[Shri Ranga]

why the Government want to stick to those rules—I do not know when they were passed—and avoid spending even small sums of money in order to take advantage of the sub-ways which are already there. If they want to construct new sub-ways or over-bridges, it would cost them very much. But if there are sub-ways which are already in existence, I do not know why Government should be unwilling to change their rules, which have been formulated long ago, to take advantage of the facilities which are already there. I would like the Government to give consideration to this matter and change the rules.

Mr. Speaker: Now the Minister.

Shri Nambiar: He might answer my point also. How many divisions are going to be there?

Dr. Ram Subhag Singh: In this Bill we have asked for an appropriation of only Rs. 10,000 and this is in regard a preliminary engineering-*cum*-final location survey for a proposed Railway line between Dantewara and Bhadrachalam. In this Bill, Professor Ranga has raised the question of level-crossings. As he knows, there are over 33,000 level-crossings in this country.

Mr. Speaker: He is not talking of all those 33,000; he is talking of only one. Therefore, he might consider it.

Dr. Ram Subhag Singh: Whatever we are going to do at one particular level-crossing shall have to be done in the case of all other similar level-crossings.

Mr. Speaker: Why should he refuse Professor Ranga immediately?

Dr. Ram Subhag Singh: I am not refusing. In the larger context we shall examine the question which Professor Ranga has raised and if it can be done it will be done.

Mr. Speaker: Shri Nambiar was enquiring about the news which has appeared in the papers about the creation of a zone.

Dr. Ram Subhag Singh: That will be taken up later on.

Mr. Speaker They have been asking for the creation of that zone for some time and nothing was said on that point. Yet, today's papers do carry the news that a zone has been created, or a decision has been taken.

The Minister of Finance (Shri T. T. Krishnamachari): I may mention that this matter was discussed subsequent to the point raised by the hon. Member.

Mr. Speaker: The question is:

"That clauses 1, 2, 3, the Schedule and the Enacting Formula and the title stand part of the Bill".

The motion was adopted.

Clauses 1, 2, 3, the Schedule and the Enacting Formula and the Title were added to the Bill.

Dr. Ram Subhag Singh: I beg to move:

"That the Bill be passed".

Mr. Speaker: The question is:

"That the Bill be passed".

The motion was adopted.

13.07 hrs.

COMPANIES (SECOND AMENDMENT) BILL—*Contd.*

Mr. Speaker: The House will now take up further consideration of the following motion moved by Shri T. T. Krishnamachari on the 17th December, 1964, namely:

"That the Bill further to amend the Companies Act, 1956, be referred to a Joint Committee of the Houses consisting of 45 members, 30, from this House......".

Shri Surendranath Dwivedy will continue his speech.

Shri Surendranath Dwivedy (Kendrapara): Mr. Speaker, yesterday I was pointing out that in spite of the wide powers given in the law, the Government has failed to take adequate measures to stop the malpractices and specially the record of the Company Law Administration, which is entrusted with this task, is very

miserable. The Company Law Administration, if I may say so, has not at all taken any initiative in this matter of inquiry. I was referring to the Mundhra deal. Even that matter came up because of some criminal cases filed by some directors; not on account of the investigation or action by the Company Law Administration of Government.

13.08 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

The Daphtari Committee, in the course of their observations, have stated about investments made by companies in their own names except in special circumstances provided therein, the fictitious transactions and yet Government not taking any action even though section 49 of the Companies Act, 1956 provides sufficient punishment in such cases. They have commented that the section provides ample safeguard against this tendency. So, the remedy seems to lie in the effective enforcement of the provisions of the Act, prosecuting the delinquent directors and getting them punished. In that background, in spite of the powers given to Government, I do not think any desirable results are expected even after the passing of this measure.

In this connection, I may again refer to what has been stated by the Vivian Bose Commission itself. It has stated that unscrupulous men with money who could buy friends at will, exploit them to their advantages. In this connection, I would like the Finance Minister to tell us how far the Company Law Administration has been re-organised in such a manner as to implement or enforce these laws effectively.

Then, it is not only the big business houses which are not touched. They have not taken action even against the officers who are responsible for this negligence. Here, I would like to refer to the appointment of Shri Chopra as inspector to go into the working of some of the companies of the Dalmia-Jain group.

I would like to know who was the officer or who was the Minister responsible for recommending the name of this particular person, Mr. Chopra who himself is now being prosecuted for some serious charges. If he has at all submitted any report, will this report receive any consideration in any court of justice and will it be justifiable to take any action against any company against whom he might have reported?

So, the first thing necessary in this connection is, when the Government are taking more powers, that the administration of the Company Law Administration must be re-organised. The Daphtary-Sastri Committee have mostly devoted their attention to, and have made some recommendations about, the investment policy. As you know, Sir, it is clearly stated in many of these reports. that there is also manipulation of shares to control management. As I have stated earlier as regards this matter, the Bill does not go far enough. One common feature of malpractiecs in these companies is blank transfers and reservation of shares in blocks. This puts the shareholders to a distinct disadvantage. Then, through interlocking of companies and through expansion of unrelated enterprises, like a textile company expanding its share issue to other enterprises as petro-chemicals etc., manipulations are made.

Shri Hari Vishnu Kamath (Hoshangabad): On a point of order, Sir. I am sure, you will agree that there should be quorum in the House during the debate on this important Bill.

Shri Nambiar (Tiruchirapalli): It is a must.

Mr. Deputy-Speaker: The bell is being rung....Now, there is quorum. Shri Dwivedy might continue his speech.

Shri Sundendranath Dwivedy: According to me, the managing agency system is the real root of the trouble.

[Shri Surendranath Dwivedy]

Shri Masani was referring to a speech of the Finance Minister and said that he has threatened that gradually the system will go. I would have expected the Finance Minister not only to threaten but to provide in this very Bill that the managing agency system would be abolished. After a good deal of experience it has been seen that the managing agency system has served its purpose and this a source of real malpractices now. Shareholders have absolutely nothing to do with the business; they have no voice. There are certain agencies which they create which go on committing several subterfuges. Therefore, this Bill should have contained an amendment to abolish the managing agency system altogether.

Then, there is the question of stock exchanges to which Government should pay some attention also. If there is no discipline and no correcting influence, there is no future for industry. About this, I think, some attention should have been paid.

About the provisions of the Bill, I will just want to have a clarification from the Finance Minister. I was not satisfied on reading clause 5 of the Bill. One of the main recommendations of the Daphtary-Sastri Committee was about the statement of objects in the memorandum. It has been poined out by Shri Morarka in the course of his speech as to how even Government companies have such omnibus objects which include everything in the world and they can manipulate in any manner that they like. Of course, in the case of a Government company one would not expect any such danger. But it has been seen even during the course of inquiry into the Dalmia-Jain concerns that because they had included supply of vehicles etc. in the statement of objects, they manipulated it in such a way that crores of rupees were lost to the company and the actual beneficiaries were some other persons. I think, in the recommendation they have specifically stated that whenever the objects are to be changed or anything has to be done, newspaper advertisement announcing the flotation and the specific objects should be made and equally prominently the advertisement should be published if they are taking up any other business or anything. In this amending Bill I do not find whether anything has been mentioned specifically about this, although there is mention of a special resolution that they have to adopt before they do anything. All these things are there, but I want to know whether the specific recomendation made by the Daphtary-Sastri Committee is there or not.

I would also point out to clause 9 of the Bill which amends section 69. It is not quite clear to me. When one reads the previous section 69, one finds that there was a penal provision for the contravention of rules of a fine of Rs. 5,000. Now, sub-section (4) of section 69 is proposed to be substituted by a new sub-section and that particular penal provision does not find a place there. Of course, subsequently when they seek to amend section 73, there is a mention of it. But I would like to know why it is that this particular matter was omitted in this section when they seek to amend it.

About audit and other things, I need not say much and there is no time. But it is necessary that we must set up a cost accounting cell to keep a check on the price structure. If that is not checked, whatever other measures you may take, according to me, it will seriously put the entire economy out of gear.

Shrimati Renuka Ray (Malda): Mr. Deputy-Speaker, Sir, in December 1963, when an amendment to the Companies Act was brought before this House, the House asked for a comprehensive measure and the Finance Minister said that he hoped to bring one during the succeeding Budget session whihc was the 1964 Budget session.

Anyway, this comprehensive measure has at last come. So, it is better late than never. I am glad that there are some very salutary provisions in this Bill.

As the statement of objects and reasons says quite clearly, this Bill has taken into account the recommendations of the Commission of Inquiry on the administration of Dalmia-Jain companies as well as the Daphtary-Sastri Report. This is exactly what had been wanted. This Bill is now going to a Joint Committee and the Joint Committee is to report at the end of the first week of the next session. I hope that in the next session, soon after the Joint Committee reports, and if this report is not delayed, we shall be able to enact this legislation so that it becomes law during the Budget session of 1965, which will mean one year later.

As I said, some of the provisions are extremely salutary, one of which I would like to mention particularly. That is sub-clause (ii) of clause 3, which says:

> '(ii) in clause (3), after the words "manager or secretary", the words "or any person in accordance with those directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act" shall be inserted.'

We have seen from some of the malpractices that came to light after the Inquiry Commission's Report and by the recommendations of the Daphtary-Sastri Committee, that it seems to be usual and it is so today also for someone to act from behind and someone else taking the blame if it was found out. I think this widening of the definition should help the Government to get at the real culprit.

Then, I come to clause 5. It has been talked about a great deal. I think this is a very, very important provision here to provide for the main and subsidiary objects of the company. Yesterday, Mr. Morarka made a very clever speech and he was pleased to ridicule the Govenment because in some of the Memoranda of Association of some of the public undertakings a large number of objects were written down. It sounds quite amazing on the floor of the House to bring out this list. But nevertheless this list is quite a necessary list. It may deflect one from the argument but it is no counter-argument to the fact that this is a very important provision, and I am very glad that the Finance Minister has actually brought it and I am sure the Joint Committee will consider retaining it as it is.

Clause 13 is, of course, one of the major clauses of this Bill dealing with prevention of blank transfers against which both Mr. Masani and Mr. Morarka raised objection. Even in U.K., they have the same system of preventing blank transfers in this way so that a good deal of transactions which bring in all these abuses can be prevented. I am glad that this provision is here in this Bill.

Similarly, clause 22 deals with suitable and effective auditing. The hon. Member who preceded me spoke about it. I entirely agree with him that proper arrangements for cost accounting are necessary and that a cell for that also should be there. I am very glad that this particular provision is in the Bill. One can enumerate a number of provisions. As the Finance Minister pointed out yesterday, there are 19 such provisions which follow the recommendations of the Inquiry Commission and the Daphtary-Sastri Committee and they are all healthy provisions. I am suprised to hear both Mr. Morarka as well as Mr. Masani to say that those conditions no longer exist for such provisions. They have said that the conditions existing before the amending Act of 1956 came in, are not operating any longer and as the Company Law Administration has been tightened up since 1956 and there is now discipline in the corporate

[Shrimati Renuka Ray]

sector, it is not necessary to have these provisions. What do we see around us in the country? Is that true? Is there such discipline in the corporate sector? Why do we have so much tax-evasion? Why is there so much unaccounted money? Why this infringement of foreign exchange rules and all that? There are so many other malpractices that still continue and, in fact, are getting, if anything, worse. It is true that the Company Law Administration was tightened up somewhat in 1956. But certainly these provisions are absolutely necessary and I only hope that by having these provisions, it will be possible for the Government now to be able to take action against those who infringe these things. I would also make an appeal to those who are good businessmen, those who really believe in keeping the canons of business or even keeping the letter of the law, because they at least have some business ethics, to support this. But when we look around, there is little of that element in this country. If there are any good businessmen who believe in keeping the business ethics and only flouting or going in for tax-evasion as in other countries according to the devices that the law allows, even they should come forward and support the Finance Minister so that this bad name that the Indian business has got may be gradually eliminated and that the bad name the business community has because of all the malpractices and abuses that go on and have increased of late, should be eliminated so that the private sector at least in our mixed economy may be considered to be one which is helping towards the nation's progress. We have accepted the mixed economy. We do not want to curtail or curb the private sector in such a manner that they cannot help in industrial growth. But it must be regulated. We cannot have the law of the jungle prevailing in this matter and those who talk in terms of complete *laissez faire* seem to want the law of the jungle. That is why they are objecting to the provisions of this Bill which they should welcome. They should welcome the regulatory measures in companies through which the industrial growth will be able to go forward better.

There is one point more which has been brought up and which I hope the Joint Committee will take into consideration to the extent it is empowered to do and that is in regard to simplifying the procedures. The Finance Minister has told us that so many of the clauses are to simplify the procedures and that is a good thing. But perhaps the procedures could be further simplified. There is no doubt the fact that we have to amend the laws so frequently that it leads to a confusion and it has all to be sorted out. I hope this will be so amended, after the Joint Committee report, that it will not be necessary for a long time to amend the Companies Act. I hope further simplification can be brought about so that the law can be made easy for those who administer and those who have to conform to it. I think such measures will be taken. But, in taking those measures, it is absolutely necessary that the provisions through which malpractices are stopped and eliminated, are there in full strength and, if necessary, the Joint Committee might suggest ways and means by which they can be further strengthened. I hope it will not weaken them in any way so that eventually the private sector that we allow in the mixed economy can be a healthy sector and help towards the nation's economic growth and prosperity. With these words, I support this Bill for reference to the Joint Committee.

Shrimati Sharda Mukerjee (Ratnagiri): Mr. Deputy-Speaker, Sir, I welcome this Bill. It is not only long overdue but in view of the report of the Vivian Bose Commission together with the Daphtary-Sastri recommendations, it is most essential that we do something about it and act on their recommendations.

Within the last few years, not only has there been a great deal of indus-

trial growth in our country, but the investment of the public has increased considerably and so it is most necessary that the Government should take such action as is necessary to provide adequate safeguards to the share-holders primarily and in the wider sense to the society as a whole. Of course, this buccaneering and pirating of the type that is being perpetrated in some public limited companies, if allowed to continue, I fear, may endanger the entire economy of the country. In the Statement of Objects and Reasons, the intentions of the Bill are clearly stated. It is proposed mainly that with the passage of this Bill the following things may be achieved, namely ensure due and proper administration of the funds and assets of the companies in the interests of the investing public, have a better and stricter governmental control with better investigation of the affairs of a company and more effective audit, and thirdly, simplify some of the procedural matters.

It has been suggested by some Members that there have been far too many amendments to the Companies Act within a short time. Perhaps, they are right in saying that Government should have given this matter more thought with a view to bringing forward a comprehensive legislation applicable to the corporate sector. Piecemeal legislation introduced at frequent intervals does create some instability in the money market. But, frankly speaking, if there is a temporary slump, it may well be caused by vested interests, but if it is a more lasting slump, then it is obviously due to some deep-rooted economic reasons and it has nothing whatsoever to do with the tightening up of the Government control to stop the misuse of managerial powers and privileges.

Business can become an alternative and private government, and that is contrary to the very basic ideology of our Government to work for the social and economic welfare ofw our people. Even Hobbes in those early days of British industrialisation had introduced the concept of business being a lesser commonwealth.

To begin with, corporate funds are other people's money held in trust. Therefore, one cannot obviously operate them or dispose of them as freely as one would do one's own money. So, to use these funds for one's own benefit or for the benefit of one's friends and relations and thus abuse the money kept in trust is tantamount to a breach of faith. Similarly, corporate power must at all times be necessarily exercisable only for the benefit of the shareholders. So, clause 46 regarding loans, which provides for a maximum limit of 20 per cent of the aggregate of subscribed capital and free reserves of the lending companies in the case of companies being managed by the same management and 30 per cent of the subscribed capital and free reserves where the companies are managed by different managements, is I believe, an essential clause.

The annual reports of the Company Law Administration cite cases of tax-evasion by the diversion of money from a flourishing company to a company making losses, and such practices are indeed tantamount to defrauding not only the investor but the State. It is maintained that shareholders can object to such things in an annual general meeting. But we know only too well how little is the influence of the shareholders, scattered as they are and uninformed as they are. In fact, the sharehoulders obey the management, and not the management the shareholders. The shareholders have little authority, and the management usually sees to it that there is a majority support for it in an annual general meeting or an extraordinary general meeting. So, in reference to clause 15 which requires the sanction of the shareholders of the company by a special resolution passed at a general body meeting, to my way of thinking, has little meaning. In fact, it typifies what is referred to as dead letter. We all know what happens in these general body meetings when

[Shrimati Sharda Mukerjee]

such a resolution is to be passed. The management sees to it that it has the right majority, and, therefore, I feel that to put this restriction which Government cannot see implemented, is of little use. On the contrary, this provision can and may be misused by some interested parties. For instance, it has become a habit, I know, in some of the shareholders' meetings in Bombay; there, one single individual or stock-broker who is obstreperous has even resorted to blackmailing, and this can indeed be a very harassing thing for an honest businessman. Recently, I heard in Bombay that a certain club, I believe, an automobile club, which had property in a very valuable area of Bombay, the value of which is usually considered to be about Rs. 700 per square yard, had disposed of it;—the directors had disposed of it—at the rate of about Rs. 150 or Rs. 175 per square yard.

I would like to know whether the provisions of the legislation provide the necessary guarantees. The test should be whether the provisions in a piece of legislation provide the necessory guarantees and whether those provisions can be implemented. If we enact such legislation as can be misused to the disadvantage of a small man or an honest man, then I think that we shall be putting undue restrictions and bringing in undue rigidity in the legislation. So, I hope the hon. Finance Minister will consider this matter, especially when this Bill goes to the Joint Committee, and make the necessary changes, if he so thinks fit.

I understand that in the United Kingdom, the objects of business are left more flexible, and it is necessary to declare only the main objects of business, not specified objects of business, nor all the objects.

The management is necessarily responsible for the proper utilisation of the investors' money. It is understandable, therefore, if the profit motive is the most important consideration. But the management has also to think of the labour, the supplier, the purchaser and also the consumer. Improper and fraudulent use of the money under their control can affect all these people, and it can affect also the cost of production, the availability of the commodity to the consumer etc. So, I think that State control is imperative and inevitable in a modern democratic society.

Lastly, I would like to say that the importance of this legislation lies in its implementation. If the administration is found lacking in fulfilling its responsibility, this will be just a piece of paper, or in the alternative, if the powers vested in the tribunal are misused so that they work to the disadvantage of the honest man and if they become a means of harassment through unjust operation or through prejudicial operation, then the good intentions underlying this Bill will be nullified. But I think that it is important to remember that for any law to be effective it must have the sanction and co-operation of the society as a whole. If it should have such sanction and such co-operation, then it must necessarily work for the large majority of the society. It must work with equal justice for all concerned, not to the advantage of those few men who have access to the right quarters, who have influence and who have money. If the law works in their favour and against the small man and against the honest man, then indeed this law will become just a mockery as some of the other pieces of legislation which have ben enacted in this country.

For example, I would like to mention the powers for search and seizure. These are very great and wide powers. They can be used well in the interest of society, but they can be misused also. A man's good name and a man's dignity are of great importance to him, not only personally but also professionally. It has been said to me that if it is possible for a dishonest man in a high bracket of income to earn Rs. 100 and keep every single rupee

of that, and at the same time, if an honest man who earns Rs. 100 finds it impossible to keep even a rupee, then indeed the law is unjust. Therefore, the law must apply equally and with equal justice to all. I trust the Government realises that this Parliament gives it wide powers, and also that such powers will be used with caution and a sense of responsibility. With these words, I support the Bill.

Shri U. M. Trivedi (Mandsaur): Mr. Deputy-Speaker, Sir, while the memory of the Companies Amendment Bill which was enacted only very recently is still very much in my mind, I feel that this is an inroad, which was virtually envisaged when we started with the conception of a welfare state. The Government had probably made up its mind then that we must have no private sector left and we must have only the public sector left. With that end in view, we started inroads into the private working of private individuals to deprive them of the liberty of action which was usually contemplated in company law. Slowly, but surely we were feeling our way to seeing that private ownership and the running of business by private individuals, their freedom of thinking, must be destroyed.

Having achieved what they wanted to achieve by amendment of the old company only four years ago, they have now come with this new picture which, as the statement of objects and reasons says, is consequent on certain reports made by Mr. Justice Vivian Bose and the Daphtary-Visvanatha Sastri Committee. To my mind, this new law will only create greater dishonesty and bring about more ingenious methods on the part of the mercantile community to get out of the various restrictions and inhibitions being introduced by means of this law. Unless and until we rise, and the national spirit rises with it, and corruption is rooted out, these pin-pricks which are being placed on the statute book are not going to give us the hold we want or remedy the ills that have set in. It will certainly bring about a state of affairs whereby we may say that we have got greater squeezing power over the mercantile community in the sense that for every little thing they will have to run to a government officer for his sanction in one way or other, with the net result that the dishonest officer will make more money than he does today. The object may be very laudable, but it cannot be served by the amendments now contemplated. The old law is not yet old; I should say it is still so fresh that even the ink on the paper on which it was written has not dried, and we are now coming forward with a large number of amendments. These amendments, brought in this piecemeal manner, create difficulties in administration of law.

Who benefits thereby? The people who want to derive any benefit thereby are those officers whose duty it is to administer the law. They derive the greatest benefit out of it, and the Government derives none. It creates, in my opinion, a sort of brake on the smooth working of any administration. It is a well-known saying, and it has been the experience of some very senior officers and some Ministers also, that our bureaucrats know so many methods of applying brakes that no work of Government can be carried out smoothly. But none of them knows how to apply grease so that the machinery may work smoothly and properly. It is this unfortunate circumstance which exists and which is desired to be perpetuated by the introduction of these amendments.

I will draw your attention to cl. 3(ii) which suggests that after the words "manager or secretary", the words "or any person in accordance with whose directions or instructions the board of directors or any one or more of the directors is or are accustomed to act" shall be inserted. The law is to be fastened upon a man who has absolutely nothing to do, who is

[Shri U. M. Trivedi]

not directly or indirectly concerned, with the administration of company law, but who may happen to be a friend of a director and who may virtually for nothing, and gratis, have given some advice or guidance—which generally happens in the case of a director who may certainly not be very ominiscient. For giving that advice or direction, is the person who has given it gratis to be brought in? In this world of ours we know that everybody seeks advice, everybody gives advice, but nobody takes it. Here, even if the man does not take it, the man who has given it will be held responsible for an act which has been done by another. This fallacious provision is, I should say, in the extreme, an absurdity unknown in the administration of law.

We know that in criminal law, there is accessory before the fact and accessory after the fact. But here, there is no question of accessory because the very definition is 'any person in accordance with whose directions or instructions the board of directors or any one or more of the directors is or are accustomed to act'. What is this 'accustomed to act'? A most vague term has been brought into the picture. How long will we act upon this vague nature of the law? Enactment of law in such vague language is really, to my mind, a thing which should have been stopped long ago.

Dr. M. S. Aney (Nagpur): This is based on the recommendations of the Vivian Bose Commission.

Shri U. M. Trivedi: To say the least, I personally doubt very much and think, with all respect to the great learning that Mr. Justice Bose has, that he had not much knowledge —I could see this by reading the report—of company working. The business acumen that a man possesses or the knowledge that man possesses in the working of a company goes a long way in realising the difficulties of an operator of a company. The recommendations of a scholar, a mere judicial officer who has never in his life laid his hand upon the running of a concern, who has no practical knowledge, are not of much value, and they ought not to have been put at such a high level at which they have been put and accepted.

In Clause 11, we have put an embargo on all paper transactions. I remember that often some wooden-headed persons make the assertion:

"हम तो नगद से काम करते हैं"

That is, you pay cash and you take cash. This provision is of a similar nature. If there is a foreign collaborator, you have got to pay him for the technical advice received from him; if there is a foreign technician, you have got to pay him for the general knowledge he possesses which he uses for promoting the company. He has got no money. You have got to assign certain shares to him, and unless and until you assign the shares to him, he will not part with the knowledge that he possesses. So, I cannot understand what is contemplated by making this provision for cash.

A very intelligent man with very intimate knowledge of a particular technical line has got no money, but if he has got knowledge, that is converted into money. He is not able to pay cash, and therefore, the company is not able to buy his knowledge. So, what will the company do? That pauper, without a farthing to his credit, will open an account in a bank, and issue a cheque in the name of the comturn, will pay a cheque for Rs. 10,000 and in consideration of having received that cheque, the shares will be issued to him. The company, in its turn, will pay a acheque for Rs. 10,000 in his favour, which he can endorse back. Why should such a foolish transaction be entered into, why should such a provision be necessary?

Dr. M. S. Aney: Do you not know that there are bogus directors?

Shri U. M. Trivedi: I know it. I have great regard for Dr. Aney, and

I take it that it is a very wise suggestion that the bogus directors should be driven out, but at the same time, will it not hit the man in the case I have narrated? The technician or the man with technical skill or the collaborator will not be able to work with you till money has passed. It will cut both ways. So, a *via media* ought to have been found, and more honest people ought to be allowed to come in. The root cause of this dishonesty ought to have been wiped out. Instead of that, we are presuming that every one is dishonest, and we want to make a law to catch hold of the dishonest persons. That is why I added a preamble, when I started, that the root cause of all this appears to be dishonesty and corruption which has spread in the whole nation. It is that which requires to be rooted out. It is not this law which is required. Will it not be possible for these dubious directors to pass one cheque and get another cheque?

The new sub-section (1A) to be added to section 108 of the principal Act by clause 13 is printed in big letters. This Clause, to say the least, will lead to a sort of delaying tactics, or an obstruction on the part of the officer concerned before he signs it. It will create an obstruction for every merchant and every man who wants to raise some finance. He has got shares with him. Today he can go and deposit the shares and get money. I know defrauding has taken place, because there were fraudulent persons who did it, and there were fraudulent banks which wanted to indulge in it.

The clause says:

"(1A) Every instrument of transfer—

"(a) shall be in the prescribed form obtainable from the prescribed authority who shall stamp or otherwise endorse thereon the date on which it is issued,"

Would it not be better to have a special adhesive duty upon it, so that on the prescribed form the man can affix it, and then endorse that this is the date on which it was sold and this was the date on which it was written? Why should one approach an authority? That authority will obstruct you, require greasing of the palm, and unless that is done, he will not do the work, and therefore, another dishonest man will come into the picture of dishonest men already there. So, I say that great attention will have to be paid by the Joint Committee in formulating the provisions of this Clause, which, to my mind, is not a very healthy provision of law.

In Clause 21, a new sub-clause, namely (iii)(d) in sub-section (1) of Section 209 of the principal Act is sought to be inserted as under:

"(d) in the case of a company engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour as may be prescribed,...."

Instead of including it in the statute, it could have been dealt with merely by making rules. We have the rule-making power under the Act. It is not necessary to put it in the Act, because every time there is a provision that any contravention of the Act will result in so much fine and penalty to be levied.

Because I have very little time, I cannot offer criticism on the entire Bill. I will deal with Clause 22 and then finish. By this Clause, a new sub-section (1A) is sought to be inserted in section 227 of the principal Act, which reads partly thus:

"(1A) Without prejudice to the provisions of sub-section (1), the auditor shall inquire—

(a) whether loans and advances made by the company have been properly secured and whether the terms on which they have been made are not

[Shri U. M. Trivedi]

prejudicial to the interests of the company...." (2)

This new provision is intended to apply to secured creditors. I am suggesting that the words 'or its members' should be deleted. There may be cases where the interest of the company and those of the members may conflict. It may be in the interest of members if a section 104 company having accumulated profits decides to give loans to its members *pro rata*: this would be against the interest of the company since such a loan would be taxable under section 22 of the Income Tax Act.

14 hrs.

While the Joint Committee discusses these things, the services of some eminent company lawyers and some eminent accountants must be requisitioned to give their views as they are specialists in the administration of the company law so that they may tell whether these provisions will be conducive to the healthy working of the company or they will be merely further obstructions on the administration of the company and will create corrupt officers in place of corrupt directors. The object of wiping out corruption will not be achieved; there will only be a new picture of corruption, a different form of corruption for which yet different amendments will have to be brought; and there will be a hotch-potch of the company law. Therefore, the amendments as they are at present moulded should be properly considered by a very competent committee where the matter may be dealt with thoroughly.

Mr. Deputy-Speaker: Shri M. L. Jadhav—absent. Shri Gandhi. 10 minutes.

Shri V. B. Gandhi (Bombay Central South): Mr. Deputy-Speaker, I shall take 15 minutes.

Mr. Deputy-Speaker: There are other speakers.

Shri V. B. Gandhi: I shall try to condense.

Sir, I am glad that this Bill is going to a Joint Committee. I also owe a compliment to the Ministry on the excellent notes on clauses that have been provided. They are clear and very helpful. This is an imporant Bill on an important subject that has great potential for the future growth of corporate sector in this country. We in this country have already achieved a fairly appreciable record of company legislation in the past few years. This is not our first effort on this subject. For instance, we passed the 1956 Act. It was a very comprehensive piece of legislation on this subject. Then came the first amendment in 1960. This too was preceded by a fairly detailed enquiry on the subject. Now, we have this second amendment Bill. I am not counting the various other minor amendments in the interim period. One, however, fears that the result of such frequent amendment of the Act may be that we may go on adding provisions which are not perhaps so needed and also, in the process make the Act more complicated than necessary. For any success in the field of regulation of companies it is necessary that we have to secure the co-operation of those who manage these companies. There were something like 24757 companies in 1963. Considering that all these companies have directors and managers, the number goes up to a few lakhs of persons whose co-operation we must acquire and whose habits of compliance with the provisions of the law also must change and whose standards of ethical behaviour must improve. Happily, we are glad to see that that process has started and we now have a new corporate behaviour very much in evidence. We also see that there is a growing desire to have an adjustment between private needs and conditions and social obligations of trade and industry. I am making this statement on the basis of the sixth annual report on the working and administration of the Com-

panies Act, 1956. Many of the evils which were brought to light by the Vivian Bose Commission are not likely to recur in the post-1956 era. In fact the Commission itself has said as much. The comprehensive legislation that we passed in 1956 and also in 1960 have done a lot. In fact it has made it appear as if the field of company legislation has undergone a sea change. Now, as I said, we already have a kind of a respectable record of some thinking done on this subject of company legislation. We had the 1956 Act, the 1960 amending Act, then the Report of the Vivian Bose Commission and then we had the analysis of the Sastri-Daphtari committee and above all we had eight years of energetic and intelligent administration of the company law department. All this progress is there. I should like the Joint Committee in proceeding to face its task to keep this at the back of their minds, this progress, this improvement and this growing habit of the timely and regular compliance with the provisions of the company law and also, finally, the rising standard of ethical behaviour. All this is necessary in order that the Joint Committee has a proper outlook in this matter. I would very humbly suggest that in proceeding to undertake its great task, the Joint Committee should have in their mind some such questions as follows: is the proposal before them necessary? That should be the first question. The second is, does it duplicate any of the provisions or any provisions very near it? After all, when we have such a multiplicity of legislation, there is bound to be some overlapping and needless complexity. As I said, the Companies Act is there; there is the Securities (Regulation and Control) Act and above all there is the Income-tax Act. All these are, in one way or another, inter-connected and any provision in anyone of these Acts can influence the behaviour of the companies or the corporate sector. Lastly, the question they should ask themselves is, can these provisions before the Joint Committee be modified and made more suitable, less restrictive and more helpful for the growth of the corporate sector. I shall proceed to consider briefly a few of the provisions of the Bill.

For instance, I would like to consider clause 7 which deals with section 43A companies. Then, I would like to consider the question of currency of the blank transfers and also the question of inter-company loans, retirement age of directors, cost audit and such others. Clause 7 seeks to provide that the Central Government be given power to exempt from the provision of section 43A any private company in which shares are held by one or more bodies corporate incorporated outside India. I might frankly say that I have some knowledge of the great difficulties that were being experienced in the absence of such a provision. I welcome this amendment, and these are days when one has to be thankful for small mercies. This is a small mercy and yet, as I said, I welcome it.

Mr. Deputy-Speaker: One minute more.

Shri V. B Gandhi: Two minutes may be given, Sir. I would say something about clause 13 which deals with the period of currency of blank transfers. We have no objection to the new requirement of getting every instrument of transfer in the prescribed form and with the official date-stamp on it. I would like that the Joint Committee gives a very thorough examination to this subject. The restriction sought to be imposed is that in the case of listed shares it shall be six months and in other cases it shall be two months. It is said that this restriction is being imposed with a view to curb abuses in the system of blank transfers. But let us not forget that with all these abuses inherent, the system of blank transfers has been prevailing all over the world in all the countries with the notable exception of the United Kingdom.

Mr. Deputy-Speaker: The hon. Member's time is up. The Bill is coming back from the Joint Committee.

Shri V. B. Gandhi: I shall finish in a minute, Sir. It is said that this system of blank transfers leads to the concealment of beneficial owners' identity; that it leads to evasion of tax and it leads to window-dressing of balance-sheets and such others. These abuses can be remedied to a large extent by legislation that is already available to us in the Companies Act of 1956, in the Securities (Regulation and Control) Act of 1956 and, above all, in the Income-tax Act. Also, several clauses in this Bill itself, such as clauses 8, 17 and 42 of the present Bill, prohibit the holding of shares in fictitious names and also compel disclosure of beneficial interests where nominees hold shares exceeding five per cent of the equity capital.

Mr. Deputy-Speaker: The time is up.

Shri Nambiar: Mr. Deputy-Speaker, Sir, I am also critical of this measure, but not from the angle of Shri Masani and Shri Morarka, but from a quite opposite angle. My angle is that this amendment is not sufficient nor strong enough. We remember that in the Rajya Sabha, in 1963, in the discussion of the Companies (Amendment) Bill, while speaking on that Bill, the hon. Finance Minister stated:

> "There is no point in producing a company law without teeth, asking the people to furnish figures, facts which nobody looks into and nobody checks the veracity of these facts and they cannot be checked."

. He himself admitted that there was actually no teeth in it and today after the Vivian Bose Commission's report and the Daphtary-Sastri Committee report, we thought he would bring in sufficient teeth into this legislation, but instead of bringing teeth, he puts up a show of teeth, but that is the tooth of only a one-year old child and nothing more than that.

When he presented this Bill, we thought that he would bring in cer- tain radical changes. You will find
tain radical changes. You will find that even yesterday, Shri Masani and Shri Morarka were trying to impress this House by saying that after the adoption of this Bill, the whole lot of companies will collapse, as if this will not help companies to be floated and they thought that the Vivian Bose Commission report and the Daphtary-Sastri Committee report were only a sort of change and they are not effective. That is what they wanted. But unfortunately the hon. Minister also played into their hands. That is what I would say.

I am just now going to quote from a paper prepared by a Research Officer in the former Company Law Administration which will give you some facts about the fraud that is being conducted behind this company law legislation and the corporate companies which are very numerous from the point of view of numbers.

Dr. M. S. Aney: What is the date of that note?

Shri Nambiar: I shall tell you. It is said in that paper as follows:

> "As shareholders of big company do not participate in the day-to-day activities of the company, and receive generally once a year an annual report showing a statement of liabilities and assets, evaluated according to current accounting procedures, and therefore subject to considerable under-evaluation ....Thanks to the creeping inflation of modern days, they are unable to know whether the dividend paid to them is their share of the current corporate earnings or in fact repatriation of their principal originally invested."

The consumers as well as the shareholders know the least about the real state of affairs of these companies. This is a paper prepared by Mr. N. D. Joshi recently. The paper says:

> "Further they are also unable to know whether they receive their

due share of corporate earnings. They are also not able in reality to insist that their share in corporate earnings should be paid to them in cash."

In all these matters, there is so much fraud and to say that bringing in more legislation to intensify the measures is to deprive the companies of their real existence is something which is unjustifiable. On the other hand, it should be so severe that the people who indulge in these malpractices can be brought to book.

Coming to the points raised by the last speaker about blank transfers, I would like to point out that blank transfers are the main cause of very many malpractices. I can point out four main defects of these blank transfers. The first abuse according to the Vivian Bose Commission was concealment of the identity of the real beneficial owners behind their nominees. The Commission's report has focussed attention on these blank transfers. The Minister does not come forward with a provision banning the blank transfers. He has put some restrictions which will be ineffective. The second fraud is the evasion of tax by suppression of secret profits invested in holdings on blank transfers. Mr. Masani said yesterday that a system of blank transfers was a common method. Mr. Gandhi also just now said that this practice is there all over the world. But what is the purpose of this system? Why should it be allowed? The Minister should tell the Joint Committee and the House why he cannot put a total ban on these blank transfers, when there is so much criticism against it even in the Vivian Bose Commission's report. Thirdly, companies are resorting to blank transfers to hide certain facts from the public eyes. As the Commission also pointed out the practice of blank transfers was adopted with a view to facilitating window-dressing of balance-sheets of companies by reshuffling of shares held on blank transfers between associated companies with the object of substituting inter-company loans and advances at a time of closing their accounts by investments. Will this restriction that the Minister is bringing now stop this malpractice? Fourthly, the second purpose mentioned by the Bose Commission was to bring into existence fictitious or ante-dated transactions in the books of companies in order to create fictitious losses in investments for the purpose of reducing the taxable profits. These four major defects have been pointed out. Measures must be brought to curb all the four. Then only the Commission's report could be faithfully brought into effect. Perhaps these amendments will only change the form of such unsocial transactions. The Finance Minister himself has said that the proposed amendment was designed to curb the abuses of blank transfer. But mere restrictions are not the correct solution. If he has banned it, I would have taken my hat off and said, here is a Finance Minister who wants to end corruption, malpractices and cheating of public funds by these monopolies. The Finance Minister should have also stopped the leakage of revenue and black money getting into circulation by this process.

Coming to inter-company loans, he has brought certain restrictions that if these loans go beyond a particular limit, by bringing it to the notice of the Government authority in charge of sanctioning it, this can be curbed. But I submit that it will only result in more malpractices, because the companies by way of resolutions can get anything passed. We know the method of these big companies. They can manipulate resolutions. When it goes beyond the limit prescribed by the Finance Minister and when it goes to the company law administration, they know how to evade these officials and get over the difficulties by resorting to various malpractices. So, the companies are not going to be affected by these small restrictions.

Coming to auditing, the auditors and the company directors get into collu-

[Shri Nambiar]

sion, with the result that the balance-sheets produced by the companies are almost fictitious, as the Minister knows, to a large extent. There was also a suggestion to nationalise auditing; I do not know what stands in the way. Any suggestion about nationalisation which comes from this side of the House is a sort of stigma to the Finance Minister. He thinks the process of nationalisation will be of no use. But from the figures and other documents available, the Minister knows that auditing is a big racket which is contributing to the malpractices by legalising the malpractices done by the directors. The Government is losing heavily by way of taxes on this account. The consumers and the people in general are not in a position to know exactly the balance-sheets of the companies. This is not going to be curbed by this amendment. I cannot agree with the criticism levelled by Mr. Morarka and Mr. Masani that so many legislations and complications are being brought into company law. The number of legislations can be restricted, but the tone and rigour of the legislations must be such that they would be effective in curbing these things. Otherwise, what is the use of legislation? If they are only to satisfy the recommendations or observations by the Bose Commission and Daphtary-Sastri Committee, it is not enough; it only gives a wrong picture. I would request the Minister to consider this question.

Mr. Morarka said yesterday that the corporate sector was suffering from Government apathy. Is it really so? The figures I have got do not prove that. The paid-up capital of the companies in India between 1957-58 and 1960-61 has gone up from Rs. 1306.3 crores to Rs. 1814.9 crores. After getting such a huge surplus in so short a period, still the corporate sector say that the Government do not allow them to grow and there is no incentive. The figures I quoted are as given in the balance-sheets. Apart from that, there is a huge amount in the form of black money. So, to say that this Government is not for helping the corporate sector is wrong. They are giving a wrong picture to the people, thereby making this Government go in the same manner and close their eyes to the misbehaviours of the corporate sector, doing much more harm to this country.

As the Minister himself stated previously, black money in this country is creating a parallel economy. If he wants to put an end to that, these half-hearted measures will not have any effect. Therefore, I request him and the Joint Committee to come forward with amendments which will be more stringent; it should not merely be on paper, but there should be a machinery to see that they are brought into effect, so that the people in the whole country might be benefited. The tycoons, the black-marketeers who not only cheat the public but also the shareholders, should be prevented from indulging in these malpractices, so that this country might have a better economy by getting out of this morass of black money. Therefore, I would request the Finance Minister to sharpen his weapon and come forward courageously with more stringent measures to deal with the situation.

Mr. Deputy-Speaker: We shall now take up non-official business.

14.30 hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

FIFTY-FOURTH REPORT

Shri Hem Raj (Kangra): I beg to move:

"That this House agrees with the Fifty-fourth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 16th December, 1964."

Mr. Deputy-Speaker: The question is:

"That this House agrees with the Fifty-fourth Report of the