14.25 hrs.

COMPANIES (SECOND AMENDMENT) BILL

The Minister of Finance (Shri T. T. Krishnamachari): Sir, I beg to move—

"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, namely, Shri S. V. Krishnamoorthy Rao; Shri Achal Singh; Shri A. Shanker Alva; Shri Ramachandra Vithal Bade; Shri Rajendranath Barua; Shri Bali Ram Bhagat; Shri Dinen Bhattacharya; Shri N. C. Chatterjee; Shri Sachindra Chaudhuri; Shri N. Dandeker; Raja P. C. Deo Bhanj; Shri Bhaskar Narayan Dighe; Shri G. N. Dixit; Shri Gajraj Singh Rao; Shri Prabhu Dayal Himatsingka; Shri Cherian J. Kappen; Shri R. N. Yadav Lonikar; Shri Madhu Limaye; Shri Ghanshyamlal Oza; Shri Shivram Rango Rane; Shri J. Ramapathi Rao; Shri R. V. Reddiar; Shri Era Sezhiyan; Swami Ramanand Shastri; Shri Digvijaya Naraian Singh; Shri Sivamurthi Swamy; Shri Radhelal Vyas; Shri K. K. Warior; Shri Nagendra Prasad Yadab and Shri T. T. Krishnamachari and 15 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 shall apply with such variations and modifications as the Speaker may make ;and

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

As stated in the Statement of Objects and Reasons, the present Bill seeks (i) to implement the recommendations of the Commission of Inquiry on the administration of Dalmia Jain Companies (popularly known as Vivian Bose Commission) and the Daphtary-Sastri Committee; (ii) to strengthen the provisions relating to investigation into the affairs of companies and to provide for more effective audit in dealing with cases of dishonesty and fraud in the corporate sector; and (iii) to simplify some of the procedural requirements which are at present burdensome to companies without being of corresponding advantage to the Government. Apart from these three categories of measures, the Bill also contains a few amendments of a clarificatory nature designed to remove drafting defects which had caused difficulties in interpretation. The Bill consists of 62 clauses and one schedule. As the notes on clauses appended to the Bill explain the reasons for the proposed amendments and as the time at my disposal is short, I now only propose to refer briefly to some of the more important amendments sought to be made by this Bill under the broad categories I have just mentioned.

As the House is aware, in pursuance of its terms of reference, the Commission of Inquiry on the administration of Dalmia Jain Companies made certain recommendations for the amendment of the Companies Act with a view to prevent in future malpractices of the nature observed by it and also to ensure due and proper administration of the funds and assets of companies in the interest of the investing public. Later, at the instance of Government, a committee consisting of Shri C. K. Daphtary and Shri A. V. Visvanatha Sastri examined the recommendations of the Commission of Inquiry

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and made some suggestions of its own for amending the said Act. Of the 62 clauses in the present Bill nineteen clauses and three sub-clauses arise directly out of the recommendations of the said Commission and the Committee. I may now be permitted to deal briefly with some of the important amendments proposed in the Bill:

Clause 13 seeks to impose restrictions on the period of currency of blank transfers by providing that——

(a) Every instrument of transfer shall be in the prescribed form bearing the date of issue stamped by the prescribed authority; and

(b) the said instrument shall be delivered to the company within six months from the date of issue thereof in the case of listed shares and within two months from that date in the case of any other shares.

As pointed out by the Vivan Bose Commission, the system of blank transfer has increasingly lent itself to certain abuses, the most important of which are—

(a) concealment of the identity of the real beneficial owners behind their nominees; and

(b) evasion of tax by suppression of 'secret' profits invested in holdings on blank transfers.

The proposed amendment is designed to curb these abuses. The Joint Committee might go into this matter further. Interested opinion in the country is pronouncedly against this provision, whereas there exists another point of view which would do away with this scheme of blank transfers except perhaps in the case of recognised financial institutions.

One other amendment of which specific mention may be made is that proposed in section 370 by clause 46 of the Bill. Section 370 *inter alia* lays down that a company shall not make any loan to another company under the same management unless the transaction has been approved by the lending company by means of a special resolution. At present there is no restriction on inter-company loans if the lending and borrowing companies are not under the same management. Even in the case of companies under the same management, the only restriction is that before making a loan, the lending company should pass a special resolution. In order, however, to ensure that company funds are properly utilised for the growth of industries and to present misuse of such funds, clause 46 of the Bill seeks to impose a limit on the amount of loans that can be advanced by a company by the mere passing of special resolution and make it obligatory for the lending company to seek the approval of the Central Government before making any loan exceeding certain limits.

I should also like to refer to clause 51 which proposes to amend section 395 with a view to checking the malpractices in relation to "take-over" bids and acquisition of shares of dissenting share-holders under a scheme or contract approved by the majority. The amendment provides for disclosure of adequate information to the shareholders in a "take-over" bid so that they could judge for themselves whether or not to accept the offer. Another safeguard provided is that no circular containing any offer to take over the shares of a company should be issued until a copy thereof is presented to and registered by the Registrar of Companies, who will have the power to refuse to register any such circular if it does not contain all the requisite information prescribed by the Government or if it sets out any information in such a way as to give a false impression.

I shall now come to the second category of amendments dealing with inspection, investigation and audit, which

are contained in clauses 21, 22(b), 24 to 28 and 58. Based on the experience of the difficulties encountered by the Registrars and Inspectors in carrying out their duties, the provisions relating to inspection and investigation are calculated to facilitate their work in regard to the inspection of books of accounts and investigation into the affairs of companies.

I would also invite particular attention of Hon'ble Members to clauses 22(b) and 24 read with clause 21(a). Clause 22(b) is intended to enable Government to issue suitable instructions to the statutory auditors of companies, while clause 24 would enable Government to issue necessary directions for conducting cost audit of companies engaged in production, processing, manufacturing or mining activities. To facilitate such cost audit, the proposed amendment to section 209(1) by clause 21(a) seeks to ensure that proper records relating to utilisation of material and labour are kept by these companies. The basic objective behind these amendments is to make audit more effective and to ensure that the audit reports do reveal the real efficiency and character of management.

The third group of amendments seek to simplify and relax some of the restrictive provisions of the Act where compliance may either be needlessly difficult or involve labour and expense disproportionate to the results likely to be achieved. There are more than twenty clauses in this category and these are based largely on the suggestion received from various Chambers of Commerce. It may be recalled that in its 53rd Report presented to this House in April last, the Estimates Committee had also recommended the need to simplify the provisions of the Companies Act.

Five clauses in this category, namely, clauses 32, 33, 34, 41 and 57 are intended to eliminate or to reduce the periodicity of some of the returns required to be filled by companies and their directors with the Registrars of Companies. I have no doubt that this will be widely welcomed by all concerned. Specific mention may also be made of clause 45, which proposes to relax the requirements of section 314 regarding previous consent of the company in general meeting in regard to the appointment of a director or a partner or a relative of such a director etc. to an office or a place of profit under the company. In place of such previous consent, the proposed amendment provides that it will be sufficient if approval of the company by means of a special resolution is obtained at the first general meeting held after such an appointment is made.

Another important amendment is contained in clause 61 which proposes to reduce the categories of relatives specified in Schedule 1A to the Act from 49 to 22. It has been represented to Government by various Chambers of Commerce that the list at present specified in Schedule 1A to the Act is so comprehensive that it has caused undue inconvenience and hardship to many companies in complying with the requirements of section 314 and other relevant sections, without any commensurate advantage to the companies concerned. After careful consideration of the matter, the Government have decided to revise the definition of 'relative' so as to include only near relatives specified in items 1 to 22 of Schedule 1A.

While on the subject of simplification, I may also refer to clause 62, the main object of which is to provide for a uniform time limit of 30 days for the filing of various documents by a company before the Registrar of Companies. This uniform time-limit, would I hope, be a considerable improvement on the existing position because at present the time-limit for filing various returns with the Registrar varies from 14 to 42 days.

Lastly, I would say a few words about clause 56 which proposes to delete sections 410 to 415 in regard to

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the Advisory Commission and insert a new clause to enable the Government to constitute an Advisory Committee for the purpose of advising it and the Company Law Board on such matters as may be referred to the Committee by the Government or the Board. As Hon'ble Members are aware, section 411 of the present Act requires Government to consult the Advisory Commission constituted under section 410 on all applications made to Government under the various section enumerated in clause (b) of section 411 before orders are passed on such applications. Experience has shown that the need to obtain advice from the Advisory Commission has caused delay in the disposal of cases primarily because every application—irrespective of the size of the company or the quantum of remuneration payable to the managerial personnel—is required to be referred to the Commission. Moreover, the procedure involves lot of paper work, labour and expenses without any commensurate results. Hon'ble Members are also aware that very recently a Company Law Board has been set up to administer the provisions of the Companies Act. This Board would be competent to advise the Government on any matter relating to major policy in company affairs. Since the Board could carry out the functions which are presently performed by the Advisory Board, it would be needless to continue the latter any longer. After considering all the aspects of the matter, Govcernment have come to the conclusion that a change in the present procedure is called for. Accordingly, it is proposed to abolish the Advisory Commission and set up in its stead an Advisory Committee consisting of not more than five members so that whenever necessary the Government or the Company Law Board can consult the said Committee on important cases or on questions of policy.

Within the limited time at my disposal, I am afraid, I have not been able to deal with the provisions of the Bill in greater detail though I would have very much liked to touch on some other amendments also. I would, however, like to emphasize that the Companies Act is essentially a regulatory measure and the various provisions contained in the present Act and as proposed in the Bill under consideration, are designed to promote greater efficiency in the working of the corporate sector and to ensure disclosure of fuller information about the activities of companies to the investors, creditors, general public and the Government. Disclosure of fuller information is the only sure means of judging whether a company is using its capital to the best advantage, it is being run efficiently and in the public interest, and pays its legitimate dues to Government. In the context of our developing economy and our limited resources, the promotion of greater economic efficiency is of paramount importance, and for the attainment of this objective, the corporate sector has to play its part by adapting its practices to rapidly changing conditions. Unless the regulatory provisions of the Company Law are also suitably modified from time to time to keep abreast of the changing economic and industrial climate of the country, there is the risk that the present Companies Act will be regarded as old fashioned. This is why the Government have to bring forward the present bill so soon after the Act was comprehensibly amended in December 1960, and again in 1963.

Since the introduction of the Bill in this House in September last, the Company Law Board has received various suggestions from Chambers of Commerce, Stock Exchanges and other bodies on some of the proposed amendments and I shall, in due course, place these suggestions before the Joint Committee for their consideration. I have no doubt that the Joint Committee would carefully scrutinize each of the proposed amendments and suggest such modifications thereto as may appear to be necessary, Sir, I move.

Mr. Deputy-Speaker: Motion moved:

"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, namely, Shri S. V. Krishnamoorthy Rao, Seth Achal Singh, Shri A. Shanker Alva, Shri Ramchandra Vithal Bade, Shri Rajendranath Barua, Shri Bali Ram Bhagat, Shri Dinen Bhattacharya, Shri N. C. Chatterjee, Shri Sachindra Chaudhuri, Shri N. Dandeker, Raja P. C. Deo Bhanj, Shri Bhaskar Narayan Dighe, Shri G. N. Dixit, Shri Gajral Singh Rao, Shri Prabhu Dayal Himatsingka, Shri Cherian J. Kappen, Shri R. N. Yadav Lonikar, Shri Madhu Limaye, Shri Ghanshyamlal Oza, Shri Shivram Rango Rane, Shri J. Ramapathi Rao, Shri R. V. Reddiar, Shri Era Sezhiyan, Swami Ramanand Shastri, Shri Digvijaya Narain Singh, Shri Sivamurthi Swamy, Shri Radhelal Vyas, Shri K. K. Warior, Shri Nagendra Prasad Yadab and Shri T. T. Krishnamachari and 15 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 shall 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 15 members to be appointed by Rajya Sabha to the Joint Committee."

Four hours is the time allotted for this Bill. Members may please take fifteen to twenty minutes each.

Shri M. R. Masani (Rajkot): Mr. Deputy-Speaker, Sir, the Finance Minister has quite fairly stated that the scope of the Bill goes well beyond the recommendations of the Vivian Bose Commission and the Daphtary-Sastri Committee. The Statement of Objects and Reasons makes this very clear when it says that this Bill, *inter-alia*, seeks to implement the recommendations of the Commission and the Committee and that the opportunity is also being taken to do two things; to strengthen the provisions regarding investigation and to simplify some of the provisions of the Act. This is a point to be borne in mind; that the Vivian Bose Commission Report should not be considered to be an umbrella under which, all the provisions of this Bill—good, bad and indifferent—can be lightly accepted by this House.

Having gone through the Bill, I must confess that the amount of simplification that it undertakes is somewhat disappointing. There could have been much more done in that direction if the Bill had to be brought before the House at all and it is disappointing that this opportunity has not been adequately taken for this purpose. However, as is now the practice, the opportunity has been taken to arm the Governmental authorities with more powers to increase the already very massive accumulation of power that has been concentrated in the hands of this Government and its officials.

Now, the Vivian-Bose Commission considered mainly matters and incidents which happened 16 or 17 years ago. The ground that they covered was, therefore, old hat. In fact the enquiry committee itself was appointed under the Companies Act of 1913. The Bose Commission itself took note of the fact that, since this matter had been referred to them and since the incidents had taken place, a great deal

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of ground had been covered by legislation. The report observes that lacunas in the 1913 Act had been largely filled by the Companies Act of 1956 and the amending Act of 1960. Similarly, the Daphtary—Visvanatha Sastri Committee also confirmed that amendments have already been made in the company law to prevent many of the evils referred to in the report of the enquiry committee. To the extent that the Commission and the committee have accepted the fact that the kind of conduct that was referred to them could not have taken place under the law since 1956, and particularly since 1960, this Bill becomes uncalled for and unnecessary.

This fact was also recognised by Government themselves. In the debate in the Lok Sabha on the report of the Vivian-Bose Commission, the Minister of Industry, Shri Kanungo, stated that since the commencement of the Companies Act, 1956, very few cases of a serious nature of non-compliance with the provisions of the Act had been reported to Government, despite the existence of several provisions under which shareholders and others could have brought complaints against the company managements. In other words, both the Government in earlier statements and the investigating bodies have themselves admitted that there is no cause for alarmism or for extreme measures. In fact, the Minister, Shri Kanungo, claimed that since 1956 a great deal of discipline in the corporate sector had been maintained, and the Daphtary-Sastri Report confirms it. Therefore, I cannot but come to the conclusion that the existing law as of today is altogether adequate to deal with the evils that were revealed by the Vivian-Bose Commission Report and the subsequent committee.

In any case, as we all know, "hard cases make bad law." One does not legislate, if one is wise, for the hard case or the extreme example. One legislates for the normal situation and for normal behaviour. When laws are made dealing with extreme or isolated cases, in trying to dispose of one evil, they open the door to a hundred new evils, and that is why the lawyers say "that hard cases make bad law". And this Bill is a case of bad law to a large extent because it emerges from a hard case.

Then again, quite apart from the merits or demerits of this Bill, I think it will be admitted that constant tinkering with the law on any particular subject is in itself bad. There must be something like stability in the laws of a country, and people must know over a number of years where they stand.

Mr. Palkhiwala, one of our most distinguished lawyers in regard to taxation and company law, stated in Bombay on 9th November this year in the course of a speech that the Companies Act had been amended on an average twice a year. Twice a year, this very same law gets constantly tinkered with. This Bill, as he pointed out, proposes 61 major changes and 21 minor amendments. Mr. Palkhiwala went on to point out that section 350 of the Companies Act has now become so involved through constant tinkering and changing that it is capable of as many as six different interpretations which can all be validly held! He went on to say that the interpretation held to be right would not be endorsed by anyone having any knowledge of the English language. That is the state to which we have brought our company legislation, and he therefore, urged that all the complex provisions in the law should be scrapped.

Finally, this Bill is most untimely. We all know that the capital market is in the doldrums. Industrial progress has collapsed. Investors are shy of investing their money. Entrepreneurship faces a very difficult situation. The Finance Minister has recently frankly conceded—and I am glad

that he has done it, because the country has to be educated on this subject —the crying need for equity capital from abroad to be invested in this country, and I welcome his very wise statement on that point. But what kind of effect is this Bill going to have on our capital market in India and on foreign capital in this country which, as the Minister conceded, we so badly and desperately need?

The *London Times* of 3rd December, 1964, discussing our fourth Five Year Plan, says:

> "India's fourth five-year plan is now being drafted in an atmosphere of gloom and despondency, which contrasts sharply with the enthusiasm attached to the third plan four years ago....The problems of the industrial sector stem very largely from a lack of capital, of markets and of basic amenities such as power which are the hallmarks of a poor country. The shortage of foreign exchange means rigorous quota restrictions on imports, even of raw materials and equipment, while virtually all the private investment will have to come from domestic sources. In spite of the high rate of profit on foreign capital, there has been a net outflow of capital over the past three years."

This is in very sad contrast to the hopes and the wishes expressed by the Finance Minister. As the *London Times* pointed out, we have behaved so unintelligently in our desire to have foreign capital—

Dr. M. S. Aney (Nagpur): What is the name of that paper?

Shri M. R. Masani The *London Times* of 3rd December—that far from attracting it we are scaring it away. All our efforts come to this: that over the last three years, there has been a net outflow—not inflow—of capital out of this country. I feel that this Bill is going to be disastrous in its effect on Indian and foreign investment.

Sir, this Bill cannot be looked at in isolation. It has to be seen in the context of other statements and other policies of Government dealing with the corporate sector. It comes as one of several threats recently held out to the corporate sector.

The Finance Minister addressed a Conference of Regional Directors and Registrars of Companies on the 27th and 28th of October in Delhi. There he stated that proposals for the renewal of several managing agencies would have to be considered during the first half of 1965. That is correct. He then went on to say that the Company Law Board should give thought to this prolem and consider whether in well-established industries the managing agency system could be gradually abolished sectorwise. The effect of such a statement is bound to be harmful to the capital market. It is bound to impede the growth of our industry and our economy. There was no need for that statement. There was no need to frighten people of. Section 324 of the Companies Act lays down a procedure by which if it is decided not to have managing agencies in a certain sector of industry the matter can be processed. Sir, let me tell the House what the procedure laid down is. Section 324 of the Act says that a Committee of Inquiry should be appointed on the basis of whose findings Government may notify in the Official Gazette that companies engaged in any particular class of industry shall not have any managing agents as from a particular date. Where then was the need for this *obiter dictum*? When the time came, a Committee of Inquiry could have been appointed by the Government, the Committee could have investigated, their findings would have come before the Government and they could have made their decision.

I am sure the hon. Finance Minister did not want to scare off capital investment; on the contrary, he wants more and more of it. I would therefore like that whatever harm has been done may be undone by his giving an assurance on the floor of this House in

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reply to this debate that this was mere loud thinking and that the provisions of the law as laid down in the Companies Act will be applied and that this was not an expression of his intention to by-pass the law by executive order or administrative dictate or to by-pass the provisions of the Company Law through executive decrees. I think if this is done and reassurance is given that the normal law will take its course and that this was a personal expression of opinion which need not be taken into account by those concerned, it would have a helpful influence on the money market.

Then again, addressing that Conference of Company Registrars the Finance Minister threatened to revive his scheme for the deposit with the Reserve Bank of company reserves which had been mooted by him during his previous Finance Ministership in 1957 and which, fortunately for all, had been dropped. Under that scheme limited companies would be obliged and required by law to part with a part of their current reserves to the Reserve Bank. This requiring the compulsory deposit of reserves built up by a company would cause the greatest hardship to those companies which wanted to go in for expansion, which required the resources for their own re-investment to develop their business and create more goods and values for the country. With bank credit tight, this proposal would be even worse now than what it was when the Finance Minister first mooted it in 1957.

This, Sir, is the kind of statement that does great harm to the economy of this country, this kind of threatening attitude towards the corporate sector that is being indulged in.

On the other hand, the Finance Minister made a very good statement. I want to give him credit for that. He mentioned that the Companies Act should not be regarded as an ideological instrument for the achievement of socialism. That was very good. But what is the value of a general statement, a platonic statement like this, if the other two statements and this Bill show that this profession that the Company Law should not be used as an engine of oppression against private business for socialist ends is not carried out in practice?

Sir, the joint stock company is the modern twentieth century method of producing goods. There is no better system yet known to civilisation. The joint stock corporation is a co-operative enterprise. We have heard a lot from hon. Members on the other side about their love for co-operation. We too, on this side, are ardent believers in co-operation. But then, why not recognise the joint stock company for what it is—a co-operative of investors, of entrepreneurs, a co-operative of those who want to come together to produce goods and services for the community, which is exactly what it is? The principle of limited liability makes it possible for the small man to put his Rs. 10, Rs. 50, Rs. 100 or Rs. 200 into an enterprise without risking everything that he may possess. That is how the limited liability principle came in. But; instead of the joint stock company being looked upon with affection, with kindness and encouragement, we find that one law after another, one measure after another is brought in to break its back, and I fear the effect of this Bill is not going to be different from that of its predecessors.

Having stated this broad approach of reserve and caution and opposition to this Bill, let me now illustrate from just three provisions how harmful this Bill can be to enterprise. Some of these provisions were referred to by the hon. Minister in his opening remarks.

The first provision to which I would like to draw attention is clause 13 of the Bill—one page 5. The Minister

explained that clause 13 seeks to impose restrictions on the period of currency of blank transfers by requiring every instrument of transfer to be delivered to the company within six months from the date of issue in case of listed shares and two months in the case of other shares. The claim made is that this would curb abuses. So far, the abuses which it is meant to curb have not been placed before the House. I am sure the Joint Committee will demand a very satisfactory explanation of what exactly these abuses are and how they arise. Section 49 of the Companies Act permits the holding of shares by nominees in certain circumstances. Certainly that category of shares should be excluded from the purview of this new section, which is not being done. Similarly, shares held by banks and other financial institutions need to be excluded from the purview of this amendment.

The system of blank transfers is a common method of raising finance on the security of shares throughout the world. Shares with blank transfers are pledged with bankers or individuals. It lends mobility and liquidity to the shares and facilitate the raising of finance by those who need it. The proposed restriction would curtail the negotiability and liquidity of shares and create difficulty in raising finances, with adverse repercussions on the money market.

Throughout the world, as I said, the system of blank transfers exists and nobody has argued that the system of blank transfers creates any abuses. Only one country in the world does not allow blank transfers and that is the United Kingdom. The United States and all countries on the Continent have this system. There are bearer shares, shares on which no name would ever appear, and there are blank transfers. In the United States, instead of restricting the currency of blank transfers, the law gives statutory recognition and protects the holders of bearer shares and blank transfers. The Uniform Commercial Code and the Uniform Stock Transfer Act of the United States give special protection and blank transfers are recognised by leading stock exchanges everywhere. If the system can work on the whole Continent of Europe and in the United States, there is no reason for us not to give it a chance to function.

I would like to warn the House that if this clause is not suitably modified in the Joint Committee, there will be a further drop in the stock market, there will be a further set-back in our capital market. Practical difficulties would arise. I mentioned what they would be. In the case of loans granted by banks on the security of shares, in the case of shares held by trusts, in the case of shares where a nominee holds shares for voting purposes, in all these cases great harm would be done. The inquiry commission itself, the Vivian Bose Commission, recommended that the restrictions should not apply when shares are held in a fiduciary capacity or as security by a financial institution. I fail to understand why in this particular respect the recommendation of the Commission of Inquiry was jettisoned or ignored while so much of lip service is being paid to it in other respects.

15 hrs.

Sir, you have rung the bell, but I would like to refer very briefly to two other clauses. Clause 24 provides for the Government to enforce a cost audit over the head of the managements of companies where it thinks it is necessary. All right, let there be a cost audit. But the worst part of this provision is that the report of the audit has to be given to the Registrar of Companies, which means that any Tom, Bick and Harry will get hold of that report, exposing a company's confidential, secret and technical information to their foreign or local industrial rivals in the world. This is a very dangerous clause and, if there is anything which frightens foreign capi-

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tal, I want to tell the Finance Minister, this is it. No foreign capitalist with any self-respect is going to come into this country to suffer this treatment. It will not come to India when their patents and technical secrets are to be exposed to the scrutiny of the market place, because the Government of India at some stage makes up its mind that such a report should be made. The Associated Chambers of Commerce have expressed their concern very strongly and I do hope that when this Bill goes to the Joint Committee, the provision that the auditor's report should be sent to the Registrar of Companies will be struck down as being a most harmful provision in the interests of this country.

Lastly, I come to clause 46, which seeks to apply the principles governing inter-company investments to inter-company loans, which is bad. Under the Companies law inter-company investments and inter-company loans are two entirely different things with a different nature and different aspects. One is short-term and the other is long-term, and what applies to one does not apply to the other. So, this attempt to apply the restrictions imposed on inter-company investments on inter-company loans is misconceived and should be dropped.

It seems to me that at a time when the patient is sinking, when the blood pressure is low and a stimulant is required, which is the state of our capital market today, Government have brought forward measures to combat high-blood pressure. As I said before, this is not medicine, this is not scientific treatment; this is quackery. This Bill shows that the path of quackery is still the path that the Government propose to follow. I am glad that this measure, good and bad in parts, is going to the Joint Committee. I sincerely hope that the Joint Committee will eliminate some of the harmful and objectionable features of the Bill. If it does not do so, we shall have to fight them when the Bill comes back to the House.

Shri Morarka (Jhunjunu): Mr. Deputy-Speaker, Sir, I am thankful to the hon. Finance Minister for the motion he has just moved, the motion to refer this Bill to the Joint Select Committee. The present Bill contains very many important provisions and, if I may say so, some of them are very novel provisions. It is therefore very essential that a Bill like this is scrutinised by the Joint Committee. Since this Bill governs the operation of the corporations in this country, it has a far-reaching effect on the economic life of the country, in as much as most of the economic life of the country is controlled and managed by these corporations.

Before I say anything more, I would like to correct one impression, and that is this. The hon. Finance Minister stated in his speech, and it is also mentioned in some of the notes on clauses, that some of the present important amendments are as a result of the recommendations of the Commission, popularly known as Vivian-Bose Commission. So far as the Vivian Bose Commission is concerned, it submitted its reports in two parts. The first part deals only with the findings on those 9 companies of the Dalmia-Jain group, a factual report to which Justice Vivian Bose was a party. But the actual recommendations, on the basis of which this Bill has been brought, are not the recommendations to which Shri Vivian Bose was a party. Those recommendations were made at the end of October 1962 by the other members of the Commission excluding Shri Vivian Bose. Therefore, it would not be proper to say that Justice Vivian Bose is in any way a party to the recommendations which we are considering today.

It was not long ago that we have re-written our company law. It was only in 1956. Then we made another major amendment in 1960. Between the years 1956 and 1964 this law has been amended for not less than six

times and this is the seventh amending measure which is before the House. I agree with the hon. Finance Minister that some of the amendments which are sought to be made are directed towards simplifying the provisions of the Act, So, I must congratulate the hon. Finance Minister for having realised a practical difficulties of the corporations and tried to reduce the avoidable paper-work as well as some routine formality. Even so, the overall picture that would emerge after the passing of this Bill would be to make the companies law a little more rigid, a little more harsh, a little more complicated and that, in any case, it is not going to achieve the purpose, it is not going to fulfil the objectives which the hon. Finance Minister so eloquently mentioned today.

I want to repeat the argument which the hon. Member, Shri Masani, mentioned namely, that all the recommendations of the enquiry Commission—I would not call Vivian Bose Commission are based on the findings of one group of companies, companies under one management, and that too at a time when the present Companies Act of 1956 was not in existence. It is on the basis of those recommendations that we are amending the law. What is the evidence that the hon. Finance Minister has for bringing in this measure before us after the 1956 Act came into force? In the course of his speech he said something about the difficulties that the Company Law Department faced. Here I would like to give two quotations from the reports of the Company Law Department which have been placed on the Table of the House. What do they say? On page 97 of the report for the year ending March 1960 they say:

> "As a result of the vigilance exercised by the department and its field officers the deliberate evasion of the provisions of the Act is becoming less and less common."

Then again, in the next year's report it is stated:

> "It is relevant to mention in this connection that as a result of continued vigilance exercised and the advice tendered during the last few years by the department and its field officers, deliberate evasion of the provisions of the Act has diminished appreciably."

The evasion of the law is becoming less and less, it has diminished appreciabily. Then the Minister in charge of this Department, Shri Kanungo, as late as in the month of May last year told this House that after the 1956 Act came into force, the instances of omission and commission are very few. One quotation Shri Masani had given, but he did not give the other one, which I would now give. Shri Kanungo had stated on the same day:

> "The point which I am emphasising is that since the coming into operation of the Companies Act, 1956 and the amending Act of 1960, there has been a great deal of discipline in the corporate sector."

A perfect sense of satisfaction in the mind of the Minister, a perfect sense of satisfaction in the minds of the department which administers it, and yet based on the recommendations of a Commission, which examined cases of a period prior to 1950 and the malpractices which took place under the provisions of the 1913 Act, you are bringing in this amendment. I say that in order to defeat the designs of an odd offender, you cannot legislate, you cannot put fetters or prevent honest corporations from functioning with a certain amount of flexibility. In this view, I am supported by what the Jenkins Committee has stated in England recently. I am quoting:

> "It would be wrong in principle to disturb in any important respect longstanding provisions designed to serve their ends unless they have clearly outlived their

[Shri Morarka]

usefulness or are demonstrably objectionable on other grounds."

Has there been any evidence that the provisions of this law have outlived their utility or have they been proved to be demonstrably objectionable The answer is "No". Then, why disturb this provision? On what basis? On what evidence?

I think, a basic law, like our corporate law, should not be subjected to such major changes so frequently. When Shri Chagla was the Chief Justice of the Bombay High Court he once observed that the production of laws by Parliament was so fast that, leave alone the citizen even the judges could not cope with it. I have a feeling that after independence we have been prolific in the production of three things without any dobut, one is our population, the other is legislation and the third is the crop of politicians.

Having said this, I would like to say that for some reason or the other the corporate sector is suffering from an apathy of the Government. It suffers from three main handicaps, namely, legislative rigidity, administrative discrimination and fiscal severity. Why do I say legislative rigidity? The provision in the law is that if the entire Board of Directors want to give any increment to the manager even of Rs. 100 they must not only have the special resolution of the company but also the permission of the Central Government. Sir, look at the absurdity. If they want to appoint any other person and do not want to call him the General Manager but call him as a departmental head or by other names they can give any salary they like, You can give three or even ten times the salary that you give to your Managing Director or to your Manager. I thought that at the hands of the present Finance Minister this law would become a little more realistic, that he would remove all these objectionable and absured features in the law and make it a simple and effective instrument for controlling and regulating the corporate sector, but I am sorry to say that in this respect to the present amendment has disappointed us.

What does the Commission, on the basis of whose recommendations we are legislating this, say? The Commission has said in para 63 of its Report:—

> "We have not taken the evidence of Chambers of Commerce and other bodies representing Commerce and Industry, as we have been assured that if any legislation is contemplated, the normal process of consultation will ensue, and also because the time at our disposal between the submission of the investigation part of our Report on 18th June and making these recommendations was just over four months."

After this the only thing that the Government has done is to elicit the opinion of the Daphtary-Sastry Committee. I admit, they are very eminent and knowledgeable people in their own field. But what do they know of the practical difficulties of running a company? And, again, they did not take any evidence from any corporation, chamber of commerce or any business organisation. The opinion of individuals, howsoever eminent they may be, is likely to be fallible and it must be tested by the testimony of the general people, of persons who are concerned, who are likely to be affected and who know something about the subject. Unless those tests are applied and the recommendations are tested, it is no use our hastening legislation on these subjects.

I am not making this criticism in the air. I will give you one example because time would not permit me to give you more. I can assure the House that I can give many more, but I will give only one example to illustrate what I mean. The present

Bill seeks to regulate the objects clause in the corporation's memorandum. It says that hereafter before a company commences its business it shall place the matter before the general body and that general body must approve the commencement of the business by a special resolution. "By a special resolution" means by a resolution to be passed by three-fourths majority. A company is formed, but before a company can commence its business, even the main objects of the company must be approved by a special resolution! If 26 per cent of the shareholders in a company—take the extreme example—for one reason or another do not approve it, the wishes of 74 per cent of the shareholders can be thrown to pieces. All the arrangements, collaboration agreement, loans, banking, purchase of land, whatever you have done go phut. By this are you not giving the minority the veto power? Are you not aware that there can be many cantankerous people in the minority wherever they may be? It is not easy to have a very pliable minority everywhere. Therefore, knowing what minorities are and knowing how they behave, I think, the hon. Finance Minister should have been very careful in giving this veto power.

What has happened is this. The Bose Commission only said: Divide the objectives of the company in two parts, the main and the ancillary ones. So far as the main objects are concerned, you follow the normal course; but so far as the other objects are concerned, which are not related to the main objects, you must have the approval of 75 per cent shareholders by a special resolution for those objects. Then, this recommendation was referred to the Daphtary-Sastry Committee. They went a step further and said that even the main functions or objectives of the company should also be approved by a special resolution. I am sure, the Finance Minister did not apply his mind to this provision; otherwise, he would never allow a thing like this to happen because unwittingly you are giving veto power to 24 per cent shareholders, if the 100 per cent shareholders are present. But in other companies 10 per cent shareholdeds can veto a provision like this. Who would benefit by this?

Then another thing is there. This report criticizing the provisions was made in the month of October 1962 and here are two Government companies whose memorandums I have got which were floated in January 1964 and June 1964. I wish to draw your attention to their objects clause. What are the objects for which these companies have been floated? Permit me to read out from the memorandum of Bokaro Steel Limited. It is a company, as you know, incorporated for the purpose of erecting the Bokaro steel plant, running it and managing it. Its objects clause includes:—

> "To carry on business as timber merchants, saw-mill proprietors and timber growers and to buy, sell, grow, prepare for market, manipulate, import, export and deal in timber and wood of all kinds, and to manufacture and deal in articles of all kinds, in the manufacture of which timber or wood is used, and to buy clear, plant and work timber estates."

Another one is:

> "To carry on business as manufacturers of chemicals and manures, distillers, dye makers, gas makers, metallurgists, and mechanical engineers, ship-owners and charterers, and carriers by land and sea, wharfingers, warehousemen, barge-owners, planters, farmers and sugar merchants; and so far as may be deemed expedient the business of general merchants; and to carry on" etc.

Shri P. R. Patel (Patan): Sugar growing is there or not?

Shri Morarka: No. Then, the next one is: Another one is:

"To carry on the business of printers, lithographers and binders."

Still another one is:

"To carry on business as manufacturers of and dealers in motor cars, tractors and vehicles of all descriptions, aeroplanes, hydroplanes and all kinds of aircraft and all component parts, engines, accessories, spare parts and fittings thereof."

Shri A. P. Jain (Tumkur): They are major objects or minor objects?

Shri Morarka: I want to mention one more object and that is:

"To establish, maintain, manage and operate restaurants, refreshment rooms, buffets, canteens, cafetarias and hotels and to carry on the business of general provision merchants, licensed victuallers and tobacconists."

Mr. Deputy-Speaker: The hon. Member should conclude now.

Shri Morarka: Now, Sir, even after hearing the criticism of this Inquiry Commission, the companies of the Government themselves are including all these in their Objects Clause in their own companies even though the Government companies do not have to do any other business for their maintenance or sustenance as the companies in the private sector may have to do. Since you have rung the bell, I would not quote other things.

Shri A. P. Jain: You quote from the other ones also.

Shri Morarka: Since it is the desire of the hon. Members let me quote from the other one. This is the Memorandum of Association of Hindustan Steelworks Construction Limited which was incorporated on 23rd June, 1964. One object is:

"To carry on the business of carriers by land, sea and air."

"To purchase, take on lease or in exchange or under amalgamation licence or concession or otherwise, absolutely or conditionally, solely or jointly with others and make, construct, maintain, work, hire, hold, improve, alter, manage, let, sell, dispose of, exchange, roads, canals, water-courses, ferries, piors, aerodromes, lands, buildings, water-houses, works, factories, mills, workshops, railways, sidings, tramways, engineers, machinery and apparatus, water-rights, way leaves, trade marks, patents and designs, privileges or rights of any description or kind."

Then, there is another one which says:

"To carry on the business of manufacturers and dealers in explosives, ammunition, fireworks, and other explosive products and accessories of all kinds and of whatsoever composition and whether for military, sporting, mining, industrial or any other purpose."

I can go on indefinitely quoting all these things.

Shri A. P. Jain: Now you can leave it.

Shri Morarka: The only point I want to make is this that this Objects clause of companies is not a new thing to our companies at all. This clause exists from the time immemorial. It has been tested in England. There is a decision of the House of Lords and the House of Lords, while criticising the probing nature, have come to the conclusion that this clause has the backing of the history behind it and, therefore, it is very effective and it would be wrong to change it. The Daftary-Shastri Committee, while relying on this decision of the House of Lords, have mentioned this thing to support the case but they did not do the courtesy to mention the full

facts as to what was the ultimate conclusion, the decision, of the House of Lords. And that thing is done by the Jenkins Committee. The Jenkins Committee has said that even though they have criticised it, they still feel that it is an effective provision and it must remain; there should be no change in it. Whether you like to keep it or change it is immaterial. But the point is this. Is it your intention to give the minority a veto power even for starting the main objects of the company? What would happen if such a special resolution cannot be passed by that company? Money would have been collected, all other arrangements would have been made and expenses would have been incurred but still the company would not be able to commence its business.

Shri A. P. Jain: The company will go into liquidation.

Shri Morarka: No. The company will not go into liquidation. The company cannot go into liquidation. It would be hanging somewhere in the air. It cannot start its business. It will go on incurring various expenses. This is what will happen.

The conclusion of the Jenkins Committee is that undoubtedly there is a risk that dishonest directors in some companies might mismanage the affairs, they might benefit and they might do harm to the corporate sector but still they say, "After careful consideration we have come to the conclusion that that is the legitimate risk and in every business that risk must be taken." As you know, Sir, it is reported very many times that thieves enter into a house from a window and that thieves enter into a house because the doors were unlocked etc. Now, the proper thing for you would be to protect those windows or to keep a chowkidar. But to legislate that no house shall have a window, I think, is a remedy that would be worse than the disease itself. According to me, that would be a very short-sighted policy.

Then, I said, there was administrative discrimination. What can be the better proof of administrative discrimination than this that for the purpose of Income-Tax Act a public company is considered to be a private company—a really public company is considered to be a private company for the purpose of income-tax—and for the purpose of Companies Act, a private company is considered a public company? Why is this sort of apathy to the companies particularly when the Government encourages the co-operatives so much? What is the difference between a co-operative and a company? There are two main differences. One is that the dividend in a co-operative society is limited to 6 per cent and another is that each shareholder has one vote irrespective of the number of shares he holds. If the Government thinks that that pattern is better, if the Government thinks that the co-operative societies have given a better account of their performance in this country.....

An Hon. Member: Question.

Shri Morarka:....and if the Government feels that that type of organisation, that type of management should be encouraged, then why not limit the voting power and put these companies at least on the same level as the co-operative societies? This type of administrative discrimination does not do any good to the growth of our corporate sector.

Then, I said about the fiscal severity. If there has been one consistent policy followed in the Finance Ministry irrespective of the change of the Finance Ministers, it is the constant increase of tax burden on the companies. In many other fields there have been changes. But so far as the companies are concerned, the tax burden on the companies has been consistently increasing. As long as the companies can bear, as long as these tax measures do not discourage the formation of new companies, it is all right. The country

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needs more money, more revenue, for defence and development and nobody will object to that. But then to impose such a crushing taxation on particularly what are known as 23A companies is not proper. The company which has got 20,000 shareholders, but because the majority of the share-holding of this company is controlled by a few persons, is regarded as a private company for the purpose of the Income-Tax Act whereas another company which has got only 10 or 11 share-holders is regarded, for the Income-Tax Act, as a public company. I was hoping that the present Finance Minister will remove this sort of thing and that he will bring a sort of rationale and logic in the corporate sector so far as the tax law is concerned and so far as the provisions of the company law are concerned.

Mr. Deputy-Speaker: The hon. Member must conclude now.

Shri Morarka: I have already taken so much time. I would refer to only one clause more, that is, Section 370 which deals with inter-company loans. Here again, the Government's policy is not clear. So far as the fiscal law or the taxation law is concerned, the Government encourages inter-corporate investment. They charge less tax on the dividends received by one corporation from another corporation. Inter-corporate investment is encouraged by our fiscal laws whereas so far as the company law is concerned, there is a prohibition on investment, and there are limits about the investment, and now they also seek to put limits on inter corporate loans. I can understand if you do not permit one company giving loans to another company, when both of them are under the same management, and this prohibition or this limit was already there. Now, Government are seeking to amend it by saying that no company can give a loan to another company above a certain percentage, and that percentage is 20 per cent of the paid-up capital.

The managing agency companies have got a very small capital, of the order of Rs. 1 lakh or Rs. 2 lakhs. They have to give in times of emergency large amounts by way of loan to the managed companies. If this provision would apply to them also, how could it be possible for them to fulfil their contractual obligations to find finance for the companies in times of emergency under the managing agency agreements?

There are so many other provisions like this which merit very careful scrutiny at the hands of the Joint Committee. My consolation is that this Bill is going to a Joint Committee where very many eminent Members of this House would be present, and I am sure that the hon. Finance Minister who is present here and who has so kindly heard my speech would no doubt give due consideration to these things.

Before I conclude, I want to mention one point, and that is regarding the objection or the exception which my hon. friend Shri M. R. Masani took to the statement of the Finance Minister which was made by him before the Conference of the registrars and regional directors, about abolition of the managing agency system. In section 324 of the Act of 1956, there is a provision that the Government may at any time after the 15th August, 1960 name any industry from which the managing agency system would be abolished, and, thereafter, the managing agencies, that is, even the existing ones, would come to an end, and new ones would not be sanctioned.

Now, it could be legitimately asked of Government why they did not take any action under the provisions which were enacted in 1956. If Government are serious that the managing agency system should have been curtailed, the managing agency system should have been contracted at least from the field of some industries which are already well established and which do not need the services of the managing

agents any more, then they should have initiated some action under section 324. All that I want to tell my hon. friend Shri M. R. Masani is that the statement of the Finance Minister to which he had referred was nothing more than a reiteration of the provisions of section 324 which still require to be enforced. I think that the hon. Finance Minister should apply his mind, whether by appointing a committee or otherwise, to see in which of the industries where this managing agency system has already outlived its utility and where this provision should be enforced.

Shri S. M. Banerjee (Kanpur): Since the Bill is going before a Joint Committee, I would like to reserve some of my comments and I shall offer them when the Bill emerges from the Joint Committee.

As is evidenced from the Statement of Objects and Reasons, this Bill has been brought forward after considering the recommendation made by or the report of the Vivian Bose Commission and also the observations made by the former Solicitor-General.

I have heard with rapt attention the very eloquent speeches of my hon. friends Shri M. R. Masani and Shri Morarka. Some of the points deserve reconsideration by the Finance Minister. But when something is said about the managing agency system, I am reminded of what happened recently. Recently, the DCM at their annual general meeting have made an appeal to Government that the period should be raised to ten years. I know how far the Finance Minister or the Government would reconcile this with their past declarations. I know the Finance Minister, and if I have heard him aright, I know that he is against the managing agency system. He has made it abundantly clear in many of his speeches that he was personally opposed to this. I would like to have a clear assurance from him whether the managing agency system is going to continue in this country or whether it is going to be abolished.

15.36 hrs.

[DR. SAROJINI MAHISHI *in the Chair*]

The managing agency system may be good temporarily to suit the convenience of the new companies, and it may be allowed to continue for some time or for some years in the case of those companies. But where the companies are well established I do not think that there is any need for the managing agency system.

Coming to the question of selling agents, I was surprised to know the list of selling agents of the Synthetics and Chemical Co. at Bareilly which is said to be manufacturing synthetic rubber and other things. Their selling agents are mainly their kith and kin. It is a limited concern, but it is limited to their own kith and kin. Unless a thorough probe is made into the appointment of the selling agents, I do not know what is going to happen to the shareholders and how their confidence in the particular company could be restored. I would have given the names of some individuals, but I do not think that it is advisable, nor would it be proper for me to mention some of the names of a new concern which is coming up because I wish them all success. But the malpractices, the maladministration, the mismanagement etc. right from the very beginning may ultimately become a cancer and then it will be difficult for the Company Law Administration or the Finance Ministry or anyone else to rectify those mistakes and mismanagement of those companies.

Then, I would come to some of the other items under company law. It takes a considerable time to finalise a particular case. When my hon. friends Shri Kanungo and Shri K. C. Reddy were heading or supervising this company law administration, I had referred to one typical case in Kanpur of the weekly called the *Citizen*. The editor of this particular paper

[Shri S. M. Banerjee]

Shri Mehra, is facing all sorts of humiliations at the hands of the company law administration because the other party is a big industrialist of Kanpur, and my information is that he has influenced some of the officers of the company law administration to humiliate Shri Mehra to the hilt, and in fact, not merely Shri Mehra but even his son, his wife and all others who were connected with criticism of that small concern which was floated actually by the big industrialists of Kanpur. I need not mention the name of that big industrialist, because his name is already popular after the Gonda case. I would request the Finance Minister to kindly consider this case, to ask for the files and see why he is made to face so much of humiliation because one industrialist is involved.

Then, I would refer to certain other companies. My attention has been drawn to the various news items in some of the reputed weekly papers about one company known as the Permament Magnets Ltd. Recently, we have been reading a lot in the Bombay and Gujarat press about a big company called the Permanent Magnets Limited, with which, I am sorry to say, the son of an ex-Cabinet Minister is connected. It has been reported that some aspetcs of the conduct of this company's affairs were recently referred to the advisory commission of the company law administration of the Finance Ministry, and we hear that the agreement that this company has signed for the sale of its products especially is under scrutiny. I would like to know what the truth about these things is. I say this beacuse when the name of some Cabinet Minister or ex-Cabinet Minister or his son or anybody connected with him is involved, it gives a bad name to our country as a whole, becaunse we want Cabinet Ministers to be like Caesar's wives. They are not directly responsible for the conduct of their sons—I am sure about it. But if the position of his father or her father is utilised for the purpose of benefiting a particular company, it requires a thorough probe and investigation. Big personalities were or are connected with Permanent Magnets. As I have mentioned, the son of an ex-Cabinet Minister was its chairman. The inauguration of this particular concern or unit was graced by the ex-Finance Minister. I am really sorry to say this. Some months ago, a personal assistant of this gentleman—I do not want to name him since he cannot defend himself here—filed an affidavit in the Bombay court cataloguing a number of irregularities allegedly committed by his former employer. A number of dubious transactions were mentioned. Has Government tried to verify these? They should verify these. I am prepared to give them as much material as they would like to have. I am not opposed to the ex-Cabinet Minister or his beloved son, but I am more concerned with this country and the country is more beloved to me than anybody's beloved son. So I would like the Finance Minister, who is known for his integrity, to kindly consider the whole aspect of this case and let us know what is the truth about this Permanent Magnets.

Coming to another point, my hon. friend, Shri Kanungo, came here and went away, perhaps because he is not concerned with this. In this very House we put some questions about the appointment of an inspector to go into the Sahu-Jain companies. I put a question whether this inspector who was appointed was involved in a case in connection with the Muktesswar Electric Company. In reply the hon. Minister wanted to ridicule me by saying 'you wish to champion the cause of some business house'. I was sorry. I laughed at him. Just after two months of his saying that there was no charge against that inspector, what did we read in the newspapers the other day? The same thing which I mentioned has in this House has come true, and that gentleman has been arrested because of defalcation or falsification of accounts

or something like that connected with the same company. When you select some persons, if you are sincerely interested in going into the affairs of big business houses—whether it is Sahu-Jain or Birlas or anybody—should we not select persons of known integrity with a clean slate, so that there may not be any impression created in the country that we are appointing those who have not got a clean slate? I would humbly urge the Minister through you to ask his colleagues like Shri Kanungo not to make such sweeping remarks that so and so was never involved, he was very honest. Of course, in his answer, he said that 'it was not to his knowledge'. Shri Kanungo, who is supposed to be a versatile genius in everything said that he was not conversant with it. I wanted to raise the matter as a question of privilege for misleading the House, but since he is elder to me, I left him.

Let me come to another matter which is still agitating my mind. You know in this House at the time of the discussion of the Vivian Bose Report and other reports, we had been demanding the auditors' reports of two Birla companies—the Ruby General Insurance Company and the New Asiatic Insurance Co. Ltd. On 5th December 1959, one of the Under Secretaries to the Government of India, Ministry of Finance, wrote to the principal officer of the New Asiatic Insurance Co. Ltd., New Delhi, as follows:

> "I am directed to state that irregularities in the management of the New Asiatic Insurance Company Ltd., have come to the notice of the Government of India. They are set out in the Annexure to this letter. Before deciding whether any action should be taken and if so, what, Government would be glad to have the explanation of the Company in regard to all the items set out in the Annexure. A reply may be sent as early as possible and in any case before the expiry of a month from the date of this letter."

In the Annexure enclosed with the letter there are serious irregularities pointed out on the basis of the Auditor's report.

Another letter was sent on 30th July, 1960 by the same officer, Under Secretary to the Government of India;.....

Shri P. R. Patel: I rise on a point of order. Are we discussing Birla's affairs or the affairs of the New Asiatic Co. How are they relevant?

Shri S. M. Banerjee: Whenever I mention this house—I have not mentioned Birla's house—he is very allergic to it, I do not know why.

Shri P. R. Patel: The point of order I am submitting is that here we are discussing something . . .

Shri S. M. Banerjee: Something is what? Company law.

Shri P. R. Patel: Company law, and my friend refers to some companies, saying this and that. I am not concerned with them, but my submission is this, that whatever may be said by one Secretary to another, a final decision has been taken by the Government, and also it has been examined perhaps by the Advocate-General.

Shri S. M. Banerjee: I expect a reply from the Minister.

Shri P. R. Patel: The reply has been given in the House, and that is final. Would it be proper to agitate again and again for the same thing?

Mr. Chairman: Shri Banerjee should not get excited over the matter. He is not required to reply to the hon. Member. I am requesting hon. Members that when they refer to any particular case, they need not mention the names of those who are not

[Mr. Chairman]

present here, and they need not also go into the details. I request them to make the reference only to the extent that is relevant.

Shri S. M. Banerjee: As you have correctly said, I need not answer him because to me it is all irrelevant.

I was saying that a letter was addressed to the Ruby General Insurance Co. I am not talking of persons. It states:

> "I am directed to state that irregularities in the management of the Ruby General Insurance Company Ltd., have come to the notice of the Government of India. They are set out in the Annexure to this letter. Before deciding whether any action should be taken and if so, what, Government would be glad to have the explanation of the Company in regard to all the items set out in the Annexure. A reply may be sent as early as possible and in any case before the expiry of a month from the date of this letter."

Shri A. P. Jain: How does he get a copy of it?

Shri K. C. Sharma (Sardhana): Resourceful.

Shri S. M. Banerjee: It is available in the Library.

We have yet to get the full audit reports of these companies, I do not know why. Somebody asked me why I was speaking against these companies. I generally say that if a particular person is a good person, that report must be brought to the notice of the House, should be laid on the Table of the House. How is it that the reports on these two companies, even after all the pressures, at least the full reports, have not seen the light of day? The Finance Minister should be a Daniel, should be impartial. I sincerely appeal to his sense of impartiality and justice If there is something wrong with a particular house and if there is really an audit report which is absolutely scandalous,—I do not feel shy of using the word scandalous—then it should be laid on the Table of the House. If the particular company wants to prove its innocence, or its good intentions, then it is more necessary that it should be discussed on the floor of the House.

In this amending Bill, certain provisions are really good. I congratulate the Finance Minister on bringing this legislation, but I feel that a more comprehensive legislation, covering all aspects, whereby we can plug all loopholes in the company law, should have been brought. I have a feeling that there is a pressure throughout the country that this Bill should not have been proceeded with. The resolution, the letter of the Chamber of Commerce people is there, which was published. They do not want anything to be considered, they do not want that such a legislation should be brought. If companies are allowed to squander the money of the shareholders, if companies are allowed to swindle the money of the shareholders, I do not think that the shareholders will have any faith in such companies. I am almost sure that the Joint Committee would invite the opinion of those who have made a careful study of the chains of big business houses. I would request that men like Prof. R. K. Hazaria should be invited by the Joint Committee to place their valuable suggestions before that Committee. Because, the Vivian Bose report has shown us what is going on in the companies. Shanti Prasad Jain or Dalmia Jain may not be a solitary instance; it should be an eye opener to us to show what is happening in other concerns.

The Finance Minister may reply to two of my points in his reply. One

is about the Permanent Magnete; it is a horrible magnete. It should be replied to. The second point is whether the Government has taken a final decision about these two companies—Ruby and New Asiatic. I assure the Finance Minister that whatever legislation he brings forward to loophole the plug . . . (*Interruptions*). The lawyers and a loophole in the legislation. Whatever opposition there might be from the reactionary elements, who are big industrialists and who want to reap a harvest at the cost of the poverty of the country, we will support such legislation.

Shri Surendranath Dwivedy (Kendrapara): Madam Chairman, in spite of the scare that has been created by my friend Mr. Masani that the provisions of this Bill are likely to have an adverse reaction in the capital market not only in our country but also outside, I think Parliament would never hesitate to arm this Government with more powers to remove malpractices and take stringent measures to prevent fraud going on in free enterprise. There is no place for a free capital in this country at the cost of the community and the nation, to do all sorts of mischief and create difficulties for the development of our country. Mr. Masani mentions about the accumulation of powers in the Government: he has also stated that the present laws are adequate to regulate the corporate sector and there was no need at this moment when capital is shy to go in for measures like this. But it would have been obvious to him after the report of the Bose Commission and the report of the Shastri-Daphthari committee that the present laws are not sufficient to prevent malpractices that came out in the course of the investigations. My complaint is that this Government has done precious little to prevent these malpractices in spite of the fact that more and more powers are unhesitatingly being given to this Government. If one goes through the provisions of this Bill one would find that in spite of the specific recommendations made by both the Bose Commission and the Daphtary committee, the provisions of the Bill do not go for enough to prevent this mischief. They have enough power not only in this company law which has been amended several times during the course of the last nine years in order to give them more powers to check malpractices and to prevent anti-social activities, but there are the Defence of India Rules at their disposal to take action if there was no adequate provision in this Bill for any contingency.

So far as the present Finance Minister is concerned, not only has he all the legal powers but—I would not be uncharitable if I say—he is enjoying almost a monopoly so far as the shaping of the economic policy of this Government is concerned. He has also vast experience through all these years how and why, in spite of best efforts, the private sector is not playing its part as well as it was expected to play. If in spite of all these laws evasion of income-tax takes place, blank transfers go on merrily—Shri Masani indicated that even in the United Kingdom this is permitted and we should continue this practice in this country—I say there would be no harm at all if the blank transfer system is altogether abolished.

15.57 hrs.

[MR. SPEAKER *in the Chair*]

I would welcome if in this measure there was a provision to safeguard against manipulations and manoeuvres and to control companies with fictitious names. All these have continued in this country, and that is because the Government have failed to take any action. They have failed miserably, I would say. Here and there, they have sometimes caught hold of small fries but so far as the big business is concerned, which is at the root of the very difficult situation that has been created, they have done precious little.

[Shri Surendranath Dwivedy]

In this connection, I want to refer to this aspect. After all, they have the Company Law Administration to administer all these powers which have been taken by this Government and this executive. Now, there is a history behind the company law administration itself which is known as the Company Law Board or something like that. For 20 years they have discussed as to what will be the powers etc. of this body, and they have wasted time—it was under the Commerce Ministry. It was again transferred to the Commerce and Industry Ministry, after it was taken over by the Finance Ministry for some time. Now, it has again come back to the Finance Ministry. One does not know whether this is the final thing or again they are going to transfer it to some other Ministry or not. But what is the record of this Company Law Administration? It is very disappointing indeed. It is not that these things have not come to the notice of the Company Law Administration. It is not that reports of malpractices in respect of various companies have not been brought to the notice of this administration or the Government. The point is they have always hesitated to take action. Even in the case of the "Mundra deal", I would respectfully submit, it is not the Company Law Administration that unearthed it.

Mr. Speaker: Is the hon. Member going to conclude his speech in a few minutes?

Shri Surendranath Dwivedy: No, Sir: I have just begun.

Mr. Speaker: Then he may continue next time. We have to take up another item now.

16 hrs.

DISCUSSION RE: MANUFACTURE, CONSUMPTION AND PRICE OF CARS—*Contd.*

Mr. Speaker: The House will now take up the discussion under Rule 193, the discussion on manufacture, consumption and price of cars. We had originally allotted two hours for this discussion. About twelve hon. Members have already spoken on this. I have a list of 18 others, besides those who might try to catch my eye.

Shri Hari Vishnu Kamath (Hoshangabad): It may be extended by one hour.

Mr. Speaker: That one hour we are having today.

Shri A. P. Jain (Tumkur): Let it be exclusive of the Minister's reply.

Mr. Speaker: Even if I extend it by another hour I cannot accommodate such a large number.

Shri M. L. Dwivedi (Hamirpur): Let it be two hours more.

Mr. Speaker: Then too, if I give ten minutes to each hon. Member it means that I require three hours for 18 hon. Members whose names are here. Besides those 18, there would be others also who have not given their names, but are anxious to speak.

The Minister of Finance (Shri T. T. Krishnamachari): Cars are very interesting, and if I am a layman I would also like to speak.

Mr. Speaker: I would also like that hon. Members have a free expression of their views. What does the Minister say?

The Minister of Heavy Engineering in the Ministry of Industry and Supply (Shri T. N. Singh): I am unable to say anything. As has been the experience, it may not be possible for the House to continue after 5.00 because there may be lack of quorum. Therefore, my suggestion is that if possible we may finish this discussion today instead of dragging on this debate for more than two days. But I cannot advise you as to how you will manage such a large number of speakers. I do not want any hon. Member to be deprived of his say.