

Mr. Speaker: So, the House will meet again at One O'clock.

The Lok Sabha then adjourned till One of the Clock.

The Lok Sabha re-assembled at One of the Clock.

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

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): Lest there be a misunderstanding about what I said before we adjourned, about one matter, I should like to clear it up. I referred to the lady, Subhadrabai, who was shot. I should like to make it clear that she is alive; she is not dead. She is, of course, seriously wounded and is in hospital.

PAPERS LAID ON THE TABLE
ANNUAL REPORT OF INDIAN AIRLINES CORPORATION

The Deputy Minister of Rehabilitation (Shri J. K. Bhonsle): On behalf of Shri Jagjivan Ram, I beg to lay on the Table a copy of the Annual Report of the Indian Airlines Corporation, under sub-section (2) of section 37 of the Air Corporations Act, 1953. [Placed in the Library. See No. S-248/55.]

DISPLACED PERSONS COMPENSATION AND REHABILITATION RULES

The Deputy Minister of Rehabilitation (Shri J. K. Bhonsle): I beg to lay on the Table a copy of the Displaced Persons Compensation and Rehabilitation Rules, 1955, under sub-section (3) of section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. [Placed in the Library. See No. S-249/55.]

PRESIDENT'S ASSENT TO BILL

Secretary: Sir, I have to inform the House, that the Code of Criminal Procedure (Amendment) Bill, 1954, which was passed by the Houses of Parliament during the current session, was assented to by the President on the 10th August, 1955.

COMPANIES BILL—Contd.

Mr. Deputy-Speaker: The House will now proceed with further consideration of the following motion moved by Shri C. D. Deshmukh on the 9th August, 1955:

“That the Bill to consolidate and amend the law relating to companies and certain other associations, as reported by the Joint Committee, be taken into consideration.”

Shri C. R. Chowdary is to continue his speech. But I find that he is absent from the House.

Before I call upon Shri Bansal, I would tell hon. Members who are getting a chance to speak here, that I want an assurance from them beforehand. Again and again, I have to ring the quorum bell and we have become an object of criticism outside and inside. Therefore, I want an assurance that every hon. Member who wants to speak will continue to sit here in the House and hear what others have to say. If, on the other hand, I find any hon. Member not sticking to this, I won't call him on the next occasion in other debates.

Shri M. S. Gurupadaswamy (Mysore): Is it iron law?

Mr. Deputy-Speaker: It is my discretion. I want to raise the level of the debate and I want the House full. Each of us is a representative of 7½ lakh population. In a House of 500, I find it very hard to get even 50 people. If 26 people decide, they decide in the name of the 360 million Indians. Hon. Members will kindly consider the responsibility that they have to bear in this House. Therefore, I would urge upon every hon. Member—whether he gets an opportunity to speak or not—to be here throughout; otherwise, we will not be able to discharge our duty properly. Whichever hon. Member wants to catch my eye, I will allow him to speak on one condition, that so far at least as that debate is concerned, he will sit here and hear what others have

[Mr. Deputy-Speaker]

to say. Again and again, hon. Members have been bringing to my notice that Ministers are not here; they have been making a loud complaint and asking me to call the Ministers, one after the other, though that was not the subject of that Minister. They must equally bear that responsibility and see to it that we have quorum and I am not obliged to ring the bell again and again for quorum.

Shri M. S. Gurupadaswamy: It should be reciprocal.

Mr. Deputy-Speaker: Does 'reciprocal' mean that I should speak?

Shri Raghavachari (Penukonda): May I submit one point? You have been pleased to be very hard. But you must take into consideration the convention and the practice that we have, that between 1 P.M. and 2-30 P.M., the lunch period, we can go home; otherwise, it leads to strain on us.

Mr. Deputy-Speaker: This is consistent with the convention that we have developed, that during the lunch period I would not insist upon any quorum; no hon. Member also need bring it to my notice.

Shri Bansal (Jhajjar-Rewari): I am overtaken with a sense of diffidence when I rise to speak on this subject, and I almost feel like T. S. Elliot when he said:

"And I have known the eyes
already,

Known them all,

The Eyes that fix you in a formulat-
ed phrase.

And when I am formulated.....

.....then how should I begin?

And how should I presume?"

But I presume to begin because I think I am one of those Members of the House who have received the indulgence of the Members of this House. I am also rising to speak be-

cause I have worked on the Joint Committee, and I endorse every word of what that committee has decided. I also take courage to speak because I am one of those who have studied this Bill not from today but from the very time the first memorandum by the Commerce Ministry was issued. I have talked this matter over not only with the captains of industry—the managing agents,—but also with the spokesmen of shareholders. I remember having sat day in and day out with Shri J. J. Kapadia, whose name has been taken with so much respect in this House. Therefore, when I say anything about the managing agency system, for it or against it, I am doing so after weighing carefully all that has been said by the spokesmen of the managing agency system and by the spokesman of shareholders.

Before I go to the major issues of this Bill, I would like to put aside certain observations that were made by Shri Asoka Mehta. His performance was so brilliant that although three or four days have passed since he spoke, I cannot get over the various points which he made, and I would like, if I may with your permission, to reply to some of them. One of the points which he made was about voting rights. About the types of shares, as you know, the Joint Committee decided that there should be only two types of shareholding. Shri Asoka Mehta, quoting the German precedent, wanted also to give Government some power so that they could authorise the issue of shares with disproportionate voting rights. I endorse what he said, and I suggest that the hon. the Finance Minister will take that suggestion into consideration. But I would like to make another suggestion, that there should be a provision for shares of 'no par value'. As you know, this question was discussed by the Cohen Committee and after that, it was referred to Mr. Montagu L. Gedge, who reported that shares of no par value have a very important role to fulfil. I would, therefore suggest to the hon. the Finance Minister that he should take that into account

and see if even now no provision can be made for the issuance of shares of no par value. This is not a matter of principle and, therefore, I am not making any fundamental departure from the report of the Joint Committee.

Then, Shri Asoka Mehta referred to social accounting. Referring to the changed and improved method of accounting of the companies he opined that we must now also develop the method of social accounting so that the picture of private enterprise is presented in a form easily understood by the people and also that facts are so presented that some sort of a social picture, social balance-sheet, emerges. It is a very good suggestion. But, what I would like to point out to the House is that in England where they have had a socialist government. Professor Stone, who is the father of social accounting, has said this. I am reading from the book by F. Sowell Bray—he is an international authority after Prof. Stone. After going into what has been achieved in U.K. so far, Mr. Bray says:

“We would close with the comment that although we have consistently raised the issue of so-called social accounts, no attempt has been made in any of the accounting presentations put forward here to carry in any sort of conventions to deal with social costs and social benefits.”

I am only quoting this to impress on the House that although it may be a very good thing to present social accounts it is far too early for our economy. But, nevertheless, I would urge upon the Finance Minister to keep it in view so that at least as far as the governmental enterprises are concerned, accounts are presented in such a way that we have a proper picture of social gains and losses.

Then, Shri Asoka Mehta referred—and this is a very important point—to the costs of private enterprise. He said that apart from the costs of production which are shown in the balance-sheet, the private enterprise

subjects the community to a number of other social costs and he quoted from a book of Prof. Kapp of some American University. I won't quote very exhaustively from this book but even reading from the contents you will find what the social costs Prof. Kapp has in view, social costs involved in contamination of the air by smoke and from chimneys and contamination of water by water coming from the factories.

What I am trying to say by referring to all these things is that every type of enterprise, every type of economy, is going to have some social costs. After all when we have a factory smoke will go into the air and when you have a factory some sort of dirty water will go into the rivulets or somewhere. What we have to see is that these costs are reduced to the minimum possible extent.

Talking of costs, it is not as if only private enterprise has had such costs. Even if we walk on the road, we wear down the roads and to that extent we are imposing costs on the community. Apart from this, if Prof. Kapp can be quoted, I can quote Prof. Von Mises and Prof. Schumpeter who have referred to a large number of other costs of other and totalitarian types of economies. I am not going into all these details but I will quote a passage from John Jewkes to show what type of costs can be involved in certain types of economies. It says:

“It is, at first sight, strange that the new ideas regarding economic organisation should have gained so wide and ready an acceptance. Experience might have been expected to restrain the movement. The only centrally planned economies we have so far known have been born into, or have finally produced societies in which terror, sadistic cruelty and constant insecurity have been the lot of all save the privileged few.”

I don't want to quote this entire passage of John Jewkes; he is a very eminent economist and is the Stanley

[Shri Bansal]

Jevons Professor of the Manchester University. I am not quoting from a person who is not a well-known authority in his line. Therefore, talking of social costs is confusing the very issue. But what impressed me in Shri Asoka Mehta's argument was that while attacking the managing agency system he wanted to cover the whole ground of private enterprise. Now, we are not discussing the merits or demerits of private enterprise. What we are discussing at present is a limited subject and that is the main instrument of the private sector in this country. Whatever you might say, the organs of private enterprise have been managed through the instrumentality of the managing agency. Except in banking and insurance, by and large, about 90 per cent. enterprises are run by the managing agency system and, therefore, what we are discussing at present is now that instrument, how that tool, of private enterprise has functioned in this country.

A large number of speakers have spoken from the very first cause, that is, after the first amending Bill of 1936 was passed, as to the misdeeds of the managing agency system. Reports have been quoted. My friend, Shri Shah, could not resist the temptation of quoting the report of a Registrar of Joint Stock Companies. Many such things have been quoted. But what I say is, yes, it has been admitted that the managing agency system has led to certain abuses. No one has denied it; that is the *raison detre* of this Bill. After all, this Bill has been before this House because it has been found that the managing agency system has led to certain abuses in the management of companies and those abuses were on the increase. That is why, soon after independence, Government came out with a memorandum and the Company Law Committee was appointed.

Shri Joachim Alva (Kanara): They were not ~~some~~ abuses, but grave abuses.

Shri Bansal: Yes, grave abuses, and that is why the Company Law Committee was appointed to go into all these grave or highly grave abuses.

There were on the Company Law Committee the representatives, again I say, of the managing agents, the shareholders, the workers and of this Parliament. The Company Law Committee, after listening to the entire evidence, the evidence of the types of persons referred to by my friend Shri Shah, after sifting and going through all this voluminous material, came to certain conclusions and their conclusions are before us in the form of the Report of the Company Law Committee. What did they say? They came to this conclusion which they recorded in para. 115 of the Report:

"We feel that shorn of the abuses and malpractices which have disfigured its working in the recent past, the system may yet prove to be a potent instrument for tapping the springs of private enterprise. Its adequacy and effectiveness in future, will, however, depend not merely on the promptitude and thoroughness which the evils which have clung to it are removed, but also on the energy, enthusiasm and foresight with which the managing agents conduct their business. While it will be for the leaders of the business community to provide the system with the quality and the momentum that will be demanded of it in future, the recommendations that we make are designed to tighten up the relevant provisions of the Indian Companies Act, so that opportunities for current abuses and malpractices may be reduced to a minimum."

Shri K. P. Tripathi (Darrang): What about the socialistic pattern of society?

Shri Bansal: I will come to that aspect also if my hon. friend will be patient.

What I am trying to say is that the entire evidence was sifted by them. I am certain that Shri Khandubhai Desai was a member of this Committee; and, no one, excepting one or two persons, I think, signed a minute of dissent. This Bill which is before the House and which was amended by the Joint Committee was based on the recommendations of the Company Law Committee. I will say one word more. A large number of representative bodies appeared before the Company Law Committee and a large number of individuals from the professions—from the chartered accountancy profession, from the legal profession and from the stock exchanges—appeared before this Committee, and I do not remember anyone excepting one person who suggested that the managing agency system should be ended. My information is....

Shri Matthen (Thiruvellah): Objection was taken not against the managing agency system as much as against the abuses of the managing agents. There is a difference between the two.

Shri Bansak: That is exactly what I am saying. Objection was taken against the abuses and it is only to remove the abuses that the Bill is before the House. Otherwise there is no point in the Bill being before the House. Even before the Company Law Committee was appointed, the Planning Commission and before the Planning Commission the Fiscal Commission, all of them had said that the managing agency system need not be ended but it needed lot of amendment. Exactly; what I am trying to impress upon the House, and particularly upon my friend, Shri Matthen, is that we are trying to mend the abuses of the managing agency system through this Bill. As to how we are going to do it I will go in greater detail shortly, but before I do that I will quote a passage from the Fiscal Commission's Report. They say:

"Witnesses have drawn attention to malpractices on the part of

some managing agents as a factor discouraging capital formation. This is not unfounded. The question of introducing improvements in the managing agency system is under the consideration of the Government of India who have published for criticism tentative proposals suggested to them."

They also talk in terms of improvement and similarly did the Planning Commission later on who wanted to introduce certain changes in the system. What I am saying is that this Bill, which was referred to the Select Committee, and the Bill which has come to this House after the thorough scrutiny of the Select Committee have precisely done this thing, that is, they have tried to mend this system. I think in trying to mend this system, we have not only achieved the objective which everyone had in view, but also, to the persons of my persuasion, they have done it more than it was absolutely necessary. As I am a signatory to the Report, I do not want to criticise it on that account at all and I would be satisfied if these various provisions are worked in such a way that all the abuses of the managing agency system, which had marred its face, will be removed. As to the manner in which this is being sought to be done, my hon. friend Shri Morarka, more than whom, I can say with some degree of knowledge, very few Members of this House understand the intricacies of the Company Law, has in a very lucid speech the other day pointed out the manner in which this Bill, as amended by the Joint Committee, is going to plug the various loopholes. After all, what are we doing? We are having in this Bill about 139 penal clauses. In a Bill of 649 clauses, 139 are penal clauses. I think this compares very favourably with the Penal Code.

The Minister of Revenue and Civil Expenditure (Shri M. C. Shah): In the English Law there are so many penal clauses like these.

Shri Bansal: Having put in so many penal clauses about the actions, or inactions of those who are in charge of company management, I wonder what more the Members of this House would desire.

Pandit K. C. Sharma (Meerut Distt.—South): They are more heinous than the ordinary thieves.

Shri Bansal: More than that what the Select Committee has done is this. Apart from giving Government power to declare that in certain industries there need not be any managing agency in the future after 1960, they have also given power to Government that when the question of appointing or re-appointing a managing agent comes up, they can decide whether a particular person should be allowed to be the managing agent of that company or not. Further all heritable managing agencies will be void and no election to the office of managing agents, by inheritance or device will take effect unless approved by the Central Government. One of the criticisms of the managing agency system was that it is a relic of the feudal past. If a father forms a managing agency company, it automatically passes to the son even if the son does not have the brains of the father. To take care of that, this new provision has been incorporated in the Bill. Further, it has been proposed that no person shall be appointed as a managing agent of more than ten companies after the 15th August, 1960. This is another provision which has been introduced in keeping with the ideas that are prevalent now, namely, that there should be no concentration of wealth or power, and that takes me straight to the point of my hon. friend, Shri Tripathi, who unfortunately has left the House after interrupting me. He said that the Company Law Committee reported before the socialistic pattern of society had come into vogue. My reply is that the Joint Committee signed this Report; in fact, it considered the most important provisions of the Bill after the Avadi resolution had been adopted

and they were quite conscious of what they were doing. I think there is no violence being done to our socialistic pattern of society by circumscribing the managing agency system by so many hedges.

Talking of powers that Government are taking, I just now said that there are 139 penal clauses. Apart from 139 penal clauses, there are 95 clauses which empower Government to do this or that with regard to a company or a managing agency.

Shri Joachim Alva: They are all for the black sheep.

Shri Bansal: That is exactly the reason and the basis of this Bill. My only fear is that having been armed with so vast and so wide powers it may not be possible for Government to exercise them properly and for the companies and managing agencies to function in as efficient a manner as possible. The Finance Minister referred to the instance of the Kandian Ministers. I am reminded of the lovers of the Arabian Nights who used to take the vow of sleeping with a sword in between them when they went to bed, which only led to sighs and groans of forlornness and to no results. I am sure these powers will be used by Government in such a manner that something concrete will fructify and materialise if our country is to advance. I know the managing agency system and private enterprise come in for a lot of criticism, but during the last few years if you see the economic history of our country, private enterprise, that is, the industrial sector, has a very proud record indeed. Shri Asoka Mehta may take objection to the word 'proud', but I would ask him: if it is not a matter for "pride", then what is it? In 1947 the general index of industrial production was 97. In 1948 it was 108. Today it is 166. After all what is this prosperity that we see and talk about in our country? This prosperity is nothing but the increased production in our agricultural and industrial sectors and without this increased

productivity our country would not have been comparatively speaking as prosperous and as well off today as it has been during these seven or eight years of our independence. Whether you like it or not, the credit for this must to some extent go to those people who are manning, working and managing the industries. Whether you like it or not, the credit is there at least to some extent and before we think of abolishing a particular system or criticising that system beyond all proportions we must bear this in mind that whatever we may say for or against the managing agency system at least a part of the credit for this industrial prosperity has to go to that system.

I agree that there are abuses and these abuses must be done away with. That is exactly,—as I said and I repeat,—the purpose of this Bill and I am sure the Joint Committee has succeeded in doing that in an ample measure.

One of the criticisms that was voiced by my friend Shri Asoka Mehta was this. I am sorry I am referring to him again and again but that is because I respect him so much that I cannot allow the argument put forward by him to remain unanswered. He said that in foreign countries—according to some information which he has,—the management charges are only 1.5 to 2 per cent while in this country they are 13 to 14 per cent. I have not been able to collect many figures on that point. Shri Asoka Mehta has quoted from the evidence that was given before the Joint Committee by the representatives of the shareholders. When they referred to the percentage of 1.5 or 2, my friend Shri Morarka asked the witnesses a question. I am quoting, Shri Morarka said:

“With your permission, I will give some figures here and I would request the witness to contradict me if he thinks that I am wrong. For example in the American Ta-

bacco Co. the percentage paid to the President and Vice-President alone is ten per cent of the profit and the income of the President in one year alone was 11,10,500 dollars or a little over Rs. 50 lakhs. Similarly, in the National City Bank of New York, 20 per cent of the profits in excess of 8 per cent of the capital employed at a particular time is payable to the President....”

The witness, Shri Parekh, said:

“We have no desire to contradict these figures. We think they are quite in order.”

Mr. Deputy-Speaker: Who was the witness?

Shri Bansal: Shri Parekh was the witness representing the Bombay Shareholders' Association who had earlier stated that the percentage in other countries was 1.5 or 2. After these things were pointed out to him, he said so.

Shri Matthen: Any instance from the United Kingdom like that?

Shri Bansal: Unfortunately, I do not have any such instance. But my own impression is that no company in the world can be managed with two or three per cent. That is my definite impression and I say that with a certain amount of knowledge of company management.

Shri Asoka Mehta put forward a very big argument. After referring to the report of the Reserve Bank he said that the managing agencies have been getting on the whole about 13 per cent and you are reducing it from 13 to 10 per cent. So, he said, you are not making any remarkable reduction. This is like the question: “Did you beat your wife?”

If the managing agencies are charging much, then of course it is wrong. If they are charging less, even then, it is wrong. But, I would have expected a man of Shri Asoka Mehta's standing to have quoted fully from

[Shri Bansal]

this report because in the same paragraph where mention is made of 13 per cent on the average, another thing is also mentioned. I am sorry I am not able to lay my hand on that particular page.

Shri S. S. More (Sholapur): That may be the difficulty of Shri Asoka Mehta also.

Shri Bansal: I can remove that difficulty in a minute because it has been said here that there are other companies charging 35, 36, or 40 per cent.

Shri M. S. Gurupadaswamy: What is the average?

Shri Bansal: The average is about 13.9 per cent. or so. But, the law is not based on averages. The criminal law is not made for an average citizen; it is not made for Shri Gurupadaswamy; it is made for the criminals and therefore, this law is being made for those people who have been charging very excessive commissions. And what I say is that it fully meets the requirements of the case inasmuch as it makes certain things impossible for those people who have been charging commissions on percentage basis on sales and thereby fattening their profit margin to 30 or 40 per cent. It makes it impossible for them to charge anything more than ten per cent and I think that it is a very great advance that has been made.

My friend, Shri Asoka Mehta referred to the question of representation of workers on the board of directors. He quoted from a paper circulated by the Planning Commission. I think it has come from the Labour Ministry but the paper has been circulated by the Planning Commission to the members of the panel for labour. I happen to be a member like Shri Asoka Mehta. I respectfully submit that such documents which have not yet been discussed or considered and which are circulated to members of certain committees should not be quoted on the floor of the House. Now

that my friend has done it, may I with your permission, also quote certain passages from that paper? He tried to make out a case for the inclusion of workers' representatives in the board of directors. That very document says:

"It goes without saying that a strong and sound trade union movement is necessary for the effective working of an industrial democracy. Even ardent trade unionists in this country will admit that the situation in this country leaves much to be desired. Political rivalries which often come in the way of settlement of disputes, lack of resources, disunity among the ranks, multiplicity of trade unions and lack of bargaining strength are the major ills that afflict trade unions in the country today.... The Plan recommended that there should be one union per industry in an area. Multiplicity of unions in the same establishment leads to inter-union rivalries which ultimately cut at the root of the movement.... If such rivalries are to be checked, action is needed in the direction of reducing the number of outsiders in trade unions and providing for statutory recognition of one union."

I would like to ask Shri Asoka Mehta one question very humbly. This being the stage of trade union movement would he like representatives to be sent on the board of directors? After all, what is our experience of the working of the works committees which were constituted in order to have the representatives of workers and employers sit at a slightly lower level and discuss their problems amicably? What is the experience of these? I will again quote from the same document.

It reads:

"Barring a few cases where such committees have proved a success, it may generally be said

that the institution has not lived up to expectations. Workers' organisations have attributed the failure of these committees to the unhelpful and obstructive attitude of employers. Complaints have been made of the undesirable methods adopted by employers in the election of members. On the other hand, employers have attributed the failure of works committees to lack of co-operation from trade unions..."

Further, I would also like to say that it is not as if this document makes a complete case and says: "we must have representatives of workers on the board of directors here and now." What they have all suggested is that we should select a few industries where collective bargaining has proved a success and in these, as an experimental measure, we should try to do that. I am not expressing any opinion for or against the association of workers' representatives on the board of directors. All that I am trying to say is that even on the basis of this memorandum from which Shri Asoka Mehta himself quoted I do not think a case has yet been made out for the inclusion of workers' representatives on the board of directors.

Then, there is another practical difficulty which I have in view. Supposing Shri Asoka Mehta's suggestion is accepted that there should be two representatives of the workers on the board of directors there is another difficulty. As my friend Shri C. C. Shah would have us believe that there is no need for any managing agents because the main function of the managing agents, namely, to finance is no longer there because the Industrial Finance Corporation goes on giving loans freely, and if this system of the private enterprise working by the free loans given by the Industrial Finance Corporation comes into vogue, then what will happen is that the Industrial Finance Corporation will want to have one or two representatives of its own on the

board of directors. Now, lest my friends here might say that I am not on firm grounds I have here a letter issued by the Industrial Finance Corporation to one of the companies which applied for a loan from the Corporation.

Shri Matthen: Will the hon. Member kindly mention the date of the letter?

Shri Bansal: 31st December, 1953. I have the letter with me and I can very well show it to my friend if he is so anxious to know its contents. There is nothing secret about it because the company ultimately decided not to take any loan from this Corporation due to the reason that one of the conditions of the loan was that the Corporation will have the right to nominate, whenever it chooses, one or two representatives of its own on the board of directors.

Shri Joachim Alva: Why was the company frightened to take Government nominees? There may be many skeletons in the cupboard to hold.

Shri Bansal: What I am suggesting to my hon. friends is this. According to Shri Asoka Mehta there should be two representatives of workers; according to the Finance Corporation there should be two representatives of the Corporation; according to my hon. friend Shri Morarka there should be one or two representatives of the minorities and according to some shareholders who may complain there must be two persons nominated by the Government. Like this we will have eight representatives on the board of directors from these various sources—labour, Finance Corporation, Government and the minorities. Therefore, I do not know how that company will function.

Shri Joachim Alva: May I ask the hon. Member, has the private sector or the managing agents been known to have made an offer at any time to the representatives of labour even to sit as guest directors in their undertakings?

Shri Bansal: I can quote instances for the edification of my hon. friend which, on these matters, seem to be quite restricted—and, naturally so; I do not know anything about journalism which is his field—to show that there are companies in this country even today who take workers' representatives on the board of directors.

Mr. Deputy-Speaker: Does the hon. Member mean to say that hon. Members must work in compartments? A journalist may know Company Law also.

Shri Bansal: What I was saying is that I do not know Journalism. That was all I said.

Shri Joachim Alva: There are workers' representatives on the board of directors in Yugoslavia.

Shri Bansal: I was saying that here too there are companies which take representatives of labour on the board of directors. There is a very big mill here in Delhi, which is under our very nose, where a representative of workers is freely elected to the board of directors. There is free election and all the workers vote. The worker who is elected is made to sit as a full director on the Board.

Shri S. S. More: With what result?

Shri Mohanlal Saksena (Lucknow Distt. cum Bara Banki Distt.): Is that an argument for appointing workers' representatives?

Shri Bansal: What I say is that if all these ideas of my hon. friend Shri Asoka Mehta, Shri Morarka and Shri C. C. Shah are put into effect and the representatives of the Corporation of my hon. friend Shri M. C. Shah are also there, then there will be on the board of directors at least 8 representatives of these outside bodies and I leave it for the judgment of the House as to how that company will function.

Then, Sir, that takes me straight to the question of proportional representation which is such a pet child of my friend Shri Morarka. I just want to know only one thing, whether this demand has been made from the side of the shareholders because it is pointed out that if there is no proportional representation then the shareholders who are in a minority cannot have any say there and, in fact, Shri Morarka went to the extent of saying that there is no use of putting so many restrictions unless you give proportional representation. I would very humbly ask him whether this demand was at any time made by the representatives of the shareholders. I have gone through their memorandum. I have myself worked, as I said in the beginning, with Shri J. J. Kapadia, a greater champion than whom of shareholders the country has yet to see. I have never heard from him this very novel and dangerous suggestion that the minorities should have a representative on the board of directors.

Shri Matthen: What is the danger please?

Shri Bansal: If the hon. Member wants to know I can tell him about the dangers. I wanted to avoid some unpleasantness on the floor of the House by quoting instances and I will even now desist from quoting instances. Hon. Members who have spoken on the subject, perhaps have not known the recent instances of some of the companies which have come for lot of criticism in this country. I can say with some authority that most of the criticism was due to the fact that the board of directors was not homogeneous. If you do not want to repeat those very ugly instances I would request the House to think over this very calmly. It is not a party issue. It is not an issue on which anybody holds opinion based on principles. I suggest that it is not a matter of principle. It is just a matter of empirical pragmatic experience and based on the ex-

perience of those who have known the working of company management.' I can tell you that unless the Board works in a homogeneous manner a company will never function properly.

Shri S. S. More: Should there be no opposition there?

Shri Bansal: The opposition will be there even from the board of directors because the board of directors cannot be a packed body under this new Bill.

Shri S. S. More: What do you mean by homogeneous then?

Shri Bansal: There has been some improvement made in the provisions with regard to the election to the board of directors and in view of these provisions the board of directors can never be a packed body. But, to deliberately impose on the Board representatives of a recalcitrant and deliberately conceived minority will be most dangerous, in my opinion, and I am saying this with a lot of sense of responsibility. I will request my friends to consider this question dispassionately and not to make it a party issue or an issue of passion.

Mr. Deputy-Speaker: How can a minority over-rule a majority? They will be there only for the purpose of getting information.

Shri Bansal: They will not be able to over-rule but they will always be able to create difficulties in the smooth functioning of the company.

Shri Morarka (Ganganagar-Jhunjhunu): Smooth functioning?

Shri Bansal: The recent instances in some of the companies have amply proved this and, therefore, that is my opinion. I am not trying to force my opinion on anybody; but what I say is that those gentlemen who are trying to press this point forward should tarry and consider.

Shri S. S. More: Is it not our experience that the abuses and malpractices are mostly due because the board of directors is a packed house?

Shri Bansal: That is exactly what I say. Under this Bill, as amended, it will not be a packed house. If the hon. Member will kindly see the provisions of the Bill he will know of it.

Shri Matthen: Sir, I have not understood.

Mr. Deputy-Speaker: He knows the other view and he is trying to answer to the best of his ability.

Shri Bansal: Then, there are so many powers of investigation. There are so many powers given to the shareholders for approaching the Government for getting investigation made into the affairs of the company and for getting two directors nominated by Government if the Government are satisfied that the affairs of the company are being conducted in a particular manner. What I mean to say is that there are lot of safeguards for the shareholders who are in a minority.

Mr. Deputy-Speaker: The hon. Member referred to certain recent instances. Do these instances relate to cases where the management are elected on the principle of proportional representation?

Shri Bansal: No, Sir. They were not represented.

Mr. Deputy-Speaker: Therefore, it is not directly in point.

Shri Bansal: They were not elected but the formation of the board by virtue of the shareholding has been such that there were warring groups in the board of directors. Please do not let me say more on that point.

Shri S. S. More: Does he not want to persuade us to his point of view?

Shri Bansal: I have already said that I have persuaded as far as Shri More is concerned, and I am sure he is going to vote with me.

Mr. Deputy-Speaker: A unique instance of both the Opposition and the Government voting on the same lines

Shri S. S. More: We always vote on the side of truth.

Shri Bansal: Now, I would not take more than two minutes, and I have come to the end of my story. There is a provision in this Bill to which I am a party. That provision is that proxies can be held by non-shareholders also. I am referring to it because I do not consider it a matter of principle but because I believe that this is going to create some difficulties inasmuch as a new class on advisers to the shareholders, a self-styled class, is likely to spring up and which, without any shareholding or any interest in the company, will get itself nominated as proxy to the various meetings of the shareholders. Not that I am totally opposed to this idea but I would suggest that just as in the case of the managing agents where you have placed a limit that a managing agent cannot hold more than ten managing agencies, in the same manner, if the Government finds that one particular gentleman is working as a proxy to a number of companies then, I think Government must come and stop that being done indefinitely. Because, in that case, what will happen? This class will become a sort of parasite class and will thrive on the real or imaginary offences which are likely to be there among the various shareholders.

I shall finish with only one more point, and that again relates to my hon. friend Shri Asoka Mehta with whom I began.

Shri M. S. Gurupadaswamy: You are obsessed.

Shri Bansal: I am, because he is such a worthy speaker in the House and I would also be obsessed if you yourself made such a brilliant speech. Shri Asoka Mehta said that the managing agency system is no longer playing the role of financiers and added that the financing role of managing agencies has become a myth. I was looking into certain figures. I do not think you will allow me so much time but if you did, I

could quote to you figures from a number of companies who have received from their Managing Agents financial accommodations even to a greater extent than their entire capital of the company in times of difficulties. Without elaborating on that point, I would just say that the managing agency system even now plays a role of financiers of companies both in ordinary times and in times of difficulties.

Although I would like to say something more, but as my time is up and I would not keep the House waiting any longer. I will end by saying that you must please give a trial to this amending legislation which has been drafted by the Joint Committee after a great deal of care. A great deal of labour has gone into the preparation of this amending Bill and I am sure it deserves to be given a trial by the country.

Shri G. D. Somani (Nagaur-Pali): India today is on the threshold of an industrial revolution. Our Second Five-Year Plan envisages an ambitious programme of industrialisation both in the public as well as the private sectors. So far as the private sector is concerned, its most functions under the system of joint stock enterprises and naturally, therefore, this mammoth legislation, the Companies Bill, which we are now considering, will have a direct bearing so far as the activities of the private sector are concerned. I have appended a Minute of Dissent along with my friend Shri Tulsidas in which we have drawn attention to the general approach of the Bill as well as the various detailed provisions. I would certainly not like to take the valuable time of the House by repeating those arguments. My submission is this. The primary objective of the company legislation must be to actively assist and encourage the promotion and smooth functioning of joint stock enterprises throughout the length and breadth of the country and we should apply the test whether the Companies Bill that we have under consideration will promote or retard the economic

development of the country. I quite admit that certain deficiencies and defects which have come to light must be removed but I am firmly of the opinion that the primary consideration in this legislation should be to ensure the promotion and smooth working of companies throughout the country and it is from that consideration that I respectfully submit that this Bill is too complicated, too rigid and too restrictive.

If you will compare this Bill, which is the most elaborate of its kind ever presented to Parliament, with the United Kingdom legislation on which model our Bill has been designed, we will find that while the United Kingdom legislation has got 462 clauses, here in this Bill we have got 652 clauses with a number of sub-clauses, appendices and annexures and so on and so forth. We are all aware that the standard of literacy in the United Kingdom is far above that of our country and that the size of the companies being formed there is also much greater and bigger than what we have in this country. It will therefore be quite logical to say that in an under-developed state of our country and in view of the very ambitious programme of development that we have before us, it should be our primary responsibility to ensure that the companies for whom we are legislating will be able to be formed, promoted and run on smooth and sound lines according to the provisions of the Bill.

After all, what is our objective? We are thinking in terms of increasing the national income by 25 per cent. We are thinking of creating ten to twelve million new jobs in the next five years. We are thinking in terms of decentralised economy. We are also thinking in terms of the growth and development of small-scale industries throughout the length and breadth of the country. May I ask respectfully whether these objectives are going to be achieved by the Bill that is before us or whether this Bill is going to come in the way

of fulfilment of these objectives? It is with that point of view that I would appeal to the hon. Members to seriously and dispassionately consider the implications of this Bill on the various objectives that we have set before ourselves.

2 P.M.

So far as the big companies are concerned, I know they will be able to function alright because mostly they are located in important centres like Calcutta and Bombay where expert legal opinion like that of my friend Shri C. C. Shah is available, but I am quite sure that the managing agents, if at all they are allowed to function, and the directors will have to spend a lot of their valuable time not in improving the management and efficiency of the concerns which are under their control but in ensuring that nothing is allowed to be done in the day-to-day administration of the company which will involve them in committing any breaches of law and in incurring penalties. As just now pointed out by my friend Shri Bansal, there are as many as 149 clauses which have prescribed one sort of penalty or the other. Apart from that, leaving aside the question of big companies what I want to submit is that so far as the small companies are concerned, I am very much afraid that it will be almost impossible for the small-scale industries in small centres to grow and to promote companies and to carry on their smooth functioning. The Bill, as it stands today, is too complex and too complicated, too rigid and too restrictive to enable these small-scale companies to be able to get the necessary legal opinion and be able to function without incurring the various penalties which have been provided in the Bill. I therefore submit that the primary consideration in framing this legislation should have been to actively assist the formation of the joint-stock enterprise throughout the country and as Mr. C. C. Shah himself pointed out the other day, to promote the industrialisation of the country. But as

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it is I find that the primary consideration in framing this Bill has been the maintenance, as the hon. Finance Minister pointed out the other day, of law and order in the private sector. If the primary consideration of the Companies Bill is only to be confined to the maintenance of law and order, I respectfully submit that the developmental side of our economy as to how the Companies Bill will be assisting the economic development of the country is going to be defeated. I therefore even at this late stage appeal to my lawyer friends in this House to apply their mind and see as to how far this legislation will enable the fulfilment of the decentralised economy and the formation and smooth running of small-scale industries throughout the length and breadth of the country.

The hon. Finance Minister while speaking the other day hinted that there was no departure from the principles as originally laid down in the Bill and the basic pattern remained unaltered. I respectfully submit that there has been a radical departure in certain directions which may have far-reaching consequences on the economy of our country and therefore I do not agree that the Bill, as it has emerged from the Joint Committee, does not materially differ from the one which was referred.

Coming to the vexed question of the managing agency system, I am quite aware that this system has been a matter of controversy not only at the present time but throughout the last 20 or 25 years. So far as the abuses and malpractices are concerned, I will deal with this point a little later. But nobody can have any difference of opinion about making any provisions which will remove the defects and deficiencies in the Act as it stands today and which will result in the running of our company management on sound and healthy lines. The point, however, is that the prevalence of malpractices and abuses has been given emphasis out of all

proportion and has overshadowed the appreciation of the role which the managing agency system has played in the economic development of our country. My friend, Shri Bansal, who preceded me has already quoted the various high-powered Commissions and Committees which have gone into the abuses and malpractices as also the contribution which the managing agency system has made to the economic development of our country; therefore, it is not necessary for me now to quote extensively from these commissions and committees. I would only like to draw the attention of my friend to the fact that the observations of the Fiscal Commission or the Planning Commission or the Bhabha Committee were made at a time when the abuses and malpractices were at their worst. We are all aware that the war and postwar conditions created opportunities for making easy money and it was under those abnormally boom conditions—I am painfully aware—that a section of the managing agency houses indulged in unsocial activities about which the strongest words may be used to condemn them. The question, however, is that after having gone into all these malpractices and abuses, these high-powered and impartial commissions have unanimously expressed their view that the system should be mended and not ended. I would quote only a few words of the Bhabha Committee, to show what they have said about the contribution and achievements of the managing agency system in building the economic development of the country. They say.

“It is also to be remembered that organisations built up by these reputable and established managing agency houses which have provided technical, managerial, and financial advice and assistance and top level control to the companies and their management have contributed much to the development of industries for the benefit of all interests con-

cerned. Having regard to all the circumstances, we consider that in the present economic structure of the country, it would be an advantage to continue to rely on the managing agency system;" and so forth.

My point is that the malpractices and abuses have been there during the recent two or three years on a much lesser scale than what they were at the time when these views were expressed by those commissions and I am quite sure that if the Bhabha Committee would have been writing their report today, perhaps they would have recommended far less rigid restrictions upon the managing agency system than what they did at that time.

Shri S. S. More: Has there been any improvement in the morality of the management?

Shri G. D. Somani: I will come to the question of morality later. So far as the cases of mismanagement and malpractices are concerned, my point is that they are on the decline and during the last two or three years I am not aware of any widespread practice of such evils. That may be due to the powers which the Government have assumed in 1951; or it may be due to the fact that opportunities are now on a much lesser scale than what they were in the abnormal war and postwar period. Now sellers' markets have disappeared and buyers' markets have emerged and this is a period of healthy competition. It may be due to one reason or the other, but my submission is that these abuses and malpractices are much less now than what they were at the time when those commissions made their unanimous recommendations about the managing agency system.

It may also be mentioned in this connection that the late Shri J. T. Kapadia who was also a Member of the Company Law Enquiry Committee and who was the greatest critic of the managing agency system was also a

party to the suggestion that the system should be mended and not ended. My point in drawing attention to this matter is that in this picture of the misdeeds of a few managing agents in an abnormal period, the entire contribution that the whole system has made during a long period has been completely ignored or forgotten. It should be remembered that it is the managing agency system which has placed India on the industrial map of the world. It is, again, this system due to which India occupies today the foremost industrial position in the East excepting only Japan. Looking to the production of the various important industries, whether it is textiles, jute, sugar, cement, steel, or engineering and chemical industries, you will find an impressive increase in the production, year by year. We are not only self-sufficient in a number of essential items, but our industries have been able to export substantial quantities of their manufactured goods in the growing competition throughout the world markets, and have thereby earned valuable foreign exchange for the country. If one were to comparatively analyse the positive contribution of the managing agency system on the one hand and the existence of abuses and malpractices, which a few of the unsocial elements may have perpetrated, on the other, I think the position will be quite obvious that in spite of the weaknesses and abuses, this system has done a great service to the country. As the Bhabha Committee itself says, it is still in a position to make a vital contribution to the economic development of the country in the future.

Coming to the malpractices, I ask, because certain government servants have been corrupt or dishonest, would you be justified in condemning the Government machinery as a whole? I hope my Congress friends will not take it ill. May I go a step further and ask, simply because, after the achievement of our Independence, certain opportunities have presented themselves and a section of our Con-

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gress friends have fallen a prey and fallen down from the high code of character and discipline which was laid down by the Father of the Nation, will it be in order to condemn the Congress organisation as a whole? Speaking for myself, I would say that the Congress organisation is doing much more good to the country than the evils which are being perpetrated by a section of the Congress people throughout the various States.

Shri L. N. Mishra (Darbhanga cum Bhagalpur): No evils.

Shri G. D. Somani: I can only say this in reply. What one sees in the press, the regular scramble for power and for office and for various other matters going on in the various States, bears ample testimony to the deterioration in the moral standards throughout the country.

Shri M. S. Gurupadaswamy: We agree with you on this point.

Shri G. D. Somani: Shri S. S. More asked about the deterioration in the moral standards. My reply is that this deterioration in the moral standards is not confined to the business community alone.

Shri S. S. More: I asked about improvement.

Shri G. D. Somani: It is quite possible that the business community may have had more opportunities in that abnormal period and perhaps the extent of their misdeeds may have been greater than those of the other sections of the community. But, it is quite clear that whenever an opportunity presented itself to any section of the community....

Mr. Deputy-Speaker: Does the hon. Member say that it is their business?

Shri G. D. Somani: My submission is only this. When you condemn the managing agency system as a whole due to the misdeeds of a certain section of the people in a particular period when there were easy opportunities for falling a prey, you are go-

ing too far. I am only just drawing attention that this deterioration in moral standards was not confined to the business community alone, but this has been a common weakness of all sections of our community. Certainly every effort should be made to improve the moral tone of the whole country so that all sections of the community can adjust their conduct on healthy lines.

Shri S. S. More: May I know whether the guilty part of the managing agency system constitutes a majority or a minority?

Shri G. D. Somani: Sir there have been speeches off and on about the abolition of the managing agency system. I submit that this is nothing short of flogging a dead horse. Those who are asking for the abolition of the system, I respectfully submit, have not properly appreciated or realised the significance of the tremendous changes and tremendous restrictions that have been provided in the Bill under consideration. It is not a system under which the managing agents can draw any remuneration they like. The managing agents used to draw commission without providing for depreciation; the managing agents used to draw office allowances. The managing agents used to draw commission on scales as part of the managing agency remuneration. The managing agents used to draw in certain sectors also a commission by acting as buying agents. The managing agents could indulge in a lot of interlocking. There were a lot of other ways which were open to the managing agents whereby the total remuneration that they could draw under the existing Act was something much more than what they can under the provisions which have been drastically modified in the Bill that we are considering today. Even this 10 per cent., provided in the Bill, does not fully reflect the provisions that have been made for making allowance for depreciation and various other charges. I submit that if, today, anybody floats a new company, it is just

quite practical to assume that it will take 3 or 4 years before the factory goes into production and in the next 4 or 5 years, he will get so much liberal depreciation allowances from the Income-tax department for new plant and machinery so that any managing agent of a new company is not going to get anything for the next 10 years, not even in the nature of office allowances. Not only that. The managing agents have to work under so many restrictions and rigid regulations, and I can tell my hon. friends that there is a responsible section of managing agency houses today which feels that it is not worthwhile now to have managing agency of a company. I would not be surprised if the new flotations now coming up in the country may have no managing agents, in view of the manner in which the managing agency has been made less attractive from so many points of view and has been placed under so many restrictions and rigidities under so many provisions of the Bill. Therefore, I do not realise the enthusiasm with which some people, even after making all these provisions in the Bill, are still agitating for the abolition of the system, because it will not be the system which prevails today or which was prevailing 3 or 4 years before. If only the real implications of the drastic changes which have been provided in the Bill are realised, they will feel that the lot of the managing agent has really been made unenviable. This is bound to automatically result in the elimination of the managing agency system gradually. Even from the point of view of the managing agents, I am quite sure that the system is going to diminish gradually. Therefore, our friends need not be so enthusiastic in their demand for the abolition of a system which will come automatically out of the sheer force of economic factors which will operate under the new Bill. Those who are talking about the abolition of the managing agency system due to the malpractices and abuses, also forget that any other alternative form of management is susceptible to the same abuses as can be perpetrated by a

managing agent. The hon. Finance Minister himself drew attention to this aspect when he said that it is not the system, but it is the loopholes in the Law which can enable even a director-controlled company to function in an unhealthy manner. Therefore, to say that the managing agency system alone is responsible for all the abuses is just not to realise the practical side of it. Companies like banking and insurance which have been functioning under directors have also shown that malpractices and abuses can be perpetrated where the managing agency system is not prevalent. My point, therefore, is that it is not the system, it is the individuals that we have to blame. These individuals are to be found in every section of the community. Therefore, this fashion of condemning the managing agency system day in and day out has gone rather too far. It is better that we realise the changed pattern under which the managing agency system will function in the future. I think the managing agency system should now be encouraged, and if you can find any managing agent to function under the new Bill, then his sacrifice, I should say, should rather be appreciated than saying anything to discourage the system.

I was just talking about the economic development of the country, and again talking from that general point of view of developmental needs of our country, I would appeal to the Members of the House that at a time when the private sector is being given a very primary responsibility of investment of something of the order of Rs. 750 crores for industrialisation in the next five year plan, we should talk in a manner which would create an atmosphere wherein people will have the initiative and enterprise to go in for such an ambitious scheme of industrialisation. I can make bold to say without the least fear of contradiction that we have got a team of businessmen in this country whose talent and experience are second to none in the world, and whose sense of honesty and integrity and above all, whose spirit of patriotism is

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second to no other section of the community. I would appeal to the hon. Members of this House to create an atmosphere wherein such a team of businessmen will be able to offer their vital contribution to the historic task of developing the country's resources to an extent which is envisaged under the Second Five Year Plan. It will not do and it is not in the country's interests—and I am not talking from the self-interest of the business community—day in and day out to run down and to offer remarks which are derogatory to the community as a whole. The community is proud of its achievements, of whatever it has been able to do so far, and the community is eager to offer its best for the historical task which we have undertaken. So, it is in this atmosphere in which we are told by the Prime Minister and the other leaders that everybody has to offer his best talent and experience in building up a new India, that I appeal to the hon. Members of the House to be a little restrained and not to indulge in such criticism of the system which might hurt the feelings of those honest and enterprising businessmen who are at present planning for the economic development of the country.

I would now come to the powers that are being taken to notify certain industries where we will have no more of the managing agency system. I do not quarrel with the possibility that might arise in the future where the Government and the House may feel that there is absolutely no need for the managing agency system to continue, but as a practical man I would like to ask whether you cannot achieve this objective even without taking these powers. Shri C. C. Shah the other day himself referred, and the Finance Minister also the other day said that the company law has to be changed quickly and promptly to suit the changed conditions of economic activity in our country, and therefore there is no finality. Those who are experts in com-

pany law all envisage that frequent changes in the company law might be necessary in the light of the experience that we gain. So, if the company law may have to be changed again, as it is likely that it will have to be, then what difficulty do the Government and the hon. Members envisage in abolishing the managing agency system at the time when it is regarded as opportune for doing so, by bringing about the necessary amendment to do away with the managing agency system either in a particular class of industries or in the industrial field as a whole? What I say is that the implications of the uncertainty, insecurity, doubts and fears which you will be creating in the business field by taking these powers are not being properly realised. On the one hand you can easily achieve your objective of doing away with the system after five years or whenever it is necessary to do so by bringing about the necessary amendment of the Companies Act. On the other hand, you are taking powers which are not meant to be utilised at least in the near future and you are creating conditions of fear and doubt and insecurity in the minds of those who are planning for a long period. Either the powers will be utilised or will not be utilised. If the powers have to be utilised, there is nothing to prevent Parliament from passing the necessary amendment any time such powers are sought and are deemed necessary to be exercised. If they are not to be utilised, then there is no useful purpose served by having those powers in the Bill. So, in my opinion, even from the point of view of those who want to abolish the managing agency system, this taking of powers is not a salutary step, and I would appeal to the House to realise that their objective of doing away with the managing agency system in the future will not in any way be adversely affected even if these powers are not there. We have changed our Constitution four times during the last few years and I do

not foresee the slightest difficulty in bringing about a simple amendment in the Companies Act at any time when such a necessity arises. I therefore feel that much harm will be done and nothing useful will be gained by the taking of these powers which will enable the Government to notify such industries as they choose. If however these powers have to be taken, then I would at least ask for an assurance from the hon. Minister that before any such notification in the case of an industry is issued, a systematic and comprehensive enquiry will be made into the financial and other implications of that announcement and that the industry concerned will be given an opportunity to express their views. Because, if the executive one fine morning just says that managing agency will not be allowed in a particular industry, then it might have repercussions, the implications of which may not be properly realised. So, I think the least that the Government can do will be to give an assurance that whenever any such notification is issued, it will be preceded by a systematic enquiry into the implications of the step that they propose to take.

I will now come to this question of confining the managing agency to ten companies and thus eliminating and avoiding the concentration of economic power and wealth in a few hands which was so eloquently pleaded for the other day by my friend Shri C. C. Shah. In this connection, I would like to ask a straight question. What is the policy of the Government? Because, so far as I have been able to understand it, and so far as the public utterances of the Prime Minister, the Industries Minister and the Finance Minister go, they have all along been asking the industrialists to go ahead with the economic development of the country and with the establishment of new industries, and it is in pursuance,—of course, also of their self-interest, as also of that policy that many big houses are at present planning new industries and expansion of their existing ones. I

would therefore like to have an authoritative clarification from the hon. Finance Minister whether all these big houses—Tatas, Birlas or somebody else—are quite in order to go on planning the establishment and expansion of their existing industries, or whether, as Shri Shah pointed out the other day, they should simply come to a dead stop and realise that they are not going to be allowed to expand any more or plan any new industry. If the idea of the Government is that because of the fact that these big houses are expanding or adding new industries they are going against the basic objective of the State policy, then the State has got ample powers. No industry can be at present substantially expanded or established without securing the necessary licence and without securing the necessary consent from the Capital Issues Department. That being so, how can Shri Shah or any other Member of his way of thinking accuse the business people of going against the spirit of the Act when they plan expansion or establishment of new industries? Let this issue be cleared once and for all. In that case the big business and industrial houses would not be particular of planning and starting new enterprises. If the Government think that we have already got sufficient industries in the country, let them say so plainly and these big business houses will not waste their time and energy in planning and establishing new industries. So far as these big houses understand, and so far as my understanding goes, the basic policy of the Government is that all the available talent and experience in the country should be utilised for developing the country's resources and if that is so these big houses would be serving the country's interests by expanding their existing and establishing new industrial concerns.

I do not propose to go into the merits of the particular case that was mentioned by my hon. friend Shri C. C. Shah but I think there is a lot

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of confusion in this matter when we talk about concentration of wealth. I can understand the various taxation measures adopted by Government; Government have already placed the estate duty on the statute-book; they have already increased the tax on high personal incomes to 87½ per cent. The concentration of wealth and power is thus being taken care of by the taxation policy of Government.

But if this policy is to be taken to an extent which will prevent the present big houses from planning for expansion or establishment of new industries, it will be a new policy to me and to these houses. We would all like to know how big business stands in this respect. My submission is that the principle of putting a ceiling on the number of companies which a managing agency can have is inconsistent with Government's policy of expanding the country's resources. We can wait for some more time for an application of these ideologies.

We have been told time and again by our Prime Minister that if we concentrate too much on the distribution side, it will only mean distribution of poverty. So, from the point of view of the interests of the country, whether a house is big or small, everybody should be encouraged to go ahead and nothing should be done in the name of concentration of wealth, or concentration of power, to discourage those who are in a position to do a job and who have got the necessary talent, experience and resources to develop the country in the most economic and efficient manner.

My hon. friend Shri Shah was also very critical about the provisions about Secretaries and Treasurers. I would like to draw his attention to the remarks of the hon. Finance Minister when he said that this is a kind of managing agency system without teeth. Many of the powers of

nominating directors and even of selling and purchasing have not been conferred on these Secretaries and Treasurers and if these Secretaries and Treasurers are not allowed to work, I am afraid it will cause great dislocation in several companies. If it is concentration at all, I submit it is concentration of technical, managerial and administrative personnel. It is not concentration, in any sense of the word, of economic power.

I would in this connection like to draw the attention of my hon. friends to the representation that was submitted by the Associated Chambers of Commerce of Calcutta. They have given various instances where there are a number of, sometimes as many as 25, tea estates under the management of one concern. A single manager and a single superintendent is looking after the management of all these estates. You cannot get the services of a top technician for a small estate, if these are to be fragmented. The idea, therefore of having Secretaries and Treasurers, I think, is a constructive idea, and if the limit of ten companies remains, it will help at least in continuing the benefits which these various companies enjoy by this concentration—if it can be so called—of technical, managerial and administrative personnel. Because these companies are small they cannot naturally afford to have top technicians, because they cannot pay the high salaries which a qualified technician would demand. But if a number of companies are under one management and if they are able to have the services of such highly paid technicians, administrators, accountants and so on, naturally it goes for efficient and economic management and there is absolutely no question of any economic power being concentrated in the hands of Secretaries and Treasurers. I, therefore, think that these provisions about Secretaries and Treasurers are very helpful and very useful and they should be retained as they are. Otherwise, there is

bound to be a lot of dislocation and disintegration of several companies.

I would like to draw the attention of the hon. the Finance Minister to clause 197. I am glad that he has given an assurance that there are certain genuine difficulties if the clause remains as it is and I hope, it will be possible for him to accept a reasonable amendment to this clause. In my opinion it is not enough for the Government just to take powers to exempt in special cases. It is not a question of special cases. You have also roped in the word "manager" there and so far as legal opinion in certain quarters in Bombay goes, even the top factory managers may be classified under this clause, or may be roped in. I would suggest that there should be a proper clarification and I hope the hon. the Finance Minister will be able to do so in his reply. He should give a definite assurance that what is meant is not the employment of technicians in the shape of managers should be worded in a way which will be affected by this clause. Indeed I would like that the whole clause should be worded in a way which will not come in the way of companies employing highly qualified technicians. So far as this limit of Rs. 50,000 is concerned, it is quite obvious that for the first five or seven years, it would not be possible for any new company to make profits. It will be very difficult for those companies who have managing directors and managers to do the job.

When I talk of this Rs. 50,000 I may in passing draw the attention of the House to a recent Government appointment which was made of a Russian expert on Rs. 4,000 a month free of tax. This comes to something like Rs. 1,20,000 per year. I do not know how our socialist or communist friends would like an appointment of an expert from a communist country on the terms and conditions which they have been criticising all along. Here again is an example to show that if we have to get an expert

foreign technician we have got to pay for it. There are various other instances of American and Continental experts working in various Government projects who are drawing Rs. 10,000 and Rs. 15,000 a month. Therefore to place a concern under the restriction of Rs. 50,000 a year is to place unnecessary hardships and difficulties. Why should it be necessary to come to Government every now and then to seek exemption from this clause? It will, therefore, be in the best interests of the industrial development of the country that a suitable amendment of this clause is made so as to ensure that genuine requirements of technical and managerial staff are not in any way affected by the operation of this provision and companies are not forced to come to Government for exemption every now and then.

I would now like to come to this vexed question of proportional representation. My hon. friend Shri Bansal has already dealt with in a very lucid way about the implications of this system of proportional representation. I am aware, and Shri Bansal himself has indicated—but certainly it will not be desirable to give any names here—how certain companies have functioned recently in Bombay when they had a board of directors who were constantly quarrelling between themselves and how the affairs of those companies have simply gone to dogs. My hon. friend Shri Morarka is amply aware of this instance. When a company has got a board of directors who are constantly quarrelling between themselves then how can the smooth functioning of the company go on? It is the actual experience of a very important group of companies that the affairs have gone from bad to worse during the last two or three years owing to the presence of directors on the board, who have been quarrelling between themselves.

So, so long as there is no difference of opinion, the question of proportional representation does not arise;

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and whoever may be the directors, so long as they are acting in a way which is not in any way prejudicial to the interests of the company, this system of proportional representation will not serve any purpose. But when such differences arise, and when you force on the company some directors, who will create a lot of interference in the day to day working of company, then I say that it will very adversely affect the functioning of the company, and it will make the task of the board simply very difficult.

My hon. friend Shri N. P. Nathwani himself gave the example of a coalition government. We all know how the Congress-Muslim-League coalition fared for the short period that the country was ruled by them. It might be said that this was a political question. But apart from its political aspect, the fact remains that Muslim League also swore allegiance to the country as much as the Congress, and they also said that it was in the country's interests to act in the manner they did. Similarly, the minority directors also may say that they are doing something only in the interests of the company. But 'interests of the company' is a very wide term, and it can be interpreted in any way. The question, therefore, is—whether it is a concern or whether it is democracy—that unless you have got a team of people on the managing side who will agree between themselves and who will act in harmony, the smooth functioning of a concern is not possible. If such a team of people is not there, then endless complications will arise in the day to day management of the company. I would therefore respectfully submit that this proportional representation will be definitely detrimental to the smooth functioning of companies, and should, therefore be dropped.

I have no quarrel with the enabling clause, as it stands, under which any company if it so chooses can have that system of election. I have abso-

lutely nothing to say against it. But I do not like Government to assume powers to themselves to impose two directors on any company, whenever they receive any complaint from ten per cent shareholders. This is really a very dangerous clause, under which a few companies might find it very difficult to work. For, after all, it may be that circumstances may prevail in a particular company in a particular manner, and if Government were to exercise this power to nominate two directors on the board of that company, who will be constantly at loggerheads with the majority, then that certainly would create a state of affairs which is absolutely undesirable. My submission is that the shareholders might resort to the various other remedies that are open to minority shareholders, such as going to court, going to Government, etc. So, there can be absolutely no justification whatsoever for placing people on the board, who will be constantly quarrelling with the majority.

I now come to the question of the omnibus powers which have been placed in the hands of Government. There are about 90 clauses, under which the companies will have to go to Government for seeking their consent and permission at every stage. To take one instance, whenever any new managing agent has to be appointed, then the permission of Government is necessary. The criterion that has been laid down is that in giving permission to that company to have that managing agent, Government will see whether he is a fit and proper person. What is the definition on 'fit and proper person'? Again, I would ask my hon. friend Shri C. C. Shah to realise the implications of this clause in terms of concentration of power and wealth. So far as one can make out, 'fit person' can be defined only as a person who has got the necessary experience and background of industrial management. If

a Government officer is going to examine the application of any newcomer, then naturally he will class that newcomer as an unfit person, because he has no experience in that line. That will only mean that only those who are already in the line, i.e. the big people alone will get the certificate of fitness, and those who have absolutely had no experience, and who want to enter the line for the first time, will have to be left out. I do not quite realise the implications of this clause. I can understand the desirability of keeping out somebody who may be undesirable, who may have misbehaved, or who may have something else against him. But to apply a positive test of fitness and capability while granting permission will certainly lead to unnecessary complications, and I think it will be better that this clause providing for the system of giving a certificate of fitness and capability to managing agents is not introduced in the Bill.

I shall give you another instance in this regard. Even if the company has to increase the number of directors, within the maximum laid down in the articles of association, still the company has to seek the permission of Government for that increase. I simply cannot understand this provision. If when once the company is floated, the articles are filed with the Registrar, and the maximum number of directors is laid down in the articles themselves, then where is the necessity or the desirability of going to Government even if one or two additional directors have to be added to the board for some very essential reasons. I submit that this is going rather too far. It does not in any way solve the problem. If one has to go to that extent, which one can imagine, into all details of work that has to be done in the company day to day, then that is quite another matter. But in the ordinary course, one cannot see the justification of going to Government for their consent even for having an additional

director on the board within the maximum laid down in the articles.

Then again, the remuneration of the managing director cannot be fixed, unless it is approved by Government. The key-stone of a joint-stock enterprise is democratic functioning. After all, it should definitely be recognised that the shareholders are the ultimate masters of their money and of their company. Why should Government come to the conclusion that the shareholders cannot protect their interests, and therefore, Government must step in to protect their interests?

Shri S. S. More: Have they been able to protect their interests up till now?

Shri G. D. Somani: Things have changed since then, i.e. since the period which my hon. friend Shri S. S. More is contemplating. I know of company meetings in Bombay which continue for two hours, or three hours, and sometimes even late up to midnight, and in some cases where the meetings have to be adjourned also. The shareholders of today are not the shareholders of ten years or fifteen years ago, who did not attend any company meetings, and things went on at that time according as the managing director chose. But conditions have changed now.

I quite realise that the utmost possible publicity should be given to the affairs and accounts of the company, and that the shareholders must have the fullest possible right to go into the minutest details of work in their company. But that is the farthest one can go in the ordinary course of company management. And to try to think that the shareholders are unable to protect their interests, and therefore Government must step in at every stage on every minor matter to protect them, is to contemplate the impossible. We have got so many things to do at present in the economic field that it will simply not be desirable even for the Department of Government to fritter away their

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time and energy in scrutinising small points of a vast number of companies that will be springing up throughout the country. It would simply mean providing for an impossible state of affairs, so far as one could see. I can understand that sort of thing in respect of certain important matters of policy which have got to be approved by Government. But to say that on each and every minor detail, one must go to the Government Department and seek their approval will mean creating unnecessary complications. I do not see the slightest justification, therefore, for some of these powers which are sought to be taken by Government.

Then, even if there is a slight change in the managing agency firm or company, Government's approval should be sought.

Certain powers were taken in 1951 to deal with some temporary difficulties. Now, they are sought to be provided permanently on the statute-book. I can understand that if there is a major change in the constitution of the managing agency—you can provide for a certain percentage—then the Government's permission should be necessary, but if Government has to be approached for approval even if there is a slight change, a technical change—if somebody retires or if somebody dies—it is again creating a sort of unnecessary interference in the day to day working of the company.

There are various other clauses—as I said, there are about 90 or 95 of them—under which companies have to go to Government at every stage for seeking their approval. At a time when we have to concentrate on big things and big policies, when big development plans are under execution, I think you are simply putting powers in the hands of Government which they will not be able to exercise with the care which they deserve. We are all aware of the deficiency of the

administration in company law all along. Indeed, it has been recognised and unanimously felt that it was not so much the lack of legal provisions in the present Act as the deficiency of the administration which has been responsible for many of the abuses and malpractices. That being so, it is better to tighten our administrative machinery in implementing certain major policies and in ensuring that the companies, so far as the major points are concerned, have to seek Government's consent and approval. But to stretch it too far, to provide for each minor and minute detail to be taken to Government for approval, is, I personally feel, doing things in a most impractical manner, and it will put a burden on the Government which they may not be able to carry out satisfactorily.

These are the few important points to which I wanted to draw attention. I would in the end again appeal to hon. Members to dispassionately consider the Bill as it stands. We are here to make combined efforts to take our country forward to progress and prosperity. There are business people who are capable of delivering the goods, who have shown by their experience and by their achievements, that they are capable of making a positive contribution to the development of the country's resources. It is in that spirit of encouraging the development of the corporate sector that the entire Bill should be designed. I again repeat that the Bill should not be designed only to maintain law and order. That is also one consideration and we must ensure that our company management is on sound and healthy lines. But the primary objective must be to encourage and assist the formation of companies throughout the length and breadth of the country. And if the Bill, as it stands, is passed into law, then I am very much afraid that it will come in the way of decentralisation of our economy and of various small companies springing up throughout the country; there may also be various

other complications which the big companies may have to face. The Bill, I quite agree, has not been placed before the House in any haste. I agree with the Finance Minister in that respect. It has been a subject-matter of detailed inquiry and the Joint Committee also devoted its full attention in scrutinising and examining the various provisions of the Bill. But my submission is this, that in this scrutiny and examination, the Bill has been made more complicated, more cumbersome, more intricate, more rigid and more restrictive, and the entire developmental approach has been subordinated to the approach of keeping the abuses out. So far as the major points to plug the loopholes are concerned, there can be no difference of opinion. The difference of opinion is only as regards the extent to which we should go in realising this goal. We must have a healthy and sound management, but in ensuring that management, we should not go too far, which will in any way adversely affect the scope of free enterprise, and it is in that spirit of examining the Bill to promote the economic development of the country that I appeal to all the hon. Members of the House to see that the Bill, as it is finally passed, is designed in a manner which will assist in the fulfilment of that objective.

Mr. Deputy-Speaker: Shri Barman. A number of hon. Members who have appended Minutes of Dissent have been called. As regards other hon. Members, many of them were on the Joint Committee. I intend giving an opportunity to such of those hon. Members who have not served on the Joint Committee and have had no opportunity to speak.

Shri Barman: I was not on the Joint Committee.

Mr. Deputy-Speaker: I know.

Shri V. B. Gandhi (Bombay City North) *rose—*

Mr. Deputy-Speaker: The hon. Member was on the Joint Committee.

Shri V. B. Gandhi: I was just going to say that. Because we were on the Joint Committee, we were not allowed a chance to speak last time. Now, I am one of those who have not had a chance to speak.

Mr. Deputy-Speaker: He need not speak if he was on the Joint Committee. The Joint Committee went on for several months, for one year. If any Member had appended a Minute of Dissent and had some particular points to urge, and I consider it necessary that those points should be pressed, it is one thing, but if a Member wants merely to say that the Joint Committee Report ought to be accepted, why not other people, who have not had a chance, be given one?

Some Hon. Members: You are right.

Mr. Deputy-Speaker: After Shri Barman, I will call upon Shri S. C. Singhal.

Shri C. C. Shah (Gohilwad-Sorath): This is an invitation to append Minutes of Dissent!

Shri Barman (North Bengal-Reserved-Sch. Castes): While I was hearing my friend, Shri G. D. Somani, in the beginning, I thought that though he did not like the Bill quite well, yet perhaps considering all the circumstances, he was amenable to the present Bill. But half an hour after he began—when it could not be clearly known as to whether he was supporting the Bill or opposing it—he gave expression to views with which I do not agree. That is to say, he began by criticising each and every clause that has been inserted later on by the Joint Committee. I for myself have taken this opportunity to speak specially to thank the Joint Committee for the changes that have been introduced in the Bill. In the beginning, I thought that I should take up a few points that have been made by opposition parties and also the Notes of Dissent appended to this Bill. From that I find some of the parties are

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not at all satisfied, specially the PSP, the RSP and the Communist Party, for two reasons. First of all, they want to say that the managing agency system should be done away with all at once and no time-limit should be given to the life of the system. The second point they have made is that in order to administer the Company law an autonomous authority should be constituted; they cannot accept that any government department, any Advisory Commission, can fulfil that task. With both these points, I would say I do not agree, and I shall presently explain it. The inspiration of the Opposition parties as regards this attitude is drawn from the expert committee Report. The expert committee have observed in their Report that their main task is to see that this company law serves the purposes of means and not the ends—alone so far as the administration of it is concerned. Later on also, they have said in their Report that so far as their province is concerned, the problem of economic policy is outside the scope of their inquiry. For that, they have cited the Cohen Committee Report, and observed as follows:—

“It is not, however, the province of company law to anticipate what economic policy should be, and we fully endorse the following observations of the Cohen Committee:

‘We have regarded the question of general economic policy, which embraces such matters as monopolies as outside our terms of reference. The company law should, in our view, deal with companies irrespective of their particular activities; questions of economic policy should be dealt with by legislation directed to that subject, and kept distinct from the general law governing companies’”.

The terms of reference given to the Bhabha Committee did not really involve anything more than this, because that Committee was constituted

in the year 1948—as we can see from the Report of the Committee—to investigate and report on how companies can be best administered under the present circumstances. So I was saying that the Bhabha Committee, according to their terms of reference and according to the notion on which they proceeded, have done their job quite well. But times have now changed. After the passing of the Avadi resolution and endorsement of the same resolution in this House, times have changed and the policy that has been adopted by the Bhabha Committee is a shortcoming so far as the new policy is concerned. That has been supplemented by the Joint Committee Report. The Joint Committee has inserted certain provisions in this Bill and it is to those very provisions Shri Somani has taken exception. My view is that the Joint Committee has acted in consonance with our present economic policy and it has improved upon the main provisions of the Bill and both together serve the means as well as the ends of the administration of company law.

3 P.M.

You will find that in clause 197, which Shri Somani has cited, it has been provided that the maximum managerial remuneration should be fixed from time to time by Government. It is necessary because of the economic policy that we want to administer in this country henceforward.

[PANDIT THAKUR DAS BHARGAVA in the Chair]

It is for that purpose that I hope Government will, while considering the circumstances of a particular company or business house, take into account how many experts they have to engage, what is the liability of the managing agent in that particular concern and then suggest what the managerial remuneration should be accordingly. The Finance Minister himself said that the provisions of this clause, as they stand, may have to be modified in some way or other

and for that he will place some amendment before this House. We shall consider it at that time. But, my point is that this is one of the provisions that have been inserted by the Joint Committee and that removes a lacuna that existed in the Bill.

Secondly, Shri Somani has criticised the insertion of clause 323 to notify an industry wherein the managing agency may be terminated after August, 1960 or even before. I do not think there should be any objection to that. If, as Shri Somani says, there are certain companies which are doing their job very well and whose assistance is necessary for the development of the country's industry, then they can exist even after that date. But, if in any particular industry, the Government, with the advice of the advisory commission and with the approval of the country as a whole, finds that there is no necessity for the managing agency to be continued, what is the objection of my friend to a provision like this by which the Government can terminate such managing agencies? There should be none.

At the same time, those who hold the extreme view that the managing agency should be terminated by a particular date, I submit, should not hold that view. If we find that particular managing agencies are really doing well and are helping in the development of the country industrially and they are doing their work according to the advice of the Government, certainly, we shall continue them. I may tell you that we should have to do some such thing.

I will give a comparison, though it will be said that it is comparing big things with very small ones. I, as a farmer, require a pair of bullocks for cultivating my field. I also require a cow for giving milk to my children. There are bullocks, which when tethered break the string and stray into the field and feed upon the crops. Shall I sell them off at once? I should provide for a stronger string. Similarly, in the case of my cow. There

are some bad cows which will kick when you want to milk them. I just tie the hind legs and get the milk. I do not sell the cow at once. If after some time I find that the cow does not give milk even when the legs are tied, then, of course, I shall have to sell it. Similar is the thing done here.

An Hon. Member: A practical instance.

Shri Barman: Yes; a practical instance because I do not know the intricacies of business houses.

Shri T. N. Singh (Banaras Distt.-East): If they are not wicked cows but yet do not give milk, what will happen?

Shri Barman: If they do not give milk I shall sell them off.

I think this provision is a mean between the two extremes. I am not for disposing of managing agencies which prove beneficial to the development of industry; it is in the country's interest to allow them to continue. If in any particular industry or a particular case it is considered that there is no need for any managing agency, Government, with the best advice, can discontinue the managing agency after the stipulated date. I do not find any objection there.

Shri Somani has taken objection to practically all the new clauses that have been inserted by the Joint Committee and which I strongly support because these are practically the clauses that will help us in furthering our economic policy, the particular destination which we want to reach sooner or later.

He has taken objection to clause 325 and, perhaps, also to clause 344. Clause 325 is an improvement on the existing clause which was in Schedule XII as clause 87CC of the 1951 amending Bill. But, the improvement made by the Joint Committee is that the Government will consider at the particular time whether they should appoint or re-appoint a managing agency. In clause 344 the Government will recognise the claims of the

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heirs or successors of the managing agents while considering other things and they will consider these claims or applicants for appointment or re-appointment if they fulfil certain conditions. I think Government is going to take this power for certain purposes and it is again for furthering our economic policy.

We want to bring down the remuneration of the managing agents. Under this Bill that we are going to pass the existing managing agencies cannot be touched, so long as their terms do not expire or till the 15th August, 1960. Up till now the conditions that they have entered into with the shareholders will subsist. We want that after 1960 or after three years from notification in the case of particular businesses, Government should carefully consider these aspects, that is, whether there should be a real change in the managing agents, whether the remuneration that is stipulated already in the previous contract is fair and reasonable, and if it is not fair, certainly Government will exercise its right to reduce the remuneration. If the managing agent concerned consents to such reasonable reduction, Government will consider renewing the contract. Though these things may not be expressly provided, I think that is the motive on which the Joint Committee has amended the existing clauses.

The Minister of Finance (Shri C. D. Deshmukh): Remuneration will be, according to the Act, after the end of the financial year—under clause 347.

Shri Barman: Anyhow, Government can put in certain conditions under certain circumstances and if the companies are amenable to those conditions.

Mr. Chairman: No conditions, according to the provisions of the Act.

Shri M. C. Shah: The remuneration that obtains now will not be the same after the coming into effect of this

Act. The new terms will come into effect accordingly.

Shri Barman: I am thankful for this correction. I did not notice that clause. Anyhow, it is stipulated under the amended section 325 that Government may put in certain conditions which Government consider to be reasonable.

Clause 331 is a new clause inserted by the Joint Committee, fixing the total number of companies as ten in the case of managing agents; that is, no person shall be a managing agent of more than ten companies. That is also a wholesome provision and the objective is practically the same. There may not be any concentration of wealth in a few hands. If one family is managing agent for a number of companies, that means accumulation of wealth at one place. The purpose is in conformity with the Directive Principles of the Constitution.

Again, the Joint Committee has made certain amendments by which two directors can be appointed under special circumstances under clause 407—and under clause 246, power is given to a company to adopt proportional representation in the matter of voting, election of directors, etc. I do not want to cite any more instances, but I simply want to say that the Joint Committee has made definite improvements on the original Bill, and most of the improvements fulfil the purpose of our economic policy, which the Bhabha Committee did not go into because they thought that that was not their province.

The next point is as to whether the administration of the Company Law would be better done by an autonomous authority or by an advisory commission as proposed in the Bill. I submit that a Government institution, that is, an advisory commission, would be better fitted for the task. The Bhabha Committee, of course, recommended an autonomous authority because they brought that enunciation

of economic policy was not the job of the Company Law but that it should be done by some other enactment. Now, certain amendments have been made by the Joint Committee, that is, that the Company Law must have within its purview not only the efficient formation of companies but also they must have an eye upon the economic policy that the country has adopted recently. It is only the Government that can perform this job. Our experience with autonomous authorities is not happy; after being installed in power, these autonomous authorities even tried to question the authority of Parliament over their work. Of course, this has been corrected later. Even then, I think that an autonomous authority can act within a certain sphere and under certain limitations. So far as policy is concerned, it can act only on the policy that has been laid down by Government. But in these matters it will be very difficult for Government to lay down definite policies as to how to reduce the income of the managing agencies in so far as the economic policy is concerned. The advisory commission will advise Government and here from day to day the Members of Parliament shall have the right and the opportunity to ask the hon. Minister how this thing has been done or that has not been done. Therefore, this House will be in closer touch with the administration of the Company Law if we place the task of discharging the functions under this Law on the Government, advised by an advisory commission. I think this is the best plan that we have drawn. Of course, there may be changes here and there and I have not gone through the particular provisions of the Bill carefully and they will come up for discussion when we take up the second stage of consideration.

I wish to say that Government should have some more powers, so far as investigation and auditing is concerned, besides the powers stipulated here. My suggestion is that Government should set up a body of in-

spectors and auditors and place them in different parts of the country where the industries are concentrated, so that they can send these inspectors and auditors, to audit and inspect each and every company on an *ad hoc* basis. In that case, the companies and business offices will always remain cautious because they know that somebody can at any moment come down upon them if they did not behave properly. As the Finance Minister said the other day that the Kandyan King had two Prime Ministers, I think he should have another added to his cabinet as it will help his objective.

With these words I support the Bill.

Shri Nevatia (Shahjahanpur Distt.—North cum Kheri—East): A lot of criticism has been advanced against the managing agency system. It has been said that it is against the socialistic pattern of society envisaged by us. Whatever other things might be said about the managing agency system, I do not see any relation between the system and the socialistic pattern of society because as our Prime Minister on some other occasion had said, there are many countries in the world which are called capitalistic countries and they do not have this system. What we have to do is to see whether in the conditions of our society, this system is useful for promoting private corporate enterprise. That is the main issue which we have to look to. The Bhabha Committee after a lot of deliberations came to the conclusion that shorn of its evil, this institution was a useful thing and that it should be continued in the interest of the country. Nobody has disputed that argument. Even the Joint Committee has not contradicted that conclusion. They only suggest that Government should have power to review things after a certain period of years. It has not come to the conclusion that the institution is not useful. The very fact that the managing agency system will continue definitely for another five years shows the same. Even after that, Government have not

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said that they will discontinue it. They want only time for reviewing as to how the managing agency system works.

So far as the question of private enterprise is concerned, the main issue is the private joint stock enterprise and we have to take it into account when we talk of the abolition of the managing agency system. The Prime Minister has said on one occasion that the private enterprise should be allowed freedom to act provided we have certain embankments so that it does not flood the countryside and cause devastation. It must be allowed certain liberty to act. Otherwise private enterprise will have no meaning. We should view this report and our suggestions from this point of view: whether it will promote the purpose which we have in view, that is to say, raising the standard of living of the people to a considerable degree by an increase in wealth. So long as we feel that the managing agency system can continue to promote the joint stock enterprise and help in that process, I think there is every reason to help that system after depriving it of its undue gains or whatever it may be and making it run on healthy lines. That is the main purpose of this Bill.

The report of the Joint Committee has cut down the remuneration to a very large extent. The other day the Finance Minister pointed out that the remuneration for a number of companies came to 27 per cent. of the profit. It has been cut down to 11 per cent; that is quite a big reduction. The average might have been 14 but in a large number of companies he said that it worked out to nearly 27 per cent. and now it is sought to be fixed at 11 per cent. That is a good feature in this report.

But there are certain other things which should be looked into. For instance, it is stated that the Government will look into it whether a person is a fit or proper person, to be appointed or re-appointed as managing agent. As my friend, Shri G. D.

Somani, pointed out, this is liable to create a lot of difficulties. It will depend upon the officer of the Government to judge whether a person is a fit or proper person to be a managing agent. A new man may not be treated as a fit and proper person. Instead of saying so, is it not possible to say that these are the disqualifications as we have provided in the case of directors. There are certain disqualifications. He should not be of unsound mind; he must not be such and such and then only he can be elected as a director. Similarly, is it not possible to say that these are the disqualifications for becoming a managing agent rather than saying that the Government shall decide as to whether one is a proper and fit person? It will lead to the vagaries of the officer concerned; he may recommend that a particular managing agent has no experience of a particular line and therefore he is not a fit and proper person. This will lead to a lot of other complications. In my opinion instead of leaving it to the Government, the law should specify certain disqualifications so that the chances of corruption in these matters are minimised.

The previous speaker has recommended proportional representation. I know from experience the cases of several industries in Uttar Pradesh. They were not able to pay the wages to the labourers because the directors quarrelled among themselves. There was no homogenous board as a result of which half a dozen sugar factories closed down and great hardship was caused to the workers. They were not able to make payments to the cane-growers. All of them were flourishing sometime back and then the directors quarrelled. So, the homogeneity of the board is a very vital fact in working the companies. Otherwise what has happened in the case of several sugar mills in Uttar Pradesh is likely to be repeated almost everywhere.

The Finance Minister has said that there is no reason to think that the practice which is prevailing in political democracy is not likely to succeed

in economic democracy—he said some such words. Some friends have suggested that the analogy of political democracy does not apply to economic democracy. But we know that so far as the broad objectives are concerned, almost every political party says that it has the good of the country at its heart and yet it is not possible to have in our cabinet representatives of all the parties. It would not lead to smooth working of day to day policies. Similarly, I do not see any reason why we should not continue the same system in companies also because every day decisions have to be taken there also. There may be honest differences of opinion and every time the business may have to be carried by majority votes. It will lead to some bitterness. Our people are not so used to it to accept every majority decision with grace. It leads to bitterness and frustration and ultimately it creates trouble. We should not do everything by a majority. There are ample safeguards provided in the new Bill so that in case of difficulties, the minority has a right to go to the Government and say that they are being oppressed and the Government will certainly intervene. I support the present permissive provisions.

Shri Veeraswamy (Mayuram-Re-seved—Sch. Castes): On a point of order, Sir, there is no quorum in the House.

Mr. Chairman: I think there is. Let me count the members.

Shri Nevatia: They do not make it compulsory that there must be proportional representation.

Mr. Chairman: I am ringing the bell—now there is quorum.

Shri Nevatia: I would request the hon. Finance Minister to clarify certain things about clause 197. The manager's remuneration includes many things and all are put together. The word used is 'manager' and not 'managers'. Now, the manager is defined as a person who wholly or substantially controls the affairs. Now, managing agents are also defined al-

most in the same terms. I do not see how the managing agent and manager can both have substantially or whole control. Both cannot have the same type of control. If the manager is to work under the managing agent, then, I believe his remuneration does not come under the definition of this clause. Because, two persons with different designations—managing agent and manager—cannot have control over all the affairs of the company.

Shri C. D. Deshmukh: If there is delegation of powers?

Shri Nevatia: Unless the managing agents delegate the powers over the whole affairs of the company I believe, this clause can not come into operation.

Shri C. D. Deshmukh: That is the intention. There may be an attempt to circumvent the 11 per cent. The managing agent might say: I am drawing 11 per cent. and so the rest of it is going to the manager. And, the manager may be a relation or an associate of his.

Shri Nevatia: I am glad this has been clarified; otherwise even where there is no delegation of whole or substantial powers, even though the manager does very important and vital job in the factory, he would come under this clause. But, since there is no delegation of such powers that is, the managing agents do not abdicate themselves of the powers and, therefore, that position would not come.

My only submission here is that this system, which has been useful in the past and about which the Bhabha Committee said that inspite of all its evils it can still be continued, should not be discontinued merely because of certain gross abuses which have been found in the system in the past.

In spite of the several criticisms that have been advanced against certain business houses with which I also agree, we know from the present market quotations of the shares of the companies managed by them that the

[Shri Nevatia]

public has got a lot of confidence in the shares of those companies, their share prices have gone up very considerably.

Shri T. N. Singh: They have confidence because of the proposed Bill.

Shri Nevatia: Even before the joint Committee had given their report on this Bill the market quotations had gone high and they are still going up. The companies which are floated by these business houses are subscribed by the public. In spite of the fact that the public know that quite a lot of money will be taken by these houses they know that if they invest their money in buying shares of the companies floated by these business houses there is a chance of appreciation in the value of shares. They have the 'know-how' and they work efficiently with the result that they do bring down the cost of production. That is the confidence which the public have in these business houses. In spite of the system of interlocking and many other complaints made about these business houses still the public find it worthwhile to invest their money in the companies floated by these people. That shows the measure of confidence the public have in their ability to run these companies efficiently. After all nobody invests in a share simply to get 3 or 4 per cent return. If that were so he would have gone for a government loan. Mostly people invest money on shares to get appreciation in share value. People invest in joint stock enterprises primarily to get some appreciation in share value and not to get 3 or 4 per cent return. The fact that certain business houses are able to command such confidence from the public with regard to their ability to run new enterprises shows that so far as the ordinary investor is concerned he is not so very suspicious as we in this House feel. Honourable though we are, I do not think that many of the outside shareholders will come forward to invest

money if we try to float enterprises. People who have got the 'know-how', people who have run business efficiently and who are able to bring down the cost of production for their articles will be supported by the public. In spite of the fact that they grab a little more money, people know that their cost of production will be lower and they will be able to make a success of the company. That is why the public have confidence in those business houses. We should, therefore, utilise their talents and see that they do not make undue gains at the cost of the community. That purpose is very well achieved by the proposals of the Joint Committee.

श्री एस० सी० सिंघल (जिला अलीगढ़) : मैं एक बात साफ कर देना चाहता हूँ कि मैं न इन्डस्ट्रियलिस्ट हूँ और न वकील हूँ, लेकिन मैं कम्पनी ला से कुछ बर्कफ हूँ, मुझे भी उस का कुछ अनुभव है। जो कम्पनी ला पहले बना था वह कुछ सीधा सादा था लेकिन अब जो कम्पनी ला बना है, जो बिल आया है, वह बहुत बड़ा और ६४६ क्लॉजेज का है। इस की भाषा भी क्लिष्ट सी है, इस का समझना मुश्किल सा है। मेरी समझ में तो जो स्थानीय वकील हैं वह भी नहीं समझ सकेंगे। इस का नतीजा यह होगा कि जो बड़ बड़ आदमी हैं, जो बड़ बड़ वकील कर सकते हैं, वही नई कम्पनियाँ बना सकेंगे। फल यह होगा कि नई कम्पनियाँ बड़ बड़ शहरों में ही बन सकेंगी। दिल्ली, अहमदाबाद, बम्बई, कलकत्ता, कानपुर आदि के लोग उन को चला सकेंगे और छोटे शहरों में नई कम्पनियों के खुलने में यह बिल बाधक होगा। इस लिये बिल मंत्री साहब से मेरी यह प्रार्थना है कि अगर अब इस की भाषा नहीं सुधर सकती है तो कम से कम नोट्स बना कर पब्लिक में बँचे जायँ जिन की सहायता से इस कानून के समझने में लोगों को दिक्कत नहीं हो।

हमारे हाउस में यह कायदा चला आया है कि जो क्लान बनते हैं वह अंग्रेजी ढंग के बनते हैं। उन में बड़ी दिक्कतें होती हैं। कभी यह होता है कि हाउस की राय कुछ होती है और सुप्रीम कोर्ट उस में कुछ और क्लियर दे देता है। नतीजा यह होता है कि कई दफा संशोधन होते रहते हैं। मैं चाहता हूँ कि कानून ऐसा बने जिस में जो हाउस का इंटेंशन हो, पार्लियामेंट का जो विचार हो, वह साफ जाहिर हो। मुझे चीन के बारे में कुछ क्लिबों बढ़ने का मौका मिला है, वहां हम देखते हैं कि जो कानून बनते हैं वह बहुत सीधे सार्द होते हैं। कानून का जो प्रिम्बुल होता है, उद्देश्य होता है, वह साफ साफ जाहिर होता है। उस में जो संक्शन और क्लोज़ होते हैं उन में साफ कर देते हैं कि यह संक्शन या क्लोज़ इस उद्देश्य से बना है। मैं आप को यहां का प्रिम्बुल दिखाता हूँ :

"to consolidate and amend the law relating to companies and certain other associations."

इस से कोई बात साफ जाहिर नहीं होती है। अगर इस प्रिम्बुल में लिखा होना

"to consolidate and amend the law relating to companies and certain other associations with a view to protect the rights of the shareholders and with the object of gradual elimination of the managing agency system."

तो इस से यह साफ हो जाता कि क्या उद्देश्य है और हर एक की समझ में आ जाता। इस लिये मेरी फाइनेंस मिनिस्टर से और पूरी गवर्नमेंट से यह प्रार्थना है कि अगर कोई कानून बनाया जाय तो वह साफ साफ सब के सामने आना चाहिये कि हमारा यह इरादा है, इस इरादे से कानून बना है और वह इस तरह से पूरा हो सकता है।

श्री टी० एन० सिंघ : रामायण की भाषा में लिखना चाहिये।

श्री एस० सी० सिंघल : यहां पर चार रोज से वाद विवाद चल रहा है, मैं एक बात यह देख रहा हूँ कि जो हमारे कंपिटलिस्ट सदस्य हैं, या उन के साथी, वह तो आधे दिल से इस बिल का समर्थन कर रहे हैं और दूसरे लोग काफी इस की आलोचना कर रहे हैं। मैं ने श्री सोमानी की स्पीच सुनी थी, बंसल साहब की स्पीच सुनी थी। वह लोग न जानें किस दुनिया में रहते हैं। वह यह चाहते हैं कि जैसे भीड़ों को भेड़ों को खाने की आजादी रहती है उसी तरह से कंपिटलिस्ट्स को हमारी जनता को चूसने की आजादी रहे। वह इस में सुधार नहीं चाहते हैं। वह यह कहते हैं कि, हां साहब, कुछ मैनेजिंग एजेंट्स ऐसे जरूर थे जिन्होंने गलतियां की हैं, कुछ शैतानियां की हैं और उस की वजह से इस सिस्टम को बदनाम किया जा रहा है। लेकिन मेरा कहना यह है कि मेरी समझ में तो भारत में एक भी मैनेजिंग एजेंट ऐसा नहीं है जिस ने टैक्स का इवेंज न किया हो या ब्लैक मार्केटिंग न की हो। आप बड़े से बड़े कंपिटलिस्ट को ले लीजिये, कोई भी इन बातों से बचा नहीं है। मुझे डर है कि अब भी इस कानून के पास हो जाने के बाद भी वह कोई न कोई तरीका ऐसा निकाल लेंगे जिस से वह उन्हीं बातों को करते रहेंगे जिन को अब तक करते रहे हैं। मैं भी इस सिस्टम के बहुत विरोध में हूँ। मैं बिल्कुल नहीं चाहता हूँ इस को, लेकिन इस बिल के लिये मैं अपनी सपोर्ट दे रहा हूँ, इस लिये कि अगर इस में कुछ बुराई है तो आगे यह मैनेजिंग एजेंसी सिस्टम खत्म हो जाय। मेरा इस के साथ पूरा सहयोग है। सरकार को इस बिल के अन्दर, काफी ताकत और शक्ति मिल गई है। अब सरकार के ऊपर यह जिम्मेवारी आ जाती है कि वह इस शक्ति का दुरुपयोग न करे। सरकार को यह जिम्मेवारी ठीक तरह से निभानी है सरकार अब जो डिपार्टमेंट खोलें उस डिपार्टमेंट में ऐसे आदमी रखें जो बहुत ही ईमानदार हों, बहुत ही मेहनती हों और अपना काम जिम्मेवारी से करें। अगर आप न अच्छे आदमी न रखें तो आप कामयाब नहीं होंगे

[श्री एस० सी० सिंचल]

और मैं समझता हूँ कि उस सूरत में इस बिल को पास करवाने से कोई फायदा नहीं होगा।

मुझे तो उम्मीद है कि इस बिल के पास हो जाने पर जो पूंजीपति हैं वे सरकार से सहयोग नहीं करेंगे और कोई न कोई वे ऐसा तरीका निकालेंगे जिस से कि उन का घर भरें। आप ने एस्टेट ड्यूटी बिल पास किया। आप बहुत उम्मीद करते थे कि आठ दस करोड़ की आमदनी आप को होगी लेकिन आप ने देखा कि एक ढाँड़ करोड़ से ज्यादा आमदनी आप नहीं कर पा रहे हैं। उन्होंने कोई ऐसे तरीके निकाल लिए हैं जिस से कि वे इस टैक्स से बच जाते हैं।

श्री राजे (भुसावल) : पूंजीपति इतने मर नहीं होंगे जितने कि फाइनेंस मिनिस्टर साहब सोचते थे।

श्री एस० सी० सिंचल : इस वास्ते मेरी प्रार्थना है कि आप यह ध्यान रखें कि पूंजीपति इस से बचने का कोई तरीका न निकाल लें।

मैनेजिंग एजेंटों की आमदनी के बारे में भी चर्चा हुई है और इस के बारे में इस बिल में भी कुछ प्रॉविजंस हैं। एक बात मैं याद दिलाना चाहता हूँ कि उन की दो तरह की आमदनी होती है, एक तो विजिबल आमदनी होती है और दूसरी किस्म की वह आमदनी होती है जिस को कि इनिविजिबल आमदनी कहते हैं। उन को जो इनिविजिबल आमदनी होती है वह विजिबल आमदनी के कहीं ज्यादा होती है और वह आय कर भी मुक्त रहती है। इस वास्ते मेरी प्रार्थना है कि जो इनिविजिबल आमदनी होती है उस पर कोई न कोई रोक अवश्य लगनी चाहिये...

श्री डी० एन० सिंह : इसका स्वरूप क्या है ?

श्री एस० सी० सिंचल : आमदनी होने पर भी वे दो दो और तीन तीन साल तक डिविडेंड डिक्लेयर नहीं करते, इस का नतीजा यह

होता है कि जो कमजोर शेयरहोल्डर्स होते हैं और जो अपने शेयर बेचना चाहते हैं उन को बहुत कम दामों पर बेच देते हैं। मैनेजिंग एजेंट यह बहुत सस्ते दामों पर खरीद लेते हैं। इस के बाद जब मैनेजिंग एजेंट डिविडेंड डिक्लेयर करते हैं, इस से शेयरों की कीमत बढ़ जाती है और तब वे इन शेयरों को बेच कर करोड़ों रुपया कमाते हैं।

जब कमीशन एजेंट्स की मार्फत कोई माल खरीदा जाता है जैसे किसी टैक्सटाइल मिल के लिए रुई खरीदी जाती है, तो वह रुई आगे के लिए रुई खरीदी जाती है, फ्यूचर में खरीदी जाती है। उस कमीशन एजेंट के पास वे अपना नाम उस सूरत में लिखवा देते हैं, जब वे देवते हैं कि एक दो महीने बाद रुई की कीमत बढ़ गई और जब देवते हैं कि रुई की कीमतें गिर गई हैं तो उस सूरत में वे कम्पनी के नाम पर उस रुई को लिखवा देते हैं। इस तरह से जब कमी नफे की बात होती है तो वह तो वे खुद ले लेते हैं और जब घाटे की बात होती है तो वह कम्पनी को देना पड़ता है।

इस के अलावा इनश्योरेंस एजेंट होते हैं। इनश्योरेंस का कायदा यह है कि जब किसी की इनश्योरेंस होती है अगेंस्ट रिस्क तो उसकी जो कमीशन होती है वह एजेंट को जाती है। इस तरह से जब ये इनश्योरेंस करवाते हैं तो एजेंटों से कह देते हैं कि इनश्योरेंस हम करवायेंगे आप की मार्फत लेकिन जो कमीशन मिलता है वह हम खुद ले लेंगे। इस तरह से हजारों रुपये रोज ये लोग कमाते हैं। मैं उस का नाम तो नहीं लेना चाहता लेकिन दिल्ली में ही मुझे एक बड़े रिलायबल सोर्स से मालूम हुआ है कि इस तरह से हजारों रुपये की आमदनी एक मैनेजिंग एजेंट करता है।

इसी तरह से जब स्टोर परचेज करते हैं, जैसे कमी कोई मैशिनरी परचेज करते हैं उस सूरत में इन लोगों को कम्पनी की तरफ से भी कमीशन मिलती है और जो एजेंट हैं उन को जो कमीशन मिलती है वह भी ये लोग उन के साथ बातचीत

करके खुद ही ले जाते हैं। इस तरह की बातों की इस बिल में कोई रोक नहीं है और यह चीजें एंसी हैं जिन पर जरूर रोक लगनी चाहिये.....

श्री सी० डी० दशमुख : क्या इन चीजों के बारे में बोर्ड आफ डाइरेक्टर्स कुछ नहीं कर सकते ?

श्री एस० सी० सिंघल : वह क्या कर सकते हैं ? आज तक तो वह नहीं कर सके और अब तक तो यह चीजें चली आ रही हैं और आगे के लिए मैं कुछ कह नहीं सकता। यह बिल इतना बड़ा है और इतना कम्प्लीकैटेड है कि इस को कई बार पढ़ने के बावजूद भी मैं इस को पूरी तरह समझ नहीं सका हूँ।

एक बात और है। जब इस बिल की सिलेक्ट कमेटी बनी थी उस समय मुझे शक हुआ कि यह जो सिलेक्ट कमेटी बनाई जा रही है यह इन्साफ नहीं कर सकेगी। इस का कारण यह है कि इस हाउस में जितने भी मिल मालिक, पूंजीपति और उन के पिछे लगे हैं वे सब उस में घुस गये। एक भी बाहर नहीं रहा। इस सिलेसले में हाउस आफ कामंस का यह नियम है यदि किसी मेम्बर का किसी चीज में कोई परसनल इन्टरेस्ट हो तो उस मसले पर वोट देने का अधिकार नहीं रहता है। यह हाउस आफ कामंस की प्रीक्टिस है। मैं मेज पार्लियामेंटरी प्रीक्टिस से रिलेवेंट पोइशन पढ़ कर सुनाता हूँ.....

श्री जलगू राव शास्त्री (जिला आजमगढ़-पूर्व व जिला बलिया-पश्चिम) : जरूर बताइये यह आप बहुत अच्छी बात सुना रहे हैं।

श्री एस० सी० सिंघल : इस में लिखा है :

"In the House of Commons it is a rule that no member who has direct personal interest shall be allowed to vote upon it".

Mr. Chairman: Why did you not object at the time when the Bill was sent to the Joint Committee that such and such a member who has direct

personal interest should not be allowed to go on the Joint Committee?

श्री एस० सी० सिंघल : मेरे कहने का मतलब यह है कि जब उन को फायदा होता है तब तो वह सपोर्ट करते हैं और जब दुखते हैं कि उन को नुकसान होता है तो वे उसका विरोध करते हैं। खैर इस बात को जाने दीजिये। मगर मैं यह जरूर कहता हूँ कि अगर बोर्ड आफ डाइरेक्टर्स में किसी डाइरेक्टर का कोई परसनल इन्टरेस्ट हो तो उसे मीटिंग में भाग लेने का अधिकार नहीं होना चाहिये। अगर आप ने उसे यह राइट दिया कि वह डिस्कशन में भी भाग ले और उस को वोटिंग राइट भी हो तो इस तरह से इन्साफ नहीं होगा। आप ने एस्टेट ड्यूटी बिल बनाया और उस में कई कमियां रह गईं। इस कारण से जो सरकार उस बिल के जरिये से एचीव करना चाहती थी वह एचीव नहीं कर सकी। आप चाहते थे कि इक्वीलटी लायें, समानता लायें और इसी वजह से यह बिल पास किया गया था। लेकिन उन कमियों के कारण बाधाये पड़ रही हैं और इस बास्तु इस बिल में भी जो एंसी कमियां हैं उन को दूर कर दिया जाये। हमारे दो कौन्सिलर मेम्बर सिलेक्ट कमेटी में थे और उन्होंने मिनट्स आफ डिसेन्ट दिए हैं। उन्होंने यहां तक कहा है कि कम्पनी के सीक्रेट रिकार्ड को बैलेंस-शीट में न लाया जाय, क्योंकि अगर वह बैलेंस-शीट में आया, तो बहुत हल्ला मचेगा और बहुत दिक्कत पैदा हो जायगी। वे लोग यहां तक पहुंच गए हैं।

मैं ने वित्त मंत्री महादेय की स्पीच सुनी है। उन्होंने कहा है कि हम ने शेयर-होल्डर्स के इन्टरेस्ट्स को प्रोटेक्ट करने की कोशिश की है। यह बात बिल्कुल ठीक है। यह उनका फर्ज है कि वह शेयर-होल्डर्स के इन्टरेस्ट्स को प्रोटेक्ट करें। आखिर आदमी रुपया कमाता है, बचाता है और फिर इन्वेस्ट करता है। उसके रुपया की रक्षा होनी चाहिये लेकिन यह बड़ी अजीब बात है कि उन्होंने श्रमिकों के बारे में—वर्कर्स के बारे में—कोई तर्क नहीं किया गया, हानाफाय

[श्री एस० सी० सिंघल]

भाभा कमेटी ने इस बार् में जिक्र किया है और इस कम्पनी बिल के उद्देश्य बताये हैं। सफा १२ पर "आबजीक्टिव्ज" में दिया हुआ है कि :

"In the Chapters that follow, our object will be to consider to what extent it is possible to adjust the structure and methods of the corporate form of business management with a view to weaving an integrated pattern of relationships as between promoters, investors and the management, so that:

(a) the efficiency of the corporate form of organisation may be increased as measured by accepted standards;

(b) managerial efficiency may be reconciled with the legitimate rights of investors;

(c) the interests of creditors, labour and other partners in production and distribution may be duly safeguarded; and

(d) the attainment of the ultimate ends of social policy is helped and not hindered by the manner in which the corporate form of business organisation works in this country."

मैं आपको यह बात बता देना चाहता हूँ कि जब तक आपको वर्कर्स का सहयोग न मिलेगा, तब तक कम्पनीज नहीं चलेंगी। आपको याद होगा कि कानपुर में मिल-मालिकों और वर्कर्स में भगड़ा हुआ और डेढ़ महीने तक कारखाने बन्द रहे। हम को यह बात समझ लेनी चाहिए कि रूपए की निस्वत वर्कर्स की ज्यादा अहमियत है। जब तक वे खुश न होंगे, तब तक कम्पनीज ठीक तरीके से नहीं चल सकती हैं।

मैं आपको वर्कर्स का हाल बताना चाहता हूँ। एक मैनेजिंग एजेन्ट हैं—शायद वे सब से बड़े हैं। बड़े दशभक्त भी रहे हैं। करोड़ों रुपया उन्होंने दान दिया है। वह महात्मा गांधी के खास भक्तों में से हैं। वह अपने को

दशभक्त कहते हैं। मैं आपको बताना चाहता हूँ कि उनके वर्कर्स की क्या हालत है।

मेरे पास एक किताब है "हाफ वे टु फ्रीडम"। यह किताब एक अमरीकन लेडी जर्नीलिस्ट ने लिखी है, जो १९४६ से १९५० तक हिन्दुस्तान में रही। वह यहां प्रधान मंत्री के यहां भी रही और उनके साथ खाना खाया था। महात्मा गांधी के साथ भी उसकी बात चीत हुई थी। इस ने यहां के अपने अनुभव इस किताब में लिखे हैं। उन्होंने बताया है कि यहां वर्कर्स की क्या हालत है। यह किताब बहुत बड़ी है और बयान भी बहुत ज्यादा है। उस में से थोड़ा सा मैं पढ़ कर सुनाता हूँ। मैं आपको नाम भी बता देता हूँ—उसने बिरला वर्कर्स के बार् में लिखा है। वह उनके कारखाने में गई—खास तौर से उस हिस्से में जहां कि वर्कर्स रहते थे। उस जगह के बार् में उसने लिखा :—

Ram Das took me into one of these and said, "250 people use the same latrine." They showed me the primitive doorless cubicles. "There is no privacy. The women have to use the same ones." I knew that modesty with Indian women amounts almost to a religion.

२५० आदमी एक ही पाखाना इस्तेमाल करते थे। स्त्रियां और पुरुष एक ही जगह जाते थे। वहां पर किसी किस्म की प्राइवसी नहीं थी।

पानी के बार् में उसने लिखा है :—

"There is only one hand pump. This single hand pump serves sixty quarters. There is no place to take a bath."

साठ क्वार्टर्स के लिए सिर्फ एक ही पम्प था और वहां पर नहाने की कोई जगह न थी।

एक क्वार्टर में कितने आदमी रहते थे, अब मैं आपको यह बताता हूँ :—

Ram Das took me into one of these. It measured, I estimated, about nine by twelve feet. Although there was one window, which let a little daylight

into the compartment, it took me a moment to comprehend the sight I saw on the floor: to grasp the fact that the tightly packed sausage rolls were sleeping men.

अब दीसिए कि उनसे भाड़ा कितना लिया जाता था ।

These were all weavers, I found, getting an average of 35 rupees a month.....They paid rent for their floor space—not much—it amounted to two rupees and twelve annas each, or just under one dollar a month.

यह है यहां के मजदूरों की हालत ! यह हालत उन सज्जदों के यहां काम करने वाले मजदूरों की है, जो अपने को दशभक्त कहते हैं और महात्मा गांधी के खास भक्तों में से हैं । अगर उनके यहां मजदूरों की यह हालत है, तो मेरी समझ में नहीं आता कि मामूली आदिमियों के यहां मजदूरों की क्या हालत होगी ।

श्री अलगू राव शास्त्री : बड़ी नाजुक ।

एक माननीय सदस्य : लेकिन कम्पनी ला से इसका क्या ताल्लुक है ?

Shri C. D. Deshmukh: I suggest that the hon. Member should see some quarters personally himself instead of taking an account given by an American lady.

Shri K. P. Tripathi: I also have seen some quarters personally and have found them in the same condition.

Pandit K. C. Sharma: You must see quarters in Kanpur.

Shri G. D. Somani: I would like Mr. Singhal and Mr. Tripathi to visit some of the factories under the same management which he is quoting and find out for himself the conditions of the quarters. I am prepared to arrange for Mr. Singhal and Mr. Tripathi to visit those quarters and see what the condition is.

Pandit K. C. Sharma: They are better quarters.

Shri C. D. Deshmukh: I am not interested in the quarters provided by any particular employer; I say that unless one looks round himself, one cannot get a correct idea of the position; one should have a comprehensive view of what is being done in this country in regard to industrial housing.

Shri S. C. Singhal: I could not follow.

श्री सी० डी० दशमुख : मेरा कहना है कि एक ही कम्पनी के बारे में ऐसा कहने से पता नहीं चलता है । जो और कम्पनियां हैं, उन को भी खुद जा कर देखना चाहिए और सरकार किस तरह से औद्योगिक मकान बनाने के लिए सहायता दे रही है, यह भी देखना चाहिए ।

श्री एस० सी० सिंघल : यह १९४६ की रिपोर्ट है, उसमें ये सब बातें लिखी हुई हैं । हम तो इन बातों को आपके नोटिस में ला रहे हैं कि क्या हो रहा है ।

श्री अलगू राव शास्त्री : अध्यक्ष महोदय, क्या वित्त मंत्री महोदय के कहने का यह तात्पर्य है कि जैसे मिस मियो ने एक किताब मनमाने ढंग से लिख दी थी, वैसे ही यह किताब लिख दी गई है और इस में कोई सच्चाई नहीं है और इसमें वास्तविकता से बिल्कुल दूर की बातें लिखी हैं या इसमें कुछ तथ्य हैं ?

श्री सी० डी० दशमुख : मेरे कहने का तात्पर्य यह है कि इसका सांख्यिक दृष्टि से देखना चाहिए ।

Mr. Chairman: The hon. Member is speaking of conditions in 1946. He is reading from a book written at that time.

श्री एस० सी० सिंघल : यह किताब १९४६ में लिखी गई थी ।

Mr. Chairman: It was again six years ago.

श्री एस० सी० सिंघल : मैं ने आपके सामने सब कुछ रख दिया है । आप चाहे, तो इन्हें को गलत समझ सकते हैं ।

[श्री एस० सी० सिंघल]

वित्त मंत्री की स्पीच में और बिल में दिया हुआ है कि गवर्नमेंट को काफी ताकत मिली है और जितनी कम्पनीज हैं, उनके मैनेजिंग एजेंट्स नहीं रहेंगे।

ट्रजरर सेक्रेटरी और मैनेजर के बारे में नई धाराएं हैं। यह कलाज बहुत अच्छा है, और मैं वित्त मंत्री साहब से प्रार्थना करता हूँ कि अगर वे आगे मैनेजिंग एजेंट बनावें तो इस बात का ख्याल कर लें कि टैक्स देने के मामले में उसका कौसा रवैया रहा है, उसने कौसा ब्लॉक किया है, मजदूरों के साथ उसका कौसा रवैया रहा है। इन बातों को देख कर मैनेजिंग एजेंट बनावें और जहां तक हो सके उन की जगह अच्छे ट्रजरर और सेक्रेटरी बनावें। यह चीज बहुत अच्छी है, लेकिन जो बातें मैं ने बतलाई हैं उन पर ध्यान देना बहुत लाजिमी है।

मुझे एक बात और कहनी है। जिस क्लास की आर्थिक शक्ति बढ़ती है वह राज्य शक्ति को भी अपने हाथ में ले लेता है। जर्मनी में वेमर कांस्टीट्यूशन बना तो उसे बहुत ही डिमाक्रोटिक समझा जाता था और उससे बहुत सी उम्मीदें थीं। वह बड़ा उन्नीतशील था। लेकिन जब वहां के पूंजीपतियों के हक छीने गये तो उन्होंने दो साल में ही उसे फेंक कर दिया और वहां हिटलर का राज्य जमा दिया। इंग्लैंड में जब लेबर गवर्नमेंट आयी तो उसने नेशनलाइजेशन किया। हालांकि इंग्लैंड के लोग बहुत पढ़ लिखे हैं, चाहे मजदूर हों या दूसरे लोग हों, और बहुत डिप्लोमैट हैं, और वहां मजदूरों की भी संख्या बहुत है, लेकिन फिर भी चीक सार अखबार कंजरवीटिव लोगों के हाथ में हैं और वे रुपया काफी खर्च करते थे, इसलिए उन्होंने लेबर गवर्नमेंट को ताकत में नहीं आने दिया और कंजरवीटिव गवर्नमेंट ही ताकत में आयी। तो मेरी वित्त मंत्री साहब से यही प्रार्थना है कि वे इस का पूरा ख्याल रखें। अभी तो कांग्रेस की कुर्बानी लोगों को याद है, वह बड़ा भारी

संगठन है, उसके नेताओं का संसार में धक्का जमा हुआ है। लेकिन अगर कहीं कमजोरी आयी तो यही पूंजीपति इकट्ठा होकर पॉलीटिकल पावर पर कब्जा कर लेंगे। इस लिए मैं चाहता हूँ कि इस मैनेजिंग एजेंसी सिस्टम का जल्दी से जल्दी अन्त हो जाय।

4 P.M.

Dr. Krishnaswami (Kancheepuram): The hon. the Finance Minister, in introducing the motion for consideration of this measure, pointed out that some kind of strange destiny seemed to be dogging this measure. I agree that even if this Bill goes through this House, we would not have heard the last word on company law legislation; Part of the explanation for repeated amendments of company legislation lies in our attempting to achieve too much, in our attempting to give to company law legislation a content which it cannot hold. The purpose of company law legislation, I take it, is to ensure companies being managed in the interests of their owners, who in legal parlance are shareholders. This implies that the directorate must be responsible for honest and efficient management. Company law legislation must concern itself only with laying down standards for the attainment of these objectives and not attempt to regulate economic policy. On this matter, the Cohen Committee has remarked aptly in the following terms:

"We have regarded questions of general economic policy which embraces such matters as monopoly, as outside our terms of reference. Company law should, in our view deal with companies irrespective of their particular activities. Questions of economic policy should be dealt with by legislation directed to that subject and kept distinct from the general law governing companies."

What is the reason for company law legislation being concerned exclusively with laying down standards and being precluded from dealing with economic policy? One of the

reasons for this limitation is that the area over which its laws are applicable is necessarily limited. If it chooses to deal with economic policy, the consequences that flow from such company law legislation would cover areas over which the company law would have no jurisdiction whatsoever. I only wish that the Joint Committee had borne this in mind. In that case many of its recommendations would have been realistic and would probably have been more enduring. The Bill, as it has emerged from the Joint Committee has, however, not changed the recommendations made by the Company Law Committee on matters pertaining to memorandum of association, sponsoring and articles of association. I have therefore few remarks to offer on these aspects as I believe that the main recommendations made by the Company Law Committee on these matters are eminently sound and sensible. But, the changes effected in rules pertaining to the management and administration of companies, the complex rules and regulations, the complicated balance sheets and profit and loss accounts to be filed, stimulate certain questions which, I hope, the Finance Minister will clarify:

What would be the effect of such legislation on the formation or continuance of companies? Do we want companies to be formed at all? Would the small man, for whom we profess interest, be in a position to form a company and yet get on without infringing the various rules and regulations? There are a little over 149 penal clauses, as several speakers have reminded us, many of which are highly technical and some of which are inquisitorial purposeless.

But the major controversy is over the constitution and continuance of the managing agency system. Now, no one need hold a brief for managing agents. There have been many cases of signal failure to discharge their duties properly. There have been cases where they have charged too high a price for services rendered, ~~to~~ them to companies. There have been

instances where they have obtained remuneration and yet remained a functionless element in our society. But, it is one thing to suggest that the managing agency system has been abused; it is another matter to impose such regulations that the very process of economic development is thwarted. May we not, in our anxiety to cure the managing agency of its abuses, go too far and commit the mistake, of emptying the baby with the bath tub? But before I deal with some aspects of the managing agency system as it has emerged, I shall give an explanation of the role which the managing agent has played in the past, plays in the present and is expected to play in the future development of our economy.

Why did we have the managing agency system at all in our country? If we did not have the need for it, it would not have come into being at all. Where financial institutions are relatively undeveloped, where the investing class is shy, where the ancillary services required for the promotion and running of industries are absent, where issue houses, underwriters and technical consultants, are not in evidence, the need for pioneering is obviously great. The managing agency system has come into being to fulfil this function, and in many cases, it has fulfilled a very proper function. After a certain stage, however in certain industries it has become functionless. Hence, it is admitted by the legislature, and there seems to be no difference of opinion on this subject,— that where the managing agents are functionless, or where they charge too high a price for services rendered society has a right to step in and regulate their activities and enforce a fair remuneration where necessary, and abolish the system in those sectors where it is superfluous. I, perused with great interest the clause that has been put in in this Bill, clause 323, to determine the continuance of managing agencies in certain industries. May I read this clause with your permission? The clause is entitled: "Power of Central Government to notify that companies engaged in specified classes of

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industry or business shall not have managing agents." The clause says:

"(1) Subject to such rules as may be prescribed in this behalf, the Central Government may, by notification in the Official Gazette, declare that, as from such date as may be specified in the notification, the provisions of sub-section (2) shall apply to all companies, whether incorporated before or after the commencement of this Act, which are engaged on that date or may thereafter be engaged, wholly or in part, in such class or description of industry or business as may be specified in the notification.

(2) Thereupon,—

(a) where any such company has a managing agent on the specified date, the term of office of that managing agent, shall, if it does not expire earlier, expire at the end of three years from the specified date or on the 15th day of August, 1960, whichever is later, and the company shall not re-appoint or appoint the same or any other managing agent; and

(b) where any such company has no managing agent on the specified date or where it is incorporated on or after that date, it shall not appoint a managing agent.

(3) Copies of all rules prescribed, and of all notifications issued, under sub-section (1) shall, as soon as may be after they have been prescribed or issued, be laid before each House of Parliament."

Considering this clause, one finds that vast discretionary powers are given to the Government. I have no objection to the Government determining the classes of business or undertakings which shall not have managing agents. For instance, in the textile industry we intend putting a will- ing on production of cloth by mills and it might therefore be argued with

a certain degree of legitimacy that so far as the vast bulk of the textile industry is concerned, since there is to be a ceiling on the growth of new mills, it would not be necessary to have managing agents. Nevertheless, even here there might be cases where managing agents might have to be employed as for instance in certain backward areas where the investing class is shy, where it is not possible to collect money and where certain pioneering risks have to be undertaken. I am glad that the Government have power under clause 323 to achieve this purpose, but I should like to point out that the very fact that such large discretion has been given to the Government should entitle us, Members of Parliament, to suggest restrictions on the use of such powers. I believe that it would be most helpful if the advisory commission which is to be constituted under clause 409 is asked to give its opinion before any notification under this clause is issued. The advisory commission presumably will consist of intelligent men and women who would know something of the economic development of our country and who on that account might be in a better position to suggest whether a particular firm even within a particular industry may have a managing agent or not.

There is also another matter which I would like to bring to your notice. You, Sir, have specialised in procedure and are therefore aware of the implications of 'rules being laid on the Table'. As you know these rules cannot be amended by this house; they are laid on the table for the information of hon'ble members. I suggest that the rules to be framed under clause 323 should be subject to amendments to be proposed by Members of Parliament within a specified period after they are laid, and provision should be made in this clause straightaway to this effect.

Having given my approval to clause 323, I now come to certain other provisions relating to managing agencies

with which I am not in agreement. Once powers have been taken under clause 323, I fail to understand why clause 325 has been put in this Bill at all. Clause 325, as you will recollect—and I hope I have your permission to read a brief excerpt of this particular provision—let the house realise what wide powers are sought to be given to the Central Government—reads as follows:

“(1) In respect of any company to which neither the prohibition specified in section 323 nor that specified in section 324 applies a managing agent shall not be appointed or re-appointed,—

- (a) except by the company in general meeting; and
- (b) unless the approval of the Central Government has been obtained for such appointment or re-appointment.

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

- (a) that it is not against the public interest to allow the company to have a managing agent;
- (b) that the managing agent proposed is, in its opinion, a fit and proper person to be appointed or re-appointed as such, and that the conditions of the managing agency agreement proposed are fair and reasonable; and
- (c) that the managing agent proposed has fulfilled any conditions which the Central Government require him to fulfil.”

I ask a straight question. If a company is declared to be one for which a managing agent can be appointed, why should Government play the role of a ‘nosey parker’? If the shareholders accept a certain person as a managing agent, how is the Government in a better position to decide that he is not a fit and proper person to be appointed as the managing agent? If the conditions of the managing agency agreement confirm to the requirements of the Act, the question of

assessing whether they are fair and reasonable does not arise at all. Further, if the managing agent has not fulfilled any condition which the Government thinks he should have fulfilled appropriate action may be taken either under the company law or under the general law. In the original Bill this provision was not included at all. In fact, it found a place only in the Schedule because it was for a period of three years. Even when the Bill was introduced, it was considered inadvisable to make it permanent. Perusing the Statement of Objects and Reasons of the original Bill of 1951 I found there a pregnant sentence stating that in view of the fact that new companies were coming into being like the South Sea bubble in the days of Walpole, it was necessary to exercise some sort of control over entry of new managing agents. It was also therein pointed out that this was at best a temporary measure. Now, why have we in this bill made this a permanent feature? Who is to judge as to whether a managing agent is a fit and proper person, and what are to be the standards of fitness and propriety? We all know that the Industrial Finance Corporation in giving loans to individuals went by the names and reputations established. So, in other words, here also the Government might observe the same criterion. It may be that as a result of the exercise of this power the very idea of having industrial development broad-based will be defeated, that the very idea of new men entering the private sector will be scotched. It may be that we will have eventually a little over three or four hundred of these old managing agents, old managing agents who can conveniently be ridiculed day in and day out, who could be pointed out to the legislature as the villains of the piece.

I consider that clause 329 also should not find a place in the Bill and should be omitted. There are a number of provisions which are ancillary to clause 325, which I would request the House to omit. Government after all, if it is to exercise discretionary powers, has to be

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controlled, and on the subject of appointment of individual managing agents I do not see what grounds of public interest there are to justify these particular provisions being put in.

Let me pass on to the controversial clause 331. A great deal was said about the need for curtailing concentration of economic power. I am all in favour of controlling the concentration of economic power. Let us assume that in future a person is not a managing agent for more than ten companies. The reason for this provision finding a place is that concentration of economic power should not be encouraged. A very laudable objective! But is this objective likely to be achieved by this particular provision? I wonder whether as a result of this particular clause there might not on the other hand be an increase in the concentration of economic power in the hands of managing agents. Let me tell the House how this is likely to happen. What the Joint Committee has ignored is the incentive to create branches of the same company. We should examine the memoranda of some of the companies. I know for instance a company which has a number of objects in its memorandum. It can start a textile mill. It can start a chemical factory. It can start a dyeing factory. It can even start a light railway. And now as a result of your having laid down that no more than ten companies can be managed by one agent, one company would have the right to open a number of branches and this would be the new type of development. What would be the result? The result would be that we would witness the growth of giant concerns as it were. I personally believe that whatever might be the defects of our company structure, it is better to have independent companies with directors rather than have one giant company with 200 sprawling branches. One has only to analyse the memorandum of association of companies like the Delhi Cloth

and General Mills to realise the number of branches that can be started by one independent company.

What we are doing by this provision is....

Shri Kane: There is clause 8.

Dr. Krishnaswami: I have read it, and I am giving this interpretation only after having read it. What would happen is that when we have companies with these branches all over the country, we would be faced with the problem of economic power. What I suggest to the House is that if we wish to control economic power, we ought to have different and independent legislation.

I now pass on to another controversial provision which deals with remuneration. I wonder whether hon. members have perused clause 197. It did not find a place in the original Bill. After having perused it, I came to the conclusion, perhaps a conclusion which was not altogether unjustified, that if this provision passes in the form in which it is, we would be violating two sound criteria. Basically, we would be doing something which would prevent the formation of companies, and secondly we would not be promoting the objective which we have at heart, namely of having a fair distribution of income. Clause 197 begins with the head-note:

"Overall maximum managerial remuneration and minimum managerial remuneration in the absence or inadequacy of profits".

I do not propose to read the whole clause. But the import of this clause is that by company legislation we should determine the distribution of income. The Joint Committee went wrong in assuming that it was entitled to use company law legislation for altering the distribution of income. This is the function of taxation, not the function of company law legislation at all. By fixing a remuneration, by laying it down in the statute, what we are doing is to force

persons to make a choice as to whether they will serve in companies or not. Persons faced with the choice of serving in a company, as business executives, or as traders, or as commission agents would very probably choose being traders or commission agents, which classes will not be affected by the harsh and onerous provisions of company law remuneration. Is this what we want? Would this be in conformity with the Second Five Year Plan for economic development? I venture to think that this is not what we want. But I ask this question: have we such a surfeit of business executives that we can afford this costly experiment for which society will have to pay, and which will not benefit even our companies either in the short or in the long run?

One can understand the logic behind fixing a managing agent's remuneration. The managing agent is after all an entrepreneur who is entitled to remuneration out of profits. Now, profits are a residue. But the manager, the executive director, these are concerned with administration. The mistake that the Joint Committee made was to confuse entrepreneurship with administration of a company. One can control an entrepreneur's income, but one cannot lay down by statute a ceiling on overheads which will have to be incurred in any event. I think the Joint Select Committee went wrong completely in trying to imagine it could fix an overall remuneration for these managers, executives and others. It committed the vulgar error of confusing entrepreneurship with administration. The compromise that has been suggested that in hard cases my hon. friend would grant exemptions does not carry us anywhere; this clause cuts at the root of what I would say proper company management; we cannot and should not rely on the discretion of Government for fixing a proper remuneration.

Having said this about clause 197, what have I to say on clause 347? The latter deals, with the managing agents'

remuneration. I think that clause 347 is a fair clause. I should like to point out that in clause 347 what the Joint Committee has done is to lay down that the managing agents' remuneration shall not exceed a certain amount, ten per cent. of the 'net profits'. After all, the managing agent is expected to get his remuneration from the profits. Indeed in 1936, Sir N. N. Sircar when he introduced this measure on company law pointed out that the managing agents were entitled to obtain only a certain fixed amount out of the net profits. A very elaborate definition of 'net profits' was drawn up then, and I do not know whether that definition would ever have been arrived at but for the co-operation and the healthy criticism which Members of the Legislature among whom you were one, made during that period.

Now, what we have done is to put a ten per cent. maximum limit for the managing agents. I think that this clause is essentially fair. I should like in this connection to remind the House of what Dr. John Matthai has said in his Report of the *Taxation Enquiry Commission*. On page 127 of Vol. I of that report, this is what Dr. John Matthai says:

"Statement XXVI shows the remuneration paid to managing agents expressed as per cent of profits before tax plus this remuneration; all forms of remuneration to managing agents and remuneration to managing directors also are included. The average remuneration works out to nearly 14 per cent. of profits for the entire period 1946—51. In certain industries, this proportion is much higher, especially in jute; the high ratio in shipping is associated with very low profits of this industry. During the period 1946—51, this ratio rose from 12 per cent. to 14 per cent. for all industries together."

Then, the commission proceeds to give the table of the income taken

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by the managing agents, and the income which the shareholders get. And here, let me point out that even the Matthai Commission has nodded, because it has forgotten to add the distributed profits to the retained profits in determining the amount which shareholders get. The shareholders after all are entitled to the retained profits, and when you wish to find out how much income goes to different classes, you have necessarily to take into account the total that each class gets. The Matthai Commission overlooked this fact, and that is why proportionate income that goes to the managing agent is overestimated relatively to the shareholder. But this does not alter the main conclusion of the commission namely that the managing agent obtains 14 per cent. of the net profits. The company law committee has recommended that 12 per cent of the net profits should be given to the managing agent. I do not think it is unfair to give ten per cent. of net profits to a managing agent.

Here, let me compliment the hon. Finance Minister on the care which he has taken to define 'net profits' and particularly on the way that he has defined. I thought there would be loopholes as in the Sircar Act, but I found out after careful investigation that there are no loopholes. Since this clause is practically a copy of the original Bill, I think he should take credit for what has been done.

I have referred to some of the provisions relating to remuneration of managing agents. I do not think there is any justification for my hon. friends saying that the managing agent's remuneration is not fair. What they can take exception to, as I pointed out is clause 197 which deals with administration. There, as I pointed out when you have to hire technical personnel especially in the years when the industry has to pass through teething troubles, it would be difficult, if not impossible, to do so if you fix a ceiling limit. Industries cannot have the best technical consultants, or the

best managers or other executives. Provided these managers, these directors do not have a share in the managing agency commission. I venture to think that we have no right whatsoever to fix a ceiling on the managerial income. I think it would be best, as I pointed out, to omit that provision altogether from the Bill, when the consideration of the clauses comes up.

Now, I pass on to another matter, the constitution of nationalised companies. While going through clauses 610, 611, 612 and 613, which relate to public companies, the first thought that struck me was that these public companies were placed in a special category.

Why should nationalised companies be placed in a special category? After all, minority rights in a nationalised concern require as much protection as in joint stock companies run by greedy managing agents or fat directors whose outlook on life is brought out by 'Shankar'. After all, in these nationalised companies the ventilation of grievances may act as a valuable check on the management. My friends, Shri Tulsidas and Shri G. D. Somani, have pointed out that a public company has been defined to be one in which the Government have 51 per cent. and not 80 per cent. as in the original Bill. I am not willing to quibble over whether it should have been 80 per cent or 51 per cent. If the Government have 51 per cent. control over the shares they can have, for all practical purposes, as much control as they would have if they had owned 80 per cent. But if in addition you lay down that provisions relating to protection of minority shareholders shall not apply, if you exempt them from several provisions of the Companies Act, then I venture to think you are creating constitutional monsters in our economy which it would be difficult to control and which would run amok. Consider what would happen. A nationalised company would have the

right to manage its day to day affairs; it would have the right to determine its policy. But in Parliament, hon. members would be precluded by rules of procedure from putting questions pertaining to its day to day administration. If nationalised industries were a department of the Government, it would be different. We would have the constitutional right to put questions, we would have the right to ventilate our grievances, we would also have the right to change their policy. Now, when you give them the special status of companies and exempt them from the provisions of the Companies Act, as you are attempting to do, you will prevent even the minority shareholders from expressing their views. Someone has pointed out that publicity is the greatest safeguard against the evils of the managing agency system. Publicity, I say, is not only the greatest safeguard against the evils of the managing agency system; it is also the greatest safeguard against the evils of nationalised industry in our country. And I want this publicity to find reasonable scope, I want it to be free, so that we might have a chance of knowing how our money is being spent, how our money is being utilised for the objectives that we have in view.

There is a sub-clause which relates to auditing by the Auditor-General of public companies. Now, Sir this provision has been drawn up with great care. But I should like to point out that I have one objection to the Auditor-General being given so much power to issue directions. The Auditor-General, after all, functions in a limited environment. He has experience of Government accounts, but he has little or no experience of trading accounts. Indeed, large portions of the Auditor-General's recent report pertaining on the working of the Industrial Finance Corporation betrays complete lack of appreciation of how a business concern works, lack of appreciation of how a financial in-

stitution should operate. What I am suggesting is that we should have chartered accountants who should be responsible for the auditing of these various nationalised companies.

[MR. DEPUTY-SPEAKER in the Chair]

The Auditor-General should at best, have only overall supervision. That would help us to run these companies properly on sound commercial lines.

Next I pass on to a clause which has seemed to find strangely enough a place in the Companies Bill—I refer to the clause which deals with need for disclosing secret reserves. Now, Sir the phrase 'secret reserves' conjures up before the mind's eye many illusions; the very phrase 'secret reserves' seems to have led many critics into thinking that such reserves are shady, that they are being collected by managing agents for the purpose of swindling companies, and that the time has come when it should be not only made public, but also revalued so as to give a true picture. But, what are secret reserves? The House is entitled to have a full and complete account of what these reserves are. These secret reserves spring from following the rules of accounting. A common method of valuation is to assign the goods either their original market price or the original cost, whichever is lower. The major defence of this procedure is that it will never result in over-valued inventories. For instance, in the Korean war, if we had taken the market value, as the basis of accounting all the stocks would have been over-valued. This would have inflated the wealth position of companies. Therefore, it is best to adopt a basis which under-estimates the wealth position of a company. How is the wealth position to be shown to shareholders? If as is insisted by the joint select committee in Schedule VI, we value stocks at market price, this would lead to an over-estimate of inventories and an over-statement of

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the wealth, and profit and loss position of a company. I want this House to consider the serious implications of altering a well-known rule of accounting procedure; I want this House to consider this question not from the point of view of suspicion but from the point of view of legitimate and sound accounting and thus benefit the country.

Finally, I would like to emphasise an aspect—a commonsense aspect of this legislation before I sit down. Whoever perused this voluminous Bill must have been struck by the large powers given to Government to exercise detailed supervision over company management. That company law reform is desirable, no one denies. But what is the purpose of having detailed supervision and control? How will such supervision affect the formation of companies? How is such supervision expected to be exercised? The Reserve Bank, under the able stewardship of my hon. friend, the Finance Minister, when he was Governor of that bank, instituted a new system of control and supervision of the banks. But hon. Members know that there are in this country only 380 to 400 scheduled banks, and to supervise them the strength of the staff required for such supervision is about 1500. The Registrar of Joint Stock Companies only last year in his report pointed out that there are 29,000 companies. If we are to have detailed supervision, according to the provisions of this Bill, we would have to employ a regular army of inquisitors. This would be obviously impossible. Therefore, what would happen is that the company law administration will work in spasms. Some report about a particular company will reach the Government, and thereafter an investigation will be started by the Government. Many of the smaller businessmen would be almost everyday infringing some of these technical rules, for which they can be landed in serious trouble if there is some slight

friction between them and some discontented shareholder or some other busy-body who feels aggrieved. What I am pointing out is that this will act as an inhibition on the small man from forming a company. While the bigger industrialist can command proper legal advice not only to keep straight according to the law but also to circumvent the provisions of the law, the small man would go to the wall, and instead of making our industrial development board-based, as we are affirming everyday, what we would be doing by this company law legislation is to apply a new and grand contraceptive to new industrial development; and it is in the backward areas and on the smaller men that this contraceptive would have the largest effect. The hon. the Finance Minister said that this measure has a strange destiny. I venture to think that within a year of this measure becoming law, the Finance Minister and the Government will come forward to this House with an amending measure; for the government will realise by bitter experience and after having affected the development of our economy that this measure is impractical, unworkable and is productive of great harm to the small man and the regionally backward areas.

Pandit K. C. Sharma: I congratulate the hon. Finance Minister for bringing this comprehensive piece of legislation. The reform of the Company Law took about nine years and various viewpoints have been taken into consideration and a workable piece of legislation has been brought forward. The fundamental questions before Parliament have been two, namely, the safeguarding of the interests of the shareholders and creating confidence for investment and limiting the powers of the managing agency. I am not one of those who will not acknowledge the great services that the managing agency system has rendered. It has certainly

contributed to the growth of industry and expansion of many new institutions of production and many new manufacturing concerns. That is all good. But from the talk of my friends from the industrial side I find a certain lack of appreciation; they do not understand that these great institutions, these great manufacturing concerns in almost all cases have been made possible on the sacrifice of the common man. What about the protection, the big protection? Has any concern of considerable magnitude prospered and grown without the help of the protective duties? How much has the poor man, the ordinary citizen, paid for it? That is why the State comes in. The State comes in because the manufacturing concern, however, creditable it might be and however much might it be due to your abilities and hard work, has been possible and has grown on the sacrifice of the people at large.

Then, what is the base of these big business houses, of these big manufacturing concerns? The base is the shareholder. Now, the shareholder goes to the background because the shareholder as such is not entitled to remove the managing agents. The only power given to him is under clause 337 for negligence and gross mismanagement. What about inefficiency? A director who concerns himself with the management of a concern can be removed under clause 283 in an ordinary meeting by an ordinary majority voting. Why can't a managing agency be terminated likewise, I fail to understand. There was a theory of the divine right of kings. The king was a king; nobody appointed him. During the long political evolutionary process that system of king by the divine right coming to the throne has vanished. But the king had many virtues on account of his past inheritance, on account of his traditions and on account of his personal equipment; the managing agent has none. Yet he has occupied the position of the divine right of kings. Certain people come in and float a company. In six months they

get themselves confirmed. In six months how many shareholders will there be? Then they are irremovable. With all respect to my friends, it is something that cannot be put up with, and I am sorry to find that even this present legislation has made no provision for the removal of managing agents.

Now, you say that the managing agency has done well. Yes, it has done well. Take it for granted. But it has also done something which my industrial friends are ashamed of. One of them,—a very rich man,—says that no managing agency whatsoever is in a position to justify its actions and some of them are very disgraceful. He is one of them. I do not find fault with them. They were tempted to do certain things; but to say that everybody else was doing mischief is to say that the magistrate should not convict the thief for thieves are in large number.

Dr. Krishnaswami: The magistrate will never be convicted.

Pandit K. C. Sharma: Therefore, the magistrate should not convict him simply because there are ten other thieves in the market. That is no argument. My only painful observation is that at this hour no man should stand up and say "we did something which was wrong because others have done it." This is no justification. With all respect, it does not sound well from the experienced and well-meaning gentlemen sitting in the Parliament.

Mr. Deputy-Speaker: Let bygones be bygones; let us see for the future.

Pandit K. C. Sharma: So, I mean to say that this law is a necessity and it is a logical consequence of the things that preceded. It is not today. The idea was already in existence in 1936. It was already in operation in 1951. More control was necessary, not because managing agency as such was something that must go down. They accept that the managing agency should remain; otherwise, they would

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have abolished it in this Bill, but that greater control is necessary. Why is it necessary? Because people mis-behave, because the shareholder is coming into the picture and because the common man is coming into the picture. When the Englishman was ruling here, the common man could not come up. Now, you go to any district or any town and people will say "the District Magistrate does not do this"; "That man does not do this"; "The Subordinate Magistrate misbehaves". He cries; he makes a demand. So does the shareholder. If it is true of the ordinary citizen in the street—to cry aloud and demand his share in the administration of the Government, to demand his share in shaping the well-being of the people—it is equally true that the shareholder should get the better of the managing agent. It is nothing wrong, nothing new. What is true in other spheres of life is equally true in the management of big business. So, my point is that there should be a provision in the Bill that like the Directors, the managing agency should be removable by the vote of the shareholder, because it is accepted that the things are not what they should be or are not acceptable. This being the case, the shareholder should get a chance, the first opportunity, to declare whether this managing agency should remain or should get out. While I plead for this provision, I also plead that this clause 366 for compensation by three years' remuneration should go. Once a body of persons in charge of a big concern are found to be inefficient or not doing their job in the proper way, not satisfying the shareholders—their masters—they have no business to get any compensation. Is a wrong-doer entitled to any compensation whatsoever? There is no logic in it. It is not fair even. If people do not behave well, if they have not worked well, it is in the people's interest and it is in the interest of the business that they should go out. Nobody of share-

holders would keep such managing agency people. If they work well, it is in the interests of the business to keep them. They will certainly think that if their services are good, they should be kept on. Why should they kick off good people? Therefore, they should be removable by ordinary vote as the director is, and secondly they should not be entitled to any compensation whatsoever.

Again as Shri Morarka and Shri Nathwani have said, I also emphasize that the appointment of directors should be on the basis of proportional representation by single transferable vote. The argument is that it will break the homogeneity of the directorate and they will not be allowed to work well. I was looking into a report in the U.S.A. In most of the States this system is prevalent and the report says that it has done well. Now they say there was Nehru-Liaquat Ali agreement and it did not work well. There is a rule on application of analogy in Logic. The analogy is applicable only to the cases in the same category, that is of the same kind. Administration and profit-making are two different things. They differ in categories. Administration has certain ideologies, certain different viewpoints, what is good for the people, what is the objective for building a new State, etc. A political party differs in its outlook. But no two persons differ in the ways of making profits. They know full well where the profit is to be put, the more it is made the better it is. In India at least, business means profit, nothing more. It may mean that their children should be well fed and therefore it will be to the good of the society. A good child is always an asset to the society, but it is a remote possibility. The immediate concern of every business in India has been profit-making and that is why so much trouble has arisen. It is no fault of yours. It is simply a long tradition. If you want

to find out the truth go to any business 'house. What would be the inscription? Not the 'truth'; not the 'light', but "Shri 'Labh' Shri 'Sukh' ". God give me profit, and God give me comfort, nothing else. Go to any business house, in that palatial building you will see only this inscription. So, it is a long tradition that in India business has always meant profit and even big manufacturing concerns have not deviated from this principle. It is a sad case. In this modern age of industrialists, the business houses are likely to play their part which the great Rajput warriors played in the history of this great country. Why? Because now it is a question of vote, how to catch the vote? With your money. Who constitute democracy? The intelligent monied man will always be a powerful factor in any democratic set-up. Because he supplies the wherewithal to fight the election. He owns chains of Daily papers. He may be remote in the corner behind the curtain. But he shall always have an important say and he is the man to be convinced of the measures that the Government or Parliament is to take. But with the profit motive alone in the mind and in the heart, will any democracy succeed with this set of people? This is a fundamental question. I do not worry whether the managing agent makes a few crores of rupees or a hundred crores of rupees. My only concern is that the present attitude that you should not change the law because there are thieves elsewhere is not correct. Do you mean to say that because other people misbehave you should not behave well? The business classes—the richer classes—are always all over the world in a democratic set-up an important factor so far as the administration of the country is concerned. You cannot escape the fact that in democracy you have to approach the common voter and in approaching the common man you have to find some money, because you cannot walk on foot. Then Industry is an important factor in raising the standard of life. With this mind

and character, it would be impossible to have any sound administration whatsoever. This is my painful observation—not that you have got lot of money, not that you do not have it. All the money in your pocket will come in the market. What does it matter? Instead of one car, one man may have 10 cars. It is somewhere and some people have it in some way or the other. It does not matter much, but what matters is the mind and character I say that the emphasis from the managing agency must pass on to the share-holder and, therefore, the elections of the directors must be on the basis of proportional representation by single transferable vote. I submit again that there is nothing strange in it. There is no force in the argument that it will not work well. I have heard very carefully Mr. Bansal's speech. I say the fears are without any foundation. It will work well and it will give satisfaction to all sections of the shareholders.

Then, Sir, again my one observation is that all companies operating in India should have on their directorates some nationals of India. In support of this argument, I am reading from the Company Law Committee's Report. Here is a provision from the General Corporation Law in the States of New York:

It provides:

"The Business of the Corporation shall be managed by its Board of Directors, all of whom shall be of full age and at least one of whom shall be a citizen of the United States."

Again, there is a provision in the Swiss legislation, which says:

"The sole director of the company, and if there are more, the majority of directors must be of Swiss nationality and domicile. For holding companies, if the main purpose is investment outside Switzerland, Government may

[Pandit K. C. Sharma]

grant exemption from this requirement. Violation of the law may give cause for judicial dissolution."

I do not think it requires any argument. It is a general sentiment of our people that whoever operates in India must have some Indian on the management, so that the country's interest may be safeguarded. There might be difficult times where even the security and the important interest of the country are to be looked after and if our national is there, it would be much more to the benefit of the country.

Having done this, I pass on to certain provisions to which my friends

have taken objection. This is about the 11% of overall managerial remuneration. It is true that competent people should get on the directorate and, for the mere sake of remuneration, the interest of the industries....

5 P.M.

Mr. Deputy-Speaker: The hon. Member is proceeding on a new topic. I think he can resume his speech tomorrow. The House will meet again at 11 O'clock tomorrow.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, the 17th August, 1955.
