C. B. No. 164

LOK SABHA

THE COMPANIES (AMENDMENT) BILL, 1963

(Report of the Select Committee)

(Presented on the 9th December, 1963)

LOK SABHA SECRETARIAT
NEW DELHI

December 1963
Agrahayana 1885 (Saka)

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JOINT/SELECT COMMITTEE REPORTS PRESENTED TO LOK SABHA DURING THE YEAR 1963.

Sl.No.	Name of the Report	Date of Presentation.
1.	The Administrators-General Bill, 1962 (Report of the Select Committee)	25-1-1963
2.	The Constitution (Fifteenth Amendment) Bill, 1962 (Report of Joint Committee)	8-3-1963
3.	Joint Committee on the Constitution (Fifteenth Amendment) Bill, 1962 - EVIDENCE.	-do-
4.	The Constitution (Sixteenth Amendment) Bill, 1963 (Report of the Joint Committee)	18-3-1963
5.	The Government of Union Territories Bill, 1963 (Report of the Joint Committee)	15-4-1963
6.	The Major Port Trusts Bill, 1962 (Report of the Select Committee)	13-8-1963
7.	Select Committee on the Major Port Trusts Bill, 1962 - EVIDENCE	-do-
8.	The Christian Marriage and Matrimonial Causes Bill, 1962 (Report of the Joint Committee)	26-11-1963
9.	Joint Committee on the Christian Marriage and Matrimonial Causes Bill, 1962 - EVIDENCE.	-do-
10.	The Companies (Amendment) Bill, 1963 (Report of the Select Committee)	9-12-1963
11.	Select Committee on the Companies (Amendment) Bill, 1963 - EVIDENCE.	-do-
12.	The Slum Areas (Improvement and Clearance) Amendment Bill, 1963 (Report of the Joint Committee)	18-12-1963

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LOK SABHA

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CORRIGENDA NO.2
TO
THE REPORT OF THE SELECT COMMITTEE ON THE COMPANIES (AMENDMENT BILL, 1963

—

Report of the Select Committee

Page (iv), line 14, for "amendment is of consequential nature" read "amendments are of a drafting nature"

Page (v), line 7, for "sub-section" read "sub-sections"

Minutes of Dissent

Page (viii), line 6 from bottom, for "case" read "cases"

Page (viii), line 9 from bottom, for "prevent to" read "prevent the"

Appendix I

Page 17, line 7, for "Bude" read "Bade"

Page 17, line 10, for "Borrooah" read "Borooah"

Appendix IV

Page 20, line 6 from bottom, for "Adviscer" read "Adviser"

P.T.O.

Page 24, line 3, for "December" read "6th December"

Page 30, omit line 3 from bottom

Page 30, line 5 from bottom, after "exercising" insert "the rights and powers conferred on him by this section"

New Delhi,

The 10th December, 1963.

LOK SABHA

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CORRIGENDA
TO
THE REPORT OF THE SELECT COMMITTEE ON THE COMPANIES (AMENDMENT BILL, 1963

—

Bill as reported by the Select Committee

Page 5, line 3, underline the words "not below the rank of a sub-inspector"

Page 5, side-line lines 26 to 34

Page 8, side-line lines 23 and 24

Page 8, line 27, for "163A" read "153A"

Pages 9 and 10, side-line lines 24 to 35 and lines 1 to 32 respectively

Page 10, line 13, for "of objects" read "the objects"

Page 12, line 8, underline the word "or" and for "as/may" read "as may"

Page 12, line 27, underline the word "is"

Page 14, line 35, omit underlines below "89(4), 211(3) and (4)"

New Delhi,
The 9th December, 1963.

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THE COMPANIES (AMENDMENT) BILL, 1963

COMPOSITION OF THE SELECT COMMITTEE

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

2. Shri Ramchandra Vithal Bade
3. Shri S. M. Banerjee
4. Shri Rajendranath Barua
5. Shri P. C. Borooah
6. Shri Sachindra Chaudhuri
7. Shri Indrajit Gupta
8. Shri R. K. Khadilkar
9. Shri T. T. Krishnamachari
10. Shrimati T. Lakshmi Kanthamma
11. Shri M. R. Masani
12. Shri P. Muthiah
13. Shri C. R. Raja
14. Shri Sidheshwar Prasad
15. Shri G. G. Swell
16. Shri Mahavir Tyagi
17. Shri Amar Nath Vidyalankar
18. Shri R. R. Morarka.

DRAFTSMAN

1. Shri S. P. Sen Verma, *Special Secretary Legislative Department, Ministry of Law.*
2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
3. Shri R. S. Gae, *Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri V. T. Dehejia, *Secretary, Ministry of Finance.*
2. Shri B. S. Manchanda, *Joint Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*
3. Shri V. Satyamurti, *Deputy Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*

SECRETARIAT

Shri G. V. Mirchandani—*Under Secretary.*

REPORT OF THE SELECT COMMITTEE

I, the Chairman of the Select Committee to which the Bill* further to amend the Companies Act, 1956 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 26th November, 1963. The motion for consideration of the Bill was moved by Shri T. T. Krishnamachari, Minister of Finance, on the 28th November, 1963. An amendment to the motion for reference of the Bill to a Select Committee was moved by Shri R. R. Morarka on the 28th November, 1963 and was discussed and adopted on the same day (Appendix I).

3. The Committee held four sittings in all.

4. The first sitting of the Committee was held on the 2nd December, 1963. The Committee, at this sitting, considered the requests received from some Associations for permission to give oral evidence before the Committee and decided to hear evidence of the Associations desirous of presenting their suggestions or views before the Committee.

Pending the hearing of oral evidence on the Bill, the Committee decided to consider tentatively the clauses of the Bill.

5. At their first and second sittings held on the 2nd and 3rd December, 1963, the Committee considered tentatively the clauses of the Bill.

6. Seven memoranda on the Bill were received by the Committee from different Associations mentioned in Appendix II.

7. At their third sitting held on the 6th December, 1963, the Committee heard the evidence given by the representatives of five Associations specified in Appendix III.

8. The Committee have decided that the evidence given before them should be laid on the Table of the House *in extenso*.

9. The Committee considered the Bill clause by clause at their fourth sitting held on the 7th December, 1963.

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*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 26th November, 1963.

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

11. *Clause* 3.—(*a*) *Proposed Section* 10A.—The Committee are of the opinion that the powers and functions conferred on the Court by the Companies Act, 1956 which the Tribunal may exercise or discharge, when so specified by the Central Government by notification in the Official Gazette, should be limited to those covered by or under sections 155, 203 (in so far as it relates to the granting of leave under that section), 240 and 397 to 407 only.

The Committee feel that the Chairman of the Tribunal should always be a person who is, or has been, or is qualified to be, a Judge of a High Court.

The other amendment is of consequential nature.

(*b*) *Proposed Section* 10*B*.—The Committee feel that every Bench of the Tribunal should consist of not less than two members of whom at least one should be a person having knowledge of, and experience in, law and if there is any change in the membership of a Tribunal, the proceedings should be continued as if the members appointed later were on the Tribunal from the commencement of the proceedings.

The other amendment is of a consequential nature.

(c) *Proposed Section* 10*C*.—The amendments made are clarificatory in nature.

(d) *Proposed Section* 10*D*.—The Committee are of the view that in cases against managerial personnel under Chapter IVA of Part VI an appeal should lie to the High Court only on questions of law arising out of the findings of the Tribunal under section 388D and in cases not falling under that Chapter an appeal should lie only on questions of law arising out of any decision, order or findings of the Tribunal.

The clause has been amended accordingly.

12. *Clause* 4.—The amendment made in the clause is of a drafting nature.

13. *Clause* 5.—(a) *Proposed sub-section* (4) *of Section* 81.—The Committee consider that the Central Government should direct the conversion of debentures or loans into shares in the company only when in the opinion of the Central Government public interest so demands. The Committee, however, feel that in respect of debentures issued and loans obtained by a company before the commencement

of this Bill when enacted, no such conversion should be directed unless the company has made default in repayment of the amount of the debentures or loans with interest thereon or in the compliance with any other terms of such debentures or loans and the company has failed to remedy the default within three months of the service of a notice in this behalf.

(b) *Proposed sub-section* (5) *and* (6) *of Section* 81.—The amendments made are of a drafting nature.

The clause has been amended accordingly.

14. *Clause* 6.—(*New Clause*).—The amendment made in section 153 of the parent Act by this new clause is considered necessary in view of the provisions of the proposed new sections 153A and 153B.

15. *Clause* 7.—(*Original Clause* 6).—(a) *Proposed Section* 153*B* (2).—The Committee feel that a trustee should send to the company concerned a copy of the declaration made by him under sub-section (1) of section 153B within a fixed period of 21 days.

(b) *Proposed Section* 153*B* (3).—The Committee consider that failure to make a declaration of the trust to the public trustee should be punishable only with fine and that making a false statement in the declaration knowingly should be punishable more severely with imprisonment.

The clause has accordingly been suitably amended.

16. *Clause* 8.—(*Original Clause* 7).—The Committee feel that the appointment of a person as public trustee should appropriately find a place not in proposed new section 187B but in a separate section immediately after section 153 of the Act.

The Committee further consider that on the appointment of the public trustee the rights and powers of every trustee to whom proposed section 187B applies, exerciseable by the trustee in meetings of the company, should become exerciseable by the public trustee but the public trustee instead of himself exercising those rights and powers may appoint any officer of Government or the trustee himself as his proxy; such officer of Government or the trustee should, however, exercise those rights and powers in accordance with the directions of the public trustee but where the trustee is appointed as the proxy the trustee should be entitled to exercise the rights and powers in the same manner as he would have been but for the provisions of the proposed section.

It has also been provided in the proposed section that the public trustee may abstain from exercising his rights and powers under

this section if in his opinion the interests of the trust would not be adversely affected thereby; the trustee, however, may communicate his views to the public trustee that there should be no abstention by the public trustee in the matter of exercising the voting rights and the public trustee may in his discretion either accept those views or reject the same.

The clause has been redrafted accordingly.

17. *Clause* 9.—(*Original Clause* 8).—(a) *Proposed Section* 388B.—The Committee feel that only persistent negligence or default of any person concerned in the conduct and management of the affairs of a company should bring him under the purview of the proposed section 388B.

The other amendments are clarificatory in nature.

(b) *Proposed Section* 388B.—The amendment is of a drafting nature.

(c) *Originally proposed Section* 388E.—This section has been omitted as the provisions thereof are covered by the proposed section 10D in clause 3.

(d) *Proposed new Section* 388E.—(*Original proposed Section* 388F).—The Committee are of the view that the Central Government may, with the previous concurrence of the Tribunal, permit any managerial personnel removed from office, to hold any managerial office before the expiry of the statutory period of five years. The proposed section has been amended accordingly.

The clause has been amended accordingly.

18. Clauses 10, 11 and 12 correspond to original clauses 9, 10 and 11, respectively.

19. *Original Clause* 12.—The clause has been deleted, in view of the more comprehensive provision inserted in clause 14 as proposed sub-section (2A) of section 637 of the principal Act (*See* para 20 below).

20. *Clause* 14.—(a) *Proposed sub-section* (1) (a) *of Section* 637.—The Committee feel that the power of the Central Government to appoint a person as public trustee under the proposed section 153A should not be delegated to the Company Law Board.

(b) *Proposed sub-section* (2) *of Section* 637.—The Committee are of the opinion that the powers and functions under section 81 should also not be delegated to any other authority or officer.

(c) *Proposed sub-section (2A) of Section 637.*—The Committee feel that the provisions of the Act should apply in relation to the Company Law Board as they apply in relation to the Central Government in respect of any matter in relation to which the powers and functions of the Central Government are delegated to the Company Law Board.

The clause has been amended accordingly.

21. The Select Committee recommend that the Bill as amended be passed.

S. V. KRISHNAMOORTHY RAO,
Chairman,
Select Committee.

NEW DELHI ;
The 7th December, 1963.

MINUTES OF DISSENT

I

The Report of the Select Committee on this Bill shows that the brief reference of the Bill to a Select Committee has been more than justified. Among the several useful changes made in the Bill, there are two modifications which will to a large extent meet the strong exception taken to the Bill by large sections of public opinion and the press.

The first of these is the elimination of the power proposed to be left to Government to transfer to a Tribunal to be set up under the Bill by notification from time to time various powers of the Courts of Law. The second major improvement is the exclusion from the mischief of Clause 5 of the Bill, except only in case of default on the part of a company, or companies which had taken loans from the Government before the coming into operation of this legislation giving power to the Government unilaterally to convert itself from a creditor of the company to its shareholder. We welcome this change because, otherwise, there was ground for the charge that the power of unilateral action given to Government retrospectively would have amounted to a breach of contract and of faith and would have damaged, at home and abroad, India's credit as a country that has so far scrupulously adhered to its contractual obligations.

All the same, we regret that several blemishes still remain in the Bill as reported by the Select Committee.

The one that towers over all others is to be found in Clauses 7 and 8 which give Government the right to deprive all trustees of their right to vote as shareholders of joint stock companies and to transfer this right to a Public Trustee appointed by Government. No case has to be made out against any trustee or trustees for expropriating them of this right of theirs and no right of appeal is proposed to those so expropriated. We note that in paragraph 2 of the Statement of Objects and Reasons appended to the Bill it has been stated that: "In order to prevent to use of voting rights attached to shares held by trusts for the advancement of the personal interests of the donors, it is considered necessary to regulate the exercise of such rights in suitable case." It is a matter of regret to us that our plea that the deprivation of voting rights should only operate in the case of trustees who were found to be using their voting rights for the advancement of their personal interests or of those of the donors was not accepted by the Select Committee. This is one of the increasing number of cases where the provisions of a law bear little

relation to the Statement of Objects and Reasons appended to the Bill. The provisions are also inconsistent with the assurance given by the Hon. Finance Minister on the floor of the House on 28th November 1963 that there would be an amendment exempting "genuine trusts created for safeguarding family interests or charitable or educational trusts."

We consider Clauses 7 and 8 of the Bill as embodied in the Report of the Select Committee to be nothing less than outrageous. There are three facets of the right of a shareholder, whether he happens to be a trustee or otherwise. The first is the right to a dividend, the second is his right to his capital and any capital appreciation that may take place, and the third and perhaps the most valuable right is that of participating in the control and management of the enterprise through the exercise of his right as a shareholder. To deprive trustees of this right without any rhyme or reason, without any recourse to a Court of Law for justice or redress is to us a proposal of a shocking nature which should have no place in a free society. What justification can there possibly be for such a drastic power? As the Bill now stands, an official of Government would be competent to deprive a citizen of his valuable right as a shareholder without anything whatsoever being proved or even alleged against him.

In our view, in order to make a provision of this nature appropriate in a democracy, the least that could be done is to modify this clause by providing for the following:

(i) Limitation of this provision to public charitable trusts, in regard to which there are tax concessions, holding shares in public limited companies;

(ii) The restriction of this provision to cases where the trustee is proved to have acted either in his own interest or in the interests of the settlor or otherwise in a way adverse to the interests of the Trust;

(iii) A provision that the trustee should be given the right of being heard in regard to the grounds on which he is proposed to be deprived of his voting rights and a right to appeal to the Courts against the decision depriving him of his right to vote.

Among other provisions of the Bill as reported by the Select Committee to which we would like to draw attention with a view to their modification are the following:

1. In Clause 3 of the Bill, the right of appeal afforded to a person against whom a finding has been arrived at by

a Tribunal is restricted only to matters of law arising out of such a finding. We consider this right of appeal to be unduly restrictive and would suggest its being extended to any other question with the leave of the Court.

2. In Clause 9 which provides for the circumstances in which a person concerned with the conduct and management of the affairs of a Company can be removed from his position are included grounds which appear to us to be altogether out of place, such as, negligence or that the business of the company "is not or has not been conducted or managed by such a person in accordance with sound business principles or prudent commercial practices."

While we are in agreement with the other parts of the clause which would permit the removal from office of a person guilty of fraud, misfeasance or persistent default or conduct which is unlawful, we believe that the question whether or not a business is being conducted prudently or on sound business principles is not one which should be referred to a Tribunal or one which is capable of judicial or quasi-judicial examination. Commercial prudence and sound business practice are matters in regard to which there can be legitimate difference of opinion and those who risk their capital or the business should be the sole judges of such issues. To place in judgement over their business decisions officials of government or members of a Tribunal who may have no knowledge or know to conduct a business and who have no record of business success which would qualify them to judge others is, in our view, something that will paralyse people in business from taking decisions and retard the economic progress of the country. The record of the present Government in regard to the management of its own enterprises in the State sector is hardly such as to warrant the arrogation of any superiority.

3. We see no reason whatsoever for the provision that the previous approval of the Central Government should be required under Clause 9 [Section 388E Sub-clause (5)] in all cases where a successor is to be nominated to an office vacated by removal of the previous incumbent. No doubt such approval would have to be

obtained in the case of those offices in respect of which the Companies Act requires such previous approval, but it is difficult to see why it is sought to extend the right of the Government to withhold approval to appointments to other offices where the Companies Act does not provide for such approval just because a particular incumbent has been disqualified.

NEW DELHI ; M. R. MASANI.
Dated the 7th December, 1963. RAM CHANDRA VITHAL BADE.

II

We do not agree with the proviso inserted by the Select Committee to the proposed sub-section (4) of section 81 in clause 5 of the Bill, inasmuch as it restricts the operation of that sub-section only to cases of default continuing after notice has been served in the matter. We think the Government should be given unrestricted power to take action in respect of loans granted even prior to the commencement of the Companies (Amendment) Act, 1963, where the Government deems fit to do so in the public interest. Considerations of public interest may not be restricted to cases of default only but may apply even to cases where in the opinion of the Government the larger interests of the community consistent with the socio-economic objects of the State demand conversion of loan into equity capital; the Government should, therefore, be armed with adequate powers under the law in this behalf.

NEW DELHI; AMAR NATH VIDYALANKAR.
Dated the 9th December, 1963. INDRAJIT GUPTA

III

I. The Statement of Objects and Reasons attached to the Bill emphasises the necessity of setting up a Tribunal "in order to facilitate quick action" against persons involved in fraudulent malpractices and mis-management of companies.

I feel that this laudable object of quick action will not be realised by the provisions of the Bill as they have emerged from the Select Committee. On the coutrary, there is a grave risk that the accused persons would be enabled to circumvent any intended quick action by simple resort to the various delaying procedures which have been laid down in the Bill. This would defeat the very purpose of constituting such Tribunals.

Under Section 388D (Clause 9 of the Bill) the Tribunal can record its "findings", and any question of law arising therefrom may be the subject of appeal to the High Court. Similarly, any order of Government made on the basis of the Tribunals findings can be appealed against. Further, there is nothing explicitly provided in Section 388C to exclude even interim "orders" of the Tribunal from the scope of appeals to the High Court, although this might entail serious interference with, and obstruction to, the normal functioning of the Tribunal during pendency of a case before it.

Even after the Tribunal has recorded its finding in favour of removal of a person from his managerial post, he is given an undefined right, under Section 388E(2), to "show cause" why he should not be dealt with as per the Tribunal's findings. Even if the provision for a show cause notice is justified, there must be Rules made under the Act to define clearly a procedure and time limit for issue and disposal of such notice. But in the absence of any assurance that such definition will be made, the show cause stage may become a pretext for endless delay and procrastination by both the guilty person and the Government which alone has the power to order his removal.

For the above reasons, I strongly feel that the efficacy of the Tribunals as instruments for quick action may get seriously blunted. Hence, Sections 388D and 388E should be amended to bring them in line with the basic objects and reasons of the Bill.

II. The original Bill, as introduced, stipulated that a person removed from office by order of the Government would be debarred for a period of five years from holding any office connected with company management. The Select Committee has held [Section 388E(3)] that the Government, with the Tribunal's approval, can permit any such person to resume or hold office again before the expiry of five years. I am opposed to this provision. A person whose removal was considered necessary by both the Tribunal and the Government should not be permitted to reoccupy any responsible managerial office during the full statutory period of five years. If even this deterrent penalty can be watered down, there will be no seriousness left in the provision for removal.

In my opinion, if the Tribunal's findings and orders are continually challenged in the Court, if its findings are not accepted by Government, and if persons found guilty by it are frequently allowed to resume office even before five years from the date of removal, the cumulative result might be the reluctance of any self-respecting person to serve as a member of the Tribunal.

III. *Clauses* 4 *and* 14.—These two clauses make it amply clear that the proposed Board of Company Law Administration can exercise only such powers and functions as are delegated to it by Government and subject to specified conditions, restrictions and limitations. The power to appoint public trustees is explicitly not to be delegated to the Board.

While the statutory relationship between the Government and the Board may have been correctly defined in the Bill, the question arises: why is this opportunity of fresh legislation not being utilised to invest the Board with the comprehensive range of subjects entrusted till 5th September, 1956 to the former Department of Company Law Administration? Such an investment would have reinforced the Board's ability and capacity to strengthen administrative control over all inter-connected subjects dealing with the management and financing of joint stock companies, *viz.*, administration of the Companies Act, of Capital Issue Control, Accountancy, Stock Exchanges and various Financial Corporations.

I feel that the provisions of the Bill governing the functions and powers of the Board will amount to a diminution of administrative control, and this is most undesirable. The Board's powers should explicitly be augmented so that it can serve as an effective body for contributing towards an integrated and purposive regulation of the corporate sector in the public interests. This the urgent need of the hour, as revealed by the experience of the Vivian Bose Commission's inquiries and findings.

IV. *Clause* 5.—I cannot agree with the majority view of the Select Committee that the Government's powers to convert loan capital into equity capital should have no retrospective effect save and except in the case of a company which has made default in repayment, and continues to do so even after notice. My views in this matter are incorporated in the separate Minute of Dissent signed by Shri Vidyalankar and myself.

NEW DELHI; INDRAJIT GUPTA.

Dated the 9th December, 1963.

THE COMPANIES (AMENDMENT) BILL, 1963

(AS REPORTED BY THE SELECT COMMITTEE)

(Words side-lined or under-lined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Companies (Amendment) Act, 1963.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

Amendment of section 2.

1 of 1956.

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

(*a*) after clause (*10*), the following clause shall be inserted, namely:—

'(*10A*) "Company Law Board" means the Board of Company Law Administration constituted under section 10E;';

(*b*) after clause (*49*), the following clause shall be inserted, namely:— . .

'(*49A*) "Tribunal" means the Tribunal constituted under section 10A;'.

Insertion of new sections after section 10 in Part I.

3. After section 10 of the principal Act, the following sections shall be inserted in Part I, namely:—

Constitution of Tribunal.

'10A. (*1*) The Central Government may, by notification in the Official Gazette, constitute a Tribunal consisting of as many members as it thinks fit, to exercise and discharge—

(*a*) the powers and functions conferred on such Tribunal by or under this Act;

(*b*) all or any of the powers and functions conferred on the Court by or under section 155, section 203 in so far as it relates to the granting of leave under that section, section 240, and sections 397 to 407, which the Central Government may, from time to time, by notification in the Official Gazette, specify:

* * * *

Provided that where any powers and functions are or become exercisable by the Tribunal by virtue of this section, the Court shall not exercise those powers and functions and any reference to the Court in any of the sections, powers and functions of the Court whereunder have been conferred on the Tribunal, shall be construed as a reference to the Tribunal.

(*2*) The members of the Tribunal shall be persons who have, in the opinion of the Central Government, * * adequate knowledge of, and experience in,—

(*a*) law, or

(*b*) matters of accountancy, or

(*c*) administration or management of companies and law relating thereto.

(*3*) The Central Government shall * * appoint one of the members of the Tribunal having knowledge of, and experience in law, who—

(*a*) is or has been a Judge of a High Court, or

(*b*) is qualified for appointment as Judge of a High Court,

to be the chairman of the Tribunal.

(4) The chairman and other members of the Tribunal shall receive from the Central Government such remuneration, and shall be governed by such conditions of service, as the Central Government may determine:

Provided that the remuneration of the chairman or any other member shall not be varied to his disadvantage after his appointment.

(5) Nothing in this section shall derogate from the powers and functions of the Court in relation to any proceeding pending before the Court immediately before such powers and functions are or become exercisable by the Tribunal by virtue of this section and the Court shall dispose of such proceeding accordingly.

(6) The provisions of this Act shall apply in relation to the enforcement of any order of the Tribunal as if such order were an order of the Court under this Act.

Explanation.—In this section, "Court" means the Court as defined in sub-clause (*a*) of clause (*11*) of section 2 and, where the powers and functions have been conferred expressly by any section on a Judge of a High Court, includes such Judge.

Procedure of Tribunal.

10B. (*1*) The powers and functions of the Tribunal may be exercised and discharged by Benches constituted by the chairman of the Tribunal from among the members thereof.

(*2*) Every such Bench shall consist of such number of members, not being less than two, as the Central Government may, by rules made under this Act, determine and at least one of such members shall be a person having knowledge of, and experience in, law.

(*3*) If during the course of any proceedings, any member of the Tribunal is for any reason unable to perform his functions or relinquishes his membership of the Tribunal, the Central Government may appoint another member in his place in accordance with the provisions of this Act and upon his joining the Tribunal the proceedings shall be continued as if he had been on the Tribunal from the commencement of the proceedings.

(4) In case of difference of opinion among the members of a Bench, * * * the opinion of the majority shall prevail and orders of the Bench shall be expressed in terms of the views of the majority:

Provided that if the members of the Bench are equally divided in opinion on any point, they shall prepare a statement on the point and refer the same to the chairman of the Tribunal for the hearing of such point by one or more of the other members of the Tribunal and such point shall be decided according to the opinion of the majority of the members of the Tribunal who have heard it, including those who first heard it.

(5) Subject to the provisions of this Act and the rules made thereunder, the Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers and the discharge of its functions, including the places at which the Benches shall hold their sittings.

Powers of Tribunal.

10C. (1) The Tribunal shall have the powers which are vested in a court under the Code of Civil Procedure, 1908, when 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 taken on affidavit,

(g) issuing commissions for the examination of witnesses, and summoning and examining *suo motu* any person whose evidence appears to the Tribunal to be material.

(2) Where the Tribunal has reason to believe that any place is used for the deposit or custody of any document or thing

which may be material for the purposes of any proceeding before it, the Tribunal may by its warrant authorise and direct any police officer not below the rank of a sub-inspector—

(*a*) to enter that place with such assistance as may be required,

(*b*) to search the same in the manner specified in the warrant,

(*c*) to take possession of any documents or things therein found and to prepare a list of the same and to dispose them of in accordance with the provisions hereinafter contained.

(*3*) When in the execution of a search warrant under sub-section (*2*) any documents or things for which search is made are found, such documents or things, together with the list of the same, shall immediately be taken before the Tribunal.

5 of 1898. (*4*) The provisions of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to a search directed, and a search warrant issued, under sub-section (*2*) as they apply to a search and a search warrant under section 98 of that Code.

(*5*) The Tribunal 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 Tribunal shall be deemed to be a judicial proceeding within the meaning 45 of 1860. of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code.

Appeals against decisions, etc., of the Tribunal.

10D. (*1*) An appeal shall lie to the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, only on questions of law arising,—

(*a*) in cases against managerial personnel falling under Chapter IVA of Part VI, out of any finding of the Tribunal under section 388D; and

(*b*) in cases not falling under that Chapter, out of any decision, finding or order of the Tribunal.

(*2*) Every such appeal shall be heard by a Bench of not less than two Judges of the High Court.

(3) Every such appeal shall be filed within a period of sixty days from the date of communication to the appellant of the decision, finding or order of the Tribunal:

Provided that the appeal may be admitted after the expiry of the aforesaid period if the appellant satisfies the High Court that he had sufficient cause for not preferring the appeal within that period.'.

Insertion of new Part 1A after Part I.

4. In the principal Act, after Part I, the following Part and section shall be inserted, namely:—

'PART IA

BOARD OF COMPANY LAW ADMINISTRATION

Constitution of Board of Company Law Administration.

10E. (1) As soon as may be after the commencement of the Companies (Amendment) Act, 1963, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration to exercise and discharge such powers and functions conferred on the Central Government by or under this Act or any other law as may be delegated to it by that Government.

(2) The Company Law Board shall consist of such number of members, not exceeding five, as the Central Government deems fit, to be appointed by that Government by notification in the Official Gazette.

(3) One of the members shall be appointed by the Central Government to be the chairman of the Company Law Board.

(4) No act done by the Company Law Board shall be called in question on the ground only of any defect in the constitution of, or the existence of any vacancy in, the Company Law Board.

(5) The procedure of the Company Law Board shall be such as may be prescribed.

(6) In the exercise of its powers and discharge of its functions, the Company Law Board shall be subject to the control of the Central Government.'.

5. In section 81 of the principal Act,— Amendment of section 81.

(*a*) for the proviso to sub-section (*3*), the following proviso shall be substituted, namely:—

"Provided that the terms of issue of such debentures or the terms of such loans include a term providing for such option and such term—

(*a*) either has been approved by the Central Government before the issue of debentures or the raising of the loans, or is in conformity with the rules, if any, made by that Government in this behalf; and

(*b*) in the case of debentures or loans other than debentures issued to, or loans obtained from, the Government or any institution specified by the Central Government in this behalf, has also been approved by a special resolution passed by the company in general meeting before the issue of the debentures or the raising of the loans.";

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

"(*4*) Notwithstanding anything contained in the foregoing provisions of this section, where any debentures have been issued to, or loans have been obtained from, the Government by a company, whether such debentures have been issued or loans have been obtained before or after the commencement of the Companies (Amendment) Act, 1963, the Central Government may, if in its opinion it is necessary in the public interest so to do, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include a term providing for an option for such conversion:

Provided that no order under this sub-section shall be made in respect of debentures issued or loans obtained by the company before the commencement of the Companies (Amendment) Act, 1963 unless—

(*a*) there has been default in repayment of the amount of the debentures or loans or any instalment thereof, or in payment of any interest or other amount in relation thereto or in compliance with any other terms of issue of such debentures or of such loans, and

(*b*) notice in writing has been given by the Government to the company to remedy the default within a period of three months from the date of service of such notice and the company fails to remedy such default within that period.

(*5*) In determining the terms and conditions of such conversions, the Central Government shall have due regard to the following circumstances, that is to say, the financial position of the company, the terms of issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or the loans, the capital of the company, its loan liabilities, its reserves, its profits during the preceding five years and the current market price of the shares in the company.

(*6*) If the terms and conditions of such conversion are not acceptable to the company, the company may, within thirty days from the date of communication to it of such order or within such further time as may be granted by the Court, prefer an appeal to the Court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision, the order of the Central Government under sub-section (*4*) shall be final and conclusive.

Amendment of section 153.

6. In section 153 of the principal Act, the words "or be receivable by the Registrar" shall be omitted.

Insertion of new sections after section 153. Appointment of public trustee.

7. After section 153 of the principal Act, the following sections shall be inserted, namely:—

"163A. The Central Government may, by notification in the Official Gazette, appoint a person as public trustee to discharge the functions and to exercise the rights and powers conferred on him by or under this Act.

Declaration as to shares and debentures held in trust.

153B. (*1*) Notwithstanding anything contained in section 153, where any shares in, or debentures of, a company are held in trust by any person (hereinafter referred to as the trustee), the trustee shall, within such time and in such form as may be prescribed, make a declaration to the public trustee.

(*2*) A copy of the declaration made under sub-section (*1*) shall be sent by the trustee to the company concerned, within twenty-one days, after the declaration has been sent to the public trustee.

(3) (*a*) If a trustee fails to make a declaration as required by this section, he shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing failure, with a further fine which may extend to one hundred rupees for every day during which the failure continues.

(*b*) If a trustee makes in a declaration aforesaid any statement which is false and which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to two years and also with fine.

(4) The provisions of this section and section 187B shall not apply in relation to a trust—

(*a*) where the trust is not created by instrument in writing; or

(*b*) even if the trust is created by instrument in writing, where the trust money invested in shares in, or debentures of, a company—

(*i*) does not exceed one lakh of rupees, or

(*ii*) exceeds one lakh of rupees but does not exceed either five lakhs of rupees or twenty-five per cent of the paid-up share capital of the company, whichever is less.".

Insertion of new section after section 187A.

8. After section 187A of the principal Act, the following section shall be inserted, namely:—

Exercise of voting rights in respect of shares held in trust.

"187B. (*1*) Save as otherwise provided in section 153B but notwithstanding anything contained in any other provisions of this Act or any other law or any contract, memorandum or articles, where any shares in a company are held in trust by a person (hereinafter referred to as trustee), the rights and powers (including the right to vote by proxy) exercisable at any meeting of the company or at any meeting of any class of members of the company by the trustee as a member of the company shall—

(*a*) cease to be exercisable by the trustee as such member, and

(*b*) become exercisable by the public trustee.

(2) The public trustee may, instead of himself attending the meeting, and exercising the rights and powers, as aforesaid, appoint as his proxy an officer of Government or the trustee himself to attend such meeting and to exercise such rights and powers in accordance with the directions of the public trustee:

Provided that where the trustee is appointed by the public trustee as his proxy, the trustee shall be entitled, notwithstanding anything contained in any other provisions of this Act, to exercise such rights and powers in the same manner as he would have been but for the provisions of this section.

(3) The public trustee may abstain from exercising the rights and powers conferred on him by this section if in his opinion of objects of the trust or the interests of the beneficiaries of the trust are not likely to be adversely affected by such abstention.

(4) If for any reason the trustee considers that the public trustee should not abstain from exercising the rights and powers conferred on him by this section and the exercise of such rights and powers is necessary in order to safeguard the objects of the trust or the interests of the beneficiaries of the trust, he may by writing communicate his views in this behalf to the public trustee but the public trustee may in his discretion either accept such views or reject the same.

(5) No suit, prosecution or other legal proceeding shall lie against the public trustee at the instance of the trustee or any person on his behalf or any other person on the ground that the public trustee has abstained from exercising the rights and powers conferred on him by this section.

(6) In order to enable the public trustee to exercise the rights and powers aforesaid, the public trustee shall also be entitled to receive and inspect all books and papers under this Act, which a member is entitled to receive and inspect.".

Insertion of new Chapter and sections in Part VI.

9. In the principal Act, in Part VI, after Chapter IV, the following Chapter and sections shall be inserted, namely:—

"CHAPTER IVA.—POWERS OF CENTRAL GOVERNMENT TO REMOVE MANAGERIAL PERSONNEL FROM OFFICE ON THE RECOMMENDATION OF THE TRIBUNAL.

Reference to Tribunal of cases against managerial personnel.

388B. (1) Where in the opinion of the Central Government there are circumstances suggesting—

(a) that any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust; or

(b) that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; or

(c) that a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) that the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may state a case against the person aforesaid and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a finding as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(2) Every case under sub-section (1) shall be stated in the form of an application which shall be presented to the Tribunal or such officer thereof as it may appoint in this behalf.

(3) The person against whom a case is referred to the Tribunal under this section shall be joined as a respondent to the application.

(4) Every such application—

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purpose of the inquiry, and

(*b*) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government. 5 of 1908.

(5) The Tribunal may at any stage of the proceedings allow the Central Government to alter or amend the application in such manner and on such terms as may be just, and all such alterations or amendments shall be made as may be necessary for the purpose of determining the real questions in the inquiry.

Interim order by Tribunal.

388C. (*1*) Where during the pendency of a case before the Tribunal it appears necessary to the Tribunal so to do in the interest of the members or creditors of the company or in the public interest, the Tribunal may on the application of the Central Government or on its own motion, by an order—

(*a*) direct that the respondent shall not discharge any of the duties of his office until further orders of the Tribunal, and

(*b*) appoint a suitable person in place of the respondent to discharge the duties of the office held by the respondent subject to such terms and conditions as the Tribunal may specify in the order.

(*2*) Every person appointed under clause (*b*) of sub-section (*1*) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Findings of the Tribunal.

388D. At the conclusion of the hearing of the case, the Tribunal shall record its findings stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

* * * * *

Power of Central Government to remove managerial personnel on the basis of Tribunal's findings.

388E. (*1*) Notwithstanding any other provision contained in this Act, the Central Government may, by order, remove from office any director, or any other person concerned in the conduct and management of the affairs, of a company, against whom there is a finding of the Tribunal or a decision of a High Court under this Chapter:

Provided that where a firm or a body corporate is concerned in the conduct and management of the affairs of a company as its managing agent or secretaries and treasurers, and the finding of the Tribunal or the decision of a High Court is against any partner in such firm, or any director of, or any person holding a general power of attorney from, such body

corporate, the Central Government may also remove from the office of managing agent or secretaries and treasurers, such firm or body corporate.

(2) No order under this section shall be made against any person unless he has been given a reasonable opportunity to show cause against the same:

Provided that no matter shall be raised by such person before the Central Government if such matter has been decided by the Tribunal or the High Court.

(3) The person against whom an order of removal from office is made under this section shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company during a period of five years from the date of the order of removal:

Provided that the Central Government may, with the previous concurrence of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

(4) Notwithstanding anything contained in any other provision of this Act, or any other law or any contract, memorandum or articles, on the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

(5) On the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, the company may, with the previous approval of the Central Government, appoint another person to that office in accordance with the provisions of this Act.".

10. In section 397 of the principal Act— Amendment of section 397.

(*a*) in sub-section (*1*), for the words "are being conducted", the words "are being conducted in a manner prejudicial to public interest or" shall be substituted;

(*b*) in sub-section (*2*), in clause (*a*), for the words "are being conducted", the words "are being conducted in a manner prejudicial to public interest or" shall be substituted.

Amendment of section 398.

11. In sub-section (*1*) of section 398 of the principal Act—

(*a*) in clause (*a*), for the words "are being conducted", the words "are being conducted in a manner prejudicial to public interest or" shall be substituted;

(*b*) in clause (*b*), for the words "will be conducted", the words "will be conducted in a manner prejudicial to public interest or" shall be substituted.

Amendment of section 408.

12. In sub-section (*1*) of section 408—

(*a*) after the words "if the Central Government", the words "of its own motion or" shall be inserted;

(*b*) after the words "interests of the company", the words "or to public interest" shall be inserted.

* * * * *

Insertion of new section after section 635. Protection of acts done in good faith.

13. After section 635 of the principal Act, the following section shall be inserted, namely:—

"635A. No suit, prosecution or other legal proceeding shall lie against officers of Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.".

Amendment of section 637.

14. For sub-sections (*1*) and (*2*) of section 637 of the principal Act, the following sub-sections shall be substituted, namely:—

"(*1*) The Central Government may, by notification in the Official Gazette and subject to such conditions, restrictions and limitations as may be specified therein, delegate—

(*a*) any of its powers or functions under this Act (other than the power to appoint a person as public trustee under section 153A and the power to make rules) to the Company Law Board;

(*b*) any of its powers or functions under this Act, other than those specified in sub-section (*2*), to such other authority or such officer as may be specified in the notification.

(*2*) The powers and functions which cannot be delegated under clause (*b*) of sub-section (*1*) are those conferred by or mentioned in the following provisions of this Act, namely, sections 10, 81, 89(4), 211(3) and (4), 212, 213, 235,

237, 239, 241, 242, 243, 244, 245, 247, 248, 249, 250, 259, 268, 269, 274(*2*), 295, 300, 310, 311, 324, 326, 328, 329, 332, 343, 345, 346, 347 (*2*), 349, 352, 369, 372, 396, 399 (*4*) and (5), 401, 408, 409, 410, 411(*b*), 448, 609, 613, 620, 638, 641 and 642.

(*2A*) The provisions of this Act shall apply in relation to the Company Law Board as they apply in relation to the Central Government in respect of any matter in relation to which the powers and functions of the Central Government have been delegated to the Company Law Board.".

APPENDIX I

(Vide *Para 2 of the Report*)

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

"That the Bill be referred to a Select Committee consisting of 18 members, namely:—

1. Shri S. V. Krishnamoorthy Rao
2. Shri Ramchandra Vithal Bude
3. Shri S. M. Banerjee
4. Shri Rajendranath Barua
5. Shri P. C. Borrooah
6. Shri Sachindra Chaudhuri
7. Shri Indrajit Gupta
8. Shri R. K. Khadilkar
9. Shri T. T. Krishnamachari
10. Shrimati T. Lakshmi Kanthamma
11. Shri M. R. Masani
12. Shri P. Muthiah
13. Shri C. R. Raja
14. Shri Sidheshwar Prasad
15. Shri G. G. Swell
16. Shri Mahavir Tyagi
17. Shri Amar Nath Vidyalankar, and
18. Shri R. R Morarka

with instructions to report by the 9th December, 1963."

APPENDIX II

(vide *para 6 of the Report*)

Statement of Memoranda received by the Select Committee

Sl. No.	Nature of document	From whom received	Action taken
1	Memorandum	The Associated Chambers of Commerce of India, Calcutta.	Circulated to members and evidence taken on 6-12-1963.
2	Do.	Tata Industries Private Limited, New Delhi.	Do.
3	Do.	Indian Merchants Chambers, Bombay.	Do.
4	Do.	Federation of Indian Chambers of Commerce and Industry, New Delhi.	Do.
5	Do.	Indian Chamber of Commerce, Calcutta.	Do.
6	Do.	The Bombay Shareholders' Association, Bombay.	Circulated to members.
7	Do.	The Institute of Chartered Accountants of India, New Delhi.	Do.

APPENDIX III

(Vide para 7 of the Report)

List of Associations who gave evidence before the Select Committee

Sl. No.	Names of Associations	Date on which evidence was taken
1	The Associated Chambers of Commerce of India, Calcutta	6-12-1963
2	Tata Industries Private Limited, New Delhi	6-12-1963
3	Indian Merchants Chamber, Bombay	6-12-1963
4	Federation of Indian Chambers of Commerce and Industry, New Delhi	6-12-1963
5	Indian Chamber of Commerce, Calcutta	6-12-1963

APPENDIX IV

MINUTES OF THE SITTINGS OF THE SELECT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1963

I

First Sitting

The Committee met on Monday, the 2nd December, 1963 from 16.00 to 18.00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

2. Shri Rajendranath Barua
3. Shri P. C. Borooah
4. Shri Indrajit Gupta
5. Shri T. T. Krishnamachari
6. Shri M. R. Masani
7. Shri P. Muthiah
8. Shri Sidheshwar Prasad
9. Shri Mahavir Tyagi
10. Shri Amar Nath Vidyalankar
11. Shri R. R. Morarka

DRAFTSMEN

1. Shri S. P. Sen Verma, *Special Secretary, Legislative Department, Ministry of Law.*
2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
3. Shri R. S. Gae, *Joint Secretary and Legal Adviscer, Department of Legal Affairs, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri V. T. Dehejia, *Secretary, Ministry of Finance.*
2. Shri B. S. Manchanda, *Joint Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*

3. Shri V. Satyamurti, *Deputy Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*

SECRETARIAT

Shri G. V. Mirchandani—*Under Secretary.*

2. The Chairman informed the Committee that he had received requests from the following three associations for permission to give oral evidence before the Committee:

(1) The Tata Industries (Private) Limited, New Delhi.

(2) Indian Merchants' Chamber, Bombay.

(3) The Bombay Shareholders' Association, Bombay.

The Committee decided that the associations named above might be asked to send copies of their written memoranda on the Bill by Thursday, the 5th December, 1963 and send their representatives to appear before the Committee on Friday, the 6th December, 1963 at 14.30 hours. The Committee also decided that if any further request is received from any association for giving evidence before the Committee, they might also be called to appear before the Committee on the 6th December, 1963.

3. The Committee then considered clauses 2 to 7 of the Bill tentatively.

4. *Clause* 3.—The Committee agreed to accept the following amendments:

(*i*) Page 3, *for* lines 11 to 16, *substitute*—

"(2) Every such Bench shall consist of such number of members, not being less than two as the Central Government may, by rules made under this Act, determine and at least one of such members shall be a person having knowledge of, and experience in, law.

(3) If during the course of any proceedings, any member of a Tribunal is for any reason unable to perform his functions or relinquishes his membership of the Tribunal, the Central Government may appoint another member in his place in accordance with the provisions of this Act and upon his joining the Tribunal the proceedings shall be continued as if he had been on the Tribunal from the commencement of the proceedings."

(*ii*) Page 4, *for* line 1, *substitute*—

"(c) compelling the production of documents and impounding the same,".

The Draftsman was directed to redraft the proposed new sections 10A(1)(b), (2), (3) and 10C(1)(a) in the light of discussion in the Committee.

5. *Clause* 4.—The Committee agreed to accept the following amendment:

Page 5, line 20, *for* 'entrusted', *substitute* 'delegated'.

6. *Clause* 5.—The Draftsman was directed to redraft the clause in the light of discussion in the Committee.

7. *Clause* 6.—The Committee agreed to accept the following amendment:

Page 7, lines 8 and 9, *for* 'as soon as may be' *substitute* 'within twenty-one days'.

The Committee felt that the proposed new section 153A(3) should provide that if a trustee failed to make the required statement in the declaration he might be punishable with fine only but if he made a false statement he should be punishable with imprisonment as well.

The Committee desired that the words "whichever is less' might be suitably added in the proposed new section 153A(4)(b). The Draftsman was directed to redraft the clause accordingly.

8. *Clause* 7.—Discussion on the clause was not concluded.

9. The Committee then adjourned to meet again on Tuesday, the 3rd December, 1963 at 15.00 hours.

II

Second Sitting

The Committee met on Tuesday, the 3rd December, 1963 from 15.00 to 16.25 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

2. Shri P. C. Borooah

3. Shri Indrajit Gupta

4. Shri R. K. Khadilkar

5. Shri T. T. Krishnamachari

6. Shri M. R. Masani

7. Shri P. Muthiah

8. Shri Sidheshwar Prasad

9. Shri G. G. Swell

10. Shri Mahavir Tyagi

11. Shri Amar Nath Vidyalankar

12. Shri R. R. Morarka

DRAFTSMEN

1. Shri S. P. Sen Verma, *Special Secretary, Legislative Department, Ministry of Law.*

2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

3. Shri R. S. Gae, *Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri V. T. Dehejia, *Secretary, Ministry of Finance.*

2. Shri B. S. Manchanda, *Joint Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*

3. Shri V. Satyamurti, *Deputy Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*

SECRETARIAT

Shri G. V. Mirchandani—*Under Secretary.*

2. The Committee considered clauses 8 to 14 of the Bill tentatively.

3. *Clause* 8.—The Committee agreed to accept the following amendment:

"Pages 9-10, *omit* lines 39 & 40 and 1—16 respectively".

4. The Committee then adjourned to meet again on Friday, the 6th December, 1963 at 14.30 hours.

III

Third Sitting

The Committee met on Friday, the December, 1963 from 14.35 to 16.37 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

2. Shri Ramchandra Vithal Bade
3. Shri P. C. Borooah
4. Shri Indrajit Gupta
5. Shri R. K. Khadilkar
6. Shri T. T. Krishnamachari
7. Shri M. R. Masani
8. Shri Sidheshwar Prasad
9. Shri G. G. Swell
10. Shri Mahavir Tyagi
11. Shri Amar Nath Vidyalankar
12. Shri R. R. Morarka.

DRAFTSMEN

1. Shri S. P. Sen Verma, *Special Secretary, Legislative Department, Ministry of Law.*
2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
3. Shri R. S. Gae, *Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri V. T. Dehejia, *Secretary, Ministry of Finance.*
2. Shri B. S. Manchanda, *Joint Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*
3. Shri V. Satyamurti, *Deputy Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*

SECRETARIAT

Shri G. V. Mirchandani—*Under Secretary.*

WITNESSES

I. *The Associated Chambers of Commerce of India, Calcutta.*

1. Shri D. Fordwood
2. Shri T. R. Crook

II. *Tata Industries Private Limited, New Delhi*

1. Shri Choksi
2. Shri Palkhivala

III. *Indian Merchants Chamber, Bombay*

1. Shri G. D. Somani
2. Shri Dhirajlal Maganlal
3. Shri G. P. Kapadia
4. Dr. R. C. Cooper
5. Shri C. L. Gheewala

IV. *Federation of Indian Chambers of Commerce and Industry New Delhi.*

1. Shri B. P. Khaitan
2. Shri P. Chentsal Rao
3. Shri N. Krishnamurthi

V. *Indian Chamber of Commerce, Calcutta*

1. Shri B. P. Khaitan
2. Shri B. Kalyanasundaram

2. The Committee heard the evidence given by the representatives of the five associations named above.

3. A verbatim record of the evidence given was taken.

4. The Committee decided that the evidence given before them might be laid on the Table of the House and the memoranda submitted by the associations who gave evidence be placed in the Parliament Library for reference by members.

5. The Committee then adjourned to meet again on Saturday, the 7th December, 1963 at 09.00 hours.

IV

Fourth Sitting

The Committee met on Saturday, the 7th December, 1963 from 09.05 to 12.00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

2. Shri Ramchandra Vithal Bade
3. Shri P. C. Borooah
4. Shri Sachindra Chaudhuri
5. Shri Indrajit Gupta
6. Shri R. K. Khadilkar
7. Shri T. T. Krishnamachari
8. Shri M. R. Masani
9. Shri Sidheshwar Prasad
10. Shri Mahavir Tyagi
11. Shri Amar Nath Vidyalankar
12. Shri R. R. Morarka

DRAFTSMEN

1. Shri S. P. Sen Verma, *Special Secretary, Legislative Department, Ministry of Law.*
2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
3. Shri R. S. Gae, *Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri V. T. Dehejia, *Secretary, Ministry of Finance.*
2. Shri B. S. Manchanda, *Joint Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*
3. Shri V. Satyamurti, *Deputy Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*

SECRETARIAT

Shri G. V. Mirchandani—*Under Secretary.*

2. The Committee took up clause by clause consideration of the Bill.

3. *Clause* 2.—The clause was adopted without amendment.

4. *Clause* 3.—The following amendments were accepted:

(*i*) Page 2, *for* lines 1 to 6, *substitute*:—

"(*b*) all or any of the powers and functions conferred on the Court by or under section 155, section 203 in so far as it relates to the granting of leave under that section, section 240, and sections 397 to 407, which the Central Government may, from time to time, by notification in the Official Gazette, specify:"

(*ii*) Page 2 *for* line 14, *substitute*—

"have, in the opinion of the Central Government adequate knowledge".

(*iii*) Page 2, line 20, *omit* "ordinarily".

(*iv*) Page 3, *for* lines 11 to 16, *substitute*—

"(2) Every such Bench shall consist of such number of members, not being less than two as the Central Government may, by rules made under this Act, determine and at least one of such members shall be a person having knowledge of, and experience in, law.

(3) If during the course of any proceedings, any member of a Tribunal is for any reason unable to perform his functions or relinquishes his membership of the Tribunal, the Central Government may appoint another member in his place in accordance with the provisions of this Act and upon his joining the Tribunal the proceedings shall be continued as if he had been on the Tribunal from the commencement of the proceedings."

(*v*) Page 3, line 18, *omit* "consisting of more than one member".

(*vi*) Page 3, line 36, *after* "matters", *insert* "namely".

(*vii*) Page 3, line 37, *after* "inspection", *insert* "of documents or other material objects producible as evidence".

(*viii*) Page 4, *for* line 1, *substitute*—

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

(*ix*) Page 4, line 12, *for* "above the rank of a constable" *substitute* "not below the rank of a Sub-Inspector",

(x) Page 4, *for* lines 35—39, *substitute*—

"10D. (*1*) An appeal shall lie to the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, only on questions of law arising,

(a) in cases against managerial personnel falling under Chapter IVA of Part VI, out of any finding of the Tribunal under section 388D; and

(b) in cases not falling under that Chapter out of any decision, finding or order of the Tribunal."

The clause, as amended, was adopted.

5. *Clause* 4.—The following amendment was accepted:

Page 5, line 20, *for* "entrusted", *substitute* "delegated".

The clause, as amended, was adopted.

6. *Clause* 5.—The following amendments were accepted:

(*i*) Page 6, line 20, *for* "Central Government may, by order direct", *substitute* "Central Government may, if in its opinion it is necessary in the public interest so to do, by order, direct".

(*ii*) Page 6, *for* lines 27—44, *substitute*—

"Provided that no order under this sub-section shall be made in respect of debentures issued or loans obtained by the company before the commencement of the Companies (Amendment) Act, 1963 unless—

(*a*) there has been default in repayment of the amount of the debentures or the loans or any instalment thereof, or in payment of any interest or other amount in relation thereto or in compliance with any other terms of issue of such debentures or such loans, and

(*b*) notice in writing has been given by the Government to the company to remedy the default within a period of three months from the date of service of such notice and the company fails to remedy such default within that period.

(5) In determining the terms and conditions of such conversion, the Central Government shall have due regard to the following circumstances, that is to say, the financial position of the company, the terms of issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or the loans, the capital of the company, its loan

liabilities, its reserves, its profits during the preceding five years and the current market price of the shares in the company.

(*6*) If the terms and conditions of such conversion are not acceptable to the company, the company may, within thirty days of the communication to it of such order or within such further time as may be granted by the Court, prefer an appeal to the Court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision the order of the Central Government under sub-section (4) shall be final and conclusive.".

The Clause, as amended, was adopted.

7. *New Clause 5A.*—The following new clause was added to the Bill:

"Amendment of section 153.

5A. In section 153 of the principal Act, the words 'or be receivable by the Registrar' shall be omitted.".

8. *Clause 6.*—The following amendments were accepted:—

(i) Page 7, *after* line 2, *insert*—

Appointment of public trustee.

153A. The Central Government may, by notification in the Official Gazette, appoint a person as public trustee to discharge the functions and to exercise the rights and powers conferred on him by or under this Act."

(ii) Page 7, line 3, *for* "153A. Where", *substitute* "153B. Notwithstanding anything contained in section 153, where".

(iii) Page 7, lines 6 and 9, *for* "Registrar", *substitute* "public trustee".

(iv) Page 7, lines 8 and 9, *for* "as soon as may be", *substitute* "within twenty-one days".

(v) Page 7, *for* lines 10 to 14, *substitute*—

"(3) (a) If a trustee fails to make a declaration as required by this section, he shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing failure, with a further fine which may extend to one hundred rupees for every day during which failure continues.

(b) If a trustee makes in a declaration aforesaid any statement which is false and which he knows or believes

to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to two years and also with fine.".

(vi) Page 7, line 25, *after* "company", *insert* "whichever is less".

The clause, as amended, was adopted.

9. *Clause* 7.—The following amendment was accepted:

Pages 7 and 8, *for* lines 28—41 and lines 1—5 respectively, *substitute*—

'Exercise of voting rights in respect of shares held in trust'

187B. (*1*) Save as otherwise provided in section 153B but notwithstanding anything contained in any other provision in this Act or any other law or any contract, memorandum or articles, where any shares in a company are held in trust by a person (hereinafter referred to as trustee), the rights and powers (including the right to vote by proxy) exercisable at any meeting of the company or at any meeting of any class of members of the company by the trustee as a member of the company shall—

(*a*) cease to be exercisable by the trustee as such member, and

(*b*) become exercisable by the public trustee.

(*2*) The public trustee may, instead of himself attending the meeting, and exercising the rights and powers, as aforesaid, appoint as his proxy an officer of Government or the trustee himself to attend such meeting and to exercise such rights and powers in accordance with the directions of the public trustee:

Provided that where the trustee is appointed by the public trustee as his proxy, the trustee shall be entitled, notwithstanding anything contained in any other provisions of this Act, to exercise such rights and powers in the same manner as he would have been but for the provisions of this section.

(*3*) The public trustee may abstain from exercising if in his opinion the objects of the trust or the interests the exercise of such rights and powers is necessary in of the beneficiaries of the trust are not likely to be adversely affected by such abstention.

(4) If for any reason the trustee considers that the public trustee should not abstain from exercising the rights and powers conferred on him by this section and the exercise of such rights and powers is necessary in order to safeguard the objects of the trust or the interests of the beneficiaries of the trust, he may by writing communicate his views in this behalf to the public trustee but the public trustee may in his discretion either accept such views or reject the same.

(5) No suit, prosecution or other legal proceeding shall lie against the public trustee at the instance of the trustee or any person on his behalf or any other person on the ground that the public trustee has abstained from exercising the rights and powers conferred on him by this section.

(6) In order to enable the public trustee to exercise the rights and powers aforesaid, the public trustee shall be entitled to receive and inspect all books and papers under this Act, which a member is entitled to receive and inspect.".

The clause, as amended, was adopted.

10. *Clause* 8.—The following amendments were accepted:

(i) Page 8, line 15, *after* "misfeasance", *insert* "persistent".

(ii) Page 8, line 35, *after* "whether", *insert* "or not".

(iii) Page 9, line 16, *after* "all such", insert "alterations or".

(iv) Page 9, lines 35-36, *for* "if the Tribunal considers the respondent as being not", *substitute* "as to whether or not the respondent is".

(v) Pages 9-10, *omit* lines 39-40 and 1—16 respectively.

(vi) Page 10, *after* line 41, *insert*—

"Provided that the Central Government may, with the previous concurrence of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.".

(vii) Page 11, line 6, *for* "entitled to claim", *substitute* "entitled to, or be paid,".

The clause, as amended, was adopted.

11. *Clauses* 9 to 11.—The clauses were adopted without amendment.

12. *Clause* 12.—The clause was deleted.

13. *Clause* 13.—The clause was adopted without amendment.

14. *Clause* 14.—The following amendments were accepted:

(i) Page 12, line 16, *for* "the power to make rules", *substitute* "the power to appoint a person as public trustee under section 153A and the power to make rules".

(ii) Page 12, line 23, *for* "89(4)" *substitute* "81, 89(4)".

(iii) Page 12, *after* line 27, *add*—

"(2A) The provisions of this Act shall apply in relation to the Company Law Board as they apply in relation to the Central Government in respect of any matter in relation to which the powers and functions of the Central Government have been delegated to the Company Law Board.".

The clause, as amended, was adopted.

15. *Clause* 1.—The clause was adopted without amendment.

16. *Long Title and the Enacting Formula.*—The Long Title and the Enacting Formula were adopted without amendment.

17. The Committee directed the draftsman to carry out changes of a drafting or consequential nature in the Bill, if necessary.

18. The Bill, as amended, was adopted.

19. The Committee authorised the Chairman to finalise the report on their behalf.

20. The Committee also authorised the Chairman and, in his absence, Shri R. K. Khadilkar, to present the report and lay the evidence on the Table of the House on their behalf.

21. The Committee decided that Minutes of Dissent, if any, should be sent so as to reach the Lok Sabha Secretariat by 10·45 hours on Monday the 9th December, 1963.

22. The Committee then adjourned.

C. B. No. 165

LOK SABHA

SELECT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1963

EVIDENCE

LOK SABHA SECRETARIAT
NEW DELHI
December, 1963
Agrahayana 1885 (Saka)
Price : Re. 0·40 n.P.

WITNESSES EXAMINED

SELECT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1963

Minutes of Evidence given before the Select Committee on the Companies (Amendment) Bill, 1963

Friday, the 6th December, 1963 at 14.35 hours

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

2. Shri Ramchandra Vithal Bade
3. Shri P. C. Borooah
4. Shri Indrajit Gupta
5. Shri R. K. Khadilkar
6. Shri T. T. Krishnamachari
7. Shri M. R. Masani
8. Shri Sidheshwar Prasad
9. Shri G. G. Swell
10. Shri Mahavir Tyagi
11. Shri Amar Nath Vidyalankar
12. Shri R. R. Morarka.

DRAFTSMEN

1. Shri S. P. Sen Verma, *Special Secretary, Legislative Department, Ministry of Law.*
2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*
3. Shri R. S. Gae, *Joint Secretary and Legal Advisor, Department of Legal Affairs, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri V. T. Dehejia, *Secretary, Ministry of Finance.*
2. Shri B. S. Manchanda, *Joint Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*
3. Shri V. Satyamurti, *Deputy Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*

SECRETARIAT

Shri G. V. Mirchandani—*Under Secretary.*

WITNESSES EXAMINED

I. THE ASSOCIATED CHAMBERS OF COMMERCE OF INDIA, CALCUTTA

1. Shri D. Fordwood
2. Shri T. R. Crook.

II. TATA INDUSTRIES PRIVATE LIMITED, NEW DELHI

1. Shri Choksi
2. Shri Palkhivala.

III. INDIAN MERCHANTS CHAMBER, BOMBAY

1. Shri G. D. Somani
2. Shri Dhirajlal Maganlal
3. Shri G. P. Kapadia
4. Dr. R. C. Cooper
5. Shri C. L. Gheewala.

IV. FEDERATION OF INDIAN CHAMBERS OF COMMERCE AND INDUSTRY, NEW DELHI

1. Shri B. P. Khaitan
2. Shri P. Chentsal Rao
3. Shri N. Krishnamurthi

V. INDIAN CHAMBER OF COMMERCE, CALCUTTA

1. Shri B. P. Khaitan
2. Shri B. Kalyanasundaram.

(The witnesses were called in)

I. THE ASSOCIATED CHAMBERS OF COMMERCE OF INDIA, CALCUTTA

Spokesmen:

1. Shri D. Fordwood
2. Shri T. R. Crook.

II. TATA INDUSTRIES PRIVATE LIMITED, NEW DELHI

Spokesmen:

1. Shri Choksi
2. Shri Palkhivala.

(Witnesses took their seats)

Mr. Chairman: We are taking together witnesses from the Associated Chambers of India, Calcutta, and Tata Industries (Private) Limited, New Delhi.

Whatever evidence you give will be treated as public. Even if you want any portion to be confidential, it is likely to be printed and distributed to our Members.

The memoranda you have sent have been circulated to the Members. If you want to stress any particular point, or make out any new point, you are free to do so.

Shri D. Fordwood: Further to what has been set out in the memorandum already submitted, I would, on behalf of the Associated Chamber of Commerce, bring to your notice the following points.

The first point is in regard to new section 10A. The Bill proposes by subclause (1)(c) to authorise the Central Government by notification in the Gazette to give the tribunal unspecified powers and functions. It is considered that the powers of the proposed tribunal should be specified in the Bill, and in any event it is suggested that further consideration requires to be given to such powers.

The second point is with regard to the new section 10B. By the provisions of this section, the entire powers

and functions of the tribunal may be exercised by one man, and further that one man need not have knowledge of and experience in law. The Associated Chambers are gravely concerned at the implications of such provisions.

With regard to the proposed new section (4) of section 81 of the Act which appears under clause 5 of the Bill, I would say that although a company may have no fundamental rights under the Constitution, the individual shareholders have such rights. One of the most important rights attaching to shares is the right to vote. It is accordingly for consideration whether unilateral action by Government, which may have the effect of diminishing voting power, as indeed also the value, attaching to the existing shares and unilaterally denies to the shareholder his basic right to vote on the question whether the total voting power should be increased, does or does not affect such members' fundamental rights.

Shri T. T. Krishnamachari: I am afraid your lawyers have not briefed you correctly. There is article 31A, clause (d). That covers your position regarding the Constitution. It says "including the extinguishment of voting rights".

Shri D. Fordwood: With regard to clause 7 of the Bill, the trustees are already under a fiduciary obligation as to the manner in which they must exercise their duties as trustees. If they exercise such power in a manner that is contrary to public policy they can under the existing law be restrained from so doing. Likewise if a trust is created for an object which is contrary to public policy it is invalid. If it is considered appropriate by Parliament that some limitations should be placed upon the purposes for which trusts can be created the proper course in the opinion of the Associated Chambers would be to amend the Indian Trusts Act.

The Companies Act very clearly recognises the principle that a company should recognise only the registered member having rights qua the company in its share capital. To do otherwise would be to stultify the growth of joint stock enterprise in the country, as companies would become involved in interminable disputes adjudicating on the respective rights of the registered member and persons claiming to have a beneficial interest in such shares.

Clause 6 of the Bill would appear to open the door to recognition of beneficial interests being raised. The desire to make provision for one's near relatives or for charitable purposes is a very natural one—it is a desire that is recognised and encouraged by the law of this country (e.g. Trusts Act, Estate Duty Act) and by practically all advanced countries. Clauses 6 and 7 of the Bill are likely to stultify this natural desire. A relatively small trust at the time of its creation could, in course of time and by prudent investment on the part of its trustees, come within the purview of clause 6.

Further, having regard to the statement of objects and reasons of the Bill the provisions of these clauses should not in any event apply to trusts created by will, and which cannot be used for the personal self-aggrandisement of the testator.

The principles underlying clauses 6 and 7 and clause 5(4) of the Bill are so contrary to the principles of jurisprudence and commercial thinking in western countries, particularly the United Kingdom and the United States that they are likely to be an effective deterrent to the flow of private investment to this country. Clauses 6 and 7 are also likely to lead to disinvestment in shares by trustees so as to escape the mischief of the proposed section of the Act.

With regard to the proposed new section 388(b) (1)(a), the word negligence should be removed and in accordance with the statement of objects and reasons of the Bill the default should be persistent and not accidental.

With regard to new section 388(c) (1), the words 'or in the public interest' should be deleted as such a phrase is far from clear cut and defined.

Shri Bade: Hon. Minister stated in the House that this clause will not be applicable to private trusts or trusts created for families, or for charitable trusts. Will it suffice? What changes do you want to make here?

Shri D. Fordwood: The answer to that is that if it is necessary to amend the law relating to trusts and the rights of trustees, surely the correct place to do that is to amend the Indian Trusts Act.

Draftsman: An amendment to the Indian Trusts Act may not be sufficient because as you know the Indian Trusts Act does not apply to public trusts at all.

Shri D. Fordwood: If the trustees have been properly exercising their functions, is it desirable that they should be deprived of their right to vote in exercise of such functions?

Draftsman: If they are properly exercising their rights then perhaps there will be no occasion for the exercise of the powers conferred here.

Shri D. Fordwood: The Bill should be amended to say that voting would be deprived only in such and such circumstances.

Shri Tyagi: You mentioned that there was something in this section which went against British or American jurisprudence. Which part of it do you refer to?

Shri D. Fordwood: The question of depriving a registered member from exercising his right to vote.

Shri Tyagi: It is not his property. A trustee is entrusted with certain things. Government is a representative of the people. If a trustee contravenes any provisions of this section or makes any statement which is false, there is some fault found. Where does it contravene jurisprudence?

Shri D. Fordwood: If I may repeat the point, in this Bill most comprehensive powers are being sought. I have been told that the hon. Finance Minister has made it clear that it would not apply to private and family or charitable trusts. But in the Bill as it stands at present, it is the most comprehensive clause and any trustee can be deprived of his inherent right to exercise his right to vote.

Shri Bade: In the memorandum, they have pointed out that the terms mentioned in clause 8(b) are too general. The provisions as they are read like this:

> "that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; or".

The suggestion is that if the words "and committed gross mistakes and negligence" are added after the words "prudent commercial principles", it may be better. So, the question is, if these words are added, will it satisfy them?

Mr. Chairman: That clause is going to be amended. Your point is met. The Minister has accepted the words "persistent default" etc.

Shri Tyagi: What happens if the word "negligence" is dropped?

Shri D. Fordwood: It is imperative that sub-clauses (b) and (c) be taken out.

Shri Tyagi: You suggested that the word may be dropped and "default" must be included. Will you be satisfied if the Committee agrees to it?

Shri D. Fordwood: Indeed.

Shri Khadilkar: I would like to have a piece of information. What is the position regarding trusts in the United Kingdom? In this country, this is a peculiar phenomenon.

Shri D. Fordwood: The position in England is that the Trusts Act there

is very much in line with the one here and they may not be registered as members. Such shares can be held by trustees in their own name and they exercise their fiduciary jurisdiction over such holdings.

Shri Tyagi: Are they income-tax free?

Shri D. Fordwood: Not necessarily.

Shri Morarka: You have said that the Government recognise only the registered shareholders. They cannot recognise the trust as such. Assuming for the moment that the Government has certain instances where the trustees have abused their position as trustees and they want to put some curb on their rights to exercise their votes. What according to you would be their proper place under the Trust Act or the Companies Act?

Shri D. Fordwood: The rights and duties of the trustees are specified in the Indian Trust Act, and if he abuses or does not function in regard to these rights, there are remedies which are open to Government under that Act.

Shri Morarka: As you yourself have said, since only registered holders can be recognised, and anybody else cannot be recognised unless the Companies Act is amended, do you not think that it becomes imperative to make some provision of this type whereby without impairing the property of the trust the Government may exercise some restriction on the rights of the trustees?

Shri D. Fordwood: I do not see the point.

Mr. Chairman: What is the use of arguing with him. He is not a lawyer. It is for the Committee to consider it. Thank you.

We will now take up the Tata Industries (Private) Ltd.

Shri Palkhivala: We have four points to urge . Two of them arise under clause 3 of the Bill and the third one is under clause 5, and the fourth is under clause 7. First, about clause 3 of the Bill, we note from some of the amendments which have been put before us; that the hon. Finance Minister proposes to delete clause (c) on page 2, lines 4 to 6, which enables the Government by notification to divest the court of its jurisdiction and invest the tribunal with it. We understand that the hon. Finance Minister would move an amendment deleting that sub-clause, but that is only enlarging the scope of sub-clause (b). In other words, they are specifying wider powers under that clause. That is the correct approach.

So far as the new additional sections which are sought to be inserted in sub-clause (b) at page 2 are concerned, under the hon. Finance Minister's amendment, we have no objection to anyone of them except on just section 107. Section 107 enables the court to adjudicate upon a dispute as to a variation in the rights of shareholders. This is a function unconnected with the management of the company, and unconnected with the company administration. It is purely a civil dispute between the different groups of shareholders *inter se*. It would need a strictly judicial approach to enable any tribunal to come to a proper decision on such a question, and it is our view which we commend to you, as really worth considering, whether you would not like to keep all the other sections, but remove section 107 from the proposed amendment of sub-clause (b). If I may repeat, it is unconnected with the management, whereas your whole object in establishing the tribunal is to have speedy remedy to deal with the cases of mismanagement and misconduct; whereas this variation of the rights of shareholders is something unconnected with that topic. That is our first submission arising out of the proposed amendment of the hon. Finance Minister. I would not say anything about sub-clause (c) because we understand that it is proposed to be removed.

Coming to the second point, what we have to urge is with regard to lines 35 to 39 at page 4 of the Bill. Here, there is one big point which

[Shri Palkivala]

we would like to place before you for your consideration. It is not a matter of great substance, but something which perhaps in equity might be done. What is proposed to be done here, by the proposed amendment of the hon. Finance Minister, is to make additional provision for appeal against decisions of the tribunal. I am referring to amendment No. 39 of the hon. Finance Minister. That would bring here what appears in the Bill on page 9 as section 388E. Section 388E will be deleted and you would have an addition made to section 10D on page 4 incorporating the provisions contained in Section 388. The only point we urge is when you propose to use the expression, "arising out of the findings of the tribunal," no question of law can be referred to the high court except one arising out of the findings of the tribunal. Our submission is that instead of saying "arising out of the findings of the tribunal", it might be more appropriate to say "arising out of the order of the tribunal" which is a uniform expression used in various statutes like the Income-tax Act, the Wealth-tax Act, etc. I will tell you what is the difference and how it may be material in some cases. If you say "arising out of the order of the tribunal" then, according to the Supreme Court decision in C.I.C. *vs.* Scindia Steam Navigation Company, if a point is argued before the tribunal but not found for or against, not dealt with in the order of the tribunal, it still arises out of the order of the tribunal, though not out of its findings because *ex hypothesis* we are dealing with a case where a point was urged before the tribunal but not found upon. But if you say "arising out of the findings of the tribunal" you are restricting the right of appeal to cases where a man argues a point of law and the tribunal gives a finding. You exclude cases where a person argues before the tribunal and the tribunal fails to deal with it and give a finding. I assume it would not be the intention of either Parliament or the Select Committee to confine the right of appeal only to such cases where the tribunal has given its finding and deny to the other citizens of India the right of appeal for no fault of theirs because though a point of law was urged before the tribunal it was not dealt with by it. Therefore, I think it would be carrying out the intention of the hon. Members if you are pleased to substitute the expression "arising out of the order of the tribunal" in place of the expression "arising out of the findings of the tribunal."

Having finished the second point, I now come to the third point, which is a more controversial one. By clause 5 of the Bill, you are seeking to incorporate a new sub-section (4) to section 81 of the Companies Act. Now, in the case of issue of shares, we offer them in the first instance to the existing shareholders. In that context, our feeling is that this new provision is something which needs to be considered, not merely from the point of view of just law but also equity and justice. It has a wide range. The whole issue is fraught with certain consequences which deserve to be considered in the interests of fairness and justice.

Let us, first of all, consider what the Government exactly does when it gives a loan. It is well-known that the Government may discharge functions which are not strictly governmental functions. When the Government gives a loan, it is not discharging a governmental function. It is doing something which is in the national interest, we shall assume, but, nevertheless, not a governmental function. It assists a private company, an industrial enterprise. When the Government is not discharging a governmental function, it is essential that in a bilateral transaction between the Government and a citizen, the rights which flow from that transaction to the Government or to the citizen should not be interfered with except for the most cogent reasons and except on very compelling grounds. When the Government is giving a loan to a company, the loan is a billateral transaction, there is the lender, the Government; it could be a bank, an

institution, a financial institution here or abroad. On the one hand, there is the lender, the Government and on the other there is the debtor, the company. We ask you to consider whether you would regard it as fair that the terms of a contract between the borrower and the lender should be altered to the prejudice of the borrower, and for reasons which really are left very vague and at large, namely, reasons of public interest? One can understand it if the law provides for such a thing for the future. Then, if a man takes a loan he takes it with his eyes wide open; he knows the law provides for the Government stepping in as equity shareholder and if with that knowledge he still chooses Government as the lender, well, it is his lookout, for if he wants the benefit of that loan, he must be prepared to bear the burden or responsibility or risk involved. We can understand it. Would it be right to apply such a provision to the past transactions? To put it bluntly, it will amount to a variation of the contract unilaterally. Would that be right?

The consequences of that to the company can be extremely grave. It is not merely a question of the loan being transmuted into equity capital. Suppose there is a company in the private sector. By the exercise of this power, it will overnight find itself in the public sector because the Government might have a controlling interest in the company by virtue of its equity capital. Secondly, if the company is going through very lean years, it has a bad time, Government is naturally content to remain a simple lender, because in times of adversity of the company, the Government as lender has higher rights than the shareholders. In case of winding up of the company, Government will step in first and take back its loan and if anything remains that will be distributed as equity share capital. That is the position of Government in times of adversity. Now, let us see the other side of the picture. Suppose a company through good management, enterprise, planning in all possible ways with all its resources is able to turn the corner and it has brighter days ahead. Then the Government steps in and says: "I am no longer content to be your lender; I shall become a participator in your prosperity". If you have given a loan and the company knows that there is the risk of the lender insisting upon becoming a part owner of the undertaking, there is nothing wrong in it. But if in the past it has not happened, we do feel, and we submit for your consideration, that it would not be correct neither on grounds of equity, nor on the broad ground of rule of law, to deprive a company of its right to say that the lender shall remain a lender and he will not be a participator as a part owner of the company.

Then, look at the other consequences from the point of view of the company. So long as the company gives interest to the Government, it is a deductible expenditure from the profits of the company for purposes of tax. As soon as a loan is converted into capital, the company will not get a deduction in what it pays to the Government by way of dividend, because dividend is not deductible expenditure. Therefore, suppose a company were to give to the Government 6 per cent interest, as a result of tax deduction it will get 3 per cent in the form of tax rebate. But when it starts giving dividend, 6 per cent is a dead loss, assuming it pays the same dividend of 6 per cent.

Therefore, from the point of view of the company, it is an extremely serious encroachment on the rights of the company. It is not our suggestion that the company should in no case have the power to convert a loan into equity capital. By all means, let the power remain and let the power be exercised. But would you not think that it is fair and reasonable that the power should be exercised in cases where, with the knowledge of the legal position, the company chooses to take a loan from the Government. It would be an unprecedented step. Then, throughout the world Indian Govern-

[Shri Palkhivala]

ment has always been recognised as honourable both in its commitments here and abroad. Therefore, you will find a certain amount of trust and confidence inspired by the Government which, if I may say so—and I do not mean it merely as an argument to bring you round to my point of view; I really mean it—will be affected by this provision. We have been men of honour and our commitments are honoured both here and abroad. I would leave it to your consideration whether you would have this type of position which, I have no doubt would amount to a breach of contract entered into in the past years. It is for you to decide whether the law should provide for such a thing. Therefore, in short, our respectful submission would be to confine the operation of this new sub-section (4) in section 81 to cases of loans given or debentures issued after the commencement of the amending Act.

Then I suggest a little modification in clause 4 of section 81. Regarding the conversion of loans into capital, the amendment chooses to say that it will be done in the public interest. The expression used is "necessarily". I am not picking out any quarrel about the expression for in the absence of a better one, they have chosen it. But you will see how elastic is the term "necessarily". No human mind can possibly give a more precise definition of this term than the subject himself. The subject matter does not warrant a more precise definition; so, we have no quarrel with the words "public interest". But we all realise how necessarily nebulous and vague that expression is. Therefore from the citizen's point of view, in the case of a breach of contract of debenture or loan, it will be little consolation to a company to know that some Government official in his individual judgment thinks that it is in the public interest.

There is no right of appeal against this right of conversion. The court can interfere only, as the hon. Finance Minister made it clear in the Parliament debate—quite rightly—as to the terms but not as to the exercise of the right or as to the Government's decision that in a given case the right should be exercised. Therefore "public interest" becomes in reality and in substance the subjective decision of an individual. There are undoubtedly very able and competent men, but you will realise that infallibility is not an attribute of a Government servant any more than that of any other human being. There is no right of appeal, the man is not heard and the section for the company, as I have just now tried to illustrate, therefore could be very, very disastrous indeed. This much on the point that "public interest" would not be enough to justify the application of this new provision about the conversion of past loans and debentures.

Now we may come to the fourth and the last point. On page 7, clause 7 seeks to insert new section 187B. There the Government proposes to exercise the rights of voting which are vested by the company law in trustees. In our very limited experience we are aware of the fact that there are cases where the Government would be well advised to exercise such a right. We have no quarrel with that. But consider, Sirs, whether the way the Bill is drafted there would be adequate safeguard for the citizen. That is the only point we are on. Our respectful submission to you is that it is a little wide and there are not adequate safeguards to uphold the citizen's freedom of action in cases where there may be a wrong administrative decision. That possibility can never be ruled out.

Consider what the scope and ambit of the clause is. It is true that the hon. Finance Minister with his very unusual ability might have one thing in his mind but this law will remain when most of us in this room are no more and the powers under this law will be exercised when the high intentions which its draftsman had may not be there to guide the people administering the law; hence the essential requirement that the law must not be more widely expressed than the set necessities of the situation and of the time warrant.

As it is drafted section 187B would apply to all trusts, public or private. It is not restricted to public charitable trusts; it applies to family trusts also. The only limitation is in the preceding section, that is, section 153A, which restricts the operation of section 187B to certain pecuniary limits, but there is no exclusion from the operation of section 187B on the ground of the nature of the trust. Therefore if a trust is a private trust or a family trust in which the public have no interest and the Government feel a right to step in, logically it is very difficult to understand as to how in a private or family trust Government would have any more right to step in than in the case of a private shareholder. Suppose, a private shareholder chooses to exercise his voting right in a certain way; the Government would not dream of interfering. It is his property and a man has got the right to go wrong as well as right. That is the whole basis of democracy. If he is a private trustee, he is doing no more than what a private individual shareholder would do.

One can understand the Government's anxiety—laudable and legitimate anxiety—to step in in cases of public charitable trusts. There undoubtedly the Government can say, "We are the custodians, in the broad sense, of public charities and we must safeguard the public interest." That we concede. But that justification for the existence of section 187B would not apply when you are dealing with family trusts. So, since the whole drift of section 187B is towards "public interest" and safeguarding the "public interest", our first submission to you is that consistent with the whole draft of the section it is essential that its ambit should be confined to cases of public charitable trusts. It is, after all, the public charitable trusts which enjoy exemption from tax and not private trusts. No private trust gets any exemption from tax. The Government would be right in saying, "I give you exemption from tax, therefore why should I not safeguard the beneficiary, the public interest? Because I give exemption from tax in the public interest, therefore I will control your voting power in the public interest." That is perfect logic and sound sense and good Government and good politics too. But all that is a little misplaced as soon as you come to family trusts. That is why our submission is that you would be pleased to confine the ambit of the section to public charitable trusts.

Secondly, this section, as drafted, applied to public companies as well as to private companies. For private companies which are family owned there does not seem to be that justification for governmental interference as there would be in the case of public companies. This is our second objection to this section. It is our submission, therefore, that the ambit of this section, in the second place, must be confined to voting powers vested in shareholders of public companies and not private companies where necessarily, *ex hypothesi*, the question of public interest cannot arise.

Our third submission is that the clause, as drafted enables Government to step in and divest the trustee of his very valuable and in some cases, invaluable right of voting at company meetings and chooses to divest him of that right only on the broad ground of public interest. Would it not be better if there was a little more precision and a little more accurate delimitation of the operation of the section? You remove managers, managing agents and directors. Why? Because they have proved themselves unworthy of the trust which is reposed in them. Would it not be right if you deprive the trustees of their voting right on the same terms and on the same ground? After all, what is good enough to remove a managing agent, is it not good enough to divest a trustee of his voting right? Why not say, therefore, in such language as you think right, that the operation of section 187B should be con-

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fined to cases of mismanagement of voting in the interest of the trust, the donor and the settler or voting contrary to the interest of the trust but not generally on these grounds because, after all, you are virtually removing the trustee from the seat of the shareholder. If you remove the trustee from his seat as a trustee, you want something specific against him. Why do you not want something specific against him when you remove him from his seat as a shareholder? It makes sense, it will give a little protection to the citizen and the Government is not going to be deprived of any right in the public interest which it would otherwise want to exercise. Therefore the governmental object and the governmental function of safeguarding the public interest would be completely fulfilled without creating a scare in the mind of the citizen which today exists. Today the citizen feels that there is an unprecedented piece of legislation where without anything being proved against him if some Government official thinks that it is not in the public interest, I am going to be deprived of the right to vote. It is an extremely serious matter and all our legislation so far about removal of trustees, directors, managing agents has always required—fortunately for us and for our fundamental freedoms—that something specific should be proved against the individual. I want you to consider whether you would not like the same type of provision for this unprecedented piece of legislation. That it is unprecedented is nothing against it; but it is unprecedented and, at the same time, ranges over a field which is too wide and which operates excessively on individual freedom. Threfore I do submit that you will consider whether it does not need a little confining and a little abridgement of its ambit.

In short, we would like to impress upon you this particular necessity of confining the operation of this section to cases where something specific is proved against the trustee. You define it in terms which you think are right and fair, but let there be something right and fair.

Shri Tyagi: You are talking of the private trusts?

Shri Palkhivala: I am talking just now generally. I say that it should not apply to private trusts. I do not know ultimately what your final decision will be, but whether you ultimately decide to confine it to public trusts only or to both public and private trusts, whichever decision you ultimately take on the category of trusts to which this section will apply, you will be good enough, if I may say so, to confine the operation of this section to cases where something specific is proved against the individual. Nothing could be more disastrous and nothing could be more damaging to his morale than for a person to know that any day without anything specific, he can be removed from his seat. It is not good for a Government servant to be told that; it is not good for a trustee to be told that; it is not good for anybody to be told that. The man must not be deprived of anything till you have something concrete against him. The man so sought to be deprived has no remedy at all.

Shri Tyagi: Now, you take another point.

Shri Palkhivala: I was saying that this is what has been done.

The fourth point which we submit for your consideration is whether the man should not be given a right to be heard before he is deprived of his right to vote. As the provision stands, no notice is to be given to him. He is not even asked to show cause. Government may have some information with them. But that information may be erroneous. After all, how will Government act? It will act purely on information. Would not that information in some cases be erroneous and in some cases it may

represent only half the truth and yet the man who is sought to be deprived of his right has no remedy at all? He is not to be heard. Our submission is that you should be good enough to have a provision enabling him to be heard before the power in section 187 (b) is sought to be exercised against him. That is the fourth amendment which we propose to section 187 (b).

The fifth and the last one that we propose is that there must be some redress against an erroneous executive decision. If you give him a right of appeal, in a fit case, to a court, there is some mode of rectifying a wrong administrative decision. Look at it this way. Here you are only taking away his right to vote. Suppose you remove him as a trustee and the High Court judge thinks so. The man has a right to go to the Division Bench of the High Court and then he has a right to go to the Supreme Court. If he is deprived of his voting power by an administrative official—and after all, in practice, at the very top level you can never have this matter dealt with; the power must be delegated to Government officials—that will virtually put an end to his most important powers as trustee and he has no redress at all. An administrative decision is made to deprive him of his right to vote. If a High Court judgment requires to be corrected by two stages, the Division Bench and the Supreme Court, would you not think it right to give one opportunity to the citizen to have a wrong administrative decision corrected? Therefore, our submission is: let a right of appeal be given in a fit case, whatever the court regards as a fit case—not in all cases. But let us give the man a chance of taking up the point that the administrative decision depriving him of his right to vote was not correct.

Shri Choksi: I would just like to supplement, before any questions are asked on this, what my friend Mr. Palkhivala said. So far as administrative finances go, we wholeheartedly support the measures where speedy action is taken and a tribunal is given the power to remove managements who misconduct themselves. We know the Finance Minister himself is a great enemy of *laissez faire* and we certainly wholeheartedly endorse the provisions which provide for speedy remedy against mismanagement.

I go a little further than what my hon. friend Palkhivala said. We deal with two important rights, that is, the right of conversion and the right in regard to trustees. There is no provision that these powers should be exercised on any information at all. Government may take a political decision. As far as we can make out, they may take a political decision that they should become members of a company and they do not want to become members by going out to the market to buy the shares of the company. We do not like that. But it is certainly a preferable procedure than the procedure which is proposed to be adopted. As you know, today in our controlled economy, there are many cases where an industry is set up with some Government support in the shape of a loan; very often, it is coupled with the loan from abroad; it is also coupled with foreign shareholders. Now, all these cases indicate that it is very necessary that there should be adequate safeguards before any power is exercised and with all respects to whatever has been prescribed by this law, I read nothing but the public interest. The public interest may ultimately, in the opinion of the Government, require all public trusts to come under Government control. Then, I suggest that you do not do it through company legislation at all. You do it in a different manner altogether. It is well to talk of a vote as a vote, but it is really property. A share consists of three amenaunces of property: (1) the right to vote (2) the right to receive

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dividends and (3) the right to have return on capital plus any capital appreciation which is realised. I can assure you as one who has been practising in Company Law and also one who has managed a number of companies, that the most important right is the right to vote because it is through the right to vote that you get dividends; it is through that right that you get any accretion to your assets. Is it suggested that a decision is taken by the Government of the day that it is good to get hold of particular assets of a company and that those rights should disappear? I strongly urge in support of what my friend has just said that there should be no deprivation of property and proprietory rights. Otherwise, you will have a situation where a company may have conducted business in an exemplary fashion over a period of 50 years and still the Government says, "That is too big; let us reduce them and let us take away the right of voting." Surely, that is not intended to be the case.

I have studied the Objects and Reasons of the Bill. Nowhere it is stated that the power is proposed to be exercised except on the ground of misconduct. But none-the-less, the section is so framed that there need to be no misconduct at all. I think, as the Select Committee goes into this Bill, it provides adequate safeguards and sees that it does not do any harm. I think, it is the duty of the Select Committee to make adequate provision in this Bill that the rights of trustees who are share-holders of the company are not deprived arbitrarily but as a result of their misconducting or abusing their position as trustees. It is well to talk of trustees being different from other share-holders. But none-the-less, the trustees are very often appointed by the original donor himself and the original donor prescribes conditions under which new trustees should be appointed. Is it right that what the donor has prescribed, when there is no misconduct and when there is no default but on the contrary admirable administration of the trust, that the Government should have the power to step in and say, "We take away your voting power." Nor is there any provision which indicates that Government will restore the voting power. Nor again there is any mention as to who can be appointed to exercise the vote.

Surely, these are very very serious matters and I do suggest that a legislation like this, if I may say so, has been rushed through. These fundamental rights should not be done away with without much greater consideration. That is all I have to say.

Shri T. T. Krishnamachari: Mr. Palkhivala, I am deeply interested in regard to your opinion mentioned on this question of voting right of trustees. Maybe, that the clause itself is somewhat faultily drafted and might give a narrower impression of Government's intention on this matter. I want to ask you this. There is a slight confusion, at any rate, in my mind, in hearing you to say that there is the identity of a person with the trust, unless it be that a person who controls the trust has other interests besides. If we had not expressed our intentions clearly, we can modify the section. The intention is only this that the holding of securities by trusts should not be used by a group of persons for the purpose of augmenting their own voting rights. That is the main intention of this. It is not a question of divesting anybody of any rights. I do not see how the identification of the right of the person who exercises the right to vote and that of the trust can be equated. Here nothing is sought to be taken away, except that you do not exercise the vote direct but exercise it through a public trustee. If Mr. Pa'khivala would help us. I would like to amend it in a manner satisfactory to him provided the amendment will carry out the intentions of the Government. The intentions, as I said, plainly are these. It is a known fact today that a very

large amount of holding of equities is in possession of trusts, be they private or public or charitable trusts. All these trusts are controlled by a person or by a group of persons. Those persons who control the trusts, again, are people who control companies or seek to control them through their securities. What is sought here is that the merging of the two elements of control does not become a big one. Therefore we say that the right exercised by a person who is a trustee exercising the rights of the trust as shareholder, though not recognised by company law, shall be transferred on to a public trustee to whom these instructions might be given by the trustee, "we want our interests to be safeguarded at such and such meeting"; and if the public trustee does not think that there is anything else attaching to it except purely the interests of the trust, he will act accordingly. That is the intention.

If that intention is not carried out by this provision—I think perhaps there is room for a lot of doubt—we shall have another attempt at redrafting. If Mr. Palkhivala accepts that the intention is something which is not *per se* obnoxious with an intention to deprive a person of his voting rights, which is not sought to be done by this at all, I am prepared to amend the clause in a manner satisfactory to him, subject to the overall intention of the Government, namely, that the aggregation of the voting rights of an individual who controls the trust and the property of the trust as such which he handles, and his own, is not used for some purpose not wholly necessary in the interests of the trust. That is the main intention, nothing else. If it is clumsily drafted, we can amend it. But that is the intention. We want to make it an omnibus one. It looks as though Government from time to time may give directions to the trustees. I would rather make it an omnibus provision. I will say that it applies to everyone, unless he is specially exempted by the public trustee. Where the amount is small, Government will not interfere. We really do not want to interfere with the ordinary right of a person who is managing a trust as a shareholder. But there should not be an aggregation of these voting rights merely because of the two personalities coalescing at some stage. If you have a better wording to secure this, I shall be very happy to consider it.

Shri Palkhivala: I appreciate your point of view and I see that you are trying to provide for the exercise of the rights of what you regard as public interest. But may I point out that in actually working it out, there would be room for abuse? I know, you are quite right, that there is a type of misuse in a section of public trusts. But I am wondering whether it may not be substituted by another type of abuse. If there is one official who will be vested with a right, not to vote in regard to *a* trust but hundred trusts, you can imagine what will be the position. Today the scope for mischief is X. Then it will be X multiplied by one hundred. One individual would have the right to vote at so many public meetings.

Shri T. T. Krishnamachari: He will not vote at all, unless he is directed to do so. Practically the vote of the trust will remain a dead-letter, unless the trust itself writes to the public trustee and gives instructions to him, which if he thinks is not prejudicial he will carry out. Otherwise, the vote is only a vote on paper.

Shri Palkhivala: Your intention is that the vote should be exercised in the interests of the trust....

Shri T. T. Krishnamachari: Through the public trustee, only in the interests of the trust. Nothing else.

Shri Palkhivala: Our difficulty is that whereas the proposition that the public trustee should exercise the vote in the interests of the trust is something with which none of us can have any quarrel, we feel that in practice it will be very difficult unless you have a man of the highest calibre as public trustee.

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There are not many persons of that calibre. You will find that big people will be able to get some men round, and people who are more straightforward and honest will find it difficult in carrying out their duties—as happens in other departments.

Shri T. T. Krishnamachari: The major abuse which we are encountering and which we are trying to remove is a much greater one than the smaller one which you envisage. The answer to it is not to give it up but to find a way which is satisfactory to both interests.

Shri Palkhivala: Suppose you were to put it here that the voting power should be exercised only in the interests of the trust. I think that would meet the intention.

Shri T. T. Krishnamachari: I do not think so. The people who are misusing it will continue to do so.

Shri Palkhivala: Why not provide that in any case where the voting power is not exercised in the public interest....

Shri T. T. Krishnamachari: It cannot be done unless I say by law that no trust, public or private, can have any equity holdings. I see your point. I think I will make another attempt tonight to see if I can get a proper wording. But I am suggesting, if you have any ideas about the subject whereby you could mitigate what you consider the rigour or the unfairness, please give us and I shall examine them.

Shri Palkhivala: We shall certainly make an attempt.

Shri Choksi: Sir, just a question for my elucidation. You said....

Shri T. T. Krishnamachari: I am being asked questions continuously!

Shri Choksi: You wanted to make it an omnibus provision. Is it your intention that once the section is enacted, all trusts automatically should have their voting powers exercised through this paragon who may have to be....

Shri T. T. Krishnamachari: There is no question of a paragon. You can ask him to vote, and if he thinks it is right he will do so.

Shri Choksi: If that is your intention....

Shri T. T. Krishnamachari: As I said, if you devise some method by which you take the permission of the trustee to exercise the power, that would serve the purpose. I see no other way of dealing with the situation. Either I should make it an ombnibus thing or start exercising my discretion individually. It is much better to have it as an omnibus one than exercising individual discretion. Virtually we are nullifying the voting powers of the trust except in cases where the trust's interests have to be defended or safeguarded.

Shri Choksi: The only thing that is bothering us, if I may say so, both my colleague and myself, is this. Suppose no trusts had been made, but there is that aggregation of voting power. Suppose Mr. T. T. Krishnamachari had some shares and I had some shares, and we got together and made a trust. If we remain separate, we could exercise both our voting powers.

Shri T. T. Krishnamachari: I wish that the proposition were so and that I had some shares! The intention is this. It is a very simple thing. I may put it in somewhat vulgar parlance. Take a case where Mr. Choksi and his brother, members of the same family, are going to vote. We know that, unlike brothers in actual fact, they are friendly, and they vote together. But suppose Mr. Choksi brings a person in *purdah* and says, "He is not my brother, but he is going to exercise his vote independently". All the time he is in *purdah*, but you control him. I want to take the *purdah* off. If you want to do so, there is nothing to prevent your taking it over on your own. I do not mind at all. Even if we want to put a check on your voting power, we can do it in another way by saying that your voting power will

be limited to a certain percentage of the total capital, which we do in other cases. It can be done that way, but we do not intend to do it that way now. The whole trouble about it is that you have voting power in *purdah*, and I want to take the *purdah* off.

Shri Choksi: Would you agree to taking it off by insisting on a disclosure of the extent of the benefit to which a person is entitled on account of his shareholding? Would that meet your objection?

Shri T. T. Krishnamachari: The beneficiary is often a fiction. When you pass on blank transfers, who is the beneficiary and who is the owner? You do not know. The beneficiary in law may be all right for you, when you practise as a lawyer, but in actual fact, the beneficiary is somebody whom you do not know. The beneficiary is the person who has the power in his hand at the moment. He will be the beneficiary and not somebody else. If you control voting rights through a dummy, then you are the beneficiary. I have merely said that the aggregation of power is something which we want to tackle.

Shri Choksi: Your analysis is correct, but would it not meet your point....

Shri T. T. Krishnamachari: My conclusions are wrong?

Shri Choksi: I am not saying that. Would it not meet your point if the beneficiary owner of a share discloses his interest? Secondly, it may be met this way, namely, that in cases of large public charitable trusts, we assume that we should get the sanction or the approval in advance.

Shri T. T. Krishnamachari: My own feeling is that in many cases there ought to be a public trustee who should deal with this. That is the ultimate thing. What I really want is this. I do not want to go into the merits of the problem. My hon. friends will do it because they are my masters. They may say 'No.' and they do not want it; that is another matter. But, so far as I am concerned, I want to meet your fears to some extent and assuage you.

Firstly, we shall not give any discretion to Government to decide in which cases the trustee shall exercise the voting right in that way and in which cases he shall exercise it in his own way. We shall make it an omnibus thing.

Secondly, we have already a limit, and we shall say that if the amount falls below a certain figure, we shall not interfere with that. We shall make it very clear that if a trustee wants to exercise his voting power on behalf of the trust in a certain manner, he can make a representation to the public trustee, and unless the public trustee finds some serious objection to it, he will do so. The proxies will be exercised in the manner in which you suggest unless there is very serious objection to doing so. We shall give that much of power to the public trustee. Ordinarily, the shareholders do not go to the meetings and they send only proxies; in fact, if they come and attend all the meetings, then probably they will give a lot more trouble than they would otherwise do.

Shri Choksi: Often, they give proxies.

Shri T. T. Krishnamachari: That is the whole trouble. Therefore, we want to limit in this way, namely that we give it to a public trustee and he can exercise the proxy as the trustee wants unless he finds serious objection to doing so. Secondly, we shall take away the discretion from Government and make it an omnibus power. Normally, it is possible for a trustee to ask the public trustee to exercise the voting power in a particular way, and if the public trustee thinks that it is reasonable, then he would do so.

Shri Choksi: Will some definite instructions be given to the public trustee in this behalf?

Shri T. T. Krishnamachari: In fact, you can even put it down in the Act. I do not mind any such thing. If you want to elaborate it much more than what is contemplated here, you can suggest it. I have no objection.

Shri Choksi: You would not put it the other way about namely that the public trustee has the right to sanction the voting power of the trustee?

Shri T. T. Krishnamachari: We shall give the proxy rights. The public trustee is not going to exercise it in his own right, and he might give a particular trustee the proxy right if he thinks that there is nothing undesirable; he can give the trustee the proxy rights; after all, he is not going himself to the meeting, but he is going to send his proxy. Often, the regional director may be the proxy.

Shri Choksi: It will be difficult for him to attend all the meetings, because they are held all over the country, and the time factor also comes in.

Shri T. T. Krishnamachari: We want to eliminate or take away the abuse of power by the companies because all the holdings are not given in public which are of such a nature, and which exceed the limitation imposed in the Act. So, I propose to sit down tonight and have another go at it; I am not a very good draftsman, anyhow I shall attempt a fresh draft. But if you have any idea, you can also put it forward before us.

Shri Tyagi: I want to have one clarification from the witnesses. Do they appreciate that in some big trusts indirectly quite a big chunk of contribution is made by the Government themselves because it is income-tax-free?

Shri Choksi: I suppose you are talking of charitable trusts.

Shri Tyagi: In those cases, quite a big amount belongs to the Government actually and is indirectly contributed by Government. In such cases what harm would be there, and would it not be fair if the owner is prohibited from taking advantage completely of the voting power? For, sometimes, what happens is that for the purpose of getting some income-tax concessions, the trusts are formed, and they get big concessions; then the money of the trusts is also invested in business sometimes, and they also get the benefit of voting power. In such cases, would it not be fair to allow the trusts to carry on their trust activities—nobody bothers about what activities they want to carry on —but to deprive them of the power only in the matter of voting?

Shri Choksi: May I answer it in this way? For instance, in Bombay, we have an Act called the Public Charities Trust Act where the treasurer or controller of charities has a good deal of power. I think that may be the proper procedure to achieve what you have in mind, namely to have similar legislation in other States also, so that there is a measure of control of public trusts through the controller of charities.

Shri Tyagi: The scope of the amending Bill is not to control the trusts. It only relates to the question of allowing or not allowing the donor to get the benefit of the voting rights. But for the voting power, the trust will remain as it is and it can carry on its activities.

Shri Choksi: All right, that is a point of view, and I can see that point of view.

Shri Bade: You have stated that there should be two provisions more, namely provision for a show-cause notice and the right of hearing and the right of appeal. If these two provisions are kept here, will that satisfy you? Instead of giving some rights under section 187B(1), if these two provisions are there, what harm will be there?

Shri Palkhivala: That would not be enough, because the ground on which the Finance Minister wants this provision is this. If it is drafted the other way, of course, it would meet the

Government's point of view and at the same time safeguard the interests of the citizen. But if the ground of application remains just what it is, namely 'public interest' and no more, then the mere right of being heard and the right of appeal would not be sufficient.

Shri Bade: Instead of the term 'public interest', what other wording would you suggest?

Shri Palkhiwala: We shall try to formulate it and place it before you for your consideration.

Shri Khadilkar: I would like to have a little information from you, because we do not know exactly what the position is. As the provision would apply to trusts with amounts over and above Rs. 5 lakhs and not below, I would like to know the number of such trusts which will come within the purview of this provision. Do you have any idea of their number?

Shri Palkhivala: I do not have any idea. But once you have a piece of legislation....

Shri Khadilkar: I entirely agree with what you say and we shall consider that.

Shri Palkhivala: Today, the limit may be Rs. 5 lakhs, but it can be brought down to Rs. 5,000 easily later on.

Shri Khadilkar: Today, some trusts are created by instruments of this nature, and from the reports we know that certain things have occurred. That is why I want to know the number of such trusts. You are well acquainted with the company practices and the practices of the big business people. So, you might be able to indicate it.

Shri Palkhivala: I think that the number would be perhaps much more than what some of us might imagine, because we are including not only public trusts but also private trusts. There are several private trusts in each State which are in the range of Rs. 5 lakhs and above.

Shri Indrajit Gupta: *Re.* col 5(b)(b) concerning conversion of loans into equity capital, you said that as far as past agreements which did not include this provision are concerned, it would not be fair to enforce it retrospectively. Even in the case of a company which has such a loan agreement with Government, the terms of which provide for repayment of the loan, if it is found that the company has actually been persistently defaulting in repayment over a long period, you would not approve of Government exercising such option?

Shri Palkhivala: If the company has made even one default, it is open to Government to take the company straight into even liquidation, because as a creditor entitled to repayment of a debt from the company, the Government's powers are enormous.

Shri Tyagi: That would be more drastic.

Shri Palkhivala: So a company would be very reluctant to default even once. If the existing law gives such wide powers to Government as a creditor, does it need an extra power savouring of breach of contract? It is not as if today the law is powerless and Government cannot do anything.

Shri Indrajit Gupta: Would you consider the application of the proposed provision even more undesirable and more drastic?

Shri Palkhivala: The reputation which the Government have established is such that one would think they would never contemplate a breach of a contractual obligation.

Shri Tyagi: Is it not helpful that instead of the company taking a loan it has the amount with it in the form of capital?

Shri Palkhivala: Companies may not share that view.

Shri Morarka: How many companies are there which have taken loan directly from Government, to which this clause may apply retrospectively?

Shri Palkhivala: I have no idea.

Shri T. T. Krishnamachari: You ask me.

Mr. Chairman: We thank you for assisting us.

The witnesses then withdrew.

III. INDIAN MERCHANTS CHAMBER, BOMBAY

Spokesmen:

1. Shri G. D. Somani
2. Shri Dhirajlal Maganlal
3. Shri G. P. Kapadia
4. Dr. R. C. Cooper
5. Shri C. L. Gheewala

IV. FEDERATION OF INDIAN CHAMBERS OF COMMERCE & INDUSTRY, NEW DELHI

Spokesmen:

1. Shri B. P. Khaitan
2. Shri P. Chentsal Rao
3. Shri N. Krishnamurthi.

V. INDIAN CHAMBER OF COMMERCE, CALCUTTA

Spokesmen:

1. Shri B. P. Khaitan
2. Shri B. Kalyanasundaram.

(Witnesses took their seats)

Shri G. D. Somani: We have already submitted our memorandum.

Firstly, I would say that if the comprehensive amendment had been taken up in one and the same Bill, instead of piecemeal legislation, it would have been better. But since the Bill has already been introduced and the Select Committee is seized of it, we do not want to labour the point.

My other colleagues will deal with other points. I just want to make a few observations about the provision for conversion of previous loans into equity capital. Not that this is something new; this practice is already being followed by international agencies like the International Finance Corpn. It has been the experience of certain business people that in certain cases at the time of taking the loan, a specific provision is made for converting the loan into equity capital at a later stage under certain specific terms and conditions. Unless those terms are specified in the beginning, no such option is exercised.

There is also a system of convertible debentures under which debentures issued can be converted into equity capital under certain terms and conditions. So the practice internationally recognised is that whenever any lender wants to have any option of converting that loan into equity capital, that arrangement has to be made simultaneously at the time of giving the loan.

The point was raised that if a company defaulted on repayment, what to do? Naturally the Government itself will not be anxious to convert the loan into equity capital because it will not be worthwhile to convert that loan like that and make the position of the loan still worse, because as the loan stands, the lender has got prior rights against the assets of the company. By converting it into equity capital, that right is taken away. So wherever, a company makes any default or does not do well, the question generally does not arise because in that case no government or no other agency will exercise the right of conversion. It is only when a company does well and has better prospects that this right is exercised under certain terms and conditions which are arranged at the time of the loan. But it is never done retrospectively.

Shri G. P. Kapadia: I will first take the question of voting rights of the trusts. I shall classify and distinguish these trusts into private trusts, public trusts which are not charitable and charitable trusts which are all public. In the case of the last category, there is income-tax exemption as rightly mentioned by Shri Tyagi, and they have to be considered on a different footing.

So far as private trusts are concerned, I can tell you from my experience that trusts that have an amount exceeding Rs. 5 lakhs may be many. I have come across nearly 200 during the course of my own experience.

Shri T. T. Krishnamachari: Rs. 5 lakhs in one company.

Shri G. P. Kapadia: Not a question of company. I am discussing the question of trusts coming within the mischief of this.

Shri T. T. Krishnamachari: Trusts having Rs. 5 lakhs in one company?

Shri G. P. Kapadia: Yes.

Then reference was made to the legislation in Bombay. That was actually discussed before the Select Committee on the Income Tax Bill in 1961. A specific observation was made by our Chamber to the effect that there is a legislation like the Bombay Public Trusts Act. Now that obtains in Maharashtra and Gujarat. That Act is of such a regulartory nature that actually it has full sort of control by the Charity Commissioner over the complete affairs of the charity trusts, and it has been administered very well, to the extent that in respect of the preparation of accounts, an obligation has been cast on the auditors of the trust, that is, they have to prepare and send the accounts to the Charity Commr. If an all-India legislation of that nature were attempted, it would at once give you the benefit of regulation.

The other concrete suggestion invited was this. Here there are two aspects, one, whether the trustees are carrying on the affairs of the trust for the benefit of the trust, and two, whether in exercise of such functions, they are acting against the interests of the company. If Government were to legislate making a specific amendment to this effect that in case the affairs of the trust are administered not to the interest of the trust or are administered in a way detrimental to the interest of the company or to a particular class of shareholders of the company, then action could be taken. And if such action is to be taken, it should be by giving previous show cause notice, and any decision in respect thereof should be appealable to the High Court.

Two objectives would be achieved: that we are ensuring the proper administration of the trust; at the same time, we are ensuring working which is not to the detriment of the company concerned. We are giving it an opportunity of hearing. This, to my mind, would give a solution to the intentions of this Bill.

Coming to the constitution of the tribunal, we have made a suggestion that instead of having tribunals, it would be better to have the matters considered by company benches in the different High Courts. No doubt, it may involve a little more expenditure, but it will certainly expedite justice, and

all the complaints which various persons have to make will not survive. I am differentiating between these tribunals and the tax tribunals which are of a totally different nature. We have also made the suggestion that all questions of fact and law should be appealable. If the tribunals are to be constituted, the questions that would be considered by them and adjudicated upon would be facts, and I feel there would be very little of a legal aspect arising. The questions would relate to the functioning of the company. In the functioning, if there has been mismanagement, it would be an adjudication on the accounts and affairs of the company. In the case of the tax tribunals, a tussle is still going on as to whether only questions of law are covered or questions of fact and law. In tax matters, a distinction is possible because what is being adjudicated upon is an interpretation of particular sections of the taxing statutes, whereas in this case it will not be an adjudication in respect of any particular section of the Companies Act. It will be an order of an enabling nature in respect of the factual position obtaining in the administration and the affairs of the company. That is why, pure abstract questions of law may possibly not arise. It is in this light that the Chamber has submitted that in case the tribunals are to be constituted, every question which is adjudicated upon by the tribunal should be appealable to the High Court.

About the constitution of the tribunal, the Chamber has in the past made a submission that a chartered accountant should be eligible for being made a member of such tribunals. The Bill makes a general provision about qualifications of law, knowledge about matters of accountancy and business experience. If every tribunal includes a chartered accountant, it will strengthen the tribunal, inasmuch he is competent to go into detailed questions of accounts and the affairs of the company on which an adjudication has to be made.

And, to attract proper talent to the tribunal, a higher emolument may be paid, so that we may attract the best talent from all fields, not only from the accountancy profession. That will ensure the dignity of the tribunal and it will be able to do proper justice.

Regarding clause (3) of section 10A, it has been said that it will be omitted. I need not dilate on it.

Regarding clause (8) in the proposed section 388B, in sub-section (1) I suggest that clauses (a) and (d) may be retained and clauses (b) and (c) may be deleted. We may add another clause to the effect that if the affairs of the company have been managed in a manner which grossly negligent, action will be taken. It is better than ambiguous expressions like "sound business principle", "prudent commercial practice" etc., because it has been more than tested in legal decisions, and has been definitely defined.

In section 388F, there is a provision to remove the managing agents, secretaries and treasurers or body corporate concerned. There may be cases where one of the partners may be the guilty party, the other partners may not be responsible. According to the provision as it stands, the penalty would be levied not only on the person who has committed the offence, but all his other partners. It would in a way introduce some sort of vicarious liability. We submit the liability should be that of the guilty person alone. He should go out of the managing agency firm.

Shri Dhirajlal: About conversion of loan capital into equity capital, I would submit that crores of rupees have been given by Government to some of the very important industries as loans. Under the present amendment they can be converted into equity capital in adversity and prosperity, but the temptation to convert loans in prosperous times would be greater.

Shri T. T. Krishnamachari: There will be no propensity to convert them in times of adversity.

Shri Dhirajlal: The amendment does provide for it. I would like to submit, therefore, that capital has been obtained from the market and we are in great need of equity participation from foreigners.

Shri T. T. Krishnamachari: That is why Government are offering you enquity capital.

Shri Dhirajlal: If we make a provision by which loan can be converted into equity capital, the capital structure will be distorted and the prospectors who will come and the monies which are taken by means of prospectors, both in foreign and rupee capital, would be in great jeopardy. I would like to submit that in project reports, when they are made out, the prospects are assessed; dividends are calculated and they are projected. If at any time, in between, the lender were to choose that his loan capital should be converted into equity capital, the whole picture would be completely distorted. I would urge that this will be a great deterrent to acquisition of foreign capital in the shape of equity participation, when the country is in great need of it. I therefore plead that it would be advisable to amend this or to withdraw this in this way, infuture, whatever loans are given by the Government, if they are convertible, they should be according to the stipulation made before, and not after, and also not at the sweet will of the Government. It should be according to stipulation. At present, some of the international agencies do give loans and they make a stipulation for converting a part of it or exercising an option to get the shares; it is not left in the manner that is left today, namely, for the whole capital to be converted into equity at a time that is chosen by the parties. I think it will very much affect the capital market and the availability of capital, if the provision is left as it is. So, first of all, I would urge that the restrictive character which has been put by the word "before" in subclause (b) (4) be removed so that the restrictive character goes away. The loan capital may be made convertible on terms laiddown at the time of giving the loans; that amendment also ought to be made so that the companies when actually borrowing the loan know that if a certain thing happens, then the loan would be converted into capital. The country is in need of equity capital in a large way. We want industrial development, and I believe this section will come in the way of equity participation on a large scale if it is not amended in the way I explained.

Shri Tyagi: Do you not think that it will add to the dignity of the company if the equity capital is also owned by the Government?

Mr. Chairman: Yes, Dr. Cooper.

Dr. R. C. Cooper: I should like to make a few submissions. One is regarding the power given to the tribunal to direct any police officer above the rank of a constable to enter the premises to conduct search, etc. It is felt that a constable is too low in rank, and it would be fair if it is mentioned as "an officer of the rank of an inspector or above".

The next point is regarding the right of the trustees to vote. We are completely in agreement with Shri Palkhivala and Shri Choksi on this matter. In case the Select Committee comes to the conclusion that more power should be given to the Government, in that case, there is no right of appeal provided to the trustees. Shri Palkivala has expressed an apprehension that a public servant may exercise a power which may not be correct, in which case it will not be fair. I would request the Select Committee to consider whether the rights of appeal should be given to the trustee to appeal against the decision of the public servant.

Regarding clause 10A(2), regarding chartered accountants, our experience has been rather painful in the past, as far as the Income-tax Appellate Tribunal is concerned. Originally there were a few chartered accountants.

Thereafter, we found that except for one, all the other members were departmental officers. In spite of a diligent search, I understand the Department has not been able to get hold of the right type of chartered accountants. As early as 1939, a particular salary was being paid to the members of the tribunal, and although in the meantime, the price-level has gone up by five times, the salary of the members was actually reduced, and that is one of the reasons why chartered accountants are not coming forward. This point requires to be considered in the light of the memorandum. In any case, having regard to the type of work which the tribunal will have to discharge, it is necessary that a man must be a chartered accountant and not any man having experience of accountancy.

The next point deals with clause 10A (3), where it is provided that the Chairman of the tribunal shall be a man of legal experience. This particular provision also existed in the original Income-tax Tribunal, but after getting some experience, the Government itself have altered the provisions of the law to provide that the Chairman or the President need not be necessarily a man with experience in law. This tribunal will be adjudicating on the questions of law and fact and mostly the question will be of facts. So, it is not necessary that the man should be a man knowing law, because mostly the questions will be on facts of the case. This particular discrimination against non-lawyers is not warranted.

Shri Tyagi: What is the reaction of the witness to float capital? If the State enters the field, would it not add to the credit or the dignity of the firm, and thus would you not command respect even abroad?

Shri Dhirajlal: There is nothing in the way of Government contributing to capital. In fact, some of the consultants as in the case of aluminium, and a big cement company in Maharashtra are floating capital from the Maharashtra Development Corporation. It is liked. But one does like, when later on, when one is entitled to get interest, it is said: "I will take your share and dividend, and I will enter and be an equity shareholder." That should not be there.

Shri Tyagi: What is your answer to the question that in case the company is in default regarding the repayment, instead of resorting to liquidation of the company, would it not be useful to the company if it has equity capital participation?

Shri Dhirajlal: I have not conecived of a lender, but it gives equity capital when the company is on the verge of collapse. If the Government is willing to take equity capital at a time when the company is on the point of collapse, I think that that is something financially unheard of. The money is there, in one form or the other. It does not add money to the company.

Shri Tyagi: They share your liability in the future by having equity capital; they share your liability but not profits.

Shri Dhirajlal: If it can be possible, I would say nothing about it. But that has not been done yet. If this is applied to the Government, it may be applied to some other institutions and may be taken as a precedent.

Shri Bade: With regard to section 388F(1), you have said that the body corporate or firm should not be punished but if the company indulges in malpractice and keeps the profits, it should be punished. I have seen companies which have benefited by malpractice indulged in by a certain person, and then they have said, "you can punish that man but not the company."

Shri G. P. Kapadia: Where there is malpractice or some wrong advantage taken of a particular position, then the monies do not go to the coffers of the company but are retained by the person who commits that mischief, and he retains the money.

The money never flows into the coffers of the company. Because he takes advantage outside the books, yet it goes to the detriment of everyone, including the company. Nobody would put something in the coffers of a company in a surreptitious way. The very putting in of the money will make the man a culprit. He will keep the whole thing outside and reap the benefit at the cost of the company and also himself.

Shri Bade: I have seen companies joining hands and take the benefit.

Shri G. P. Kapadia: If there is a conspiracy on the part of all of them, you can establish liability against all of them. The whole set can be removed, because all of them are guilty.

Shri G. P. Kapadia: There are cases where certain persons even to the detriment of their own colleagues have done certain things. These things may not be visited upon the colleagues who are innocent. Every one of them who is responsible should be punished.

Mr. Chairman: Thank you very much. We shall now hear the evidence of the Federation of Indian Chamber of Commerce and Industry.

Shri B. P. Khaitan: I have got the advantage of hearing Mr. Palkivala and I will not repeat all that he has said.

Clause 3(2). We are concerned with the quality and the composition of the Tribunal. It will be a high powered tribunal and its decisions will enable the Government to remove the directors. So, we should be careful about the quality and composition of the tribunal so that the persons who are proceeded against may have the sense of confidence that there will be a proper trial. Specific qualifications should be laid down and if necessary proper remuneration should be paid so that the proper type of persons would be attracted. The High Court Judge qualification is with regard to Chairman only. Members of this tribunal should not be drawn from executives of the company law administration.

Shri T. T. Krishnamachari: That is not the intention it will never be. Executives can never act as members of the tribunal.

Shri B. P. Khaitan: Before a reference is made to the tribunal, there should be some check. These are days of publicity and great harm will result if ultimately after two years or even six months, a man is found not guilty. Much damage would have already been done during the proceedings. Publicity will be given to the proceedings before the tribunals and there will be questions in Parliament. So, there should be some check before referring to the tribunal. It should be at the instance of the company law advisory commission or some other specific safeguard should be provided that it would not be referred except with the approval of the company law administration at the highest level.

With regard to sub-clause 4 on page 6, I support what the other witnesses have said. The remedy has also been suggested by them. At the time of giving loan, the contractual position can be made clear that later on powers have been taken to convert the loan into shares. The question has been put: if a company is not paying the loan, why should that power be not exercised? The remedy is already there under the Industrial Development and Regulations Act. Government can take over powers of management and court powers are also there. Under the existing laws there is so much power; the management can be controlled. Therefore, this power of conversion of loan into equity shares is wholly unnecessary.

We have heard the Finance Minister regarding the voting rights of trusts. Our submission that it should be confined to public trusts and secondly, a show-cause opportunity should be given. Thirdly, there should be the right of appeal. The wording, "The Central Government may....in

public interest" is wholly subjective. The reasons should be given, such as, "since it has been proved that the trustees are exercising their voting rights in detriment to the trust or to the company.....". Some such provision should be there. There will be some objective tests.

On page 9, clause 8, the tribunal has been given the power to hold its sittings. So far as the place of hearing is concerned it should be either the registered office of the company is situate, or the place where the party resides or where the complaint has been committed. Otherwise, if the party is in Bombay and the hearing is in Calcutta, it would be ruinous to the party. In the case of courts exercising jurisdiction it is done.

Then, with regard to the proof of facts, the Evidence Act should apply. Because, as it is, the tribunal is free to regulate its own procedure.

Shri T. T. Krishnamachari: The tribunal will follow the provisions of the Code of Civil Procedure in this matter.

Shri B. P. Khaitan: If it is provided that the CPC will apply, we shall be satisfied.

Shri T. T. Krishnamachari: If it is vested with the powers given in the Civil Procedure Code, naturally, the Evidence Act must apply. It is a quasi-judicial body.

Shri B. P. Khaitan: With regard to the proviso to section 338(F) on parge 10, it has already been submitted that for the guilt of one director of party the whole company should not be removed. The question that will naturally be asked is: if the firm is taking advantage or enjoying the benefits of the misdeeds of a director, why should it not be removed. My answer to that would be, you should make the company or firm a party to the proceedings. You should determine at the time of reference whether the firm has got the benefit or not. If the company or firm has benefited from it, then it should also be made a party to the proceedings. If you cannot fix the responsibility, you cannot move him.

Then, the tribunal should be under the superintendence and control of the Supreme Court, if it is an all-India tribunal and under the High Court if it is a State tribunal.

Shri Bade: On page 7, clause 7 incorporating Section 187B, objection is taken to the words "if it considers necessary so to do in the public interest". Suppose it is said "if the Government is satisfied on reasonable grounds of public interest". Then the court comes here and the court can intervene.

Shri B. P. Khaitan: Expressions like "if in the opinion of Government" "if Government considers it necessary" or "if the Government is satisfied" are subjective opinions which cannot be questioned in courts. They can be challenged in courts only if an objective test is given. Whatever the intentions you may express on the floor of the House may be, they cannot control the interpretation of statutes. The inter-pretation will be governed by the language of the statute. Today, one political party is in power; tomorrow another political party may come to power.

Shri T. T. Krishnamachari: The grievance of some is that this does not happen.

Shri B. P. Khaitan: I think I have covered all the points.

(The witnesses then withdrew)

The Committee then adjourned.

GMGIPND—LSI—1654B/LS—10-12-63—903