C. B. (II) No. 83

LOK SABHA

THE BANKING COMPANIES (AMENDMENT) BILL, 1959

(Report of the Joint Committee)

PRESENTED ON THE 3RD AUGUST, 1959

LOK SABHA SECRETARIAT
NEW DELHI
August, 1959
Price 0.75 *n P.*

JOINT/SELECT COMMITTEE REPORT
PRESENTED TO THE LOK SABHA
DURING THE YEAR 1959.

---

1. Joint Committee on Indian Electricity (Amendment Bill, 1958 with Evidence. Presented on 9.2.1959.

2. Joint Committee on Banking Companies (Amendment) Bill, 1959 with Evidence. Presented on 3.8.1959.

3. Joint Committee on State Bank of India (Amendment Bill, 1959. Presented on 3.8.1959.

4. Joint Committee on State Bank of India (Subsidiary Banks) Bill, 1959 with Evidence. Presented on 3.8.1959.

5. Joint Committee on Arms Bill, 1959 with Evidence. Presented on 10.8.59

6. Joint Committee on Dowry Prohibition Bill, 1959. Presented on 19.11.1959.

CONTENTS

THE BANKING COMPANIES (AMENDMENT) BILL, 1959

Composition of the Joint Committee

Shri C. R. Pattabhi Raman—*Chairman*

MEMBERS

Lok Sabha

2. Shri S. Osman Ali Khan
3. Shrimati Sangam Laxmi Bai
4. Shri Kailash Pati Sinha
5. Shri Bhola Raut
6. Shri Chandra Shankar
7. Shri Suriya Prasad
8. Shri Liladhar Joshi
9. Shri P. Subbiah Ambalam
10. Shri S. M. Siddiah
11. Shri Hem Raj
12. Shri Harish Chandra Mathur
13. Pandit Krishna Chandra Sharma
14. Seth Achal Singh
15. Shri Raja Ram Misra
16. Shri S. Hansda
17. Shri Prafulla Chandra Borooah
18. Shri Umrao Singh
19. Shri Kamal Krishna Das
20. Shri B. R. Bhagat
21. Shri K. G. Deshmukh
22. Shri V. P. Nayar
23. Shri Chintamani Panigrahi
24. Shri Khushwaqt Rai
25. Shri Motisinh Bahadursinh Thakore
26. Shri Karsandas Parmar
27. Shri Premji R. Assar
28. Shri Prakash Vir Shastri

29. Shri S. M. Banerjee
30. Shri Morarji Desai

Rajya Sabha

31. Shri Tarkeshwar Pande
32. Shri P. S. Rajagopal Naidu
33. Shrimati Sharda Bhargava
34. Shri M. Govinda Reddy
35. Shri Lavji Lakhamshi
36. Shri Mahesh Saran
37. Shri T. D. Pustake
38. Shri Nawab Singh Chauhan
39. Shri V. C. Kesava Rao
40. Shri M. D. Tumpalliwar
41. Dr. Raj Bahadur Gour
42. Shri Rajendra Pratap Sinha
43. Shri Kamta Singh
44. Shri A. Chakradhar
45. Dr. B. Gopala Reddi.

DRAFTSMEN

Shri S. K. Hiranandani, *Joint Secretary and Draftsman, Ministry of Law.*

Shri V. N. Bhatia, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri P. K. Patnaik—*Under Secretary.*

Report of the Joint Committee

I, the Chairman of the Joint Committee to which a *Bill further to amend the Banking Companies Act, 1949, 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 the Lok Sabha on the 23rd February, 1959. The motion for reference of the Bill to a Joint Committee of the Houses was moved by Shri B. Gopala Reddi, Minister of Revenue and Civil Expenditure on the 30th April, 1959 and was discussed in the Lok Sabha and adopted on the same day (Appendix I).

3. The Rajya Sabha discussioned and concurred in the said motion on the 6th May, 1959 (Appendix II).

4. The message from the Rajya Sabha was read out to the Lok Sabha on the 9th May, 1959.

5. The Committee held four sittings in all.

6. The first sitting of the Committee was held on the 9th May, 1959, to draw up a programme of work. The Committee at this sitting decided to hear the evidence of associations, public bodies and individuals desirous of presenting their suggestions or views before the Committee. The Chairman was authorised to decide, after examining the memoranda submitted by them, as to which of the associations, public bodies etc. should be called to tender oral evidence before the Committee.

7. Four memoranda or representations on the Bill were received by the Committee from different associations, public bodies and individuals as mentioned in Appendix III.

8. At the second sitting of the Committee held on the 13th July, 1959, the Committee heard the evidence tendered by the two associations specified in Appendix IV.

The Committee have decided that the whole of the evidence tendered before them may be laid on the Table of the House.

The Committee have also decided that the memoranda submitted by the associations that tendered evidence before them may be appended to the Evidence volume and laid on the Table of the House.

---

*Published in Part II, Section 2 of the Gazette of India, Extraordinary, dated the 23rd February, 1959.

9. The Committee considered the Bill clause by clause at their third sitting held on the 14th July, 1959.

10. The Committee considered and adopted the Report at their fourth sitting held on the 15th July, 1959.

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

12. *Clause* 2.—*Item* (*i*).—The Committee feel that the definition of "branch" or "branch office" should, except for the purposes of section 35, be restricted to only such place of business where deposits are received, cheques cashed or moneys lent.

The item has been amended accordingly.

13. *Clause* 6.—(1) *Sub-clause* (*a*), *Item* (*ii*).—The Committee feel that the Reserve Bank should have power to grant extension upto nine months in suitable cases.

The proviso has been amended accordingly.

(2) *Sub-clause* (*b*).—The Committee feel that the Reserve Bank should have power to remove any chairman or director or manager or chief executive officer of a banking company, if such person has been found by any tribunal or other authority to have contravened the provisions of any law and the Reserve Bank is satisfied that the association of such person with the banking company is undesirable. The Committee further feel that the Reserve Bank should also have the power to prohibit such person from taking part in the management of any banking company for such period not exceeding 5 years as the Reserve Bank thinks fit.

Sub-clause (b) has accordingly been inserted.

14. *Clause* 10.—The Committee feel that banking companies should be permitted to declare dividends without writing off depreciation, if any, in the value of their investments in shares, debentures and bonds or the losses on account of bad debts, if adequate provision has been made therefor to the satisfaction of the auditor.

The clause has been recast accordingly.

15. *Clause* 12.—The Committee consider that as in the case of opening of Branches, a banking company should obtain the permission of the Reserve Bank before forming a subsidiary for the purpose of carrying on banking business exclusively outside India.

The clause has been recast accordingly.

16. *Clause* 13.—The amendments made are intended to make it clear that clauses (a) and (b) of sub-section (3) of section 22 are also applicable to a banking company which has not yet commenced banking business at the time of the grant of a license.

17. *Clause* 14.—The amendment is of a consequential nature and has been made in order to bring this clause into conformity with the amendments made in Clause 2(i).

18. *Clause* 20.—The Committee consider that in the case of banking companies incorporated in India, the Reserve Bank should have the power to inspect subsidiaries of such companies formed for the purpose of carrying on the business of banking exclusively outside India. Item (ii) of the Explanation has been suitably amended to provide for this.

19. *Clause* 33.—In the opinion of the Committee, the penalty provided in sub-section (4) of section 46 as substituted by this clause is not adequate. The maximum fine has, therefore, been raised from five hundred rupees to two thousand rupees and from fifty rupees to one hundred rupees. The Committee feel that the penalty provided in sub-section (2) of section 46 should be correspondingly enhanced.

The clause has been amended accordingly.

20. *Clause* 35.—The Committee consider that the Reserve Bank should be mentioned in the proposed section 49A of the principal Act since the Reserve Bank also accepts deposits withdrawable by cheques.

Necessary insertion has, therefore, been made in this clause.

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

NEW DELHI;
The 15th July, 1959.

C. R. PATTABHI RAMAN,
Chairman,
Joint Committee.

Minutes of Dissent

We regret to have to append this Minute of dissent.

At the outset, we must say, that the amending Bill itself is extremely inadequate to enable the Government of India to regulate the banking industry in such a way as to make it function in a manner necessary in a developing economy, with a Socialist Pattern as the goal. The present Bill is a first major amending Bill of its kind seeking to make substantial amendments to the original Bill passed ten years ago *i.e.* in 1949, when the concept of the role of banking in our economy was different from what it is today. We fail to understand why Government contended themselves in bringing forward a Bill of this kind which does not enable them to control the industry to the extent necessary in the present context. Even as regards the provisions embodied in the Bill, it is clear to us that some at least are retrograde in character and in the interest of the industry and the country ought not to have been embodied. We take the stand and feel fully justified in doing so, having regard to the attitude of the Government in regard to the several amendments which we proposed. We regret that we were unable to convince the majority of our colleagues in the Committee as regards the major amendments which we proposed. We are giving below our views on the more important points arising out of the Bill as also relating to the report.

As regards clause 6 of the Bill we are opposed to the inclusion of Cashier-Contractor in sub-clause (b) of the proviso. Firstly, overwhelming majority of the banks do not employ this Cashier-Contractor. Secondly, the system of employing Cashier-Contractor operates against the interest of the industry and breeds corruption. A Cashier-Contractor, as we understand, is employed by a bank on the basis of commission. He guarantees operational losses to the bank and in return the bank employs his nominees in the cash department. To the best of our knowledge, no operational loss is paid by the Cashier-Contractor from his pocket. On the other hand, it is recovered from the employees by the Cashier-Contractor where he exists and by the bank where he does not. Cashier-Contractor is paid the commission and the employee is to bear the loss. Apart from this unilateral benefit to the Cashier-Contractor, the Cashier-Contractor himself becomes a vehicle of fraud and mal-practices in the bank

concerned. Usually, he is a businessman and by virtue of his being a Cashier-Contractor he commands more influence with the authorities of the bank and their advances. Moreover, the Godown-Keeper as an employee of the Cash Department is a nominee of the Cashier-Contractor and is, therefore, subject to his control. This position is utilised and frauds are committed. It is also reported that bribes are taken by the Cashier-Contractor from the prospective employees. Instead of taking steps to abolish this already dying system the amending Bill is giving a premium to the employment of this Cashier-Contractor.

Sub-Clause (2) of Clause 6 seeks to allow the Contractor of any Banking Company to become a Contractor of any bank registered under Sec. 25 of the Companies Act, 1956. The Banks registered under this section are meant "for promoting commerce, art, science, religion, charity or any other useful object." Even though the profits of these companies are not to be distributed as dividends and are instead intended to be employed in promoting these objects; it is a fact that even these companies do business in order to earn profits. It is, therefore, objectionable that a banking company and such companies under Sec. 25 of the Companies Act be locked together through the same person operating in both. We, therefore, seriously object to this amendment and seek its omission.

Incidentally, while we welcome sub-clause (a) of the proviso that is sought to be added to sub-section (1) of the principal Act (Clause 6 of the Bill), we plead that it be given retrospective effect.

Coming to Clause 10 of the Bill which seeks to amend section 15 of the Principal Act, we feel this is a retrograde step permitting banking companies a greater scope for distributing dividends and bonus shares. A banking company is radically different from an industrial establishment. The shareholders of a banking company hardly own two to three percent of the working capital of the bank. The bulk of the funds on which a banking company operates and which bring so called profits to the banking companies come from the depositors who have no say in the management of the banking company. It is, therefore, imperative that dividends are restricted rather than allowing greater scope for distributing dividends and bonus shares. Moreover, profit of a banking company could go to enhance the liquid reserves of the bank and be utilised for financing our developing economy instead of being distributed to this small group of shareholders. We do not see any reason for enlarging the scope of distributing dividends, when the trend in the country is of rising profits in the banks.

We very strongly feel that this amendment should be rejected by the Houses of Parliament and the issue of bonus shares should be prohibited. We regret that the amending Bill is not only allowing increased dividends for the few but is also seeking to regularise such irregularly distributed dividends in the past through clause 3 of the amending Bill.

Then we come to the amendment which seeks to provide for winding up a banking company. Here, we wish to emphatically point out that a banking company is established only after the Reserve Bank approves its establishment. The Reserve Bank regularly inspects the banking company and guides its operations. We, therefore, fail to understand why the depositors are to unilaterally suffer if a bank is wound up. We, therefore, propose that just as Government and the Reserve Bank have been empowered to permit the establishment of a bank and supervise its operations they should have statutory powers to amalgamate banks working unsatisfactorily sufficiently in time and not allow them to degenerate further and create a ground for their winding up. We insist on this also because at every stage it is the Reserve Bank which exercises control over the banks and which is in know of the things happening in the banks and the depositors are kept all along in the dark. In fact, the depositors are attracted to the bank because of the confidence arising out of the control of the Reserve Bank.

We commend our views to both the Houses of Parliament.

S. M. BANERJEE.
V. P. NAYAR.
CHINTAMANI PANIGRAHI.
RAJ BAHADUR GOUR.

NEW DELHI;
Dated the 15th July, 1959.

THE BANKING COMPANIES (AMENDMENT) BILL, 1959

(AS AMENDED BY THE JOINT COMMITTEE)

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

A

BILL

further to amend the Banking Companies Act, 1949.

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

Short title and commencement.

1. (*1*) This Act may be called the Banking Companies (Amendment) Act, 1959.

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

10 of 1949.

Amendment of section 5.

2. In section 5 of the Banking Companies Act, 1949 (hereinafter referred to as the principal Act), in sub-section (*1*),—

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

'(cc) "branch" or "branch office", in relation to a banking company, means any branch or branch office, whether called a pay office or sub-pay office or by any other name, at which deposits are received, cheques cashed or moneys lent, and for the purposes of section 35 includes any place of business where any other form of business referred to in sub-section (*1*) of section 6 is transacted;';

(*ii*) for clause (*d*), the following clause shall be substituted, namely:—

'(*d*) "company" means any company as defined in section 3 of the Companies Act, 1956; and includes a foreign company within the meaning of section 591 of that Act;'; 1 of 1956.

(*iii*) for clause (*h*), the following clause shall be substituted, namely:—

'(*h*) "managing director", in relation to a banking company, means a director who, by virtue of an agreement with the banking company or of a resolution passed by the banking company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with the management of the whole, or substantially the whole of the affairs of the company, and includes a director occupying the position of a managing director, by whatever name called;';

(*iv*) clauses (*i*), (*k*) and (*m*) shall be omitted;

(*v*) after clause (*n*), the following clause shall be inserted, namely:—

"(*o*) all other words and expressions used herein but not defined and defined in the Companies Act, 1956, shall have the meanings respectively assigned to them in that Act.". 1 of 1956.

Insertion of new section 5A.

3. In Part I of the principal Act, after section 5, the following section shall be inserted, namely:—

Act to override memorandum, articles, etc.

"5A. Save as otherwise expressly provided in this Act,—

(*a*) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking company, or in any agreement executed by it, or in any resolution passed by the banking company in general meeting or by its Board of directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Companies (Amendment) Act, 1959; and

(*b*) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.".

Amendment of section 6.

4. In section 6 of the principal Act, in clause (*b*) of sub-section (*1*), for the words "managing agent", the words "managing agent or secretary and treasurer" shall be substituted.

5. In section 7 of the principal Act, for the proviso, the following proviso shall be substituted, namely:— Amendment of section 7.

"Provided that nothing in this section shall apply to—

(*a*) a subsidiary of a banking company formed for one or more of the purposes mentioned in sub-section (*1*) of section 19 whose name indicates that it is a subsidiary of that banking company;

(*b*) any association of banks formed for the protection of their mutual interests and registered under section 25 of the Companies Act, 1956.". 1 of 1956.

6. In section 10 of the principal Act,— Amendment of section 10

(*a*) in sub-section (*1*),—

(*i*) in clause (*b*), for the proviso to sub-clause (*ii*), the following proviso shall be substituted, namely:—

"Provided that nothing contained in this sub-clause shall apply to the payment by a banking company of—

(*a*) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business;

(*b*) any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person employed by the banking company under a contract otherwise than as a regular member of the staff of the company; or";

(*ii*) in clause (*c*), for sub-clause (*i*), the following sub-clause shall be substituted, namely:—

"(*i*) who is a director of any other company not being—

(*a*) a subsidiary of the banking company, or

(*b*) a company registered under section 25 of the Companies Act, 1956: 1 of 1956.

Provided that the prohibition in this sub-clause shall not apply in respect of any such director for a temporary

period not exceeding three months or such further period not exceeding nine months as the Reserve Bank may allow; or";

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

"(*3*) Where a person holding the office of a chairman or director or manager or chief executive officer (by whatever name called) of a banking company is, or has been found by any tribunal or other authority (other than a criminal court) to have contravened the provision of any law and the Reserve Bank is satisfied that the contravention is of such a nature that the association of such person with the banking company is or will be detrimental to the interests of the banking company or its depositors or otherwise undesirable, the Reserve Bank may make an order that that person shall cease to hold the office with effect from such date as may be specified therein and thereupon, that office shall, with effect from the said date, become vacant.

(*4*) Any order made under sub-section (*3*) in respect of any person may also provide that he shall not, without the previous permission of the Reserve Bank in writing, in any way, directly or indirectly, be concerned with, or take part in the management of, the banking company or any other banking company for such period not exceeding five years as may be specified in the order.

(*5*) No order under sub-section (*3*) shall be made in respect of any person unless he has been given an opportunity of making a representation to the Reserve Bank against the proposed order:

Provided that it shall not be necessary to give any such opportunity if, in the opinion of the Reserve Bank, any delay would be detrimental to the interests of the banking company or its depositors.

(*6*) Any decision or order of the Reserve Bank made under this section shall be final for all purposes.".

Amendment of section 11

7. In section 11 of the principal Act,—

(*i*) in sub-section (*1*), for the words "unless it has paid-up capital and reserves of such aggregate value as is hereinafter required by this section", the words "unless it complies with such of the requirements of this section as are applicable to it" shall be substituted;

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

"(*2*) In the case of a banking company incorporated outside India—

(*a*) the aggregate value of its paid-up capital and reserves shall not be less than fifteen lakhs of rupees and if it has a place or places of business in the city of Bombay or Calcutta or both, twenty lakhs of rupees; and

(*b*) the banking company shall deposit and keep deposited with the Reserve Bank either in cash or in the form of unencumbered approved securities or partly in cash and partly in the form of such securities an amount which shall not be less than the minimum required by clause (*a*):

Provided that any such banking company may at any time replace—

(*i*) any securities so deposited by cash or by any other unencumbered approved securities or partly by cash and partly by other such securities, so however, that the total amount deposited is not affected;

(*ii*) any cash so deposited by unencumbered approved securities of an equal value.";

(*iii*) in sub-section (*4*), the words "the proviso to" shall be omitted;

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

'(*5*) For the purposes of this section,—

(*a*) "place of business" means any office, sub-office, sub-pay office and any place of business at which deposits are received, cheques cashed or moneys lent;

(*b*) "value" means to real or exchangeable value, and not the nominal value which may be shown in the books of the banking company concerned.'.

8. In section 12 of the principal Act, in sub-section (*2*), after the words "exercise voting rights", the words "on poll" shall be inserted. Amendment of section 12

9. After section 14 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 14A.

"14A. (*1*) Notwithstanding anything contained in section 6, no banking company shall create a floating charge on the undertaking or any property of the company or any part thereof, unless Prohibition of floating charge on assets.

the creation of such floating charge is certified in writing by the Reserve Bank as not being detrimental to the interests of the depositors of such company.

(*2*) Any such charge created without obtaining the certificate of the Reserve Bank shall be invalid.

(*3*) Any banking company aggrieved by the refusal of a certificate under sub-section (*1*) may, within ninety days from the date on which such refusal is communicated to it, appeal to the Central Government.

(*4*) The decision of the Central Government where an appeal has been preferred to it under sub-section (*3*) or of the Reserve Bank where no such appeal has been preferred shall be final.".

Amendment of section 15.

10. Section 15 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Notwithstanding anything to the contrary contained in sub-section (*1*) or in the Companies Act, 1956, a banking company may pay dividends on its shares without writing off— 1 of 1956.

(*i*) the depreciation, if any, in the value of its investments in approved securities in any case where such depreciation has not actually been capitalised or otherwise accounted for as a loss;

(*ii*) the depreciation, if any, in the value of its investments in shares, debentures or bonds (other than approved securities) in any case where adequate provision for such depreciation has been made to the satisfaction of the auditor of the banking company;

(*iii*) the bad debts, if any, in any case where adequate provision for such debts has been made to the satisfaction of the auditor of the banking company.".

Substitution of new sections for sections 17 and 18.

11. For sections 17 and 18 of the principal Act, the following sections shall be substituted, namely:—

Reserve Fund.

'17. (*1*) Every banking company incorporated in India shall create a reserve fund and unless the amount in such fund together with the amount in the share premium account is not less than its paid-up capital, shall, out of the balance of profit of each year as disclosed in the profit and loss account prepared under section 29 and before any dividend is declared, transfer to the reserve fund a sum equivalent to not less than twenty per cent. of such profit.

(2) Where a banking company appropriates any sum or sums from the reserve fund or the share premium account, it shall, within twenty-one days from the date of such appropriation, report the fact to the Reserve Bank, explaining the circumstances relating to such appropriation:

Provided that the Reserve Bank may, in any particular case, extend the said period of twenty-one days by such period as it thinks fit or condone any delay in the making of such report.

Cash reserve.

18. Every banking company, not being a scheduled bank, shall maintain in India, by way of cash reserve with itself or in current account opened with the Reserve Bank or the State Bank of India or any other bank notified by the Central Government in this behalf or partly in cash with itself and partly in such account or accounts, a sum equivalent to at least two per cent. of its time liabilities in India and five per cent. of its demand liabilities in India, and shall submit to the Reserve Bank before the fifteenth day of every month a return showing the amount so held on Friday of each week of the preceding month with particulars of its time and demand liabilities in India on each such Friday, or, if any such Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.

26 of 1881.

Explanation.—In this section and in section 24, "liabilities in India" shall not include—

(*a*) the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;

(*b*) any advance taken from the Reserve Bank or from the State Bank of India or from the Refinance Corporation for Industry (Private) Limited, or from any bank notified by the Central Government under clause (*c*) of the *Explanation* to sub-section (*1*) of section 42 of the Reserve Bank of India Act, 1934.'.

of 1934

Amendment of section 19.

12. In section 19 of the principal Act, in sub-section (*1*), after the words "Reserve Bank,", the words "the carrying on of the business of banking exclusively outside India, or" shall be inserted.

Amendment of section 22

13. In section 22 of the principal Act,—

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

"(*1*) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a licence

issued in that behalf by the Reserve Bank and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose.";

(*ii*) in sub-section (*2*), in the first proviso, for the words, brackets and figure "sub-section (*2*)", the words "this section" shall be substituted;

(*iii*) in sub-section (*3*), for clauses (*a*) and (*b*), the following clauses shall be substituted, namely:—

"(*a*) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;

(*b*) that the affairs of the company are not being, or are not likely to be conducted in a manner detrimental to the interests of its present or future depositors;";

(*iv*) for sub-sections (*4*) and (*5*), the following sub-sections shall be substituted, namely:—

"(*4*) The Reserve Bank may cancel a licence granted to a banking company under this section—

(*i*) if the company ceases to carry on banking business in India* * *; or

(*ii*) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (*1*); or

(*iii*) if at any time, any of the conditions referred to in sub-section (*3*) is not fulfilled:

Provided that before cancelling a licence under clause (*ii*) or clause (*iii*) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

(*5*) Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.

(*6*) The decision of the Central Government where an appeal has been preferred to it under sub-section (*5*) or of

the Reserve Bank where no such appeal has been preferred shall be final.".

Substitution of new section for section 23.

14. For section 23 of the principal Act, the following section shall be substituted, namely:—

Restrictions on opening of new, and transfer of existing, places of business.

'23. (*1*) Without obtaining the prior permission of the Reserve Bank—

(*a*) no banking company shall open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India; and

(*b*) no banking company incorporated in India shall open a new place of business outside India or change, otherwise than within the same city, town or village in any country or area outside India, the location of an existing place of business situated in that country or area:

Provided that nothing in this sub-section shall apply to the opening for a period not exceeding one month of a temporary place of business within a city, town or village or the environs thereof within which the banking company already has a place of business, for the purpose of affording banking facilities to the public on the occasion of an exhibition, a conference or a *mela* or any other like occasion.

(*2*) Before granting any permission under this section, the Reserve Bank may require to be satisfied by an inspection under section 35 or otherwise as to the financial condition and history of the company, the general character of its management, the adequacy of its capital structure and earning prospects and that public interest will be served by the opening or, as the case may be, change of location, of the place of business.

(*3*) The Reserve Bank may grant permission under sub-section (*1*) subject to such conditions as it may think fit to impose either generally or with reference to any particular case.

(*4*) Where, in the opinion of the Reserve Bank, a banking company has, at any time, failed to comply with any of the conditions imposed on it under this section, the Reserve Bank may, by order in writing and after affording reasonable opportunity to the banking company for showing cause against the action proposed to be taken, revoke it, any permission granted under this section.

(5) For the purposes of this section "place of business" includes any sub-office, pay office, sub-pay office and any place of business at which deposits are received, cheques cashed or moneys lent***.'.

Amendment of section 24.

15. In section 24 of the principal Act,—

(*i*) in sub-section (*1*),—

(*a*) after the words "shall maintain", the words "in India" shall be inserted;

(*b*) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'*Explanation*.—For the purposes of this section, "unencumbered approved securities" of a banking company shall include its approved securities lodged with another institution for an advance or any other credit arrangement to the extent to which such securities have not been drawn against or availed of.';

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

"(*2*) In computing the amount for the purposes of sub-section (*1*), the deposit required under sub-section (*2*) of section 11 to be made with the Reserve Bank by a banking company incorporated outside India and any balances maintained in India by a banking company in current account with the Reserve Bank or the State Bank of India or with any other bank which may be notified in this behalf by the Central Government, including in the case of a scheduled bank the balance required under section 42 of the Reserve Bank of India Act, 1934, to be so maintained, shall be deemed to be cash maintained in India.";

2 of 1934.

(*iii*) in sub-section (*3*), after the words "its time and demand liabilities", the words "in India" shall be inserted.

Amendment of section 25.

16. In section 25 of the principal Act,—

(*i*) for sub-sections (*1*) and (*2*), the following sub-sections shall be substituted, namely:—

"(*1*) The assets in India of every banking company at the close of business on the last Friday of every quarter or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of the business on the preceding working day, shall not be less than seventy-five per cent. of its demand and time liabilities in India.

26 of 1881.

(2) Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed form and manner of the assets and liabilities referred to in sub-section (1) as at the close of business on the last Friday of the previous quarter, or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.";

26 of 1881.

(ii) in sub-section (3), clause (b) shall be re-lettered as clause (c), and the following shall be inserted as clause (b), namely:—

'(b) "liabilities in India" shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;'.

Amendment of section 27.

17. In section 27 of the principal Act, in sub-section (2), for the words "the classification of advances and investments of banking companies in respect of industry, commerce and agriculture", the words "the investments of a banking company and the classification of its advances in respect of industry, commerce and agriculture" shall be substituted.

Amendment of section 28.

18. In section 28 of the principal Act, for the words and figures "under section 27", the words "under this Act" shall be substituted.

Amendment of section 32.

19. In section 32 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Where a banking company in any year furnishes its accounts and balance sheet in accordance with the provisions of section 31, it shall at the same time send to the registrar three copies of such accounts and balance sheet and of the auditor's report, and where such copies are so sent, it shall not be necessary to file with the registrar, in the case of a public company, copies of the accounts and balance sheet and of the auditor's report, and, in the case of a private company, copies of the balance sheet and of the auditor's report as required by sub-section (1) of section 220 of the Companies Act, 1956; and the copies so sent shall be chargeable with the same fee and shall be dealt with in all respects as if they were filed in accordance with that section.".

1 of 1956.

Amendment of section 35.

20. To section 35 of the principal Act, the following *Explanation* shall be added, namely:—

'*Explanation.*—For the purposes of this section, the expression "banking company" shall include—

(*i*) in the case of a banking company incorporated outside India, all its branches in India; and

(*ii*) in the case of a banking company incorporated in India— * *

(*a*) all its subsidiaries formed for the purpose of carrying on the business of banking exclusively outside India; and

(*b*) all its branches whether situated in India or outside India.

Amendment of section 35B.

21. In section 35B of the principal Act,—

(*i*) in clause (*a*) of sub-section (*1*), for the words "managing or whole-time director or of a director not liable to retire by rotation", the words "managing director or any other director, whole-time or otherwise" shall be substituted;

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

"*Explanation.*—For the purposes of this sub-section, any provision conferring any benefit or providing any amenity or perquisite, in whatever form, whether during or after the termination of the term of office of the manager or the chief executive officer by whatever name called or the managing director, or any other director, whole-time or otherwise, shall be deemed to be a provision relating to his remuneration.";

(*iii*) in sub-section (*2*), for the words, brackets and figures "apply to a banking company after the commencement of the Banking Companies (Amendment) Act, 1956", the following shall be substituted, namely:— 95 of 1956.

"apply to any matter in respect of which the approval of the Reserve Bank has to be obtained under sub-section (*1*)".

Amendment of section 36

22. In section 36 of the principal Act, in clause (*b*) of sub-section (*1*), for the figures "45", the figures and letter "44A" shall be substituted.

23. In PART II of the principal Act, after section 36, the following section shall be inserted, namely:— Insertion of new section 36 A.

"36A. (*1*) The provisions of section 11, sub-section (*1*) of section 12, and sections 17, 18, 24 and 25 shall not apply to a banking company— Certain provisions of the Act not to apply to certain banking companies.

(*a*) which, whether before or after the commencement of the Banking Companies (Amendment) Act, 1959, has been refused a licence under section 22, or prohibited from accepting fresh deposits by a compromise, arrangement or scheme sanctioned by a court or by any order made in any proceeding relating to such compromise, arrangement or scheme, or prohibited from accepting deposits by virtue of any alteration made in its memorandum; or

(*b*) whose licence has been cancelled under section 22, whether before or after the commencement of the Banking Companies (Amendment) Act, 1959.

(*2*) Where the Reserve Bank is satisfied that any such banking company as is referred to in sub-section (*1*) has repaid, or has made adequate provision for repaying all deposits accepted by the banking company, either in full or to the maximum extent possible, the Reserve Bank may, by notice published in the Official Gazette, notify that the banking company has ceased to be a banking company within the meaning of this Act, and thereupon all the provisions of this Act applicable to such banking company shall cease to apply to it, except as respects things done or omitted to be done before such notice.".

24. Section 36A of the principal Act shall be re-numbered as section 36B. Amendment of section 36A.

25. In section 37 of the principal Act, after sub-section (*3*), the following sub-section shall be inserted, namely:— Amendment of section 37.

"(*4*) Where the Reserve Bank is satisfied that the affairs of a banking company in respect of which an order under sub-section (*1*) has been made, are being conducted in a manner detrimental to the interests of the depositors, it may make an application to the High Court for the winding up of the company, and where any such application is made, the High Court shall not make any order extending the period for which the commencement or continuance of all actions and proceedings against the company were stayed under that sub-section.".

Substitution of new section for section 38.

26. For section 38 of the principal Act, the following section shall be substituted, namely:—

Winding up by High Court.

"38. (*1*) Notwithstanding anything contained in section 391, section 392, section 433 and section 583 of the Companies Act, 1956, but without prejudice to its powers under sub-section (*1*) of section 37 of this Act, the High Court shall order the winding up of a banking company— 1 of 1956

(*a*) if the banking company is unable to pay its debts; or

(*b*) if an application for its winding up has been made by the Reserve Bank under section 37 or this section.

(*2*) The Reserve Bank shall make an application under this section for the winding up of a banking company if it is directed so to do by an order under clause (*b*) of sub-section (*4*) of section 35.

(*3*) The Reserve Bank may make an application under this section for the winding up of a banking company—

(*a*) if the banking company—

(*i*) has failed to comply with the requirements specified in section 11; or

(*ii*) has by reason of the provisions of section 22 become disentitled to carry on banking business in India; or

(*iii*) has been prohibited from receiving fresh deposits by an order under clause (*a*) of sub-section (*4*) of section 35 or under clause (*b*) of sub-section (*3A*) of section 42 of the Reserve Bank of India Act, 1934; or 2 of 1934.

(*iv*) having failed to comply with any requirement of this Act other than the requirements laid down in section 11, has continued such failure, or, having contravened any provision of this Act has continued such contravention beyond such period or periods as may be specified in that behalf by the Reserve Bank from time to time, after notice in writing of such failure or contravention has been conveyed to the banking company; or

(*b*) if in the opinion of the Reserve Bank—

(*i*) a compromise or arrangement sanctioned by

a Court in respect of the banking company cannot be worked satisfactorily with or without modifications; or

(*ii*) the returns, statements or information furnished to it under or in pursuance of the provisions of this Act disclose that the banking company is unable to pay its debts; or

(*iii*) the continuance of the banking company is prejudicial to the interests of its depositors.

(4) Without prejudice to the provisions contained in section 434 of the Companies Act, 1956, a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand made at any of its offices or branches within two working days, if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days, if such demand is made elsewhere, and if the Reserve Bank certifies in writing that the banking company is unable to pay its debts.

(5) A copy of every application made by the Reserve Bank under sub-section (*1*) shall be sent by the Reserve Bank to the registrar.".

of 1956.

Amendment of section 39.

27. In section 39 of the principal Act, for the words and figures "in section 448", the words and figures "in section 448 or section 449" shall be substituted.

Insertion of new section 39A.

28. After section 39 of the principal Act, the following section shall be inserted, namely:—

of 1956.

Application of Companies Act to liquidators.

'39A. (*1*) All the provisions of the Companies Act, 1956, relating to a liquidator, in so far as they are not inconsistent with this Act, shall apply to or in relation to a liquidator appointed under section 38A or section 39.

(*2*) Any reference to the "official liquidator" in this Part and Part IIIA shall be construed as including a reference to any liquidator of a banking company.'.

Amendment of section 43A.

29. In section 43A of the principal Act, in sub-section (*1*), after the words " have been made,", the words "or adequate provision to the satisfaction of the High Court for such payments has been made," shall be inserted.

Substitution of new section for section 44.

30. For section 44 of the principal Act, the following section shall be substituted, namely:—

Powers of High Court in voluntary winding up.

"44. (*1*) Notwithstanding anything to the contrary contained in section 484 of the Companies Act, 1956, no banking company may be voluntarily wound up unless the Reserve Bank

of 1956.

certifies in writing that the company is able to pay in full and its debts to its creditors as they accrue.

(2) The High Court may, in any case where a banking company is being wound up voluntarily, make an order that the voluntary winding up shall continue, but subject to the supervision of the court.

(3) Without prejudice to the provisions contained in sections 441 and 521 of the Companies Act, 1956, the High Court may of its own motion and shall on the application of the Reserve Bank, order the winding up of a banking company by the High Court in any of the following cases, namely:— 1 of 1956.

(a) where the banking company is being wound up voluntarily and at any stage during the voluntary winding up proceedings the company is not able to meet its debts as they accrue; or

(b) where the banking company is being wound up voluntarily or is being wound up subject to the supervision of the court and the High Court is satisfied that the voluntary winding up or winding up subject to the supervision of the court cannot be continued without detriment to the interests of the depositors.".

Omission of section 45 K.

31. Section 45K of the principal Act shall be omitted.

Amendment of section 45O.

32. In section 45O of the principal Act, in sub-section (2), after the words "accrual of such claims", the words "or five years from the date of the first appointment of the liquidator, whichever is longer" shall be inserted.

Amendment of section 46.

33. In section 46 of the principal Act,—

(i) in sub-section (2), for the words "five hundred rupees", the words "two thousand rupees" and for the words "fifty rupees", the words "one hundred rupees" shall be substituted;

(ii) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) If any other provision of this Act is contravened or if any default is made in complying with any requirement of this Act or of any order, rule or direction made or condition imposed thereunder, every director, liquidator and other officer of the company and any other person who is knowingly a party to the contravention or default shall be punishable with fine which may extend to two thousand rupees, and

where a contravention or default is a continuing one, with a further fine which may extend to one hundred rupees for every day during which such contravention or default continues.";

(*iii*) sub-section (*5*) shall be omitted.

Amendment of section 49.

34. In section 49 of the principal Act, for the words, figures brackets and letters "sections 90, 165 and 255, clauses (*a*) and (*b*) of sub-section (*1*) of section 293 and sections 300 and 416 of the Companies Act, 1956", the following shall be substituted, namely:—

1 of 1956.

"sections 90, 165, 182, 204 and 255, clauses (*a*) and (*b*) of sub-section (*1*) of section 293 and sections 300, 384 and 416 of the Companies Act, 1956".

1 of 1956.

Insertion of new sections 49A, 49B and 49C.

35. After section 49 of the principal Act, the following sections shall be inserted, namely:—

Restriction on acceptance of deposits withdrawable by cheque.

"49A. No person other than a banking company, the Reserve Bank, the State Bank of India or any other banking institution notified by the Central Government in this behalf shall accept from the public deposits of money withdrawable by cheque:

Provided that nothing contained in this section shall apply to any savings bank scheme run by the Government.

Change of name by a banking company.

1 of 1956.

49B. Notwithstanding anything contained in section 21 of the Companies Act, 1956, the Central Government shall not signify its approval to the change of name of any banking company unless the Reserve Bank certifies in writing that it has no objection to such change.

Alteration of memorandum of a banking company.

1 of 1956.

49C. Notwithstanding anything contained in the Companies Act, 1956, no application for the confirmation of the alteration of the memorandum of a banking company shall be maintainable unless the Reserve Bank certifies that there is no objection to such alteration.".

Amendment of section 42 of the Reserve Bank of India Act, 1934.

2 of 1934.

36. In section 42 of the Reserve Bank of India Act, 1934, in the *Explanation* to sub-section (*1*), for clause (c), the following clause shall be substituted, namely:—

'(c) "liabilities" shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the bank or the amount of any loan taken from the Bank or from the Refinance Corporation for Industry (Private) Limited, or from the State Bank or from any other bank notified by the Central Government in this behalf.'.

APPENDIX I

(*Vide* Para 2 of the Report)

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

"That the Bill further to amend the Banking Companies Act, 1949, be referred to a Joint Committee of the Houses consisting of 45 members; 30 from this House, namely:—

1. Shri C. R. Pattabhi Raman
2. Shri S. Osman Ali Khan
3. Shrimati Sangam Laxmi Bai
4. Shri Kailash Pati Sinha
5. Shri Bhola Raut
6. Shri Chandra Shankar
7. Shri Suriya Prasad
8. Shri Liladhar Joshi
9. Shri P. Subbiah Ambalam
10. Shri S. M. Siddiah
11. Shri Hem Raj
12. Shri Harish Chandra Mathur
13. Pandit Krishna Chandra Sharma
14. Seth Achal Singh
15. Shri Raja Ram Misra
16. Shri S. Hansda
17. Shri Prafulla Chandra Borooah
18. Shri Umrao Singh
19. Shri Kamal Krishna Das
20. Shri B. R. Bhagat
21. Shri K. G. Deshmukh
22. Shri V. P. Nayar
23. Shri Chintamani Panigrahi
24. Shri Khushwaqt Rai
25. Shri Motisinh Bahadursinh Thakore
26. Shri Karsandas Parmar

27. Shri Premji R. Assar
28. Shri Prakash Vir Shastri
29. Shri S. M. Banerjee, and
30. Shri Morarji Desai

and 15 members from Rajya Sabha;

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

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

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

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

APPENDIX II

(*Vide* Para 3 of the Report)

Motion in the Rajya Sabha

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill further to amend the Banking Companies Act, 1949, and resolves that the following members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

1. Shri Tarkeshwar Pande
2. Shri P. S. Rajagopal Naidu
3. Shrimati Sharda Bhargava
4. Shri M. Govinda Reddy
5. Shri Lavji Lakhamshi
6. Shri Mahesh Saran
7. Shri Trimbak Damodar Pustake
8. Shri Nawab Singh Chauhan
9. Shri V. C. Kesava Rao
10. Shri M. D. Tumpalliwar
11. Dr. Raj Bahadur Gour
12. Shri Rajendra Pratap Sinha
13. Shri Kamta Singh
14. Shri A. Chakradhar
15. Dr. B. Gopala Reddi."

APPENDIX III

(*Vide* Para 7 of the Report)

Statement showing particulars of memoranda/representations etc. received by the Joint Committee and action taken thereon.

No.	Nature of document	From whom received	Action taken
1.	Memorandum	Indian Banks' Association, Bombay.	Circulated to Members & Evidence of the Association taken on 13-7-59.
	Do.	The Bombay Exchange Banks' Association, Bombay.	Circulated to Members.
2.	Do.	All India Bank Employees Association, Delhi.	Circulated to Members & Evidence of the Association taken on 13-7-59
3.	Do.	Shri M. S. Gidwani, 341, Pandara Road, New Delhi.	Circulated to Members.

APPENDIX IV

(*Vide* Para 8 of the Report)

List of Associations who tendered evidence before the Joint Committee

Serial No.	Name of Associations	Date on which evidence was taken
1.	All India Bank Employees' Association, Delhi .	13-7-59
2.	Indian Banks' Association, Bombay . . .	13-7-59

APPENDIX V

MINUTES OF THE SITTINGS OF THE JOINT COMMITTEE ON THE BANKING COMPANIES (AMENDMENT) BILL, 1959

I

First Sitting

The Committee met from 15.30 to 16.00 hours on Saturday, the 9th May, 1959.

PRESENT

Shri C. R. Pattabhi Raman—*Chairman*

MEMBERS

Lok Sabha

1. Shrimati Sangam Laxmi Bai
2. Shri Kailash Pati Sinha
3. Shri Bhola Raut
4. Shri Chandra Shankar
5. Shri P. Subbiah Ambalam
6. Shri S. M. Siddiah
7. Shri Hem Raj
8. Shri S. Hansda
9. Shri Prafulla Chandra Borooah
10. Shri Umrao Singh
11. Shri Kamal Krishna Das
12. Shri B. R. Bhagat
13. Shri K. G. Deshmukh
14. Shri Chintamani Panigrahi
15. Shri Khushwaqt Rai
16. Shri Motisinh Bahadursinh Thakore
17. Shri Karsandas Parmar
18. Shri Premji R. Assar
19. Shri Prakash Vir Shastri.

Rajya Sabha

20. Shri Tarkeshwar Pande
21. Shrimati Sharda Bhargava
22. Shri M. Govinda Reddy
23. Shri T. D. Pustake
24. Dr. Raj Bahadur Gour
25. Dr. B. Gopala Reddi.

DRAFTSMAN

Shri V. N. Bhatia, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri A. Baksi, *Joint Secretary, Ministry of Finance.*

Shri R. K. Seshadri, *Deputy Secretary, Ministry of Finance.*

SECRETARIAT

Shri A. L. Rai, *Under Secretary.*

2. The Chairman as directed by the Speaker read out a letter which he had written to the Speaker informing him that he was a legal adviser to certain Banking Companies.

3. The Committee held a discussion about their future programme of sittings.

4. The Committee considered whether any evidence should be taken by them and whether it was necessary to issue a press communique advising associations and individuals desirous of presenting their suggestions or views before the Committee in respect of the Bill to submit written memoranda thereon.

5. It was decided that a press communique might be issued advising associations, public bodies and individuals who are desirous of presenting their suggestions or views before the Committee in respect of the Bill to send written memoranda thereon to the Lok Sabha Secretariat by the 10th June, 1959.

6. The Committee authorised the Chairman to decide after examining the memoranda as to which of the Associations, public bodies etc. ought to be called to give oral evidence before the Committee.

7. The Committee desired that copies of the Banking Companies Act, 1949 and the last annual report on the trend and progress of

Banking Companies in India submitted to the Government by the Reserve Bank might be circulated to the Members of the Committee.

8. The Committee decided to hold their further sittings from the 13th July, 1959 onwards.

9. The Chairman suggested that notices of amendments to the clauses of the Bill might be sent to the Lok Sabha Secretariat by the 6th July, 1959 for circulation to the Members of the Committee.

The Committee then adjourned to meet again at 15.00 hours on Monday, the 13th July, 1959.

II

Second Sitting

The Committee met from 15.00 to 17.00 hours on Monday, the 13th July, 1959.

PRESENT

Shri C. R. Pattabhi Raman—*Chairman*

MEMBERS

Lok Sabha

2. Shri S. Osman Ali Khan
3. Shri Kailash Pati Sinha
4. Shri Bhola Raut
5. Shri Chandra Shankar
6. Shri Suriya Prasad
7. Shri P. Subbiah Ambalam
8. Shri S. M. Siddiah
9. Shri Hem Raj
10. Shri Harish Chandra Mathur
11. Seth Achal Singh
12. Shri Raja Ram Misra
13. Shri S. Hansda
14. Shri Prafulla Chandra Borooah
15. Shri Umrao Singh
16. Shri Kamal Krishna Das
17. Shri B. R. Bhagat
18. Shri K. G. Deshmukh
19. Shri Chintamani Panigrahi
20. Shri Khushwaqt Rai
21. Shri Motisinh Bahadursinh Thakore
22. Shri Karsandas Parmar
23. Shri Premji R. Assar
24. Shri Prakash Vir Shastri
25. Shri S. M. Banerjee
26. Shri Morarji Desai.

27. Shri Tarkeshwar Pande
28. Shri P. S. Rajagopal Naidu
29. Shrimati Sharda Bhargava
30. Shri M. Govinda Reddy
31. Shri Lavji Lakhamshi
32. Shri Mahesh Saran
33. Shri T. D. Pustake
34. Shri V. C. Kesava Rao
35. Shri M. D. Tumpalliwar
36. Dr. Raj Bahadur Gour
37. Shri Rajendra Pratap Sinha
38. Shri Kamta Singh
39. Dr. B. Gopala Reddi.

DRAFTSMEN

Shri S. K. Hiranandani, *Joint Secretary and Draftsman, Ministry of Law.*

Shri V. N. Bhatia, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

Shri M. V. Rangachari, *Special Secretary, Ministry of Finance.*

Shri A. Bakshi, *Joint Secretary, Ministry of Finance.*

Shri C. S. Divekar, *Executive Director, Reserve Bank of India.*

Shri R. K. Seshadri, *Deputy Secretary, Ministry of Finance.*

SECRETARIAT

Shri P. K. Patnaik—*Under Secretary.*

WITNESSES

I. *All India Bank Employees Association, Delhi.*

1. Shri Prabhat Kar.
2. Shri H. L. Parvana.
3. Shri G. N. Trikanad.

II. *Indian Banks' Association, Bombay.*

1. Shri S. L. Kothari.
2. Shri R. L. Tuli.

2. The Committee heard the evidence tendered by the representatives of the two associations named above.

3. A verbatim record of the evidence tendered was taken down.

4. The Committee decided that the whole of the evidence tendered before them might be laid on the Table of the House.

5. The Committee also decided that the memoranda submitted by the associations that tendered evidence before the Committee might be appended to the Evidence volume and laid on the Table of the House.

6. The Committee decided to take up clause by clause consideration of Bill at their next sitting.

7. The Committee then adjourned to meet again at 09.00 hours on Tuesday, the 14th July, 1959.

Third Sitting

The Committee met from 09.00 hours to 12.50 hours on Tuesday, the 14th July, 1959.

PRESENT

Shri C. R. Pattabhi Raman—*Chairman*

MEMBERS

Lok Sabha

2. Shri S. Osman Ali Khan
3. Shri Kailash Pati Sinha
4. Shri Bhola Raut
5. Shri Chandra Shankar
6. Shri Suriya Prasad
7. Shri P. Subbiah Ambalam
8. Shri S. M. Siddiah
9. Shri Hem Raj
10. Shri Harish Chandra Mathur
11. Pandit Krishna Chandra Sharma
12. Seth Achal Singh
13. Shri Raja Ram Misra
14. Shri S. Hansda
15. Shri Prafulla Chandra Borooah
16. Shri Umrao Singh
17. Shri Kamal Krishna Das
18. Shri B. R. Bhagat
19. Shri K. G. Deshmukh
20. Shri V. P. Nayar
21. Shri Chintamani Panigrahi
22. Shri Khushwaqt Rai
23. Shri Motisinh Bahadursinh Thakore
24. Shri Karsandas Parmar
25. Shri Premji R. Assar

26. Shri Prakash Vir Shastri
27. Shri S. M. Banerjee
28. Shri Morarji Desai.

Rajya Sabha

29. Shri Tarkeshwar Pande
30. Shri P. S. Rajagopal Naidu
31. Shrimati Sharda Bhargava
32. Shri M. Govinda Reddy
33. Shri Lavji Lakhamshi
34. Shri Mahesh Saran
35. Shri T. D. Pustake
36. Shri V. C. Kesava Rao
37. Shri M. D. Tumpalliwar
38. Dr. Raj Bahadur Gour
39. Shri Rajendra Pratap Sinha
40. Shri Kamta Singh
41. Dr. B. Gopala Reddi.

DRAFTSMEN

Shri S. K. Hiranandani, *Joint Secretary and Draftsman, Ministry of Law.*

Shri V. N. Bhatia, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri M. V. Rangachari, *Special Secretary, Ministry of Finance.*

Shri A. Bakshi, *Joint Secretary, Ministry of Finance.*

Shri C. S. Divekar, *Executive Director, Reserve Bank of India.*

Shri R. K. Seshadri, *Deputy Secretary, Ministry of Finance.*

SECRETARIAT

Shri P. K. Patnaik—*Under Secretary.*

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

3. *Clause* 2.

The following Government amendment was accepted:—

In page 1, line 15—

for "or where any of the forms of business", *substitute* "and for the purposes of section 35 includes any place of business where any other form of business".

The clause as amended was adopted.

4. *Clauses* 3 *to* 5.

These clauses were adopted without any amendment.

5. *Clause* 6.

The following amendments were accepted:—

(i) In page 3, line 30—

for "six months", *substitute* "nine months".

(ii) In page 3,—

(a) line 6,

omit "in sub-section (1)".

(b) *after* line 6,

insert "(a) in sub-section (1)".

(c) after line 30,

insert "(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

(3) Where a person holding the office of a chairman or director or manager or chief executive officer (by whatever name called) of a banking company is, or has been found by any tribunal or other authority (other than a criminal court) to have contravened the provision of any law and the Reserve Bank is satisfied that the contravention is of such a nature that the association of such person with the banking company is or will be detrimental to the interests of the banking company or its depositors or otherwise undesirable, the Reserve Bank may make an order that that person shall cease to hold the office with effect from such date as may be specified therein and thereupon, that office shall, with effect from the said date, become vacant.

(4) Any order made under sub-section (3) in respect of any person may also provide that he shall not, without the previous permission of the Reserve Bank in writing, in any way, directly or indirectly, be concerned with, or take part in the management of, the banking company or any other banking company for such period not exceeding five years as may be specified in the order.

(5) No order under sub-section (3) shall be made in respect of any person unless he has been given an opportunity of making a representation to the Reserve Bank against the proposed order:

Provided that it shall not be necessary to give any such opportunity if, in the opinion of the Reserve Bank, any delay would be detrimental to the interests of the banking company or its depositors.

(6) Any decision or order of the Reserve Bank made under this section shall be final for all purposes."

6. *Clauses* 7 *to* 9.

These clauses were adopted without any amendment.

7. *Clause* 10.

The following Government amendment was accepted:—

In page 5,—

for lines 13 to 18, *substitute*—

"(2) Notwithstanding anything to the contrary contained in sub-section (1) or in the Companies Act, 1956, a banking company may pay dividends on its shares without writing off—

(i) the depreciation, if any, in the value of its investments in approved securities in any case where such depreciation has not actually been capitalised or otherwise accounted for as a loss;

(ii) the depreciation, if any, in the value of its investments in shares/debentures or bonds (other than approved securities) in any case where adequate provisions for such depreciation has been made to the satisfaction of the auditor of the banking company;

(iii) the bad debts, if any, in any case where adequate provision for such debts has been made to the satisfaction of the auditor of the banking company."

The clause as amended was adopted.

8. *Clause* 11.

The clause was adopted without any amendment.

9. *Clause* 12.

The following Government amendment was accepted:—

In page 6, *for* lines 23 to 25, *substitute*—

"12. In section 19 of the principal Act in sub-section (1) after the words "Reserve Bank", the words "the carrying on of the business of banking exclusively outside India or" shall be inserted."

The clause as amended was adopted.

10. *Clause* 13.

The following Government amendments were accepted:—

(i) In page 6, *after* line 36, *add*—

"(iii) in sub-section (3), for clauses (a) and (b), the following clauses shall be substituted, namely:—

(a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;

(b) that the affairs of the company are not being, or are not likely to be conducted in a manner detrimental to the interests of its present or future depositors."

(ii) In page 7, line 6, *omit*—

"or goes into liquidation".

The clause as amended was adopted.

11. *Clause* 14.

The following Government amendment was accepted:—

In page 8, lines 30-31, *omit*—

"or where any of the forms of business referred to in sub-section (1) of section 6 is transacted."

The clause as amended was adopted.

12. *Clauses* 15 *to* 19.

These clauses were adopted without any amendment.

13. *Clause* 20.

The following Government amendment was accepted:—

In page 10, *for* lines 30-32, *substitute*—

"(ii) in the case of a banking company incorporated in India—

(a) all its subsidiaries formed for the purpose of carrying on the business of banking exclusively outside India; and

(b) all its branches whether situated in India or outside India."

The clause as amended was adopted.

14. *Clauses* 21 *to* 32.

These clauses were adopted without any amendment.

15. *Clause* 33.

The following amendment was accepted:—

In page 15,—

(a) line 12,

for "five hundred" *substitute* "two thousand".

(b) line 14,

for "fifty" *substitute* "one hundred".

The clause as amended was adopted.

16. *Clause* 34.

The clause was adopted without any amendment.

17. *Clause* 35.

The following Government amendment was accepted:—

In page 15, line 26,—

after "banking company" *insert* "the Reserve Bank".

The clause as amended was adopted.

18. *Clause* 36.

The clause was adopted without any amendment.

19. *Clause* 1.

The clause was adopted without any amendment.

20. The Committee unanimously decided to waive the time gap of three days between the disposal of the clauses of the Bill by the Committee and the consideration of the draft report as prescribed in Direction No. 78 and decided to consider the draft report at their next sitting to be held on the 15th July, 1959.

21. The Committee then adjourned to meet again at 14.30 hours on Wednesday, the 15th July, 1959.

IV

Fourth Sitting

The Committee met from 14.50 hours to 15.00 hours on Wednesday, the 15th July, 1959.

PRESENT

Shri C. R. Pattabhi Raman—*Chairman*

MEMBERS

Lok Sabha

2. Shri S. Osman Ali Khan
3. Shri Kailash Pati Sinha
4. Shri Chandra Shankar
5. Shri Suriya Prasad
6. Shri P. Subbiah Ambalam
7. Shri S. M. Siddiah
8. Shri Hem Raj
9. Shri Harish Chandra Mathur
10. Pandit Krishna Chandra Sharma
11. Seth Achal Singh
12. Shri Raja Ram Mishra
13. Shri S. Hansda
14. Shri Prafulla Chandra Borooah
15. Shri Umrao Singh
16. Shri Kamal Krishna Das
17. Shri B. R. Bhagat
18. Shri K. G. Deshmukh
19. Shri V. P. Nayar
20. Shri Chintamani Panigrahi
21. Shri Khushwaqt Rai
22. Shri Motisinh Bahadursinh Thakore
23. Shri Karsandas Parmar
24. Shri Premji R. Assar
25. Shri Prakash Vir Shastri
26. Shri S. M. Banerjee.

Rajya Sabha

27. Shri Tarkeshwar Pande
28. Shri P. S. Rajagopal Naidu
29. Shrimati Sharda Bhargava
30. Shri M. Govinda Reddy
31. Shri Lavji Lakhamshi
32. Shri Mahesh Saran
33. Shri T. D. Pustake
34. Shri V. C. Kesava Rao.
35. Shri M. D. Tumpalliwar
36. Dr. Raj Bahadur Gour
37. Shri Rajendra Pratap Sinha

38. Shri Kamta Singh
39. Dr. B. Gopala Reddi.

DRAFTSMAN

Shri S. K. Hiranandani, *Joint Secretary and Draftsman, Ministry of Law.*

Shri V. N. Bhatia, *Deputy Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

Shri M. V. Rangachari, *Special Secretary, Ministry of Finance.*

Shri A. Baksi, *Joint Secretary, Ministry of Finance.*

Shri C. S. Divekar, *Executive Director, Reserve Bank of India.*

Shri R. K. Seshadri, *Deputy Secretary, Ministry of Finance.*

SECRETARIAT

Shri P. K. Patnaik—*Under Secretary.*

2. The Committee considered the Bill as amended and adopted the same with the following amendment:—

Clause 33.

After "In section 46 of the principal Act, ..." *insert*:—

"(i) in sub-section (2), for the words "five hundred rupees", the words "two thousand rupees", and for the words "fifty rupees", the words "one hundred rupees" shall be substituted".

Re-number (i) and (ii) as (ii) and (iii) respectively.

3. The Committee then considered the draft Report and adopted the same with necessary consequential changes in regard to clause 33 and certain other verbal changes.

4. The Committee authorised the Chairman and in his absence Shri Harish Chandra Mathur to present the Report on their behalf and to lay the evidence on the Table of the House after the presentation of the Report.

5. The Committee authorised Dr. Raj Bahadur Gour and in his absence Shri M. Govinda Reddy to lay the Report of the Committee and the evidence on the Table of the Rajya Sabha.

6. The Committee decided that the Report might be presented to the Lok Sabha on the 3rd August, 1959 and laid on the Table of the Rajya Sabha on the 10th August, 1959.

7. The Committee decided that Minutes of Dissent, if any, might be sent to the Lok Sabha Secretariat so as to reach them by the 22nd July, 1959.

8. The Committee then adjourned.

C.B. (II) No. 84

LOK SABHA

JOINT COMMITTEE ON THE BANKING COMPANIES (AMENDMENT) BILL, (1959)

EVIDENCE

LOK SABHA SECRETARIAT
NEW DELHI
August, 1959
Price 50 nP.

WITNESSES EXAMINED

JOINT COMMITTEE ON THE BANKING COMPANIES (AMENDMENT) BILL, 1959

MINUTES OF EVIDENCE TAKEN BEFORE THE JOINT COMMITTEE ON THE BANKING COMPANIES (AMENDMENT) BILL, 1959

Monday, the 13th July, 1959 at 15·00 hours

PRESENT

Shri C. R. Pattabhi Raman—*Chairman*

MEMBERS

Lok Sabha

Shri S. Osman Ali Khan
Shri Kailash Pati Sinha
Shri Bhola Raut
Shri Chandra Shankar
Shri Suriya Prasad
Shri P. Subbiah Ambalam
Shri S. M. Siddiah
Shri Hem Raj
Shri Harish Chandra Mathur
Seth Achal Singh
Shri Raja Ram Mishra
Shri S. Hansda
Shri Prafulla Chandra Borooah
Shri Umrao Singh
Shri Kamal Krishna Das
Shri B. R. Bhagat
Shri K. G. Deshmukh
Shri Chintamani Panigrahi
Shri Khushwaqt Rai
Shri Motisinh Bahadursinh Thakore
Shri Karsandas Parmar
Shri Premji R. Assar
Shri Prakash Vir Shastri
Shri S. M. Banerjee
Shri Morarji Desai.

Rajya Sabha

Shri Tarkeshwar Pande
Shri P. S. Rajagopal Naidu
Shrimati Sharda Bhargava
Shri M. Govinda Reddy
Shri Lavji Lakhamshi
Shri Mahesh Saran
Shri T. D. Pustake
Shri V. C. Kesava Rao
Shri M. D. Tumpalliwar
Dr. Raj Bahadur Gour
Shri Rajendra Pratap Sinha
Shri Kamta Singh
Dr. B. Gopala Reddi.

DRAFTSMAN

Shri S. K. Hiranandani, *Joint Secretary and Draftsman, Ministry of Law.*

REPRESENTATIVES OF MINISTRY AND OTHER OFFICERS

Shri M. V. Rangachari, *Special Secretary, Ministry of Finance.*

Shri A. Bakshi, *Joint Secretary, Ministry of Finance.*

Shri C. S. Divekar, *Executive Director, Reserve Bank of India.*

Shri R. K. Seshadri, *Deputy Secretary, Ministry of Finance.*

SECRETARIAT

Shri P. K. Patnaik—*Under Secretary.*

WITNESSES EXAMINED

I. All India Bank Employees Association, Delhi

1. Shri Prabhat Kar.
2. Shri H. L. Parvana.
3. Shri G. N. Trikanad.

II. Indian Banks' Association, Bombay

1. Shri S. L. Kothari.
2. Shri R. L. Tuli.

I. All India Bank Employees Association, Delhi

Spokesmen:

1. Shri Prabhat Kar.
2. Shri H. L. Parvana.
3. Shri G. N. Trikanad.

(*Witneses were called in and they took their seats*)

Chairman: As you are aware, their memorandum has been circulated. (Appendix 1). So, in addition to that if Members want to put any questions they may do so.

Dr. Raj Bahadur Gour: There is a point raised that if the Reserve Bank is given the power to inspect the branches outside India, there will be difficulty for the Indian depositors abroad. May I know what is their opinion on this controversy?

Chairman: What is stated is there will not be reciprocity. Indian Banks with branches outside India will suffer and the business will be taken away to the other Banks.

Dr. Raj Bahadur Gour: The point raised is this, that particularly our nationals abroad would be scared and the deposits would be taken away from the branches of Indian banks if they are subjected to inspection by the Reserve Bank. What have they got to say about this particular provision?

Chairman: In addition to what you have asid in the memorandum.

Shri Prabhat Kar: So far as this provision is concerned, we welcome it. Generally, Indian banks will have majority of their branches in India. They have never raised any objection to the inspection of the books of their accounts by the Reserve Bank.

Shri Morarji Desai: You need not presume that because they have not raised any objection they do not object. They cannot afford to raise some objections, so they don't raise.

Shri Prabhat Kar: The Reserve Bank has been given the power and it has been regularly inspecting the books of accounts of all the branches. As regards Indian banks which will have branches overseas, the number of those branches will be very small in comparison to their Indian branches. The point of objection about inspection by the Reserve Bank does not apply to the Indian branches which are a majority in number; and frankly speaking, the bulk of their business, either of deposit or advances, will be in the Indian branches here. If they allow the Reserve Bank to inspect their branches here, then there cannot be any objection to their allowing the Reserve Bank to inspect their branches outside India, the number of which will be very small.

The point may be raised that inspection of the accounts by the Reserve Bank may give rise to certain doubts in the minds of the depositors. So far as the Reserve Bank's inspection is concerned, it is not that they go through the accounts of the depositors: they try to see how the books of the banking companies are kept, how the directions are....

Shri Morarji Desai: I do not know how the witness is called upon to give a reply to this. It is for us to consider.

Shri Prabhat Kar: We welcome this procedure.

Shri Morarji Desai: That is good enough.

Shri Prabhat Kar: I was trying to give you the reason.

Shri Morarji Desai: So we are in good company on this.

Dr. Raj Bahadur Gour: Have you anything to suggest with regard to the restriction particularly on the amounts that are to be held by the banks in cities like Calcutta and Bombay—whether that particular provision should be further liberalised and smaller banks should be allowed to operate in those cities? I would like to have a little more clarification in regard to this, because the idea has not been concretised. What is it that they really want?

Chairman: Do you feel that there is inadequacy in this provision?

Dr. Raj Bahadur Gour: At page 4 of the memorandum, they have stated:

> "It may be mentioned here, that the restrictive provisions of section 11, existing and/or with proposed amendments, are designed to check growth and expansion of smaller banking concerns and thus ensure functioning of larger units in fields of opulence like Calcutta and Bombay specially. It is true that banks which cannot attract share-capital should not be encouraged inasmuch as such banks raise deposits from public without risking its own (*i.e.* its shareholders) funds and tend to become irresponsible; still, the rigidity of minimum paid-up capital and reserves for Calcutta and Bombay should be relaxed in the context of growing national economy and scope should be given to smaller institutions to trade in the field.".

They want that some relaxations should be made in the case of these banks. I would like to know what real relaxations they want. Could they concretise them further at this stage? Suppose the Reserve Bank is given the authorlty to say that if they are satisfied with a particular bank, then this section will not apply to them, and they allow that bank to open branches, would that satisfy the witnesses?

Shri Prabhat Kar: I may explain to you that today there are certain banks functioning in cities like Calcutta and Bombay. They have already been functioning for about a dozen years. The restrictive provisions of section 11 would imply that they have got to have a minimum paid-up capital in order to run or continue their branches in cities like Calcutta and Bombay. Now, these banks are serving a particular type of customers who cannot afford to go to the bigger banks, mostly small businessmen and small depositors. And they have been serving them. The Reserve Bank has inspected these banks, and save in regard to violation of section 11 which requires them to have a certain minimum paid-up capital, no other fault has been found by the Reserve Bank in regard to these banks. But if they are to comply with the requirements of section 11, that means they will have to procure more share capital in order to enable them to continue their branches in cities like Calcutta and Bombay; this would mean that they will have to close down their branches. When a banking company is functioning well, and furnishing to

the Reserve Bank all the information that the Reserve Bank wants, so far as the working is concerned, and the Reserve Bank has not found any fault with them except in regard to violation of section 11, now, if this technical disability about the paid-up capital is imposed on them, then it would be impossible for these banks to raise the required capital at this stage.

Shri Morarji Desai: This is not a technical disability. This is a substantial disability. This is just the reverse of your thesis of nationalisation. I do not understand why you go from one extreme to the other.

Shri Prabhat Kar: I am saying that they are already functioning in these cities, and so far as their functioning is concerned, there is nothing to complain against them, and the Reserve Bank also has not found any other disability or defect in regard to their working.

Chairman: Are you more concerned with the employment aspect, that is, about the people getting unemployed and so on? Is that worrying you?

Shri Prabhat Kar: Today, if these branches are closed automatically, there will be retrenchment. Apart from this, when a particular bank is serving the needs of a particular section of the depositors and customers, and they are functioning all right except that they have not been able to procure the paid-up capital to the extent required under the Act to continue their branches in Calcutta and Bombay, we want a relaxation of this particular section. Otherwise, those banks will have to close down their branches.

Shri Morarji Desai: I think that would be better than a crash thereafter.

Shri Prabhat Kar: I can understand that a banking company, if it is not functioning properly, must close down, before there is a possibility of any crash. But when a bank is functioning properly,—except that there is not the required paid-up capital—then we want a relaxation.

Dr. Raj Bahadur Gour: At page 4 of the memorandum, they have stated:

> "It is true that banks which cannot attract share capital should not be encouraged inasmuch as such banks raise deposits from public without risking its own (*i.e.* its shareholders) funds and tend to become irresponsible;"

Therefore, they agree with the principle behind this restriction. Still they want:

> "the rigidity of minimum paid-up capital and reserves for Calcutta and Bombay should be relaxed in the context of growing national economy and scope should be given to smaller institutions to trade in the field.".

That is their contention.

It is not merely a question of banks which are operating at present and which fall short of the required paid-up capital, and which, therefore, have to close down, but even in the case of opening of branches, this relaxation will apply. That is the thesis of the memorandum. I want to know what concrete relaxation they have in view.

Secondly, will it be all right, if we say that the Reserve Bank will have the necessary authority to say that if it considers that a particular bank is functioning all right, it will relax this provision; will that satisfy the witnesses?

Shri Prabhat Kar: I would say that it is not our intention that a complete relaxation should be given to all. But I agree with Dr. Raj Bahadur Gour...

Shri Morarji Desai: It is a suggested reply.

Shri Prabhat Kar: That was what I was already suggesting. For example, where the Reserve Bank has already

inspected and found that a particular bank is functioning all right, except in regard to section 11, in that case, the Reserve Bank should be authorised to permit a relaxation of this provision. So, it is not as if I am saying that there should be a general relaxation for all, but where the Reserve Bank has found after inspection that a bank is functioning all right, only in those cases, this relaxation should be given.

Chairman: But must we not have some margin? After all, we are passing an Act.

Shri Prabhat Kar: But you should also remember the development of banking companies in this country. At that time, there was no control, and the banks started functioning; and we cannot deny the fact that at that stage, they really did a good job of it. Today, we are trying to bring forward legislation to have some effective control of the banking system in this country, and our approach will be that we want effective control, but we want that in case a particular bank has been functioning properly—I am not saying on the basis of a director saying so, but I am saying that the Reserve Bank after inspecting it has found that the bank is functioning well—then the Reserve Bank may be empowered to grant a relaxation. I am not suggesting that there should be an omnibus relaxation for all the banking companies.

Chairman: You would not like the Reserve Bank to have a blanket-power?

Shri Prabhat Kar: We would like the Reserve Bank to have that power.

Shri Morarji Desai: The Reserve Bank does not want that power.

Shri Prabhat Kar: We would like the Reserve Bank to have that power.

Shri Morarji Desai: We want them to go by the advice of the Reserve Bank.

Shri Rajendra Pratap Sinha: I would like to have a clarification. Could you give us some idea as to the extent to which this relaxation should be given?

Shri Morarji Desai: He says, in regard to companies which are working well.

Shri Rajendra Pratap Sinha: 'Working well' is too general a term. After all, the Reserve Bank has to act under definite statutory provisions. If there is to be any relaxation, then we must have a definite idea. What is the intention of the witnesses? We shall consider whether it is worth the while or not.

Shri Prabhat Kar: Under the present Act the Reserve Bank inspects the books of account of all banks. If the only drawback of that banking company is that it has complied with the requirement of section 11—that is, although it has got its branches in Calcutta or Bombay but the required paid-up capital is not there—but is functioning according to the norms applied by the Reserve Bank, in that case only, I am putting in a plea for the relaxation of the provisions of section 11.

Shri Morarji Desai: I do not think it is advisable if it cannot raise the required share capital. It may be functioning all right.

Dr. B. Gopala Reddi: Section 53 gives sufficient margin of power.

Chairman: Under section 53 the Central Government has got sufficient powers. (Read out section 53).

Shri Prabhat Kar: Under this power the Central Government has, from time to time, given extension of period to these types of banks. The Central Government on the advice of the Reserve Bank has given this extension of time to such banks. My point is this. When you are granting this extension of time you are convinced that this bank is running all right. You say that effort should be made by the promoters of the

bank to raise the share capital. Today, considering the stringency in the money market, it is difficult to raise the necessary share capital.

Shri Morarji Desai: The Central Government can give extension for 50 years or 100 years; there is nothing to prevent it. They can give exemption from several provisions of the Act; not only from this provision. On the recommendation of the Reserve Bank the Central Government may do a number of things.

Shri Prabhat Kar: That is how the time is being extended. But considering the fact of the withdrawal of the licences during the last two years, we are apprehensive....

Dr. B. Gopala Reddi: They have not cancelled.

Shri Morarji Desai: What is the guarantee that what you want will be done even with your amendment? If they want to do it that power is there.

Chairman: You are really thinking of the employees. That is why at the very beginning I asked you whether you are thinking of the employees. If you feel so, you can always bring it to the notice of Government and they have got wide powers.

Shri Morarji Desai: We cannot keep a bank going for the sake of employment.

Shri Prabhat Kar: It is not for the employees only but it is also for the depositors and others.

Chairman: The hon. Finance Minister has already pointed out that the powers under section 53 are very wide. But you want that here in the section itself the rigidity should be removed which would make the section limp from the very beginning. On whom is the responsibility to be put? I think section 53 is wide enough.

Shri Prabhat Kar: I have explained our point of view. Our anxiety is not from the point of view of the employees but also from the point of view of the small customers. It may be that big banks will not like this because they will have competition.

Shri Morarji Desai: What is the competition that bigger banks can have from these small banks in Calcutta and Bombay?

Shri Prabhat Kar: In some particular areas it is so.

Dr. B. Gopala Reddi: At that rate you will have to give that in other places also. Supposing it is at Allahabad. Why should they have Rs. 15 lakhs? Tomorrow some bank operating in Madras may also plead that it cannot have Rs. 15 lakhs; it will go on like that.

Shri Prabhat Kar: I am not for blanket power. I only want this in the case of banks that are doing good business.

Shri R. P. Sinha: I would like to draw the attention of the witness to page 3 of their memorandum in which they have raised objection to the granting of powers to the Reserve Bank for regulating the participation of banks in some other concerns to which the bank's moneys have been advanced. In the interest of the bank's money advanced to the borrowing companies it is desirable that the managers of the executive of the banking company should be empowered for at least the time being, to be on the board of such a borrowing company.

Shri Prabhat Kar: I will answer it this way. There are two things. If a big amount of money has been advanced by a bank to a particular concern, then there should be a bank's representative to look after the affairs of the company. That is one thing.

Another thing is where the director of a particular company is also concerned with a bank which grants ad-

vances or loans. It will not mean that if a big amount of money is advanced by the bank to a particular concern, one of the bank's representatives should be there on the board of directors.

I will only recall to you the report of the Liquidation Proceedings Committee. Recently, in the Calcutta National Bank what we have seen is this. This interlocking of interest has resulted in the crashing of the bank.

We know how, during 1947 and 1949 banking companies in different parts of the country collapsed and we know also the reasons for that. We know also that recently in the year 1953 when the Calcutta National Bank collapsed—the Reserve Bank instituted a case against the bank and it is still going on—the only reason was the interlocking of the interests of the board of directors. If a director of a banking company becomes the director of another company, then the interests of that particular company will create a situation where the interest of the banking company itself will be jeopardised. That is we are objecting to it.

Another thing is, that so far as the chief executive officers of the bank are concerned, they should have full time to devote to the banking company. Then and then only can they be of real service to the bank with which they are connected. We are not against the Reserve Bank's powers.

Shri R. P. Sinha: The witness more or less agrees with the first contention that where a bank has advanced money, the representative of the bank should be allowed to come in. But he wants to encourage the interlocking of banks with other companies which is the purpose of this section itself. This amendment is to safeguard the money.

Chairman: For instance, the Investment Corporation, whenever it lends money, has one or two directors to watch its interests.

Shri Prabhat Kar: I agree with that part.

Shri Morarji Desai: You are agreeing and you are not agreeing.

Shri Prabhat Kar: While allowing them to be a director....

Shri Morarji Desai: Are you going to look after the bank's interest more than the banks themselves?

Shri Prabhat Kar: I would only say, so far as we are concerned, whether you agree or not, we look to the bank's interests more than the bankers. Till now so many cases had come out and nowhere do we find that ordinary employees are involved in these cases; it is only these big persons, high officers who are involved in these cases of fraud and other things.

Shri Morarji Desai: You have got cases of employees having done such wrong things; they have also come to light. In their capacity they have done.

Shri Prabhat Kar: If certain money is lost to the bank, the banking companies will suffer. When you say the interests of the banking companies, we are more interested or equally interested.

Shri Morarji Desai: I do not deny that. You are interested in the bank working because if the bank does not work you go. Therefore, you are very much interested; I am not denying that. But is not a director more qualified to see whether it goes against the bank's interest or not?

Shri Prabhat Kar: In the past the banks have not done well.

Shri Morarji Desai: By and large the banks have done well in this country.

Shri Prabhat Kar: How much of the public money has been lost?

Shri Morarji Desai: There are some cases. It has happened in all the countries, not only in India. It will always happen. With all our wisdom in Parliament, we are also making mistakes.

Chairman: The proviso is not so wide.

Shri Prabhat Kar: The original section is all right and so we are against the relaxation.

Shri R. P. Sinha: But that relaxation that is being given is absolutely essential in the interest of the banking companies themselves.

Shri Prabhat Kar: When you say that the Reserve Bank and the Government will not sanction things if they are against the interest of the banks, I have nothing to say. But it is nowhere in the Act. When the hon. Minister has said that the Government will not give its sanction, I have said that I have nothing to say. But it is nowhere in the Bill. That is why I raise this point.

Shri Thumpalliwar: On page 9 of your memorandum, you refer to malpractices. It is stated that books and records are refused to be produced before the courts and you insist their production before the courts. You agree that the records are open for inspection by the Reserve Bank. Then, how is the Reserve Bank not in a position to check these malpractices? How can the submission of records before the courts stop these malpractices?

Shri Morarji Desai: He has expressed it at great length. Why do you want to go further lengths? In spite of the greatest amount of vigilance possible, crime will be committed. Nobody can assume that no crime will be committed.

You refer to the Mundhra affair. It has no relation to the banks.

Shri Prabhat Kar: I am not referring to the L.I.C. During these four years his dealings with the bank has resulted in losses.

Shri Morarji Desai: If somebody commits forgery, you cannot say that everybody is going to do that.

Shri Prabhat Kar: It is not simply forgery. It is a question of doing things with the connivance, with the knowledge, of the management. I can tell you that a particular man was sent off before the Reserve Bank inspection began. I refer to the case of the Bhagwandas. That man in that case left India for Pakistan.

Shri Morarji Desai: From that you are generalising and I am objecting only to that.

Shri Prabhat Kar: I am saying that such deals had resulted in the loss to the banking companies to the tune of a few crores of rupees. It leaves a reflection on the industry itself and the question of the bank closing down itself may arise. This is the first time that you are amending the sections of the Banking Companies Act. This is a major amendment. In spite of all these, I want the Joint Committee to consider whether any further steps or restrictions can be put.

Chairman: Do you refer to the penal law or this Bill?

Shri Prabhat Kar: This Bill. I am not talking of the penal law.

Shri Morarji Desai: This sort of remedy which you suggest will not be desirable, I think.

Shri Prabhat Kar: I am not suggesting anything. I am putting my view before the Committee for its consideration, namely, whether any reasonable restriction can be put.

Shri Morarji Desai: We cannot do that in relation to this section. This Committee has also no authority to do it. As an M.P. you ought to know it. This Committee cannot do that. Your companies may not know it but you ought to know it.

Shri Prabhat Kar: Wherever possible it may be done. You are giving power to the Reserve Bank in that section which you are amending. While amending it and giving power to the Reserve Bank to inspect the overseas branches, if you can put this in.....

Shri Morarji Desai: This cannot be brought in there.

Chairman: You can see the example in the United Kingdom and the United States.

Shri Panigrahi: I would like to draw the attention of the hon. Minister to page 8 of the memorandum regarding section 38 of the Banking Companies Act where powers have been given to the Reserve Bank to take steps on its own for winding up banks under certain conditions. I would like to know the reason and have some further elucidation as to what their suggestion is and the ways in which they want to deal with these banks who are not acting properly? What should be the power of the Reserve Bank with regard to these banks?

Shri Morarji Desai: He says it must not be wound up. That is all. He says that such banks must be taken up by the Reserve Bank which should manage them, so that you can put all the losses on the Reserve Bank. That in short would be the effect of this suggestion.

Shri Prabhat Kar: Amalgamation.

Shri Morarji Desai: That is the meaning of it. Amalgamation means the same thing. The Reserve Bank cannot amalgamate it.

Shri Prabhat Kar: We are not suggesting that the Reserve Bank should do it.

Shri Morarji Desai: The Reserve Bank forces it on some other bank which does not want to take it! That can be done in a different kind of economy and not in this economy. In that kind of economy, you can force things on other people. There will be no banks then!

Shri Prabhat Kar: There should be banks. As a result of the widening of the business, ...

Shri Morarji Desai: Such banks would have to be wound up. How can they be allowed to go on?

Shri Prabhat Kar: The Reserve Bank has been checking regularly.

Shri Morarji Desai: Even when everything is checked, something can happen after checking or something can be missing also in checking. These things do happen. You cannot avoid them. There cannot be any foolproof checking of anything so that everything will go on straight.

Shri Prabhat Kar: I would suggest that we should make efforts to see.....

Shri Morarji Desai: Those efforts are being made.

Shri Prabhat Kar: Winding up of banking companies is neither helpful not only to the employees but....

Shri Morarji Desai: The Reserve Bank is not to wind them up normally as long as the Reserve Bank can see that the banking companies work properly and can be brought up to work well, and as far as that is concerned, it can give all sorts of help and offer suggestions and do everything. But when it finds that it is not possible, the next step is taken. Even in the matter of amalgamation which you were saying, there also, we suggested to some people if it is possible to do that. It cannot be done otherwise.

Shri Prabhat Kar: The point is the Reserve Bank cannot force the amalgamation of the banks. If the banks agree the Reserve Bank can help. Our suggestion is that the Reserve Bank, after inspection, can suggest, ...

Shri Morarji Desai: They do but that cannot be provided in law.

Chairman: You say:

> "It is, therefore, imperative that there should be an end to the winding up of banks and law should provide that banks whose

existence is not safe for the community should be straightaway merged with the State Bank so that the Government takes over the responsibility for those banks."

I think that is asking for too much.

Shri Morarji Desai: I appreciate your intention. I am not quarrelling with your intention. I am not saying that your intention is wrong. But there are some things which cannot be done. You have got to reconcile yourselves and we have got to reconcile ourselves with imperfections in society, crimes in society, etc. We should try to minimize them. That is the intention.

Chairman: The Act provides for all these; there are various steps that have been provided for.

Shri Prabhat Kar: What we want is this. Instead of the Reserve Bank being an onlooker or if it is approached, then, to advise, I would say that the Reserve Bank should go into this matter.

Chairman: In a section it must be precise. Your intention must be made clear. You cannot just beg or give a warning or advice. Winding up provisions are all there and schemes for reconstruction are provided for. Moratorium is also available in suitable cases.

Shri Prabhat Kar: As the hon. Minister has said, if you appreciate my intention, I would only suggest to you to think over how our intention can be implemented.

Shri Panigrahi: I refer to page 9 of the memorandum in regard to the provision for checking malpractices. It has been stated that:

"positive measures are therefore absolutely necessary against these situations if the country's banking institutions are to be improved and banking habits are to be developed among the people by creating greater confidence in banks."

I would like to know from the witness what positive measures they have in view and what views are they placing before us?

Shri Prabhat Kar: I have suggested them.

Shri Morarji Desai: Can you point out any new measures?

Shri Prabhat Kar: I have been suggesting that more powers to the Reserve Bank should be given in this matter.

Shri Morarji Desai: I think the Reserve Bank has enough power. What more powers can be given to it for this purpose?

Shri Prabhat Kar: I would like you to refer to page 4 of the memorandum. I refer to clauses 10 and 11. Previously restrictions were there. Until the difference of the depreciation on the investment has been provided for dividend should not be declared. This rule is being relaxed. Today I do not know whether any of the banking companies are in the difficulty of paying dividends because of the particular clause. There is no bank which during the last 10 years when this clause was in operation has not increased its dividend in spite of the restrictions of this clause. So, why should you today relax this particular clause? Out of the relaxation of this clause, there may be further increase in the dividend.

So far as the dividends of the banking companies are concerned, I would only draw the attention of the Joint Committee to the fact that the share capital of a banking company constitutes only 2 to 3 per cent. of the working capital. All the big banks are today paying dividend to the tune of 15 to 16 per cent. and some banks pay even 18 per cent. In spite of the restrictions imposed by this section, there has been a steady increase. Now the effect of relaxation of this particular provision can only be payment of more dividend. In a banking company, to allow 16 to 20 per cent. return to the shareholder whose

money constitutes only 2 to 3 per cent. of the working capital will not be correct.

You are granting the banking companies power to show less income. Of course, provision for bad and doubtful debts is understandable, but they will show less income by making so many other provisions the details of which nobody knows. Again, you are granting them power to pay dividend without writing off the depreciation in the value of their investments in Government securities. I think the result will be the dividend will be increased whereas the shareholders are already enjoying a good rate of dividend.

Again, dividend is not an important matter so far as the stability of the bank is concerned. I can cite one example—the United Commercial Bank —which has not paid dividend during the first 10 years of its existence—has come out even in the first year as one of the best banks. So far as foreign exchange business is concerned, it stands on a par with any other foreign exchange bank. The Allahabad Bank is paying 18 per cent. dividend but during the last 20 years, it has not made any advance so far as deposits, etc. are concerned. The Punjab National Bank reduced the dividend from 16 to 4 per cent., but the deposits have gone up by Rs. 70 lakhs. So, dividend is not a factor related to the deposits or business of the bank. So, I fail to understand why you want to relax this clause further. Necessary provision is not being made so far as liquidation proceedings are concerned. The banking industry is not facing any difficulties neither has the dividend been low because of the restriction imposed by the section which has been continuing so far. So, I would plead before the Joint Committee that this relaxation need not be made.

Regarding the issue of bonus shares from reserve funds—clause 11—I have already pointed out that the share capital is only 2 to 3 per cent. of the working capital. A banking company's shares are not what are known as fluctuating shares.

Shri Morarji Desai: You mean they are not speculative.

Shri Prabhat Kar: Yes; they are not speculative. It is just an investment where the return is 18 per cent. You will find from the stock exchange report that banking shares are held for a long time. It is not as if they are bought today at a premium and sold tomorrow.....

Shri Morarji Desai: That is all known. What is it that you want to emphasise?

Shri Prabhat Kar: I want that the issue of bonus shares in the banking companies drawing from the reserve should be restricted. You know how many banks apply for bonus shares.

Shri Morarji Desai: There are not many banks which come for bonus shares. Even when some banks come, they come for specific reasons which are perfectly legitimate and they ought to be allowed. They are paying sufficient tax to Government.

Shri Prabhat Kar: So far as drawing on the reserve fund is concerned, according to the Banking Companies Act, every year the bank shall transfer out of the net profits and before any dividend is declared a sum equivalent to not less than 20 per cent. of such profits to the reserve fund until the amount of the reserve fund is equal to the paid-up capital. So, till the reserve fund is equal or more than the paid-up capital, drawing from that reserve fund on whatever plea should not be allowed.

Shri Morarji Desai: But sometimes it becomes necessary to allow the bank to draw on the reserve fund. Otherwise, Government does not generally look with favour upon bonus shares. That is the policy of Government also.

Shri Prabhat Kar: I have already pointed out how during the last 10 years the dividend paid by banking

companies has been increasing, noting also that the share capital is just 2 per cent. of the working capital. You are saying bonus shares are not generally granted. But during the last 2 or 3 years, we have seen many cases...

Shri Morarji Desai: We have seen only one case.

Dr. B. Gopala Reddi: All told only 2 or 3 cases.

Shri Morarji Desai: Government does not look upon it with favour. Only under certain circumstances it has allowed it.

Chairman: I think, Government has refused in many cases.

Shri Prabhat Kar: I know one case at least. Now, I come to clause 6(b), where you have said:

> "any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person....."

So far as auctioneering and other things are concerned, I am still at a loss to understand how they cannot be considered as employees of the Bank. But about cashier-contractor, I have got to point out to you....

Shri Morarji Desai: You have already said this in your memorandum. Why do you want to repeat it?

Shri Prabhat Kar: All right. You may kindly take note of it. Now, I come to part (a), about the question of payment of bonus. You know, Sir, that this proviso was brought into effect from January, 1957.

Chairman: The Bill was placed in 1956.

Shri Prabhat Kar: But it was assented by the President in January, 1957. Now, Sir, this is a matter which was referred to the Supreme Court and the Supreme Court said that the section as it stood prior to 1956 disentitled the Bank employees to claim any bonus. Parliament with proper understanding made this proviso with a view not to make the Bank employees disentitled to claiming of bonus. My only request will be that this proviso should be given retrospective effect, because the intention of Parliament is not to disentitle the Bank employees. That has been specifically mentioned in this proviso. The net result will be that again this matter will come before the Supreme Court.

Shri Morarji Desai: It cannot be with retrospective effect. I am very sorry. I am not going to agree with it. The Joint Committee can consider that.

Shri Prabhat Kar: That is why I draw the attention that Parliament amended it.

Shri Morarji Desai: But it did not apply retrospectively. Parliament in its wisdom did not do that.

Shri Prabhat Kar: Sir, this proviso was made simply for a clarification. That means, if the provision meant this, then it deemed to have been always so. Sir, I would only draw your attention that this was a matter of clarification by Parliament, it was not in any other way. The clarification means, that the intention of the Government was there. So, that is why clarification was made and the clarification should be deemed to have been always there. That is my request to the Joint Select Committee.

That is all I wanted to say.

Chairman: Thank you very much

Shri Prabhat Kar: Sir, thank you, for giving me a patient hearing.

(The witnesses then withdrew)

II. **Indian Banks' Association Bombay**

Spokesmen:

1. Shri S. L. Kothari:
2. Shri R. L. Tuli:

(Witnesses were called in and they took their seats).

Chairman: We have read your memorandum (Appendix II) and your subsequent communication of the 8th June. We have got both with us. Would you like to elaborate the points which you have made?

Before that, I just want to understand one aspect of the matter to which you have referred to in your memorandum. Would you like India to follow the practice in the United Kingdom instead of that in the U.S.A.?

Shri S. L. Kothari: Yes, in the matter of inspection of branches.

Shri Morarji Desai: Why does it hurt you?

Shri S. L. Kothari: When banking in India has followed the practice or system of England.....

Shri Morarji Desai: We have not followed anybody.

Shri S. L. Kothari: What we have felt is that foreign nationals may be scared from keeping deposits in our foreign branches.

Shri Morarji Desai: They are not going to inspect the accounts of the people. They will see only the accounts of the banks. Of course, there is a danger which you are imagining. But that danger is not a danger. It is a good thing for the country.

Chairman: Do you say that instead of putting monies in your bank, they will put it in foreign Banks?

Shri S. L. Kothari: That is what we have meant.

Chairman: You are probably saying here that in America, the control is not Government's control, but it is exercised by a quasi Government body.

Shri S. L. Kothari: Yes.

Shri Morarji Desai: Here also it is done by the Reserve Bank.

Shri S. L. Kothari: Reserve Bank is an official organisation, and the feeling outside will be that this inspection is done by an official organisation. This will be the feeling outside the country.

Shri Morarji Desai: If you explain it properly, nobody will misunderstand it.

Shri S. L. Kothari: That is true. Then they will not misunderstand. But to explain this to every client outside the country will be difficult.

Shri Morarji Desai: I do not think that the clients will bother about it.

Dr. Raj Bahadur Gour: May I ask the honourable witness to refer to their memorandum, page 2, paragraph 2? His apprehension seems to be that the Indian depositors living abroad would think that the Reserve Bank will do this inspection on behalf of the Income-tax authorities. That is what they say.

Shri Morarji Desai: Is it what they say?

Dr. Raj Bahadur Gour: They say in paragraph 2, page 2:

> "Indian nationals having accounts with the foreign branches of banking companies incorporated in India, may feel that the Reserve Bank has been given the power of inspecting these branches at the instance of the Indian Income-tax authorities and may transfer their accounts to the branches of other banks which are not subject to this inspection".

I do not think that this provision provides for inspection of private accounts of depositors. I do not think the Reserve Bank will inspect accounts of individual depositors under this clause.

Shri S. L. Kothari: In this matter of inspection I do not think that there is any rule laid down as to what they should inspect and what they should not. If they want to go into the accounts of a particular person, the banks cannot say.....

Shri Morarji Desai: Of a particular person, not all the accounts. They will not do it in fits and starts. Reserve Bank is a very responsible body. You have presumed here that they are the agencies of the Income-tax authorities. This does credit neither to the Income-tax authorities nor to the Reserve Bank.

Shri S. L. Kothari: It is only a fear which we have expressed.

Shri Morarji Desai: Fear is the greatest enemy of mankind.

Dr. Raj Bahadur Gour: So far the Reserve Bank of India has never in our country detected any income-tax evasion through this inspection. Even in our own country they have not detected it, which is quite high. If that is the case within our country, with regard to outside the country, your apprehension has no justification.

Shri Morarji Desai: It may lead to disclosure of foreign exchange, not of income-tax.

Dr. Raj Bahadur Gour: As Indian citizens they ought to discourage such dealing in foreign exchange.

Shri Morarji Desai: That is what Indian citizens ought to do; how many of them do what they ought to do?

Dr. Raj Bahadur Gour: My point is will not the Reserve Bank's inspection of these Branches instil confidence in the depositors and will it not further add to the goodwill of the Bank that there is a certain check and it is not going to collapse. Will it not therefore help the Bank and its branches abroad?

Shri Morarji Desai: There can be arguments on both sides.

Chairman: They are sticking to their clients' position. They say that their clients' accounts are sacred. Adding to that they are pointing out what the English example is. They want that the sanctity of the accounts of their clients should be safeguarded. You do not want them to agree with your point of view.

Dr. Raj Bahadur Gour: I would like to convert them to our point of view.....

Shri Morarji Desai: ....and *vice versa.*

Dr. Raj Bahadur Gour: On pages 3 and 4 they want further relaxation with regard to posts the Directors are entitled to hold, if I have not misunderstood. May I ask the honourable witnesses whether they would like the Director of a particular bank to occupy positions, of course temporary, in other companies which are borrowing companies? Obviously they are interested in safe-guarding the amount that they have given as a loan to any other company. Would they like them to serve temporarily as Directors in that particular company only with the express understanding that this will be allowed for the borrowing company and not for any other company?

Shri R. L. Tuli: A Director of the Bank, who is also a Director of the borrowing company does not vote on that issue. If a Director is interested in any loan he is not supposed to vote. Even if he votes, his vote is not taken into account, and he ceases to be a Director at that time.

Chairman: You want your own Officer to be a Director of the other Company so long as your loan continues.

Shri R. L. Tuli: Sometimes yes.

Dr. Raj Bahadur Gour: Is it only for the borrowing company or for any other company? A company may not be borrowing; yet your Director is serving on that company. In that case the Company gets interested in the Bank and interlocking takes place. Would they prefer restricting the temporary service of the Bank officials only when the other Company is a borrowing company and in no other respect?

Shri R. L. Tuli: On what clause does this discussion arise—this borrowing company and interlocking etc.?

Chairman: You say that the Directors of banking companies should not be put on a par with Directors of other joint stock companies.

Shri R. L. Tuli: We have mentioned this in connection with the clause requiring amendments of any provision relating to remuneration of ordinary Directors to be approved by the Reserve Bank.

Dr. Raj Bahadur Gour: So, you are not worried about the other thing.

Shri Morarji Desai: What do they give in Japan? Why don't you take the Japanese pattern? Why do you want the English pattern only?

Shri S. L. Kothari: I have no experience of Japan.

Shri Morarji Desai: Have some experience about Japan also. They are paying much less.

Shri Panigrahi: May I draw the attention of the honourable witnesses to their observations on Clause 6—page 1—of their memorandum. They have objected to Clause 6 where it is said that no banking company shall be managed by any person who is a director of any other company not being

(a) a subsidiary of the banking company, or

(b) a company registered under Section 25 of the Companies Act, 1956.

I would like further elucidation on their observations. If one is a Director of both the companies, how can he look to the interests of both the companies? When this amending Bill wants to remedy this, the witnesses want to oppose it.

Shri R. L. Tuli: We are merely suggesting that if the permanent General Manager is on leave and somebody is officiating and he also happens to be a Director of another company, he should not be asked to resign for a certain period. The Bill as drafted says three months and the Reserve Bank has the option to again extend that period for not more than six months.

Shri Panigrahi: What is the difficulty in having 9 months? What is the necessity for extending it to two years?

Shri R. L. Tuli: The principal Officer normally does not go as a Director of another company. His junior or next to him is sent as a Director of another company where the Bank gives a substantial monetary help and if the General Manager goes on leave even for a day, the officiating General Manager, under the existing law must resign as a director of other company. The Bill has recognised the difficulty and has provided that he need not resign for a total period of 9 months. Our point of view is that this period should be extended to two years.

Shri Morarji Desai: If the General Manager goes on leave for two years, after that he will have to resign. 9 months is not a short period.

Shri R. L. Tuli: We do not want that power ourselves. We say that the Reserve Bank should have it.

Shri Panigrahi: About the remuneration of ordinary Directors, the honourable witnesses have said that the approval by the Reserve Bank of the appointment and remuneration of managing or whole-time directors will lower the prestige, position and honour attached to directors of banking companies in the estimation of the shareholders, depositors and other members of the public. Supposing a man who is a Director of some of the concerns of Tatas and he is also on the Board of Directors or the General Manager in any other banking

company, then perhaps he wields more prestige as a man in the service of Tatas than as an official in the Board of Directors of a Banking company. I can't understand how the approval of his remuneration by the Reserve Bank will lower his prestige.

Shri Morarji Desai: You are arguing for a man who has a higher prestige. All members are not Directors of Tatas.

Shri Panigrahi: So far as the fee is concerned, how much do they want?

Shri R. L. Tuli: It is not the desire to earn higher fees or remuneration that has prompted the Association to recommend this. The Association has recommended this because of the necessity under this provision to submit any modification to the articles to the Reserve Bank for its approval. Actually, banks do not pay the directors as much as many industrial concerns do. There they get commission also over and above the fees. Banks do not allow any commission to the directors. So, as a class it cannot be said that the bank directors are more well paid than the other directors. The Association has merely represented that we should not be required to submit any alterations in the articles to this effect to the Reserve Bank.

Shri Panigrahi: May I enquire what is the remuneration of a member of the board of directors of a banking company and, if it comes under the power of the Reserve Bank to control, how it will affect their prestige?

Shri R. L. Tuli: There is a very large variation in the fees, and banks are of different sizes. It cannot be generalised that 'this is the normal pattern'. The usual pattern is that a fee for attending a meeting is given and, in some cases, some monthly remuneration is given—that is in very rare cases. But to generalise that 'this is the usual pattern', or that 'it is Rs. 100 or Rs. 200' is very difficult.

Shri Morarji Desai: How does it affect their prestige? For instance, my Secretary draws four thousand rupees and I draw only two thousand. Does it mean that he has a higher prestige?

Shri R. L. Tuli: No, Sir. But the fees given to the directors of banks have never been heavy ones.

Shri Morarji Desai: Suppose it is proposed to give fifteen thousand rupees to a director when he retires?

Shri R. L. Tuli: We are not objecting to that particular clause.

Shri Panigrahi: Will the witnesses not agree that the margin of difference between the pay scale or remuneration of a director of a banking company and a normal executive is too great and if the Reserve Bank is given the power it will be beneficial?

Shri R. L. Tuli: The remuneration of the director is very much lower than what the general manager gets. There is no comparison between the two. Unless it is a whole-time director or managing director, when he is the top man, there is very little comparison between the two. The director gets a fee for attending the meetings. And the Reserve Bank have already a say in controlling the remuneration of the managing director or whole-time director. It is only when it is sought to include the ordinary directors.....

Shri R. P. Sinha: The whole-time director's remuneration is controlled by the Reserve Bank. I cannot understand how, when the part-time director's fee is sought to be controlled by the Reserve Bank, their prestige will be affected.

Shri M. Govinda Reddy: Suppose a director retires after thirty years, and the bank says "we will give him thirty thousand rupees for the services rendered for thirty years"?

Shri R. L. Tuli: As I said already, we are not objecting to it. And probably it is a right move.

Shri R. P. Sinha: I am glad to hear that.

Shri R. L. Tuli: One more thing I may mention. While trying to harmonise the provisions of the Companies Act and the Banking Companies Act, this amendment has overshot the mark. The amendment provides for approval of the Reserve Bank on any provision relating to the appointment or reappointment of even ordinary directors, while any such thing in other public companies does not require such approval. The section there relates only to a managing or whole-time director or a director not liable to retire by rotation. Inadvertently this is the effect of the clause. There are two clauses in the Companies Act, one relating to appointment etc. and another relating to remuneration. In this an effort has been made to combine them into one and this is the result of it.

Shri Morarji Desai:. It is not the intention to make it more stringent.

Shri Panigrahi: On page 3 of their memorandum they have said that the directors of banking companies should not be put on a par with the directors of other joint stock companies and that the nature of their responsibilities and status and so on is different. What is the difference between the directors of the banking company and the directors of the joint stock company, and why do they want that the pay scales or remuneration should be different?

Chairman: They will say it is a credit institution, it is not like a mere profit-making institution. The deposits are there, and there is a trustee position. It is a matter of argument.

Shri Morarji Desai: An ordinary company may have no reputation, still it will earn profits. If a bank has no reputation it will burst.

Shri S. L. Kothari: As we have said, they get commission on profits. In a banking company they do not get any such thing.

Chairman: That is why I said that they are in the position of trustees.

Shri Morarji Desai: He has a greater responsibility.

Shri Panigrahi: Does it mean it should not be put on a par?

Chairman: You will find actually that in section 10 there is a bar on remuneration, commission etc. dependent on profits.

Shri Rajendra Pratap Sinha: In regard to clause 2, they have expressed the apprehension that certain forms of business may be transacted by a bank at places where it may have only a godown and no branch. I would like to know whether there is a large number of such places where such advances are made, and which are not within the municipal or other limits of a branch.

Shri R. L. Tuli: I would invite your attention to the wording of the clause. Sub-clause (i) of clause 2 of the Banking Companies Amendment Bill, 1959, defines a branch or branch office in relation to a Banking company as:

> "any branch or branch office whether called a pay office or sub-pay office or by any other name, at which deposits are received, cheques cashed or moneys lent or where any of the forms of business referred to in sub-section (1) of section 6 is transacted.".

By including the words 'called by any other name' and the words 'or where any of the forms or business referred to in sub-section (1) of section 6 is transacted', a very large number of places which cannot reasonably be called branch offices have been brought under the definition.

Section 6 of the principal Act gives a list of the forms of business in which banking companies may engage in addition to the business of banking. which under section 5(1)(b) means 'the accepting, for the purpose of lending or investment, of deposits of

money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise'. Some of the additional forms of business listed under section 6 require no separate place of business, yet the place where the property owned, leased, charged or subject-matter of a trust as mentioned in the said sub-section is located may be called a branch office under the above definition:....

Shri Rajendra Pratap Sinha: Could you give us some indication as to what percentage of this kind of advances is made on securities at places which may not be called as branches, and which are outside the jurisdiction of the branches?

Shri R. L. Tuli: No money is actually lent at any other place except the branch, but security is accepted in a godown situated not within the municipal limits of a branch, and the number of such godowns is by far larger than the number of branches.

Chairman: The definition requires a little clarification with regard to godowns not coming specifically under this section.

Dr. Raj Bahadur Gour: Section 6 of the original Act only lays down what a branch is, and refers only to banking operations. Taking security in a godown is not a banking operation.

Chairman: They are referring to the *ejus dem generis* rule; anything appertaining to a branch will come within the scope of the definition, but if it is strictly confined to a branch, then a godown will not come under this. I think this requires clarification.

Shri S. L. Kothari: I would submit for the consideration of the committee that it is a simple point. At page 4 of the Bill, the place of business has been defined. If that alone can be taken for all other purposes, that would serve the purpose of the banks.

Shri Morarji Desai: That will be considered.

Shri S. L. Kothari: At page 4, the words 'place of business' have been defined thus:

> '"place of business" means any office, sub-office, sub-pay office and any place of business at which deposits are received, cheques cashed or money lent;'.

If this definition is adopted, then it will serve the purpose of the banks.

Shri R. L. Tuli: The words 'branch office' wherever they are used in the Bill can be substituted by this phrase 'place of business'. Nothing is lost thereby.

Shri Rajendra Pratap Sinha: What is the practice in other countries in regard to inspection of the banks; for example, in the United Kingdom, are not the banks inspected by the Bank of England? If they are inspected there, then what is the harm if we have a similar inspection in those countries?

Chairman: They themselves have stated that in England, the position is different, but in the United States there is inspection, but they say that the Federal Reserve Board is an organisation and not a part of the Federal authorities themselves.

Shri Rajendra Pratap Sinha: From the note that I have got from the secretariat, I find what they have pointed out is not very correct. I am told that the Bank of England has some such powers as we are seeking to give here.

Chairman: The hon. Member is pointing out that the witnesses are not wholly correct when they say that there is no inspection in England.

Shri S. L. Kothari: I am not aware of it, but if it is so, we shall certainly make a note of that point.

Shri Rajendra Pratap Sinha: The other aspect of the question is this. There are branches of foreign banks in India, which are subject to inspection by the Reserve Bank of India. If their credit or the confidence of their

constituents is not affected by the inspection of their branches in India, why do you think that the credit of the branches of the Indian banks in foreign countries would suffer if our Reserve Bank inspects them?

Shri R. L. Tuli: That is the real core of the problem that has been thrashed out. Actually, this is what we want. Where we have opened a branch, we are subject to the laws of that country; and if we are inspected under those laws, we have no objection, and we cannot have any objection.

It is not only the Indians who are in other countries who bank with us, but we hope that one day India may attract the custom of non-Indians in the countries where we open branches. Those people are accustomed to certain behaviorism on the part of banks, and if we cannot live up to the reputation or to the customs of those banks, we may suffer on account of that reason.

For example, the instance of Switzerland was cited. If at any time, we do get permission to open offices in Switzerland, we have to be on a par with the Swiss banks. We have not stated this in the memorandum but it is not merely the custom of the Indians settled there that we can ultimately live upon, for that will not at all be profitable to us. If through our efficient and proper dealings, we can attract the nationals of those countries or other nationals who are settled there, then only, India can be proud of all its bank branches outside the country.

Shri Rajendra Pratap Sinha: It was pointed out to the witnesses by some members that probably if the foreign depositors are assured that the branches of the Indian banks are run on a more scientific and controlled manner, perhaps, it will instil more confidence in their minds.

I understand from the note given to me by the secretariat that there is a provision for regular inspection in the Federal Reserves Act of the United States, and even in the United Kingdom, the law contains certain special provisions authorising the inspection of any office of a bank; the proposed amendment is salutary in character.

Therefore, what they are saying is very novel, that inspection does not take place in other countries. I do not understand the force of their argument against our Reserve Bank carrying on inspection.

Shri R. L. Tuli: Our reply to this contention is that the Federal Reserves Board is an organisation of the Federal Reserve Banks themselves, and not a quasi-government or government body.

Dr. B. Gopala Reddi: It is not an official agency, you mean?

Shri R. L. Tuli: It is an agency of the banks themselves.

Shri Thumpalliwar: I want to ask a question on a point which is not included in the memorandum. A suggestion is made to the committee that the word 'cashier-contractors' should be deleted from clause 6. I want to know from them as to how it will react on the working of the bank?

Shri R. L. Tuli: We have not raised that point. I personally believe that the deletion will not be proper. Banks find it better to have some man of means as a sort of an insurance to the bank as cashier-contractor and if he cannot be paid for the usual services rendered by him, it will be difficult. I will give an instance. Gold or jewellery is accepted by banks as security. He is a sort of insurance to the banks for any loss on that account. He used to get a small part of the interest earned on those loans. But this was stopped in 1949. We represented that we were losing the services of experts and were taking a risk by accepting ornaments as security which may not really be gold. On our representation, the Reserve Bank agreed that the guarantee broker and the cashier contractor should be there and any deletion of either of

them will be against the interests of the bank.

Shri Thumpalliwar: Is it minimising the risk?

Shri R. L. Tuli: It does. It is like an insurance to the bank. In case he goes wrong, he is responsible for the shortage of cash value of the jewellery accepted by us as gold which might later on turn out to be something else and not gold.

Chairman: Is he required to furnish security and all that and to enter into a contract? He is not a full-time servant.

Shri R. L. Tuli: The actual objection was that it was considered part of the commission and so the banks could not continue to pay the commission as part of interest earned. The remuneration is not stopped by this. It was the commission that was objected to under the old Act and this Bill purports to remove that.

Chairman: If you have anything more to say, you may do so.

Shri R. L. Tuli: With regard to the definition of the managing director, we have had to supplement our previous note. If our position in that note is accepted, we need not say anything.

Shri Morarji Desai: We cannot say now whether we accept or not.

Shri R. L. Tuli: In the Banking Companies Act, there is a definition and in the Companies Act, there is a definition. We really urge for uniformity of definition so that these terms are better understood under both the Acts. The definition under the Banking Companies Act is far superior and better. It is very difficult to suggest before this select Committee that the Companies Act should adopt this definition, but the Government may kindly take a note of this.

Shri Morarji Desai: They are looking into the matter.

Chairman: Thank you.

(*The witnesses then withdrew*).

The Committee then adjourned.

APPENDICES

I

MEMORANDUM

By

ALL INDIA BANK EMPLOYEES' ASSOCIATION, DELHI

In his introductory comments on the Bill, the Finance Minister has stated that the amendments to the Banking Companies Act in December, 1956 were made "with a view to extending the powers of supervision and control exercisable by the Reserve Bank" over banking institutions. The amendments now sought to be made one mentioned as "mostly of a non-controversial nature, in order to facilitate the application and enforcement of the Act". To our surprise, we find that though some of the amendments proposed are in the nature of improving the language or intended for administrative convenience, some vital changes in the existing legal provisions have been mooted in the Bill which hit at the basic policy which governs the Banking Companies Act. These changes are far from being of a non-controversial nature and should not be allowed to be put on the statute in the interest of national economy and also in the interest of the banking companies as credit institutions dealing in public money.

Banking is a key industry. Therefore, any law to be framed for it or any proposal intended for amending the existing laws on the subject should be made purely from national viewpoint. Some legal provisions governing banking companies, their functions and operations are already in force since 1949. The dreadful banking crisis of 1946 in the wake of which the Banking Companies (Control) Ordinance, 1948, and the Banking Companies Act, 1949, were put into effect are fresh in memory. The broad features which were responsible for the crisis were bad management, inter-linking of banks' resources with non-banking concerns through common management, imprudent and speculative advances and investments, non-provision of adequate reserves, window-dressing of accounts, extravagance in the matter of declaring dividends and so forth. (*Ref.* Banking Companies Liquidation Proceedings Committee's Report.) Above all there was complete lack of any authoritative control over the industry from the Governmental machinery or agency. In this background, the Banking Companies Act no doubt did bring about a healthy deviation from a state of anarchy. But experience indicates that the Act has limitation in various aspects. There are loopholes which necessitate plugging. That being so, the laws in respect of this industry should be reviewed and so revised or amended as will ensure greater and greater state control over banking institutions from the social viewpoint as well as in the perspective of economic reconstruction of the country. Necessity for this will be well realised if the Reserve Bank's directives to bankers in regard to advances against foodgrains are borne in mind. In short, the approach should be to extend more and more governmental control and strict control over the industry until such time as nationalisation of banking is made a reality. Phasing out of this programme of nationalisation should not be a long one.

The amendments/alterations proposed in the Banking Companies (Amendment) Bill do not lead to this position. Some of the drawbacks from which the industry had faced difficulties and the public suffered as a result and which to some extent were removed by the existing Act are now sought to be re-introduced in the present bill though in a different process.

MANAGEMENT—(*Bill's Clause* 6)

(a) The purpose of Section 10 (c) (i) of the Act, and it is healthy, is that a Banking Company should be managed by some official who should pay his entire attention to the Bank or its own subsidiaries which are intended to be analogous or complementary to its business as otherwise the interests of the bank will be affected adversely owing to the divided attention. The present provision is beneficially restrictive. The Bill's Clause 6(ii), *i.e.* the proposed additional sub-clause to section 10(c) (i) seeks to relax the restriction. It permits bank's Chief Executive Officer or somebody managing its affairs to become a director of any other company, not being its subsidiary, registered under Section 25 of the Companies Act, 1956. This goes against the existing approach to principle. The proposed addition will, in essence, lead to a proposition like interlocking of a bank's chief executive officer, managing director or general manager's position with that of a director of other types of concerns. Even though such concerns may not be run for profits to be distributed by way of dividends, the chief executive officer's attention to the bank will be distracted. The proposed proviso to the mooted amendment (rather addition) relaxing the short spells of 3 to 9 months, the inter-linking of the functions of a bank's chief executive officer and director of any other company will virtually become a continuous process with short breaks.

(b) The existing law [Sec. 10(1)(b) (ii)] prohibits payment of commission to an employee of the bank. Proviso (b) to the Bill's clause 6 authorises payment of commission to various contractor parties. Cashier-Contractors are also included. Cashier-Contractor system is nothing but the old "banian" system in commercial concerns. This system is outmoded and is gradually getting buried. The Bill seeks to re-introduce this which should be stopped. Bank's Cash Departments should be managed by the banks themselves, directly. This will save uncalled for expenses, and will protect banks from external influence exerted through Contractor-Cashiers, who generally represent organised business community and functions as Contractors-Cashiers in several Banks and Commercial concerns.

SMALLER BANKING CONCERNS—*vis-a-vis* SECTION 11 OF THE ACT (vide *Bill's clause* 7)

It may be mentioned here, that the restrictive provisions of Section 11, existing and/or with proposed amendments, are designed to check growth and expansion of smaller banking concerns and thus ensure functioning of larger units in fields of opulence like Calcutta and Bombay specially. It is true that banks which cannot attract share-capital should not be encouraged in as much as such banks raise deposits from public without risking its own (*i.e.*, its share holders') funds and tend to become irresponsible, still, the rigidity of minimum paid up capital and reserves for Calcutta and Bombay should be relaxed in the context of growing national economy and scope should be given to smaller institutions to trade in the field. Instances are no fewer where good banking concerns which have been functioning from before and doing honest business are struggling and a reasonable relaxation of the rigid legal provision in this respect will be helping them maintain ground and move ahead.

DIVIDEND DECLARATION WITHOUT WRITING OFF, DEPRECIATION ON INVESTMENTS, WITHDRAWALS FROM RESERVE FUND (*Bill's Clauses* 10 *and* 11)

The notes on clauses (p. 19) says that "if the securities concerned have not been sold and if a loss has not actually been incurred" appropriations from profits may be made before full writing off of the depreciation on investments in such approved securities. Theoretically, the proposition may be in order, but in reality one of the essentials of a banking company is its liquid resources in the event of an emergency and that being so, the depreciation on such investments has a direct bearing on liquid resources, because fluctuations in the market value of such approved securities (mainly Government Securities) in which banks invest their funds—tell upon the banks' resources when their conversion into cash becomes necessary. Declaration of dividend without neutralisation of the depreciation would be bad in banking principle and would serve the motive of exploitation of the profits without looking to the institution's as well as its depositors' interests. Rather, more stringent provisions should be made regarding dividend declaration. Restriction of dividend at a level is what is called for so that surplus profits augment capital formation and the institutions' positions are strengthened as against liberalised distribution of profits to the shareholders. Planned economy for the development of an under-developed country like ours demands such restrictions as to declaration of dividend and fixation of a maximum limit for dividend at 5 per cent. to 6 per cent. and where declared.

Apart from rigid restrictions on dividends, issuing of "bonus shares" should be prohibited. This is another measure of appropriating surplus profits over and above dividends and ensuring distribution of much larger amounts as dividends from subsequent years.

When employees, the human machines who turn their labour into profits for the banks, ask for minimum fair wages, bankers come out and argue that they are unable to increase employees' emoluments without raising the rates of interest on borrowers etc. Issuing of bonus shares is a glaring contradiction. Without entering into details of the question that banks can pay adequate wages to their employees and even increase them from their ordinary income without raising interest rate on advances, it can be well said that with the surplus available after imposing restriction of dividend quantum and prohibition of bonus shares, interest rates charged on advances can safely be reduced for benefits of banks borrowing customers. In short there should be a ceiling in the payment of dividends and prohibitions in the issue of bonus shares. Provision should be made in respect of proper accounting and distribution of banks profit and after a reasonable return on the share capital is given, and appropriate bonus to the employees is paid, any surplus remaining thereafter should be taken out of the banks concerned and deposited in a special account which is to be created on which the State should have full control. In the event of nationalisation of banks in future days, if any compensation is to be paid to the shareholders, it is to be paid out of such special funds.

Incidentally, a reference to the form of a banking company's balance sheet as in the third schedule to the Banking Companies Act is called for. Part 'B' of the Schedule dealing with profit and loss account provides that on the income side the amounts set apart as provision for bad and doubtful debts and other provisions out of profits during a year need not be shown, *i.e.*, the income may be shown less the provisions made. This leaves room for depicting

an unreal position of a bank in its Income and Expenditure Account with all its consequences and parapharnalia. Such provisions must be shown in the Balance Sheet so that the Balance Sheet exhibits a bank's position in all its details easily understood by all.

NEW BRANCHES OPENING

An undersirable feature of the banking system in our country is too much concentration of bank offices in larger cities and that too in limited congested areas. With the expansion of banking business and its rapid progress as a consequence of the Five-Year Plans, the recent trend as being observed is the opening of newer and newer branches by the larger banks, in places which are already over-crowded with offices of many other banks. Bombay, Calcutta and Delhi are pointed examples of this process while the role of the Banks is primarily to help develop the economy, the purpose cannot be fulfilled unless there is an expansion in the branch banking scattered throughout the country so regulated that there is an even distribution of bank offices in all areas without any concentration in particular areas. Although the State Bank of India has been opening numerous new offices according to recommendations of the Rural Credit Survey Committee, the scope and urgency of establishing offices of other banks in areas not yet served by banking facilities should receive primary consideration not only for the purpose of mopping up idle or uninvested moneys but also to enable the people of these areas to derive benefits from bank services.

Opening of new offices by larger banks in areas where smaller banks have been functioning develops avoidable competition leading to ruination of the smaller institutions and growth of monopoly control of credit facilities by larger concerns. It is, therefore, incumbent that provisions should be incorporated in the Banking Companies Act to so regulate branch opening as will not allow further concentration of bank offices in big cities and areas already served by offices of other banks and prohibit unhealthy tendencies of wiping out small banks. Small institutions should be protected so as to maintain availability of their services to small traders and customers who are not generally entertained by the larger banks.

AMALGAMATION OF BANKS—PROHIBITION OF WINDING UP OF BANKING COMPANIES

Taking over of other banks by the State Bank of India is now becoming a process beneficial to the community because of extension of the sphere of public sector over this vital industry.

As a result of the unhealthy competition referred to earlier, many of the small-sized banks are facing difficulties. Such difficulties might be the legacies of past imprudent and unscrupulous management, but with the system of Reserve Bank's inspections some standardisation in their operations might be in the offing. The question, however, is whether these banks should continue with such difficulties endangering the deposits of public and restricting business operations. The need today is, in cases where in the opinion of Reserve Bank existing banks are not being able to function economically or facing problems in complying with provisions of law relating to banking companies, Government or the Reserve Bank should direct their amalgamation with the State Bank of India. Here we insist that there should be amalgamation as going concerns and not transfer of assets and liabilities to the State Bank. Existing laws do not empower Reserve Bank to direct amalgamation of banking companies. The initiative is left with individual bank managements and if they approach then Reserve Bank enters

into the field only to report whether the combined unit will be able to serve the interest of the depositors. We feel that irrespective of whether particular bank or bank's management desire or not, if Reserve Bank so thinks, it shall have authority to direct amalgamation of banking companies.

Section 38 of the Banking Companies Act has given powers to Reserve Bank to take steps on its own for winding up banks under certain conditions, mainly if they fail or are unable to meet their debts and obligations. We consider it wrong and defective from the service-to-the-community point of view. Once a banking company has been allowed to be incorporated and commence business now or beforehand, such company has a great link with public directly as distinct from other companies whose existence or winding up affects the shareholders only. As such, banking companies must not be wound up. Everybody is aware that despite good intentions and legal provisions of a speed-up the winding up of banks is a long process ultimately affecting the depositors. In spite of addition of a full chapter to the Banking Companies Act, the position of those vitally affected regarding banks already in liquidation is precarious. Decades have passed. Still depositors have not received their dues. It is, therefore, imperative that there should be an end to the winding up of banks and law should provide that banks whose existence is not safe for the community should be straightaway merged with the State Bank so that the Govt. takes over the responsibility for these banks. The reason being that the Govt. allowed them to function, supervised their operations through Reserve Bank and Company Law Administration and if in spite of these the bank fail it should be Governmental responsibility with a view to serve the interest of the community.

The Policy should be to stop liquidation of banking companies any more and merger of such banks as are on the verge of liquidation under the present management with the State Bank should be the social and legal approach to the problem.

Voluntary winding up of banks is restricted by section 44 of the Banking Companies Act. But this restriction applies to banks which are granted licence by Reserve Bank under Section 22 *ibid.* Here the restriction itself is restrictive. It should not be limited to licence-granted banks only, no bank should have any right to voluntarily wind up its business. Such voluntary winding up often leads to swindling of public money by unscrupulous management and there are numerous instances of the kind.

Above all, amalgamation of uneconomic banks and merger with State Bank of India which otherwise would have been cases of liquidation must be a speedy process not encumbered by law's delay.

Prohibition of Malpractices

Bankers treat their books and records as too secret in the name of protecting customers' interests. They make too much fuss about it. Production of books and records are refused even to the Court of Law like Tribunals. We understand that often records are not made available to Reserve Bank Inspectors. Why this is so? Malpractices in business operations, dodging of law, unscrupulous use of public money, etc., are, in our opinion, some of the cogent reasons. Mundhra affair, Shanti Prasad Jain's case, Bhagwandas Goel's issue, loss of lakhs and crores of rupees to banks due to collusion of anti-social and unscrupulous persons with top officials and directors of banks are pointers on the subject. Positive measures are, therefore, absolutely necessary against these situations if the country's banking institutions are to be improved and banking habits are to be developed among the people by creating greater confidence in banks.

Such malpractices are eating into the vitals of banking system. In spite of adequate information and reports against banks and their management there is no instance to our knowledge where public action has been taken against such officials or banks or bad management have been removed from office by the Govt. or Reserve Bank under legal authority. Strong and direct measures are essentially to be provided for in the Act in this respect.

In spite of inspections by the Reserve Bank, audits by Chartered Accountants, internal auditors, etc. speculative, unscrupulous, anti-social and even anti-national deeds are perpetrated by bank managements and they do not come to light. It is here that the co-operation and assistance of the banks' general employees, other than those at the top, are required. They should be encouraged to disclose the managements' malpractices and for that appropriate and adequate protection must be given to them from the wrath of the bankers for such disclosure. Employees' Associations' representations in respect of the Bank's working must be given due recognition and value. Banks' employees are much more interested in the banks than the shareholders and this interest is not confined to the question of wages alone. Through this process it will be possible to successfully eradicate malpractices and corruption in banking concerns. Apart from such representations law should provide for and make it effective that representatives or employees' associations is/are included in the policy making bodies of banking companies.

In the light of what has been stated above we suggest that the following changes should be made:—

Bill's Clause 6—(p. 3)—*Delete* the words "Cashier-Contractor".

Both the sub-clauses (a) and (b) should have retrospective effect so as to mean that these clauses were as if in force from the commencement of the Act.

Bill's Clause 6—(p. 3)—lines 26—30 should be deleted.

Bill's Clause 7—It should be further amended so as to obviate certain difficulties faced by the small banks which are functioning properly in spite of technical disabilities.

Bill's Clauses 10 *and* 11.—Sections 15, 17 and 18 of the Act—*Delete* the clause upto line 36. Rather now amendment should be brought so as to restrict the payment of dividends and prohibit issue of Bonus Shares in the Banking Industry.

Bill's Clause 11—(p. 5), (p. 6)—Section 18 of the Act—*Add* in Page 6, line 2, after the word "behalf", "as also with Co-operative Bank and Post Office Savings Bank Accounts".

Matters discussed in the Memorandum but in respect of which specific form of amendments have not been suggested should be taken into consideration and suitable provisions should be made while finalising the Bill.

II

MEMORANDUM

By

INDIAN BANK'S ASSOCIATION, BOMBAY

A

The above Bill has been introduced in Parliament during its current Budget Session to amend further the Banking Companies Act, 1949, which is referred to below as the Principal Act.

Clause 2

In clause 2 of the above Bill "branch" is defined as any branch or branch office where any of the forms of business referred to in sub-section (1) of Section 6 of the Principal Act is transacted. In this connection, we may state that a few forms of business, such as holding of property as security for loans and advances, may be transacted by a bank at places where it may have only a godown and no branch, but that according to the above definition, the opening of such a godown station will require the permission of the Reserve Bank of India and subject the bank concerned to unnecessary inconvenience. Further, if a bank carries on business as provided in sub-sections (g), (k) and (l) of Section 6 of the Principal Act in any place, at which it has no branch, according to the above definition of branch, the bank cannot transact the above business without the previous permission of the Reserve Bank. This also will subject banks to unnecessary hardship. It, therefore, appears that the definition of "branch" requires suitable amendment.

Clause 6

Section 10 of the Principal Act lays down that no banking company shall be managed by a person who is a director of any other company, not being a subsidiary company of the banking company. Clause 6 of the Amending Bill substitutes the following for the above clause of the Principal Act:—

"No banking company shall be managed by any person who is a director of any other company not being—

(a) a subsidiary of the banking company, or

(b) a company registered under Section 25 of the Companies Act, 1956,

Provided that the prohibition in this sub-clause shall not apply in respect of any such director for a temporary period not exceeding three months or such further period not exceeding six months as the Reserve Bank may allow."

In this connection, our view is that there may be cases where the officiating manager of a banking company may have to function in this capacity for a period longer than 9 months provided at the end of the clause referred to above. We, therefore, suggest that this period may be extended to two years.

Clause 20

This clause amends Section 35 of the Principal Act and adds the following explanation:—

"Explanation.—For the purposes of this section, the expression "banking company" shall include—

(i) in the case of a banking company incorporated outside India, all its branches in India; and

(ii) in the case of a banking company incorporated in India, all its branches whether situate in India or outside India."

We are not in favour of giving the Reserve Bank the power of inspecting foreign branches of banking companies incorporated in India, for the following reasons:—

1. The grant of such power *now* may create a wrong impression upon the minds of the people of the foreign areas in which branches of banking companies incorporated in India are situated, especially as the branches of other banking companies situated in the same areas are not subject to inspection by their respective Central Banking Authorities.

2. Indian nationals having their accounts with the foreign branches of banking companies incorporated in India, may feel that the Reserve Bank has been given the power of inspecting these branches at the instance of the Indian Income-tax authorities and may transfer their accounts to the branches of other banks which are not subject to this inspection.

Moreover, it does not appear necessary to grant this power to the Reserve Bank, as such branches cannot be established by banking companies incorporated in India without the previous permission of the Reserve Bank, which can ensure that only banking companies having a high standing, full trust and confidence both of the public and of the authorities are allowed to open branches abroad. Virtually therefore the Reserve Bank has and can exercise this inspection. Why then should Government specially seek to give it such additional powers of control?

In this connection, it may be urged on behalf of Government that the Federal Reserve Act of the United States gives similar powers to the Federal Reserve Board to inspect the foreign branches of its member banks. Our reply to this contention is that the Federal Reserve Board is an organisation of the Federal Reserve Banks themselves and not an official organisation, whereas the Reserve Bank of India is practically an official organisation. Moreover, the banking system in India has been developed on the British model and the Bank of England has no powers of inspecting any offices of the British banks. Banking in India has still a long way to go. For that legitimate growth and progress as few powers of control as possible should be put on the Statute Book.

Clause 21

Clause 21 subjects the remuneration of ordinary directors also to Section 35B of the Banking Companies Act which provides for the approval by the Reserve Bank of the appointment and remuneration of managing or whole-time directors. Directors of banking companies in India receive remuneration in the form of director's fees or special remuneration for performance of specific duties and out-of-pocket expenses. It is not understood why such remuneration should be made subject to the approval of the Reserve Bank. This clause is likely to lower

the prestige, position and honour attached to directors of banking companies in the estimation of the shareholders, depositors and other members of the public.

In this connection, it may be urged on behalf of Government that this clause is intended to harmonise the provisions of the existing section 35B of the Principal Act with those contained in section 310 of the Companies Act, 1956 and that any discrimination in favour of the directors of banking compan es exempting them from the provisions in the Companies Act, which should normally be applicable to them, cannot be justified. Our reply to the above contention is that directors of banking companies should not be put on a par with directors of other joint-stock companies and that, by the very nature of their responsibilities and status, directors of banking companies should be treated with special consideration and should be shown greater confidence. There is no question of harmonising the provisions of the existing Section 35B of the Principal Act with those contained in Section 310 of the Companies Act. For instance, directors of joint-stock companies under the Indian Companies Act are entitled to a commission on profits. This is rightly prohibited by the Banking Companies Act in the case of directors of banking companies. Further, in none of the other enlightened countries of the world is the Central Banking Authority vested with the power of controlling the remuneration of directors of banks. Actually, from such information as we have been able to gather, we find that bank directors are paid much more in various forms in other advanced countries like the United States of America, United Kingdom, West Germany and Japan. Bank directors in the United Kingdom, for instance, are given an annual remuneration of £1,000 and above, in addition to various fees and amenities which are provided for them during their visit to the City.

Clause 26

Clause 26 extends the Reserve Bank's power to apply to the court for the winding up of banking companies, wherever this is considered necessary. The wording of this clause is so wide as to give almost unlimited powers to the Reserve Bank to apply to the court for the winding up of banking companies. We do not think it desirable or even necessary to give such powers to the Reserve Bank.

In this connection, it may be urged on behalf of Government that the powers conferred by this clause upon the Reserve Bank are intended to be exercised in cases where banking companies are not functioning normally and the circumstances generally are such that the interests of the depositors have to be protected. Our reply to this contention is that the necessary powers in this respect with regard to all companies are provided by the Companies Act and other legislative measures. These powers should suffice in the case of banking companies also. We cannot understand the reason for investing the Reserve Bank of India with special and wide powers with regard to banking companies only.

Clause 33

This clause extends the penalties leviable under Section 46 of the Principal Act, so as to ensure compliance with the requirements of the Act by certain officers to whom it does not now specifically apply. We do not approve of this extension, because there are genuine difficulties regarding filing of returns particularly on account of the difficulties of obtaining returns from distant and small places where the banks cannot afford to maintain competent and therefore highly paid staff. The imposition of such penalties is likely to cause hardship to banks, to interfere with the normal working and to check the expansion of banking to remoter areas.

In continuation of our earlier memorandum we write to invite the kind attention of the Joint Committee of Parliament to the fact that the definition of Managing Director given in Section 2 of the Banking Companies (Amendment) Bill, 1959 proposing to amend Section 5(h) of the Banking Companies Act, 1949 differs materially from the definition of Managing Director given in Section 2 of the Companies (Amendment) Bill, 1959 proposing to amend Section 2(26) of the Companies Act, 1956. As Section 314 and some other Sections of the Companies Act, 1956 apply to Managing Directors of banking companies, we request the Joint Committee of Parliament to be good enough to consider the matter.

GMGIPD—LSI—554 (B) LS—3-8-59—1,000.

PRINTED AT THE PARLIAMENTARY WING OF THE GOVERNMENT OF INDIA PRESS,
NEW DELHI AND PUBLISHED BY THE LOK SABHA SECRETARIAT UNDER
RULE 382 OF THE RULES OF PROCEDURE AND CONDUCT OF BUSINESS IN
LOK SABHA (FIFTH EDITION)