[श्री विभूति मिश्र]

एंटेन्सन काल किया था २ तारीख को और आज १२ तारीख हो गई ।

अध्यक्ष महोदय : इसी लिये मैं ने उन से कहा कि वह वक्त वक्त पर स्टेटमेन्ट दें तो ठीक होगा ।

**Shri V. G. Deshpande** (Guna): They have done nothing after that.

**Shri Nanda:** I am going to lay a statement on the Table of the House in the next two or three days which will cover the States of Assam, Bengal, and Bihar and any further information about the U. P. that might become available.

**Shri S. L. Saksena** (Gorakhpur Distt. North): In view of the widespread floods in the country, will the Government consider allotting one day for discussing the flood situation all over the country?

**Mr. Speaker:** What is the idea of the Government?

**Shri Nanda:** I have not followed what the hon. Member has said.

**Mr. Speaker:** Let us first have the facts clarified. As the hon. Minister said, the rains are yet on and the situation is changing. The present adjournment motion refers to a second instalment of rains. I think, let them collect all the facts. Let us be then ready with the facts for a further discussion. At present, the situation is a continuing one unfortunately, and a changing one.

**Shri Nanda:** But, fortunately, as the reports which I have received show, it is not so bad. The apprehensions are not well founded. It has not been a very heavy rain, after I made the earlier statement. It was a very much worse position when I made that statement.

**Mr. Speaker:** Let us now proceed to the next business.

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## ABDUCTED PERSONS (RECOVERY AND RESTORATION) CONTINUANCE BILL.

**The Minister of Works, Housing and Supply (Sardar Swaran Singh):** I beg to move for leave to introduce a Bill to continue the Abducted Persons (Recovery and Restoration) Act, 1949, for a further period.

**Mr. Speaker:** The question is:

> "That leave be granted to introduce a Bill to continue the Abducted Persons (Recovery and Restoration) Act, 1949, for a further period."

*The motion was adopted.*

**Sardar Swaran Singh:** I introduce the Bill.

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## COMPANIES BILL

**Mr. Speaker:** The House will now proceed with the further cosideration of the following motion:

> "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 Sadhan Gupta** (Calcutta South-East): Day before yesterday, when I was speaking, I had shown.....

**Mr. Speaker:** I might remind him that he has already taken 29 minutes. Remembering that, he may proceed with his further comments.

**Shri Sadhan Gupta:** I had shown the necessity of loosening the foreign grip over our economy and how it could be done. I was also trying to show the futility of the claim that this Bill would end all abuses in the matter of company management. In that connection, I was dealing with the managing agency system. I had shown how through interlocking of business, managing agencies were able to defraud the Government and

defraud the employees: defraud not only the Government, not only the employees, but even the shareholders of the managed companies. There are a variety of means by which they defraud the shareholders. There is the buying and selling agency. As regards the buying agency, we know that that device does away with the check on the quality of the goods supplied, and with the check on the price of the goods supplied because the managing agency which buys it on behalf of the company also sells it to the company. Selling agencies have also led to a variety of abuses including blackmarketing and other things. The Income-tax Investigation Commission Administration Report reveals an alarming state of affairs in this respect. Apart from the buying and selling agencies, they have enumerated a number of means by which the managing agencies defraud the shareholders, the Government and other persons concerned, the consumers.

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

They have listed the devices of inflating the costs of production. They say that the managing agents show fictitious purchases of raw materials which were never made or show purchases through a chain of intermediaries who are really *benamidars*, and who eat up the profits which should belong to the company, and thereby defraud the Government and the shareholders alike. They partially suppress the sales and understate the production correspondingly. They show exhaustion of stores by showing excessive consumption or false consumption and then sell in blackmarket or re-sell to the company at an inflated price. Materials which are never required are shown as consumed and wastage is inflated. False debits are made either of capital expenditure and shown as ordinary expenditure or of fictitious sums which were never spent at all. I can do nothing better than read the passage of the report of the Investigation Commission regarding this. They say:

"Managing agents of companies, particularly textile mills, had been found to have made secret profits for themselves in various ways prejudicial alike to the revenue and to the shareholders. Costs of production have been inflated by making entries of purchases of raw materials never made or made through a chain of intermediate concerns which where merely *benamidars* of the managing agents and each of which added to the cost by charging some profit and thereby reduced the profits of the main companies. Sales were partly suppressed and in aid of the suppression, the production was under-stated. Store materials were exhausted by showing excessive consumption and the materials falsely shown as consumed were either sold in the black market or re-sold to the company itself at inflated prices in later years. Materials never required by or used by mills such as firewood or charcoal were nevertheless shown as purchased and consumed. The wastage was inflated. The manufactured goods were ostensibly sold at controlled prices, but the parties to whom they were sold were really *benamidars* of the managing agents and they generally had their place of business in some Indian State from where the goods were passed on to the black market in the interests of the managing agents, and when the quota system was introduced, large sums in excess of the proper price was received as the consideration for supplying the particular kinds of goods wanted by a consumer; and lastly, false debits were made in the repairs accounts either of what was really capital expenditure or of sums never spent at all."

This shows the variety of ways in which managing agencies have led to abuses. I defy any one to say that these abuses can be rooted out except by rooting out the managing agency system itself.

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The same thing applies to the institution of Secretaries and Treasurers which are sought to be given legal recognition by this particular Bill. The Secretaries and Treasurers should also go the same as the managing agency should go, that is to say, the way of extinction.

I now come to the question of directors. Their remuneration has been fixed pretty high, at Rs. 50,000 which I think is a little too much for companies which suffer losses. Apart from that it has been sought to limit the number of companies on which directors may serve as well as the number of companies that managing agents should manage. There is nothing sacred in a number. Number is important in the case of managing agents only in so far as it prevents interlocking. Apart from that, there is no magic in any number. The principle which should govern these matters in the case of managing agents is the question of concentration of economic power and the question of concentration of wealth in a few hands. It may be necessary to reduce numbers for the purpose of interlocking, but for the purpose of preventing concentration of wealth and concentration of control over certain industries or a substantial sector of certain industries, we must look not to numbers but to the size of the concerns. Therefore, in limiting the capacity of management, in limiting the right of management in the case of the managing agency, what we should do is to restrict it both by numbers as well as by size of the company. In time I hope to propose amendments to the relative clauses to give a scheme for reduction by numbers as well as by size.

The same thing applies to the case of directors. In the case of directors, another principle comes into play for the purpose of imposing limitations, which is the principle of efficiency. The Bill has provided that a director can be a director of 20 companies. I can say, I think, without any fear of challenge, that unless the director is a sinecure he cannot be expected to manage 20 companies efficiently. He cannot be expected to put in that amount of work for the 20 companies for which he receives remuneration. Therefore, this allowance of 20 companies is nothing but encouraging sinecure directors in the case of some companies. Therefore, in the case of directors also what we should aim at is to prevent undue concentration of wealth and to increase efficiency of management. Now, for both these purposes, we should impose limitations by numbers—yes, in the interests of efficient management the number of companies must be limited—but also by size, because in the interests of preventing concentration of wealth the size of the companies also must be limited. And in this respect also, I propose to move certain amendments.

Then I come to the question of audit. I welcome the provision that Government companies are to be audited by the Comptroller and Auditor-General. That is a good thing, but there is a snag in it. The Government company is only a company where Government controls 51 per cent. of the shares. May I ask why? Does it not represent an outlook in which the only persons that are interested in the company are the shareholders and no one else? Is it a proper outlook to take in the case of a Government company? When the Government invests its money, it is the money of the public, and whatever money it invests, the people are interested in the affairs of the company and it does not matter two hoots whether the shareholder has 51 per cent. or 80 per cent. or 90 per cent. of the shares. As soon as public money goes into it, the people are interested in the company, interested in seeing that the affairs of the company are properly conducted. I would go even further. Apart from the question of Government's investments, there are cases where Government guarantees certain loans in the case of certain companies. Why should not Government insist that their affairs should also be audited by a competent, impartial auditor?

And therefore, I would also demand that in the case of companies in which the Government has any financial interest either by way of interest or by way of giving a guarantee or by way of giving a loan, whatever it is, the Auditor-General should audit its affairs and it should be a Government company for that purpose. And even in the case of Government investments I would demand that the percentage of Government investments for the purpose of bringing it into the class of Government companies should be very drastically reduced, because we know that there are certain very important oil ventures in our country which have world-wide ramifications, which carry on all sorts of political activities all over the world, and which have become partners with the Government in these ventures. And they have become partners with a major share, and Government have a comparatively minor share only. So, under the Bill as it has emerged from the Joint Committee, the Auditor-General will have no power to audit their affairs. But I want, and I think the entire people of the country want, that these foreign concerns should be very vigilantly watched, and particularly by the Auditor-General.

Then, we want that there should be a ceiling on dividends. We know that in this poor country of ours, dividends to a very unconscionable extent have been paid. Where the people are poor, we have seen dividends ranging up to anything over a hundred per cent. This should not happen; this should simply not happen. I think it is very reasonable thing to limit the dividends to say, two or three per cent. above the bank rate or at most double the bank rate. There should be no dividend paid above that rate. In a country where the people are struggling for the bare necessities of life, it is a luxury for anyone to claim that he would have a dividend without doing anything but simply by investing money, at a rate higher than two to three per cent. above the bank rate or double the bank rate. We would urge that the extent of dividend be ceiled at some level of that kind.

Then, I have something to say about the controversy over whether there should be a statutory authority to administer the company law or the Central Government should administer it. In this connection, I do not want to create any illusion that the Central Government is a very great champion of popular interests, and that in its hands we are safe against abuse of company law. But there is one thing we must say in favour of the Central Government's control as distinct from that of a statutory corporation. We know it from our experience that a statutory corporation when it is constituted is usually representative of big business in such matters. It is as bureaucratic as the Government themselves, and to make matters worse, it has a considerable representation of big business.

**Shri M. S. Gurupadaswamy** (Mysore): Why can you not prevent it?

**Shri Sadhan Gupta:** It is impossible to prevent it with a Government of the kind we have.

There will be bureaucracy, and there will be big business in that, and the only difficulty is that there will not be any criticism. But if the Central Government have the administration of the company law in their own hands, then we may, from this House as well as from the other House, keep a vigilant watch, and pester it with questions or cut motions or debates on motions and all things of that kind. But in the case of a statutory corporation, that sort of thing becomes impossible. (*Interruption*) My hon. friend Shri Kamath says that Government are impervious. We are not unaware of that fact. But still there is something, when we have a vigilant watch from the House, when at every stage, we can focus the light of exposure on the misdoings or the absence of doing of Government. We may expect some profit out of it. But in the case of the statutory corporation we shall have no such safeguard, and on the other hand, they will go the same way as the Industrial Finance Corporation or other

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similar institutions have gone. Therefore, between the two evils, I would rather choose Government. In one we have bureaucracy and the other evils with criticism, and in the other we have bureaucracy and the other evils without criticism. So, I would rather choose the one which will be subject to criticism to a larger extent by the two Houses of Parliament.

With proper changes, the Bill may yet serve a useful purpose. It may be so amended that foreign grip may be loosened, if not at present—because I know that this Government are very reluctant to interfere with existing vested interest—at least in the future. If we take proper steps, foreign grip may be loosened. The Bill may be amended to strike at some of the existing sources of abuse, though within the present structure, abuses can never be completely liquidated. In particular, we want a total ban on foreign equity capital. If that ban does not come, then we want foreign equity capital to be confined only to those sectors in which national industry cannot engage. Failing even that, we want foreign equity capital, and foreign investments to be drastically regulated by fixing for them a small percentage in any investment. We want the total abolition of managing agencies, secretaries and treasurers; and failing that, we want limitation of these institutions with reference to the number as well as the size of the companies. We want the reduction of the remunerations proposed for managing agents, secretaries, treasurers and directors; and we certainly oppose the principle mooted by the Finance Minister to give the companies the option of increasing remuneration. We want limitation of the number of directorships also by number and size. We want ceiling on dividends. And we want public audit of all companies in which Government have an interest.

Finally, I have a word to say about some of the devices which Government have adopted to counteract the abuses, whether it is in the case of the managing agent or in the case of the secretaries and treasurers. For example what the Bill has provided for is that the grant of buying and selling agencies to managing agents would require a special resolution in a general meeting. Now, what is the use of this special resolution? We know that the Bombay Shareholders' Association in their memorandum before the Bhabha Committee have shown us that if the managing agents could muster thirty percent. of the voting strength, they could have a special resolution passed, because the small shareholders are dispersed all over the country and therefore they cannot take any interest in the meetings, and therefore, the attendance is very small. Now, in view of the abolition of the disproportionate rights, it may be that the limit will be a little raised, and they may have to control a little more of the number of votes. Formerly, they could have a special resolution passed by controlling twenty-five per cent. of the votes. They could do that in many ways. Now, perhaps, it will be a little more than that, say, thirty or thirty-three per cent; for, asuming that only fifty per cent. attend the meeting, only 37½ per cent. would be required to pass a special resolution. Therefore, the requirement of special resolution is absolutely useless and would act as no check on the abuses.

I would again request the Finance Minister to consider from this point of view also whether he would try to do away with the abuses by such an illusory thing or altogether root out the source of the abuse itself.

**Shri K. P. Tripathi** (Darrang): When this Bill was discussed last time before it was referred to the Joint Committee, it was expected that the managing agency system would be abolished, and for that purpose proper provisions would be made in this. But, unfortunately, no decision about its abolition has been taken. What has been done is that provision has been made that Government may declare certain industries in which managing agencies should not exist, if they so like; but if they do not like it, then they may continue the managing agency system for even a hundred years. Now,

obviously this is said to be a middle course. But I humbly submit that it does not reflect the desire of this House, when we referred it to the Joint Committee, nor does it reflect the desire of the country. I think the country discussed this question in 1934 and 1936 also, and then also a demand was made for its abolition. At that time also, it was said that it was better to curb it and reform it. But all attempts at curbing and reforming failed, because after all, where money is concerned, it is not so easy for the reason that moral considerations do not apply there. More money, more corruption, corruption from our point of view, from the people's point of view, though it is not regarded as corruption from the point of view of the managing agents. Therefore, however we may try, it is not possible to reform this system.

Now, whatever might have been the case before, after this House had decided that we were going to have a socialistic pattern of society, it was incumbent on the Joint Committee to think further. Socialism is not going to come from concentration of wealth and power in the hands of a few individuals. From that point of view, I submit that this question was not considered enough and, therefore, it was not decided that managing agencies should be abolished. The powers which have been retained in the hands of the managing agencies are very far-reaching indeed. It is said that remuneration has been reduced to some extent and, therefore, the power also would be reduced. But I have to submit that in spite of that, the power will remain and this power will have to be curtailed. If we want really a socialist democracy, concentration of power of this type, in individual hands is not going to bring socialism nearer. It is said that managing agency has nothing to do with socialism because there are countries which are capitalist in which managing agency does not exist. I humbly submit that it is a negative way of looking at the thing. When we are going to promote a socialistic pattern of society in the country, we have to determine what are the structural changes which should be brought about in the country. I only submit that from that point of view, this was not properly considered. If it has been considered, then a limit should have been laid down. It is said that if a limit is laid down, then within that limit the managing agents will try to create as much corruption as possible, and possibly eat away the companies. I think that argument does not apply, because even within the limit of those controls which are guaranteed to the Government, they will be able to check the managing agencies, provided those control are effective. If they are not, then the provisions condemn themselves. If there are sufficient controls, then Government will be able to apply those controls, and if they apply those controls, it would not be possible for the managing agencies to eat away the companies.

Now, I am not one of those who believe that as soon as the managing agency system is abolished, suddenly there would be a vacuum. Nature abhors vacuum. Therefore, these employers, these managing agents, these controllers of industries, would not suddenly disappear; they will try to change colour and try to be in management of industries, whatever the nature of the industrial structure we might determine. Therefore, if you provide for secretaries and treasurers, they will merely purchase shares in the company and try to become secretaries and treasurers; if you provide only for managing directors, they will try to be managing directors. I have not been able to understand this theory of vacuum. I personally feel that whatever might have been the necessity for managing agencies in the past, in view of the changes that have occurred in the capital structure of the country, they are no longer necessary. The Finance Minister himself has taken power and brought about certain changes in the credit structure of the country, particularly with regard to agricultural finance, industrial finance, the system of guaranteeing foreign

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loans to industries, with regard to floating other financial corporations and institutions, which shows that, by and large, the theory that these people, the managing agents,—provide capital formation has been belied. Even with regard to small savings, it is the Government which have given the drive, and have collected the money and given loans. Therefore, the whole capital structure has changed. The Reserve Bank's report itself says that only 25 per cent. of capital formation in terms of credit occurred through managing agents in 1951 and 1952. If it has been reduced to that extent, it shows that other institutions have come into the field and capital formation is occurring through these other sectors, which are the major sectors. Therefore, the time has come when this system should go.

Obviously this system has become very unpopular and people have no longer any faith in it. People are not going to subscribe to shares when called for by these people. The present share market is controlled by these people and the transactions occurring there occur through these people. The other investors have been scared away, and unless and until this practice is changed, the other investors will not be brought in. They will come in if the Government venture into these schemes of investment. Therefore, from all these points of view, I was thinking that it would have been better if a time-limit had been set for abolishing this system. It would have been better in this way also: Government themselves are exercised as to how an alternative system of management would grow in the country. No alternative system can grow, I humbly submit, if this system remains. If the managing agents know that they will have to go after a certain time, then only they will change themselves into secretaries and treasurers or merely directors. If they know that by merely bringing pressure on the Government they can continue, they will try to continue as they are. I submit that the amount of pressure which will be brought on the Government machinery which will control this will be tremendous. It will be pressure of power as well as money and it is highly wrong for any Government to determine a machinery which is subject to such tremendous pressure. I can quite foresee and realise that there will be many occasions on which the exercise of this power will be vitiated by this type of influence by the managing agents. I think it would be quite wise for this House to reconsider the decision on the question whether a time-limit should be set or not.

Some people think that there is not enough managing personnel in this country which can shoulder the burden. I think there is sufficient personnel in this country but because there is a tie between the managing agents of companies and banks therefore the attempt is made that the whole managerial structure should remain as a special preserve in a few hands. If this grip is loosened, I have no doubt that it will be found that a very large percentage in our country is capable of shouldering this managerial responsibility. Even if Government think that sufficient people are not there, it is the duty of Government to start institutions which can train personnel for this managerial capacity. Within five or six years such institutions could be started and managerial cadre might be trained.

If it is true that we have sufficient managerial talents, if it is true that capital formation is no longer occurring through the managing agents, then why should we retain this managing agency system? I think that because of these developments and because the credit structure has been completely changed by the Government itself there is no longer any necessity and if we abolish this system in the near future the country's ship would not flounder.

We have decided on a socialistic pattern of society. But what are the criteria of a socialistic pattern? They

have not been fully brought out in this company law. Obviously, the question of workers has been completely omitted. Most responsible people say that workers are shareholders in the industry but when we try to find out whether we are shareholders we find that we have been completely omitted from this company law. If we are shareholders then we should find a place somewhere—Where is that place? Government have taken powers to nominate two directors where the minority shareholders are oppressed. What about the workers who are also oppressed? If you think that a really socialistic pattern of society has to be evolved then, as the workers are shareholders in the industry, we shall have to take powers into our hands so that we might nominate representatives of the workers where there are good trade unions in industries, where the trade unions represent more than 50 per cent. of the workers. Government should take power in their hands to nominate from them their representatives on the directorate. That would be greatly advantageous because we do not get a large amount of information and a great deal of shady things happen. But, if you, by any chance, get these representatives of the workers on the directorate, then a lot of corruption which we are faced with today will be reduced and to that extent both the company as well as the consumers in the country will benefit.

With regard to remuneration also in the present structure of the country it is said that the workers are only entitled to wages. If they are starvation wages they are entitled to starvation wages only. As soon as the turnover is converted into profit, then it becomes the private property of the employer and the managing agents and the workers have no share. It was expected that the present tribunals in this country would be able to change this, that they would be able to bring about a change by which the worker would get a share in the profits. But unfortunately, the tribunals have ruled in such a way that the workers have been practically denied any share in the profits. The workers are entitled to living wages; but when they are denied or not given living wages then they are entitled to bonus by way of deferred wages. When they are given living wages they are entitled to a share in the profits. But both are denied by the rulings of the tribunals. I had thought that in fixing the remuneration Government would take into consideration what part of the profits should go to the workers. No such decision has been made. The main consideration or concern of the Government seems to be what should be the remuneration of the managing directors and the managing agents etc. Below that they did not look. But, in a socialistic pattern of society we have to look below also and that is one lacuna to which I want to draw the attention of the hon. Finance Minister, whether it would be proper to put in the workers' share of the profits. I would like to point out this. The employers have taken away all by creating special reserves like the dividend equalisation reserves. This dividend equalisation reserve is created only for the shareholders. There is no equalisation reserve for wages and whenever there is a crisis, wages have to be brought down. The idea is that shareholders would continue to get their level of profits but the workers will not get even fair wages. I submit that some thought should be bestowed on this in this fundamental law of ours and if you think it is proper then you might say that if any special reserves are created then the workers' share in them should also be there. After all it is a way of cornering the profits, so that the profits might not be available for distribution to the workers by way of bonus. It has been seen that so far as the reserves are concerned, they are converted into bonus shares and when they are converted into bonus shares they become the private property of the employers. The workers have no share. Therefore in all these reserves which are convertible into bonus shares in future as well as the special reserves

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like dividend equalisation reserve the Government should be able to say what is to be the share of the workers.

I would also like humbly to draw the attention of the Finance Minister particularly to changes of hands. At present there are tea gardens, for instance, which are changing hands at a very rapid rate and at too high prices which our nation cannot afford. It is said that sterling control is there and therefore no purchases of shares can be made in the London market where the same gardens could be purchased at one-fourth the cost. When these gardens are sold here they are sold at four times the prices and all this sterling is made available to them for being exported abroad. In this way we are suffering and it is the national interest which is suffering and we have been trying to draw the attention of the hon. Finance Minister to it, from two points of view, one how to prevent frittering away of our sterling resources and the second, how to prevent over-capitalisation by this method which is growing and thereby reducing the share of the workers in the profits of companies or their chances of any share.

I think it would be better if the Finance Minister could incorporate in this legislation some provision by which Government would have power to prevent the sale of concerns at very high prices so that the tea gardens and other concerns which are being sold at high prices could not be sold. Even in today's paper I was surprised to find a report namely, the U. K. High Commissioner has represented to the Government of India that if the Mysore Government goes forward with the nationalisation of the Kolar Goldfields then it would be bad because it would scare away British investors. From this point of view we can see how foreign capital is trying to put pressure on our economic policy, to put pressure on the Central Government as well as the State Government so that we may not go forward with nationalisation. After all when we have adopted the socialistic pattern of society as our goal it is our duty to think of nationalisation in all the spheres of our economic activity. We should go forward with nationalisation and Government have made it clear that mines is one of those spheres in which nationalisation may go on. The Kolar Goldfields is one of the mines and, therefore, if either the Central or the State Governments come forward to nationalise it, it is the right way. At least the U. K. Government cannot protest against it because it has itself nationalised mines. If it is in favour of nationalisation of mines in that country how can it say that we shall not go forward with nationalisation? I think this is a test for the Government of India as well as the people of India. In Persia the U. K. Government very sucessfully prevented nationalisation of oilfields and if they succeed in terrorising our Government into accepting the position in which we may go back on this desire of nationalisation of the Kolar Goldfields, then. I think it would be very wrong and our whole policy of socialisation would get a setback. From this point of view also I would request the Finance Minister to apply his mind. I have heard that the Central Government have been advising the Mysore Government to go slow and not to go fast with their nationalisation scheme. I would humbly suggest that after this intervention by the U.K. High Commissioner in our economic affairs—this type of intervention would not be proper—it should be our duty, and it is the desire of the country, to see that if an attempt at nationalisation is pursued by the Mysore Government, it should be made to succeed and not to fail. From this point of view I would draw the attention of the Government to the desirability of providing in all future contracts either that the Government guarantees loans or Government is a shareholder in those concerns in order to see that our rights to nationalise any company or concern

re not jeopardised by any cause be- g inserted in those agreements

With regard to the basic structure hich has been brought about, I find iat most of the powers which are iken by the Government are in such way that there is also the power to iake concessions, that is, the Gov- mment takes a power to control the ompany and at the same time there i a power that if the Govenment so ooses, the control might be lifted. bviously, this a very risky, because ll the controls, which we have been rying to impose as being very good, ight be made completely nugatory f they are not applied. From his point of view, the Depart- ient which the Government is rying to create is a step in the ight direction. If a separate cor- oration were floated and if it exer- ised its discretion wrongly, that it ould not be possible for us to catch , but if the Department is directly nder the Economic Affairs wing of the inance Ministry and if its activities re under the scrutiny of this House, think it might be better, because hen only as a matter of fact we ould be able to exercise control. Otherwise, the amount of political and economic pressure, which would be brought on this Department, will be o terrible that may be the Depart- ment itself will fail. It is the con- inued vigilance of this House as well as the Ministry which only can, if at all, succeed in controlling the economy of the country with regard to the com- panies in the way in which this Bill provides. Therefore, the agency which will administer the control is very important and on its success will ultimately depend, to a large extent, how we can control the economy of this country. From this point of view I support the idea of departmen- tal control and I welcome the new Department which has been set up by the Finance Minister. I think there should be general support to this.

I would humbly beg to appeal to the Members of the House as well as the Finance Minister and the Govern- ment to reconsider the special request which I have made with regard to labour, because I feel that in the Second Five Year Plan the labour has been promised that it is going to be given a share in the management. The Prime Minister himself, after his return from Yugoslavia, made a state- ment that the workers' share in management should be considered. The arguments against this are that the worker in India is not sufficiently trained, is not educated and is not capable of shouldering the burden. To some extent there is truth in this argument, but there are large sectors in our country where the worker is capable, is able to understand his res- ponsibilities, is fully Indianised and can shoulder this burden. From this point of view Government will have to consider that statement if it is true and meant to be true, and in that case I have no doubt that this will be in- corporated in the Second Five Year Plan since this Bill is going to apply mostly from the Second Five Year Plan period. Therefore, some provi- sion should be made for the workers' participation in the management, that is, directorship and obviously the other things will come in also— workers' share in remuneration, wor- kers' share in responsibilities, wor- kers' share in duties, workers' share in management, etc. I think this point is also being considered at the Planning Commission's level as well as well as the Joint Consultative Board of the Planning Commission. I hope they will be able to draft out a plan as to how this should be execut- ed. But if you do not privide for it in the Company Law, how shall it be brought about then? I, therefore, humbly beg to request that Govern- ment may consider this point of view so that the workers may be given the due responsibility which they deserve. It is a known fact that the production of this country has been raised to an index of 165, which has been the high- est up till now. That shows that the worker, by and large, has been show- ing concern with regard to the de- velopment of this country. The worker has also been contributing his mite for the purpose of the small savings scheme so that capital

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formation has been occurring. From all points of view there is a general realisation in the small cultivators and small workers how to rebuild this country. Therefore, they should be given a share in management and it would be advantageous also to the employers to consider how they can make the worker shoulder further work or burden. The situation is that there is a great deal of difference and misunderstanding existing between the employers and the workers, and these misunderstandings will not disappear unless and until the basic causes for these are removed.

With regard to balance-sheets, I welcome the provisions which have been put in. Model balance-sheets have been laid down but I find there is a clause again there at the end which says that the Government is empowered, in fit cases, to rule that certain companies may not publish their balance-sheets. That is an unfortunate provision. Why should the balance-sheets not be published? As a matter of fact, balance-sheets have been hidden and that is one of the reasons why so much corruption has crept in. We want to put down corruption and so all these provisions are made. I am not talking about the provision in the Bill which gives a model of the balance-sheets, how they should be kept, etc. I am now talking about the other provision at the end, that is, that Government will have power in fit cases to rule that the balance-sheets need not be published. I may humbly submit that that will be a wrong step because balance-sheets are the index of the company and they are not private property. As somebody was arguing here, industry is not a private property; it is the property of the nation and, therefore, at a glance at the balance-sheet it should be apparent as to how the company is functioning, and that should be apparent not merely to the employer and to the Government but also to the masses, the shareholders and the workers. That can only be achieved if all companies, irrespective of the nature of the company, are asked to publish their balance-sheets. We will then be able to check corruption.

With regard to foreign companies, I beg to submit that such companies which are incorporated outside should be required to maintain a share register in India so that their shares might be transacted in India. We are finding very great difficulty here because of the sterling agreement which has been made by our Government with regard to tea companies which are being quoted at a quarter of the price in the London market whereas we are purchasing at four and ten times the price in certain cases. If the shares were quoted in both places, I think this kind of thing will not have happened. I request the Government to consider the desirability of having a section incorporated in the Bill making it obligatory on all foreign incorporated firms to get themselves registered and to maintain a register in India so that India also might develop a share market as other countries have done. After all it is the duty of every company wherever it is registered to be honest in the country where it is functioning and from that point of view it is very necessary that they maintain the register here. I know that it is a very controversial measure but I humbly beg to submit that the controversy can be set at rest if we realise the pattern of society to which we are tending and I, therefore, feel that the suggestions which I have made will be given due consideration by the Finance Ministry of the Government of India.

1 P.M.

**Mr. Deputy-Speaker:** I would like to give an opportunity to persons who are connected with industry; they may be elbowed out later on and if they then complain they cannot help and I cannot help. In the earlier stages we have to go in search of people to

speak. That is what happened the other day and Shri Sadhan Gupta came to the rescue of the House. Therefore, there is no good hon. Members writing to me: "Day after tomorrow please call me" or "I have to run away to the train and so call me immediately". Hon. Members will not unnecessarily embarrass me like this with such requests. I cannot go on carrying in my mind that I should call an hon. Member today or tomorrow. I call whoever comes here, and if nobody stands I will close.

**Shri A. M. Thomas** (Ernakulam): I join the Finance Minister in paying a tribute to the magnificent work that the Joint Committee has done. I believe there will be unity in the House with regard to the fact that it was an arduous work that they had to do and they did it in a splended way. It has been said that a more voluminous Bill has not come up before this House or its predecessors. An economic journal has characterised this Bill as a jungle with 649 clauses.

**Shri Kamath** (Hoshangabad): Name of the journal?

**Shri A. M. Thomas:** If my friend is so particular, it is the *Eastern Economist*. This Bill, it says, is a jungle with 649 clauses and with a thick undergrowth of so many sub-clauses and divisions and if I may add to the expressions of the journal, it is a jungle with spreads of schedules and tables and there also there are thick undergrowths.

**Mr. Deputy-Speaker:** Who are the tigers in it? There must be animals also.

**Shri Kamath:** Jackals.

**An Hon. Member:** They are being hunted out.

**Shri A. M. Thomas:** It is a difficult piece of legislation and the first plea that I would make to the new department which has been formed is this. Soon after the passing of this Act, the first thing that they have to do is to issue a hand-book which will give us in simple and straightforward English and not in an involved language, the purport of this Bill, the rights and duties of the managers, managing directors, managing agents, shareholders and the public at large. When a similar suggestion was put forward in this House with regard to the Estate Duty Bill, the Finance Ministry was good enough to issue a handbook and that has been as far as I know very helpful to the public at large. There is one specific reason why I make that request from the point of the shareholders as well as the general public. It is not because there have not been sufficient or adequate provisions—perhaps provisions may not have been so adequate as you wish them to be—which do give rights to shareholders that there have been mismanagement of companies. The shareholders were generally not in the know of their rights and so very many fresh fools have been cast away on the flotation of companies after companies. There is another point of view also which the new department may bear in mind. There has been a great deal of laxity and lack of vigilance on the part of administration itself in enforcing the various provisions of the existing enactment as amended in 1936 and 1951. There had been instances brought out by the reports of responsible committees and commissions that various authorities dealing with company administration—I mean Government authorities—when several instances of very scandalous and notorious behaviour had been brought to their notice, did not take any serious notice. So far I do not think any serious action has been taken by the department against those persons. Perhaps they may be bigs up. Perhaps some action might have been taken by the department in cases where small persons were involved and where perhaps in the interest of the public at large serious notice which the department has taken ought not to have been taken. I believe the department will bear this aspect specially in view. And I would request the department when

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its whole attention is fixed on shaping this Bill to take notice of this feeling in the minds of the public at large.

Shri Asoka Mehta who initiated the discussion on the Joint Committee report made a very forcible plea for the creation of a Central autonomous body to administer the various provisions of this Bill and he has also quoted with approval the observations of Shri Chatterjee in his dissenting note. Although the representatives of the various industrial concerns, prominently among them, Shri Somani and Shri Tulsidas, have appended a detailed note, I find what they plead for is only the establishment of a strong Central authority—that is, a special department under the Finance Ministry itself. The Communist Group's outlook in this matter has just now been voiced by Shri Sadhan Gupta and the Members of the Communist Party who were Members of the Joint Committee also have not put forward any plea for the establishment of an autonomous corporation or a semi-independent authority to administer company law. Shri T. K. Chaudhuri has in his detailed note—though he has not made a specific plea for the appointment of a Central authority—recorded his liking for that. Really, this is a very attractive proposition and speaking for myself I was also at first influenced and I was inclined to accept the plea for the establishment of an autonomous corporation. It has also the support of the high-power committee, namely, the Company Law Committee which went into the details of company administration. But having thought further and having gone into the pattern of the Bill in detail I am sorry I cannot agree with the suggestion of Shri Asoka Mehta. Shri N. C. Chatterjee himself in his dissenting note at page 30 says that under this Bill, very wide and almost uncanalised powers have been contemplated to be given to the Government. It is very easy to say that major issues of policy may be determined by the Government and their implementation may be left to an independent authority; but in actual practice it may be very difficult to make any demarcation like that. One cannot say what matter relates to policy and what matter does not relate to policy; and especially so when the management and administration of the Company Law is intimately connected with other schemes and plans of the Central Government.

The Department of Company Law should necessarily work in close collaboration with the various departments of the Ministry of Commerce and Industry. For example, the Development Wing of that Ministry has to work in close collaboration with the Finance Ministry. It has also to keep pace with the tempo of the economic activities of the State at large. This new department has also to take note of the various regulatory and supervisory powers of the State. We have got the Industries (Development and Regulation) Act. There are very sweeping powers vested in the Government under that Act. Therefore, when powers are bifurcated like that, when powers are divided like that, between the various Ministries and departments and when close co-ordination is necessary between those departments, I feel that it will be dangerous to constitute an autonomous authority and vest the powers of Company Law administration in that authority. There is bound to be friction and there is bound to be chaos in that case.

Sir, the hon. the Finance Minister himself has pointed out that out of the 649 clauses in this Bill as many as 94 clauses refer, in some way or other, to Government and those clauses are given as an appendix to the Joint Committee Report itself. Of course, some of those clauses refer to certain definitions or something like that, but very many of these clauses—most of them—refer, in some way or other, to the Government itself, so much so, I believe that it is not possible to constitute an autonomous body and give these powers to that body.

Shri Asoka Mehta raised the question with regard to the fears that have been voiced by Shri N. C. Chatterjee in his dissenting note, namely, that out of political considerations the Department of Company Law may act and that will lead to several complaints. We have to bear in mind, that it is not a foreign government that is ruling us. Now, we are not working under a colonialistic regime. It is a popular government that works and, as such, so long as that government has got the backing of the country at large, we have necessarily to vest that government with some powers. You may remember the weighty arguments that have been advanced by Shri Sadhan Gupta himself that the Parliament will have direct control over the administration of this department if it is a department within the Government itself that adminsters this law.

It has been criticised in this House that in the administration of the various autonomous corporations that this House has constituted, namely the D.V.C. and other corporations of its nature, parliamentary control has been reduced to a shadow. A complaint has again been raised that it is not advisable to constitute public limited companies to manage industrial concerns because thereby it deprives this House of its duty to control the working of that undertaking of the State. If that has been the attitude of this House, if that has been the criticism levelled against the constitution of autonomous corporations to manage industrial concerns, I should ask Shri Asoka Mehta and other hon. Members of that way of thinking, whether it would be advisable for us to abdicate our function of keeping a clear, vigilant and a very detailed watch over the administration of the Company Law, and that may not be possible if the administration is vested in an autonomous corporation. I am not saying that it may not be proper to constitute autonomous corporations where necessary. We have ourselves constituted autonomous corporations for running our industrial concerns and we are intending to constitute an autonomous body for laying down and for co-ordination of standards in university education and also for the administration of grants. Even in that Bill as it has emerged from the Joint Committee, hon. Members who have gone through that Bill will see that power is given to the Government to lay down matters of policies and when any conflict arises between the autonomous body and the Government as to what exactly is a matter of policy it is the Central Government that has to decide. Therefore, if, out of political considerations the Government really wants to help any particular body or any particular interest, the loophole will be still there even if there is an autonomous body. Even if there is an autonomous body it will be very easy for the Government to notify the industries in which, perhaps, managing agencies have to be terminated. The Government will have the power even if there is an autonomous body and under those powers the Government can show favouritism and favour a particular group. Therefore, we cannot plug all loopholes and the only thing we have to guard against is misuse of the powers by the Government and its departments.

Sir, the Joint Committee has given anxious consideration to this question and at pages 23 and 24 of the Report they have not favoured this but have only favoured the setting up of an advisory commission. I do not, for a moment, want to suggest that the laudable objects mentioned in chapter XVII of the report of the Company Law Committee should not be carried out. Even in that report you will find that the pattern of management or the pattern of administration of the affairs of this Company Law is not restricted to an autonomous body. You will find from that report that two alternatives have been given by the Company Law Committee. They have been given at page 193, paragraph 257.

> "There are two ways of organising the central authority that we propose. (1): there may be a

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central authority dealing with joint stock companies (and if necessary with related institutions, *e.g.*, banks, insurance companies, stock exchanges, etc.,) analogous to the corresponding organisations under the Board of Trade with local registrars working in the regions entrusted to them; or,

(2) there may be a central statutory authority with regional offices in charge of local registrars under its control and guidance".

Of course, this Company Law Committee enters its preference for the latter category. If one reads between the pages, one can find arguments against the constitution of a statutory committee like that in the report of the Company Law Committee itself. At page 186 of the report, it has given certain arguments in favour of taking away the powers from the State Governments with regard to the administration of the joint stock companies. At page 186, these observations occur:

"The compelling requirements of a positive economic policy have already induced the Central Government to build up a suitable organisation for the administration of many complicated subjects in the economic field; and if the administration of the Indian Companies Act is not to be kept divorced from the working of other economic institutions, it will be essential for the Central Government also to assume responsibility for the administration of this Act. Very few State Governments have any intimate contact with the specialised terrain served by these complicated economic organizations, and can hardly be expected to take any lively interest in the administration of the Companies Act, with which they have so little to do in its other related aspects."

This ground will itself indicate that it may not be possible, especially in view of the co-ordination that is necessary as has been pointed out by me at an earlier stage to vest these powers in an autonomous body. You will again find that the following passage from Company Law Committee's report pleads in strong terms for the constitution of a central authority:

"When a previous Bill came up for discussion, namely, the Bill for the development and control of industries as reported on by the first Select Committee, the Committee pointed out that there was a provision for the creation of an Industries Board and it was proposed that the functions of the Controller of Capital Issues relating to the scheduled industries should be transferred to this Board. The Second Select Committee, however, did not approve of the scheme of an Industries Board with the result that the Planning Commission's proposal for transferring capital issue work to the Industries Board in so far as the scheduled industries are concerned was not proceeded with."

This statement of fact itself indicates that it is not possible to constitute a semi-independent body to administer the company law. So, the department which is constituted to administer the company law will necessarily have to deal with the Industries Board and will necessarily have to deal with the development of the subjects under the Commerce and Industry Ministry, so that, as stated by the Joint Committee, we have to place the burden of the administration of company law squarely on the shoulders of the State itself. That will only ensure the fullest control on the part of this House. This House should be in a position to exercise its responsibilities and there should not be bodies which will pull in opposite

directions and when any particular administration is attacked or challenged or criticised, it should not take shelter under the plea that it did not fall within their purview or that it falls within the purview of another department or authority. The Government has responded to the suggestion made by the Joint Committee to constitute a special department and the Ministry should be congratulated for constituting this department as early as was possible. But I should at the same time wish to administer a warning to this special department which has been set up.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

The co-ordination of activities as well as the concentration of every economic activity as far as the Government is concerned, has led to the concentration of power at the capital, namely, Delhi. This circumstance offers opportunities for malpractices. It may be possible for large established firms which are being controlled by business magnates to afford to maintain the necessary contact with the Central Government. But smaller entrepreneurs will have to wait for months to get interviews with the authorities concerned. This fact has been pointed out in the report of the Shroff Committee which was constituted by the Reserve Bank. I am tempted to bring to the notice of the Government the following observations made in the summary of recomendations at page 100 of that report, in order that the Government may take note of them and adopt the necessary measures:

> "The procedural uncertainties and difficulties which arise from the regulative powers assumed by the State have the effect of delaying and retarding private investment. The Committee considers it essential that the work of the several authorities from which licences or sanctions have to be obtained should be co-ordinated and the procedure for obtaining such licences or sanctions should be simplified and rationalised".

This recommendation of the Shroff Committee has to be taken very seriously when this department has been set up. One cannot find any exception to the recommendations of the Company Law Committee on the outlines of the scheme of administrative reform contemplated in this Bill. In fact, the various administrative reforms that have been suggested by the Company Law Committee can certainly fit in with the central authority, namely, the department of Company Law Administration under the Ministry of Finance.

I would also, at this juncture, say that adequate use has to be made of the Advisory Commission that is contemplated to be constituted under clauses 409 to 414. Shri Asoka Mehta, while pleading for the setting up of an autonomous corporation, said that in these matters we have to set up precedents and that we have to lay down healthy conventions. I believe if proper use is made of this Advisory Commission, the objects that Shri Asoka Mehta had in view can certainly be carried out. Of course, it all depends upon the efficiency of the working of any machinery that we have to employ. So, I believe the fears that have been entertained by the hon. Members who plead for the setting up of an autonomous corporation are misplaced. Although an autonomous body is a very attractive proposition, if you take a realistic view and if you want to administer the company law proposed or intended by this Bill, the Government itself should be fastened with the responsibility of administering it.

Before going to certain other provisions in the Bill, I will just deal in passing with the question of the advisability of amending the Chartered Accountants Act. Fears have been expressed that this amendment is not necessary and that if the powers given by this contemplated amendment are exercised, it will act prejudicially to

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the interests of indigenous chartered accountants. We know that their number is considerable now and the number is also increasing: if foreigners are also given free entry into this field of business, it may act prejudicially to their interests. The fears expressed by the associations of these chartered accountants may be kept in view and an authoritative statement may be made by the Finance Minister in his reply dispelling those fears.

I have also another minor point to make before I come to the major part of the question of managing agency. Is it not possible to take away institutions like the associations formed as limited companies for the promotion of arts, science, religion, charity, etc., from the purview of this enactment? I am referring to institutions which intend to plough their profits, if any, or other income for the promotion of their objectives and prohibit the payment of any dividends to its members. This is a matter which must be examined, especially in view of the fact that under old enactment under section 289A, with regard to such institutions the State Government was given the power to exempt such companies from the operation of the various provisions of Company Law. I also invite the attention of the Ministry to certain of the enactments prevailing in some of the States. In my State before integration—Cochin State—there was an enactment for the registration of literary, scientific, and charitable institutions etc. That enactment had done a very useful job. For registration of such institutions, the complicated procedure contemplated by the Company Law is not necessary and it is always better to have a separate enactment dealing with this group of institutions.

Fears have been expressed that some of the advantages and exemptions enjoyed by private companies have been taken away, that it was not necessary to be done and that it would discourage the formation of private companies. If, as a matter of fact, it will retard the growth of corporate enterprise. I wish that the provisions relating to private companies may be examined afresh. It has been pointed out that privileges and exemptions are responsible for the promotion of numerous private companies in the United Kingdom, such as family enterprises; and I believe that especially in view of the object that we have in mind, namely, development of small-scale and medium-sized industries it would be better that we encourage as far as possible the formation of private limited companies which may take advantage of the conception of jurisdic entity that is conferred by the Company Law.

**Shri Matthen** (Thiruvellah): Is the hon. Member aware of the abuses of private companies by some public companies?

**Shri A. M. Thomas:** For that purpose, as suggested by the Cohen Committee in the United Kingdom, a class of exempt private companies may be provided for. In that event, authorities need interfere only in cases wherein abuses are resorted to. In *bona fide* cases it may be allowed to work in the normal way. Even as it is, you will note the important place that the private limited companies have in the economy of our country. In the Taxation Enquiry Commission's Report, Volume I, at page 104 you will find:

> "Private companies represent a little more than one-quarter of the paid-up capital in the entire corporate sector, about 18 per cent. of the paid-up capital in manufacturing industries and 45 per cent. in non-manufacturing industries. Manufacturing industries as a whole have 67 per cent. of the entire paid-up capital of all companies. Of private companies 45 per cent. by proportion of paid-up capital, are engaged in manufacture, and of public companies 75 per cent."

Therefore, you can more or less know the importance of these private

limited companies from the assessment made in this report.

A plea was again made by Shri Asoka Mehta for the appointment of representatives of workers to the Board of Directors. At this time it is too late to contend against the advisability of such a course. The Government itself has said a few days back on the floor of this House that it is seriously considering the proposal to make workers also participate in the management of companies. What form it should take and in what manner it should be done is a matter of detail. I do not think that with the Companies Bill according to its present structure without substantial modifications we may be in a position to give representation to the workers. I plead strongly that that question has to be examined. It is a part of the overall policy of the Government and the party in power which has expressed itself in favour of the participation of labour in management. I should think that serious consideration has to be given to it, although there are difficulties for immediate implementation of the proposal.

Shri Tripathi pointed out section 407 which vests the Central Government with authority to appoint two directors in case of oppression and mismanagement. You will find that those directors who can be appointed can only be from members of this company; that aspect also has to be borne in mind.

There are several technical and legal difficulties which may militate against the notion of a jurisdic person as envisaged in this Bill, to implement this proposal. However, I repeat that this is a proposition to be considered. The hon. Finance Minister stated that his object in bringing this Bill is to bring law and order into the private sector; I would also add, for the promotion of industrial peace. It will be highly advantageous to make the workers' representatives also participate in management.

Now, I will come to the question of managing agency. Clauses 323 to 377 deal with this aspect of the matter. Before coming to this question proper, I want to say that the Joint Committee was wise enough to make provisions for the appointment of secretaries and treasurers. The hon. Finance Minister, I think, said that even without any specific provisions, it would have been possible for the constitution of secretaries and treasurers. Having regard to the definitions that find a place in this Bill, I do not think that without special enabling provisions for the appointment of secretaries and transurers, it would have been possible to have such institutions. From the definition of the word 'managing agent' contained in this Bill, you will find:

> "'managing agent' means any individual, firm or body corporate entitled, subject to the provisions of this Act, to the management of the whole, or substantially the whole, of the affairs of a company by virtue of an agreement with the company, or by virtue of its memorandum or articles of association and includes any individual, firm or body corporate occupying the position of a managing agent, by whatever name called;"

When you come to the definition of secretaries and treasurers, a new definition that has been given by the Joint Committee,

> "'secretaries and treasurers' means any firm or body corporate (not being the managing agent) which, subject to the superintendence, control and direction of the Board of directors, has the management of the whole, or substantially the whole, of the affairs of a company; and includes any firm or body corporate occupying the position of secretaries and treasurers, by whatever name called, and whether under a contract of service or not;"

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If there was no special enabling provision with regard to secretaries and treasurers, I do not think they would have come within the definition of managing agent. I realise that in the definition of secretaries and treasurers, the words "subject to the superintendence, control and direction of the Board of directors," have been used, which do not find a place in the definition of managing agent. When you go to clause 368, you will find that even as far as the managing agent is concerned, it says:

> "The managing agent of a company, whether appointed before or after the commencement of this Act, shall exercise his powers subject to the superintendence, control and direction of its Board of directors...."

I feel that enabling provisions with regard to secretaries and treasurers are absolutely necessary. That is why some persons raise the criticism that the managing agent has been brought in through the backdoor in constituting these secretaries and treasurers.

With regard to the question of managing agency, my point of view was given when there was a discussion before this Bill was referred to the Joint Committee. I was of the opinion then that the institution of managing agency is not to be ended, but mended. I was influenced in coming to that opinion by the observations contained in the Company Law Committee report. They have said that a great majority of the witnesses who had appeared before them were anxious to mend and not end the system. Later on, they say:

> "Having regard to 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. In taking this view, we have not ignored the many abuses and malpractices in this system to which reference has been made in the report of the two Commissions from which we have quoted above or in other reports like the Report of the Income-tax Investigation Commission to which many of our witnesses drew our pointed attention."

When we consider the opinion expressed by this committee, we have also to take into consideration the psychological approach or the objective approach that this committee has made with regard to company matters in general. The general build-up of the personnel of this committee was such that we have necessarily to give considerable weight to their opinion expressed after examining the several witnesses that had appeared before them. We have also to consider the point of view which was expressed by the hon. Finance Minister that the Shareholders Association of Bombay have themselves recommended the adoption of the course which has been adopted by the Joint Committee. I think that the opinion of that Association which has fought for the rights of the shareholders should be the last word on the subject.

The points that have to be examined are: (i) that the managing agency system should be abolished here and now; (ii) that sometime limit should be fixed, and (iii) that the recommendation of the Joint Committee has to be accepted. It has to be admitted that, although there have been several institutions in other countries which more or less did the work of the managing agency, the institution of managing agency has got its unique character as far as our country is concerned. There are no such institutions—similar institutions there may be—in countries like America and England. How this institution of managing agency has cropped up has also been dealt with in detail in the Company Law Committee report. They say that it was the lack of institutions which furnished an integrated capital market with issue houses

or investment syndicates that has been responsible for the coming up of this institution. At the time when I spoke last on this matter, I advanced an argument that the managing agency system was doing good work in the matter of financing of these companies. Perhaps that argument may not hold much water in the present context, especially in view of the several institutions which will help in the starting of new industries, that have been set up by us. There is the Industrial Finance Corporation in the Centre as well as in the States. We have now constituted the Industrial Investment Corporation; we have the Industrial Development Corporation and so many such institutions. But, we have also to take into consideration the difficulties found in floating a company without the backing of an industrial house in spite of the existence of all these institutions. We must bear in mind that the promoters have to take substantial shares and they have to arrange for subscription to the shares. They have also to arrange the working finances. The management of affairs and the nursing of these companies in the preliminary stages have necessarily to be entrusted with experienced institutions. In coming to the conclusion to which the Joint Committee has come, after very serious consideration and anxious consideration, it was influenced by the fact of the vacuum which may be created in case we abolish it here and now. That is why it was anxious that even in cases where we may terminate the managing agencies, another institution, which may perhaps do the same business should crop up. We necessarily find from the Joint Committee's report, in view of the changes that they have made in the original Bill, that they were thoroughly dissatisfied with this system. They had no illusion at all about the system. But, even then, they have recommended the course which finds expression in the various provisions of this Bill. We have necessarily to give considerable weight to that report and I should think that we have to adopt that course. We have to give the Government sufficient discretion in the matter to terminate the agencies wherever necessary, to extend managing agencies where they are necessary and to create managing agencies where they are necessary. We must also bear in mind that we are not against the managing agency system as such. We are only against the abuses of that system. And if there are sufficient safeguards and provisions which do away with those abuses, those provisions have necessarily to be given a trial.

In this connection, I would also deal with the question of the profit—the percentage of profit that is proposed to be given by this Bill to the managing agents as well to the various other directors, managers etc. The Finance Minister has stated that some suitable amendment may be made to clauses 197 and 347 to meet cases of proved hardship and difficulty. He has stated that a provision may be made empowering Government to make relaxation. In clause 347 the percentage of profits that is now being sanctioned is 10 per cent. In the original Bill it was 12½. The Company Law Committee also recommended 12½ per cent. A reduction has been made. I think the reduction that has been made by the Joint Committee is not an unreasonable or insignificant one. Shri Asoka Mehta stated that having regard to the figures given out by the Taxation Enquiry Commission the figure that is now adopted by the Joint Committee recognises the quantum of remuneration that the managing agents at present get. I do not think that he has been quite correct in his appraisal of the report of the Taxation Enquiry Commission. I will read the relevant portion of the report. At page 127, they say:

> "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

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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. The following table gives the amounts received by managing agents, dividends distributed and profits retained in business in 1946 and 1951 and their respective shares in profits before tax plus managing agents' remuneration. Managing agents received about one-half of what accrued to shareholders in dividends. While such levels of remuneration to managing agents affect both distributed and undistributed profits, the impact on the latter is likely to be more important."

It is worthwhile to refer to the lastest issue of the *Reserve Bank of India Bulletin*—the July issue. You will find the following observation at page 727 in that bulletin, under the article "Company Finances in India, 1950—52", and it is worthwhile quoting from the same:

"In the three years 1950—52, managing agents' remuneration amounted to a total of Rs. 32 crores, or about 14 per cent of profits as shown in table 7. The percentage share of managing agents' remuneration in total profits declined from 13·6 in 1950 to 12·8 in 1951 owing to a larger increase in profits and rose to 16 in 1952. Managing agents' remuneration during the period was as much as 44 per cent of distributed profits; it was equivalent to 72 per cent of the volume of retained profits. It was relatively high in cotton, jute, silk and woollen textile and chemical industries, in which it constituted more than 20 per cent of profits, and was relatively low in iron and steel and cement industries, in which it was less than 10 per cent."

So that it cannot be said that the reduction that has been made by the Select Committee is not considerable or is not reasonable. But all the same I would say that the ratio that has been put down by the Joint Committee should not be disturbed in the body of the Bill, but powers may be given to the Government to relax that provision in case of proved difficulty. Certain journals have come forward with facts and figures showing the absurd extent to which we will be driven in case this ratio is accepted. So that I will only say that the Government may be given powers but there is absolutely no case for raising the ratio that has been adopted in this Bill.

There is only one thing more on which I wish to touch, and that is a subject that has been dealt with in the Dissenting Note of Shri Morarka and Shri Nathwani. They have said that it is better to protect minority interests, that the principle of proportional representation may be adopted. The principle has, in a manner, been adopted by the Government or by the Joint Committee in clause 264, but that is left to the sweet will and pleasure of the promoters of the company to have such provisions or not. The plea that the minority interests have to be protected will be dangerous if we try it to any extreme extent while keeping in view the interests of the minority, we should also have in view the harmonious working of the company itself. It has been pointed out, and I do not think that argument is baseless, that in case the principle of proportional representation is accepted, that will lead to group rivalries within the company itself and that it may not be a desirable course. We have, I think, to be satisfied for the present with the safety clause given in clause 407. In clause 407 the Government has been

given the power, in the interests of saving minority shareholders from oppression or mismanagement by the majority, from the tyranny of the majority if I may say so, to appoint two directors in case a particular number of the shareholders make out a case for that. I think that for the present we must be satisfied with that power which is vested in the Government to protect the interests of minority shareholders. I may also say that we have to await the reports of the working of similar provisions in other enactments in other countries. I am told, and in the Dissenting Minute also it is referred to, that in America with regard to several federating States in the Company law there is provision for giving proportional representation, so that minority interests also may be represented. But in the United Kingdom that does not obtain, and our various Acts were more or less modelled on the United Kingdom pattern. So, we must now give a trial to clause 264 and also watch the working of similar provisions in other countries.

I do not want to take up the time of the House any further. I feel that without substantial modifications we have to pass the Bill as reported by the Joint Committee. Of course, when we examine the various clauses if we find any loop-holes, we have to set them right. But substantially, I think, we must adopt the Bill as reported by the Joint Committee.

2 P.M.

**Shri S. V. Ramaswamy** (Salem): I welcome the Bill as it has emerged from the Joint Committee. It has been improved very much, and to my mind very satisfactorily too.

Looking into the minutes of dissent, I do not find that there are very many points of contention. One feels that on the whole the Joint Committee's report has been more or less unanimous. And I do hope that even in this House there may not be very many amendments, because the Bill in its present form seems to be the product of compromising extreme views. The Joint Committee's report as a whole follows the rule of golden mean, and I believe that it is good it has followed that; it is also good that we should agree to see that the provisions which have been recommended by the Joint Committee are approved, and then tried; and should there be any difficulty, we shall rectify them by a subsequent Act. But that is not to say that the Bill as reported by the Joint Committee is perfect.

I wish to point out six points for the consideration of the House. I shall first deal with clause 225 (b). In that connection, I shall have also to refer to the Chartered Accountants (Amendment) Bill, which has recently been introduced in this House. Clause 225 (1) reads thus:

> "A person shall not be qualified for appointment as auditor of a company unless....
>
> '(b) he is for the time being authorised by the Central Government to be so appointed as having obtained similar qualifications outside India:".

Now, the Chartered Accountants (Amendment) Bill seeks to substitute clause (v) of sub-section (1) of section 4 of the parent Act. In the Statement of Objects and Reasons appended to that Bill, it has been stated that Government are making this amendment to the Chartered Accountants Act in order that they also may be enabled to recognise foreign qualifications, since such recognition is generally to be granted only on a reciprocal basis. This position is not quite clear. Is it the case of Government that the Institute of Chartered Accountants of India is granting recognition to all and sundry irrespective of the fact of reciprocal principle? Do they grant recognition without ascertaining whether the foreign institutions recognise our qualifications in their countries? If that is the case, then the proper thing, to my mind, would be to withdraw the

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power from the Institute to recognise such qualifications. Otherwise, this will lead to an anomaly.

In clause 225 of the Companies Bill as reported by the Joint Committee, there are two provisions. Sub-clause 1(a) relates to recognition within the meaning of the Chartered Accountants Act; and sub-clause 1(b) relates to recognition by Government. So far as the second point is concerned, the recognition is to be there only on a basis of reciprocity. This rule obviously does not apply to the first category, namely, those qualifications which are recognised within the meaning of the Chartered Accountants Act. Then, what happens? You will find that the Institute of Chartered Accountants would be recognising certain institutions not necessarily on a reciprocal basis, while the Central Government, after this amendment to the Chartered Accountants Act, will recognise only such of those institutions as abide by the principle of reciprocity. To my mind, it appears that this will lead to an anomalous position. I do not know why the Act is sought to be amended in this fashion. It might as well be that the Institute of Chartered Accountants are conferred this power with the specific understanding that they should recognise foreign institutions only on a basis of reciprocity. I do hope that in view of the anomaly that might result, Government might consider the deletion of clause 225 (1)(b).

I now come to clauses 197, 347 and 352. As has already been pointed out, clause 197 deals with managerial remuneration, and fixes the limit for the same. The corresponding clauses dealing with the remuneration for managing agents are clauses 347 and 352. In the course of his speech yesterday, the hon. Finance Minister stated that Government are thinking of amending these provisions so that they may take powers to grant exemption in certain cases of difficulty. It is a laudable object, and there will also be a certain amount of flexibility because Government can exempt in just cases and see that there is no hardship. That is quite understandable. But I feel that it would be inopportune to move an amendment in this regard at this stage, because the general tenor and temper of the Joint Committee's report seems to be on a basis of compromise, and if the Joint Committee's recommendations are accepted more or less, I fancy there will not be very many amendments. But if to these clauses Government at this stage seek to move amendments then I am afraid that they will be disturbing the hornet's nest. If after this Bill is passed as recommended by the Joint Committee and is put into effect, in the course of its working it is found that hardships have been caused, then I submit there is time enough for Government to have these clauses amended suitably. I would, therefore, earnestly urge that Government may not move amendments to these contentious clauses at this stage.

I now come to the much-talked-of question about managing agency. As has been said, two views are possible in regard to this; and possibly there is a third view also. The first view is that it must be ended straightway; the second is that a date-line may be fixed so that on the appointed date the whole thing would cease; the third view, of course, is a more tolerant view of the managing agency system I remember that when the Hindu Succession Bill was being discussed in this House, some hon. Members urged that the joint family system should be ended on a particular date, possibly the date on which the Bill came into effect. To declare that on a particular date the managing agency system will come to an end is to my mind as impossible as declaring that the joint family system will come to an end on a particular date. The thing is growing, the thing is going, and you cannot abruptly say that a date-line will be fixed, and that by such and such a date the thing shall cease. It is not as if one can sever

diplomatic relations on a particular date, and ask a particular embassy to leave the country. It cannot be that here, because the system is so vitally interlinked with the economic prosperity of the country that to my mind it is wrong to think that it should be ended straightway or that at least a date-line should be fixed.

It has been pointed out that the problem is not of ending it but of mending it. Now, at page 85 of the Bhabha Committee Report, I find:

> "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 with 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 only 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."

I believe the Joint Committee has amended the Bill very suitably in the light of the observations of the Bhabha Committee quoted above.

Chapter III is surfeit with restrictions and controls on the managing agency system. It is so full of these restrictions that I do not know what else can be done at this stage to mend it. Fifty-four clauses deal with restrictions on the powers of the managing agents. Take for instance, clause 323 itself, the opening clause. A Minute of Dissent has been written about it. Clause 323 says:

> "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."

Now, power is sought to be taken to notify that companies engaged in specified classes of industry or business shall not have managing agents. This has been attacked on several grounds. You will see from a Minute of Dissent by an hon. Member that he says that it will introduce an element of uncertainty and the psychological effect of these provisions will prove to be far more disastrous to the economy than the physical effect of the provisions. He adds that this is a novel provision which must be fundamentally opposed to the accepted canons of company management, and that the psychological effect of it will be to disrupt the working of the company itself rather than to secure proper management of the company. I am afraid I cannot subscribe to that view. No doubt, it may immediately have some psychological repercussions because it may introduce an element of uncertainty. Whether my industry will be notified, which particular class of industry will be notified, we do not know. But the whole thing is this The basic idea is to see that there is no malpractice, that there is no abuse of the powers. For such of those who are right, who do the right thing, who conduct things properly

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and honestly, there is nothing to fear. Law is meant for protecting the just and right and for punishing the wrong-doer. If there is a penal section or a power to take away, it is for the wrong man, the man who has got the intention to cheat or to be dishonest. It is he that need be afraid of such a provision. I do not think that this clause, by itself, should induce any psychological reaction of this type in the business community. It is only when he does the wrong thing, when he deviates from the path of righteousness, if he goes to the extent of being dishonest to the shareholders and makes illegal profit, that the law will come down heavily upon him. I do not see anything wrong in it. It is good that the Government take such a power.

Now, they may say, we do not know what categories of industries will be notified, what particular industries will be notified; the Government may do it arbitrarily, pressure may be brought to bear or influence may be brought to bear upon Government, so much so that there is a great element of uncertainty. But I do not think any government would be so foolish as to lend itself to pressure to do the wrong thing, because it is there to see that the public interest is safeguarded, and I do believe that if at all there is a necessity, it will be administered on a just and proper basis and interference will be in cases where it is absolutely necessary in the interest of the general public.

Now, it has been urged that the managing agency system deserves mending and not ending. I believe the view of the Bombay Shareholders' Association deserves consideration, and I believe I am right in saying that when they themselves, the Bombay Shareholders' Association themselves, who have taken such a leading part in exposing the vagaries of the managing agents, in attacking them in season and out of season, go to the extent of saying that this is a case for mending and not ending, it deserves the consideration of this House. They have, in their evidence before the Joint Committee, said:

> "As already stated in the memorandum, we are for mending the managing agency system at present and not ending it. The reasons which we have for this are, that in India today, there is an absence of an organised investing class, there is an absence of an integrated capital market and there are no issue houses, as there are in other western and more industrially advanced countries, and the investor in India has to be led into making investment, and then only he is able to take a decision for himself. For these reasons, as India requires today rapid industrialisation, it is in the interests of the country to continue the managing agency system for the time being, and particularly up to the year 1959, when it is provided in the Act that the managing agency contracts will come up for renewal."

There has been an over-emphasis on the bad aspects of the managing agency system. We forget that there are also firms, managing agency firms, who have conducted themselves very honestly, scrupulously honestly, even during the worst days of the war period. I know of some firms who, when things were tempting outside, when others were making tons and tons of money, still stuck to their guns, stuck to the path of honesty, so much so that the accounts of those firms were passed by the income-tax department in no time. But as in all other things in the world, there is good and bad. Among the managing agents also, there are good people and bad people. The question resolves itself as to whether the good is more than the bad. I concede that the bad is more. Hence the legislation. Hence we are seeking to see that the bad is reduced, it is curbed and, if necessary, severely punished.

That is why are trying to amend this Act in such a manner that the power rests with Government to bring the offenders to book, to protect those who are good and behave properly. I therefore see nothing wrong either in clause 323 or in the other clauses which have been suitably amended. The Joint Committee seems to have bestowed great attention; line by line, page by page, they have carefully scrutinised the several sections and have imposed restrictions. And, if in spite of these, the managing agents are so clever as to evade the law, find loopholes in it and still practice their old art, well, there is time enough. Their day of reckoning would be 1959 and we shall take stock of their activities and I fancy a commission or committee of enquiry can be instituted which will find out which of them have been working properly and which have not. I do not think there is any hurry now to wind up the managing agency system or even to say that a date may be fixed and that it may be terminated on that particular date. I do heartily support the several provisions in chapter III as the best possible solution for solving this thorny question of the managing agency system.

Ther, I take up clauses 264 and 407. I do not see why hon. Members are somewhat apprehensive of these clauses. They seem to be permissive and the proportional representation that is contained in clause 264 is decried on the ground that a principle which is applicable to political conditions and to political institutions should not be applied to industrial and economic undertakings and it is wrong to import principles which are good elsewhere into the field of economics. I do not think so. After all, we are experimenting. We are on the eve of a Second Five Year Plan. We have recognised that there is the private sector and that private sector also deserves to exist. We have accepted the principle of mixed economy and we are not abolishing totally the private sector. It is a policy of co-existence of the public and private sectors. If that is so, I do not see why these provisions cannot be accepted. We are experimenting and should there be any mistake and should one or two firms acting upon clause 264 adopt the principle of proportional representation and should minority groups as in the political field develop and the working of the industry be hampered by such considerations, then by experience we shall learn and there will be time enough to amend this clause.

With regard to clause 407, the cry has been raised that it is a very serious thing that they have introduced two persons and it will be a sort of drag on the smooth working of the companies. I do not think so. It is not in every matter that the Government is going to interfere. When they do interfere, it will be with a due sense of proportion and due exercise of discretion to see that justice is done and that the true interests of the shareholders and the public are taken into account. I do not think there can be any objection to this clause.

Then I come to clause 409. In the Bhabha Committee report they have advanced five grounds why there must be a central authority. I do not wish to take those five points in detail but I will merely state them. First, they have stated:

> "The law can function only through the formulation of precise definitions—definitions not merely of concepts or categories, but also of conditions or circumstances in which certain provisions would be applicable, while in others they will have no relevance. Unfortunately, no definition, however well-drafted, can comprehend the multitude of characteristics that really matter while the charateristics may themselves vary from case to case."

Therefore they say that there must be a certain amount of latitude in an institution which will not be hide-

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bound by other considerations as an administrative department can be.

Secondly, they say—

> "It follows from the above argument that, while the company law must necessarily frame definitions of concepts, categories and the relevant conditions and circumstances in more or less general terms, leaving the applicability of such definitions to marginal cases to be determined by an appropriate authority, powers should also be vested in such authority to relax, in suitable cases, those provisions of the Act or of the regulations, where absolute rigidity in application might easily do more harm than good."

Thirdly, they say—

> "It is now generally recognised that law is not a sufficiently flexible instrument of control for correction, especially in economic matters."

Fourthly, they say—

> "even the most well-conceived and well-designed of laws is liable to become ineffective and to fall into disrepute, if there is no regular machinery for making any use of it."

Fifthly, they say—

> "there is one special factor which we have to take into account in this country, viz., the general lack of financial knowledge and alertness on the part of investors and the general public."

To my mind, though all these five reasons are really weighty, they do not carry conviction with me in the special context of the situation in our country. What has been proposed, namely, the advisory body, I think, is more than enough in the present stage of our industrial development. This, as I submitted, is an experiment. One extreme view is that there should be *laissez faire*. The other extreme view will be a central authority controlling everything. In between, I find this middle view of an advisory commission that has been recommended. I think it is good because if we find in actual working that there is anything wrong and the company has not come up to the level, there is yet time. We might find after 5 years, in 1959 when the question of managing agency comes up, they can review this also. That would be the appropriate time when we can review the working of the advisory commission. If it is found inadequate, by experience we shall know how to amend the law and if it is thought that we must have a statutory body, certainly, we shall have it so amended. In the meantime, I do believe that the advisory commission satisfies the needs of the country.

Lastly, I come to clause 614. This deals with government companies. There are three types of government companies; first, where the entire investment has been provided by the Government of India; second, where the majority of the investment has been made by the Government of India but private interests also have a significant, though minority, interest and third, where Government hold a minority but significant interest in the shareholding of a company or where having granted loans or given guarantees or other fiduciary assistance the Government have acquired a right to nominate directors to the board of certain private companies.

The question of parliamentary control over these government companies has often been raised. It has been suggested that a parliamentary committee should be set up so that it may review from time to time the working of these companies. To my mind, it is not good to interfere with the day to day administration or even interfere with the policy of these public corporations. I find myself in entire agreement with what Mr. Herbert Morrison has said. It is essential, therefore, that the State

units should be organised and operated on business lines with a comparable degree of elasticity of control and business efficiency as private units in the same field. In the words of Mr. Herbert Morrison—

> "When we come to a highly commercial enterprise which is very tricky on which one has to think out a lot of day-to-day problems, to think quickly and chance one's arm, like Transport and Mining and other industries with which we have been dealing or with which we may deal, then we have to get a more subtle instrument, more adaptable, more capable of quick movement and less liable to be bound by traditions and rules. I am certain that if we run these public corporations—highly commercial, highly industrial, highly economic —on the basis of meticulous accountability to political channels, we are going to ruin the commercial enterprise and the adventurous spirit of these public corporations in their work."

I am in entire agreement with these words. The only thing that I would urge is this. I have tabled an amendment to add clause 613A. It runs thus:

> "The annual reports on the working and affairs of Government companies together with copies of the Audit Reports on their accounts, referred to in section 613, shall, as soon as may be, laid before Parliament."

There is no such provision now. I want that this important amendment should be accepted so that it is not merely the audit report that is submitted to up but the audit report and the reports on the working of these companies should come up before this House so that we may discuss them and if there are any deficiencies we may have them rectified after debate.

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## COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

### THIRTY-THIRD REPORT

**Shri Altekar** (North Satara): I beg to move:

> "That this House agrees with the Thirty-third Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 10th August, 1955."

This is a simple report in connection with the allotment of time for resolutions and the time to be allotted is stated in the report. I commend the report for the acceptance of the House.

**Mr. Chairman:** The question is:

> "That this House agrees with the Thirty-third Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 10th August, 1955."

*The motion was adopted.*

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## RESOLUTION *RE*: APPOINTMENT OF A PAY COMMISSION

**Mr. Chairman:** The House will now resume further discussion of the following resolution moved by Shri D. C. Sharma on the 29th July 1955:

> "This House is of opinion that a Pay Commission should be appointed to go into the question of the pay structure of the country so that the disparity between the highest salary and the lowest salary is reduced to the minimum."

along with the amendments moved thereon.

Out of three hours allotted for the discussion of the resolution, two hours and nine minutes are left for further discussion today.

**Shrimati Sucheta Kripalani** (New Delhi): I consider our esteemed friend Shri D. C. Sharma's resolution demanding the appointment of a Pay Commission to be very timely. You