are concerned. A public limited company has to go to the Govt. for various sanctions. First of all, appointment of Chief Executive called the Managing Director or a Manager, for that, they have to go to the Govt. in order to obtain the sanction. Even in investing in another company, increasing its own capital and resources or giving loans to another company, it will have to obtain the sanction of the Central Govt. These are the two main points which will create difficulty. Then they may have to comply with various procedures. Under the Companies Act, its profit and loss account will have to be filed with the Registrar; it will have to hold meetings every three months. This will increase the management cost of small private companies.

SHRI JAGDISH PRASAD MATHUR: In your opening remarks you have said that you are opposed to the extreme control. Do you find in this Bill that there are some provisions for which Govt. is going to take more powers?

SHRI POPATLAL M. JOSHI: It will have tremendous power so much so that the growth of the corporate sector . . .

SHRI C. C. CHOKSHI: The corporate sector will be completely stultified. Section 108 does not apply only to public companies, it applies to all the companies if the capital is more than 25 lakhs in which no public interest will be involved. This conversion of private company into public company and thereby making them to comply with the various formalities of the Companies Act which the private company will not have to comply with. Then Section 297 says that they cannot make a contract with the relatives

of the Directors. If the private company becomes a public company by this definition, then it has to comply with the provision which requires Government's approval. In any way, a large number of difficulties will be created for small companies.

SHRI K. S. CHAVDA: Mr. Chairman, two or three witnesses while tendering their evidences before the Committee have said, if I am not mistaken, that these provisions, if they are incorporated will be null and void, according to the Constitution. May I know from the witness as to how many of these provisions in the present amending Bill will be null and void according to the Constitution?

MR. CHAIRMAN: Likely to be null and void.

SHRI C. C. CHOKSHI: With respect I submit that ours is a body which is the Study Circle on Company Law and allied subjects relating to corporate bodies. We are not dealing with or studying the Constitution, and therefore, we will refrain from making any observations about the constitutional validity or otherwise.

SHRI HIMMAT SINH: You have agreed to the idea of appointing an additional auditor and that it can be done by the Government, as you say, in addition to the auditor already functioning on behalf of the Directors. Similarly, would you also approve of the idea of Government appointing Directors, as has been suggested in the Bill?

SHRI C. C. CHOKSHI: Already, there is a provision suggested in the Companies Act, that is Section 408, where the Government is taking tremendous powers of appointing Directors. But, we have not opposed.

MR. CHAIRMAN: The hon. Member is referring to Clause 30 of the amending Bill which empowers Government to appoint as many Directors as it likes. Would you agree to that suggestion of the Government?

SHRI C. C. CHOKSHI: We are neither opposed to it nor do we agree to it because we have left it to the Chambers of Commerce. We are a Study Circle.

MR. CHAIRMAN: I have a question to ask. Yours is a Study Circle. I would like to know whether the views which you have expressed and the memorandum which you have given, do they reflect the views of the Study Circle or do they reflect your views?

SHRI C. C. CHOKSHI: With respect, I submit that this memorandum was prepared after holding five meetings of the Study Circle wherein, large number of Members of the Study Circle were present. The draft was sent to all the Members and after getting the consensus of all the Members, we submitted this memorandum.

SHRI H. M. PATEL: Arising out of what you have said, I would like to know one thing. At present, under the Act, Government can appoint two Directors. Under the proposed amendment, any number can be appointed. You say that you have left it to the Chambers. Presumably, as a Study Circle, you would have studied the entire amending Bill. Can we take it that you are leaving this alone and you do not have any objections? I would like to know as to what has been the view of the Study Circle.

SHRI C. C. CHOKSHI: The Study Circle was not in favour of having these powers.

MR. CHAIRMAN: It may be embarrassing for the Study Circle to express its opinion on such a subject.

SHRI C. C. CHOKSHI: There was a difference of opinion among the Members.

SHRI H. M. PATEL: Even if there was a difference of opinion, we would like to know as to what sort of views were expressed.

SHRI C. C. CHOKSHI: The Study Circle consists of the members, and persons who are managing Companies as Secretaries, Managers or Managing Directors and also Government representatives like the Regional Director, Registrar of Companies etc. and when there was a difference of opinion and there was a sharp difference of opinion, we left it at that, but majority of the Members were not in favour of this because they felt that this will create lot of hardships for the Company management

SHRI HIMMAT SINH: Did you take a vote on it?

MR. CHAIRMAN: Thank you very much for the views you have expressed. Thank you.

(*The witnesses then withdrew*).

VI. Mahratta Chamber of Commerce and Industries, Poona

Spokesmen:

1. Shri G. A. Thakkar
2. Shri S. C. Chagla
3. Shri R. M. Gandhi
4. Shri M. M. Thakore
5. Shri S. R. Somvanshi
6. Shri K. S. Danait
7. Shri K. S. Bhat

(*The witnesses were called in and they took their seats*).

MR. CHAIRMAN: Mr. Thakkar and other Members of the Mahratta Chamber of Commerce and Industries, Poona: I welcome you here on my behalf and on behalf of the Committee. Before you begin, I would like to draw your attention to one direction which states as follows:

> "The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

With this direction, I would request you to be brief and finish your general observations, if any, within a couple of minutes and I would also request you to confine your observations only to the salient features so that Members will then ask questions and there will be a better elucidation of your views. With these preliminary remarks, I would request you to begin.

SHRI G. A. THAKKAR: I propose to deal with only relevant and salient features of the proposed amendments to the Companies Act. The first submission which I propose to make is that the definition clause relating to particularly to—'group' and 'same management' is rather vague and uncertain and is likely to lead to innumerable practical difficulties. 'Group' has been defined in the amendment Bill in Clause 2(i). The words, namely, "the object of exercising" and the word 'control' in our opinion, are likely to lead to more complications. Then, 'same management' has been defined in Clause 3 of the amending Bill. A new Section 4B is proposed to be added. My first submission is that sub-section 1 (i) is very wide and comprehensive and it is likely to cover all other clauses which are following thereof. I do not mind if the definition is precise and

simplified and my respectful submission is that control should be defined in specific terms. Control may be over anything, managerial or holding of share capital, and my submission is that control should be defined as having some sort of holding in shares, such as not more than one third paid up or subscribed share capital. So far as sub-clause (ii) of sub-section (1) is concerned, namely, that 'if the managing director or manager of the one is the managing director or manager of the other'—this is sufficiently simplified and is specific and certain. I do not object to this. So far as sub-clause (iii) of sub-section (1) is concerned, namely, 'if one holds not less than one-third of the shares (whether equity or preference or partly equity and partly preference)...', my submission is that the words 'whether equity or preference or partly equity or partly preference' should be deleted or it should be brought in line as it is proposed to be done in Section 108(g). Section 108(g) says for the purpose of sections 108(a) to (f) the expression equity share shall include preference share as having been issued before the commencement of Companies Act. You are aware at the present moment in many a company preference shares do not have any voting right and, therefore, if the preference shares have voting right it should not be equated with equity shares as it is contemplated to be done under sub-section 3 of section 1.

Now, we turn to sub-section 4. I submit this should be brought in line with Section 370 because the original section requires that majority of the directors on both the companies should be holding the power for control. Here also it should not be confined to 1/3 but confined to the majority of the directors. I give an illustration. Suppose for a while two public limited companies have three directors each. If one director in each of the companies suppose is a solicitor, legal adviser or chartered accountant then both the companies will be deemed to be under the same management.

SHRI P. R. SHENOY: You have raised some objection regarding the transfer of judicial power to executive under the proposed amendment. What is your objection to that?

SHRI G. A. THAKKAR: So far as sections 17 and 141 of the Companies Act are concerned, they are dealing with certain fundemental principles, namely, transfer of registered companies from one place to another, amendment of the Object clause, etc. These require consideration by a judicious mind otherwise as it has been observed by the Bombay High Court and even the Supreme Court that neither the political motives nor the moral aspect which one has in his mind should weigh with the person who is considering whether amendment should be allowed or not.

SHRI P. R. SHENOY: You always go to the court and to the government seeking a change. Is it not easier to get the approval from government?

SHRI G. A. THAKKAR: With respect I am saying it will take longer time so far as government is concerned rather than the court. I can tell you from my own personal experience that the petitions filed under Section 17 have been disposed of in the Bombay High Court within a period of 6-8 weeks. Only on occasions when the Registrar of Companies takes an objection and files an affidavit it may take little longer time but it will not exceed beyond 4-6 months.

SHRI POPATLAL M. JOSHI: What about the Government?

SHRI G. A. THAKKAR: So far as Government is concerned, it has taken sometimes six months, sometimes more than a year. Time without number, they write it is under consideration. But, so far as this is concerned, once service is affected by the court process and no sooner it is done, the matter is done.

SHRI POPATLAL M. JOSHI: You are dealing exclusively with the cases

that in High Court it takes 4—6 months and in Government it takes more than a year. The court is also having a lot of work and the Government is also. Do you think that some time limit is put and the power is vested with the Government?

SHRI G. A. THAKKAR: Time is not only the factor. It is the very judicial discretion which has to be exercised. Whether the amendment to the Memorandum and Articles of Association should be made by a legally trained mind, we must consider that aspect of the case and try to find out whether it is in the interest of the Company to do this thing or not. The approach should be legal and it should be unopposed between the two. That is why we are strongly requesting you to consider this matter from that point of view and have a judicious mind to be applied to the problem that may arise both under section 17 as well as section 141. So far as Section 186 and Section 79 are concerned, I have no objection that it may be left to the Government I feel that the only reason which has been arisen for the introduction of these changes in these sections is that these are merely matters of administrative nature and therefore it should be done.

SHRI H. M. PATEL: As far as deposits from public are concerned, you say that the proposed amendments are not desirable. I think you will agree that the public deposits must be secured. These particular amendments designed to safeguard the general public from putting their money with companies without knowing the simple facts. Do you think it is necessary for the companies which want deposits to put out certain facts regarding their working and so on publicly? Don't you think that it is necessary and in the interest of the general public and the ordinary public must know the company and its working?

SHRI G. A. THAKKAR: It is correct that the public interest should be adequately and sufficiently safeguarded. So far as the present amendment is concerned I am objecting or I am endeavouring to object on the footing that it is cumbersome procedure. But it should be in the nature of prospectus.

SHRI H. M. PATEL: Have you got any other simpler procedure? What you have suggested is not a simpler procedure.

SHRI G. A. THAKKAR: My personal opinion is that it will be in the fairness that one should insist upon an advertisement. That advertisement should be limited to, namely, the functional aspect of the company such as share capital of the company, dividend declared by the company for the last five years, reserve fund of the company at present and the profit of the company for the last four or five years. As the case may be, whatever one requires, just four or five things will be enough for a person who proposes to deposit his money with the company to judge whether the company is sound or not. Prospectus, on the contrary, will not give a clear picture.

SHRI H. M. PATEL: Would it not be better if the financial house may certify by saying that following is the status of the company and so on?

SHRI G. A. THAKKAR: There are two things. At what stage you will require the company to issue such an advertisement? How long will it last?

MR. CHAIRMAN: Please give a straight reply.

SHRI G. A. THAKKAR: Companies, if they tell to the person who wants to deposit money by way of advertisement as to what are its reserves, profits, dividends, without introducing the other things, namely,.....

SHRI H. M. PATEL: You see an ordinary person who wants to deposit his money with safety. He wants to know whether a particular firm is

sound or not. What you are saying, that is not possible for an ordinary man to judge those figures. Therefore, to assist him, if a simpler certificate is provided by some one who can understand those figures other than the company itself. Then it provides an adequate safety for the public to deposit.

SHRI G. A. THAKKAR: The only handicap which I find if this suggestion is being implemented is that the company be at the mercy of some one who has to give that certificate or the company may resort to.....

SHRI SYED AHMED AGA: Companies usually obtain funds either from the share capital of the members or by borrowing from financial institutions. These are the two main sources from which a Company borrows funds. For instance, I want to understand as to why should it be necessary at all for a Company to go directly to the public and invite deposits when it is possible for the Company to borrow from the financial institutions. Just now, in reply to a hon. Member's question, you said that you are not even willing to furnish a certificate to a person to enable him to know that his money with you is safe. Even that also is rejected. I want to know, as an ordinary member of the public, as to why should you at all invite deposits from the public because you do not need them. You get it from the financial institutions.

SHRI G. A. THAKKAR: My respectful submission is that the resources which were available otherwise at the time before the nationalisation of the banks to the Companies are now not available and the Companies are not in a position to raise resources from the Banks as well as from other financial institutions. Therefore, they have to go to the public to invite deposits and to accept money.

SHRI SYED AHMED AGA: Do you want to take it that the Banks are now giving less financial assistance?

MR. CHAIRMAN: That is what they mean.

SHRI G. A. THAKKAR: Banks are not giving clear loans at all.

SHRI SYED AHMED AGA: Should we take it that the Banks are now giving comparatively less financial assistance than they were giving before?

SHRI G. A. THAKKAR: Before that, there were no fetters on the Banks.

SHRI SYED AHMED AGA: We will ascertain that. Our information is that the Banks are advancing money.

SHRI G. A. THAKKAR: In connection with amendment of Section 314, as it is framed, the words "legal or technical adviser" have been deleted. The question is whether it will apply to the lawyers and technical advisers. I submit that sub-section (3) should be suitably amended so as to exclude from the definition the payments made to legal advisers or technical advisers not on monthly basis. That will perhaps meet the requirement which is sought for by the present amendment. We do not say that this should not apply at all. For example, if there is a solicitor in a Company, he may receive his fees after 5 years and it may be Rs. 5000 or Rs. 10,000. Our only submission is that this sub-section should be suitably amended so as to bring in line the position very clear.

SHRI SURENDRA MOHANTY: Will you be satisfied if the word 'emoluments' is substituted for 'remuneration'?

SHRI G. A. THAKKAR: That would not harm us more. There should be a provisio to sub-section (3).

SHRI SURENDRA MOHANTY: You are excluding legal and technical advisers. But for other Directors, remuneration means only monthly salary. It does not take into account the other allowances which are paid. What will be your reaction

to the substitution of the word 'emoluments' to the word 'remuneration' in the case which you have referred to?

SHRI G. A. THAKKAR: It makes no difference to our view point. So far as Section 297 is concerned, if this proviso is added to it, it will lead to more or less a position wherein Companies would find it impossible to function. No Company would be able to work if the Company every now and then has to go to the Central Government for obtaining sanction.

MR. CHAIRMAN: You have already said that. Thank you.

(The witnesses then withdrew)

VII. Company Secretaries of certain public limited companies in Bombay

Spokesmen:

1. Shri S. S. Borker,
2. Shri N. D. Sonde
3. Shri R. S. Gandhi
4. Shri K. B. Dabke
5. Shri R. D. Kulkarni
6. Shri P. S. Kanungo

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Mr. Dabke and other Company Secretaries of public limited companies of Bombay: I on my behalf and on behalf of the Committee welcome you here. Your memorandum has been circulated to the Members. I would request you to be brief in your general remarks, if any, and before you begin, I would like to draw your attention to the direction which states as follows:

> "The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

With this direction, I would request you to conclude your general remarks within 5 or 6 minutes, so that Members will be in a position to put questions to you. Kindly begin.

SHRI K. S. DABKE: At the outset, on behalf of my colleagues, I would like to thank you for giving us an opportunity of personal hearing We are a group of professional Secretaries and we felt that, in our individual capacity, we, as members of the profession, would express our views particularly in respect of the provisions dealing with Secretaries. We are happy to note that, for the first time, the Company Secretary has been given the due recognition in the Act itself. In our memorandum, we have expressed our views on the role of a Secretary, and in particular, we want to stress that for the growth of the profession, we must have necessary qualifications and also experience. We also felt that the present incumbents who are actually working as Secretaries, should continue to be so even after the passing of the Act. We have also given illustrations which in our opinion would constitute as a requisite qualification for Secretary in a sense since the Act does not speak today what the prescribed qualifications should be. We have also dealt with whether a Company Secretary should be whole-time or part-time. We do believe that if the primary object of the Act as stated in the statement of Objects that it is a growth

of profession in such a case a profession should be allowed to grow unhindered and right type of climate should be created. This is a new profession and in the beginning we do feel a company secretary should not be made whole-time secretary of any limited company. We believe let each company decide and in such a case we do believe that the Secretary would be given other burdens according to his own merits—maybe finance, purchases, etc. The present proposal is each company with a paid-up capital of Rs. 25 lakhs should have a whole-time company secretary. We believe it would be desirable that instead of Rs. 25 lakhs if it is made Rs. 50 lakhs.

Lastly, we have suggested that at the moment the definition of a Secretary as proposed in the Bill is purely ministerial and administrative work. We suggest that it should be not only ministerial functions but also of managerial nature. So, the definition should be amended—a secretary means any individual appointed to perform the duties whether ministerial, administrative or managerial nature.

Further, we do believe that the Institute of Companies Secretaries should be given the same recognition as that of Institute of Chartered Accountants and Institute of Cost and Works Accountants. I may say that the Institute of Company Secretaries have already submitted to the Company Law Department an Act to be passed on the same line of Institute of chartered Accountants so that professional body is governed by the specific rules. We do feel a high priority should be given for a chartered secretaries bill which is submitted by the Institute to the Company Law Deptt.

SHRI H. M. PATEL: I think we accept there is need for professional institute but why should the chartered accountants be excluded. Why exclude people who are capable of discharging the duties of secretaries because as you yourself said all companies cannot afford whole-time secretary.

SHRI K. S. DABKEY: We believe chartered and cost accountants are qualified to do the functions of the Secretaries but in future when the Institute comes up and their is a separate body there should not be two streams of secretaries—one who are the members of the profession and others who are not members of the profession.

SHRI H. M. PATEL: At some point of time, you will exclude them.

SHRI K S. DABKEY: Our contention is that the existing Secretaries should continue. The moment, this Act is passed, these Secretaries are allowed to continue. Provision should be made that the existing Secretaries must become members of the Company Institute within a timelimit so that all the Secretaries are governed by the same rules.

SHRI H. M. PATEL: Eventually. only those who are members of the Institute. Secretary should have only functioned as Secretary. It is in the same way as an auditor.

SHRI HIMMAT SINH: Are you, in principle, against the appointment of a whole time Secretary?

SHRI K. S. DABKEY: It should be left to each company to decide whether a Secretary should be a whole time Secretary or not. So, it will be desirable for the growth of provision.

SHRI HIMMAT SINH: In principle you are not against the appointment of a whole time Secretary.

SHRI K. S. DABKEY: No, Sir.

MR. CHAIRMAN: Thank you very much.

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972.

Wednesday, the 24th January, 1973 from 10.00 to 13.45 hours in Council Hall, Bombay

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri Tridib Chaudhuri
5. Shri Khemchandbhai Chavda
6. Shri S. R. Damani
7. Shri Madhu Dandavate
8. Shri G. C. Dixit
9. Shrimati V. Jeyalakshmi
10. Shri Popatlal M. Joshi
11. Shri Baburao Jangluji Kale
12. Shri Jagannath Mishra
13. Shri Surendra Mohanty
14. Shri Muhammed Sheriff
15. Shri Priya Ranjan Das Munsi
16. Shri Narsingh Narain Pandey
17. Shri H. M. Patel
18. Shri S. B. P. Pattabhi Rama Rao
19. Shri R. Balakrishna Pillai
20. Shri Bishwanath Roy
21. Shri P. Ranganath Shenoy

Rajya Sabha

22. Shri Salil Kumar Ganguli
23. Shri B. T. Kulkarni
24. Shri Jagdish Prasad Mathur
25. Shrimati Saraswati Pradhan
26. Shri D. D. Puri
27. Shri Himmat Sinh
28. Shri Habib Tanvir
29. Shri Mahavir Tyagi
30. Dr. M. R. Vyas

REPRESENTATIVES OF THE DEPARTMENT OF COMPANY AFFAIRS

1. Shri R. Prasad—*Secretary.*
2. Shri P. B. Menon—*Joint Secretary*
3. Shri Ch. S. Rao—*Deputy Secretary*
4. Dr. (Mrs.) Usha Dar—*Joint Director*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*

WITNESSES EXAMINED

I. Prof K. T. Merchant, Member—*Company Law Advisory Committee*

II. Shri F. R. Ginwalla—*Corporate Law Adviser, Bombay.*

III. INDO-AMERICAN CHAMBER OF COMMERCE, BOMBAY.

Spokesmen:

1. Shi J. B. Dadachanji
2. Shri C. S. Vidyasankar
3. Shri A. R. Burton
4. Dr. B. V. Bhoota

IV. THE BOMBAY SHAREHOLDERS' ASSOCIATION, BOMBAY.

Spokesmen:

1. Shri Tanubhai D. Desai—*President.*
2. Shri Dhirajlal Maganlal—*Vice-President.*
3. Shri J. C. Mashriwala—*Secre tary*
4. Shri J. D. Mehta—*Secretary*
5. Shri H. B. Perreira—*Assistant Secretary*

V. WESTERN INDIA YOUNG CHARTERED ACCOUNTANTS' FORUM, BOMBAY.

Spokesmen:

1. Shri Jagesh Desai
2. Shri Bansilal Kucheria
3. Shri Rajkumar H. Achhipalia

I. Prof. K. T. Merchant—*Member, Company Law Advisory Committee.*

(The witness was called in and he took his seat)

MR. CHAIRMAN: Mr. Merchant, I on my behalf and on behalf of the Committee welcome you here. I know that your views would be some help to the Committee, you being an eminent person. I am sorry for the inconvenience caused to you yesterday. But, before you begin, I would like

to draw your attention to the direction which states as follows:

> "Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament."

With this direction, I would request you to begin and you can, if you like, stress on some salient features of the Bill, which according to you are important or which, in your opinion, require changes, and then, of course, Members would have the right to put questions and I hope your replies to those questions would be of some use to the Committee. With these preliminary observations, I would request you to kindly begin with your comments in general.

PROF. K. T. MERCHANT: Mr. Chairman, Sir. I am thankful to the Committee for giving me an opportunity for a personal hearing. I would request the Committee not to take my comments and observations, merely as observations of an academician. These are also based upon the observations made by me as a shareholder in the annual general meeting of Companies on the correspondence which I had with Chairman of various Companies. The observations are also based upon my experience in the Tariff Commission. First of all, I would like to make a few general observations. It is known that the present bill is an amendment of the Act of 1956 which was an amendment of the Act of 1936. These amendments were aimed at plugging the loopholes and the present Bill is also an amendment aimed at plugging the various loopholes. The Act of 1956 was a result of comprehensive enquiry by Bhabha Committee and it was an elaborate piece of legislation. It was merely an attempt to plug the loopholes of the Act of 1936, the advantage of which was taken by our businessmen with the help of lawyers and other experts. Many Companies circumvented the provisions of the Act. At the time when the Act of 1956 came into force, there was a feeling at our economy will be doomed because there were too many restrictions on the managing agents etc. It was also said that the Act which changed all these provisions would prove to be far more disastrous to the economy than the physical effects of those provisions. Not only that. These amendments were called as a sort of revolutionary changes and some people predicted the doom of the economy. But, as you all know, nothing of that sort happened and the private sector and also the economy flourished like anything. The same happens to be the verdict today. I have been amused when I see that these provisions are considered as far reaching revolutionary changes and there is also a prediction that this will hamper the growth of our economy. Personally, I believe that a study of the Bill and the Statement of Objects and Reasons of the Bill shows that the present amendments are not adequate enough to plug the loopholes in the Company Law and to prevent the various abuses perpetrated by the corporate sector and to effectively safeguard the interests of the small shareholders and the community at large. I would like to look at the provisions from a number of points of view. First, how far they safeguard the interests of the shareholders. Secondly, how far they safeguard the interests of the community at large and thirdly, and more important, how far they are consistent with the declared objectives of our policy and the Constitution, namely, socialistic pattern of society. Parliament and the people have

accepted the good of the socialistic pattern of society and we have also accepted mixed economy. The Company Law which tries to control and regulate the corporate sector, must be in that direction so that our socialistic objectives can be realised. Otherwise, there is no purpose in bringing forward these amendments. At the same time, you must not forget that the 1956 Act was essentially oriented towards a capitalist structure of economy. The 1956 resolution for a socialistic pattern of society came later on. Bhabha Committee had not at all thought in terms of a socialistic reorientation of the Company Law. Now, that we have accepted it, we should judge the provisions from that point of view. I find that in the amendment Bill, there are a number of loopholes, the advantage of which is likely to be taken by the corporate sector. I would like to mention a few points. The first thing is about the so-called private limited companies. If we examine the history of the last few years, not only in India, but also elsewhere, we find that as the Company Law makes more and more regulations, regarding the public limited companies, which was a vehicle for the economic development of the capitalist structure of the economy during the 19th and 20th Centuries, the trend is towards formation of increasing number of private limited companies and India is no exception to this., In the memorandum, I have given some figures about this also. This is the result of a number of privileges and amenities granted to private limited companies from the operation of the Company Law. To take advantage of that, many of the companies formed themselves as private limited companies. The result is that even big corporations have their own private limited companies. Private limited companies were given exemptions simply because they financed their own business. If a Company is financing its own business by its own funds, naturally, public interest is not involved. But, in recent years, a change has come. We have private limited companies which have very little risk capital. As a matter of fact, there has been a tremendous growth in the so called fixed deposits. There are no effective provisions to safeguard the interests of the public depositors either in the regulations of the Reserve Bank of India or in the Company Law. I will come to that later on. I wanted to emphasise was that the time has now come when we should revoke those exemptions. British Government realised this, and therefore, by the amendment Act of 1967, they abolished the exempted granted to private limited companies. There is nothing like exempted to private limited companies. We should not forget that our Act is modelled on the British Act primarily and, therefore, I suggest that whatever healthy features have been adopted by the British Act during the last few years by way of amendment should be suitably adopted. One thing I would emphasise that private companies now must be amenable to full public accountability because they essentially depend upon public funds e.g., Shakti Trading Co. has Rs. 500,000 capital but has taken loans worth Rs. 28.7 lakhs from scheduled banks and Rs. 51 lakhs unsecured loans. This company has not filed any report since 1967 and even if some action is taken it will invite very small fine. It is considered merely a technical offence. I am glad that now deterrent punishment is provided for.

Another aspect of private companies, that is, the foreign private limited companies. You will find these foreign private limited companies make huge profits. They have very small equity capital and the profits are repatriated to a large extent. I will give one example—Colgate Palmolive. Its equity capital is Rs. 1,50,000 and turn-over was Rs. 8.1 crores, net profit a little over Rs. 1 crore in 1970. Out of this a dividend to the tune of Rs. 72 lakhs were paid. If you look at the various foreign companies you find that they are financed with funds from India. In fact, whatever the funds go to the foreign companies the Indian companies are deprived of

these fund and their equity capital is very small. I am glad certain restrictions have been imposed in the present Bill. We must have full public accountability of private companies and it is necessary to abolish the category of private limited company from the Act altogether.

Another aspect is that most of the big corporations have also their own private limited companies either in their own name or in the names of the relations which are the main source of siphoning off profits to the detriment of small shareholders. That is why I suggest that in the particular proposal of private limited companies whereby the capital requirements are reduced from 25 per cent to 10 per cent and to make the loan capital and operation 50 lakh turn-over of turning the private company into public company are not enough. The best thing would be to aboish the private companies altogether so that all private companies are treated as public companies. The report and balance-sheet are available for inspection by any member of the company. But, mere access to balance-sheet will not be enough but profit and loss account should also be available. The best remedy is to abolish the private limited company. That may or may not be possible or considered desirable at the present juncture. In that case one must not take the equity as criteria but the turn-over above should be criterion of considering private company as public company.

Now, I would like to say that though Section 408 provides for appointment of government nominated directors to safeguard the public interest in actual effect they are ineffective. I can tell you from my own experience, Government appointed me as director on the 4th December of Indian Express News Papers (Bombay) Pvt. Ltd. After my appointment I asked for an urgent meeting of the Board but uptil now no meeting has been called. Excepting replying to the first letter my other letters have not been acknowledged. I would like to know how the purpose of Section 408 is served by merely nominating a person as government director. The capital of this company is small but they have taken public deposits at the end of 1970 to the tune of Rs. 11 crores and they are refusing the repayment of the same. Today they are giving post-dated cheques. Now, the question that arises is how the government nominated directors can be effective. I am told in a number of companies where there are Government nominated Directors, the major decisions are taken outside Board meeting. The Board of Directors consists of persons belonging to 'the charmed circle' either family members or the relation or the friends and an independent Director is never to be found in any company. Very few companies have independent Directors. It is true that the managing system has been abolished. Yet you find the son succeeds the father. They have been appointed without any qualification simply because they happen to be members of the family or friend's family. If major decisions are taken outside the regular Board meeting, how on the Government Director be effective?

Then there is another aspect of the structure of the companies. Interlocking and inter-investment we taking place. Indian Express Newspapers, is a holding company; it has got four subsidiaries. Then one subsidiary has got three subsidiaries. One subsidiary has got another subsidiary. But the worst thing is that the holding company along with the three subsidiary companies has formed a partnership firm. If you look at the partnership agreement, it is most astouding thing that I have come across. The partnership firm, does not come within the purview of the Company Law at all; it comes within the purview of the Income Tax authority because their accounts are to be shown. Partnership firm deals in shares and the stock exchange operation and as a matter of fact, this compuny has come into trouble. These partnership firms are not at all amenable to the

legal provision of the Act. I do not know how you can tackle this problem. The four companies are partners. Under the Partnership Act, even a company can become a partner. But these are wholly subsidiaries. As the law stands today, this is legally feasible and proper and through this means, the manipulations are made. I, therefore, suggest that amendment must be made to the Partnership Act or to the Companies Law whereby a company cannot become a partner; only an individual can become a partner. There is another inconsistency. The company has got the limited liability. They are partners of the partnership firms and each partner has an unlimited liability. But the partners being a company, here got limited liability. I suggest that no company should be allowed to become a partner of any firm. Then as far as deposit is concerned,....

MR. CHAIRMAN: I think you may leave the matter of deposit, because it has been amply made clear by so many witnesses. You can take up some other subject.

PROF. K. T. MERCHANT: In these deposits there are also plenty of loopholes The RB rules and regulations are there. I had a lot of discussion with the Dy. Governor as the nominated Director because deposits to the tune of 11 crores of the public were involved. According to the definition of the deposit, if any deposit was secured or guaranteed by a Director, it did not fall within the definition of the deposit. I learnt that all the deposits taken by these companies as well as a number of other companies are guaranteed by a Director. The result is that they do not come within the purview of the RB at all. That is very dangerous simply because the deposits are guaranteed by Directors, they ceased to be deposits; they are not secured loans. That loophole was removed by the new amendment to the rules. But there was another loophole on which attention has been paid by the companies and that is Rule 2(1) and (ii) (read). As soon as these amendments came, it is said that the Indian Express took advantage of that and created equitable mortgage. Here is a letter addressed to them. As the things stand by equitable mortage, they are not within the purview of the RB. The new RB rules exempt the money received by one company for another. It will be excluded from the definition of the deposit. That is a very serious omission. That would leave all the companies of the subsidiaries, etc. to move fund from one company to another. There is one company United Breweries whose balance-sheet and report are worth consideration. It has got so many subsidiaries and so many associate companies. I was completely baffled. I have given a copy to the Company Law Board also and to Dr. Hazari requesting them to help me in understanding the whole thing. The funds are transferred or being pumped in certain losing concerns—subsidiaries or associates. In other words, this is to the detriment of the shareholders or the main company as well as for the general public. The rule that the money received by one company from another will be excluded from the term deposit. I suggest when rules are made by the Company Law Board to control these deposits, these clauses f(ii) and (v) should be deleted and there should be coordination with Reserve Bank.

There are so many examples. But this is not the place and this is not the time to mention all those. We must control that. Therefore, in the report, investments and loans must be given fully, and full details should be given. Then, there is another aspect to which I would like to draw your attention. You must have heard about Dena and Sons. They had amounts of deposits over one crore or so and they are not paying at all. I think, the case is going on. The Directors and other people have been put in jail. The ground was,—I understand from the Reservce Bank of India—that this Company claimed to be Hindu undivided family and there-

fore they do not come within the purview of the regulations of the Reserve Bank of India at all. I mean, there is no legal restriction. From that point of view, I would suggest that Section 11 Clause (d)(3) should be deleted. This deals with joint families. In other words, illegal associations and Hindu undivided family etc. should be so that this type of abuses may not take place. Whatever the rules and regulations to be made, in connection with deposits, the interest of the public should be safeguarded and the main thing is to safeguard the interests of the public. We were told that very high rates of interest were offered. This was as much as 6 to 7 per cent higher than that offered by other companies. They gave very high percentage to the brokers as commission and the brokers tried to bring them. I need not give you all the details. The result is that with the Reserve Bank of India there the public really think that their money will be safeguarded. But, the lacunae in the rules of the Reserve Bank are there. Something must be done to safeguard the public interest. It is true that the public are gullible. They are attracted by higher rates of interest. I am mentioning this not from the point of view of the individuals but its repurcussions on the economy as a whole. Even if a person is gullible, the State must protect him. From that point of view, some sort of deposit assurance scheme should be thought of. Then, the next point is regarding auditors. In this connection, I would like to say something, with regard to the amendment of Section 224. I think this amendment is not enough. The requirement of the approval of the Government after three years will not improve the position. In this connection, I would like to invite your attention to the question of payment to auditors for other services. You will find that the Managements pay to same auditors for other services rendered, amounts which are fantastic in relation to payment of audit fees. In theory and letter, auditors are appointed by the shareholders. This is a fiction and a myth. Really speaking, managements appoint auditors. Shareholders have no say in the matter at all and even if they are supposed to report to the shareholders, yet, what happens is that the Managements pay very high remuneration to their auditors for other srevices rendered. I have raised this question in a number of meetings as well as in some articles. I understand that the Company Law Board is making some investigations into the matter. The main thing that I would like to point out to you is that there is a general practice of the auditors submitting confidential notes or reports to the Chairman or the Managing Director which I understand is not placed before the other Directors. Really speaking, auditors are liable to report to the shareholders, and therefore, whatever confidential notes are given the Management, they must be given in the report and must be made known to the shareholders. There is another point which I would like to mention about auditors and this is in connection with the so-called casual vacancies. Under the Act, casual vacancies of auditors can be filled in by the Management. But, the casual vacancy is not clearly defined. Suppose, in an Annual General Meeting, a resolution is passed appointing so and so as an auditor and that person refuses to act this cannot be treated as a casual vacancy. But, this is regarded as a casual vacancy. I bring to your notice a very glaring example, on which I do not know whether any action has been taken by the Government or by the Registrar of the companies. This is in connection with Belapur Sugar Company. The 1968 audit report was signed by M/s. Ferguson and Company and there was another Kalyaniwala and Company. Fergusons made some remarks about un-secured loans. But, the other Company did not make any remarks with the result that the accounts were passed. Then, came the merger and it was surprising to find that in 1969, Fergusons did not figure as auditors. The merger was between Belapur Sugar Company and

Gangapur Sugar Company. In the report of 70, the name of one Mr. Bhagwat figures as auditor. He was the auditor of the Gangapur Company and on merger he became the auditor. The merger is a very interesting story and this is not the time and place to dwell on it. Now, Mr. Bhagwat also made some remarks about un-secured loans. The result of that was, in the 71 report, Mr. Bhagwat did not figure as the auditor. We find that in the space of 3 years, two auditors were changed. I understand that Fergusons had refused to act. There is no dismissal of the auditors at all. This is like Government Service, where people resign. Resignation is an act of dismissal. But, you cannot call it dismissal. Thus, auditors have been changed like that.

MR. CHAIRMAN: May I request you to come with concrete suggestions with regard to auditors. You have certainly pointed out cretain deficiencies. But, have you any concrete suggestions. What are your concrete suggestions with regard to the amendment of Section 224?

PROF. K. T. MERCHANT: My point is clear that the Law cannot do it. The Institute of Chartered Accountants should take some action. In America if one auditor refuses to act, another persons does not accept that.

MR. CHAIRMAN: That is correct. That is with regard to casual vacancy that you are talking of. Do you approve of amendment of Section 224? Have you any alternative suggestions to that amendment?

PROF. K. T. MERCHANT: At present the auditors are appointed at the annual general meeting but thhey are actually the nominees of the management. My suggestion is another auditor should be appointed by the Government. There should be joint auditors. There should be periodical auditing by the auditors appointed either by the Government from their own auditors or from outside auditors.

The next point is about directors—amendment to section 269. Here we find a fit and proper person in subsection 3(b). The words fit and proper persons are too vague, it is necessary to define what is 'fit and proper person'. Certain specific qualifications should be laid down for directors by the Act.

Now, Managing Directors or full-Directors are supposed to be full-time employees of the company but as the law stands today they are allowed to be directors in other companies. If a person is director of another 19 companies where does he get time to attend to the affairs of his company? I, therefore, suggest the number of 20 should be reduced to 5.

Now, about legal profession and the accountancy profession. The partner of a solicitor firm or legal advisors firm should not be appointed as director. Similarly, when a particular firm of chartered accountants are auditors of the company then a partner of the firm is not appointed director because there is conflict of interest and they cannot be objective in their assessment.

Now, amendment to Section 340. Here we find today the powers are only in the case of winding up. We also find that honorary advisors are not included. You should qualify this to cover the honorary advisors and honorary consultants and the word 'remuneration' would also include the honorarium paid to so-called honorary advisors.

Then there is the question about taking-over. Suppose, the company is mis-managed and Government wants to take-over, there is no provision whatsoever in the Act for taking over the management with the result you have to go to the court of law. So, provision should be made where there is mis-management the Government has power to take-over the management.

Now, about disclosures. Today there are not many disclosures and I would suggest that like Section 17 of

the British Companies Act you should have provision balance-sheet and profit and loss account should be given for each class of business.

Evaluation of stocks--guidelines should be given by Government for evaluation of stocks because mere certifying by Managing Director is not enough because it is through the evaluation of stocks that financial manipulations are being done by the company which affect depreciation as well as tax-liability. Today there is immunity under the Act enjoyed by accountants, lawyers and other professionals. Now, this should be withdrawn. It is necessary that the public interest should be safeguarded. The Director's and their relation's interest in shares and debentures of the company and allied company at the end and at the beginning of the financial year, as is under the British Companies Act, 1967, should be disclosed, so that if there is any manipulation, that will come to the notice of the shareholders. The Court procedure is very lengthy. You can find that immediate action cannot be taken at all. It is high time that we revive the suggestion that was made by Bhabha Committee. An Independent Commission or a Company Tribunal was established in 1963 and worked for three years. In July, 1967, it was done away and the ground was given for procedural delays. I do not know why a tribunal cannot expedite the procedure. I do not remember exactly the circumstances under which the Company Tribunal failed to work properly. The time has come when it is necessary to revive it so that the Act can be properly implemented and enforced. Otherwise, the purpose will not be served.

About selling agents, A.B.C: companies have appointed another foreign private limited company as selling agents. But the full information has not been given to me at all. No foreign companies should be allowed to be appointed as selling agents under any circumstances; they should not be allowed for trading purposes at all. The proposals are there about every company has its own selling department. A company wants to have its own selling department and yet for five years' period, they continue. The agreement of selling agencies with these foreign companies by the new amendments is that these companies...

MR. CHAIRMAN: We could follow your point that no foreign company should be appointed.

SHRI MADHU DANDAVATE: You have raised very controversial point. You have said that in our country private companies are only private in name because they heavily draw from the financial institutions. It is now quite essential we should actually abolish this category of private Ltd. companies in tune with the 1967 Act in Britain. There is one school of thought which speaks that in Britain the control was not at all rigorous and therefore it did not work. Assuming that, what have you to say?

PROF. K. T. MERCHANT: I have come to the conclusion that it is high time that the private Ltd. companies should be abolished because they exploit must have the position. Today, the important point in our country is that it depends on public finance and their full public accountability. In other words, they must be put under the same checks as Public Limited Companies. The argument regarding growth is that I am not convinced that the growth will suffer. I find that a number of small companies which are started, they are started to take advantage of the vast facilities that are given to small entrepreneurs. But most of them are captive companies. In other words. through the institute of small private Ltd. companies, they get the advantage. Privileges are given to the small people. I do not know, if at this juncture, you do not want to abolish private limited companies, the amendment can be made so that turnover alone should be the criterian and not the capital.

SHRI MADHU DANDAVATE: At present, companies have got the right to go to the court if they find that there is mismanagement of the company. Now, there has been persistent demand from trade union organisations, Chief Ministers that shareholders have got the right to go to the court. Similarly, representatives of the workers through the representative unions should also have the right. What you have to say about that?

PROF. K. T. MERCHANT: Shareholders can go to a court. But, to my mind, that is merely on paper. It is very costly to go to the court. It is in theory.

SHRI MADHU DANDAVATE: I would like to draw your attention to the positive aspect. I am not questioning.

PROF. K. T MERCHANT: In Britain, an experiment was made. Now, I am in favour of workers. If you can make a provision that workers can go to a court of law, you can do it. So far as the public Ltd. companies are concerned and the trade unions are concerned, today, we have come to such a stage where we do not know about the role of the trade unions and the workers. Today, the situation has come, as I call, my theory is that there is holy alliances between the capital and the labour. There is an unholy alliance between capital and labour to exploit the consumers.

SHRI MADHU DANDAVATE: There is another question.

MR. CHAIRMAN: Would you agree with that?

SHRI MADHU DANDAVATE: I am only asking clarifications.

PROF. K. T. MERCHANT: Let me complete. I am glad that I have been given this opportunity of proponding my theory in public. I have been feeling about it for a long time. I have talked to my friends and you know my views. I have been a socialist from the very beginning.

SHRI MADHU DANDAVATE: Nowadays all are socialists.

MR. CHAIRMAN: But, it is very difficult to convince one Professor.

PROF. K. T. MERCHANT: I should not be mis-understood as anti-labour. If I say something, which is against labour, I am immediately downed as capitalist or a fascist. If you look at the present.....

SHRI MADHU DANDAVATE: There is one more question. As far as audit system is concerned, one extreme is to give a free hand to the auditors, as it exists today. One concrete suggestion has been made, and that is, the Institute of Chartered Accountants should maintain a panel and from that panel, by rotation, auditors should be picked up. There is another suggestion that there should be two independent panels, one of junior and another of senior experienced auditors and every time one should be picked up from each so that the process of collusion and also too much interference by the Government can be eliminated.

PROF. K. T. MERCHANT: I did not follow your question.

SHRI MADHU DANDAVATE: As far as the audit system is concerned, one concrete suggestion has been that the Institute of Chartered Accountants should maintain a panel and let there be two panels, one of senior and another of junior auditors, and by rotation, persons should be picked up from the panels, one from each, so that there will be no collusion.

PROF. K. T. MERCHANT: There is already the suggestion what is called nationalisation of audit service. Prof. Gadgil suggested nationalisation of audit service. I, for one, have come to the conclusion, that mere nationalisation will not serve the larger

national interests. You cannot also take away the rights of the shareholders to appoint auditors. I have suggested two joint auditors, because, the right of shareholders will be protected, and at the same time, there will be a sort of counter-noise by the Government appointing auditors. If there are any deficiencies, Company Law Board would be able to judge and take remedial action.

SHRI H. M. PATEL: You have said that many private limited companies are drawing loans from financial institutions. Therefore, for all practical purposes, they are public limited companies. There are about 30,000 private limited companies. Would you say that a vast majority of them do like this, or have you made any statistical study? My impression is that a very considerable percentage of private limited companies do not have recourse to large borrowings from public financial institutions.

PROF. K. T. MERCHANT: They may not be bothered about public deposits. But, they take loans from public financial institutions. Bank is a public financial institution. The funds from these institutions are public funds, and therefore, they must be amenable to public accounting.

SHRI H. M. PATEL: You consider small companies which borrow from Banks, also to be public companies. Now, the Banks are nationalised. Otherwise, they would not have....

PROF. K. T. MERCHANT: Even if they are not nationalised, I would suggest that a Bank is a public financial institution.

SHRI P. R. SHENOY: If, according to you, many of the private limited companies are used for you must have come across winding up of companies every year. Do you think that many private companies are being wound up in this country every year?

PROF. K. T. MERCHANT: I do not have the statistics. I do not think any companies are wound up.

SHRI P. R. SHENOY: You referred to *Indian Express* and said that this company has received a loan of about Rs. 11 crores.

PROF. K. T. MERCHANT: That was in 1970. I do not know the present position. Two years have passed and no accounts are available.

SHRI P. R. SHENOY: Were you on the Board of Directors when this amount or any part of it was sanctioned?

PROF. K. T. MERCHANT: No.

SHRI JAGDISH PRASAD MATHUR: As a Government Director, you say that you have been helpless to be effective in the affairs of the Company. Do you suggest some measures to make the Government Directors useful or merely a majority of Directors will serve the purpose?

PROF. K. T. MARCHANT: I and my colleagues asked for an urgent Board meeting. I wrote a letter to Mr. Goenka, Chairman of the Company saying that an urgent meeting of the Board should be called to discuss the various issues. The reply was sent to me by the General Manager.

MR. CHAIRMAN: That apart, the question of the hon. Member is, what is your suggestion in this respect.

PROF. K. T. MERCHANT: I would suggest that Directors have no right to requisition a meeting. The right should be given to the Government Directors to requisition a Board meeting.

SHRI S. R. DAMANI: Will you kindly tell me, with regard to whatever you have said about private limited companies, what is the source of your information? On what basis, you have given the figures.

PROF. K. T. MERCHANT: I have already said what I feel about private limited companies and that now conditions have changed, there is no role for private limited companies.

SHRI S. R. DAMANI: I want to know....

MR. CHAIRMAN: He is asking about the source of information with regard to private limited companies, about which you have said.

PROF. K. T. MERCHANT: My source of information is published figures. These are from the examination of the balance-sheets from the files the Registrar of Companies.

SHRI S. R. DAMANI: According to you, what is the definition of public finance?

SHRI D. D. PURI: I would like to draw the attention of the witness to page 4, last para of his memorandum where they use the word 'emoluments' has been recommended. I would like to ask the witness if he had seen the proposed section 271(11)(a). This covers all the perquisites.

PROF. K. T. MERCHANT: I came to know of it later but honorarium is not covered by the word 'remuneration'.

SHRI D. D. PURI: In your memorandum you have referred only to perquisites which are specifically covered.

[*No reply*]

SHRI D. D. PURI: According to the figures given by the witness, the number of public limited companies in India has gone. It is 2|3 of what it was in 1956. Would the witness accept this as a satisfactory state of affairs for the growth of the Indian economy and what is his explanation of the number having gone down?

PROF. K. T. MERCHANT: The explantation is through the amendment Act of 1956 more and more restrictions were placed on public companies with a view to avoid that and take the advantage of private limited companies the number of private limited companies increased. The number may go down but the total capital will increase.

SHRI D. D. PURI: Does the witness consider it a satisfactory state of affairs from the point of view of his professed socialism that the number of public limited companies should go down even when their production is increasing?

[*No reply*]

SHRI D. D. PURI: It is suggested that public limited companies turned into private limited companies.

[*No reply*]

SHRI D. D. PURI: It has been suggested to us that the only scientific distinction between a Public limited company and private limited company is that if in a private limited company it can be assured that the interest of the general public is not involved either in the equity capital or in the borrowing, if this is assured, would the witness still suggest that private companies should be abolished?

PROF. K. T. MERCHANT: If the private limited companies do not borrow money from public institutions or from public it will be all right.

SHRI D. D. PURI: In so far as the borrowing from public institutions is concerned, particularly banks, etc. this is presumably secured borrowing against stocks, against building and machinery. If a partnership is allowed to borrow against stock, if an individual is allowed to borrow against stocks, what is the objection to private limited companies borrowings against valid security.

PROF. K. T. MERCHANT: What I would like to say is that in the private limited companies the number

of share-holders is limited. What would happen is the share-holders might borrow money from others and pass the money as theirs. This is a danger. It is better to avoid that possibility and frame rules.

SHRI D. D. PURI: An individual can borrow money and throw it down the drain, what rules can be framed against such an eventuality? In regard to concrete case you give *viz.* Colgate, Palmolive, having regard to the fact that no Indian capital, no capital of the Indian public is involved, would it make any difference, how would it improve matters if the Colgate, Palmolive functioned as a public limited company. I am not dealing with the question whether they should have been granted the licence for manufacture of a consumer product. That is not a matter regulated by the Companies Act, but the licence having been granted, how would it improve matters if it functioned as a public company since public is not interested in it, either as shareholders or as creditors.

PROF. K. T. MERCHANT: I here give you the illustration of Palmolive Company. But, there are a number of other companies like that.

SHRI D. D. PURI: You have stated that one of the companies in which you are a Director, that have taken deposits from the public and those deposits are not being repaid. That cheques of Rs. 2,000 are bouncing. Are you aware that there is a provision in the Companies Act that where a company is unable to meet its liability, it can be sent into liquidation. Private limited companies are not excepted from the provisions of this section, you have also stated that private companies are siphoning their money into public companies. Can you give any concrete instances?

PROF. K. T. MERCHANT: There should be a public accountability of the private limited companies.

SHRI D. D. PURI: You are advocating complete abolition. You have mentioned that where auditors refused to take up audit it should not be treated as a casual vacancy and the directors should not be permitted to fill it without reference to shareholders. If a provision is made in law that before any auditor is put up for election to the shareholders, their previous consent should be obtained, would this satisfy you?

PROF. K. T. MERCHANT: It is not enough to merely require the consent of the Government.

SHRI D. D. PURI: Secondly, do you think that the security of tenure for an auditor *viz.*, that the management should not be free as it is today to remove the auditor every year. Would that not be conducive to independence of audit?

PROF. K. T. MERCHANT: To some extent, this will meet the difficulties.

SHRI D. D. PURI: And, therefore, to the extent that it will meet the difficulties, automatic changing of auditors every three years as proposed, is a step in the wrong direction.

(*No reply*)

SHRI D. D. PURI: You have stated in regard to evaluation of stocks, that these affect the profit and loss and thus the taxation. Are you aware that income tax authorities have extensive power and authority to go into the basis of stock evaluation and they do it very minutely and in many cases they do not permit any change in the system of stock evaluation when it is once adopted?

PROF. K. T. MERCHANT: As a matter of fact, the question raised is very complicated one. The problem is not only here but in England also. Shareholders everywhere and all the authorities are asking for definite guidelines about the method of stock evaluation. But my point is that it is

through this that the entire manipulation is made. Even now, there are certain guidelines given.

SHRI D. D. PURI: Are you aware of the provision of the Income-tax Act in this regard?

PROF. K. T. MERCHANT: No, Sir.

SHRI HIMMAT SINGH: You have kindly observed in your notes that this legislation is not going to solve the problem. One of the problems that faces today is the drain on foreign exchange. I entirely agree that unless some drastic measures are taken, it cannot be solved. Would you not say that in order to stop it rather than including it into legislation, for a separate piece of legislation, we have to stop the functioning of such and such concern—definite drainage on foreign exchange?

PROF. K. T. MERCHANT: I said that these are not radical enough. What I mean to say is that with our socialistic objectives, they are not quite consistent. What I mean to say is that they will plug some loopholes. What is required today is a thorough export enquiry with a view to have socialist reorientation.

SHRI HIMMAT SINH: You have suggested foreign branches, subsidiaries in our country should be prohibited. I agree that the independent branches in foreign countries should also be disbanded. Because I feel that our Commercial Departments functioning in foreign countries have carried on the functions of the Indian Companies? Would you agree with that?

SHRI K. S. CHAVDA: The witness has expressed his views on amendment of Section 43-A. A private company just becoming a public company on the basis of sales turn over of Rs. 50 lakhs. If the turn over comes down to Rs. 40 lakhs, what would be the position? One of the witnesses who appeared before the Committee has said that this amendment also is silent on this point. Would you please offer your views on this point?

PROF. K. T. MERCHANT: As a matter of fact, this very danger I have pointed out in my memorandum that there is a possibility of private limited companies escaping this by reducing their turn over. A private limited company may split up into two or three, with a view to avoid these laws. I have suggested complete abolition. What I have said is that if abolition is not possible, the criterion of turn over alone should be the condition for deeming a private company as a public company.

MR. CHAIRMAN: We are thankful to you.

(*The witness then withdrew*)

H. Shri F. R. Ginwalla—Corporate Law adviser, Bombay.

(*The witness was called in and he took his seat*).

MR. CHAIRMAN: Mr. Ginwalla, I welcome you here on my behalf and on behalf of the Committee. I think your evidence would be of some use to the Committee. Before you begin, I would like to draw your attention to one direction which states as follows:

[*Direction 58 was read out*]

With this direction, I would request you to make your general observations in as short a time as possible and in any case, it should not exceed more than ten minutes. We have still to examine a large number of witnesses. After you make your general observations, hon. Members would be asking questions. Please begin.

SHRI F. R. GINWALLA: Mr. Chairman and the members:

My object to appear before this committee of Parliament is to bring to its notice the doubts and defects, the drawbacks and the blemishes in the drafting of this bill with due regard to the underlying priciples of the existing Act, namely, public interest and socio-economic progress of the country.

Mr. Chairman, your committee is required to perform a formidable task in a limited time to consider the views expressed from various quarters and to submit its report to the Parliament after its own assessment of the changes proposed to be made in the Company Law in this country.

The Bill, as you are aware has been criticised as making arbitrary and unnecessary changes in the existing Company Law, suggesting cumbersom procedure in regard to certain matters, and including in it several provisions which do not find a parallel in the English Act. Apprehensions has also been expressed that private companies will virtually become extinct under the Bill, and that the Bill would deter investment and inhibit enterpreneurs. Similar apprehensions, it will be recalled, were also expressed when the bill amending the existing Companies Act was discussed in Parliament in November, 1955. There is, however, a tendency on the part of the vested interest to view the Company Law reforms from an angle as may suit their inclination or their limited experience and to overlook the need for a change and even resist it. As frightened children look everywhere for the imaginary ghost, so vested interest sees danger in all directions. It is important to appreciate that it is not wise to take a halting and a half-way position in bringing about reforms in Company Law. The muddy river-bed must be stirred in order to purify the stream.

I recall here a story of a Shepherd who was taking on his shoulder a goat to sell in the weekly market. On the way he was accosted by some thieves who told him that why was he carrying a dog on his shoulders. This puzzled him but he worked on. He met other thieves who told him the same thing. He was convinced that all people could not be wrong, in telling him that he was carrying a dog and he began to doubt his own understanding and believed that he was carrying a dog and set it free. The thieves escaped with the goat. They roasted the goat and made merry themselves. I do not see much difference between some of the critics of this Bill and the persons who persuaded the shepherd to set the goat free. The committee will have to be on constant guard against this possible danger Nevertheless, in all humility I submit that due regard should be given to the views and suggestions made from various well informed quarters.

Though it may not be always possible to foresee every possible result that may ensure from the language in which a provision is couched nor may it be always possible to frame an exhaustive defenition of expressions, words and phrases applicable to all situations, the need to eliminate the doubts, defects and blemishes in the drafting of this Bill can hardly be stressed.

With these preliminary observations, I will first make my submissions on clause 3, Section 4B on page 3 and on clause 5, Section 43A, on page 4 of the text of the Bill which inspire controversy. I will then, Mr. Chairman with your permission, briefly deal with my other submissions which I have made in the memorandum which is before you. Clause 3—New Section 4 B. The expression 'Companies under the same management' is deleted from Section 370(1B) and is redefined in Section 4B. Most of the provisions of the existing Section 370(1B) have been retained. The concept of control is equated to holding of more than one third of the shares either singly or together with relatives or group of persons. The effect

will be that if one company controls one third of the shares of the other, both shall be deemed to be under the same management. Nine circumstances have been spelt out for treating two bodies corporate under the same management. Attention may be invited to sub-clauses (iii) & (v) and (vi). No voting rights are attached to preference shareholders unless they have such rights under the terms of the sub-section. I submit these sub-clauses need clarity of language.

Then amendment to Section 43A. Amendment to section 43A, extends the concept of public interest to private companies. Under the concept of 'public interest' as enlarged, the public interest is to be determined not only with reference to the distribution of shares but also with reference to the size of a private company, and also with reference to investments in a public company.

Private companies which will be affected with public interest are:

(a) Where 10 per cent or more of of the paid up capital of a private company is held by other corporate body.

(b) Where a private company has a paid up capital of Rs. 25 lakhs and a turnover of Rs. 50 lakhs.

(c) Where a private company holds more than 10 per cent of the paid up capital of a public company.

The existing percentage of 25 per cent is now reduced to 10 per cent and two more circumstances which would affect a private company with public interest have been spelt out as above.

Re-definition of the expression' companies under the same management' of Section 43A, have not to be viewed from purely technical or legalistic aspects. No law can be insulated against the country's economy. As the country develops more and more social needs will have to be satisfied. However, it is argued that when Section 4B is enacted and when Section 43A is amended the combined effect of these Sections will produce results which might be absurd beyond belief It is also argued that the distortion of language preceds distortion of thought and therefore the distorted language of the proposed sections represents distortion in the Government's thinking. I submit that there should be some rethinking on the drafting of these Sections with a view to provide an easy and expeditious understanding of their meaning and effect.

SHRI POPATLAL M. JOSHI: There is a suggestion that there should be an auditor on behalf of the Government and the auditor elected by the shareholders. Do you think joint auditing would suffice?

SHRI F. R. GINWALA: Yes, it would be sufficient.

SHRI POPATLAL M. JOSHI: You have suggested certain offence—not submitting accounts, reports, etc. You have suggested that the Director should be removed. Do you think it will be sufficient deterrent?

SHRI F. R. GINWALA: Yes. It is a very wise remedy.

SHRI POPATLAL M. JOSHI: There is a provision that Government can appoint as many directors as they like. What is you experience of the government directors which are already on certain companies?

SHRI F. R. GINWALA: It is a healthy practice.

SHRI POPATLAL M. JOSHI: Now, Section about remuneration drawn by a director. He has to notify to the government as to what remuneration he has drawn.Don't you think instead of remuneration 'emoluments' should be substituted. Would it include all the benefits derived by a director?

SHRI F. R. GINWALA: That would be better.

MR. CHAIRMAN: Have you got anything further to say?

SHRI F. R. GINWALA: One of my submissions regarding deposits is that there are many companies which accept deposits through their agents. There is no provision in the proposed section 58A for dealing with such companies. The company itself will not do anything. It being behind the persons who canvass. These people are responsible for creating loss to the public. Therefore, some amendment should be there. The company ought to canvass directly. The R.B.I. has recently issued certain directions and they should be consistent with the proposed amendments. That is what I have analysed in my memorandum.

SHRI JAGDISH PRASAD MATHUR: What is your opinion about the transfer of the Registered Office of the company from one State to another State? Suppose, a factory is established in the State of Bombay and its Head Office is located at Calcutta. In this respect can the people of this State say that the Head Office should be there. In this case, what should be the proper way?

SHRI F. R. GINWALA: Under the provision, the Head Office may be anywhere in India. Some provision should be made; some guidelines should be there.

SHRI JAGDISH PRASAD MATHUR: what is the guideline?

SHRI F. R. GINWALA: The powers have been given to the Central Government to do this, whether to allow it or not. Then the State Government concerned might take an objection, something like that. There is no provision in section 17 which is proposed to be amended.

MR. CHAIRMAN: Thank you very much. I, on my own behalf and on behalf of the Committee thank you very much. I hope your views should be of some help to the Committee. I think your observation are very good Thank you.

(The witness then withdrew)

III. Indo-American Chamber of Commerce, Bombay.

Spokesmen:

1. Shri J. B. Dadachanji
2. Shri C. S. Vidyasankar
3. Shri A. R. Burton
4. Dr. B. V. Bhoota

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Mr. Dadachanji and friends of the Indo-American Chamber of Commerce, I, on my own behalf and on behalf of the Committee welcome you all here. Before we begin, I would like to draw our attention to the Direction which states:—

"The witness may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

Now you can start with you observations.

SHRI J. B. DADACHANJI: We are grateful to you for giving us this opportunity to appear before this Committee to express our views on the

subject. We have highlighted certain aspects in regard to the repercusions that this Bill may have upon private and public companies. It appears to us that in many respects, the concepts of the Monopolies Act are sought to be applied to smaller companies and one has to see whether the considerations which may be appropriate in the MRTP Act would be appropriate to smaller corporations. For instance, group definition and the question of control. We have pointed out in our submissions that for both these concepts, it would be necessary to have a clear idea about what the concept the legislature has when it uses terms like exercising control or constitution of a group. In regard to the definition of same management, we have pointed out the simple fact that two companies own 1|3rd shares in each other *ipso facto* brings them under 'same management' or if there are common Directors *ipso facto* come under the 'same management'.

In our humble submission, such a simplicit a definition may lead to many hardships and we would suggest that a concept of acting together continuously of bodies and individuals and individuals and bodies or bodies together, acting in a consort or in unison continuously, such a test of criterion should be there before it could be said that there is 'same management'. In the definition that is sought to be given, this idea, in our submission. should be a permanent idea because there may be groups of people who may be genuinely acting together. There may be common Directors who may be required. They may be financial experts. For instance, if there is a small company having three Directors and one Director is a financial expert and that financial expert is also a Director in a very large Corporation, then, by reason of this definition, that small company, if I may say so, a mushroom company, will become part of the group of the large giant by the mere fact of there being a common Director. These are certain features, Mr. Chairman. which we have tried to point out which might lead to hardships. Then, we have also pleaded that the Court's jurisdiction in regard to certain matters such as amendment of the memorandum and other sections which we have mentioned in our submission, should not be taken away because these are matters which are essentially of a judicial or a quasi-judicial nature. Then, Sir, we have also pointed out that this question of deeming a private company to be a public company, may lead to many hardships. Mainly. the small scale industries would be put to a great hardship. For instance, if a small enterpreneur starts a small company and then he invests 10 per cent in other company, and if it deemed to be a public company, then, it would lead to great hardships. We have also pointed out about the question of deposits, that it would create lot of difficulties in the expansion of the corporate sector, in corporate activity, and the delays that will be involved in getting permission from Government either to sell or purchase shares. We have also pointed out, whether there should not be a revision of the section dealing with distribution of dividends. It would very vitally interfere with the functioning of a company, if dividends are to be paid out of reserves and for that purpose. Government's sanction is required. We have also commented on the question of appointment of auditors, that it would be better to leave it to the company to decide about the continuance of auditors. About this appointment of sole selling agents, it would lead to difficulties, if by a notification, certain industries are precluded from having sole selling agents because economic cycles are unpredictable and it may be that a particular industry, which has a seller's market will become a buyer's market. For proper organisation of business, no doubt. Government should have control in the appointment of sole selling agents. But, to have a blanket provision, in certain cases, in our submission, would mean hardship. We have also pleaded that some appellate body should be there, just as there is an appellate body in the Foreign Exchange Regulation, Foreign Exchange

Appellate Tribunal, because executive discretion is involved in almost all important corporate functions, either to get sanction or not to get sanction. There are no guidelines laid down as to in what manner the sanction should be given or should be refused. Of course, one argument is that the executive authority will act bonafide and so on. No doubt, that may be so. But, there must be a safeguard because such vital matters are involved. For instance, a Company which has vast resources wants to diversify and therefore want to amend its memorandum and it goes to the Government and some Officers might say that they would not allow. it. One would suggest that an appellate body, just as we have in the Income Tax law and also in the Foreign Exchange Regulation, should be set up, so that, Foreign Exchange Regulation, should be set up, so that, executive actions may be reviewed or revised. Since the powers are so wide and extensive in their operations, that if they are not subject to review, hardship would be caused.

SHRI P. R. SHENOY: You are not in favour of getting Government's approval for the acquisition or transfer of shares beyond certain limits, because, that would involve delay. Will you be satisfied if some time limit is imposed for getting Government's approval or otherwise?

SHRI J. B. DADACHANJI: We would submit that the percentage, which is given as 25 per cent is certainly a very low limit, because, w are not dealing with big business houses. There is a separate Act which deals with big business houses. You will appreciate that even in the Industries Development and Regulation Act, no licence is required if the assets of the company does not exceed one crore. Here also, some such provision should be there.

SHRI JAGANNATH MISHRA: May I draw your attention to Page 14 of your memorandum. Clause 25 requires Companies to obtain prior sanction of the Central Government for entering into contracts in which Directors may be interested or concerned. What are your objections? In our opinion, it appears to be a well-intentioned and a pious proposal.

SHRI J. B. DADACHANJI. As far as we read the section it means any contract which is over Rs. 25 lakhs requires the sanction. If the director is interested then, of course, in our submission it may go to the general body of share-holders. We would submit it is sufficient if it goes to the annual general meeting of the shareholders and if the shareholders approve it would be a sufficient safeguard.

SHRI JAGANNATH MISHRA: Prior sanction of the Central Government is necessary. What is the objection?

SHRI J. B. DADACHANJI: Central government's permission should not be required because it will cause lot of practical difficulties.

SHRI POPATLAL M. JOSHI: At page 1 of your memorandum you have suggested there would be considerable delay in decision making... Supposing some time-limit is fixed that the decision must take place within such and such time would it be sufficient?

SHRI J. B. DADACHANJI: That is a general remark. In export transactions it would be very difficult as transactions have to be decided on the spot.

SHRI POPATLAL M. JOSHI: You fear the word 'group' is misnomer. What should be the group definition according to you?

SHRI J. B. DANDACHANJI: Group is a concept which reallly belongs to monopoly business which is now being sought to apply to smaller companies. You treat all companies over Rs. 25 lakhs as mini-monopolies. A 'group' should be when two individuals or individual or a corporate body act in concert or in unison to control a company that may be a group. We would

say the orthodox concept of 51 should also be there.

SHRI POPATLAL M. JOSHI: You know the monopolies which are there today were started as private companies and slowly and slowly their activities increased. Don't you think by the same operation-if such restrictions are not put now hundreds of monopolies will come in the country?

SHRI J. B. DANDACHANJI: On the other hand the natural growth of ordinary joint stock companies may be hampered because the capital today is so short and if you prevent one company investing one third where will they go for finances.

SHRI JACDISH PRASAD MATHUR: What is your feeling-by enactment of this Bill whether more restrictions will be placed on the company or production will also be hampered?

SHRI J. B. DADACHANJI: It will certainly hamper production because of these red-tape permissions which one has to take for further expansion, etc.

SHRI JAGDISH PRASAD MATHUR: If the administration machinery is made fit then what will be your objection. Then there can be no objection.

SHRI J. B. DADACHANJI: On that hypothesis 'yes'. It is very difficult to answer a question, if I may say so. For instance, take dividend policy. Dividends should be declared from the reserves or not. Even if it is expeditiously done within 24 hours it would in princple not be a correct thing to have a control by the Government. Will he, in 24 hours, know the whole history of the company? As far as dividend is concerned, normally, orthodox companies pay dividend from the reserves.

SHRI JAGDISH PRASAD MATHUR: We have a feeling that the Government Directors today are not free to work because the decisions are taken before by the family Directors. As far as section 30 is concerned, Govt. will appoint as many Directors as they like. So, it will change the situation.

SHRI J. B. DADACHANJI: It will be another form of joint sector.

SHRI JAGDISH PRASAD MATHUR: You want to exempt the foreign companies from this Bill.

SHRI J. B. DADACHANJI: No, Sir. What we have in mind is if foreign companies indulge in any kind of malpractice, the Government. Would be absolutely justified in taking action.

SHRI JAGDISH PRASAD MATHUR: You want the deletion of this last paragraph at page 10.

SHRI J. B. DADACHANJI: That is only in regard to the power of the Registrar. Even in regard to Indian compaines, it is not confined to foreign companies. It applies to all companies. It is different in context; it is with regard to companies which are registered abroad. When a company is registered abroad, it would be governed by the local law of that foreign country. We say, on the other hand, if 50 per cent of the Indian citizens hold shares in that it will be under our jurisdiction. It may cause hardship in the working out of the company. Supposing, at one time, it is less than 50 per cent, then it will go outside the purview of the Indian Companies Act.

SHRI JAGDISH PRASAD MATHUR: For the percentage, do you feel that there must be some control by the Company Affairs?

SHRI J. B. DADACHANJI: As regards operation.

SHRI TRIDIB CHAUDHURI: Which section of the corporate sector, the country respresents?

MR. CHAIRMAN: What is the significance of this Anti-American?

SHRI C. S. VIDYASANKAR: They mainly represent companies which have got collaboration with America.

SHRI TRIDIB CHAUDHURI: You have suggested power from the shareholders and the Government side. What is your opinon about the appointment of labour side?

SHRI C. S. VIDYASANKAR: It is a matter for the company to decide. So long as the corporate sector as such is recognised as an entity, shareholders should presume and see that their powers are there to appoint the auditor to declare dividends. If their powers in the appointment of auditor are taken away, it will take away very important power which is in the hands of the shareholders.

SHRI D. D. PURI: As far as section 108b (1) is concerned, this does not set out the time limit for concluding transactions. Therefore, the time limit of not less than 3 months should be fixed. I think, they mean not more than 3 months.

SHRI J. B. DADACHANJI: Yes Sir.

SHRI D. D. PURI: As far as clauses 2 & 3 are concerned, could you send us an alternative? If the deletion was not acceptable, what, according to you, should be the first or second alternative?

SHRI C. S. VIDYASANKAR: We will do that.

SHRI D. D. PURI: You have stated separate a/c for the deposit of the dividend. This is a practice which has been followed by a number of companies. They found it better to put the cash in the fixed deposit and to make the overdrafting arrangement, etc. Otherwise, even if you open a separate a/c and put all the money, only the party which will be benefited will be the bank which will earn interest on the overall fund. How they do it and for what purpose? It will enable the bank to earn interest over the company's own money.

DR. B. V. BHOOTA: You are right, Sir.

SHRI HIMMAT SINGH: On page 1, while commenting on Clauses 2 and 3, you said that the concept of group which has been introduced by Section 2, Clause 18A of the amending Bill is too comprehensive and vague. I fail to understand this. If it is comprhensive, it cannot be vague. What I wanted to know is this. You have expressed some apprehensions about common Directors. Would you agree that these difficulties can, to some extent, be countered by restricting the persons from holding Directorships not in 20 Companies, as at present, but, say, only in 5 Companies? If a person is restricted from holding Directorships beyond 5 Companies, it would perhaps meet your difficulty.

SHRI C. S. VIDYASANKAR: I believe that is one of the methods of meeting this difficulty.

SHRI B. T. KULKARNI: What is the percentage of small scale industrialists in the Indo-American Chamber of Commerce? How many small scale industrialists are there?

SHRI J. B. DADACHANJI: I may say that the statistics which I am giving is only off-hand. There are about 269 members. They are mostly in collaboration and they are Indian Companies. The figure according to the Secretary is which is of course subject to correction, about 15 per cent would be of medium sized companies.

MR. CHAIRMAN: Mr. Dadachanji, thank you very much. I hope your views would be of some use to the Committee.

SHRI J. B. DADACHANJI: We are obliged to you for the very patient hearing that you have given us and our thanks are also due to the members for the consideration they have shown us.

(The witness then withdrew)

IV. The Bombay Shareholders Association, Bombay.

Spokesmen:

1. Shri Tanubhai D. Desai —*President.*
2. Shri Dhirajlal Magan lal—*Vice-President.*
3. Shri J. C. Mashriwala —*Secretary.*
4. Shri J. D. Mehta— *Secretary.*
5. Shri H. B. Perreira— *Assistant Secretary.*

(*The witnesses were called in and they took their seats*).

MR. CHAIRMAN: Mr. Desai, and other members of the Bombay Shareholders' Association: I, on my behalf and on behalf of the Committee welcome you here. Before you begin, I would like to draw your attention to the direction which states as follows:

> "The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

With this direction, I would request you kindly to be brief on the points which you want to elucidate before the Committee and then give a chance to the Members to put questions. Kindly confine your general remarks within ten minutes, if possible, and in any case it should not exceed beyond that.

SHRI TANUBHAI D. DESAI: On behalf of the Association, I thank you and all the Members of the Committee for allowing an opportunity to the Association, which is a body of small shareholders, if I may say so, to express its views.

In the first instance, I would like to point out to you that there is some mis-understanding as to the role of shareholders in the management. We, sir, in particular, represent the small share-holders who are not organised enough, and it is this body, whose cause we champion before the Government and before the public. We have got some statistics which would give you some idea. In this country, there are about two million shareholders and the attempt of the public and the attempt of the Government should be to broad-base this corporate by having more and more shareholders. Therefore, our objective is that in order to induce the smaller man to invest more and more in the corporate sector, the Companies Act should be more simplified and it should not be complicated more and more. It should not be jungle of laws, bye-laws and regulations and all sorts of laws. Therefore, our suggestion is that nothing should be done which would inhibit the growth of the corporate sector and also its extension into more and more wider fields where more and more shareholders would take part in the administration of companies. We have compiled certain statistics. Out of the total paid up capital of the companies listed on Bombay Stock Exchange, shareholders with less than Rs. 5,000 are ho'ding about 25 per cent. shares. I am talking of the corporate sector, public and private companies. Institutions are holding about 20 per cent. These institutions are the Government-controlled institutions like the IDBI, IFC, ICIC. Corporate holding is about 13 per cent, the holding by foreign companies is about 20 per cent. and only 22 per cent. of the share capital is held by shareholders having capital more than Rs. 5,000. Half a number of shareholders, individual shareholders holding less than 5,000 shares. This is the pattern. If I give an instance of a big company Scindia—Steamship—they have got about 36,000

shareholders and out of that 34,000 shareholders are less than 100 shares.

I would first take you to the question of 'benami' holding which affects very badly the average small shareholder. It is stated this benami holding is for the purpose of take-over bids. Our submission is all the smaller and small shareholders companies shou'd be completely exempted from the operation of this Section because object is only take-over bids. Our second suggestion—it is most well-known that individual share-holders keep their shares in the name of themselves and their wives and yet every small shareholder having shares of even a thousand rupees is called upon to make a declaration. What is the point of having a declaration from these small shareholders. There will be two million declarations. Our suggestion is shareholders having capital less than 1 per cent in any company should not be asked to make this declaration.

Now, I come to sections 108A and 108B about the take-over bids. There is one difficulty with the small share-holders. He does not know who is the purchaser and through the market mechanism the ultimate seller and the ultimate buyers are completely different. We do not see how this can be carried out. We are not against legislation of take-over bids. The most important thing is that the small share-holders are not given any option that they should be able to dispose of their shares. Government should be vested with the power that as a condition of the take-over bids being given permission the purchaser should be required to buy over the shares of all the other shareholders in a certain proportion. If that is not done the small share-holders will get a raw deal.

Now 108(d). No period is given. After the transfer is made there must be some time-limit. You cannot go on hanging him for five years. This section should not operate against the shareholders and they should not be called upon to refund the money.

Now section 209—payment of dividend from Reserves we submit in the case of particularly Indian companies where no remittance is involved there is no point in restricting payment from reserves because reserves are for rainy days otherwise the shareholders will come in difficulty. So, the restriction of payment from reserves should be removed as regards Indian companies. If the share-holding of the foreign company is over 25 per cent then in that case the Government should be consulted for payment made out of reserves. This has happened because of one foreign company. I would submit in the interest of the small shareholders reserves are profits of the past which have to be distributed in the rainy days to equalise dividends.

SHRI POPATLAL M. JOSHI: It is observed many companies are paying dividends from reserves. It is done with a view to get tax benefits. The law of the country provides that if you take the profits and pay dividends from profits then you don't get the calculation as capital but if you transfer it to reserve then it is added to the capital for the purpose of calculating the reserves. Therefore, for the purpose of sur-tax it is beneficial to the campanies and, therefore, advice is given that all the profits are transferred to the reserves and from the reserves dividends are paid.

SHRI P. R. SHENOY: The object of declaration of shares by benamidar is not only for the purpose of prevention of undesirable takeover bids, but also for the prevention of evasion of tax. Don't you think such a provision should be there?

SHRI TANUBHAI D. DESAI: There are enough provisions in the Income Tax Act for that purpose. It is only introduced for takeover bids as stated in the objects.

SHRI D. D. PURI: As far as taking over the companies is concerned, what you say? Is it the percentage of the shareholders who have invested less than about 5000 in a company?

SHRI DHIRAJLAL MAGANLAL: We have taken a sample of 706 companies. We find that the smallholders are 25 per cent individuals; Indian companies held about 15 per cent and 22 per cent shares are held by big holders over 5000. 25 per cent should be the basis.

SHRI B. T. KULKARNI: I would like to know the membership of your association. Roughly, how many industries, all these shareholders represent? These shareholders belong to so many industries.

SHRI TANUBHAI D. DESAI: None of the industrialists are on our committee nor are the members. Most of the shareholders are from all companies and we have about a thousand members. In the past, if I may say so, it is we who had put the biggest fight in the formulation of the Companies Act, 1956.

SHRI B. T. KULKARNI: Are you restricted your operation to Bombay only?

SHRI TANUBHAI D. DESAI: Only in Bombay.

SHRI DHIRAJLAL MAGANLAL: They refer the matter to us and we in turn take up their matter. This is done when they are not able to do it. But associations are also established elsewhere. Then conferences for all shareholders all over India are also held. Such a conference was also held by the Bombay Shareholders' Association about three years back.

SHRI TANUBHAI D. DESAI: Like L.I.C. and other institutions, they also consult each other. We all consult one another so that small shareholders can be protected. Therefore, Association does fight for the small shareholders.

SHRI B. T. KULKARNI: I want your Association to represent the interest of small shareholders.

SHRI TANUBHAI D. DESAI: Yes, Sir. We do so.

SHRI SYED AHMED AGA: As far as takeover bids are concerned, the proposed amendments are more in the interest of the financial institutions. You have also mentioned about stock exchange. You suggest that the proposal should be provided in a more faithful manner. I would like to know, have you got any alternative suggestion to give to the Committee?

SHRI TANUBHAI D. DESAI: In our memorandum, we have dealt with takeover bids which is very appropriate. We have also suggested of a commparative reference to the legislation in the United Kingdom.

SHRI SYED AHMED AGA: You want us to study that and take a decision.

SHRI DHIRAJLAL MAGANLAL: Whenever takeover bids are involved, small shareholders are also to be associated with it. Govt. should not be the only authority to decide. It would be better if hearing is given to the share-holders whether takeover is advantageous to the shareholders or not: Financial advantage should also go to the small shareholders. This we have done in so many other cases in Bombay.

SHRI TANUBHAI D. DESAI: Regarding this, we have made a particular suggestion at page 2. It should be made obligatory that they i.e. shareholders are not left out.

SHRI SYED AHMED AGA: I was only suggesting that instead of telling us to study, why don't you put up a proper draft?

SHRI TANUBHAI D. DESAI: That is done.

SHRI SYED AHMED AGA: Suppose one person is a Director of many companies. Is that with the intention of concentration of economic power by bigger companies?

SHRI TANUBHAI D. DESAI: With due respect, no.

SHRI SYED AHMED AGA: Do you think there is no harm done if one person is a Director of many companies?

SHRI TANNUBHAI D. DESAI: Every Director is not interested to become a Director of many companies. Sometimes persons are coaxed to become Directors.

V. Western India Young Chartered Accountants' Forum, Bombay

Spokesmen:

1. Shri Jagesh Desai
2. Shri Bansilal Kucheria
3. Shri Rajkumar H. Achhipalia.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: I welcome you, Mr. Desai, on my own behalf and on behalf of the Committee.

[*The attention of the witnesses was then drawn to direction 58 of the Directions by the Speaker.*]

MR. JAGESH DESAI: Mr. Chairman, Sir, I am thankful to you all for giving me this opportunity to place my views before this Committee. As we all know the thinking in this country has changed very radically in the last 25 years but as regards the policy regarding appointment of auditors no major policy change has been affected. Previously, the tax rate was not more than 19 per cent but now the tax-rate of companies range from 55 per cent. to 77 per cent. So, it is necessary that the true profit should be shown by the company so that Government can get its due share by way of corporate tax. If there are high profits it will repatriate if the proper audit is done. The comsumers will also get relief on account of reduction in prices. Then in most of the companies government by way of loans and by way of capital they invest it is necessary also to see that all the moneys which is being given by government by way of share-capital are safeguarded. My humble suggestion is that the time has come when we have to think drastically regarding the appointment of auditors. As far as concentration of power in a few hands is concerned in this profession 40 firms have the control of 60 per cent of the public Ltd. companies in their hands. There are 14000 CAs. But most of them have not a single audit of the public Ltd company. The object of this Bill is to reduce the concentration so that the audits can be distributed among the CAs. For that purpose, we have suggested a change in section 224. You have provided rotation in the appointment of an auditor and that should not be appointed without the consent of the Govt. The purpose for which this is enacted will not serve at all. Therefore, it is necessary that if you really want to reduce the concentration one way of doing is that an independent body must be appointed who will make the appointment of auditor. That independent body should consist of various interests such as labour, shareholders, small shareholders, UTI, LIC, Government and the representative of the Indian Institute of Chartered Accountants. Then only concentration will be reduced. The auditors will be independent and whatever loans are there, they will be brought about and the regroup of it will be shown in the books of accounts. In this way, Government will be benefited; labour and the masses of this country will be benefited. For this purpose. It is necessary that in the general meeting, he should not be allowed because in reality, it is not the general meeting but the management appoints the auditor. So, these rights should be taken away from the companies. Then true profits will be shown in the books of a|c. There must be a central board

which will lay down the principles of appointment of auditors of the paid up capital is such and such. In this way, we shall see that the appropriate thing should be done, work should be distributed to CAs and true profits will be shown in the books of a|cs.

Regarding other aspects where the auditor is also a Director in a company where the management is the same, he should not be allowed to be an auditor of the company.

SHRI D. D. PURI: As far as paragraph 2. 2(a) at page 3 of your memorandum is concerned. this is an important matter. I would like to ask you, is there out average standard.

SHRI JAGESH DESAI: That is not in my memorandum.

SHRI D. D. PURI: Then it is all right. I will not ask any questions.

SHRI P R. SHENOY: In your memorandum, you have given the figures that there are about 6000 companies. What about the remaining companies?

SHRI JAGESH DESAI: This was done about three or four years ago. This is not upto date. But the trend will be the same.

SHRI POPATLAL M. JOSHI: Are you more interested in the junior auditors or are you more interested in finding out the truth in the management of the company?

SHRI JAGESH DESAI: First of all I would be interested in finding out the truth. That is why I asked for an independent board. (2) The independent body is there. They will see who are the auditors. Suppose, a is given an audit. Why he should be given to more audits?

SHRI POPATLAL M. JOSHI: You mean the right of the shareholders to appoint their own auditors.

SHRI JAGESH DESAI: In a democracy, that is not only the purpose of the auditor. There are other factors. We want to have social audit. We have to safeguard the interest of the Govt and see the interest of the common people. That is why it is not necessary to give right of appointment of auditor to shareholders. But it is the right of the people of this country to appoint an auditor.

SHRI POPATLAL M. JOSHI: What will be your reaction if a formula is found out wherein there is a joint audit—one auditor being appointed by the shareholders and the other auditor by the Govt.?

SHRI JAGESH DESAI: I have no objection. But if my suggestion is approved regarding the getting up an independent board, it wil serve the purpose.

SHRI POPATLAL M. JOSHI: You have the experience of associations that they have worked efficiently.

SHRI JAGESH DESAI: In this regard it depends upon the persons who are on the Board. I do not want bureaucracy also. I would not like all, the powers to be given to the Government. I would like to have the powers in an autonomous Board where various interests are represented.

SHRI POPATLAL M. JOSHI: In this Board, do you suggest that some representatives of the Government,. some representatives of the banks, and some representatives of the Board of Directors should also be there?

SHRI JAGESH DESAI: This is some of them. It is also necessary that those persons who are committed to socialism should also be there.

SHRI POPATLAL M. JOSHI: They are appointed?

SHRI JAGESH DESAI: They will be nominted by the Government.

SHRI POPATLAL M. JOSHI: Do you think that it will serve the purpose?

SHRI JAGESH DESAI: As I told you, this is a sort of compromise between extremes, in the sense, we are giving place to all shades of opinion. Even management will be represented. If this is not accepted by the Government, we have given the second alternative. which should be considered.

SHRI SYED AHMED AGA: Your is a qualitative memorandum. I do not want to ask more questions. My point is this. It has been brought to our notice that there are 20 audit firms who have 80 per cent of audit work. This is concentration of audit and this means there is collusion between the Companies and these audit firms. I would like to know as to whether this concentration and collusion lead to manipulation of profit by companies.

SHRI JAGESH DESAI: That is correct. In this regard, I will refer to one press cutting entitled 'Corporate audit changes' wherein Mr. Menon, has indicated that Government had sufficient evidence that certain auditors had colluded with managements and hence a specific provision was being incorporated to curb such collusions.

SHRI SYED AHMED AGA: Don't you therefore think that Government should have the power to appoint auditors and their reports should become available not only to the mass of shareholders, but also, for the information of the tax collectors? Do you accept that view also?

SHRI JAGESH DESAI: I accept. but, with one qualification that instead of the Government, if this autonomous board is constituted, then, this will be best solution. according to me. If this is not accepted, I do not mind Government, appointing auditors.

SHRI SYED AHMED AGA: In your opinion, this rotation will not help?

SHRI JAGESH DESAI: It will not serve the purpose for which you are framing these amendments. Not a single audit will change hands.

SHRI SYED AHMED AGA: Because of this concentration by audit firms, it has been said that there are many qualified auditors who do not even have a *licence*. Is that so?

SHRI JAGESH DESAI: That is correct. There are many auditors who have not got a single audit of any company. Majority of the auditors have not got a single audit.

MR. CHAIRMAN: Mr. Desai, thank you very much. I hope your views would be of some use to the Committee.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Wednesday, the 13th June, 1973 from 11.00 to 13.00 hours in Committee Room, Old Legislators' Hostel, Madras

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Khemchandbhai Chavda
4. Shri C. Chittibabu
5. Shri Madhu Dandavate
6. Shri G. C. Dixit
7. Shri Popatlal M. Joshi
8. Shri Ramachandran Kadannappalli
9. Shri Baburao Jangluji Kale
10. Shri Jagannath Mishra
11. Shri Muhammed Sheriff
12. Shri Narsingh Narain Pandey
13. Shri S. B. P. Pattabhi Rama Rao
14. Shri R. Balakrishna Pillai
15. Shri Jagannath Rao
16. Shri Bishwanath Roy
17. Shri R. R. Sharma
18. Shri P. Ranganath Shenoy
19. Shri R. K. Sinha
*20. Shri H. R. Gokhale

Rajya Sabha

21. Shri B. T. Kulkarni
22. Shri Harsh Deo Malaviya
23. Shri S. S. Mariswamy
24. Shrimati Saraswati Pradhan
25. Shri S. G. Sardesai
26. Shri H. M. Trivedi
27. Shri Mahavir Tyagi
28. Dr M. R. Vyas

LEGISLATIVE COUNSEL

Shri S K. Maitra—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri P. B. Menon—*Joint Secretary.*
2. Shri C. M. Narayan—*Director of Investigation and Inspection.*
3. Shrimati Usha Dar—*Joint Director.*
4. Shri C. R. D. Menon—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

Public Financial Institutions

Spokesmen:

1. Shri V. V. Chari, *Deputy Governor, Reserve Bank of India and Vice-Chairman, Industrial Development Bank of India.*
2. Shri H. T. Parekh, *Chairman, Industrial Credit and Investment Corporation of India.*
3. Shri James Raj, *Chairman, Unit Trust of India.*
4. Shri V. V. Divecha, *Chief Law Officer, Industrial Credit and Investment Corporation of India.*

(*The witnesses were called in and they took their seats*)

MR. CHAIRMAN: On my behalf and on behalf of the Committee I welcome the witnesses from the financial institutions of India. I hope the evidence which would be tendered by you would be of some benefit to this Committee. You know we are amending the Companies Law and the contemplated amendments may mean something in relation to your relations with the companies. Your advice and your views would be certainly very important from the point of view of this Committee. I would, therefore, request you to give your views frankly and before you begin I would like to draw your attention to the Direction 58 of the Directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha which is as follows:—

"The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

With this direction, I would request you to begin.

SHRI V. V. CHARI: Sir, two other institutions are not here represented by their own officers *viz.* Industrial Finance Corporation and Life Insurance Corporation. I shall be giving evidence on their behalf also.

About the evidence being treated as confidential, there is nothing confidential about it and you can treat them as public.

MR. CHAIRMAN: Thank you.

SHRI V. V. CHARI: After I have finished my remarks, my colleagues also will give evidence.

MR. CHAIRMAN: They can do so.

SHRI V. V. CHARI: Mr. Chairman, at the outset may I express our gratitude to the Committee for having given us this opportunity to express our views on this Bill. As you have rightly observed, the financial institutions are very vitally concerned with some of the provisions of this Bill. I would deal directly with what we are vitally concerned and then come to individual sections of the Bill. So far as financial institutions are concerned, today they are not just financial institutions as such but they are also having developmental functions, which means besides giving money on loan they are interested in the actual development of the projects which they finance and also in many cases of the rehabilitation of the old projects which had been given assistance. This makes it responsible for the proper management of rehabilitation projects. In this connection, they may have to change the management, they may have to change the structure of ownership as between existing owners. There are provisions in the Bill which relate to transfer of ownership of shares. Those sections will be of deep concern to the financial institutions.

The second type of activity is implementation of government's policy regarding of conversion of debt into equity, a portion of debt into equity, where debt is of substantial magnitude. I shall deal with that in detail when I come to individual sections. Meanwhile it is sufficient to say that any procedure which would facilitate incorporating of sections in loan agreement giving the right to convert debt into equity—these are things in which financial institutions will be interested. This is a particular type of activity in which LIC and Unit Trust are engaged. They make investment and for that they will have to buy shares from time to time and they have also to sell shares. The LIC should see that the monies are invested properly and it is their responsibility to guard the interests of shareholders. It is for them to see that the shareholders are not put to loss. They are also interested in the provisions of the Bill which are likely to create difficulties in the easy conversion of debt into equity. Any restriction or regulation on shares is of concern to them. My colleague will deal with that aspect later.

I now come to individual provisions There also I shall divide them into two parts—one relating to such provisions as are already in the Amendment Bill. I shall refer to one or two provisions which we as Financial Institutions, as a result of our experience feel, should be incorporated in the Act, though that may not be a comment on the Amending Bill as such. But it is important and I would request the Committee to take that also into consideration.

In regard to clause (3) of the Bill, Public Financial Institutions do have investments in the various companies and it is sometimes as high as 40 per cent, sometimes 25 per cent and when two or three such institutions are put together, it will sometimes be more than 33 and 1/3 per cent. We do not feel that it would be proper to make that an occasion for treating the company as being covered by the same management. So we earnestly request the Committee to consider this suggestion that the shares held by Public Financial Institutions which have been defined in the Bill should not be taken into account when you apply 33-1/3 per cent criterion in deciding whether a particular company is under the same management.

CHAIRMAN: You think that there should be a provision in so far as shares of public financial institutions are concerned?

SHRI V. V. CHARI: Yes. Supposing the LIC which is vitally interested in buying and selling shares, buy 15 per

cent of the shares of a certain company. Sometimes it so happens that the company may ask for a loan and in giving a loan to the company conversion is taken and later on the loan is converted into equity; taking all these it may be something more than 35 per cent which means more than 1/3 of the share capital. That should not be the reason why we should call the company as being in the same management. I think the object of the clause is different.

Next I come to clause 6 relating to the proposed new section 58A, to control companies inviting deposits from the public. There cannot be two opinions about the need for controlling/deposits. Reserve Bank themselves are trying to control and they are thinking of a legislation and I do not know whether there will be duplication. There is one particular thing. When we give loan to a company or an industrial concern, sometimes, the documentation and various other things take some time. On that account, we do not want that there should be delay in the commencement of the project, pending the completion of documentation. Some institutions, particularly, the Unit Trust which is really interested in earning interest, keep the money in the form of deposits in the company and later on as soon as the documentation is completed and other formalities are completed, they convert the deposits into loans. What we feel is that deposits of this type should be exempted from this provision, that is, deposits which are made in anticipation of being converted into loans and where the delay is due to formalities being completed should be taken away from the purview of the provision.

Then I come to clause 10 dealing with sections 108A and 108B. There may be considerable difference of opinion and I hope the Committee would have heard a lot of observations from other bodies also. Under the new section 108A, a company or group of companies or an individual or a group of individuals who have already 25 per cent of the shares or who have such amount that with the purchase of shares would make their ownership more than 25 per cent. Such people are prevented from acquiring such shares without the permission of the Government. Now new clause 108B looks at the problem from the sellers' side. Anybody having 10 per cent of the shares of a company and who proposes to sell should do so with the permission of the Government. Here individuals have been exempted. Under section 108B it is not clear whether objection is taken to even a single share or only to transfer of block of 10 per cent shares. The Committee may perhaps examine this whether the objection is to transfer of single share or block of 10 shares. The Public Financial Institutions in their rehabilitation programmes have been obliged to completely change the structure of ownership and structure of capital. I do not want to refer to particular cases as it may not be proper. I am sure in several cases we have asked parties to change and transfer shares. In such cases the public financial institutions have no other motive except public benefit. It is not necessary that this provision should be applied to such transactions which are sponsored or made as a result of the agreements with public financial institutions. The Bill very rightly already excludes from the scope of the provision transfers to public financial institutions. You may kindly extend this exemption also to transactions sponsored by or required by public financial institutions. That is our view with regard to 108B.

As between 108A and 108B, a different percentage is adopted and that is not clear. That may be considered by the Committee.

The punishment proposed is for both the transferee and the transferor. It is not known how the transferee is expected to know that the person selling holds more than 10 per cent

of the shares. This aspect may be considered.

In regard to restriction against distribution of dividends, Mr. Raju would clarify. In the past the practice was to set apart a portion of the profit to Dividend Equalisation Reserve and that was understood as the legitimate function of a company, and that was done not to fritter away the profits. One year may be exceptionally good and they may have to put by something for the rainy day. Why that is departed from is not known. If that has something to do with foreign remittances, that has to be taken care of under Foreign Exchange Legislation. We feel that this requirement may be done away with. Mr. Raju would further clarify this point.

SHRI JAMES RAJ: The Unit Trust of India is an institution set up by the Government in 1964 to collect middle-class savings and to put the savings in securities of companies and distribute the income therefrom. We have paid last year a dividend of 8-1/4 per cent. We have a total of around 5 lakhs of unit holders distributed all over India. The average unit holder has about Rs. 2,500|- invested with us. As my colleague Mr. Chari has pointed out, this particular provision regarding the framing of rules for declaring dividends out of accumulated reserves in the past would affect the Unit Trust very adversely. There are several industries in which we have a heavy stake, particularly plantations and the jute industry where because of agricultural cycle the profits in one year as compared to the next year fluctuate very widely. It has so far been an accepted practice that companies do not distribute everything which they make in a good year, but leave something in order to equalise dividends in the following years. If we have tremendous ups and downs in the dividend declarations as we have in fact noticed during the last year—I am sure you have come to know from Press reports and so forth that several companies are simply distributing whatever they have. Now we very much fear that this will inhibit their capacity to distribute their dividends in the following years. You may ask 'if it is a good year distribute more and if it is a bad year you distribute less'. Unfortunately under Indian conditions, if by any chance we are forced to cut out dividend from 8-1/4 per cent we have distributed last year to something less, we very much fear that the confidence which the public has in the Unit Trust will be considerably shaken. In fact we ourselves are following a policy of consistent slight increase in dividend over the years and we could have distributed very much more in the earlier years, but as we conserved this we stepped up our dividend gradually from 6 per cent in the first year to a steady 8-1/4 per cent in the last year.

I would like to make one more point. While this provision would make it necessary for companies to obey the rules regarding the non-distribution of dividends in a particular year out of reserves, there is nothing to force companies to make dividend declaration even when they are making excellent profits. I would like to refer in this connection to the example of Madras Aluminium. This Company has made good profits in the year 1972-73. But it has made a decision that it will not distribute any dividends at all. Now therefore what we are finding is that companies which can afford to distribute dividends are not compelled to distribute dividends. On the other hand, those which can have a steady dividend policy or do not make any tremendous ups and downs in their declaration of dividends are hit both ways.

I will cite two more examples—Associated Cement Company and Tatas. Associated Cement Company last year distributed dividend out of previous reserves and that helped us considerably. After all that is something which they have earned in the past. Now Tatas I am afraid with

the control over steel price and the rise in cost they may have to keep up their dividends only by distributing within profits. These are two companies in which the Unit Trust has rather heavy investments—nearly Rs. 5½ crores in Tatas and nearly Rs. 3 crores in Associated Cement Company. I would not like to be caught as making a special pleading but I am pleading on behalf of the 5 lakhs of middle class people who have invested their savings with us. I would very respectfully request that due consideration be kindly given to delete this particular amendment.

AN HON'BLE MEMBER: What is your positive suggestion?

SHRI JAMES RAJ: With the increasing position of financial institutions in the management of these companies—I think my colleague Mr. Chari will bear me out when I say that there are now nearly 50 to 60 large companies in which we have invested over 25 per cent. together ourselves, LIC and so forth—we would be in a position to see that proper conservation of the resources of the company is not interfered with by its dividend policy. I think that plus the good sense of the managements of companies plus what is coming up now, namely the growth of the shareholders' movement in India through institutions like the All India Shareholders Association should be quite enough to see that on the one hand companies do not fritter away their resources unnecessarily and on the other hand they really distribute the dividends which they ought to distribute. I referred earlier to the case of Madras Aluminium. Now there is a controversy going on in the case of Atul products of Ahmedabad in which there is again a campaign mounted by the shareholders that enough dividends have not been distributed this year. So, this is a sort of thing which cuts both ways. I would respectfully urge that between the position of the financial institutions in the shareholding of the companies and the awakening among ordinary small shareholders, what you have to do is you leave this really to the good sense of the companies themselves.

SHRI H. R. GOKHALE: There is no ban on the declaration of dividends from accumulated profits. There are two things. The rules contain the guidelines. If the declaration is made in accordance with the guidelines, there is no question of taking the permission of the Government. There is also a further provision. If according to the rules you cannot do it, even then you can pay with the approval of the Central Government.

SHRI JAMES RAJ: What you say is correct. Please look at it from the point of view of the companies. They do not know what kind of rules are going to be framed in this behalf, Only they know that there will be some constraints on their freedom to declare dividends out of resources.

SHRI H. R. GOKHALE: The object of making reserves may be two-fold. May be that you are able to plough back the resources for development or things like that. You may be able to use the resources also for distribution of dividends in a rainy day, in a lean year. Therefore, there is the control which says that in every case where you are distributing accumulated profits, you can do it in accordance with the rules. Even if you cannot do it under the rules, if you can make out a special case, you will be allowed to do so. There is no completely ban. Still it is permissible with the approval of the Central Government.

SHRI JAMES RAJ: There is no complete ban. But what is actually happening is, the companies are fearing between the two extremes. Their fear is that whatever the rules may be which are framed, they are likely to inhibit their freedom to pursue a dividend policy of the type which they have been following so far. You made the point that accumulated reserves are also meant

for ploughing back in development. But my point is that during the last years there are a number of companies which have simply distributed practically 80 per cent of their profits which they have made. They have said to the shareholders 'you take this now. Next year we may not be able to distribute anything at all. Next year we may distribute something.' Once you say that you are going to frame certain rules, those rules, in any case, are likely to restrict the freedom of the company in respect of reserves for the purpose of ploughing back as also for the purpose of distributing reserves. The object which you are seeking to subserve is not being achieved because I have generally seen that people are simply distributing saying 'next year we may not distribute anything'. Then the share values go up and down and therefore, our portfolio suddenly depreciates or suddenly appreciates. All these are calculated to make our task of collecting the savings from the public more difficult.

SHRI V. V. CHARI: I would like to refer to Clause 20 of the Bill. In that it has been stated that auditors after retirement should not be appointed, if they were the auditors of a Company for three consecutive financial years. Apparently the intention is that the auditing work is concentrated in a few hands of auditors and that it should be done away with in order to provide opportunities to youngsters. On this point, there cannot be two opinions. But I would only point out that the object behind this amendment will not be achieved by this particular type of amendment. I agree that long acquaintance of auditors with the company may lead to mal-practices. That is number one. By allowing old auditors to continue, it curbs the opportunity for the young-auditors. Thus it leaves the new entrants without much scope for employment. These two points are really valid. By simply passing this type of amendment, it will not be possible to achieve the purpose, because it will not be possible to work out an arrangement by which the compacts between the old auditors and the companies can be ruled out and the distribution of work to youngsters will not be achieved. In big businesses, certain amount of expertise has to be developed. The Government has to take into consideration this aspect also. The auditor is not there just to check some financial affairs; he has to do something more than that. That requires a greater amount of acquaintance into the accounting system of a company. It will take some years to develop. Therefore, I do not think that fixing a limit of 3 years will be condusive to the evolution of efficient system of high cost of audit or High Management Audit. All these aspects have to be taken into consideration. At present I am not able to give a better alternative. At the moment, I am not able to do so. I can only suggest this point for the consideration of the Committee. I think that this be brought under a separate Bill rather than in this Bill. This could have been dealt with by bringing a separate law. I think this has been brought under the Company Law Bill with a view to curb the concentration of audit work in a few hands. This could have been done by a separate law.

MR. CHAIRMAN: You have said that the object of the Government is not going to be achieved by this amendment. If that is so, what is your suggestion? In what way do you think that this can be controlled. We feel that because of the long acquaintance of the auditors with business concerns, things are taken for granted. We want to know what is your suggestion in this regard?

SHRI V. V. CHARI: I would respectfully submit that at present I have no alternative to suggest. This problem has not been tackled. But I would say that the disease has been recognised but the remedy is insufficient.

MR. CHAIRMAN: Then you agree.

SHRI V. V. CHARI: Yes.

MR. CHAIRMAN: What is your suggestion? We have suggested an amendment in the Bill. If you are not aggreable what is your alternative suggestion? You can send your suggestion later, if it is possible for you.

SHRI V. V. CHARI: I only want to say this. Even if the amendment is to be passed it will not be sufficient. You have to think and take some more action to achieve the object. Two things are necessary. One is to spread the work better among various people and to avoid the possibility of wrong doings by the auditors due to their long acquaintance or association with the Companies. I would suggest that in the case of big companies—I am not talking about the size of the Companies, it is for the Government to decide—the Government can insist on appointing another auditor side by side. Since the Company is big, they can appoint one more auditor and they can give an opportunity also to young auditors to get employment. It will also be a check on the existing auditors. It may give an opportunity for young new boys to take up the job. That is my suggestion.

Clauses 21 and 24(A) also relate to the appointment of auditors. In clause 21, it has been stated that in the case of a company in which not less than twenty-five per cent of the subscribed share capital is held, whether it is a financial public institution or a Government company, the appointment or reappointment of a auditor should require the approval of the Government. With regard to this point, my colleague, Shri Parekh will speak.

Clause 13 of the Bill relates to the insertion of new section 187C. They relate to benamidars. I am using the word 'benamidars' though it has not been used in the Bill. The object is that the benamidars should declare the real beneficiary. I suppose that is the object of the Bill. The benefit ciary should also declare his real interest in the concern. It would also avoid any attempt to tax evasion. In such a case, certain categories which do not really relate to benamindars should be left out. For instance, Trustee is not a benamidar. He is only a Trustee. It should be properly explained. Some other points with regard to binamidarship, Shri Parekh will touch upon.

Now I come to the other point which has not been dealt with in the Bill. It was said in the beginning that it related to the policy of the Government. Now the Financial Institutions give substantial loans to Companies and a portion of that loan amount should be converted into equity according to the guidelines framed by the Government and the option to convert should be incorporated in the loan agreement. If the loan assistance is upto 25 lakhs, this may not apply, because the amount involved is unsubstantial. If the amount is more than 25 lakhs, but less than Rs. 50 lakhs, the institutions may or may not take the option to convert, but should record reasons when they decide not to convert. In case the assistance exceeds Rs. 50 lakhs, the conversion clause should apply. They have no discretion in the matter. If they feel that the Clause need not apply in any case they must refer the matter to the Government and the Government will decide on the matter. The Government can consider the possibility of doing away with section 81(3). We, for instance, are carrying out the policy of the Government when taking the option to convert the loan into equity. No further formal sanction of the Government should, therefore, be necessary. But now the section 81(3) of the Companies Act requires that such permission should be taken by the financial institutions. I feel it is unnecessary. It is a time consuming process, because they had to go again with the same process and this may lead to a delay in formulating loan agreements. Unless the loan agreement are completed, the amount cannot be

given. I, therefore, respectfully submit that this permission of the Government for option to convert the loan into equity in accordance with the loan agreement should be done away with. We feel very strongly on this.

Under section 293(1)(d) of the Act, any loan required by the Company should have a special Resolution of the Company. Under section 293 (1)(a) all mortgage actions require Special Resolution. I think there is a doubt in this matter. When once a Special Resolution has been passed under section 293(1)(d), there is no need for another Special Resolution under section 293(1)(a). I feel this is unnecessary. This is one view. A different view is held. I request that this matter may be examined by the Committee. When a Special Resolution is passed under section 293(1)(d), no further resolution is necessary for mortgaging the assets. Both the Resolutions cannot pass simultaneously, that is one for taking loan and the other for mortgaging the assets. Therefore, I feel that the Resolution under Section 293(1)(d) is unnecessary. This point may also be clarified.

I come to the last of my point with regard to appointment of nominee directors by financial institutions. There is some trouble in the nomination. There are some people, of course, who may not know what the responsibilities of the Directors are. They may be willing. But really competent people who are conversant with the work are hesitating to serve as nominees in the Board because they are afraid of the penal provisions even for innocent offences. These are very harsh. For anything done in good faith, there is no protection. Even for an innocent omission, for which he may not be responsible or guilty and somebody else may be guilty, the nominee is penalised. My suggestion is that the nominees of the financial institutions may be treated as public servants before any action is taken by the Government. Now my colleague, Shri Parekh will answer other points.

SHRI H. T. PAREKH: I am grateful to the Committee for giving me an opportunity to place the views on behalf of my Corporation together with my colleagues Chari and Raj. There are five financial institutions which have all India importance. My Corporation is in charge of developmental activities. The Corporation is set up to provide capital for developmental activities. But the Unit Trust is an Institution which is set up to mobilise resources from public. All these five institutions work more closely and intimately and all work in a general fashion and carry on their work in a co-ordinated fashion as far as possible. So far as my Corporation is concerned, it was started in 1954 after the IFC was started. We have assisted in providing capital. We have assisted in giving loans. We also give foreign currency loans. We also get funds even from abroad such as World Bank and other Governments. In that fashion, we are also very much concern with the proposed amendments, about which my Colleague, Shri Chari had explained. Various other points were met jointly by Mr. Chari and Mr. Raj. I would like to touch upon only 3 or 4 points.

First of all, I would like to refer to the clause in which mention has been made with regard to payment of dividend out of past profits. The real position has been explained by Mr. Raj. Our feeling is that no real purpose will be served by having this clause. There would not be any loss and the clause can be completely deleted. We have been connected with the stock exchange for the past 20 years and my experience is by and large Companies have distributed about 60 to 65 per cent of the profits and took 35 to 40 per cent to keep them as reserve fund for future requirements and also for developmental purposes. The Reserve Bank has got statistics for fifteen hundred companies and they have shown that in

no case they had paid dividend out of past profits without justification. I can only say that in recent years in 2 or 3 foreign-aided companies, they have distributed the amount from past reserve because they have not been permitted to develop their activities. They had huge amount of cash and distributed them as dividend. So far as Indian Companies are concerned, they have paid dividend out of past profits where there was valid reason. Actually many companies are anxious to distribute more dividend and the entire profit as dividend, but they were doubtful whether the Government would permit them or not to do so. We respectfully submit that this clause may be deleted and the deletion will not have any harmful effect on the Government. My second point is in regard to auditors. Mr. Chari has mentioned about it. It so happens that ICIC is affected by this clause relating to auditors. In three sections you deal with it. It is said that if extension of period of 3 years is required for an auditor, Government's sanction is required. That affects all of us. We cannot take exception. The three year period is too short a period. As companies grow, the audit becomes complicated affair. It takes one or two years for the auditor to get acquainted with the affairs of the company or corporation as such. So I think a five or seven year period would be little better. I give alternative suggestion. In important companies, where the Government have right to appoint additional directors, they can also have right to appoint one auditor in addition to the shareholders' right to appoint one auditor, Government can use the discretion.

We are affected by section 224A also. The shares of our corporation are held by other financial institutions like LIC. More than 25 per cent of our shares are held by other financial institutions jointly. We would be affected by referring every year to Government for confirmation of auditors. It is our submission that this provision is meant only for industrial firms. We are finance companies and as financial institution we should be excluded from the provisions of this section 224A. My submission is that it is not the intention of Government to cover financial institutions in this clause.

It is also said that where substantial share is held by Central Government or State Government, they have to get Government's approval for appointment of auditor. In our Board, Secretary of Finance Ministry and Secretary of Industry Ministry are there. Some portion of our share holding is held by LIC. Our plea is that we may be exempted. We do not invest. Most of the sub-clauses relate to Central or State Government's direct participation. In our case there is no direct participation of Central Government or State Government. So we may be exempted.

Next is Sections 108A to 108I. These are important sections which concern the take-over of companies and government regulating the companies. Where the paid-up capital is more than Rs. 25 lakhs any further purchase of equity shares requires Government's permission. This is all right as it goes. As financial institutions, we are exempted in this clause. Our direct operations do not come under this. Section 108A relates to acquisition of shares and Government regulating further acquisition of shares and in that case they may have to control management. I would like to make a personal suggestion. It refers to companies with share-capital of more than Rs. 25 lakhs. My submission is that instead of Rs. 25 lakhs which will cover too many small companies thus creating tremendous administrative work on Government, if you could raise it to Rs. 1 crore, perhaps the administrative work might be made easy.

Section 108B relates to sale of shares. Section 108 relates to acquisition of shares. Our feeling is

Section 108B does not serve any purpose. It will only create lot of complications in sale and purchase of shares. So, I think it is better to delete Section 108B. Otherwise it will come in the way of free negotiability of shares. They will have to get Government's permission. Most companies holding shares will be affected. When they try to sell their shares and if other institutions buy them, the transferability of this thing will be affected. The sale and purchase position will be affected. What is intended under section 108B is sale of share. While section 108A applies to acquisition of shares. Therefore, this section 108B seems to be out of place and should be deleted. Under Section 108D, the Government can always direct the company not to transfer the shares, if they think it is against public interest. So, what I say is, it would be better from the point of view of negotiability and marketability that Section 108B is deleted.

Under Section 108D there is no time-limit. It is better that a time limit is put. Otherwise any unwary public who buys shares would be affected.

Coming to benaminder holding, it has not been defined clearly. It includes so many other things which is really not Government's intention. Many people have their own private or public trusts. Trustees are not beneficial owners though shares may stand in their names. They would all be affected both benaminder and actual beneficiary. Companies will be unnecessarily legally involved. I think large number of small shareholders should be excluded by having some kind of limit, say, Rs. 1 lakh. We can say only those having more than Rs. 1 lakh would be covered by this. Otherwise the administrative problem would be tremendous. It will also be better if the beneficial owners declare themselves before the Registrar of Companies and not before the Joint Stock companies. The definition has to be clarified. Otnerwise lot of unnecessary work will be involved for Government. These are the points I wanted to make.

MR. CHAIRMAN: I would request you to answer some questions of the Members.

SHRI MAHAVIR TYAGI: If it is registered in the name of any person, whether trustee or any other body, the company will deal with that person as such. If that is clarified, would it cause difficulty?

SHRI H. T. PAREKH: So far as companies are concerned they recognise only those people in whose names the shares stand. They do not know whether they are nominal holders or benami holders. What I say is, there are private trusts and public trusts where shares are held in the name of individuals. The shares do not belong to them. All those people will be affected. Take minors. Their shares may be held by parents. So, it is better such trusts are excluded.

DR. M. R. VYAS: The provision in this Bill includes a new element and that is implementation of a jail sentence for economic offences. What do you think of that?

SHRI H. T. PAREKH: In all cases where punishment involves imprisonment for offences which are really not of that nature, it seems to me that perhaps the punishment be in terms of fine only, because in many cases innocent people may be affected.

SHRI S. S. MARISWAMY: Do you think that the provision in regard to auditors is in your opinion a drastic measure?

SHRI V. V. CHARI: I am wholeheartedly in sympathy with the objective of breaking up concentration, but I feel the method suggested will be ineffective. For removal of the evils of concentration, more comprehensive legislation should be thought of.

SHRI H. T. PAREKH: I am afraid the intention of the provision may not be carried out. My corporation appoints auditors one from Bombay and one from Calcutta. Both these firms are not very large. Both these clause, if we are to change to big firms, it may work contrary to the spirit of the proposed legislation.

SHRI S. G. SARDESAI: You represent public sector financial institutions of the country and I hope the opinions expressed by you are on behalf of the institutions?

SHRI H. T. PAREKH: Yes; we have given our views as representatives of the institutions which we belong to.

SHRI S. G. SARDESAI: Yes. That gives added weight to the points made. Now, you wanted that public sector financial institutions' investments should be excluded from same management'. So far as definition of 'same management' has been made out, it is a substantially good description. I think you have no objection to the definition made as such?

SHRI V. V. CHARI: I have no comments to make, because I did not either object or support it. I was only bothered with financial institutions being involved.

SHRI H. T. PAREKH: We have not applied our minds to it.

SHRI S. G. SARDESAI: You are not only representatives of financial institutions, but responsible public men who can help us in such matters. So, it is rather surprising that you have no comments to offer.

MR. CHAIRMAN: He says he has not applied his mind. The witness has the right to say so. You please go to the next point.

SHRI S. G. SARDESAI: Regarding distribution of dividends from reserves, your view, I understand is that the remedy is worse than the disease. Can it be made obligatory that a certain percentage of the annual profit be transferred to reserve or in the alternative, dividend in any case should not exceed a certain percentage, say it should not be beyond 20 per cent.

SHRI JAMES RAJ: So far as something is put to the reserve, it is a very good idea. We would strongly support it. But the other point in regard to distribution of dividend being subject to a maximum, that will be difficult. Though 20 per cent, 30 per cent may be considered excessive, a number of people have bought the shares at a time when it was selling high, not at par. For instance, the Century Mills declare a dividend of 30 per cent but, the share is now bought for over Rs. 300. He is getting only 10 per cent. Therefore, limitation on dividend would not be really just.

MR. CHAIRMAN: What the hon. Member means is this. Would you not agree to some condition, regulation or restriction on the distribution of dividends? It may be in the form of maximum limit or the form of keeping certain reserve, whatever it may, that is a different thing. There should be some sort of condition or restriction imposed. Would you not agree?

SHRI JAMES RAJ: There is distinction between taking the profits and making a deposit and distributing the rest and putting a percentage on the distribution of dividend.

SHRI H. T. PAREKH: This particular provision which we are discussing really does not concern with current profits. It says only about taking from reserve made from profit for distributing dividend in later years.

MR. CHAIRMAN: Yes, you are correct.

SHRI S. G. SARDESAI: One of the suggestions is that as a result of the provisions, the audit profession is considered one of the social services in India. What is your opinion?

SHRI H. T. PAREKH: Really this is part of a larger question, about professional people generally, whether one is a doctor or a lawyer or otherwise, whether that profession is to be socialised, or nationalised. That is a matter of policy. But here the point is only about the auditors' profession. That profession has been picked out why that one profession alone is singled out is the point we have made.

SHRI HARSH DEO MALAVIYA: We find that most of your advances are given to big monopoly houses a very big part of which remains unrealised. Now the idea is to prevent this concentration of wealth in big companies. Why should the Government continue to trust you on all these matters? Why should the Government exempt you from these things? What is the guarantee that if you are so exempted, the functioning of your policies will not go in the old way and will confirm to the general policies of the Government and the Constitution? That is my blunt question.

SHRI V. V. CHARI: I do not know. I have not seen the memorandum. As this is a Select Committee for the purpose of this Particular Bill, it would not be possible for me to go into the whole policy of the Industrial Credit and Investment Corporation of India or the other institutions. I have no objection certainly, but not on this occasion.

SHRI H. T. PAREKH: I would respectfully point out that this institution along with others is there to develop and promote industrial growth.

SHRI HARSH DEO MALAVIYA: In the light of the Directive principles of the Constitution.

SHRI H. T. PAREKH: We operate under every overall policy of the Government. We do not come into the picture in the first instance. Only when somebody brings an industrial licence, we start looking at the case. Unless they produce industrial licences we do not look at their cases. We really come at the second stage and not at the first stage. Once Government have chosen to give a licence, it would be very difficult on our part to discriminate one or the other. This is the point which has really come in the way of our own interpreting things. We recognise ourselves as an arm of Government in the field of development and we come under the Government's policy.

The other point is, most of our advances have been given to the big houses. I would like to submit that it is not correct to say so. It may be about 40 to 50 per cent. This again we have tried to check it up with the total number of licences which the Government issues and there again it comes about the same percentage.

The other point you made is, most of the monies advanced do not come back to us. That is not correct. Most of the monies do come back. We have our problems and difficulties. But we do our best to recover the monies. We recognise that these are public funds.

SHRI HARSH DEO MALAVIYA: Is there any objection on your part to approach the Government in case of loans advanced of more than Rs. 50 lakhs.

SHRI V. V. CHARI: If the loan given is above Rs. 25 lakhs and below Rs. 50 lakhs and if the case is such that a conversion option is pointless, in that case we give reasons and say that for these reasons it is not considered necessary to have conversion. If it is above Rs. 50 lakhs we cannot even do that and we must go to the Government and tell them. No such case has so far arisen.

SHRI HARSH DEO MALAVIYA: At page 4, paragraph 3 of your memorandum (ICICI) you have stated that in the case of some sick units financed by the financial institutions, it becomes necesary to arrange for the transfer of shares so that the controlling interest in that unit would pass to another body corporate or a firm

or to an individual found suitable by the institutions. How will you ensure that this has been made in public interest?

SHRI H. T. PAREKH: This has reference to what we have mentioned as sick units, *i.e.* where a company has run into management or financial or technical difficulties and is not able to pay back the loan. We have to apply different remedies, in some cases change of management, some times take over in one form or other. Each company's case whether it is small or big is so complicated. Each has its own features and we have to examine each case on its merits and suggest whatever is best to revive the company and to see that production comes back in that company and its profitability restored. Our whole purpose is in a sense public purpose to see that capital does not go waste in a unit which has run into some difficulties. In this way we are trying to follow the public purpose and in suitable cases we even keep the Government informed about these matters.

SHRI HARSH DEO MALAVIYA: You have suggested in your memorandum that 'in view of this difficulty, we suggest that the take-over of companies at the instance of financial institutions might be excluded from the purview of these sections. How many companies have you taken over and why do you want to be excluded from the purview of these sections?

SHRI H. T. PAREKH: The only point in mind is that when things go so bad whenever we thing of changing the management, we keep Government informed in most of the cases. But if at that stage time is very important and the matter is urgent-the factory is closed or is closing down and people will be thrown out of job —in cases like that a reference to Government will involve further time, So, this is only with a view to save time. Otherwise we would be very happy to keep Government informed. It is part of our policy to keep Government informed in important cases. We have no desire to ask for any special protection from Government for this purpose. Only with a view to save time we want exemption. Some times reference to Government may drive the parties whom we want to displace to take advantage and go to Government and make false representations and thus the matter may get delayed.

SHRI HARSH DEO MALAVIYA: How Many companies have you taken over?

SHRI H. T. PAREKH: We have not taken over any company. It is not part of our policy to take over any company but we reconstruct it or reorganise it.

SHRI NARSINGH NARAIN PANDEY: You have put forth the idea that the nomineess of the financial institutions should be penalised or should be exmepted.

SHRI V. V. CHARI: They should be treated like public servants.

SHRI NARSINGH NARAIN PANDEY: You represent the public financial institutions and now-a-days in many concerns you are interested and your nominees may be there. If they fail in their duty due to carelessnsse or by overlooking, why should they not be penalised?

SHRI V. V. CHARI: There are purely certain technical matters with which they are not concerned. Because of collective responsibility theory. suppose some person who should have done some purchase action has not done it properly, the nominee at no stage might have seen it or might have nothing to do with it. At least such cases should be considered by the Government before prosecution is launched against them. That is the case with regard to Government servants.

SHRI NARSINGH NARAIN PANDEY: Once he becomes representative of a public institution, is it not his duty to see to these things?

SHRI V. V. CHARI: There are certain matters which do not involve moral turpitude. Due to some technical reasons some failure of the executive machinery of the company may be there. Suppose a person does not send a return to the Registrar of Companies with time.....

SHRI NARSINGH NARAIN PANDEY: Don't you think that there will be a moral code for them also as to how should they act and supposing they have failed, should they not be penalised?

SHRI V. V. CHARI: Certainly action will be taken against him. I am not saying that they should not be penalised if they are guilty. You treat him as a public servant who is appointed to that post.

SHRI MADHU DANDAVATE: Most of the witnesses when asked about concentration of audit work, quite a number of them admitted that there is the disease. Even though they stated that the provision suggested would not do, almost every one did not say anything about the alternative. Shri Parekh suggested that instead of three years, the period may be 5 or 7 years, but even that would not solve the problem. I would therefore like to ask you about one concrete alternative. . . .

SHRI V. V. CHARI: Government can appoint an auditor to any big company, but what a big company means, they can decide.

SHRI MADHU DANDAVATE: I would like to ask you about a positive alternative. For instance, there is the Institute of Chartered Accountants and with their assistance a panel is prepared and, if it is possible, adopting a double audit system in the sense that we have two panels, one consisting of senior auditors and another of comparatively junior ones. In that case the expertise which you want would be available and at the same time opportunities would be available to juniors who have started their work and who would like to learn by experience. If that type of arrangements is done don't you think that the provision which is already suggested in the Bill will be highly commendable?

SHRI V. V. CHARI: Why should there be two panels? While we try to avoid one difficulty or defect, we will create some sort of favouritism and a different type of favouritism may come up. Every one who has qualified himself in that profession and who has registered himself in the Institute of Chartered Accountants of India should have an opportunity and he should be available to the Companies. If we draw up panels then we will be restricting their scope. If we draw up a panel, we will be doing a great injustice to the profession.

SHRI MADHU DANDAVATE: Will it not eliminate the difficulty which you have pointed out? Expertise will also be available to the Companies if we adopt this system and it will also give employment opportunities to youngsters.

SHRI V. V. CHARI: For every big company an extra auditor may be appointed. For a small Company, it is not necessary. If you want that extra auditor to be a junior, I have no objection.

SHRI MADHU DANDAVATE: You have said that even for the management, experienced auditor's service is required. They may enter into agreement with the Company and adopt some mal-practices. To avoid that specific provision has been suggested in the new Bill.

SHRI V. V. CHARI: I have already given by views.

SHRI MADHU DANDAVATE: The auditors may enter into an agreement with the Companies in drafting an

agreement for getting loans. So a specific provision has been made in the Bill.

Very often we find that some of the Companies are inviting share-capital from the public for their projects. The public are not able to know the credit-worthiness or the financial position of a company. The people get into troubles. In order to avoid that trouble, the Bill provides for that provision. It will enable the people to know the credit worthiness of a Company. If they fail to do that, there is a panel provision also. I know an instance in which the State Bank of India gave a loan of several lakhs without knowing the credit worthiness of the Sugar Mill . . .

SHRI V. V. CHARI: We are mixing up two things. I have no objection to the provisions. All that I have said was that there should be a special provision for the public financial institutions.

SHRI MADHU DANDAVATE: Mr. Chari, you have said that deposits of all financial institutions which have been converted into loans should be exempted from the purview of clause (6).

SHRI V. V. CHARI: I have said that special provision should be made for financial institutions.

SHRI MADHU DANDAVATE: May I draw your attention to the notes for Clause 6 on page 33 of the Bill. There it has been stated. It has been the practice of the Committee to take deposits from the public at a high rate of interest. This was one reason. Secondly experience has shown that in many cases deposits so taken by the Companies have not been refunded on the due dates. The proposed section is to curb those two reasons. That is the reduction of the high rate of interest and payment of deposits on due dates.

SHRI V. V. CHARI: In many cases, the Companies have gone into liquidation. What is contained in the note is the object of the Bill.

SHRI K. S. CHAVDA: The financial institutions are interested in getting high rate of interest.

SHRI V. V. CHARI: As far as financial institutions are concerned, they are not. On the contrary, their rates of interest are the lowest.

SHRI K. S. CHAVDA: Please read the last sentence at page 34 of the Bill where it has been stated that this clause will be applicable to all companies other than banking companies and those specified by the Government in consultation with the Reserve Bank of India. Your institution is a financial institution and it will be exempted.

SHRI V. V. CHARI: I want this to be done in the Act itself.

SHRI H. M. TRIVEDI: You have said that for the conversion of loans into equity the approval of the Governent was not necessary. Permitting such conversion.....

SHRI V. V. CHARI: It is not a question of permission. They are compelling us to convert. We want to convert that at certain rate. But the Government say. "You don't do it at that rate." They have got their own policy. The Government may or maynot agree. We are carrying out the policy made in guide lines. Before giving loans, we must decide and draft the agreement saying that so much will be converted into equity. We have done that and we have carried out according to the policy of the Government.

SHRI H. M. TRIVEDI: If the conversion into equality brings about a change in the capital structure of the Company the Government may want to re-look at the picture.

The approval of Government should, therefore, be necessary.

SHRI V. V. CHARI: Yes. The amount is given on the basis of an agreement entered into. The documentation may take 4 or 5 months time. Pending documentation, we give them in deposit. We take all possible cares. I would like to touch upon other common points which have not been referred to. Sometimes, the promoter may not be able to bring equity. which is normally expected from him. In such cases, we must have some stake in that project, some sort of deposit non-bearing interest, unsecured deposit in order to adjust the unapid quantum of deposit subject to the provisions of the Act. The Reserve Bank fixes the maximum of 25 per cent and they can receive deposits only to that extent. Even if you pass this legislation, that will be subject to that limit only.

SHRI H. M. TRIVEDI: Mr. Chari. you have suggested that transfers of shares sponsored by public financial institutions should be exempted from any approval by Government. I think that total exemption sponsored by public financial institutions may not always be necessarily in the public interest. I know that the sale of shares by public financial institutions has in some cases led to unhealthy capital structure and control in certain companies. I am also thinking of transfers by and to public financial institutions.

SHRI V. V. CHARI: This will depend on the acquisition or sale of shares.

SHRI H. M. TRIVEDI: I think that total exemption of Public financial institutions may not be necessary in the public interest. I know the sale of shares by public institutions have lead to unhealthy structure in certain companies.

SHRI V. V. CHARI: I am afraid there has been some mis-understanding. The Bill itself exempts transaction by the Public financial institutions. I think the hon. Member is thinking of different category. namely, rehabilitation of sick units. This mostly happens in Calcutta area. For instance, if 'A' is not able to finance and if he is to be rehabilitated we send an expert body and take some interest in the concern. In order to have some sort of sale, we ask him to sell his shares to other man to acquire the shares. This transfer of acquisition is done in accordance with the agreement of the financial institutions. It is done in order to provide assistance to the sick concern.

SHRI H. M. TRIVEDI: Don't you think that audit transactions of public undertakings also be regulated?

SHRI V. V. CHARI: The present exemption is all right.

SHRI H. M. TRIVEDI: Supposing there is a scheme of voluntary regulation by the auditors' profession. We could give statutory recognition to that. Then the provisions relating to auditors may be omitted from this Bill.

SHRI V. V. CHARI: When there is voluntary regulation there is no question of statutory recognition. Perhaps you mean that if there is voluntary regulation by auditors' profession, government can frame such regulations. It is upto the auditors' profesion to come to voluntary regulation.

SHRI R. R SHARMA: On page 12, clause 11. it is proposed to amend the word 'Court' in Section 141 of the word 'Central Government' This amendment is against equity. What is your opinion on this, if you have any opinion to offer.

SHRI V. V. CHARI: I have not studied that aspect. My colleague may answer.

SHRI H. T. PAREKH: It takes away the rights of Courts. That would involve tremendous increase in responsibility of Government. It could well be discharged if an independent statutory authority is set up on the lines of 'Security Exchange Commission' in the United States.

That will handle all these matters. The work is getting specialised nowadays and we need specialised people to deal with such kind of work.

MR. CHAIRMAN: Are you aware of the Company Law Tribunal which was in existence formerly. What is your experience about it. Did it work well?

SHRI H. T. PAREKH: I do not know much about it. I was only suggesting long term remedies.

SHRI P. RAGHUNATH SHENOY: You are claiming exemptions from obtaining approval of government in the matter of acquisition and transfer of shares. At the same time you say you are working as arm of government, and implementing policies of government. In what way will this exemption help financial institutions?

SHRI V. V. CHARI: When we are rehabilitating sick concerns and when we find it necessary to transfer shares from one person who is incompetent to a competent person, it is done because the competent person would attract more capital

SHRI P. RAGUNATH SHENOY: What is difficulty in getting approval of Government?

SHRI V. V. CHARI: Why unnecessary delay when it can be done at lower levels.

MR. CHAIRMAN: Thank you Mr. Chari, Mr. Parekh and Mr. Raj. We are coming to end of our deliberations today. The Committee will meet again at 11.00 a.m. tomorrow

[*The Committee then adjourned*]

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Thursday, the 14th June, 1973 from 11.00 to 13.00 hours in Committee Room, Old Legislators' Hostel, Madras

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Khemchandbhai Chavda
4. Shri Madhu Dandavate
5. Shri G. C. Dixit
6. Shri Popatlal M. Joshi
7. Shri Ramachandran Kadannappalli
8. Shri Baburao Jangluji Kale
9. Shri Jagannath Mishra
10. Shri Muhammed Sheriff
11. Shri Priya Ranjan Das Munsi
12. Shri Narsingh Narain Pandey
13. Shri S. B. P. Pattabhi Rama Rao
14. Shri R. Balakrishna Pillai
15. Shri Jagannath Rao
16. Shri Bishwanath Roy
17. Shri R. R. Sharma
18. Shri P. Ranganath Shenoy
19. Shri R. K. Sinha.
*20. Shri H. R. Gokhale.

Rajya Sabha

21. Shri B. T. Kulkarni
22. Shri Harsh Deo Malaviya
23 Shri S. S. Mariswamy
24. Shrimati Saraswati Pradhan
25. Shri S. G. Sardesai
26. Shri H. M. Trivedi
27. Shri Mahavir Tyagi
28. Dr. M. R. Vyas.

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

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*Not a member of the Committee and attended the sitting with the permission of the Chairman under Rule 299.

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS).

1. Shri P. B. Menon—*Joint Secretary.*
2. Shri C M. Narayanan—*Director of Investigation and Inspection.*
3. Shri C. R. D. Menon—*Joint Director.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. THE MADRAS CHAMBER OF COMMERCE AND INDUSTRY, MADRAS

Spokesmen:

1. Shri A. K. Sivaramakrishnan
2. Shri C. S. Vidyasankar
3. Shri R. N. Ratnam

II. THE SOUTHERN INDIA CHAMBER OF COMMERCE AND INDUSTRY, MADRAS

Spokesmen:

1. Shri S. Narayanaswamy—*President.*
2. Shri N. C. Krishnan
3. Shri R. Venkatesan
4. Shri K. V. Srinivasan

III. MADRAS STOCK EXCHANGE LIMITED, MADRAS

Spokesmen:

1. Shri J. V. Somayajulu
2. Shri M. S. Sivasubramanian—*Vice-President.*
3. Shri E. V. Rajagopalan—*Council Member.*
4. Shri E. R. Krishnamurti—*Executive Director.*
5. Shri Y. Sundara Babu—*Secretary.*

I. The Madras Chamber of Commerce and Industry, Madras

Spokesmen:

1. Shri A. K. Sivaramakrishnan
2. Shri C. S. Vidyasankar
3. Shri R. N. Ratnam.

(*The witnesses were called in and they took their seats*)

MR. CHAIRMAN: I, on my behalf and on behalf of the Committee welcome you here. Before we begin, I would like to draw your attention to the Direction for your benefit which states that the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they

specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI A. K. SIVARAMAKRISHNAN: On behalf of the Madras Chamber I thank the Committee for giving us the opportunity to present our views before the Committee on the Companies (Amendment) Bill, 1972.

We have already submitted a Memorandum. I would like to touch upon a few aspects and give our observations. Firstly, the concept of 'Group' is newly introduced in the Bill. The definition is not quite comprehensive, but rather vague and perhaps this may be examined in conjunction with the definition of "company under the same management" where group is specified; this may lead to a situation where totally unrelated companies would fall to be classified as companies under the same management. Transactions may take place without the companies realising what has happened. So perhaps a modification of the definition of company in the same management would be desirable.

The next point is withdrawal of courts jurisdiction in the matter of alteration of the Memorandum of Association etc. In many cases contentious issues have been the subject-matter of petitions to the court and Government have been also parties. It seems necessary that we should have the right of appeal to the court against the decision of the Central Government.

In relation to companies which are deemed public companies in law, the Sastry Committee had recommended the principle that real public interest alone should be the criterion for conversion of private companies into public companies. The proposal to treat a private company with Rs. 25 lakhs share capital and Rs. 50 lakhs turnover as a public limited company would have the effect of practically wiping out the class of private companies. On behalf of the Chamber I would plead for the capital limit being raised to one crore and turnover to two crores.

As regards the new section 108B, restriction on transfer of shares, I would request the Committee to consider that this shall not be applied to private companies. Another practical difficulty seems to arise from introduction of section 187C which requires declaration of trust to company. I am sure that we shall have a number of practical difficulties when conflicting claims come up. This I think is far too drastic. This provision may kindly be examined again. Some form of protection is necessary to companies.

As regards the requirement of depositing the money declared as dividend within 7 days, it seems a financial problem. I would submit that the period be extended to one month and payment be made within 42 days. The restriction on payment of dividend from accumulated reserve seems to give a blow to well-managed companies.

The requirement that when Government so considers the cost audit report should be disclosed to shareholders seems to take away the secrecy promised in Parliament. This disclosure to share-holders might create difficulties for companies to function, because the cost audit report is a vital document and disclosure of it to share-holders and competitors should lead to practical difficulties.

In regard to appointment of sole selling agencies, the test of demand exceeding production seems a difficulty.

Then again the question of prior approval of Government for contracts with directors who are interested is going to complicate and make unworkable. Ex-post-facto sanction may it is suggested be given by Government.

As regards appointment of secretaries. I think the existing procedure may continue. If this is changed, it will create a lot of difficulties, as we do not have enough qualified secretaries.

Control is sought to be made over foreign companies operating in India particularly where they have more than 50 per cent of the shares held by Indian Citizens. Our Chamber feels that the company should such a case be treated as are Indian Company for all purposes like licensing, taxation, foreign exchange etc.

Finally ,there is a total ban on chartered accountant doing cost audit. We do not make a distinction between the two. Cost accounting is a specialised study. But there are chartered accountants as good as cost accountants and a total ban on them seems to give a step-motherly treatment to chartered accountants. They function under an Act of Parliament. The Chamber feels that no such restriction should be imposed. That is all my submission.

SHRI MADHU DANDAVATE: What are your comments on cross checks that are sought to be introduced in the new Bill about the obligation on the companies to declare their creditworthiness or their financial position when they seek deposits from the public?

There are various types of companies. The deposits received by non-banking and non-financial companies are regulated by the Reserve Bank directly as amended from time to time. Do you feel that the present directives given by the Reserve Bank even if amended from time to time cannot be circumvented by those people who want to have privileged deposits from different types of people? Don't you think that the provision suggested in the Bill is absolutely necessary?

SHRI A. K. SIVARAMAKRISHNAN: I would submit 'yes'. There may be some form of assessment of creditworthiness of these companies, but at the moment there has been no abuse, as far as I know.

SHRI MADHU DANDAVATE: Have you come across any cases in which these directives of Reserve Bank have been circumvented?

SHRI A. K. SIVARAMAKRISHNAN: I have not come across. .

SHRI MADHU DANDAVATE: But you have no objection.

SHRI A. K. SIVARAMAKRISHNAN: I have no objection for some form of study of credit-worthiness of these companies.

SHRI MADHU DANDAVATE: I would refer you to clause 13 Certain safeguards against take-over of companies have been already provided. In your note there is a reference to this clause. But don't you think that there is an abuse as far as this aspect is concerned and there should be some sort of alternative?

SHRI A. K. SIVARAMAKRISHNAN: The companies will be in great difficulties. They would not be able to operate. There will be conflicting claims regarding uncalled share capital—some times to whom you should pay the dividend or who should exercised the voting right. I would expect some form of provision which will enable take over of companies being stopped where it is considered undesirable.

SHRI MADHU DANDAVATE: Would you propose an effective alternative?

SHRI C. S. VIDYASANKAR: One method will be to protect the companies if they pay the dividends to the shareholders whose names appear on record or to make them liable for uncalled liability for that matter or issue notice of a meeting to the shareholder owhse name appears. If there is a provision notwithstanding this the company will be indemnified if it pays the dividend to this shareholder, sends a notice to this shareholder and possibly call upon this shareholder if there is uncalled liability.

SHRI MADHU DANDAVATE: That means do you consider that there is a lacuna in the present provision that is suggested, whether it is workable or whether it will create difficulties or the procedure that you suggest would be more effective.

SHRI A. K. SIVARAMAKRISHNAN: We are trying to see that the companies will not be finding it difficult to run their affairs by having all these difficulties around like conflicting claims.

SHRI C. S. VIDYASANKAR: It gives a go-by to some extent to the principle of Section 153 where a company is not expected to take note of any trust. Once the company is saddled with the liability of taking notice of a trust in favour of somebody else, it is a sort of resulting trust, a benami resulting trust, the resulting trust is brought to the notice of the company, it is very doubtful whether the company will be safe in paying the dividend to a shareholder other than the shareholder because the real person interested in the shareholder may claim the dividend payable to him.

SHRI MADHU DANDAVATE: As far as public limited companies and private limited companies are concerned, even in a country like United Kingdom where the thinking has been quite conservative and traditional they are trying to remove the distinction. Don't you think that a stage has come in our country also to revise our attitude towards public limited companies in which the finances of the public or the financial institutions in the public sector are utilised to a very great extent to stabilise the private sector and bring about a further growth of the private sector? One extreme suggestion that has been made is that we should abolish these institutions, public limited companies.

SHRI A. K. SIVARAMAKRISHNAN: That, Sir, might have a very dangerous effect on the development of small scale industries. We have a number of small private companies. They have to organise themselves in that way to limit their liabilities. There is no other object in view. But that protection in the development of the business seems necessary.

SHRI K. S. CHAVDA: Clauses 31 and 32—The Chamber has suggested that this Act should apply to the foreign companies in all respect, i.e. licensing, taxation, foreign exchange regulations, etc. The Government have suggested that if a company has more than 50 per cent of the share capital by the foreign company, then it is a foreign company and if it is less than 50 per cent it is not a foreign company. If the percentage of shareholding is reduced to 26 per cent, would it serve the purpose

SHRI A. K. SIVARAMAKRISHNAN: No.

SHRI K. S. CHAVDA: The intention of these people is to send their monies to foreign countries. They are interested in repatriating their profiits to their countries.

SHRI A. K. SIVARAMAKRISHNAN: When we consider that a foreign company should be treated as an Indian company if 50 per cent of the shareholders are Indian citizens, let us treat them as Indian companies in all respects—licensing, taxation foreign regulations, etc. We will have the advantages as well as the restrictions.

MR. CHAIRMAN: The question is whether you would agree with the suggestion that the participation by foreign companies which is to the extent of 50 per cent of the capital be reduced to 26 per cent for the purpose of definition of foreign company.

SHRI A. K. SIVARAMAKRISHNAN: May I say, Sir, that in the Foreign Exchange Bill they have put it at 40 per cent now.

SHRI K. S. CHAVDA: We are concerned with the Companies Act. If it is reduced to 26 per cent, will it not suffice, will it not serve the purpose? Regarding Foreign Exchange Regulations to that extent the repatriation of profit would be less, if it is reduced to 26 per cent.

SHRI A. K. SIVARAMAKRISHNAN: I agree.

SHRI R. R. SHARMA: In the course of your statement, you said that the definition of 'group' is vague. Can you give some proper definition?

SHRI A. K. SIVARAMAKRISHNAN: We are not ready at the moment, but we can draft it.

SHRI R. R. SHARMA: You have said something regarding ousting of jurisdiction of the Court. My opinion is that after ousting the jurisdiction of the Court there will be total denial of justice. What is your opinion? Do you share my view?

SHRI A. K. SIVARAMAKRISHNAN: I was only trying to say that whatever the Government decides, we will accept subject in any case to a right of appeal to Court. That does not mean that every case will go to Court.

SHRI R. R. SHARMA: In your memorandum you have not said anything about punishment. Do you you think that the punishment is severe or hard and should not be there?

SHRI A. K. SIVARAMAKRISHNAN: I am only thinking in the context of Section 108-A where a company is to be adequately protected. The Company is not protected. The Company cannot undo what has been done.

SHRI POPATLAL M. JOSHI: I want to ask you one question regarding Clause 18. Do you think that the professional managers will be scared away by this clause? You do not want anybody less than the Registrar? If the company's accounts are all right, why should you fear anybody.

SHRI A. K. SIVARAMAKRISHNAN: You please refer to objects and reasons for this Clause. The amendment relating to inspection is intended to evaluate precisely the level of efficiency in the conduct of the affairs of the company concerned and to cover the performance of statutory auditors. The evaluation has to be done by a very senior Officer of the Company Law Board. That is why we suggested that the Registrar or somebody equivalent to him should do this job.

SHRI POPATLAL M. JOSHI: How can you have so many Registrars to inspect all the companies?

SHRI A. K. SIVARAMAKRISHNAN: This evaluation would not require to be done as often as one would imagine because it is a very serious procedure under the Company Law. This would be done very sparingly. A few Officers of the Company Law Board should be able to deal with that, if the object is only to limit this special examination to certain badly managed companies.

SHRI POPATLAL M. JOSHI: Now my question is this. How can you have so many Registrars, when you say that the person should be not below the rank of a registrar? Would it be possible?

SHRI A. K. SIVARAMAKRISHNAN: The lawyers or Chartered Accountants who can do that work can do it. I have only indicated the rank.

SHRI MAHAVIR THYAGI: In your Memoranda you have stated that totally unconnected companies would fall to be classified as companies under the same management if a Director of one company is one of the three Directors of the other, a situation which cannot be justified from the legal or ethical point of view. I think this can be removed if a provision was made to that effect in the Bill with regard to the genuineness of the Company. Only after knowing the genuineness of the Company action should be taken.

SHRI A. K. SIVARAMAKRISHNAN: Yes, that would be a practical suggestion.

MR. CHAIRMAN: In reply to a question of Shri Madhu Dandavate, you have said that the abolition of the distinction between the private and public limited companies would harm or retard the growth of industry. May I know what are the ressons for retarding the growth of industry?

SHRI A. K. SIVARAMAKRISHNAN: If you look at the statistics of companies, you will find that several thousands of companies are run in private sector. The ratio between private companies and public sector companies is indication of the present position. From the statistics you will find that people generally prefer to run their industry through private companies.

MR. CHAIRMAN: Is it not a fact that persons in public limited companies or Managing Directors of the public companies are doing business in different names and style to get more money and also is it not a fact that they have drawn so many of the private companies in various forms and styles?

SHRI A. K. SIVARAMAKRISHNAN: Yes, that abuse is possible.

MR. CHAIRMAN: Are there not many instances of that kind that a group of industries which have connection with public limited companies are organising business in the name of private companies and organise subsidiary in a different name of the same concern. Will it not amount that persons in public limited companies are controlling the private companies?

SHRI A. K. SIVARAMAKRISHNAN: Section 43 A is there to cover such cases. I am sure the Government has got adequate powers.

MR. CHAIRMAN: Restrictions and penalties are always there. Let us talk of the present position. The present position as it stands to day. Do you agree that the private companies are backed by the persons who are managing the public limited companies to their advantage?

SHRI A. K. SIVARAMAKRISHNAN: There may be instances.

MR. CHAIRMAN: Thank you very much for the evidence that you have tendered before the committee.

(The witnesses then withdrew.)

II. The Southern India Chamber of Commerce and Industry, Madras.

Spokesmen:

1. Shri S. Narayanaswamy—*President.*
2. Shri N. C. Krishnan.
3. Shri R. Venkatesan.
4. Shri K. V. Srinivasan

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Narayanaswamy and other Members of the Southern India Chamber of Commerce and Industry, Madras, on my behalf and on behalf of the Committee, I welcome you all here. Before you begin with your comments on the Company Law Amending Bill, I would like to draw your attention to the Rule which says: The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published. unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. Now you can submit your comments on the salient features on which you want to lay stress particularly because we have had enough evidences of Chambers of Commerce and Industries from so many parts of India. Kindly be brief and after you submit your comments, the hon. Members will put questions and while replying to the questions, you can explain.

SHRI S. NARAYANASWAMY: Mr. Chairman and Friends, first I would like to introduce my colleagues Shri R. Venkatesan and Shri N. C. Krishnan, who are the Members of the Committee of Southern India Chamber of Commerce.

I shall lay stress only on two or three points rather than going through a large number of points on which we have given a elaborate reply in our Memoranda, and which I hope would be made available to the Members of the Committee.

The basic concept of the Bill relates not only to the Corporate community but also to the business community. Incidentally, I may point out that I belong to the corporate community and I am Director of 19 Companies. The predominant feeling left in those who have gone through this Bill (Amending Bill) is that basically many rights of the shareholders are sought to be deprived of, which they presently enjoy. It is felt that such rights are being eroded or are likely to be transferred to the Government. The second point is this. The decisions of the Courts are sought to be substituted by the decisions made at the executive levels. Both these seem to deprive the shareholders of discretion and the protection that the Courts have given him are substituted by the decisions of the executive. The major psychological impact of the Bill has been felt by the community of entrepreneurs.

The other general concept I would like to refer to is this. India does not have a very large corporate sector and I can say that we have the existing corporate sector has yet not grown to full stature. In fact played a very notable part in the economic activities in the country and in its development. This economic activity needs further development. During the Five Year Plan periods, the private sector has played a very important role in increasing production and is also responsible for considerable enlargement of those sectors. The Bill unequivocally provides additional disincentives. So people would like to avoid corporate sector and engage themselves in less organised sectors. The less organised sectors are not perhaps the very best form for

economic activity. They shy away from the corporate sector. Economic activity depends on the size of the sector. We feel that the amendments suggested in this Bill would hamper the enthusiasm of the entrepreneurs. For example take clause 2, sub-clause (i). It seeks to define a group as two or more individuals, associations, firms or bodies corporate or any combination of individuals or institutions who exercise or *have the object of exercising control over a company*, firm or a body corporate. We represent a number of companies. Our experience is this. In the promotion of new companies, we find it very difficult to get men of calibre and experience to join the Board. There are of course a number of people who want to become directors. But they neither have experience nor entrepreneurial acumen. They have no experience in capital formation. Therefore, I would suggest that as far as possible we should choose men of calibre and experience. These difficulties are experienced in formation of Boards of Directors of various companies. What is sought to be done is to identify a motive to exercise control. This is one thing which we have been finding it difficult to understand. Officials are concerned with many functions, and hold so many responsibilities. So many statutory and moral responsibilities are sought to be incorporated on the shoulders of Government officials under this Bill. When it becomes law, it is going to become much more difficult to operate the law and there would be a lot of complaints of injustice being done to the entrepreneurs. Therefore, I would suggest that since the Bill is going to have far-reaching consequences, there can be an *ad hoc* Expert Body on the lines of Securities and Exchange Commission, which might take charge of all the matters including capital issues, conduct of company affairs and foreign exchange affairs. That *ad hoc* Expert Body might consist of representatives from the Ministry of Finance, Ministry of Economic affairs and other persons in charge of the subject. My experience in the past five years is that there has not been adequate co-ordination among these in charge of the three subjects.

I feel that a Security and Exchange Commission as in United States which will possess more expertise and which will have the necessary leisure and time could be best suited to make necessary economic decisions on matters like capital issues etc. Such expertise should be pooled into one body and such a body would be in a position to take quicker decisions than governmental bodies. We have been complaining of delay on the part of government. We have had experience with it in import licensing. Due to delay in decisions, we have been affected by increased cost of imported material. An independent body will bring in a more objective outlook by virtue of the expertise they possess. I hope in that body you would naturally put in men of sufficient experience.

I have put in my memorandum the points which we wanted the Committee to consider. I shall only highlight three or four points. I say that putting in of words like 'with the object of exercising control' etc. in a statute book is not quite appropriate. Such kind of phraseology would only result in creating more prejudices. So that wording should go.

So far as 'constituent' within the same group is concerned, one person under the existing law could be Managing Director of two companies. Between the two, he can constitute the same group. I think something could be done and the Committee might consider whether sub-clauses (iii) and (iv) of Clause 4. should be persisted in.

Now coming to private companies the object with which a private company is constituted is to bring in a certain amount of discipline and organisation into family enterprises. In England private companies have come up with a view to bring in better organisation, scientific management and

better sense of security. Undoubtedly they have some tax benefit. All these are done within the four corners of law. The House of Lords have held that it may not be accepted in order, but the man may have a duty to his family to reduce the tax liability of the family within the four corners of law. There must be a distinction between tax avoidance and tax evasion. If a man dodges paying tax, he should be punished. But if within four corners of law, a private company operates and helps to reduce taxes there is no harm in that. Already there is the noose over all private companies and the margin of profit they make is too marginal, as my auditor friends may know too well. There is inherent contradiction between the approach to a private and a public company, in basic concepts. Private company is not a new phenomenon. When a private company works with a view to bring in more scientific management in family concerns. it should be allowed to continue. Saying that they would be automatically converted into public companies under some circumstances, will cause them only hardship.

With regard to deposits, I fully appreciate the provisions relating to control of deposits. The question of having fixed deposits in companies came in because of enormous increase in cost of raw materials and capital cost of plant and machinery. Within the last 7½ to 8 years, there has been 400 per cent price increase in plant and machinery. In such circumstances it is not always possible to depend on bank finances. The public bodies, like Electricity Boards and railways etc. are not able to pay in time. My goods lie idle, raw materials on one side and finished goods on the other. I have naturally to go in for fixed deposits. That was how the idea of fixed deposits was mooted. I, however, welcome control on fixed deposits.

A normal prospectus is of 25 pages. But nobody reads the whole of it. The Broker's circular is read. The salient features of the company's operation, its performance during the last three to five years could be summarised in one or two sheets and that could be published for the depositor. All the other statutory informations in prospectus are not usually read. If there is a dividend column it is eagerly read. That is how it happens. When that is the case, should we increase the number of pages by giving in more statutory information? It is not necessary that a full prospectus should be issued in the context of deposit invitation. That would become an elaborate document.

A word about declaration of dividend and deposit of dividend money within seven days. The time should be a fortnight and not seven days. I have had experience with D.G.S.D. and Railways They do not lift goods and we do not get money in time. Of course I have six months to prepare a balance-sheet. What I say is I do not want 42 days. It is good it is reduced. But let it be a fortnight instead of only seven days for payment of dividend.

Now another thing. You want a list and addresses of persons drawing more than Rs. 3000 and above to be published in annual reports. Nobody now-a-days reads the balance-sheet in full. If there is a dividend column, it is read. Nobody bothers about voluminous statutory information given. If there is a dividend column, it is dresses of senior officers drawing more than Rs. 3,000/- it would be an elaborate a document and it will only give a hand to labour union leaders to find out the names and addresses and gherao the senior officers. I think that is not necessary. We can give the number of officers drawing more than Rs. 3000 and above. That would be enough. What is the good of saying that instead of Krishnamoorthy, Gopalan is drawing more than Rs. 3,000. It is enough if the number of officers drawing more than Rs. 3,000 is given.

I now come to the most controversial clause of appointment of auditors. I am not allowing my other friends

who are auditors to speak. I speak from my experience. The senior auditors have come into being by attaching themselves with big business concerns and by building up practice and then branching off and setting up independent practice, after their long service in the line. They have come up in the line by dint of sheer merit. Nobody says that junior auditors should be shunt out. In most cases business grows with the man and the genteel grows with the man. But when you say that these people will be arbitrarily turned down at the end of three years, you compel them to introduce a system of Junior Aurotations and all that. It is far better to inroduce a system of Junior Auditors—the term to be separately defined—and utilise the promising youngmen for internal audit, making internal audit compulsory in respect of companies with capital of say Rs. 30 lakhs or 40 lakhs or 50 lakhs. Internal audit must first be given to these junior auditors.

I am told that the Institute of Chartered Accountants and the profession are not wholly averse to have a ceiling. But I do not know how this is done. A man enlarges his profession on the basis of personal merit, personal knowledge of the subject and his reputation for rectitude. These are the cardinal tests for success in any profession. I do not know why a statutory ceiling is sought to be put. I am personally against any form of ceiling except on population in this country. I suggest that there should not be any ceiling on the auditors profession. For every fixed number of audits that a firm has. you can have so many junior auditors and their scales of pay may be fixed in consultation with the Institute of Chartered Accountants, and Governmnt can bring moral pressure to adopt the scale of pay decided by them.

I have referred to certain things which you might call as indiscreet. It is possible to corrupt or coerce or bring intimidation on junior auditors unlike in the case of big audit firms and the junior auditors might feel too weak to resist the temptation of being asked to do an improper thing or compromise a book entry. Further, he may not have the equipment which a big auditor firm might have and they may not be able to complete the audit with the statutory limitation of three months.....

AN HON. MEMBER: It is not only indiscreet, but it is uncharitable to junior auditors.

SHRI S. NARAYANASWAMY: I am only giving out the collective feeling of the committee which went into this question. There is difference in the theory of assessing human nature.

AN HON. MEMBER: A young auditor will be more reliable and honest because of his interest to build up his future.

SHRI S. NARAYANASWAMY: I hope sincerely that that would continue to be the trend. The institute of Chartered Accountants has a Disciplinary Committee which examines such lapses....

MR. CHAIRMAN: You leave that point.

SHRI MADHU DANDAVATE: I refer to page 5 of your Memorandum—clause 6. You have said that acceptance of deposits by companies is subject to the limits and rules prescribed by the Reserve Bank of India. In the Reserve Bank Regulation, definition of non-financing and non-banking company is any chit fund, hire purchase, investment loans etc. It does not include any insurance company or stock-exchange or stock-broking company. Since these institutions are excluded, but merely rely on the directive of Reserve Bank of India. An investor would like to know the credit-worthiness of the institution. He will not be worried about the elaborateness of the prospectus. Therefore, the provision seems all right. What is your opinion?

SHRI S. NARAYANASWAMY: I spoke from my experience of 40 years. I meant no aspersion against the investor. If wou give him an elaborate document he cannot do the strenuous exercise of going through it fully.

As for Chit Funds etc., I do not refer semi-financial institutions. I am concerned with industrial companies in the corporate sector. Actually there are other legislations in the State controlling Chit Funds. They are covered by State Statutes I have not presently applied my mind to the question posed.

SHRI MADHU DANDAVATE: You have not referred to section 15 in your memorandum?

SHRI MADHU DANDAVATE: You have dealt with only certain clauses, not all.

SHRI MADHU DANDAVATE: After the abolition of Managing Agency system, it is found that former managers, secretaries etc. try by the back door to take control of new companies. Now the new provision tries to avoid that. One of the arguments against this provision is those experts who are really helping the companies in the form of advisers are not accepting any honorarium and therefore why they should be excluded. The sound principle of business demands that such interference should not be there and the new provision seeks to achieve it. What is your attitude?

SHRI S. NARAYANASWAMY: There has been a prejudice against former managing directors and former management group of people. I want any statement made on this floor to be accepted as being objective....

MR. CHAIRMAN: We as a Committee have come to take evidence and the evidence of witnesses is taken most objectively.

SHRI S. NARAYANASWAMY: I am referring to my objectivity. As you may be aware, at least 60 or 70 per cent of former Managing Agents have trained their sons, sending them abroad and going through rigorous study in the Management Institutes. It would be unfortunate that if such people are excluded from the affairs of the companies, I am sure that the ordinary way of 'son of the father' question should be ruthlessly excluded. I have no sympathy with such persons. But there are men trained in Management and I do not think that such people especially when management talent is not over-flowing the country should be excluded, merely because he is a relative of the former managing agent.

SHRI MADHU DANDAVATE: What is you objection to service-agreements being approved by the Government of India?

SHRI S. NARAYANASWAMY: So long as there is no delay, I do not mind.

SHRI H. M. TRIVEDI: In your general comments you mentioned that the concept of this amending Bill seem to be to encroach upon shareholders' autonomy. Subsequently we were talking about regulations in respect of deposits, publication of prospectus, shareholders' looking at the prospectus or balance sheets and so on. You practically imply that they are not greatly interested in all the details, they are complacent with it or they are not even looking at it very carefully. Would you not say that the historical experience of corporate existence in this country has been that shareholders' autonomy is not functioning. In effect as a matter of fact most financial groups have been successful in controlling the corporate companies and shareholders' autonomy has in fact not been functioning. Now this leads me to the other part of it, namely, it is because of that feature that stringency of statutory law in relation to companies becomes necessary. Would you not subscribe to this view?

SHRI S. NARAYANASWAMY: To the extent to which shareholders' autonomy is there, I am exercised about the global phenomenon. In a normally well-run company, a shareholder does not even care to attend the general meeting. But that does not mean that he has no capacity to understand the operations of the company. So long as he receives the dividend he thinks that the company must have been reasonably well-managed. That is the general attitude. The existence of Company Law itself, is acceptance of regulation. Therefore, I am for acceptance of regulation. But what is the degree of spoon-feeding that a shareholder deserves is what I have been attempting to ask. You are trying to protect him, but it may be self-defeating for the field of entrepreneurship may be scotched. I feel that the capital market is already dormant. Therefore, it is that I want to arrive at some compromise so that the entrepreneur will be able to promote the company without having to conform to too many formalities. That is all. It is not as if I wanted to contradict it.

SHRI K. S. CHAVDA: You wanted to exclude the deposits from the members of the company from the operation of the proposed amendment to Section 58. There are companies in which some shareholders do not receive even annual reports or even notice of the general meeting. In that case, is it not necessary?

SHRI S. NARAYANASWAMY: If such a man deposits with a company from whom he does not even receive the balance sheet, if he chooses to make a deposit with that company, I do not think Government can protect such a person.

SHRI P. RANGANATH SHENOY: Is it not that an ordinary shareholder feels that his interests are protected by the Government and therefore, he does not care to know the affairs of the company?

SHRI S. NARAYANASWAMY: I have not taken a referendum from the shareholders. But my general impression is that he is a person of his own preoccupations and having invested his money, if he feels that he has invested his money diligently enough, he does not take too much interest except to receive the balance sheet and begins to complain only when he does not receive the dividend. The Company Law gives certain degree of protection to him, but not all the protection.

SHRI HARSH DEO MALAVIYA: I want to draw your attention to pages 7 and 8 of your memorandum. You very rightly say that some public financing institutions like the LIC, Uunit Trust of India, ICICI or IFC, etc. have their money invested in some public companies. Their holdings sometimes amount to 30 or 40 per cent. For instance, there is Kothari Textiles wherein the LIC holds 40 or 45 per cent of the shares. You have referred to Section 108-B and pointed out that it requires that a body corporate holding 10 per cent of the share capital of a company either singly or alongside of a sister company under the same management shall not transfer such shares without giving intimation to the Central Government of such proposal. The Government should be given full particulars. You are not in favour of the Government being given full particulars because you fear that the Government in the process of prohibiting such a transfer shall assume powers to transfer the shares to its own name. Do you think that the Government will transfer the shares? Supposing it has a holding of 40 per cent, it can take 10 per cent more and make it 51 per cent and it may become a Government Company or public sector company. That is your fear?

SHRI S. NARAYANASWAMY: Yes.

SHRI HARSH DEO MALAVIYA: What is the harm? After all Government have already invested 40 per cent of the capital and that is public money. If a certain capitalist and certain Kotharies are making huge

profits and if the Government chooses to add 10 per cent more of its holding, what is your objection?

SHRI S. NARAYANASWAMY: It is this way. The reason why public financial institutions hold shares in most public companies is not because the management wanted it, but because the capital market has been shy. All these entrepreneurs have got to go to the institutions and get their underwriting arrangements. In the course of fulfilment of the underwriting arrangements, it happens that these institutions come to hold 20 per cent, 10 per cent like that and in the aggregate it become 40 per cent. The man is happy if the company is managed continuously diligently.

SHRI HARSH DEO MALAVIYA: But the very fact that even though the company managed its affairs so well or so unwell, it had to rely upon the public financial institutions to advance 40 per cent of its capital, does not speak very well of the management of the company. If the Company is so bad that it has got to acquire 40 per cent of the capital from the Government, will the Government be wrong in advancing another 10 per cent and taking over the company?

SHRI S. NARAYANASWAMY: The reasons are historical. The process of capital market was getting demoralised for the last 25 years due to fiscal imposts. As a result of that people have been investing less and less in companies and more and more elsewhere. Shares prove a very poor hedge against inflation. The reasons are both fiscal and monetary. That is the reason why the individual is avoiding the share market as an investment source and therefore, we are thrown to Government for promotional effort, and in that process Government have been advancing capital. So, it does not reflect on the merits of the company. I should be legitimately afraid of the company becoming a Government company. I do not want that my company should become Government company overnight. It is not agreed It is legitimate and normal that I want to manage the company which I have been so far managing.

SHRI HARSH DEO MALAVIYA: There may be two interpretations to what you say. Your investment has been constantly going down, but your profit has been constantly going up.

SHRI S. NARAYANASWAMY: This adding of 10 per cent can take place even in a perfectly prosperous company, that is transfer and Government may insist that it should be transferred to them. Then it becomes a Government company.

SHRI HARSH DEO MALAVIYA: Out of Rs. 100|- Government have given you Rs. 40|-. You are making huge profits. Why not the Government invest another 10 per cent and take the whole of it. There can be this point of view also.

I ask you one more question about your memorandum. You are distrusting the depositors. You are afraid of putting the whole prospectus before them. You say that they do not read, it will become very cumbersome. Why are you worried, if your accounts are clear and facts are clear? You can certainly afford to employ a few more persons and prepare any cumbersome documents and present them to depositors. I cannot understand your hesitancy in placing all facts before those who wanted to deposit.

SHRI S. NARAYANASWAMY: Absolutely no hesitation. I would be publishing the balance sheets and annual reports. It gives the minimum amount of statutory information in the schedules. Depositors are attracted by big companies whose balance sheets are always available. What I said was, do not call for too cumbersome documents which the depositors will not read. If I distrust my depositors, the depositors will not trust me.

SHRI HARSH DEO MALAVIYA: I have got a copy of publication here 'Mystery of depositors' published by some young auditors' firm of young chartered accountants from Calcutta. They have asked some questions which

I would like to ask you. Do you know that big audit firms make several serious defaults in signing big company's balance sheets, putting the shareholders to tremendous loss? Will you agree?

SHRI N. C. KRISHNAN: There are enough provisions under the Company Law as it is. If the auditors were really at fault, the matter is investigated and they were booked. As far as I know, no company has come across such a thing.

SHRI S. NARAYANASWAMY: They say that the auditors are reluctant to sign the balance sheet.

SHRI HARSH DEO MALAVIYA: It is said that they are making serious defaults in the balance sheets.

SHRI N. C. KRISHNAN: It is untrue and it is a very wrong statement.

SHRI HARSH DEO MALAVIYA: Do you also know that disciplinary cases are dealt with by a Committee?

SHRI N. C. KRISHNAN: There is also a Government nominee in that Committee appointed by the Government. His voice only prevails in that Committee.

SHRI HARSH DEO MALAVIYA: Would you agree that the disciplinary jurisdiction be taken away from the Institute of Chartered Accountants Council of India and handed over to a tribunal?

SHRI N. C. KRISHNAN: The entire autonomy of the Institute can be taken away in that case. When one function is taken away, the entire auotonomy of the Institute can be taken away. If the disciplinary action power is taken away from the Institute of Chartered Accountants and given to an independent Tribunal, it will not function properly. If it is to be taken, we are prepared to surrender the autonomy of the Institute to the Government.

SHRI HARSH DEO MALAVIYA: Then you are not in favour of this.

SHRI N. C. KRISHNAN: Yes.

SHRI HARSH DEO MALAVIYA: Then you are not in favour of this.

SHRI N. C. KRISHNAN: Yes.

SHRI R. VENKATESAN: The auditor referred to in the Vivian Bose Report was hauled up and action taken against him.

SHRI S. S. MARISWAMY: Since you have good experience in this field and you are also quite conversant with all the provisions of the Bill and closely associated with the financial institutions and you are also a legislator, I want to know your opinion whether this Bill, as it is, will definitely curb the malpractices or will it act as disincentives to the Companies?

SHRI S. NARAYANASWAMY: Many parts of the Bill are welcome to us. Actually we have left out many of the provisions, because they are no objectionable. We have concentrated only on 5 or 6 points, which we feel are cumbersome to most of the entrepreneurs, who are already having other troubles due to Income-tax Act and other Statutes. Now itself we are finding it very difficult to mobilise resources. We want that community should be treated in a better way. They are not bad people. They are all patriotic people. They represent so many companies and their interest should be protected and preserved. The company organisation is an extremely difficult task. When we undertake to promote a concern, we had to undergo so many problems and difficulties. There should be incentive and inducement to promote industries. Some provisions in this Bill would curb their enthusiasm though they were provided for in the Bill to curb malpractices. Human nature is not wholly that of the angel or of the devil. It is a mixture of the two. There are five or six points which have to be modified. For instance, we find it extremely difficult to form the Board of Directors. That clause also requires reconsideration by the Committee.

SHRI S. S. MARISWAMY: There is a fear in the mind of some auditors

with regard to their future appointment by the Government. A fear is lurking in their minds whether thee would be appointed by the Government or not. To what extent do you share with this view?

SHRI S. NARAYANASWAMY: It is a legitimate fear. Whether it is right or wrong, they should be treated as Montessori children who need complete protection at the hands of the Government. Even now action is taken by a Committee constituted by the Institute of Chartered Accountants agaist erring auditors. I am not saying that it should not vest wih the Government. Even in the case of aulitor referred to in Vivian Bose Report action was taken and he was brought to book. The Government is watching right through. The criticism about the aulitors as a whole is unwarranted. I can say that so far no case of malpractice of collusion by the auditors was brought to the notice of the Government.

SHRI S. S. MARISWAMY: Would you kindly explain how some of the provisions would affect the Investment Market?

SHRI S. NARAYANASWAMY: I think 5 or 6 provisions, if they are rectified will not affect the Investment Market. Four or five provisions which we have referred to are rausing hardship to the entrepreneurs. I think that they will be modified. That is why purposely we have left out other provisions. I am not saying that the entire Bill is wrong. That is not the attitude that we have taken. We represent everybody in the Chamber of Commerce. We had two points in view while preparing the Memoranda for the Committee. That was the concensus of feeling among the members.

SHRI MAHAVIR TYAGI: I would like to ask one question. While commenting on Clause 2, sub-clause 1, you have said that this clause can bring anybody of two or more persons, to whom an officer has taken a dislike, within the definition of a group on the basis merely of the opinion or judgement of an official. I can very well understand that there is some such thing and you have rightly pointed out that the potential for arbitrary exercise of power would be enlarged if this proposed clause becomes the law. You have concluded saying that the definition of a group based on material facts would be more welcome. May I request you to put the alternative definition for 'Group'. You can kindly send us a note on the definition of 'Group'.

SHRI S. NARAYANASWAMY: If you do not include 'the object of exercising control' in this particular clause, it would be easy.

SHRI MAHAVIR TYAGI: You give us your constructive sugegstion.

MR. CHAIRMAN: Mr. Narayanaswamy says that 'the object of exercising control' should be deleted.

SHRI S. NARAYANASWAMY: For example,.....

MR CHAIRMAN: Apart from giving example, you can send us a note on the alternative definiion for 'Group' later on.

SHRI S. NARAYANASWAMY: Yes, we will do it.

MR. CHAIRMAN: Thank you very much for the evidence that you have tendered before the Committee. I hope your evidence will be beneficial to the Committee.

SHRI S. NARAYANASWAMY: May I on behalf of the Southern India Chamber of Commerce and Industry invite the hon. Chairman and Members of the Committee for lunch at 1.15 p.m. to-day

MR. CHAIRMAN: Thank you very much.

(The witnesses then withdrew)

III. Madras Stock Exchange Limited, Madras

Spokesmen:

1. Shri J. V. Somayajulu
2. Shri M. S. Sivasubramanian—Vice-President.
3. Shri E. V. Rajagopalan—Council Member.
4. Shri E. R. Krishnamurti—Executive Director.
5. Shri Y. Sundara Babu—Secretary.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Somayajulu and other Members of the Madras Stock Exchange, on my behalf and on behalf of the Committee, I welcome you here. I hope your evidence will be brief. Before you begin with your comments, I would like to draw your attention to the Direction which reads, that the witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evievidence to be treated as confidential, Even though they might desire their evidence to be treated as confidential. such evidence is liable to be made available to the members of Parliament. Now I would request you to make your comments briefly on the salient features on which you want to lay stress.

SHRI J. V. SOMAYAJULU: On behalf of the Members of the Madras Stock Exchange, I would like to express our sincere thanks to the Chairman and Members of the Committee for giving me an opportunity to place our views before the Committee.

The Madras Stock Exchange is generally interested in mobilising the savings of the community and diverting them to investment channels. In that process, we are also interested in seeing that the investment is spread out as widely as possible and in that process we are inclined to believe that some of the provisions incorporated in the proposed Company Law Amendment Bill may not be very conducive to the process of spreading investment. I would like to refer to particularly one or two sections which are added on to section 108 such as 108A, B, C and D. It is true and we also agree that it is desirable to see that the concentration of shares is not allowed to take place. But at the same time the clauses that are introduced in the Bill may not be conducive for economic activity. If you say that if a joint stock company or a group of companies under the same management who are holding 10 per cent or more of the capital of any company will not be allowed to transfer any share out of such holdings without informing the Government, it is not conducive for liquidity of shares. It would be very difficult in actual practice and affect market trading in shares held by Companies. In implementation of this proposal what will happen in this. People buy shares for various reasons, for investment purposes and also far getting regular dividend and also for having some investment interest in certain Companies. We agree that if people acquire more and more shares. it would lead to concentration. But if you take into account shareholding in companies, you will find shares are held in the names of individuals or companies; for the last two years you will find that the number of people having shares in individual names is becoming lesser and lesser. Therefore, companies are holding fairly quite a large number of shares. Again, if you put a ceiling on holding, the liquidity of shares will be affected. Every investor is interested in liquidity of

the shares he holds. Unless the liquidity is there, he would not buy shares. If definition of 'group' is extended, and if you bring in control over people holding more than 25 per cent, it will only prevent companies from registering shares. This will create a certain amount of uncertainty in the minds of investors. They may not come to buy shares. For any stock exchange to function effectively, there should be liquidity of shares. If you take into account present trading on a stock exchange, not more than 10 to 15 per cent of the shares are traded regularly. If more restrictions are imposed, it will create difficulty for investors. If liquidity is not there, stock exchanges cannot function properly. The Committee should see that liquidity of shares is not hindered.

Now I come to listing of shares in stock exchanges. When a company applies for listing in more than one stock exchange and listing is obtained on any one of stock exchanges, it is deemed that all other stock exchanges have given permission. But now the section has been amended to provide that even if one stock exchange does not grant listing or refused listing, subscriptions received from the public in response to the prospectus have to be refunded. This is too onerous a responsibility to be undertaken by companies and may result in dissuading public companies from getting listed on more than one stock exchange. This is not at all conducive for our avowed object of securing a shareholder's democracy by diffusion of shares among a large body of investors. The object should be to see that shares are spread as widely as possible among a large number of shareholders. Therefore, if the clause is considered necessary, there must be some proviso whereby some appellate authority may be given discretion to leniently views hard cases where they are unable to get permission in the short time prescribed under the Act.

Coming to dividend an investor is normally interested in getting dividend, which depends on the quantam of profits of companies. In some years there may be higher dividend. In some years there may not be dividends at all and after some years, out of accumulated profits of earlier years, higher dividend may be paid. It is also not correct to say that unclaimed dividends lying for more than 3 years should be paid to Government coffers. It is not as if they are always put to undesirable use. This will create endless problems for shareholders or their representatives to claim dividend back from Government.

Normally transactions take place through stock exchanges. If after one or two years they are annualled, the responsibility should not be put on stock brokers. Otherwise the whole stock broking community would be put to hardship. We would submit that whatever may be the transaction that a person may have with stock exchange, it should be treated as *bona fide* and brokers should be exempted from financial liability in these matters.

MR. CHAIRMAN: Hon. Members may put questions and witness may please answer.

SHRI MADHU DANDAVATE: You have said in your memorandum as follows:—

> "While attempting top recent undesirable persons to get control of (well managed companies by means of their unlimited financial resources, the proposed legislation would only perpetuate inefficient management, Further, they will also encourage the evils of political interference penetrate into the administration of private corporate sector as the managements of companies will be obliged to a look to Government officials for favourable orders".

You have also said at the outset that the main object of the Bill would seem to be to prevent anti-social elements from assuming control of the corporate management. The two statements are contradictory.

You know that after abolition of managing agency system, if the companies have entered into service agreements, it may be that some undesirable elements might have been brought into the picture. They might have contributed towards inefficiency. What all we say in this Bill, is, that if at all such service agreements had been entered into, it must be approved by Government? What fault do you find in that? After all according to what you have said. you want that undesirable elements should go.

SHRI J. V.. SOMAYAJULU: We are not objecting to the principle of government control whenever undesirable elements are brought into picture through back-door. What we say is that there should not be restrictions which would hinder investment.

SHRI MADHU DANDAVATE: You are evading the main thing. If service agreements had been entered into, what is your objection to Government approving of them? Can you suggest any other alternative than that?

SHRI J. V. SOMAYAJULU: In most of the major companies, Government have got control and their representatives are there and they could see that nobody comes in through backdoor. They would see that the company is run on proper lines.

SHRI MADHU DANDAVATE: You can answer me straightaway. Your intention is good but you are evading the question. Are you objecting to Government's approval of such 'service agreements'.

SHRI J. V. SOMAYAJULU: No, we are not objecting to Clause 15.

SHRI MADHU DANDAVATE: There are financial institutions like LIC which are public companies. They give lot of help to private financial institutions to come up. From such public sector can we go on feeding private sector companies?

SHRI J. V. SOMAYAJULU: Government can always exercise proper control over the management.

SHRI H. M. TRIVEDI: Do you agree that at least in the past the Stock Exchange itself has been the medium of benami transactions and what would you suggest to strengthen the provisions in this Bill for preventing benami transactions and declaring the beneficiary share-holder as the share-holder?

SHRI J. V. SOMAYAJULU: As far as the Madras Stock Exchange is concerned we have no budley transactions and forward trading. As far as the companies are concerned, they have to deal with the persons in whose names the shares are registered in the books of the company, as otherwise there will be difficulty in the payment of dividends rights, etc.

SHRI H. M. TRIVEDI: You have suggested the recognition of shareholders' Association. How will you sort out the claims of rival shareholders associations for recognition? How will you determine the representatives character even of a federation. (No. reply).

SHRI R. R. SHARMA: On page 28 of your memorandum, on penal proceedings, you have given your views. Do you think that by virtue of this amendment, the Government is going to nationalise all private companies without saying so through the backdoor?

CHAIRMAN: Have you any reply to this question, Mr. Somayajulu? Are you in agreement with what the hon. Member says that it would be tempt through back door to nationalise the private companies?

SHRI J. V. SOMAYAJULU: There are so many provisions in the Company Law which are being amended. If these things are super-imposed. It

will create more difficulties, Day-to-day administration will be difficult as they will have to refer to higher authorities for everything.

SHRI PRIYA RANJAN DAS MUNSI: With regard to the power of Courts, you have made certain remarks in pages 27 and 28 of your memorandum. It is not always possible for small share-holders to get to know very thing that happens. Only some four share-holders control the whole thing. They simply take a decision to change the registered office and the workers are put to a lot of difficulties. Whenever they want to do a thing they call for an extra-ordinary meeting and decide things as they want. In such circumstances do you not agree that the interests of small share-holders would be safe in the hands of the Government?

SHRI J. V. SOMAYAJULU: We submit that it is better to have an independent, judicial authority so that whoever has the right point may hope to get justice.

So far as shifting of registered office is concerned only where it is changed from one State to another State, they have to take the permission. For small things it is difficult to call for a general body, the members being spread all over the counry.

SHRI R. K. SINHA: Do you not think that poor-share-holders could get better deal from the Government, as only big people could afford to go courts and all that?

SHRI J. V. SOMAYAJULU: There are some provisions in the existing Act where the rights of minorities are safeguarded. We are inclined to think that the existing provision relating to minorities would adequately meet situation. Unless the nature of the complaint is known, it is difficult to give our views. We cannot say anything on a hypothetical basis.

SHRI S. G. SARDESAI: In the first three or four pages of your memorandum your view point boils down to this. You say that it is claimed to deal with problems and abuses of private monopoly sector or private corporate sector but actually what is being done is to replace the concentration of economic power in private hands with concentration of economic power in the hands of the Government. This is your specific charge. Obviously it implies that you consider that whatever the faults of concentration of economic power in private hands may be, that is preferable to the concentration of economic power in the hands of the Government. Am I putting your view point correctly?

SHRI J. V. SOMAYAJULU: Our submission is this. You are trying to solve the problem of concentration and impose certain restrictions. Therefore we have suggested that some of the proposals may be reconsidered so that the very objective for which the Committee and the Government is striving can be achieved.

SHRI S. G. SARDESAI: You say that all these powers which have already been taken over for the last so many years converge and flow into the monolithic Government extending to different Ministries in the name of public interest. With the object of ensuring social justice more and more absolute powers are taken by the Government leading to a great concentration of economic powers in the hands of the Government. It is a very categorical statement. What you are sayisg is the Government which want to eliminate the abuses in private sector is actually replacing the concentration of economic power in private hands with concentration of economic power in the hands of Government. In the given situation you are opposed to it. Between the two you stand for the continuation of things as they are.

MR. CHAIRMAN: Have you any reply? Are you subscribing to this view?

SHRI S. G. SARDESAI: The devil of the private sector is better than the deep sea of the Government. That is what you say.

SHRI J. V. SOMAYAJULU: Our submission is the extreme form of concentration of economic power whether it is in the hands of the Government or in the hands of the private sector may not do good to the public.

MR. CHAIRMAN: I have only one question to ask. All of you have come here as representative of Stock Exchange. May I know how many of you are represented on the Board of Directors and in how many companies?

SHRI J. V. SOMAYAJULU: Some of us are on the Boards of other companies.

MR. CHAIRMAN: Is there anybody from you who is not represented on the Board of Directors of any company?

SHRI SOMAYAJULU: Two.

MR. CHAIRMAN: Thank you very much for the evidence which you have given. I hope it will be of some benefit to the Committee.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972

Friday, the 15th June, 1973 from 11.00 to 13.00 hours in Committee Room, Old Legislators Hostel, Madras

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Khemchandbhai Chavda
4. Shri C. Chittibabu
5. Shri Madhu Dandavate
6. Shri G. C. Dixit
7. Shri Popatlal M. Joshi
8. Shri Ramchandran Kadannappalli
9. Shri Baburao Jangluji Kale
10. Shri Jagannath Mishra
11. Shri Muhammed Sheriff
12. Shri Priya Ranjan Das Munsi
13. Shri Narsingh Narain Pandey
14. Shri S. B. P. Pattabhi Rama Rao
15. Shri R. Balakrishna Pillai
16. Shri Jagannath Rao
17. Shri Bishwanath Roy
18. Shri R. R. Sharma
19. Shri P. Ranganath Shenoy
20. Shri R. K. Sinha
*21. Shri H. R. Gokhale

Rajya Sabha

22. Shri Harsh Deo Malaviya
23. Shri S. S. Mariswamy
24. Shrimati Saraswati Pradhan
25. Shri H. M. Trivedi
26. Shri Mahavir Tyagi
27. Dr. M. R. Vyas

*Not a member of the Committee and attended the sitting with the permission of the Chairman under Rule 299.

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS)

1. Shri P. B. Menon—*Join Secretary.*
2. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
3. Shri C. R. D. Menon—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. The Madras Shareholders' Association, Madras

Spokesmen:

1. Shri S. Annaswami.
2. Shri V. M. Thomas.
3. Shri C. Muthia.

II. *Mysore Chamber of Commerce and Industry, Bangalore*

spokesmen:

1. Shri G. Ramanathnam—*President*
2. Shri J. Srinivasan.
3. Shri H. C. Nagabhashana.

I. *The Madras Shareholders' Association, Madras*

Spokesmen:

1. Shri S. Annaswami.
2. Shri V. M. Thomas.
3. Shri C. Muthia.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Annaswami and other friends, on my behalf and on behalf of the Committee, I welcome you all here. You know that we are seized with the Company Law Amending Bill. There may be some provisions in which you may have interested or anxiety. On certain provisions, you may like to offer your views. I would like you to place your views with regard to those particular clauses in which you are anxious to draw the attention of the Committee.

Before you begin, I would like to draw your attention to Direction 58 of the Directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha, which reads are follows:—

"The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

Now I request you to make your comments. The hon. members will

put questions at the end and for which I hope you will reply. Thank you.

SHRI S. ANNASWAMI: I thank the Chairman and Members of the Committee for giving us an opportunity to putforth our views on this important Company Law Amendment Bill. Our main representation that we wish to make is with regard to recognition of Shareholders' Association. There has been no mention in the Amendment Bill that is before us or in the Act itself. We wish that an amendment should be introduced providing for recognition of an all India federation of shareholders associations and their regional member associations approved by the Government of India, when the Government finds that the Federation which is competent, which is genuine and can be trusted to represent the shareholders views, particularly the minority shareholders. The Government can recognise such a Federation. It is an important provision that we require to be introduced so that the Government can when the time comes give recognition to such a Federation. Such a recognition will enable the Federation and its regional member associations to represent the matters to the Government and to companies where there are said to be grievances, which the shareholders Association feel genuine. The Association will scrutinise such grievances and make representations to the companies or Company Law Board as the case may be. We require permissive provision to be introduced as a fresh amendment, because the present amendment does not contain anything. We have represented and representing the matter for several years. This recognition is very important. Without such a recognition, the Associations are powerless. At present we are feeling very frustrated.

MR. CHAIRMAN: Can you tell me in what way the recognition of the Shareholders Association can help you? In what manner and how it should be done.

SHRI S. ANNASWAMI: When we write to a Company saying that some shareholders have represented ....

MR. CHAIRMAN: I know that. In what form you want that to be done in the present Bill or in the present Act. In what Section, it should be done. In what section, you want that to be incorporated and amended. If there is no section, you can suggest.

SHRI S. ANNASWAMI: We want a clause to be introduced under Section 90. Our earnest request is that a provision should be made or included in the present Amendment Bill of 1972. This could be done by inserting a clause to Section 90. That is our request. We have mentioned it in our supplemental memoranda.

MR. CHAIRMAN: You are referring to page ....

SHRI S. ANNASWAMI: Page 3 of the supplementary memoranda which we have submitted to-day.

MR. CHAIRMAN: In what form that clause should be inserted has not been stated in your memorandum.

SHRI S. ANNASWAMI: We have drafted a clause provisionally. I shall read that draft:

> "Section 90A. Notwithstanding anything contained in this Act, the Central Government may, by notification in the official Gazette, recognise any Association of shareholders of an all India character or any federal body of shareholders, which it may approve on such terms and conditions as 'may be prescribed, hereinafter, called "Shareholders' Association."

MR. CHAIRMAN: You want that provision to be incorporated under section 90. I may read the Section for your benefit. (The Chairman read out the Section). How your provisional amendment would come under section 90? However, I would suggest that if you want that a clause

or section should be inserted, you should give your concrete suggestion to enable us to examine it and incorporate it, if possible.

AN HON. MEMBER: That is a good idea.

MR. CHAIRMAN: Therefore, I am asking so many questions.

SHRI S. ANNASWAMI: Yes, Sir, we shall send it.

MR. CHAIRMAN: You give it in a comprehensive form so that we can examine it.

SHRI S. ANNASWAMI: Thank you, Sir. We will send it. Now I come to what we have said in page 3 of our memorandum. There are certain companies which have shown loss consecutively for the last several years. The managements sits pretty. The share-holders do not come for the meeting. Even if they come, they are not entitled to talk. They are in a minority. Government should come to the rescue of shareholders. If a Managing Director is not able to show profit for three years, if the company is working continously in loss for three years, then the Managing Director must be asked to quit . He must be replaced by a competent man. Such a thing should be done. That means Secs. 269 and 408 must be amended suitably. What I say is let the views of our association of shareholders be heard by management. We do not want to vote. We want to be heard; that is all. We want to have the right to make representations to the management on behalf of shareholders, who form minority. That is our submission.

SHRI R. K. SINHA: You do not have right to vote.

SHRI S. ANNASWAMI: A proxy can vote but cannot talk. Many are not able to come to the meeting.

MR. CHAIRMAN: We welcome the idea. But a concrete shape has to be given to your feelings. For that purpose you can suggest suitable amendments to the Committee. If we consider it worthwhile, we can consider their inclusion in the Bill.

SHRI S. ANNASWAMI: Thank you, Sir. We will suggest later.

On page 3 of our original memorandum we have said that the Bill should be amended in Section 224 to the effect that no company should have an auditor for more than 3 years. If that is done, then the question of approaching the Central Government for extension or re-employment of an auditor who had completed 3 years, may not arise. No such exception should be given.

MR. CHAIRMAN: Now the members can put questions.

SHRI MADHU DANDAVATE: In your memorandum you have said that to put a total ban of payment of dividend is quite unreasonable. You seem to be under a wrong impression. We have not put any total ban. What we are concerned with is that there should not be distribution of reserve fund by adopting mal-practices. Don't you agree that Reserve Fund should not be touched in that way?

SHRI S. ANNASWAMI: If use of Reserve Fund for dividend is there, we are satisfied.

SHRI C. MUTHIAH: What we mean is this. By 'ban' we mean this. Suppose a Shipping company is there. They have not been working well for the past two years. They are just paying out of Reserve Fund. What we say is for that they should not be asked to come to Government for permission.

SHRI MODHU DANDAVATE: Genuine cases will always be covered. Why do you suppose it won't be so. We can make only a general provision. Government will not place restrictions on genuine cases.

SHRI V. M. THOMAS: You can put that if dividend of more than 12 per cent is to be paid, then they must come to Government. You can put it that way.

SHRI MADHU DANDAVATE: You say that if a managing director does not perform the functions expected of him efficiently, he should be liable for removal by the process of company law. You also say that where a company is not able to return a net profit of at least 6 per cent of the paid up capital and reserves for a period of three years, their term of office should come up for review by Government under a suitable provision in the Act. What is the type of provision you want?

MR. CHAIRMAN: Have you thought of any suitable provision?

SHRI S. ANNASWAMI: What we say is, from 5 years reduce it to three years. There should be 'performance test' when the renewal question comes.

SHRI MADHU DANDAVATE: While formulating the test, would you have the 'general norms'? In spite of efficient management etc. at times due to shortage of raw materials etc. there might not be good performance.

SHRI S. ANNASWAMI: If for three years continuously, a managing director is not able to provide necessary raw materials to the company, then he must be removed. He is not fit to be a managing director.

SHRI MADHU DANDAVATE: You are association of shareholders. Just as we talk of labour participating in management, would you like your shareholders have a say in the management? Would you favour shareholders' participation in management?

SHRI S. ANNASWAMI: Our Association has no idea of participating in management. What we want is that our views should be heard.

SHRI MADHU DANDAVATE: You are shareholders' association. Because the shareholders are not near registered office, they are not able to come to the meeting. So would you like your association to have a participation in management.

SHRI S. ANNASWAMI: We have not thought about it. What we say is that our views should be heard. In a socialistic State, we agree that workers' should have a say in management. But so far as our association is concerned, we want our views to be heard by management.

SHRI POPATLAL M. JOSHI: Your idea to have recognition for the Association is good. But there may be rival claims from different such associations? Is it not?

SHRI S. ANNASWAMI: Our idea is that there should be a federation of All-India Share-holders' Associations. Already steps are being taken and Memorandum and Articles of Association have been drawn up for the purpose. The various State Associations will be affiliated to the Federation and if the Government accords recognition to the All-India Federation, not to the different constituents separately and directly, it will be a workable proposition. Government also will know to whom they should talk in cases of necessary. Such recognition should be made obligatory on the part of Government and a provision in that behalf may be made in the Amending Act itself.

In areas where there is large-scale industries, perhaps, there may be local associations in places like Poona, Bombay, Madras, Coimbatore, Bangalore etc All these local association should be affiliated to the Federation.

SHRI K. S. CHAVDA: What should be in your opinion the criterion for such recognition?

SHRI S. ANNASAMI: Government can prescribe whatever requirements and norms they feel

necessary and we will abide by that.

SHRI JAGANNATH MISHRA: Critics have been arguing against the new clause 108A, that is, section 10. What is your view?

SHRI S. ANNASAMI: In our Memorandum we have made specific reference to certain clauses. Where we have not made specific comments, we generally are in agreement with the proposals made in the Bill. We welcome the provision.

SHRI PRIYA RANJAN DAS MUNSI: In page 4 of your Memorandum you say, that any number of directors of any company appointed by Government would not solve the problem, but the interest of the shareholders and the company and public can be better safeguarded if the election of directors is made on the basis of proportional representation. That would in your opinion help to protect the interests of minority shareholders. But in actual practice and in an earlier part you have also said that it is impossible for all the shareholders to attend the meetings. They also do not have the capacity to get all things. Therefore why cannot you agree to the proposal of the Government to appoint Directors?

SHRI V. M. THOMAS: If representative of shareholders is appointed on a proportional representation, that would be better for the minority shareholders. Any number of Government Directors would not serve the purpose. Government directors do not even sign the balance sheet, for they do not want to take responsibility.

SHRI R. K. SINHA: We have been told by a witness here that the small shareholders are a dumb driven mass who do not bother about anything except dividend and they do not bother themselves about the details of the company's actual working. What is your opinion?

SHRI V. M. THOMAS: Our opinion is that as much information as possible should be made available to the shareholders.

SHRI R. K. SINHA: It has been argued that even asking that certain information be made available is Government interference and control of the company. What is your opinion?

SHRI S. ANNASWAMI: The report of the Cost Accountant should be published along with the balance sheet so that we may know how they are working and how they are conducting the affairs of the company.

SHRI R. K. SINHA. Big monopoly houses would not like that. What is the way out?

SHRI S. ANNASWAMI: I personnally feel that it is not beyond the ingenuity of the law Department to devise ways and means to get over the difficulty and to see that chartered accountants are not brought back again.

SHRI HARSH DEO MALAVIYA Do you hold share in any Company which has been nationalised?

SHRI S. ANNASWAMI: Yes.

SHRI HARSH DEO MALAVIYA: Have you been paid your compensation properly?

SHRI S. ANNASWAMI: I have been paid compensation in the form of shares.

SHRI HARSH DEO MALAVIYA: Was it adequate?

SHRI S. ANNASWAMI: I had shares in the Central Bank. They have amalgamated with TELCO. I have received the shares. To a certain extent I am satisfied. I cannot go into the minute details how much money payable is available for distribution, what is the difference between the amount available and that received by me. As far as that amalgamation is concerned, most of the people I

know are satisfied. But there are still some companies coming in with which people are not satisfied.

SHRI HARSH DEO MALAVIYA: Would you suggest some stipulation in the Bill to see that the shareholders also receive their due part in the payment of compensation?

SHRI S. ANNASWAMI The compensation may be paid directly to the shareholders without being given back to the management because they have always got a tendency to retain that money for themselves to keep control with that money and use the same in some other concern in which they are interested. For instance, the Tamil Nadu Government is going to nationalise Electricity Companies. Many shareholders feel that they should get the amount of compensation directly to themselves.

SHRI HARSH DEO MALAVIYA: Would you like it to be stipulated in the Bill.

SHRI S. ANNASWAMI: Yes.

SHRI HARSH DEO MALAVIYA: Have you any comments on remuneration which is payable and is being paid today to Directors, and Managing Directors and also the perquisites? Would you like it to be reduced?

SHRI S. ANNASWAMI: The Managing Director's remuneration is a fair indication of his capacity to manage. In good Companies as far as perquisites are concerned, there can be slight reduction because the total impact on the Company's finances is wholly concealed as far as the ordinary shareholder is concerned. They only say 'such and such remuneration and so much is the maximum value of perquisites' at the time of agreement, but who remembers that at the time when we receive the balance sheet?

SHRI HARSH DEO MALAVIYA: Som times there is a general complaint that in the name of perquisites huge amounts are being paid to people who do not really deserve it. Would you like some restrictions to be placed upon the perquisites?

SHRI V. M. THOMAS: We would like that the remuneration to the directors should be restricted to what is permitted under the Income Tax Act. The Company pays out this first and on that also they have to pay income tax when the income tax people disallow that amount. So double payment comes to the company.

SHRI HARSH DEO MALAVIYA: Will you agree that remuneration to a Director or any Officer of the Company should not exceed the permissible under the Income Tax Act as deductable expenditure?

SHRI V. M. THOMAS: Yes, we agree.

SHRI HARSH DEO MALAVIYA: Some have said that travelling allowance should be paid to the shareholders to attend meetings. They suggest that it would be possible to pay travelling allowance to representatives of shareholders holding proxies of atleast 25 shareholders or shareholders holding one per cent of equity share capital of the Company to attend the company meetings.

SHRI V. M. THOMAS: We are in agreement with that suggestion. The total amount on that account should not exceed the perquisites.

SHRI HARSH DEO MALAVIYA: Some times they spend lakhs and lakhs of rupees to publicise the speech of the Chairman of the company. So, they can pay something to the shareholders also.

SHRI S. ANNASWAMI: They pay lakhs of rupees to some charities in which a particular man is interested.

SHRI H. R. GOKHALE: I am glad that you have raised some important issues which of course needs attention. You have stated that the management should be made to retire after three years of bad management. How

to work it out? We cannot prevent his dummy becoming a Managing Director under the present law. How do you get over this difficulty?

SHRI V. M. THOMAS: One third of the Directors can be made to retire compulsorily and not eligible for re-appointment for a period of three years so that after three retirements a completely new set will come if the Company is not managed properly.

SHRI H. R. GOKHALE: But the same controlling shareholders still nominate their successors. How do you get over this?

SHRI C. MUTHIA: There is a wrong impression that is going on here. The minority shareholders are not really in minority. If you take one vote for each shareholder they more than 95 per cent of the votes. If we can go by the value of shareholding, the controlling interest do not hold more than 10 per cent of the entire share capital....

MR. CHAIRMAN: What is your suggestion?

SHRI C. MUTHIA: If a simple provision is made to provide proportional representation for the small shareholders on the basis of the shareholding, that will be sufficient because about more than 50 per cent of the entire share capital is held by institutional shareholders. They do not have directors now.

SHRI H. R. GOKHALE: I do not agree with this argument myself. What do you say for this argument? If there is proporational representation, they would be making a sort of arrangement with the Board. The Board will always be divided and there will not be homogeneity.

SHRI C. MUTHIA: We have not thought about it.

SHRI H. R. GOKHALE: I would request you to say how Section 208 can be amended to provide for proportional representation. Under Section 208 the Government can order. But it is not functioning in that way. I think it will be much better personally. If there is a proposal from 100 members the Government can still order that election will be held by proportional representation. Will that serve the purpose?

SHRI C. MUTHIA: We ourselves are trying to get more shareholders to our Association. The first thing they ask is 'what we can give in return to them?' Even to get 100 proxies will be a big problem for the Shareholders' Association as it is now. Although it is in the Act, it cannot be put into practice at all. Only wealthy people can go and collect the proxies. We, the small shareholders cannot go and collect the proxies. Before some of us can go and collect the proxies, the bigger people get the proxies. Most of us are part-time people and we can give only a little amount of time to this work.

SHRI H. R. GOKHALE: It will be difficult to make it compulsory.

While an industry is nationalised the shareholders would like to get the maximum amount. That is a different question. You have already stated that you are staisfied. If the industry is not nationalised the non-controlling shareholders could not have expected better payment. My opinion is that non-controlling shareholders hope to get market value of their shares. But Government at least give them something better than the market value in most cases. To that extent I do not think personally that the shareholders will be affected even if the present pattern of payment of nationlised shares is adhered to. Do you agree with this view?

SHRI V. M. THOMAS: Our view is, compensation paid is not paid out. There are so many nationalised banks which are yet to pay compensation. So, there should be a time limit within which they should either merge with the other Company or pay out the money. They cannot go on keeping the money indefinitely.

SHRI H. R. GOKHALE: They are keeping it indefinitely. The banks have paid to the original banks, but the orginal officers have not paid it to the shareholders.

MR. CHAIRMAN: Thank you very much. Please send your suggestions within 10 days so that the Committee may consider the same.

SHRI C. ANNASWAMI: We thank you for the opportunity given to us. We will send our suggestions in the form of amendments which will be suitable for incorporation in the Bill.

(The witnesses then withdrew.)

II. Mysore Chamber of Commerce and Industry, Bangalore.

Spokesmen

1. Shri G. Ramarathnam—*President.*
2. Shri J. Srinivasan.
3. Shri H. C. Nagabhushana.

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Mr. Ramarathnam and friends, thank you very much for your introduction. I also thank you for coming over here to tender evidence before the Committee. I welcome you all here on behalf of the Members of the Committee. I hope your views will be of some benefit to the Committee. Before you begin, I would like to draw your attention to the Direction 58 by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha, which reads as follows:

> "Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidnce is liable to be made available to the members of Parliament."

With this direction, I would request you to begin your comments.

SHRI G. RAMARATHNAM: I thank the hon. Chairman and Members of the Committee for accepting our request to have the meeting at Madras in order to enable us to give our views. On behalf of the Mysore Chamber of Commerce and Industry and on behalf of the Members, I thank you very much for giving me an opportunity to appear before the Committee. Now Mr. J. Srinivasan will give his comments.

SHRI J. SRINIVASAN: I will briefly go through the various points mentioned in our Memoranda. I would just like to highlight a few points.

First, I would like to refer to section 43-A. This Section will virtually impair the essential working freedom of nearly 20,000 private limited companies. It will certainly act as a deterrent to incentives and will inhabit production. The limitations to the share-capital of 25 lakhs or turnover of 50 lakhs is at the low side in view of the present inflationery spiral. If the object of this new legislation is to see that the public interest is to be protected in many of the companies, especially in the private sector, our view is that large amount of public money is not involved. Turnover of Rs. 50 lakhs is not the indicattion to the involvement of public money. Many companies may utilise their own money and it may not in-

volve the public Interest at all. This will naturally curb the incentive and enterprise of small entrepreneurs who constitute a sizeable section in the economic activity in our country.

The next point is about the conversion of loans to increase the share capital of companies automatically without going through the ordinary procedure inunciated under the Company law. The intention of conversion is already there. There would not be any difficulty administratively in increasing the share capital according to the provisions laid down under the Company law and in respect of which a new Section 108-C has been introduced. This can be achieved by an order of the Government . The object is to prevent misuse of funds. It can be achieved by exercising section 372. It is not fair from our point of view. This section appears in our view redundant.

Then I would like to refer to section 205A. It is the considered view of our members that this section is unwarranted. Under this section, there are two penal provisions for the same default in regard to payment of dividend. It is our view that it is not advisable to pay dividends through cheques, especiallyy in respect of shareholders who are in rural parts. The amount may be sent by Money Order.

Then I would like to refer to section 209-A. Under this section extraordinary powers are proposed to be given to the Company Law Administration to inspect books even without previous notice to the company. Heavy penalty has been proposed under this section . Both fine and imprisonment have been proposed under this Section. Lot of powers have been given to the Government officers and the *mens rea* should be applied in every case before punishment or fine was levied. This section is open for maximum practical abuse and we earnestly request a favourable review of the stringent provisions of this Act. There are already sufficient provisions under the existing Act itself for inspection and the additional power are unnecessary and unwarranted. They should give prior notice to the Company before inspecting the books. That is essential.

Then I would like to refer to clause 19. It relates to section 217 (2A) (a) of the Act. It corresponds to the U. K. Act. It says that the Board report shall include a statement showing the name of every employee of the company, subject to certain conditions. But in U. K. the names of employees whose remuneration exceeds 10,000 dollars per annum which is equivalent to Rs. 1,80,000 are furnished. But in our act, it has been mentioned as 36,000 rupees. In view of the peculiar circumstances of our country and in view of the present trends, the limit should be increased to 50,000 or one lakh. Section 314 is also redundant.

With regard to appointment of auditors, I would say that it seeks to curb the concentration of audit work in a few hands. In this connection, we would suggest that the period be kept once in 5 years for the reason that the frequent changes at the end of 3years might disrupt the auditing work. The guidelines on appointment or reappointment should be spelt out. This should not be construed as any reluctance on the part of companies for changes in the office of auditors. The addition of Section 224-A makes it compulsory for companies to have the approval of the Central Government of any auditor who is appointed by the Company. On the erring auditors, action is taken by the Institute of Chartered Accountants of India and in many cases the punishments are upheld by various Courts. It is suggested that in order to encourage employment opportunities to young auditors, they may be appointed along with the old auditors of big auditing firms. Auditing is a specialised job and it requires technique. Smaller firms of auditors may also be

encouraged to fulfil this task to the best of their ability. Therefore, it is our submission that without restricting the high capacity and experience of that technical profession, some sort of ceiling might be imposed on the number of audits in consultation with the Institute of Chartered Accountants of India. It would be a worthwhile measure.

With regard to the appointment of Managing Directors, the guidelines are vague and general. It is left to the Central Government to approve or disapprove and to alter or not the terms and conditions of such appointment. There should be certain amount of ability and skill. The shareholders should be left to design the interest of the company *vis-a-vis* and managerial remuneration.

MR. CHAIRMAN: What is your suggestion about the ceiling? What you propose to be a good ceiling?

SHRI J. SRINIVASAN: The ceiling is already there. Rs. 5,000 exclusive of perquisites.

MR. CHAIRMAN: You are talking about the ceiling on remuneration of Directors. I am talking about the number of audit. Can you suggest any ceiling in that regard?

SHRI J. SRINIVASAN: To begin with, I think the Institute of Chartered Accountants of India is of the view that each C.A. should have at least 10 public limited companies and that private companies should be excluded from the ceiling. This is the view of a sub-Committee constituted by the Institute. The private companies are excluded from the ceiling because they are far flung and too many all over the country. Therefore, I feel there is no concentration of audit work in a few hands. The concentration is only in public limited companies *vis-a-vis* big firms with many branches.

MR. CHAIRMAN: So you suggest a ceiling of 10.

SHRI J. SRINIVASAN: 10 public Limited Companies having more than Rs. 25 lakhs as share capital.

Coming to the Managing Directors' emoluments, I wish to point out that some restrictions have been imposed. In fixing the emoluments of the Directors, the financial position of the company should be taken into consideration. That is understandable. But the remuneration or commission drawn by the individual concerned in any other capacity, including his capacity as a sole selling agent is not understandable. Because the remuneration or commission is drawn by the Managing Director for the contribution that he has made to the company. It is based on the contribution that he has made to the company. The Income-tax Department will look into it. There is no necessity for us to give another power. This will be one item where the Company Law Administration will come to question or objection. Less powers should be given to the officers who administer this act in order to have better relations. It is also essential that Government should consider higher scale of remuneration and fix accountability by results consistent with their experience and expertise, as was done in U.K., U.S. A. and Japan.

I would like to refer to Section 294 AA. Here the Government suspects that there would be avoidable or unnecessary erosion or diversion of funds as remuneration to sole selling agents. Here the substantial interest means 5 lakhs or 5 per cent of the paid up share capital whichever is lesser. This definition is unduly restrictive. But in the present context, no goods are in excess in this country and every product has to find a market and hence the appointment of sole agents should be continued to be free

from Government's control. As far as exports are concerned, different techniques have to be adopted altogether. So far as Clause 25, relating to Sec.297 is concerned, we feel that the proposed proviso will definitely make it very serious obstacle for the normal work of running any company having a share capital of not less than Rs. 25 lakhs. The value of Rs. 5000 is too low even for a single contract and the company cannot forsee at what point of time it will exceed Rs. 5000. If the approval of Central Government does not come within close of financial year, it will put the company in awkward position. We have already said that limit of Rs. 25 lakhs should be increased to Rs. 50 lakhs.

These are the important points we want to submit.

SHRI MADHU DANDAVATE: You have said in your preamblex that operational leverage of companies is likely to be impaired by addition of Sec. 4A and you have said that this is perhaps the first step towards over-regimentation of corporate sector, which may stifle its growth.

Don't you know that this amending Bill has come up not because of marginal lapses but because of tremendous lapses. You might have heard what had been voiced forth in Parliament. Many shareholders and many members of Parliament have objected to these tremendous lapses. What is your experience?

SHRI J. SRINIVASAN: Just because a few companies have erred, the whole corporate sector cannot be blamed. That is our view. Government may take powers to punish erring companies and they may take remedial measures to prevent recurrence of such lapses. Just because of the erring of some few companies, why should the whole corporate sector be punished. If some indulge in malpractices. it cannot be said generally of the entire corporate sector. That is my point.

SHRI MADHU DANDAVATE: You have said on page 2 that there should be a dialogue between representatives of Industry and commerce and representatives of government. Would it not be better for the very growth of social justice, about which you speak in your memorandum, that the just as workers like to have say in the management, the share-holders also should have a say in management and would it not be better to have a dialogue with them also.

SHRI J. SRINIVASAN: I will answer that point. So far as the different constituents of company is concerned, for the labour side, there are laws with regard to bonus, gratuity etc. and they are well looked after by several statutory enactments. For the proper functioning of the company, there is the Companies Act. The various provisions of the Companies Act stipulate how the company should be run. What we mean is in regard to management, there should be dialogue with Company Law Administration and the business community, to plug some loopholes and to formulate guidelines in regard to Managing Director's remuneration etc.

SHRI MADHU DANDAVATE: Safeguards for labour, you say are already provided. Just like that for management, also statutory provisions are there.

We have just heard the view of share-holders' association also. You say that share-holders' interest are protected. They were saying that their voices should be heard by management. They want that their interests should be protected. They also want that too much service by auditors' should not be there and that such a thing would lead to unhealthy practices. They want that shareholders' autonomy should be preserved.

SHRI J. SRINIVASAN: I do not have statistics whether there had been concentration by audit. I cannot comment on that aspect now. It cannot be generalised. It cannot be taken as a general presumption.

SHRI MADHU DANDAVATE: As far as payment of dividends are concerned from the accumulated profits, there is scope for manipulation by the managements and in order to check some restriction is placed. Do you think it is enough?

SHRI J. SRINIVASAN: We can talk only of our personal experience and we do not have exceptional cases that have come to our notice. There is compulsion by law to pay the dividend within 42 days. For not adhereing to that, there is punishment also. Why then should there be a condition that the money be deposited in a separate account within 7 days? Why not that money which has not been drawn by the shareholder be available for use by the company? This is an interference in the internal affairs handling of the finances of the company. In the Income-tax Act you are asked to pay advance tax within a stipulated time. You are not asked to put in an account and pay it in instalments and so on. Once it is said that the dividend be paid, that is enough; if it is not paid there is penal clause.

SHRI MADHU DANDAVATE: After the abolition of managing agency system, certain undesirable persons try to take charge of the company by backdoor methods. They have service agreements with the company. Do you feel that such agreements should be done only with the approval of Government? Would you think that that is also interference?

SHRI J. SRINIVASAN: How can we distinguish between genuine service agreement and bogus one? How can we say that this is a substitution of the previous arrangement? Further, how to decide who is desirable or not desirable person? Why should there be a bar on the appointments which are or are not made against the interests of the company against the normal cannons of mercantile usage?

SHRI K. S. CHAVDA: There is provision regarding foreign companies in clauses 31 and 32 These foreign firms indulge in malpractices and they make huge profits and they send the moneys to foreign countries through dividends etc. Would you suggest that these firms should be controlled? What are the steps for doing it effectively?

SHRI H. C. NAGABHUSHANA: Indianisation. These firms should be indianiseed. That is the only answer. While I welcome the amendments, they are not sufficient to meet the present unhealthy situation.

In fact certain areas have been left out untouched. For example, there is new floatation; the sponsors give all promises; they are printed in finest paper in multicoloured pattern. But at the end of the year, they come up with the plea that things have gone wrong and they could not do anything and that there has been delay on the part of the Government in issuing licences etc. They will blame the Government and the shareholders are placed in a miserable state. The small shareholders would have invested their hard earned moneys and for a ten-rupee share they will be left at the end with 20 or 25 paise. Such malpractices in the corporate sector had been left untouched by this amending bill.

SHRI K. CHAVDA: What is the definition for small share-holder?

SHRI H. C. NAGABHUSHANA: I have come to learn more than to teach. You are all learned persons, each one of you is held in high esteem and each one you know much more than what I do. Whatever you are doing is in the interests of the nation.

MR. CHAIRMAN: You say that so many important aspects have been left untouched. You know, everybody is not perfect. It is just possible that some things have not occurred to the members of the committee or the framers of the bill. It might be intentional or unintentional. May I therefore request you to give to us—not just now. but afterwards within 10

days—your views. You have been quick frank and I know you are one of the shareholders and you do not belong to the class of industrialists or management people. Therefore you have been frank in your assessment of the situation. May I therefore request you to send your suggestion where you want specific provisions have to be made in the Bill and send your suggestions within ten days. The Committee will consider your suggestions and take appropriate action on them. Thank you.

SHRI R. R. SHARMA: Please refer to paragraph 5 in your memorandum at page 2. You have stated that the concentration of economic power stated to be in the private sector would now shift its concentration of economic power and controls into the State sector, etc. Assuming this to be correct for argument's sake will it not be in the interest of the nation and the public at large if concentration of economic power is allowed in the hands of the Government instead of in the hands of the private sector?

SHRI H. C. NAGABHUSHANA: In fact I have been wondering what is public and what is private. In a national sense everything is public. Don't you agree with me?

SHRI R. R. SHARMA: It is not a question of agreement or disagreement. What are the reasons for the apprehension that the concentration of economic power and control is going into the hands of the Government?

SHRI H. C. NAGABHUSHANA: I am not very much bothered where it is concentrated, as long as it is used in the public interest. Whether Government uses it or whether an individual uses it, as long as society derives the right benefit, the maximum benefit out of it, I am not very much bothered where the economic power lies.

SHRI J. SRINIVASAN: When we refer to conecentration of economic power in the hands of Government, we only mean the shifting of control and decision-making in regard to management of corporate sector by more and more regulations introduced in this amending Bill. The administration and decision-making in respect of every big company has now been shifted from the management of the company to the Government. Because whatever we want to do in regard to management aspect, sales or purchase aspect, everything has got to go through the Government. Therefore, we say not only by this law but by the various laws that are being introduced from time to time slowly the decision-making as far as the management of the economic power is concerned, is being now shifted more and more to the hands of the Government.

SHRI JAGANNATH MISHRA: At page 2, para 7 of the memorandum the witnesses have stated that the spate of penalties and prosecutions for infraction of law proposed under the amendments are considered sufficient to discourage even a stout hearted entrepreneur from venturing in new industrial enterprises. But they have not come out with alternative suggestions of their own. May I know what are their suggestions?

SHRI H. C. NAGABHUSHANA: I have found by experience that normally the small and quiet-going man keeps himself within the framework of the law and within that framework he tries to produce results. But by some of these things he gets scared. Suppose he learns that a particular entrepreneur has been prosecuted for some small offence, he gets scared and he does not come to the light of the day. He becomes shy. So, the whole thing should be of such a nature that it does not scare a deserving, intelligent and up-coming entrepreneur. That is the idea behind. The joint mechanism should be set right by conducting the necessary operations. That is my suggestion.

SHRI P. R. SHENOY: Most of the private companies with a large share capital or with a large turnover accept

loans from public financial institutions and nationalised banks and also accept deposits from the public. So, public money is involved in their dealings. Don't you think it is reasonable to redefine these private companies as public companies

SHRI J. SRINIVASAN: I agree. But in my introduction this morning I said that this deemed public companies as applicable to private companies of a particular size should be limited to those only where the public money and public sector is involved. There are many companies which do not take any public funds and do not involve themselves in any public financial institutions and even in their sales operation they do not have any public involvement. In those particular cases there should be no interference. Simply because of their size of operation or size of capital. they should not be deemed public companies. I agree that some private companies under the cloak of private limited company involve themselves by taking loans from public financial institutions and also accept deposits from the public. The public financial institutions themselves at the time of granting the facilities should say what these companies are to do. There is no use of giving these private companies public funds and later on at another point of time make a rule applicable to all private companies simply because there are some private companies which have taken public funds. You must only categorise these companies where public money is involved and call them as deemed public companies simply because they have taken twice the share capital as loan from public financial institutions or over and above a certain percentage as deposits from the public. There the question of their exhibiting or publicising their balance sheet values. their various assets. their profitability is involved. We are against this particular mechanism. For example chit funds are there. There are so many chit funds which operate with monies of individual house-wives or householders and they put their small savings in these things. There is nothing wrong in Government coming out with a particular thing that this shall be only for this particular company which operates under a particular sector. Let us define the areas in which public involvement is there and we have no objection. If you take a man who is earning a lakh of rupees today, his take-home salary is of the order which will just enable him to save Rs. 10,000. How many persons are there who are earning more than lakh of rupees? Let it not be misunderstood that when we are speaking on behalf of the Chamber, we are speaking for millionaires. We are also one of you. We want a proper climate to be created both in industry and elsewhere, so that we can also thrive. There are a few millionairies in this country for whom the entire 30,000 or 40,000 companies should not be penalised. The axe should not fall on them simply because there are a few companies whose stakes are high, and whose volume of transaction is high. Simply because of that you should not ask the small man who has started a company with Rs. 10,000 to conform to the entire regulations. For example day before yesterday an export firm was started. Under the new Government of India Regulations the export house will be recognised for export purposes if the shareholders are only composed of small industrial units. They have formed such company in Mysore and if the company is to be deemed a public limited company what will happen to the promotion of small scale industries. They have got to consult professional man to conform to the formalities. Instead of trying to export commodities, they will be wasting their time in the normal administrative procedures. We should also try to seek a remedy for all these things.

SHRI HARSH DEO MALAVIYA: Are you not satisfied with the dialogues already held in the months of March and December between the Government and the Federation of Indian Chamber of Commerce, Merchants Chamber of Commerce and

other institutions. You have said in your memorandum that you want more purposeful dialogues. What is that dialogue?

SHRI J. SRINIVASAN: It is not with a view to side-tracking the issue we mentioned that. Anything that happens to a particular sector of our economy must be properly understood by either parties. The dialogue that you mentioned with regard to the annual meetings of the Federation or the dialogue of your various Ministries we are not aware of the sanctity of those particular dialogues because what is the fate of the various reports of the expert bodies like Khaldas committee report, Wanchoo Committee report and other things. What happened to those meaningful dialogues or things that have been created and the various reports that have come out. What is the reaction of the Government to them? Only some useful or revenue-bearing aspects of any report are being taken up by the Government and the other aspects...

MR. CHAIRMAN: We do not want your comments on the various reports. I hope you will have chance to give your comments before some other Committee. I am told that your Chamber has already been addressed in that connection.

SHRI H. C. NAGABHUSHANA: I said this because some hon. Member of the Committee mentioned about the need for dialogue again and again. I am only saying that in respect of various dialogues between various Committees, Government are not doing justice in regard to various reports. For instance, in Khalidas Committee dialogues took place in regard to Wealth Tax, Gift Tax etc. When we give the negative or weaker aspects. they are taken and given effect. But positive aspects are never appreciated or taken care of. We are also one among you and you are also one among us. We feel that you will understand our problem so we want to have dialogue. We want proper understanding of each other's point of view. It means nothing more. The dialogues should be meaningful and worthwhile and they should be understood from each other's point of view.

SHRI J. SRINIVASAN: The dialogue referred to here is how best the spirit of the statute can be respected and implemented.

SHRI HARSH DEO MALAVIYA: The writing on page 2 of your Memoranda reveals how much you are interested in respecting the statute. I am reading the 7th line, which runs: "If the Company wants to keep out of the mischief of Section 43-A it can always do so by staggering production whereby the resultant impact on the economy will be less of adequate production of indigenous goods, rising prices and consequential inflation. In other words, this restriction appears to place a premium on under-production." You are revealing to us some information that if Section 43-A is not amended, you will go in for under production. Is it the way of respecting the statute? It is quite contrary to the spirit. You are representing the Chamber of Commerce.

SHRI H. C. NAGABHUSHANA: As far as I am concerned, I have made it clear. As far as this comment is concerned, Mr. Srinivasan will make it clear.

SHRI J. SRINIVASAN: May I respectfully submit one thing. If one produces more than or sell more than Rs. 50 lakhs that it will be deemed to be a public limited company. It is left to the choice of that concern to produce more or less. If he wants to earn more, he will produce more. If he wants to sit idle, he will not be able to produce more. It is left to his choice. He is at liberty to produce more or less. If he is unwilling, we cannot force him to produce more.

MR. CHAIRMAN: You are drawing our attention to the circumstances which may develop or which is likely to develop.

SHRI J. SRINIVASAN: We have mentioned only the likelihood.

SHRI HARSH DEO MALAVIYA: I come to the last lines of page 2. Here you have said: Here is a strong case to enhance this percentage say to atleast 40 per cent rather than scale it down to 10 per cent. You are against small companies being financed by public financial institutions. You want that bigger companies if they take shares in small companies, that should be promoted. I think that is what you say.

SHRI J. SRINIVASAN: That is not so.

SHRI HARSH DEO MALAVIYA: I cent. Looking at the scope of the amshall read the sentence again. "Here is a strong case to enhance this percentage say to atleast 40 per cent rather than scale it down to 10 per cent. Looking at the scope of the am ending bill, the object appears to be that, instead of building up an interconnected Corporate sector with a freedom of movement of financial resources from the well to do to the needy companies, it aims at balkanisation and forces each unit to seek the help of Public Financial Institutions whereby private enterprise will gradually be converted into Government or Government controlled Institutions preparatory to nationalisation or direct acquisition by the Central Government. Then you have cited the examples of Japan and U.S.A. and say that these countries have prospered by adopting the principles of freedom of enterprise. I can say that small entrepreneurs were responsible for their prosperity. The concerns like Mini Chi and Mitushi have again come up and everything is revived with the help of small entrepreneurs. What we want to day is this. Instead of big monopolists and big money power emerging, we want the Government to intervene to prevent the emergence of such big monopolists. Your alternative is a dangerous alternative. We can only find Tatas and Birlas. Don't you think that the Government policy of seeking the help from public financial institutions is a more correct policy than the one which you have suggested.

SHRI P. R. SHENOY: We don't have Tatas in our area.

MR. CHAIRMAN: Let him answer.

SHRI H. C. NAGABHUSHANA: Here I have my own original line of thought. Where there is a lion, there should be a goat. We should provide sufficient areas both for the lion and the goat. We should provide sufficient areas for the lion to live and also for the goat to live, when He says that he will be the protector. Why not the Statute makers provide this and demarcate the areas both for lion and goat. Why not the Government take that attitude and say that this is the region for the goat to live and this is the region for the lion to live. So that there may not be any confrontation. We thought that we should bring the facts to the notice of the Committee so we have brought them to the notice of the Committee.

SHRI HARSH DEO MALAVIYA: I would like to refer to paragraph 6 on page 4 of your memoranda. "It is the considered view of our members that this section is 'unwarranted' in the sense that extraordinary powers are proposed to be given to the Company Law Administration to inspect books even without previous notice to the company." You very strongly object to this. Why? Is it not a fact that there is 'double entry book-keeping'. Is it not a fact that there is double-book keeping? If time is given the Company will give false particulars. Is it not useful?

SHRI J. SRINIVASAN: Similar provisions exist in the Income-Tax Act already. 'Being the Central Act, the Income-Tax Department is very much interested in seeing that double-books are not kept. Their interest is more predominent than the Company Law Administration. They take 60 per cent of the schedule income of a Company. Therefore, in the face of the

provision in the Income-Tax Act, I do not think that powers should be given to different Ministries in the country. Then it would mean inspecting of books at various levels and at various times.

SHRI HARSH DEO MALAVIYA: Not that.

SHRI J. SRINIVASAN: I shall finish, Sir. Now the Company Law Administration is done by the Central Government. The Company Law Administration is concerned with the transaction of the Companies. They can have some arrangement with the Income-Tax Department, because the Income-tax can do the work better.

SHRI HARSH DEO MALAVIYA: Referring to Sec. 217 you say that if it is made obligatory to give names and addresses of employees getting more than Rs. 3000/- p.m. it will be difficult. You bring in the parallel of Great Britain wherein the ceiling is 10,000 per year. Here you want Rs. 3000/- to be raised to Rs. 1 lakh. Only persons getting more than that sum, the addresses of those persons only should be published. But you know that India is a poor country and the income of 22 crores of our people is less than Rs. 50 a month whereas in U.K. the average income of a worker is £1500 a year. How is your parallel relevant?

MR. CHAIRMAN: He wants to know whether there is any scientific basis for this assessment of yours or it is just arbitrary?

SHRI J. SRINIVASAN: In the case of big companies, they may employ hundreds of persons drawing more than Rs. 3000 p.m Giving information regarding all of them might cast a lot of workload on management. It is with that view we have put forward the suggestion that only persons drawing more than Rs. 1 lakh, their names and addresses need be published.

SHRI POPATLAL M. JOSHI: Sales Tax and Incom-tax people have their own functions. Company Law deals with remuneration to managing directors, transfer of shares etc. For Income-tax purposes you produce so many vouchers. For company law purposes, what is your objection to produce documents and registers they want?

SHRI J. SRINIVASAN: There are certain registers which have to be maintained by Company Law. We have no objection if these registers are to be produced. But if books of accounts and vouchers are to be demanded, it will involve lot of work for Company Law Administration. I do not agree with the saying that every company maintains 3 to 4 sets of accounts and that is why they do not want to produce the same on specific notice by authorities. That is not the correct presumption to be taken. For instance if you take labour side, under some labour laws, registers have to be maintained for bonus, provided fund etc. They are specific registers open for inspection at any time. Just like that if Company Law requires specific registers which we have to keep under the Company Law, we have no objection to show them, when demanded.

SHRI MAHAVIR TYAGI: The corporate sector should be given the largest freedom. I agree. But you know that the shareholders who had invested money their interests also have to be safeguarded. Many of them may be illiterate and they do not come to general body meetings. Is it not necessary that their rights should be protected?

SHRI J. SRINIVASAN: My limited answer would be that under the provisions of Company Law, the right type of climate is created for protecting interests of shareholders. There are various limitations on the management.

SHRI MAHAVIR TYAGI: Everywhere we hear the same thing being said by management.

MR. CHAIRMAN: All right. Thank you very much.

(The Committee then adjourned.)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1972.

Saturday, the 16th June, 1973 from 11.00 to 13.30 hours in Committee Room, Old Legislators' Hostel, Madras

PRESENT

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Bedabrata Barua
3. Shri Khemchandbhai Chavda
4. Shri Madhu Dandavate
5. Shri G. C. Dixit
6. Shri Popatlal M. Joshi
7. Shri Baburao Jangluji Kale
8. Shri Jagannath Mishra
9. Shri Muhammed Sheriff
10. Shri Priya Ranjan Das Munsi
11. Shri Narsingh Narain Pandey
12. Shri S. B. P. Patfabhi Rama Rao
13. Shri R. Balakrishna Pillai
14. Shri Bishwanath Roy
15. Shri R. R. Sharma
16. Shri P. Ranganath Shenoy
*17. H. R. Gokhale

Rajya Sabha

18. Shri B. T. Kulkarni
19. Shri Harsh Deo Malaviya
20. Shrimati Saraswati Pradhan
21. Shri S. G. Sardesai
22. Shri Mahavir Tyagi
23. Dr. M. R. Vyas

LEGISLATIVE COUNSEL

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

*Not a member of the Committee and attended sitting with the permission of the Chairman under Rule 299.

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF COMPANY AFFAIRS).

1. Shri P. B. Menon—*Joint Secretary.*
2. Shri C. M. Narayanan—*Director of Investigation and Inspection.*
3. Shri C. R. D. Menon—*Joint Director.*
4. Dr. (Mrs.) Usha Dar—*Joint Director.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

I. AHMEDABAD MILLOWNERS' ASSOCIATION, AHMEDABAD.

Spokesmen:

1. Shri N. V. Iyer
2. Shri R. M. Dave

II. MADHYA PRADESH TEXTILE MILLS ASSOCIATION, INDORE.

Spokesmen:

1. Shri E. B. Desai.
2. Shri D. N. Makharia

III. CENTRAL INDIA CHAMBER OF COMMERCE & INDUSTRY, UJJAIN.

Spokesmen:

1. Shri S. V. Mazumdar
2. Shri M. D. Gupta
3. Shri D. N. Makharia.

I. The Ahmedabad Millowners' Association, Ahmedabad

Spokesmen :

1. Shri N. V. Iyer
2. Shri R. M. Dave

(*The witness were called in and they took their seats*)

MR. CHAIRMAN: Mr. Iyer and Mr. Dave, I on my own behalf and on behalf the Committee welcome you here. Perhaps you would have found it inconvenient to come here to give evidence. Now I request you to be brief and refer only to the salient points on which you want to make stress. Before you begin, I would like to draw your attention to a Direction by the Speaker which reads as follows:

"The witnesses may kindly note that the evidence they give would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. Even

though they might desire their evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

SHRI N. V. IYER: We are extremely grateful for this opportunity of presenting the case of the Ahmedabad Millowners' Association. The Chairman referred to our inconvenience to go over to Madras. I may say it has been a very pleasant experience and we are grateful for this opportunity.

Our Association is an association representing the Textile Industry of Ahmedabad. It has about 55 members who are all textile mills. The member hold 25 per cent of the installed capacity of the loomage and spindlage of the entire cotton textile industry of the country. The approximate employment in this industry among our members is 1,25,000 and the turnover of the industry in our region would be of the value of Rs. 265 crores. This is merely a background to what we are and what we represent. We have already submitted a retailed memorandum examining the various clauses of the Bill. It is not our desire to take the time of the Hon. Committee by repeating whatever has already been said in the Memorandum. We would highlight some of the important observations that we have to make.

The first is with regard to Section 43A of the Companies Act. We appreciate the desire to convert certain private companies in which there is a public interest into public companies. As a result such private companies would cease to enjoy the privileges which are available to private companies. Surely, we submit it would not be the desire to create hardship for private companies which are in essence small private companies. So the present feature in the law which measures the concept of public interest with reference to 25 per cent of the inter-corporate holding and is on the statute book well over 12 years has by and large been functioning smoothly. In so far as converting private companies into public companies, our Association has also appreciated that position and a private company which may have capital of a crore of rupees and a turnover of Rs. 2 crores has large operations and it could be brought under the discipline of a public company. That is the submission of our Association. There may be small private companies and with small resources may make an investment of 10 per cent in another private company. The effect of the present provision would be that the investee company and the investing company, both would stand converted into public companies. This would create considerable hardship to small men. The reasons are these. The private companies today enjoy certain privileges just as not having to make applications to Central Government under the Companies Act in connection with the various provisions of the Act. If they are converted into public companies and if they have to approach the Government for various approvals, it would be at quite a prohibitive cost. So far as small private companies are concerned and the present exemptions which are available under Section 43A, sub-sections 6 and 7, have been designed particularly to keep these private companies outside the purview of these extensive controls which are justified in the case of public companies where there is public investment or where there is large scale operation.

The second section with which we are concerned is section 269. In our memorandum we have submitted that the contemplated provision for seeking Government approval at each stage of re-appointment of the same person and may be on the same terms and conditions as well, would cause unnecessary formalities and further it would be placing the managing-director in a state of suspense. The Managing-Director is concerned with the management of the companies affairs. There should be a stability in his position. If every five years he should go forward for

this approval, that may be subjected to various conditions and it will place him in a state of suspense. The existing provision is working reasonably well. In so far as increase in the remuneration or if a new person is to be appointed, naturally all that goes for review before the Central Government and that provision should continue as at present. If it is the desire to alter the existing contracts, the Central Government may take power to vary the contracts that may be in existence so that those contracts by and large may be in accordance with the guide-lines and not subject to interference from time to time.

The third point is about section 297 of the Companies Act. It is sought to introduce a provision whereunder contracts which the directors may be interested would require approval of the Central Government. Under the present law, there is quite an efficient system of safeguards built-in. Firstly, in the case of public companies, sections 299 and 300 provide that the interested director himself cannot count for quorum and he cannot take part in all the proceedings and vote. That is one safeguard in the existing law. The second safeguard is that these contracts have to be entered in a register under section 301 and the register is open for inspection of shareholders and also to the officers of the Government. If in a case the directors have abused their position, they naturally expose themselves to various penalties. It is not only the interested director, but the disinterested director also, if they act in breach of their position of trust in regard to the affairs of the company, they expose themselves to the various consequences. Therefore, the provision that these contracts be approved by the Government may bring about a stand-still in the working of the companies affairs.

Ordinarily an application may take 4 to 6 weeks for clearance by the Central Government, for they would have to examine the various factors connected with the application. There may be thousands of applications which may take considerable time and impose considerable strain on the administration of the Act. It would be better if the Government considers this. However, if it is considered that the existing safeguards are not adequate, the first step they may take is to extend the control and bring these contracts within the purview of the control of the shareholders and even if that is not considered adequate, to their review as to what further action should be taken.

MR. CHAIRMAN: How do you suggest controls by the shareholders?

SHRI N. V. IYER: It can be this way. Such contracts could be the subject matter of the approval by a resolution, may be an ordinary resolution or by a special resolution. Today in most of the public companies, banks in public sector and financial institutions have an effective shareholding and they are able to convince the managements about the desirability of certain resolutions. So, it can be either an ordinary resolution to start with as is provided in the case of appointment of sole selling agents or that is not considered adequate it can be made a special resolution, as for appointments of relatives of Directors to offices of profit. Today that sort of area is there where the control beyond Board in the hands of the shareholders is given. There are instances in the present Companies Act—Sctions 294, 314, etc.

The next Section which we would like to refer is the new Section 4-E which is sought to be introduced with a view to define more precisely the bodies corporate under the same group or under the same management. This particular definition is not very much of consequence for the purpose of Companies Act. It is relevant in connection with the inter-corporate investment and inter-corporate lending under sections 370 and 372 of the Companies Act. But it appears to be

the intention to seek to extend this control of bodies corporate under the same management for another purpose, namely, the purposes of the Monopolies and Restrictive Trade Practices Act. Because the last Clause in the Bill also refers to the consequential amendment to the M.R.T.P. Act. If it is the intention to extend the scope of inter connection for the purpose of monopolies legislation we would submit that the proper place would be an amendment under the monopolies legislation itself because this particular concept which does not have very much of relevance for Company law purposes, if it is brought within the Company Law, it would have the effect of putting large number of companies which are not covered by monopolies legislation in regard to the difficulties under the Companies Act for the inter-corporate investment and the inter-incorporate loans.

Secondly, it is our submission that the type of inter-connections , which are drafted in the present clause are extremely wide and extremely nebulous in certain cases. Some of them may lead to funny results as pointed out in our memorandum. We would submit that the existing five circumtances which exit in section 370 (1B) of the Act are quite adequate so far as Companies Act is concerned. And if inter-connection is be extended, that could be done by an amendment to section 2(g) of the MRTP Act.

The next section is section 58A which is sought to be introduced in the Companies Act. This is provide for regulation of acceptance of deposits by companies and bringing those regulations under the provisions of the Companies Act. These regulations are prescribed by the Reserve Bank under the non-braking companies regulations. They have been working for quite some time and from time to time the Reserve Bank has been amending those regulations based upon their experience of those operations. If it is sought to be provided that this shall be a matter under the provisions of the Companies Act and that a company shall not accept deposits, if it does not publish advertisements complying with the requirements of a prospectus barring whatever exceptions the Government may frame in this notification, it would create considerable difficulty to companies which accept public deposits. At present there is a provision in the non-banking regulations of the Reserve Bank regulating in sufficient manner the acceptance of deposits by companies and there is quite an efficient system of reporting this information to the Reserve Bank and the Reserve Bank following up those cases, etc. It can best be left to continue as at present. It has been operating quite smoothly for so many years. If the companies have to publish advertisements from time to time, it would place them in considerable difficulty because the framing of a prospectus and the publication of the same under Company Law is a very elaborate process. It cannot be done overnight or at monthly intervals. So, this requirement would be unduly elaborate if it is a question of merely accepting public deposits which today is under the control of the Reserve Bank directions.

The next Section is the new section 205A dealing with dividends. Depositing of monies which are declared as dividends within a week in a separate bank account will create difficulties for companies which will result in some sort of a situation like this. A company may be having borrowing acounts and most companies have borrowings for financing working capital. When they declare dividend, they issue the dividend warrants to the shareholders and their account is actually treated as drawn as and when the dividend warrants are in fact paid from time to time by the bank. But if the company is asked to transfer the whole amount to a separate bank account it would meant that in its borrowing account the whole amount stands debited on the day of transfer and it will go on paying interest on its

borrowing on the one hand whereas these monies which are kept in a separate account will not earn interest, and it will be casting a burden of interest on these companies.

Then, Sir, forfeiting of dividends into the general revenues of the Central Government after three years of transfer would also be a harsh provision, particularly because in our country whenever a shareholder dies or there are disputes between shareholders, getting letters of administration and getting the ownership properly registered on the company's register of members takes a lot of time and most of the dividends which remain unpaid are in regard to the estates of persons who may have died and where there is legal representation, etc. proceedings are under progress. If these people have later on to claim the monies out of the general revenues of the Central Government it will place them into a lot of difficulty. In fact many of these unpaid dividends are small sums of Rs. 100 or 200 per share-holder and then the effort involved to process the application through the Central Government would be quite a long-drawn out effort. Our submission is that if these monies are separately earmarked and if it is the desire to see that the company does fritter away these funds, they could be separately earmarked and kept in a separate account with the State Bank or any of the nationalised Banks so that the control of those funds is adequately established and as and when the appropriate claims come for those dividends the company may pay off those dividends from this earmarked account which is kept with either the State Bank or in any of the nationalised banks.

We also submit that froming of rules for drawing upon the reserves for declaring dividends would place the thrifty companies at a great disadvantage. It would lead to a situation where in good years there will be a pressure from the shareholders to distribute all the profits that are available for fear that monies transferred to the reserves may not come back to the shareholders and may be regulated by various rules which might have to be framed. On the countrary, this tendency of retaining of profits into reserves should be encouraged and if there is a trend that these reserves would come under certain extraordinary control it would place a discount on retention of profits into reserves.

The next section which we would like to touch briefly is the new section 209A which is sought to be introduced by which extensive powers are sought to be confererred upon the Registrar of Companies with a view to ensure various objectives. The notes on the clauses mention that he would be trying to look into the books of accounts, various vouchers and records of a company to find out whether the audit has been carried out effectively, whether income tax assessments have been properly made or whether incomes have been sought to be evaded, etc. This, would merely introduce some sort of a parallel jurisdiction All our companies are assessees under the Income Tax Act and the proper determination of income and examination as to whether any income has escaped, etc. would form better role of an Income Tax Officer and this role already being discharged by the Income Tax Officers. This is an unnecessary provision. Today the Registrar has adequate powers of inspection and control over companies. There are also requirements for independent statutory audit. There is also power with the Central Government to direct investigation into affairs of companies. Besides, there are some special powers available with the Central Government. If these powers are judiciously exercised, that itself is an adequate safeguard.

Then I come to the amendment to section 224 dealing with the appointment of auditors. The right of the sareholders who have entrusted their monies to the companies as also the protection for the management who

are the Board of Directors of Companies to have auditors of their choice so that their interests are adequately safeguarded and the interests of the shareholders and their monies have been properly utilised—that right should be continued. In fact in the past the desire of all the committees which have gone into company law administration has been to grant protection to an auditor against unjustified removal. More or less the drift of the present legislation should be to see that the existing auditor is protected and continued within a company so that he can expose any improper acts on the part of management, etc. But now altogether a different trend is introduced. We do appreciate the objectives of the Government namely to ensure adequate distribution of work and to see that there is no concentration of work and also to see that there is no close association between the auditors and the companies. To some extent these objectives are partly achieved by a provision which is now introduced in the Taxation Laws Amendment Bill which is also before Parliament where the scope of work for the Chartered Accountants has been considerably enhanced. In some quarters a doubt has been expressed whether the services that are available in various parts of the country are adequate to cover not only the requirements of audit under the Companies Act as also the maintenance of books of accounts and audit which are now contemplated under the Taxation Laws Amendment Bill. To a large extent this difficulty that young accountants may be facing in establishing themselves and having proper work would be met by this particular amendment which the Government has introduced.

The second point is this. The objective of the Government can also be achieved by a better solution than disturbing the rule which is contained in the Company Law. If the Central Government felt it so the existing provision in regard to the right of the shareholders may be continued and concurrently the Central Government may take powers to appoint a joint auditor. A large number of public Corporations and the Nationalised Banks, Nationalised Insurance Companies of the public sector corporations are about 50 per cent of the paid up capital of the corporate sector and they are under the Government control. Therefore, the appointment of auditors in these companies is already under the control of the Central Government. This would ensure more or less the total control in the hands of the Central Government.

Lastly I would like to refer to Section 294-AA which is sought to be introduced with regard to withdrawal of the selling agents. May I submit that this blanket withdrawal or removal of selling agents would not be proper method of dealing with the situation. There may be circumstances where buyers market may emerge for some time and it may become sellers market or *vice versa*, or there may be situations where the demand may exceed the supply yet for these purposes, greater specialised services of the selling agents are required, especially with regard to sophisticated products like fertilisers, there would be greater demand than the supply. It requires a lot of technical know-how and skill and technical services etc. These services are rendered by a specialised organisation than by the manufacturing organisation. Therefore, issue of such a blanket order for removal of sole selling agents would not be proper in the interest of trade and industry. These are the submissions that we want to make.

Thank you very much for the opportunity that you have given us to appear before the Committee.

MR. CHAIRMAN: I now call upon the hon'ble Member to put questions. If you so like, you can reply to them.

SHRI R. R. SHARMA: While commenting on section 43A, you have said in page 5 of your memorandum. "It is not understood why a private company in which public is not interested should become a public company." Can you cite an example?

SHRI N. V. IYER: Yes, I can explain. Suppose we have a private company with a caital of 10,000 rupees or one lakh of rupees, which is purely owned by a family. Private company is prohibited from giving shares to outsiders. Supposing the Company accumulates a reserve and has a sum of Rs. 1 lakh to spare for starting another concern and invests that amount in that concern, where there is no outsider. The same family members who are the shareholders in the previous company will have interest. According to the present amendment to the Bill, these private companies would be come public companies in spite of the fact that the entire share holding is with the members of the family. If there is any public interest, we can agree. There is no public interest at all.

SHRI R. R. SHARMA: On page 12 of your Memorandum, you have said that "My Committee strongly feel that the encroachment upon the inherent right of the shareholders to choose their managing director or whole-time director would not be in the interest of the company." It has been represented that the interest of the members of minority shareholders is not safe in the hands of the company. Have you got any comment to make on this?

SHRI N. V. IYER: I will explain the position. I have already mentioned it in my opening remarks that whenever a new person is sought to be appointed may be on the same remuneration or less remuneration or higher remuneration the control exists as he will have to be approved by the Central Government under the provisions of sections 269, 310 and 311 of the Companies Act. Whenever application is made to the Central Government, such a company will issue a public notice that any member of the minorities can make a representation to the Central Government. In fact the Central Government take the evidence of the minority group and majority group before passing orders on the appointment of Directors, their term etc. There is adequate machinery for protecting interest of minority. There is also general protection for minorities under sections 398, 399, 407 and 408 of the Act.

SHRI R. R. SHARMA: You have made comments on the definitions. Can you send a suitable definition on various things? You must send it within 10 days to the Chairman.

SHRI N. V. IYER: Yes, we shall make an attempt to do it.

SHRI K. S. CHAVDA: It is said that the new section 58A will place company in considerable difficulties. You know that in many cases, companies have gone into liquidation. Depositors are the worst sufferers. In such cases, what is your suggestion to safeguard the interest of the shareholders.

SHRI N. V. IYER: The point mentioned by the hon. Member is very relevant. There might have been instances where depositors might have been cheated of their funds. This cheating takes place despite the regulations which are already imposed. It was as a result of such cheatings the Government had to introduce strict regulations through the Reserve Bank on the company accepting deposits. These regulations are very right. The company has to deposit is limited to 25 per cent of the capital and reserve. The Reserve Bank is issuing regulations from time to time. After the issue of directions and regulations by the Reserve Bank and after their strict enforcement, the loss of depositors would have been considerably less. That sort of control has already taken place through the directives and regulations of the Reserve Bank. They have been functioning for the past 8

or 9 years. Recently, the Reserve Bank has taken steps to launch prosecutions wherever there was non-compliance with those regulations and directions.

SHRI K. S. CHAVDA: The fact remains the same. The Companies are not in a position to give back the deposits. Secondly, they do not pay the deposits on due dates. Yesterday, one witness suggested that the deposits from the members should be excluded from the purview of the proposed Section.

SHRI N. V. IYER: For that, the legislature has already taken care of such individual cases. In the explanation it has been stated that for the purpose of this section, 'deposit' means any deposit of money with, and includes any amount borrowed by a company but shall not include such categories of amounts as may be prescribed in consultation with the Reserve Bank of India. "This has been rightly left to the Notification to be issued from time to time. A specific provision for the exclusion of deposits received by the non-banking non-financial companies from members, directors, relatives partners and employees should be made.

SHRI K. S. CHAVDA: Under section 408 (2), two Directors are to be appointed. If they are in minority, they do not function effectively. What is your experience? You might have seen the functioning of the Director appointed by the Government under Section 408. Under this Bill, in the interests of the company or its shareholders or the public interest, the Government may appoint as many Directors as the Government may consider proper.

SHRI N. V. IYER: It is an extraordinary power conferred on the Central Government to act under special circumstances of oppression, mismanagement, etc. The Government should exercise this power whenever complaints are made to the Central Government. Only in such cases, the Government would appoint Directors.

SHRI MADHU DANDAVATE: On page 5 of your memorandum, under section 58A, you have said that the Committee fails to understand the justification of introduction of a new section 58A, when Non-Banking, Non-Financial Companies (Reserve Bank) Directions, 1966, as amended upto 1972 are in operation. Now I would like to bring to your notice the reasons under which the amendment was actually formulated. You must know that the definition of Non-Banking Non-Financial Companies has not covered the Chit Funds and Hire Purchase houses and the financial companies do not include Stock Exchange or Stock Broking Company. It should be made clear. In addition to that even after the Reserve Bank's Directions, you will know that efforts are made to circumvent the rules.

SHRI N. V. IYER: What we want to submit is that today a method of control has been introduced and it has been in operation for the last 7 or 8 years. Any system of control takes time to yield results. Government first collected statistics and the Reserve Bank framed regulations and the various forms had been prescribed. It is not the intention of Reserve Bank to put the companies into difficulties. They have been adopting, a practical approach. Ii involves a certain process of time. One sort of machinery is already established and is in the process of functioning. It is not necessary to bring this business under Companies Act.

SHRI MADHU DANDAVATE: Even though the rules of Reserve Bank are there, because they had not been followed, this amendment had been brought forward.

SHRI N. V. IYER: The purpose of the amendment would have been achieved if the prosecutions are launched under these regulations. There are two sets of rules, one for non-banking financial companies and the other for non-banking non-financial companies. The textile industry comes

under the latter category. There are two sets of rules and the machinery has been developed gradually. Disturbing that machinery will not be conductive to normal working. Prospectus issue is an elaborate process and we can say that provisions relating to issue of prospectus would involve considerable difficulty.

SHRI MADHU DANDAVATE: Regarding dividend, if you go through concrete cases, don't you think that drawing from Reserve Fund has led to various malpractices and only to check them this amending Bill has been brought forward.

SHRI N. V. IYER: Only some companies which had adopted conservative policy during the past years might draw from Reserve Fund. If you take branches of foreign company, the entire profit goes to head office. They have no dividend to distribute.

The idea of shareholders also would be to take the profit, whenever they can. Pressure may be brought by the shareholders on the management to make the maximum distribution. But shrewd management might put something to reserves and this would be discouraged.

SHRI MADHU DANDAVATE: Regarding appointment of auditors, you say that government's interference with the right of shareholders to choose their own auditor would not be in the larger interest of the company. For the same reason, the Shareholders' Association had said that even though they had theoretically the right to appoint their own nominee, yet because of geographical location of these shareholders from registered office, their inability to attend meetings etc., they are not able to have effective control. They felt that something more stringent than what is contained in this Bill should be there. They do not want any concentration of audit and they think such long service would lead to collusion between audit and management. They have expressed such a view.

You have also said as follows in your memorandum. "It should be appreciated that the expertise, experience and status of senior auditors would be immensely beneficial for ensuring impartial audit of companies without any fear or favour. It is not free from doubt whether the same service can be rendered by junior auditors". So some sort of allegation against junior auditors is there. It is also granted that junior auditors should not be completely shut out. So will you like a *via media* arrangement, some sort of double panel system in which the senior auditors will be there according to the rules of Institute of Chartered Accountants and at the same time there will be the junior auditor also. Will not such a double panel system contribute to having expertise as well as representation for the junior auditors also.

SHRI N. V. IYER: We have made a practical suggestion. The Government can take the power to have a joint auditor so that the shareholders' will have their auditor and government also would have their voice.

SHRI MAHAVIR TYAGI: Your memorandum had been well-drafted, precise to the point. I want one clarification. You say that chambers of commerce and industrial and trading associations should not be covered under the definition of "Group". Are Var Associations also covered?

SHRI N. V. IYER: Those registered under Sec. 25 of the Companies Act are covered. That is the position.

SHRI MAHAVIR TYAGI: You say that some realistic time should be devised. What is the timelimit you envisage?

SHRI N. V. IYER: If the present 42 days' limit is increased to 60 days, it would be reasonable.

SHRI MAHAVIR TYAGI: You say as follows in your memorandum:

> "The rigorous penal provisions attached to each and every clause

of the amending Bill converts the piece of legislation into a penal code. My Committee therefore urges that the disproportionately harsh penal provisions should be revised."

What is the sort of review you want? You want provision for appeals or appointment of any tribunal?

SHRI N. V. IYER: We have suggested tribunals where Government is taking over the functions of Courts as under Section 17 and 153. If the powers under those sections are going to be seized by Central Government, then orders of the Government should be subject to appeal to some sort of Tribunal.

SHRI HARSH DEO MALAVIYA: Do you really feel that the small shareholders have any voice in the management of the companies or mills?

SHRI N. V. IYER: May I explain from practical experience? We represent the Ahmedabad Millowners Association. The shareholders community of Ahmedabad is one of the most enlightened group of shareholders and that would be borne from records of the Government. The shareholders meetings are important meetings with 600 or 1000 shareholders attending. In one case, a company proposed an amalgamation with another company and by a majority of shareholders this proposal was voted down. So, the shareholders of Ahmedabad are quite enlightened.

(The witnesses then withdrew)

***II. Madhya Pradesh Textile Mills, Association, Indore**

Spokesmen:

1. Shri E. B. Desai
2. Shri D. N. Makharia

***III. Central India Chamber of Commerce and Industry, Ujjain**

Spokesmen:

1. Shri S. V. Mazumdar
2. Shri M. D. Gupta
3. Shri D. N. Makharia.

(The witnesses were called in and they took their seats)

[The Chairman welcomed the witnesses and said that they should have felt some inconvenience in going over to Madras for giving evidence. He also drew their attention to Direction 58 of the Director of the Speaker.]

SHRI E. B. DESAI: The first important section which requires careful consideration and which has overwhelming effect on the various other provisions is definition of 'group'. If this definition were adopted and it finds a place in a statute book, we will be faced with a situation whereby all the members of a company and shareholders of a company will constitute into a group. For a company consists of two or more individuals. This has to be again judged in the light of certain other provisions for example 4B.

In India companies are spread over throughout the country and there are large, small and medium companies and the shareholders are widely scattered. It is possible that in a company situated in Maharashtra, there may be certain shareholders who may have shares in a company which is

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*Appeared jointly.

situated in Mysore or Tamil Nadu. With the limited resources at one's disposal the easiest way to invest is shares of a company. If this definition of 'group' were to be applied, we will be faced with a situation where a company in Maharashtra would be deemed belonging to the same group or the same management as the company in Mysore or Tamil Nadu. But in actual practice, one has nothing to do with the other company. The shareholders themselves might not know about the other. But the companies would be deemed as companies belonging to the same group or coming under the same management. This is an anomalous position. Unless the definition of the 'group' is drastically altered to take care of such a situation, there will be practical difficulty.

A similar expression finds place in the Monopolies Act also. That Act has come into force with effect from 1970. Various attempts have been made to inter-connect any two companies on the basis of the definition as laid down in the Monopolies Act. It also says that in the absence of specific provision as to what are the factors which should constitute control and what are the elements which are said to exist when control is established. It is difficult to decide. We know of cases where in connection with the hearing by Monopolies Commission, attempts are made to inter-connect two companies on the basis that one of them acts as special adviser. There may be professional special advisers and they may act as special advisers. Is it suggested that if a single person acts as special adviser to company A here and special adviser to company B there, can be said to control both the companies A and B. The Government authorities have no criteria laid down and they have to adopt their own principles and norms. There is basic difficulty. Is it suggested that once interconnection is established, that interconnection should subsist for all time to come. There is no machinery to see that as a result of these past activities of that particular gentleman having ceased, there is a cessation of inter-connection. That is my respectful sumission that it will lead to unnecessary litigation and controversial situations and even after the Monopolies Commission was established in 1970, and various investigations; in 1973, there is nothing established to decide how two companies are deemed inter-connected on the basis of element of control. That is why I say there may be positive doubt before the exercising authority to come to a conclusion as to what cases establish control.

The next point is, the two companies must act in concert in some way or in unison, then all the shareholders must act in concert. Then there can be some basis to establish control or inter-connection between the two companies.

I shall deal next with the provisions contained in the new Section 4-B. In sub-clause (1)(i) two stages of control are contemplated. It will be very hard to determine the second stage of control in order to cover a case under Clause (1) of Section 4B.

Sub-clause (1)(i) is redundant as the basis of controls have been contemplated in the next of the provisions.

Sub-clause (1)(iv)—the word 'relatives' is used. Whose relatives. The wording should, be I submit, 'their relatives'. The same wording is found in sub-clause (v). The expression used there is correct. It is better that the language is consistent.

Apart from this, the word 'independently' is used in sub-clause (iv) whereas the words 'by themselves' are used in sub-clause (v). If it covers the same situation and same facts, there is no reasonable justification to use different expressions in the same sub-clauses of the Section.

If I am a director in one company which is a large company, I happen to be only one of the many and if I

with my relatives start a small company to do my own business, even though my small company would have no relationship with the big company of which I am only one of the directors, by reason of this definition the two companies will be deemed to be inter-connected or under the same management. As such for my own small private company I have to make an application for expansion under the provisions of Monopolies legislation. So, the better way is this. If I together with some relatives of mine constitute one third of the Board of one body corporate and at the same time I constitute one-third of the Board of the other body corporate in those cases inter-connection can be said to be established and in no other case.

MR. CHAIRMAN. Whatever is contained in the memorandum we would certainly go through. Please touch the salient points.

SHRI E. B. DESAI: Regarding sub-clause (vii), suppose I am a lawyer by profession and in A company I may exercise the right of proxies because lawyers attend general body meetings. In other B company I may exercise my voting rights with proxies. By mere exercise of voting rights in professional capacity, these two companies will be deemed to be inter-connected. This should be taken care of and some exception should be made.

There may be companies who have no borrowing from public financial institutions and the question of public money is not involved at all. Such companies should not be deemed public companies.

No Company today can have any expansion activities or industrialised activities without the support of the financial institutions. In all the documents which are executed between the company and the financial institutions which give loans there are convertibility clauses. Even at the time of initial issue of capital, preference capital is mostly subscribed by financial institutions. If both equity and preference capital are equated together for the purposes of holding one-third equity, then you will be faced with a situation that in a company which may belong to a large industrial house like Tatas where they have taken loans from financial institutions which is a body corporate registered under the 1913 Act. If as a result of the option of convertibility clause, if ICICI happens to hold 1/3 equity of a concern belonging to Tatas or Birlas, the ICICI will be deemed to be interconnected with Tatas or Birlas. It is therefore desirable to see that such holding of financial institutions are outside the purview of the legislation.

There may be practical difficulties which are likely to arise in the case of administration of companies, especially in the case of private companies who are on the border line of Rs. 50 lakhs of turnover of business. Some provision should be made to except these cases of border line. It is better to provide that the turnover should be consistent for three financial years to attract the provisions of the legislation.

Then I come to Section 73, amendment to sub-section (5). We come across cases where shares of a company are sought to be quoted by different stock exchanges. Invariably it is difficult for some reason or other to dispose of these applications by the Stock Exchange authorities. It is not within the control of the Company. There might be certain factors beyond the control of the company which may delay the disposal of the application on the part of the stock exchange authorities, especially where the cases referred to different Stock Exchanges. It is practically impossible for the companies to follow up the matter with the stock exchange authorities and to get the disposal made within the particular time. It may be provided that if the company has made an application in time an extension could be obtained

in such cases and the position should be within such time as may be extended to by the Central Government or even the Registrar of Companies'.

Section 94A: When there is alteration in the Articles, there is necessity of passing a resolution. The cumbersome procedure of passing a resolution and altering the Articles is sought to be done away with. Sometimes the capital clause is also inserted in the Memorandum of Association, therefore, a similar provision for doing away with cumbersome procedure of amending the memorandum should also be made. When loans are sought to be converted into capital, the company should have a say in the matter. That is in the fitness of things.

Whenever there is increase in capital of a company, there is a fee on the increased capital. There is no provision as to who will pay the fee.

I now come to sections 108A to 108D. The *mens rea* aspect should be inserted. A person should be held to be guilty, unless he commits the offence with full knowledge thereof. One is not at a loss to know to which group he belongs. Some people might have registered inadvertently. Section 108C deals with 'foreign company'. Nowhere in the parent Act has the term 'foreign company' been defined. Foreign company is not defined in this Bill also. The head office is situated outside India. It is not registered in India. If transaction takes place in this country, there is contravention of section 108C. The case of such foreign companies have to be looked into.

The company should not be concerned between transactions between benami and beneficial holder. It should be laid down that notwithstanding what is contained in sections 153 and 187C the Company will not be concerned with private disputes between benami and beneficial holder. The company would recognise only the person whose name is registered in the records of the company. Section 187C should provide for this.

Section 204A is intended to apply only to persons who are in receipt of remuneration from the company and not to Directors who do not receive such remuneration.

Section 209: Several directors may not be aware of the day to day accounts of the company. If every Director is made liable to furnish information to any officer, who comes to the company without any previous notice, it will be difficult. All directors may not be aware with day to day working and may not be in a position to furnish the explanation required by the inspecting government officer. Only a director who is in charge of day to day affairs will be able to answer and not a Technical Director or other who may not be conversant with accounts. So it may be said that only 'working director' and one in charge of administration would be required to furnish the information required by the inspecting government officer.

Certain documents relating to company which may in the possession of a solicitor who is a director of the company may be secret documents and may come in as privileged documents under Section 15 of the Evidence Act. Can these be shown to the inspecting authorities?

Sub-clause (8) deals with officers who are in default. Will this include the Directors also? That has to be clarified.

This section would give too much power to the inspecting officers and there is possibility of powers being misused.

Section 224A: So far as 25 per cent holding of subscribed share capital is concerned, now in majority of companies, the public financial institutions hold more than 25 per cent shares. Preference shareholders do not have voting rights. They do not have a say in the administration. To say that the preference share holders be given higher representation than

75 per cent equity share-holders is rather unrealistic.

Regarding Section 269, I want to say something on foreign nominees on the Board. Their remuneration necessarily has to be on a higher scale consistent with their qualifications and status in foreign country. When they are nominated to the Board, if their remuneration is also covered by the limits prescribed by Sections 198, 309 and 310, there will be no scope or room left for appointment of Indian managerial personnel. As per Section 198 the total managerial remuneration cannot exceed 11 per cent. So their (foreign nominee's) remuneration etc. should be excluded from the perview of section 269. Otherwise, there will be difficulty. In cases of foreign collaboration, those foreign representatives on the Board and technicians whose salaries are approved should not be hit by the new provision 269.

In regard to 294A, we know that the position of demand and supply is always conflicting from year to year and from season to season. Is it intended that once the demand is less and supply is more, the selling agency should be affected.

As for 297, it has far-reaching consequences. As now framed, in cases of urgent necessity where the amount involved is less than Rs. 5,000, the company has to enter into contract and get the approval of the Board. By virtue of this proviso requiring the previous approval of the Central Government, these cases also will be affected. There are cases where big companies have to enter into contracts as of urgent necessity. In such cases this provision will create difficulties.

In regard to 637AA. I am afraid Government expect the poor officers to decide too much. This is incidental to section 269. How can the poor government officer decide this? If it is a percentage of profit that is paid as remuneration, there will be difficulties in computation.

That is all.

SHRI MADHU DANDAVATE: As far as dividends are concerned there are a number of companies which do not declare dividends. A sort of fright is created in the minds of the shareholders that the value of it would go down and they are persuaded to sell away their shares. And persons who want to take control of the company adopt backdoor methods and adopt malpractices on a large-scale. In order that there may be a check on such activities, a provision is made. What is your opinion about it?

SHRI E. B. DESAI. One cannot escape the fact that when a company does not declare a dividend, it does not fritter away the money. The amount is transferred to the Reserve and the amount could be utilised later for bonus shares and the shareholders stand to gain. The result of the provision is this. When it is transferred to certain account, the funds are not available to the company, they cannot embark upon expansion activities, there is no fund for the internal working of the company and they cannot utilise money without borrowing at high rate of interest. When the advantages and disadvantages are weighed and compared, ultimately the advantages are more to the shareholders themselves.

SHRI MADHU DANDAVATE: It has been represented that the average shareholder in the country does not play much part in the affairs of a company and they are not vocal . . .

SHRI E. B. DESAI: In Bombay they are vocal.

SHRI MADHU DANDAVATE: Is it not a fact that because of the apathy of the shareholder, he does not attend many of the meetings and he does not understand the intricacies of the balance-sheet. An apprehension is

created in them and by manipulation, certain malpractices are practised on them.

SHRI E. B. DESAI: It is more hypothetical. In large companies with hundreds and thousands of shareholders, it would be impossible to go round the country and persuade them to dispose of their holdings.

SHRI MADHU DANDAVATE: Before we finally decide on this, if we are able to find out from statistical data that there is room for a change and the disadvantages are far too great than advantages would you not agree that such a provision be made?

SHRI DESAI: There can be an alternative. Why make a general provision.

MR. CHAIRMAN: All right. Leave it. Next.

SHRI K. S. CHAVDA: What would you suggest to have effective control over foreign firms in which there is no share held by Indian citizens.

SHRI E. B. DESAI: Action will have to be taken under the Foreign Exchange Act. There may be some provision whereby their business in India may be controlled, probably under section 592 of the Companies Act. Some sort of curative measure could be taken.

SHRI R. R. SHARMA: At page 3 of your memorandum you have given your views, 'by the provisions of the proposed amendment bill, the government is placed in the position of driving the car from the back seat . . .' To what major provisions do you refer in this?

SHRI E. B. DESAI: Provisions relating to 269, 637AA etc.

SHRI JAGANNATH MISHRA: How far it is true that the introduction of new section 187C in clause 13, takes away the protection hitherto enjoyed and the possibility of having to face rival claims? What would be your suggestion to improve upon the provision?

SHRI E. B. DESAI: The existing position that the company does not recognise any trust is a very healthy one, because the company does not form a party to any litigation, between two rival groups. I think suitable provision can be made that in the event of a company having rival groups, there must be a competent authority to decide the case.

(The Committee then adjourned.)