Shri Satya Narayan Sinha: That question is under consideration.

Mr. Speaker: Yes, that question is under consideration.

COMPANIES BILL—*Contd.*

Clauses 610 to 649

Mr. Speaker: The House will now resume further consideration of clauses 610 to 649 of the Companies Bill. Out of 5 hours allocated to these clauses, about 2½ hours now remain. This would mean that these clauses would be disposed of by about 2-30 P.M. Thereafter, the House will take up the next group consisting of Schedules I to XII and clause 1.

There were some further selected amendments received yesterday to the group of clauses 610 to 649 which are as follows:

Clause 614—Nos. 1171, 1172 and 1173.

Clause 633—No. 1174.

A list incorporating these and the others moved earlier has already been circulated to Members last night.

The following clauses were held over for consideration and they should also be disposed of by the House before the Schedules are taken up:

Clause 273, 516, new clause 516A and new clause 609A.

Clause 614.— (*Power to modify Act etc.*)

Pandit Thakur Das Bhargava (Gurgaon): I beg to move:

(1) Page 286, line 4—

after "notification" *insert* "to be".

(2) Page 286, line 6—

add at the end:

"and discussed and passed by the Houses before it is issued."

(3) Page 286, line 6—

add at the end:

"and Parliament will be competent to make such modification as it likes within a period of one month from the time such notification is laid at the Table of the House."

Clause 633.— (*Power of Central Government to make rules.*)

Pandit Thakur Das Bhargava: I beg to move:

Page 291, line 19—

add at the end:

"and Parliament will make such modifications in the rules as it chooses within a period of two months from the time they are placed at the Table of the House."

Mr. Speaker: These amendments are also before the House.

Dr. Krishnaswami (Kanchipuram): When the House rose last evening I was in the midst of an argument concerning the propriety of exempting Government companies from the provisions of company law. I wish to make it clear that where Government owns 100 per cent. of the shares in a company, obviously many of the rules applicable to ordinary companies cannot be applied. Indeed the well known authority on modern company law, Gower, summarised the position thus:

> "It will be appreciated that the absence of shares and shareholders automatically renders large and important branches of company law totally inapplicable; rules relating to the raising and maintenance of share capital, the control of directors by members, protection of minority shareholders, company meetings and the like can have no relevance. As we have said earlier, the knotty problem of the relationship between the management and the members is solved by the abolition of the latter."

But the approach of our Joint Committee to this problem is difficult to appreciate. Government companies are put in a peculiarly privileged position. Last night I happened to pursue the minutes of the Fourteenth Meeting of the Joint Committee which considered this question. The recommendations submitted by the Finance Ministry miss the point.

[SHRIMATI SUSHAMA SEN *in the Chair*]

There have been exemptions suggested for certain types of companies, but I do not think that any purpose will be served by having any of the Government companies other than those in which Government has 100 per cent. shares brought within the purview of the exemption clause at all. Indeed, the recommendations of the Finance Ministry on this subject is a peculiar case of 'Love's labours lost'. We have to bear in mind that a Government company, in which 51 per cent. of the shares are held by the Government, is not a company which is the exclusive property of the Government. It is one in which the Government has a technical majority holding of the shares and in theory the Government, according to the provisions of the Bill, is given powers to revoke all the safeguards provided in the Companies Bill. Let me read out briefly the particular section which covers these exemptions:

> "614. *Power to modify Act in relation to Government Companies*— (1) The Central Government may, by notification in the official Gazette, direct that any of the provisions of this Act, (other than sections 612 and 613) specified in the notification:—
>
> (a) shall not apply to any Government company; or
>
> (b) shall apply to any Government company, only with such exceptions, modifications and adaptations, as may be specified in the notification."

I want to ask only a few questions of those who have taken a prominent part in the deliberations of the Joint Committee. What is it that you seek to achieve by granting such an exemption? The Government can, if it deems necessary, cheerfully decide one fine morning to exceed the overall limit of managerial remuneration laid down in clause 197, which is applicable to all companies. Of course, such a dispensation will be said to be in the national interest and we would then have to reconcile overselves to this change.

Under clause 234, Government has to entertain complaints from shareholders. But exemption from this provision can be made. Government companies after all are run by people of virtue. What business is it of the poor sharholder to complain? How dare he cast doubts on the competence of Government managers? No, Sir. We might remind our shareholders even as Lady Catherine De Bough, in *Pride and Prejudice* did: Are the shades of Pemberley to be thus polluted? How can we ever entertain any complaint against Government directors? Indeed, the blanket power that has been given confers on the executive full and complete authority to dispense with any or all the provisions of the Companies Act except two provisions to which specific reference is made. Of course, the argument would be trotted out that Government would not be unreasonable, that it will not exercise these powers. I fail to understand the validity of this argument. If you do not choose to exercise these powers, then why take such large powers and why should Parliament give these powers to people who might not use them at some future date? After all, a statute is in existence until it is amended, and at any moment changes can occur. Some day a rash Finance Minister might come to this House and dispense with all these elaborate safeguards which are meant to protect the interests of shareholders. I think it is morally unjust and constitutionally improper to confer these blanket powers on Government. Have the legal consequences of such powers being given been examined? I have grave doubts on whether this particular

[Dr. Krishnaswami]

provision is in conformity with article 14 of our Constitution. We have after all a written Constitution which assures equal protection under law. On what grounds of legality can we distinguish between shareholders in a Government company and shareholders in a private company? I believe the Courts would have something to say on this classification of categories which has been attempted by the Joint Committee. How can we strip them of their rights.? The shareholders have already been stripped of their virtues by the Government which does not trust them and now we are called upon to deprive them of their rights in Government companies. Even in a corporation—State corporation—although it is true that shareholders have limited rights, where an infringement of the statutory powers by the corporation occurs or where there is an infringement of their rights, the aggrieved individuals have a right to go to courts of law. Under this peculiar provision, if it is held to be valid, it will mean that the Government, if it is so minded, can deprive shareholders of all their rights. There is also another point which has to be taken into account. What is the sort of control that Parliament can exercise over such companies? The Finance Minister knows that Parliament's right to interpellate is extremely limited because the rule that has been propounded is that in the case of nationalised companies which are creatures of statute, questions regarding their administration cannot ordinarily be raised. There should be some check by Parliament. No check has been provided in this Bill. It looks as though we are given power to Government to create constitutional monsters which can function without any check or control either by shareholders or by Parliament.

Shri Kamath (Hoshangabad): We might create new conventions regarding interpellations here.

Dr. Krishnaswami: I have perused all conventions on the subject and having taken into account all these conventions I am putting forth this argument. When we are considering Government companies, it is but proper that we should bear in mind the difficulties that face Parliament. Had we merely a departmental authority operating an enterprise it would be an entirely different proposition. The degree of control by Parliament would be considerably greater. I have in view in particular those companies in which the Government has less than 100 per cent. of the shares. Obviously in a company where the Government has less than 100 per cent. shares, problems of minority and maladministration will arise and it is better that the shareholders be given those specific rights which they are given under his Company Law for the purpose of having their grievances redressed. Having made these observations let me point out that I do not share the view that the management in these Government managed companies should be subjected to harassment.

I feel that in those provisions which relate to the powers of the Auditor-General clarity of thought has not been displayed. The Auditor-General is undoubtedly an important person and occupies a key position according to our Constitution. But we have to realise the limitations under which an Auditor-General functions. His technical competence to determine what should be the proper type of accounts is extremely limited. I have to point out that the function of an auditor is to decide whether the action taken is properly authorised. It is not for him to make an assessment as to whether the action is proper. The first is no doubt limited. The second is liable to be more dangerous. The first is an interpretation of facts. The second is an evaluation of the action of those responsible. It must be left purely to the Public Accounts Committee and the Estimates Committee to make an estimate or evaluate the actions of those responsible.

In this connection, I should like to bring to the notice of the House that

some of the Auditor-General's reports on companies create a doubt in our minds as to whether he has understood the criteria which should be taken into acsount. I hold no brief for the Industrial Finance Corporation. But reading the report I came across the criteria which could not be justified by anyone in this House. We have for instance the novel proposition trotted out that if an individual is given a loan at a different rate of interest, then *ipso facto* there is discrimination. No financial body can function unless it distinguishes between the types of borrowers and if we wish to allege anything unfair against a particular body we must find out whether there are other circumstances which have led to its indulging in discrimination.

In giving Auditor-General these powers we should be extremely careful not to saddle with functions which he cannot perform efficiently. The other function that has been entrusted to him under this Bill, namely, that he shall give comments on Government managed institutions, has to be curtailed. I feel that when there are comments given by the Auditor-General, they should be comments given to the Public Accounts Committee and should not be published; these comments should not be published because the management has very little chance of answering allegations that happen to be enquired into by the Parliamentary Committees. They are put in a disadvantageous position. If we wish on the other hand that the comments of the Auditor-General should be published, then the management's comments also on what the Auditor-General has said should be published simultaneously and the Public Accounts Committee should be seized of both. There is a practice in vogue in Government enterprises in the United Kingdom. A rider has been added in the case of the United Kingdom that where the State owns less than 100 per cent. shares principles of commercial accounting should be followed as far as possible and that the Controller and Auditor-General should only supervise these criteria.

I, therefore, feel that by these provisions—clauses 612, 613 and 614—we are setting up a very dangerous precedent. We are creating by statute as it were a privileged community of Government-owned enterprises. I can understand the argument that we should have nationalisation on a large scale. But where we have two enterprises in which there are shareholders, there is no justification whatsoever for exempting one from the provisions of the Company Law and making the other subject to restraints. After all Government-owned enterprises must feel the pinpricks of these restraints and must not live in an atmosphere of cushioned comfort. Therefore, I think it is completely wrong that we should provide for exemptions except in the case where the Government owns 100 per cent. of the shares.

Now, I pass on to the other point to which my hon. friend, Pandit Bhargava made a reference yesterday. The Finance Minister the other day viewed my proposal to have a reviewing commission rather unkindly. I do not propose to use harsh expressions. But I should like to point out that such a commission is absolutely necessary. You have given so much executive discretion to the official hierarchy and these powers are liable to be abused—that it is absolutely necessary that there should a reviewing commission. I cannot understand the argument that it need not be included in this Act. Every Act includes birth, marriage, death, and judgment after provisions and this is a very salutary provision. It ought to be in the Act because that would give an opportunity for reviewing the manner in which the Advisory Commission has exercised its powers and also the manner in which the Ministry has implemented the recommendations. In the amendment that stands in the name of Pandit Thakur Das Bhargava and myself, we have pointed out that the reviewing commission should give its opinion.....

The Minister of Finance (Shri C. D. Deshmukh): Which amendment?

Dr. Krishnaswami: Amendment No. 1157 to clause 631 I shall read out the amendment: we want to substitute the following clause:

"631. *Annual report on working of Act and Review Commission.*— (1) Central Government shall cause a general report on the working and administration of this Act to be prepared annually.

(2) For the purpose of reviewing the working and administration as disclosed in the annual report prepared under sub-section (1) the Central Government shall—

(a) constitute a reviewing Commission consisting of not more than five members with suitable qualifications of whom at least one shall be a Chartered Accountant of ten years experience,

(b) appoint one of these persons to be Chairman of the Commission.

(3) It shall be the duty of the reviewing Commission to review—

(aa) the working and administration of the Act as disclosed in the report; and

(bb) to submit its report with its recommendations to the Central Government within three months from the receipt of the report by the Central Government.

(4) The Central Government shall cause the Central Annual Report prepared under sub-section (1) and the report of the reviewing Commission submitted under sub-section (3) to be laid before both Houses of Parliament within one year of the close of the year to which the annual report relates."

Shri Morarka (Ganganagar-Jhunjhunu): Does he want a reviewing commission to be established every year?

Dr. Krishnaswami: I do not want a reviewing commission to be appointed every year; it may be appointed for five years, or it may be appointed for three years. But, it has to perform the function of reviewing the doings of the Government in respect of Company Law Administration once a year. I do feel that it would exercise a salutary effect on the administration of our Company Law. Let us, after all, remember that the vast amount of powers we have given under the Company Law, may, in certain cases at least, exercise a degrading influence on our society. Unless there are possibilities of checks and balances in any political society it would be impossible for us to have a sound administration. People may say.....

Shri Rane (Bhusaval): May I know whether there is any such provision in the English Act or any other Act?

Dr. Krishnaswami: The English Act does not make an official a demi-God. No other democratic country makes an official a demi-God. We have in our wisdom chosen to make officials demi-God. Therefore, we should have a reviewing commission for the purpose of putting the fear of God into these demi-Gods.

I am unhappy, Madam, about the provisions which exempt Government companies from the provisions of the Company Law. Speaking on a former occasion I pointed out that some of the provisions in our company law might lead to the development of a servile society or a corrupt society; a servile society in which people wish to be on the right side of the Government or a corrupt society in which people want to persuade the Government to their own point of view. We should avoid either of these calamities because either of these societies different from the socialist pattern of society as anything can be.

Shri A. M. Thomas (Ernakulam): I wish to make certain observations regarding the clauses under the heading: "Application of the Act to Government Companies". I am afraid that

the trend of the discussions does not disclose the proper approach to this problem and it is high time that we adopt a corrective attitude. The impression that will be given to the public from the discussion on the floor of this House is that the Government is going to do something improper. I want to disabuse the minds of the hon. Members as well as the public of any such impression. We have to bear in mind the background of the growth of public enterprise in this country.

When the Bhabha Committee was asked to report on the problem of companies the practice of constituting our State enterprises into private limited companies had not been adopted—it is more or less a matter of recent growth—so that it was never called upon to report on this matter nor has it reported on it. The first company that was to be formed as a private limited company was the Sindri Fertilizers and Chemicals Limited in December, 1951. Then in January, 1952 the Hindustan Shipyard was formed with two-third share by the Government and one-third by the Scindia Company. In 1952 itself the Hindustan Cables Ltd., and the Nahan Foundry Ltd., were formed. In January, 1953 the Hindustan Housing Factory was constituted as a private limited company and in 1953 itself we had the Hindustan Machine Tools Factory also constituted into a private limited company. With regard to Sindri Fertilizers and Hindustan Cables they are all owned and financed by the Government of India. I have already mentioned that with regard to the Hindustan Shipyard two-third share is owned by the Government. With regard to the Hindustan Anti-Biotics Ltd., it was constituted on 1st January, 1954 and this also is a wholly State-owned enterprise. The Hindustan Insecticides Ltd., which manages the D.D.T. Factory, was constituted into a private limited company on 1st April, 1954 and that also is fully owned by the Government. The Hindustan Housing Factory which, as I have already submitted, was constituted in January 1953, is more or less a partnership concern with Messrs. Basakha Singh Ltd. The Nahan Foundry Ltd., was constituted into private limited company in 1953.

We have to bear in mind that all these State enterprises which have been constituted into corporate concerns are all private limited companies. I do not know whether the hon. Members have borne that distinction in mind when they dealt with the companies which we have already constituted. We know that all the provisions in this Bill are not applicable to private limited companies and they enjoy several exemptions and several privilages which are not, as a matter of fact, being enjoyed by public limited companies. Another fact that we have to bear in mind is that with regard to almost all these companies cent. per cent. ownership is vested with the Government. There is another feature also with regard to these companies which we have to bear in mind and that is that agreements have been entered into with other participating concerns so much so the working is, as reality, controlled by the provisions of those agreements. Those agreements have all been placed on the Table of the House and they are all available in the Parliament Library also. We have also to bear in mind, in view of our several future Plans and especially in view of the socialistic pattern of society, the necessity of a growing public sector.

Madam, when this House has adopted the socialistic pattern of society and when there is a demand from all sections of the House—except from the section to which my friend Shri Tulsidas and others belong—that State must more and more enter into the sphere of industrial enterprise, I am surprised that hon. Members should be influenced by the whispering campaign that is going on in our country that everything is wrong with regard to the public enterprises. We had recently a leaflect published somewhere from Calcutta to the effect

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that all our national enterprises which we have undertaken are being run on a loss and the affairs are being mismanaged in a most hopeless fashion. I feel that, perhaps, the Members have been a little influenced by that sort of campaign that is going on in our country.

What I want to impress on the House is this. A set pattern for government companies is not possible at this stage. That was the reason why the Joint Committee has not chosen to adopt the various provisions which the Government itself introduced at the Joint Committee stage, as will be seen from the minutes of the fifty-seventh meeting of the Joint Committee. The Joint Committee did so very wisely and I am suprised to find that some Members of the Joint Committee even now feel that the various provisions should have been detailed in the very Bill itself. It is not advisable to incorporate them when we are not sure of the future pattern of the companies which will take out management of State enterprises, to set up a uniform pattern which will be applicable to all the companies. Although there have been statements on the part of hon. Members that there is absolutely no justification for making any distinction or any discrimination at all between the companies owned by the Government as well as other companies in the private sector, it has been, I feel, recognised that some sort of exemption will be necessary in the actual working of the companies which are Government-owned. I do not think that fact will be disputed at all. To what extent exemptions should be introduced is a matter of dispute between the several Members and that may be the reason why although the Joint Committee had various provisions which can be incorporated in the Bill, which will empower the Government to give exemptions with regard to companies, they proceeded on certain basic principles. We find at page 173 of the *Minutes of the Companies Bill*, which has been circulated, the following passages:

> "The Committee took into consideration the draft 12A proposed by Government to be inserted in the Bill. The Finance Minister explained to the Commitee that this draft chapter was an attempt to give form to the assurance given by him in the House, when the House discussed these establishments of a committee of Parliament for going into the Government enterprises. The Committee accepted the following:
>
> So far as Government companies are concerned, it would be inappropriate to apply to them the clauses of the Bill imposing penalty in respect of failure to do certain things," by the directors, managers, etc. "But clauses prescribing routine things like supplying information to shareholders, filing returns, issuing prospectus, etc., should be made applicable to them like any other company."

That is the general principle adopted by the Joint Committee. Then, in the next paragraph, which is very important, they say:

> "Having accepted the principle as stated in the preceding paragraph, the Committee started examining the different clauses of the draft, Part 12A."

They are the clauses which exempt Government-owned companies from the operation of this Bill.

> "But after some discussion it was felt that the scheme of the existing clause 575 with certain amendments would be a more suitable one for the purpose of this Part 12A. So, the Committee reverted to consider clause 575".

We find the result of the Joint Committee's discussion at page XXV, paragraph 155, of the Joint Committee's Report. I do not want to take up the time of the House by reading those relevant paragraphs from page XXV.

My friend Dr. Krishnaswami, disputed the very wisdom of constituting State enterprises, into private limited companies.

Dr. Krishnaswami: No, I did not, except where Government hold less than 100 per cent. shares in companies public and private.

Shri A. M. Thomas: Anyhow, my hon. friend complained that Parliamentary control over those undertakings has been taken away by constituting those enterprises into private limited companies. I beg to differ from my hon. friend. It has been universally recognised that some amount of internal autonomy and freedom from the day-to-day working is necessary for managing these enterprises. We have frequently come across the controversy connected with Parliamentary control and this controversy has more or less assumed a permanent character. This controversy has been going on in the United Kingdom. My friend Dr. Krishnaswami, has been comparing the pattern of State enterprises that we have adopted by forming these private limited companies with the pattern in the United Kingdom. I should think that Dr. Krishnaswami, knows that with regard to the management of State enterprises, so far as U.K. is concerned, they have been constituted into statutory autonomous corporations different from the private limited companies which we have formed. There are two claims: the claim to have the working of these State enterprises with freedom with regard to the day-to-day working, and the claim of the representatives of the people to have a check on these State enterprises. It is just to adjust both these claims that the Government have been adopting this practice of constituting these State enterprises into private limited companies without special legislation.

The withdrawal of monies from the Consolidated Fund takes place with the approval of Parliament. In the case of ordinary Government department, Parliament exercises its overall supervisory powers by questioning the Minister in charge on matters of policy, and by a debate over the budget, the annual reports and statements of accounts. All these are available in the case of the working of these private limited companies also. I would request any Member who has got doubt concerning this matter to go through the latest administration report of the Ministry of Production, and know for himself how all available information has been given concerning the work of these private limited companies.

Another fact which I wish to bring out—and it has been hinted by Dr. Krishnaswami, towards the close of his speech—is with regard to the control that the Comptroller and Auditor-General can exercise over the working of these companies. As a matter of fact, when we go through the clauses of this Bill, we will surely see that the Government companies are not in a privileged position at all. I have already indicated that so far as the companies now working are concerned, they are private limited companies, and there is no obligation cast upon any private limited company which is working in the private sector to have its accounts audited by the Comptroller and Auditor-General. So, my submission is this: the government companies are not at all in a privileged position. They are, if I may submit so, in an exacting position. So far as the articles of the various private limited companies are concerned, even now, a provision exists giving the right to the Comptroller and Auditor-General to make arrangements for independent audit. What has been done by the Joint Committee, under the provisions of this Bill, is to give statutory recognition to the practice already existing. If you go through any of the articles or the memorandum of association of those companies, you will see that ar article provides for independent audit by the Comptroller and Auditor-General, and the Bill now gives statutory recognition to that practice which is being adopted in the matter of those companies. So, I submit that the best

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guarantee for getting an opportunity to study the affairs of the company is given by the provisions contained in this Bill for the Government companies.

After having said this much, I wish to refer to the amendments which stand in the name of Pandit Thakur Das Bhargava, and my humble self. They are amendment Nos. 1171 to 1174, both inclusive. Amendment No. 1171 is this:

Page 286, line 4—

after "notification" *insert*.

"to be".

With this amendment, the clause will read thus:

"A copy of every notification to be issued under sub-section (1) shall, as soon as may be after such issue, be laid before both Houses of Parliament".

The insertion of these words will be clearer from the other amendments that I intend to move. Amendment No. 1172 runs as follows:

Page 286, line 6—

add at the end:

"and discussed and passed by the Houses before it is issued."

Then, amendment No. 1173, is as follows:

Page 286, line 6—

add at the end:

"and Parliament will be competent to make such modification as it likes within a period of one month from the time such notification is laid at the Table of the House."

The next amendment is No. 1174 which says:

Page 291, line 19—

add at the end:

"and Parliament will make such modifications in the rules as it chooses within a period of two months from the time they are placed at the Table of the House."

These amendments are explanatory. The object with which these amendments have been moved is only this It is difficult to provide in the Bill which of these clauses should not apply to Government companies at present. But when any company is sought to be exempted from the operation of any section of the Act, the Parliament should have an opportunity to decide whether it is proper to exempt that company from the operation of that section. If such a provision is not possible, the alternative amendment that has been suggested is that the exemptions which are sought to be given may be placed before the Parliament by the Government and the Parliament must have an opportunity to modify it or , to negative it or to add to it after it has been notified within a particular time. Even if the Government finds it difficult to adopt the first amendment, I believe it will not be difficult for the Government to accept the last two amendments that we have moved.

Lastly, I wish to submit that the power which has been taken under clause 614 is not to put any premium on inefficiency in the management of Government enterprises. We have also to bear in mind that as far as these State enterprises are concerned, they are all open books. from the very start. We know that even when the preliminary investigatins are carried on, the Minister-in-Charge takes the House into confidence. When any preliminary agreement is entered into, as we have seen in the case of Hindustan Steel Limited and also in the agreement with the U.S.S.R., the House is being taken into confidence from the very preliminary stages, so that it may not be necessary as in the case of other companies to have prospectuses for floating these companies. From the very nature of things, regarding several of the provisions which are intended to be applied to companies in the private sector, it will be

superfluous to apply them to the Government companies. I have also submitted that it is not possible to achieve uniformity nor is it desirable, because the constitution of each company will be different—it may be entirely State-owned or State-owned to the extent of 51 per cent. or 80 per cent. So, we have to adopt the provisions as circumstances require the Government to act in any particular category of companies. Shri Tulsidas was waxing eloquent on the fact saying "You adopt all these provisions in the case of companies in the private sector; but with regard to companies which are State-owned, it is a power of discrimination that is, going to be adopted." Shri Tulsidas also said that according to the present provisions, if any private company does not commence business within a particular period, that company will have to go; but in the case of public companies, there is no such provision. We have to bear in mind one distinction at this stage. As far as the public sector is concerned, the State is not coming in in all sorts of enterprises. We are still following the industrial policy resolution of 1948, so that the private sector is given complete freedom with regard to many industries. But the State interferes only in a limited class of industries—basic and other strategic industries. Also, it is a matter of experience that the private sector is not prepared to venture into those enterprises. That is the reason why the State has to take up those enterprises. For example, we have propose to work a synthetic oil plant as a State enterprise. We know that it may not be a profitable concern and so the private sector will not be forthcoming for undertaking such a task. We have also other enterprises of a similar nature where the private sector will not come forward. Therefore, it is not possible to adopt all the provision, which we require to adopt in the case of companies in the private sector, which has got a long history and long experience of the management of such companies, in the case of Government enterprises

Mr. Chairman: The hon Member's time is up.

Shri A. M. Thomas: I will finish in one minute.

My submission is that the House should not at all be influenced by the fact that any discrimination is sought to be made by clause 614 of this Bill. I would like to go a step further and say that limited companies formed by the Government are in a more exacting position, having regard to the audit provided by the Auditor-General, than other private limited companies, or for that matter, any other public companies in the private sector. One argument is advanced by Pandit Bhargava, and others saying 'with regard to all these matters, the companies which the State has started should set up an example to the other private sector also." That is a proposition which cannot be disputed. In the matter of labour participation or in the amenities given to labour etc., it is certainly advisable that the State should be a model employer with regard to these undertakings. Beyond, that, it is not advisable to adopt all the provisions that we have in this Bill to these State companies also.

One word more and I have done. We are not going to have managing companies for these Government companies at all. The very keynote of this Bill is to put restrictions on the managing agency system. All these restrictions are meant to curb the evils of the managing agency system. If that managing agency system is not adopted in the case of government companies, I do not understand why the provisions which are intended to curb these evils should be adopted in the case of government companies

I commend the provisions that have been adopted by the Joint Committee with suitable modifications as have been suggested by me as well as by the Finance Minister.

Shri Kamath: I shall be very brief. Before I come to the clauses under discussion, I shall briefly refer to the

[Shri Kamath]

new clause 516A the draft of which has been sent to me, in accordance with the suggestion made by the Speaker yesterday, by the hon. Minister. I am glad that the hon. Minister has decided to stick to his resolve to accept the principle of my amendment. I would only request you that it should not be taken up before 2-30.

Coming to the clauses under discussion, I have got five amendments—amendments Nos. 1158, 1159, 1160, 1161 and 1162. Taking the last amendment, 1162, first I am aware that there is a clause already, No. 610 regarding the application of the Act to insurance, banking, electricity supply and other companies governed by special Acts. I think the draft of this amendment of mine is simpler. Either it may go as a new clause or as a substitute to clause 610 already in the draft Bill. I have suggested:

> "635A. Nothing in this Act shall affect the provisions of any special law relating to any particular types of companies and compliance with such law by companies governed by it shall be deemed to be compliance with the provisions of this Act."

It is self-explanatory and does not need any comment.

I now proceed to amendment 1161 to clause 634, relating to the rule-making powers of the High Courts. The Calcutta, Madras and Bombay High Courts are the only High Courts which have got original jurisdiction and I understand that they have got very elaborate rules which have been in operation for a number of years. I do not think that any departure from these rules already in existence and in operation for a long time is necessary or desirable at this stage.

Coming to amendment No. 1160 to clause 632, there is nothing much of principle in it. I want to make sure that the Government will publish not merely the amended or altered rules and schedules, but also the alterations themselves. Clause 632 says:

> ".....alter any of the regulations, rules, tables, forms and other provisions contained in any of the Schedules to this Act....."

I want the Government not merely to publish the altered rules, but the alteration itself, in each case because very often it happens that when the altered rules are published, unless you refer to the old rules, you do not know what has been altered. I have suggested that in lines 38 and 39, the words "by notification in the Official Gazette" be omitted and at the end of the clause 632(1), the words "by publishing the alterations in the Official Gazette" be added, so that we will have an idea of the alterations, and not merely the altered rules and regulations and Schedules.

Coming to amendment No. 1159, clause 613, refers to audit. I have suggested that without prejudice to the provisions already contained in clauses 223 to 232 which deal with the appointment and remuneration of auditors, this clause may be amended according to the suggestion made by me in this amendment. I would only like to make a slight change here. On second thoughts I think that instead of empowering the Central Government here.....

Mr. Chairman: Is this a new amendment?

Shri Kamath: Yes. Amendment No. 1159, to clause 613: this has been circulated. I think it would be better to have the "Comptroller and Auditor-General" instead of the "Central Government." In place of all these sub-clauses of clause 613, we may have a simpler formulation of this provision, as I have suggested in my amendment No. 1159.

Then, I come to my first amendment, No. 1158, last and I shall take only a couple of minutes. This relates to Government companies envisaged in clause 611. I want to bring within

the ambit of Government companies some other companies as well, by defining Government companies a little more widely, by casting the net a little wider. The Explanation to the amendment reads:

> "Government means the Central Government, State Government or both together or any Government company."

If this last bit of the explanation be not accepted, there is a danger of Government trying to extend its patronage to other companies without that other company coming within the ambit of this clause. Further, I have suggested in this amendment that a company in which not less than half of the shares are held by the Government may be deemed to be a Government company. I have said the same about loans. That also should be provided for in this definition of Government company.

That is all I would like to urge in respect of my amendments. I am sorry I have to hurry away in connection with some urgent engagement. If I get a chance after 2-30, I would crave your indulgence again.

Shri K. K. Basu (Diamond Harbour): On these clauses?

Shri Kamath: No, but 516.

Shri K. K. Basu: In respect of these provisions regarding Government companies, I have moved a number of amendments that stand in my name and the name of some of my hon. friends. First, I shall deal with the subject that has been dealt last by my hon. friend Shri Kamath, regarding definition of a Government company. I have also moved an amendment in which I have reduced the size of Government shareholding from 51 per cent. to 30 per cent. and also I have tried to bring in those companies where Government has given a guarantee for loans or for a fixed dividend. There are certain companies whose shareholders may be either banks or other institutions, but the Government guarantees a certain fixed return, dividend at a stipulated rate or within a certain varying rate. Return on the capital is more or less guaranteed by the Government. There are special agreements nowadays coming up every now and then. In some cases, it may be that huge sums of money are being taken as loans from either the International Monetary Fund or any other foreign agencies or in the internal market for which Government gives guarantees. In the existing provisions of the Industrial Finance Corporation Act, an amendment was made whereby irrespective of the share capital or paid-up capital of the company, Government may guarantee loans to any extent. It means that a company with a capital of Rs. 50 lakhs may raise a loan of Rs. 5 crores in the international market or anywhere else and Government stand guarantee for that. Also as my hon. friend Shri K. P. Tripathi said, we are faced with a situation in which in some oil companies in Assam, Government will have 30 per cent. shares. If you restrict the proposition to 51 per cent., it means that except in those cases where Government have a majority of the shares, these provisions will not apply, as also the powers that we are taking as regards the control of the Auditor General. We know fully well that under the planned economy, whether mixed or adulterated or whatever it may be, Government are going to either join in partnership or by themselves establish quite a number of public corporations and it is necessary that a certain power should be embodied in the Company law itself. Of course, so far as we are concerned, we do not accept the proposition that where the Government are cent per cent. shareholders, there is necessity to have a public corporation because that takes the whole thing out of the purview of Parliamentary control so far as administration is concerned. We are often told that autonomy is necessary, but I shall deal with that point later, but we

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know fully well that there is a method by which we can develop business administration even in respect of those companies which are run as a department of the Government or directly under it. For example, in the Railways or in the defence industries—you may say that the defence industries are run on a no-profit no-loss basis—or even in the Posts and Telegraphs department we have certain institutions for manufacture and repairs, which though managed under a department can be run on somewhat business-like lines.

1 P.M.

But, my whole attitude is this. When the nation is investing some money or is a guarantor for the payment of certain money, it is absolutely necessary that the minimum control which the Parliament can have through the Auditor-General should be there, and unless we call all those companies Government companies I do not think the provision under this particular chapter may come into being. Because, I give an example. In the case of a company in which the Government has 30 per cent. of the shares, of course, it may be argued that as it is incorporated under the law of the land, there are the provisions regarding investigations and that Government has the power to investigate and force them to adopt proportional representation or whatever it may be, and therefore Government can have some control. But my proposition is this. Supposing there is a company in which Government has 30 per cent. of the shares and other people outside have 70 per cent. Naturally, the majority of shareholders will always have control of the organisation as such, unless Government possibly on the recommendation of the minority shareholder—Government itself is the shareholder—invokes certain special provisions regarding investigation etc. Otherwise, the question of audit and management is bound to be determined by the majority shareholders, and therefore Government will have no control over the most important part namely control of audit through the Auditor-General. And we will be told in the House that Government has invested so much money, or has earned no dividend, or there may be a casual reference to it which may find a place in the annual report of the Ministry to which the particular establishment is attached.

We have seen in the recent past, and also in the future quite a number of concerns will come into being in which Government will participate. Apart from going into the policy or the principle behind it, what I would like to urge is that in all these cases where Government has a substantial interest either as shareholder or as guarantor for loan or guarantor for a fixed rate of dividend, it is absolutely necessary that Government should have some control over that. Therefore, I have moved the amendment in order to see that these are declared as Government companies.

Some of my friends may argue that as soon as it is declared to be a Government company, it becomes entitled to certain privileges, and the other shareholders may not try to work with them, but I do not understand the logic behind this, because when the other shareholders come forward with a proposal to the Government and ask the Government to participate in the share capital or guarantee the loan or guarantee the payment of a dividend at a fixed rate, naturally at that stage they come to an agreement as to the manner in which the administration is to run. Unless a private company is forced into the situation that without Government help they cannot get the money, they will never approach the Government either for participation in the share capital or for becoming a guarantor of the loan or dividend at a fixed rate of interest. Therefore, it is absolutely necessary that at that point of time an agreement should be reached as to

what sections of this Act should be applicable to such a company. There will not be any difficulty, because it is not every private company which is affected. Those companies which ask for Government help should be bound by certain limitations, and it is absolutely necessary that this should be provided for.

The nation is going to invest a huge amount. These are bound to be big companies where the share capital would be of the value of Rs. 5 or Rs. 10 crores. We know very well that a loan of Rs. 12 or Rs. 15 crores has been obtained from the International Monetary Fund for development of iron and steel in Bengal, and Government is the guarantor. I was told, but I am not sure, that Government has advanced to the Tata Iron and Steel Co. a loan or guaranteed a loan three or four times the actual paid-up capital. Somebody was telling me. I do not know the exact amount. In such cases Government should have a certain interest, at least a certain authority to see the accounts and how they are run. It may be argued that Government directors are there. We know fully well that they are the Joint Secretaries or Secretaries, and they might change from one department to another in six months, and there may not be any continuity. There will not be the same person who will continue to be the director. And naturally a director who attends just one or two meetings may be able to express only a general opinion to the Government and may not be in a position to know the detailed administration of the company which is absolutely necessary. Therefore, what we want is that in all these cases where huge sums of the nation's money are at stake, it is absolutely necessary they should come within the purview of Government companies.

In this connection, I of course support the principle of one of the amendments of my friend. Shri Kamath wherein he says that Government companies should not only be restricted to the actual participation of Government itself; it may be that a Government company like the Industrial Finance Corporation in which Government has a large stake or shareholding may advance a loan or may participate in the shares of another company, in which case the latter company should also come within the limitations of this particular chapter regarding Government companies. Because, the other day we were told, and it came out in the press, that a certain corporation has underwritten shares. We may have many State organisations or many State investment corporations which may be autonomous bodies with some Government share and some share by outside bodies like banks, insurance companies and other credit institutions, but all these institutions may participate in the share of a particular company but that particular company will not be considereded as a Government company as Government itself is not directly participating in the shares of the company or is not a guarantor or loan etc.

Our whole attitude is this. There is no point in saying as some friends have said: "Let the private sector run amuck; we have nothing to do with it." In spite of our criticism, Government has accepted today a mixed economy, and there will be side by side the public and the private sectors, and they may also have a common sector, the public and private sectors combined with joint participation. Therefore, it is absolutely necessary that some form of Parliamentary control which looks after the requirements of the country must be there, and the most important point is the power of the Auditor-General to look into the affairs of the company. He is, under the Constitution, an independent authority. He is not directly under the control of Parliament as such. Under the present definition of Government companies I do not think the Auditor-General's jurisdiction can be invoked so far as the question of

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looking into the affairs of these companies is concerned. This is so far as our argument regarding the extension of the scope of the definition of Government companies is concerned.

Then, in dealing with these Government companies we have another amendment, No. 1165, whih is insertion of a new clause 613A. This clause says:

> "*Government companies to have twenty-five per cent. directors from amongst the employees.*—In the case of a Government company, twenty-five per cent. of the total number of directorships or two, whichever number is greater, shall be elected from amongst the employees of the company in the manner prescribed by the Central Government."

I want to put in this amendment because we know fully well that in the case of all these Government companies there is a director usually who is supposed to represent labour. The Finance Minister might say that he has not yet decided as to labour participation in the management, as to what form it should take and when it should be. That may be applicable so far as companies in the private sector are concerned. But for the Government companies we have accepted this principle that there should be a person who should be a representative of labour. I have put it at 25 per cent. I feel that unless we develop this system of participation of labour in Government undertakings at least, labour will not feel that they are common participants in the development of the nation. And when we have accepted that proposition that there should be one man representing labour, what I want is he should be one who should be elected by the labourers who are engaged in the particular concern. For, we know how labour representatives are chosen when Government float a company, as for instance, the steel plant in Orissa. Somebody is chosen as a representative of labour, who might have worked as a labour leader either in Bihar or possibly in Bombay or somewhere else. That appointment is more or less a stepping-stone for him for a Ministership.

Shri T. B. Vittal Rao (Khammam): Ahmedabad textile expert.

Shri K. K. Basu: Today he may be a textile expert, but tomorrow he may become a Minister, and the next day he may become a Governor. That is not the type of representation that we want. If Government accept the theory that labour should be represented, then why should there be any nomination? Of course, at the stage of promotion, you may say that there should be some gentleman who is supposed to be connected with labour movement. But why should not Government as a model employer develop the idea that the labour employed in a particular undertaking should elect their own representatives to function as labour directors or whatever it might be. In my amendment, I have asked only for twenty-five per cent. of the total number of directorships or two, whichever is greater. If Government are not willing to concede that, at least they can concede that in the case of these labourers, they will have their own elected representatives.

As a Member of the Estimates Committee, I have gone round some of the government undertakings, and I have seen how the labour directors there have been chosen. Unless he comes from a particular union, he is not chosen. We know fully well that in the area in which a particular undertaking is situated there are very often two or three schools of unions, if I may use that expression—and unless a person belongs to a particular union, he is not chosen. The result is that the actual person chosen as labour representative on the directorate has no connection with the labour working in that undertaking. He comes like

any other director, attends the meeting of the board of directors, and reacts to the discussion there according to commonsense or in whatever way he likes, and then he goes away. That sort of representation for labour is of no use.

What we would like to emphasise is that is the case of government companies at least there should be a statutory provision to the effect that soon after the promotion of the companies—if it is not possible at the time of promotion—a labour director should be elected by the labour themselves. I have kept the method of election open. I have left it to Government to decide, because if I give any particular suggestion, Government might come forward and say, this system may work well in Sindri, but it will not work well in the Hindustan Shipyard, there some other method would be required and so on. It may be that undertakings situated in different areas may require different methods of election. But what I want is that Government should at least concede the principle that a labour director will be elected by the employees themselves in any particular undertaking. In my amendment I have suggested twenty-five per cent. of the total number of directorships or two. But if Government are prepared to concede the principle of my amendment I would be satisfied, and they can have modifications or alterations to the amendment that I have suggested.

I feel that if in these nationalised undertakings we are not able to generate enthusiasm among the employees who actually with the sweat of their brow are producing the wealth of the nation, then they will never feel that they are participants in the building up of the nation. You may talk much about the socialistic pattern or whatever pattern it might be. But I am not concerned with any pattern, because we may talk about many things without actually doing anything. What I am concerned with is only this. Whenever you establish a nationalised undertaking, it is absolutely necessary that you as a model employer should make everybody,—right from the managing director down to the ordinary peons who are working in it,—feel that they are participants in the building up of the nation of the future, where they expect that they will have a better life. This is what I would like to say with regard to my amendment seeking to introduce a new clause 613A.

I have also got another amendment in my name, namely amendment No. 1150. By this amendment, I seek to substitute the words 'on the advice of' for the words 'after consultation with' in amendment No. 1067 moved by the Finance Minister. According to that amendment, the Finance Minister seeks to provide that the auditor of a government company shall be appointed or reappointed after consultation with the Comptroller and Auditor-General of India. I want that the auditor should be appointed on the advice of the Comptroller and Auditor-General of India. That is the short point of my amendment. The hon. Minister might say that that is precisely what he has in mind. But I would like to point out that the expression 'after consultation with' does not make the position very clear. I am not sure whethere that expression will make it a statutory obligation on the part of Government to abide by the advice tendered by the Comptroller and Auditor-General; according to me, that expression would mean that you may take the advice of the Auditor-General, but you may or may not abide by that advice. But if you put in the words 'on the advice of' specifically—and that is the expression used in many other places—it would make it clear that every auditor that is going to be appointed in respect of a Government company will be a person chosen under the advice of the Auditor-General. That is the short

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point I would like to make in regard to this amendment.

I now come to a proposition which has been so loudly championed by Dr. Krishnaswami and others, namely the role of the private sector. I for one believe that so far as the industrial expansion of our country is concerned, there has to be an increase in the role of the private sector. However, I fully concede that for some time to come, it would be in the interests of the nation to allow the private sector to continue and to develop in certain specified industries or in specified sectors of production. In regard to the public sector which is being expanded, I would urge that by and large, it should be under the control of Parliament.

Of late, a theory has been developed that unless there is some autonomy for the public sector, it cannot grow. But what does this autonomy mean? We have seen how these autonomuos enterprises of Government are working. I would not like to refer to any particular undertaking, but I would say that as a Member of the Estimates Committee, I had occasion to go round some of these government undertakings. I found that a person who was in charge of the P. and T. Department had been appointed on his retirement as the head of one of the factories, the Sindri factory, or the steel plant or some other undertaking. In Sindri we find that a person who was working in the Ministry of Railways is now working as managing director; he is now in charge of the business management. I do not know how he came to acquire all this business experience all of a sudden, and how he will be able to run it.

One result of this theory of the need for autonomy is that there is a lot of bureaucratisation. The bureaucrats in these autonomous bodies think that they are all powerful. We cannot even put questions about the details relating to such undertakings, because they are autonomous. I am willing to concede that since Parliament is so busy with a lot of legislative work, it may not find time to go into the details very minutely. But what I would urge is that they should at least come under the direct control of Parliament. And Parliament may devise some suitable device to ensure supervision of those undertakings. For the last several years, we have asked for the setting up of a Parliamentary committee to supervise the working of these nationalised undertakings, but Government have not agreed to that. But I say that it is absolutely necessary that Parliamentary control should be there.

Apart from the question of the nation's money being wasted, there is also the point to be considered that we are now developing a new sector of industry, and the experience that Parliament derives from its working should be utilised in either expanding it or modifying it in the future. Today, there is no denying the fact that we have no intention to go back. On the other hand, possibly the public sector will be on the increase. We on this side of the House want that it should expand with greater speed. But my hon. friends opposite may not like that. As they profess, they would say that it will have to be at a slower speed, and we have to move with caution or moderation. Whatever that may be, my point here is that these public undertakings should be under parliamentary control. After all, it is the Parliament that will decide what is in the interests of the nation, and how that is to be done.

As I mentioned earlier, this question of autonomy has led only to over-bureaucratisation, without any increase in business efficiency. I am not therefore prepared to agree that this autonomy should be there and that these undertakings should be organised as corporations or as limited companies, in order to ensure that autonomy. In fact, we can determine here what are the undertakings run by the Ministry of Production which will have a particular type of management

and so on. We can also establish a convention that the appointment of X or Y should not be insisted unless it be vital in the national interests.

As I said earlier, like the Public Accounts Committee or the Estimates Committee, we can have another statutory committee consisting of Members of Parliament to guide and advise the Ministry as to how to run these undertakings. The report of that committee and their advice can be brought before Parliament, and we can discuss the matter threadbare.

So, it is not necessary that these undertakings should be established either as corporations or as limited companies having autonomy. I say that such a theory is absolutely wrong. As we have seen, such autonomy has only resulted in the powers being exercised without proper parliamentary check. Of course, we have the Public Accounts Committee, but that committee conducts only a *post mortem* examination after a period of three or four years.

In the Estimates Committee, we know fully well that in one year we cannot deal with more than two Ministries. And when the matter which relates to the Ministry of Production, or whatever it is, comes up, it will be six or seven years afterwards. By that time, so much money must have been drained away and wasted, possibly a hundred crores of rupees. Therefore, it is necessary to have a new method of management which should be developed; it should be directly under the control of Parliament. I for one is not enamoured of this theory of autonomy which very much suits the philosophy of the vested interests. I for one want to see a new type of management; there can be either a managerial cadre or there can be control by Parliament over these enterprises as a convention. We can adopt some such procedure.

What the work of the reviewing authority suggested by Dr. Krishnaswami will be, I do not know. If it is that the reviewing authority will be such as will consist of some Members of Parliament who will form a Committee and consider the reports and discuss the whole thing, I am willing to concede that there should be some such authority. But to ask for a reviewing Commission, when we have already an Advisory Commission, which will be composed of experts who will be appointed by Government has no meaning. It will be like one expert body sitting in judgment on another expert body, both of them nominated by Government. I for one believe,—and I have also moved an amendment to that effect,—that the Auditor-General's report and the report of the Government on the administration of this Act in relation to companies should be made available to the House, and Parliament should be given opportunity to discuss the whole matter and see how the Government have utilised the provisions of this law, to what extent the Auditor-General has reported on these things and so on. Therefore, I for one am completely opposed to the idea of giving such authority to a reviewing Commission suggested by Dr. Krishnaswami. I suggest that Parliament should discuss the working of the Act, the way in which the exemption clauses have been utilised, whether they have been misused or used in the best interests of the nation and so on. Because I feel that this company law is not only a matter between company management and shareholders, but it also reflects the application of the economic policy that the Parliament has directed Government to follow in the course of their activities.

Shri N. C. Chatterjee (Hooghly): This Parliament will stultify itself and the Government will be open to very strong criticism in the country if clause 614 is enacted, as it stands. If you kindly look at clause 614, it says: 'Power to modify Act in relation to Government companies'. The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act (other than sections 612 and 613) specified in the

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notification shall not apply to any Government company. There is certain amount of misgiving that the hon. Finance Minister, who was a very experienced bureaucrat at one time, is entering into some kind of device in order to arrogate powers so that all Government companies shall be completely immune from the scope and operation of the Companies Act, and is trying to have power so that the Companies Act should be a dead letter with regard to all Government companies. Only two sections have been specifically made compulsorily operative with regard to government companies, sections 612 and 613. Section 612 says:

> "*Future Government companies not to have managing agents*: No Government company formed after the commencement of this Act shall appoint a managing agent."

Clause 613 says:

> . "*Application of sections* 223 *to* 232 *to Government companies.*"

This deals with audit and other matters.

I have no doubt that there is no such sinister design on the part of the Finance Minister to arrogate power or to take such wide and extraordinary power in his hands that he can make the Companies Act completely nugatory. That will be an evil day for this Parliament, that will be an evil day for the public sector, and we will be open to the charge that while we are tightening up and putting so many restrictions on the private sector, we are really doing nothing to see that Government departments and government companies also function properly. I do not think there was any such sinister design on the part of the Ministry or the Government. The whole difficulty was this. We had some kind of a list. But unfortunately the list could not be so finalised in the Joint Committee. This is in Part XIII, which in itself is a bad number. It is the last part. I wish it were some other part. The Committee found that it was very difficult to frame a complete pattern of rules or sections which would be applicable to government companies. Still, I think in fairness to government companies and in order to pacify public opinion and to show the *bona fides* of the Government the Finance Minister ought to make his position clear in this House. I would appeal to him to make it clear that certain essential things must be made applicable to Government companies. Take, for instance, clause 197. It seems to be one of the most important clauses which we have in our wisdom enacted here. Clause 197 says that the overall maximum for managerial remuneration shall be fixed at 11 per cent. You have fixed the overall managerial remuneration for directors, managing agents, secretaries and treasurers and managers at 11 per cent (maximum) of the net profits of the company. You ought to say that that overall maximum shall be applicable also to government companies. I know that there will be no managing agents or no secretaries and treasurers, but still, whether you have managing agents or not, it does not matter; you will have managers or some directors and other people functioning who will work these companies. That overall maximum should not only be made applicable to private companies but also to Government companies, so that we know where we stand. We know that there is some restriction put and we shall know that that maximum shall not be allowed to be exceeded in the case of a Government company.

Shri C. D. Deshmukh: How do we manage that now? Do we have in amendment giving the numbers of clauses from which companies cannot be exempted? Or would the hon. Member like to pick out a few clauses in respect of which no exemption shall be given? Then there will have to be an amendment, say, provided that

no such exemption shall be given from the operation of clauses.....

Shri N. C. Chatterjee: You have already got clauses 612 and 613.

Shri C. D. Deshmukh: I know. More to be added to these?

Shri N. C. Chatterjee: That is what I am pointing out. It can be easily done. There are certain cardinal clauses. I call them cardinal because...

Shri C. D. Deshmukh: What is say is; is the hon. Member prepared to give a list of them here and now?

Shri N. C. Chatterjee: I think I can.

Shri C. D. Deshmukh: It has to be done now.

Shri N. C. Chatterjee: What I am saying is that if the hon. Finance Minister has got his mind clear on this question, we can formulate the point and if he accepts, it can go through. At least, he should give an assurance to the House that in respect of these matters, there is absolutely no desire on the part of Government to exceed the maximum or in any way to deflect from the principles enunciated in this Act.

Shri C. D. Deshmukh: Clause 197 is a bad example to take, because exceptions are allowed there.

Shri N. C. Chatterjee: First of all, am I to understand that the general desire on the part of Government is not to apply clause 197?

Shri C. D. Deshmukh: No, no. To apply clause 197 as it is passed by the House, which gives power to Government to relax. One hon. Member pointed out that it had no meaning.

Shri N. C. Chatterjee: First of all, is it not the general desire, is it not the intention of the statute that 11 per cent. should be the ordinary maximum in the case of managerial remuneration?

Shri C. D. Deshmukh: I am talking of circumstances in which there is no profit. In a new concern, when there is no profit and the minimum of Rs. 50,000 is likely to be exceeded, it is only then that a question of making an exception arises. Now, the clause, as passed, provides for making all these exceptions. So if clause 197 is applied, as passed, we do not secure anything very important because Government themselves are the deciding authority

Shri N. C. Chatterjee: Still Government will decide on certain principles. Certain criteria have been laid down. Ordinarily, the maximum overall remuneration is prescribed at 11 per cent. Cannot the Finance Minister, Madam, even give an assurance to the House....

Shri C. D. Deshmukh: Certainly.

Shri N. C. Chatterjee: ..that in respect of these matters, there is absolutely no intention to make any exception in the case of a Government company? That is with regard to overall remuneration. Or take another instance. We have been talking a lot about oppression of minorities and so on. We have made special provision against that. That is in clause 407. We have also got the provision that any member can approach the court in certain cases. Would you simply give an immunity that in no case where the Government is managing a company, however much a minority may feel oppressed, they cannot enforce the provisions of these sections? Will that be a fair thing to do?

Take for instance, clauses 396 to 406. If you look at page 201 you will see it says 'Prevention of oppression and mismanagement'. Clause 396 is application to court for relief in cases of oppression. It reads:

> "Any members of a company who complain that the affairs of the company are being conducted in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Court for an order under this section...."

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Is it the intention of Government that in no case of any charge of mismanagement, even if it is founded on cogent grounds, will this clause be applicable; or that it cannot ever be invoked by any members of the company merely because it is managed by Government? Would that be fair? Therefore, I am saying that there are certain cases which you have provided and which are vital and which are likely to improve the private sector. At the same time, it would not be fair to give immunity to government companies. Otherwise, people will suspect that you are taking a licence in order to indulge in all sorts of activities without the salutary provisions of this Act applied.

There are also other things. I do not know about winding up. In certain cases, winding up is permissible. Is it the intention of Government that no government company, however mismanaged or at whatever loss it may be carried, can ever be wound up or for ever there can be no application for winding up? Supposing the Minister is taking a particular view and is not taking any action, or supposing a particular department has got a soft corner on a particular government company; am I to understand that even if it is carried on at much loss for years and years, will there be no question of winding up? Will you not allow the shareholders to apply to the court for winding up? These are very vital things. Although it is not quite feasible to think of a complete list, in respect of certain matters it is not simply fair to do so.

If you look at page xxv of the Report of the Joint Committee, it is said:

> "The Committee are of opinion that so far as Government Companies are concerned, it will be inappropriate to apply the clauses of the Bill which impose a penalty in respect of failure to do various things by directors, managers etc. But the provisions requiring the supply of information to shareholders, the submission of returns and the like should be made applicable to Goveernment Companies also in the same manner as in the case of other companies."

My only quarrel is that you should not stop there. You should go further ahead. As Pandit Thakur Das Bhargava has said, we are complaining that the private sector has misbehaved and we are also complaining that there are certain black spots also in government managed companies. Therefore, it is vital in national interests, in the interests of public funds, in the interest of having our control to see that these healthy recommendations which we have embodied in the Bill should be made applicable to government managed companies also. It may not be that all these things should be applied in every government company but the main things you are taking more care to be put down in this should made applicable. Then there will be a feeling that everything is above board and that there is no interest on the part of the Minister and the Government to keep back anything. Otherwise there is some point or force in what Shri Tulsidas has said that in order to get complete immunity from parliamentary control the Government can start a company and get it registered and so on. If they have it as a department of Government they will be amenable to parliamentary control. Thereby you make parliamentary control illusory. Therefore it is very material that the hon. Minister should give an assurance to the public and to this Parliament that there is absolutely no desire to keep back anything or to make the company law completely dead so far as government companies are concerned. It should be in their interest to see that the full searchlight of public criticism is available. We are now enlarging the scope because formerly it was 80 per cent. and now we have made it 51; that is if there is 51 per cent. of government shareholding then it becomes a government company. Therefore, it is still more necessary

that all these salutary provisions should be made applicable to them so that there should be no kind of hush hush policy and trying to get immunity or getting licence to do whatever they like simply because government runs a particular company or has got an upper hand in the management.

Shri C. D. Deshmukh: I feel that the issue which is essentially a simple one has been rendered complicated by the importation of a great deal of feeling arising out of the Bill that is before the House, at least in the case of some hon. Members. I am thinking, particularly of the hon. Member opposite who referred to questions of the relative efficiency of the private and the public sectors. I hardly think that this is a place for entering on that controversy because none of the provisions that we have now suggested have any intention to give any unfair advantage, as a balancing factor, to the public sector. The hon. Member has also raised the question of parliamentary control. That is, again, a separate issue which is still not closed. It was raised at one time on the basis of information that a special Parliamentary Committee had recommended that a special committee be set up in U.K. for examining, from the policy point of view, the affairs of the Government Companies and Corporations. We investigated that matter, followed it for a little while and discovered that that particular recommendation had not been accepted by the Parliament. I do not know whether hon. Members are aware of it; but, our information is that it was not accepted. Therefore, the matter is still left to the Parliament to take a view on.

The view we put forward tentatively was that between themselves, the Estimates Committee and the Public Accounts Committee should be able to deal with this issue. But, it is possible to argue that when one embarks on an enlarging field of government companies and corporations, some *ad hoc* arrangement would have to be made for the simple reason that these two committees will not be able to do their normal work and yet deal with a situation where they have to go into the affairs of Government Companies. When that stage comes, I have no doubt that some one will suggest and, possibly, Government will accept that Parliament should approve of some special arrangements. But, in essence, it is a matter for Parliament to decide on general grounds and not so much on the ground of what Government participation in any matter is. Here we are dealing merely with the question of shareholding. There are other ways in which Government monies are engaged and may be in jeopardy if control is relaxed. One hon. Member who moved his amendment referred to loans and guarantees. As far as I can see, that is a process that will go on in an increasing measure as we go along with the implementation of a planned economy. And it is not possible to bring all those cases within the four corners of the company law. Government interest may be a small one and yet may be a vital one in which case it would still be right for Parliament to urge that Parliamentary control should be exercised. Therefore, I suggest that we should dissociate the matter of Parliamentary control from the question of definition of a government company and the limited aspect in which we exercise that control, namely, through an audit by the Comptroller and Auditor-General. In that amendment, the hon. Member suggested that government companies should be not only those for which there is a loan or a guarantee but enterprises which obtain loans or obtain investments from such companies. A time will come, it seems to me, when almost every company in this country will be a government company....

Shri T. S. A. Chettiar (Tiruppur): It must be majority of shares—51 per cent.

Shri C. D. Deshmukh: It has nothing to do with majority at all. The other amendment is that it should be reduc-

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ed to 30. Therefore, what I gather is this. One example was given—IISC0. God knows in how many companies it has shares; and all those companies should be regarded as government companies. If Government has placed a loan at the disposal of the Industrial Credit and Investment Corporation, as we have, because it is created for the purpose of underwriting and giving loans to other companies, then all those companies, without a single direct investment, should be regarded as government companies. I say that it is a *reductio ad absurdum* of the theory of parliamentary control. I would be the last person to resist any suggestion that Parliament must not relax control, and whatever methods are open to Government they must make the executive to adopt—whether it is an annual report, whether it is a report by the Comptroller and Auditor-General, whether there are any other special report. After all, the Industrial Finance Corporation is not a government company according to the definition that we have given. Originally when it was started, it would have been even a government company under the amendment suggested by the hon. Member.

Shri K. K. Basu: Then, some other amendment would have been there.

Shri C. D. Deshmukh: That is the trouble, because it is not on the merits of the thing but because an amendment has to be given. If it is a matter of principle, I say that in that case 20 per cent. was held by the Reserve Bank which was not then owned by the Government. It was in 1948. Then the nationalisation of the Reserve Bank came in, and the rest of it was held by banking companies, insurance companies and co-operative societies, and yet we have lost no opportunity—we have done it rightly—to see that where Government money is involved there is a guarantee there. Therefore, it is open to us to take every opportunity of criticising the working and operations of a company like that or a corporation like that. I agree with the hon. Member that it is possible to over-strain the meaning of autonomy. I am not myself a great believer in autonomy so far as Parliament is concerned, and that was the feeling, if I may say so, with the Damodar Valley Corporation at one time. There was a feeling in their minds that "since Parliament has given us this power, we are autonomous." If I may give a personal reminiscence, I came to Delhi in November 1949, and then the Damodar Valley Corporation and the Ministry of Irrigation and Power were not on speaking terms, because the D.V.C. claimed that they were autonomous. Since then much water has flowed under the bridge and we have the Parliament.....

Shri K. K. Basu: The bridge was raised after the water had flowed?

Shri C. D. Deshmukh: After the turbid water passed under the bridge, limpid water has started flowing under the bridge. That is why I am mentioning this, and I do not wish to mention anything which is a current difficulty. Those difficulties are all over and an understanding has been reached, and I am at one with the hon. Member when I say that all these corporations, autonomous bodies and so on should be subjected to the control of Parliament, that Parliament is supreme and must exercise its control. Parliament must know of every little wisp or trace of money that goes anywhere. After all, we give grants to thousands of institutions. Are they government institutions? Do we say that a school for deaf and dumb, which receives Rs. 10,000 as grant, is a government institution? Something must be done and the Auditor-General must go and audit the accounts of that institutions in that case.

Shri K. K. Basu: But you still insist on certain checks by the Government. You have a set of rules within which they must come. It is not just giving them the money and leaving them to do what they like.

Shri C. D. Deshmukh: The hon. Member has made a point for me. Therefore, apart from law, Government must know and secure its interests. I quite agree that even if Rs. 10,000 is mis-spent, that particular Ministry or Government is responsible, and if it then appears that these grants are wasted, certainly Government might show that it is taking reasonable care to follow them up. Therefore, Government may make a stipulation that whoever receives a credit or a loan or a guarantee must agree to an audit by the Comptroller and Auditor-General. That is a matter to be agreed between the recipient and the Government. Similarly it seems to me that it would be a matter to be agreed upon and it is usually done that way by the appointment of a Government director or audit by the Comtroller and Auditor General. In such cases where we have no predominant interest, we still have or could have a stipulation by which the Comptroller and Auditor-General could audit the accounts. Therefore, we should dissociate that general issue from the question of framing a definition of what is a government company. I suggest that since we have come down from 80 to 51, we really have made all reasonable requirements, that is to say, if there is a Government majority and if there is an effective Government control, it should be regarded as a government company. The use of those words will be rightly understood, I think.

When we brought this list before the Joint Committee, the Joint Committee did not go into the details of it. There it is that we lay our cards on the table. We said that here are instances in which we feel that the law would not apply, but when it was reduced to 51, then it is quite obvious that the original list could not have stood. In other words, even if the Joint Committee had thought of including a list in a schedule for instance—not in a main section—it could not have given that list, and I readily accept the criticism that when there are minorities, obviously there must be some protection against oppression. Prospectus and other things have got meaning because certain representations are made by a large number of people—thousands of people and there is no reason why the State companies should be exempted. All I can say is that it is not the intention. Our difficulty—I think the difficulty of the Joint Committee also was how to apply all these to companies where Government participation may be from 51 to 100 per cent. In the case of 100 per cent., hon. Members who have generally opposed this generally agree that certain exemptions must be made. There are exemptions in other countries where when a nationalisation law was passed, exemptions had to be given because the thing was absurd on the face of it. Arranging the affairs in the way of rather a department is another matter. Whatever Government's motives may be I suggest there is no reason to impugn it. The principal reason is that there should not be departmental interference in the day-to-day affairs in which case there is bound to be red tape. On the one hand there is complaint of red tape but on the other there could not be a complaint against this expedient by which we want to insulate the day-to-day work of these companies from interference of the Ministries. That is the only reason why we are forming these companies. In such companies where there is a majority of Government shares, we want that we should have some way by which we can distinguish between a company with, say 80 or 90 per cent. Government holding and a company with 51 per cent. If I had any right means of generalising by sections 197 or 396 or whatever it is I shall be very happy to have such a provision. I myself think from whatever thought I have given to this matter that it is going to

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be extremely difficult and therefore we are left only to this expedient of exemption.

I am very glad that hon. Member who spoke last had exonerated the Finance Minister from any sinister motive to bureaucratise these institutions. I do not think that anything could be gained by doing so.

I was in agreement with certain hon. Members who have suggested amendments here that the proper remedy is to bring the matter before Parliament. If every time the matter comes before Parliament, where is the danger? We bring the matter—every single matter—where a notification is to issue before the sovereign body and we will place all our notifications before them. We will say that for these reasons we think that the following sections will not apply—not only not apply but will appear ridiculous if you apply them. I have taken notice of the argument of an hon. Member: if something does not apply let it not apply. If you cannot have complaints of members, let there be no members to complain? On the other hand there are certain other matters where we cannot comply with the letter of a particular provision. We shall bring all those facts before the Parliament. Therefore, I am prepared to accept the amendment.

The amendment is in two forms. One is No. 1167 and the other, amendment Nos. 1171 and 1172. There are two forms in which these amendments have been given. We prefer the latter one—namely, 1171 and 1172, but in a slightly changed form which I will read:

> "A copy of every notification proposed to be issued under subsection (1) shall be laid in draft before both Houses of Parliament for a period of not less than 30 days while they are in session and if, during that period, either House disapproves of the issue of the notification or approves of such issue only with modifications, the notification shall not be issued or as the case may require, shall be issued only with such modifications as may be agreed upon by both the Houses."

This is a redraft of that and I think this will secure all legitimate purposes and all legitimate interests. I shall hand this over.

Shri N. C. Chatterjee: Do kindly make it clear. This notification will not be issued unless it is placed before the Parliament. Is it?

Shri C. D. Deshmukh: I read out:

> "A copy of every notification proposed to be issued under subsection (1) shall be laid in draft before both Houses of Parliament....shall be issued only with such modifications as may be agreed upon by both the Houses."

It is as if you are legislating on every occasion and I think that should meet all legitimate demands.

The next point is about taking advice before we draft such a notification. I accept the amendment of Shri T. S. A. Chettiar—No. 114. We have already passed clause 410 and all matters connected with the Advisory Commission—what should be referred to them and what not—were all discussed when we discussed that clause and passed it. Nevertheless, I give an assurance to be recorded here that we shall consult the Advisory Commission before we draft such a notification and place it before the House and I think the House should be satisfied and content with the arrangement that we are proposing.

There is no question of trying to secure any special standard of morality, concessional code of ethics for public sector nor need we embitter the relations between the two sectors by making charges and reading out Scaife's report (*Interruptions*). There is a lot of controversy about that particular report; neither are the facts

very correct. Of course that is for the Production Ministry; its representative is here and I have no doubt that we shall have plenty of opportunities to deal with this matter sometime or the other. But all the facts are not necessarily correct. There was a statement made that as soon as one firm at Harihar started producing these items Government started producing them at Jalahalli factory and it was the most amoral or immoral thing that has come to the notice. All that is a very unbalanced and an unrestrained kind of statement. The actual idea of the Government machine tool factory had its germ long time ago before the factory at Harihar started production. I have visited both and I have had discussions with both the Government—Production Ministry—as well as the people who run that factory. The difficulty is that by the time Government made up their minds, the capital was collected, the work started and the experts came, time rolled by as it does and in the meanwhile a preliminary meeting of all the machine tool manufacturers went to show that it would be all right and that there was enough and plenty of supply for everyone in the country. By the time all these were settled and the factory started—it is about to be inaugurated in October—they have started and their point is that Government should not manufacture those lathes which they were manufacturing. Since then, again the scene has changed. As a result of this they have reduced their own production target to 400. Now the point I was going to make is this. In the meanwhile we are thinking in terms of larger industrialisation, a steel target of 4.5 million tons supporting light and heavy engineering industries and really it will take us all our ability in finding out what the demand for machine tools will be. I have no doubt that there will be a common production programme for all the machine tool manufacturers and ourselves. I am not sure if all of us will be able to meet the requirements.

Therefore, I would beg the House not to be carried away by that particular report. In any case it is not a matter of abuse or malpractice and the use of the word 'immorality' is a very strong one in this context. I leave the matter there.

I think the House will be satisfied with the amendment that has been redrafted and that I am going to accept in this matter.

2 P.M.

Then the other question is about the reviewing commission. Here again, I must thank the hon. Member opposite for his support. I really do not understand what a reviewing commission is. Only the other day I gave the composition of the Advisory Commission. I said that it should be a Judge at the head or a public man with adequate experience. I said that there should be a chartered accountant—the President or one of the ex-Presidents, I should suggest, if the President is not available. I also said that there should be a labour representative, a top-ranking man. The hon. Member is not here—he has sent me a note saying that he is sorry he would not be here as he has to go somewhere—and I regret that he is not here to listen to what I say. He said that perhaps one of the members ought to be a chartered accountant. Now, I really cannot understand how one chartered accountant would report on the work of another chartered accountant indirectly; because, the House will remember that we have already promised to accept almost every recommendation of the Advisory Commission—·005 per cent., I said, that was our record of rejection in the past and, may be, we might better it. In such a case this reviewing commission's report, if it is damaging, would certainly bear unfavourably on the work of the Advisory Commission and I do not think any self-respecting person would elect to be a member of the Advisory Commission if at the end of the year his work is going to be reviewed by a reviewing commission, nor I think would any self-respecting Minister

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agree to the work of the Central Government being reviewed by a reviewing commission which has to report to itself within three months of the receipt of the annual report which it has prepared. I do not like using strong words but I think the conception is absurd and the idea is absurd and if at all there is a review necessary it must come on the initiative of the Parliament. If Parliament were to say: "Well, we have studied all these reports; we have discussed them from time to time, but we are not satisfied that the enterprises in the public sector are doing very well; we would like a commission to be appointed to go into this whole matter," that is a different issue. That is not arranging for everything as if everything is going to be wrong. Reviewing committees are usually committees of experts who are appointed from a sort of higher or more comprehensive sphere. For instance there is a reviewing committee to review the work of our national laboratories because our own scientists say: "We should like judgment of international scientists in our field—whether it is physics or anything else—and they should come and tell us what they think of the research that is being carried on." The two fields are different. They have experience which is not confined to this country and I think that is a very valuable thing. But, what is suggested here is covering the same ground by another body. Therefore, I am strongly opposed to this amendment in regard to the appointment of a reviewing commission.

I think I have dealt with the two major issues on which hon. Members had some observations to make. Now, I come to some of the least difficult points. There is the question of clause 619 dealing with payment of compensation in cases of frivolous or vexatious prosecution. There is an amendment which seeks to make it "false and frivolous or vexatious"; that is to say, language similar to section 250 of the Criminal Procedure Code. I am prepared to accept this amendment on the ground that, as between two strangers one cannot be punished under section 250 of the Criminal Procedure Code unless the magistrates come to the conclusion that not only was he frivolous or vexatious but also false too. As between members of the same family—as the members would be, in regard to a member of a company and the company—it is not sufficient, therefore, merely to say that frivolous or vexatious complaints are enough to bring one within the mischief of this, because within a family a little more is required. Therefore, I think it is only right that .....

Pandit Thakur Das Bhargava: Even outside the family according to the Criminal Procedure Code, both things must be proved—falsity as well as the other thing.

Shri C. D. Deshmukh: That is what I say. I accept that. Therefore, it is wrong to expose members of a family to the danger of paying compensation and so on merely on the ground that something was frivolous or vexatious. I do not doubt for a moment that the magistrates or the courts will come to a proper conclusion that "frivolous and vexatious 'would be' untrue, frivolous and vexatious." But, what I say is, that is not sufficient. An ordinary member really will not be able to find out when he is being frivolous and when he is vexatious. After all he can only have a perspective of an individual. He won't have the perspective of the company and what the company may regard as frivolous and vexatious may be a genuine complaint in the eyes of a small shareholder. Therefore, I accept it—I do not know what the amendment number is, it is 87 or 887.

Pandit Thakur Das Bhargava: It is the latter one.

The Minister of Revenue and Civil Expenditure (Shri M. C. Shah): According to one list it is 887.

Shri C. D. Deshmukh: In the new yellow list it is 887 and in the white list it is 87.

Shri C. C. Shah (Gohilwad-Sorath): They have issued a correction correcting 87 into 887.

Shri C. D. Deshmukh: Then it must be 887. I accept that. With regard to the rest, I am sorry I cannot accept the other amendments suggested, but I must refer to one, and that is with regard to 25 per cent. representation of employees on Government companies. We have been bandying arguments in this matter and I have been saying that this is a matter which has to be decided; yet, there is one observation I should like to make and that is: on the one hand the hon. Member wants a very wide and expanded definition of Government companies and on the other he wants 25 per cent representation. In other words, as I said, a time may come when every company in this country would be a Government company under his definition. Therefore, what he is suggesting, that at least in Government companies the Government should show to be a model employer....

Shri K. K. Basu: Under existing rules, in the Government companies—at Sindri and others and even in the Rourkela plant—you appoint a director who is supposed to represent the labour. What I have suggested is that it should be specifically made clear—even if you cannot accept the principle of 25 per cent. for the time being—that at least that one director should be elected by the employees.

Shri C. D. Deshmukh: In which companies?

Shri K. K. Basu: On all the Government companies. My point is, in the Government companies you already have one director who is supposed to be representing labour but he is nominated.

Shri C. D. Deshmukh: If the meaning of the amendment is that, so far as Government companies—there is no definition of Government companies today....

Shri K. K. Basu: No.

Shri C. D. Deshmukh: ....and for the purpose of applying the Act one would have to define Government companies. One cannot say "Government companies as they are today" because that is an expression which cannot be interpreted.

Shri K. K. Basu: Now, as soon as this Act comes into being, Government companies can be more or less defined as having 51 per cent. shares or whatever it may be.

Shri C. D. Deshmukh: My point is, when Government companies will be companies with 51 per cent. shares and companies in which these companies have shares, then, as I have argued some time ago, the number of companies to which this would apply would be far more numerous than the what the hon. Member had in mind.

Shri K. K. Basu: That part you are not accepting. So far as extending the scope of Government companies is concerned, you are not willing to accept that part. But my point is, even in the companies which are predominantly run or owned by the Government, like Sindri or even the Orissa steel plant, there is a director who is supposed to be representing the labour. What I say is, he should not be a nominee of the Government, but he should be an elected representative of the employees.

Shri C. D. Deshmukh: I suppose, Madam, that is an observation to be taken notice of, but it does not really help us for the purposes of this Bill. There may be some point in what the hon. Member is suggesting. He is referring to the mode of selecting an employees' representative, where there is already a director. That is a point which can be taken notice of executively.

Now, in regard to the amendment No. 1144 to clause 619, I should like to accept the amendment.

Shri C. C. Shah: I think those words occur in both sub-clauses (2) and (3) of clause 619.

Shri C. D. Deshmukh: We accept the amendment in both the places.

Pandit Thakur Das Bhargava: These are the words taken from the Criminal Procedure Code.

Shri C. D. Deshmukh: Yes, from section 250. It should be "was false and either frivolous or vexatious". That is to say, it should be false, and then, one or the other—either frivolous or vexatious.

Pandit Thakur Das Bhargava: My amendment 1144 refers to those words only at one place. A similar change may be made in the other place also.

Shri M. C. Shah: Yes. On page 287, line 17.

Shri C. D. Deshmukh: Yes: there also, *for* "was frivolous or vexatious" *substitute* "was false and either frivolous or vexatious". We accept the amendment in both the places.

Now, I have given thought to the various other verbal amendments which have been suggested by Shri Kamath. I am sorry I am not able to accept them. His amendment No. 1162 suggests a sort of improved drafting. It does not commend itself to me. The objective is the same. "Nothing in this Act shall affect the provisions of any special law...." etc., convey the same meaning as ours. The meaning is the same, but we still think that our drafting is better.

In amendment No. 1160, Shri Kamath has suggested an extension of the clause with the words, "by publishing the alterations in the Official Gazette". It seems a very simple amendment but I should like to explain why I cannot accept it. He says that you should publish the alterations in the Official Gazette. His reason is that people ought to know what the old rules are and what the new rules are and where the change has been made. This reasoning is of such general application that either you should have this in all laws and for all rules and regulations, which should be a very terrific business, or not at all. In other words, it will double the volume of every rule and regulation that we issue. It seems to me that the public must get used to comparing what the requirements of the old rules are and what the requirements of the new rules are. Therefore, I think we should be accepting a very troublesome principle if we were to accept this particular amendment.

Then, I frankly confess that I have not understood the point of his amendment No. 1161. It is not clear to us why the Calcutta, Madras and Bombay High Courts are proposed to be kept out of the rule-making power of the Supreme Court under this clause. Sub-clause (3) of clause 634 makes it abundantly clear that until rules made by the Supreme Court, "all rules made by any High Court on the matters referred to in this section and in force at the commencement of this Act shall continue to be in force in so far as they are not inconsistent with the provisions of this Act".

There is another amendment which refers to the rules under clause 634 and says that the rules should be laid before the House in the same way as the notifications, for exempting government companies. That also, I think, will hold up matters a lot, because there will be a large body of rules under the company law, and I do not think there is the same necessity to have the rules placed before Parliament and to have the prior approval of the rules, before they are issued. Therefore, I am not able to accept that amendment either. That is all I have got to say.

Shri K. K. Basu: In your amendment No. 1067, the auditor of a government company shall be appointed or re-appointed by the Central Government after consultation with the Comtroller and Auditor-General of India. You may not accept his advice,

if this is so. So, I would like to have my amendment No. 1150, which is an amendment to amendment No. 1067, accepted.

Shri C. D. Deshmukh: These amendments of ours are generally on the advice of the Comptroller and Auditor-General. These amendments themselves have been put in on his advice. It is possible that in some special matters, we may have some disagreement with him. Usually, after discussion, those disagreements are ironed out, but I do not think it will be right for us to say, "on the advice". The implication is that, "on the advice" means Government is bound by the advice of the Comptroller and Auditor-General. But if we do not accept it, we are answerable to the House. We do not accept anyone as sovereign except the Parliament.

Shri K. K. Basu: This is only in respect of the appointment of the auditor. Naturally, the Constitution will come in so far as the Auditor-General is concerned, as regards his removal, and otherwise, he is supreme. When you go through the whole gamut of this Bill, you will find that what we guarantee is that the auditor should be an independent person and the audit should be done by an independent auditor. So, naturally, the Auditor-General, being in charge of the audit of the Government, should have the last say so far as the appointment of an auditor is concerned.

Shri C. D. Deshmukh: Do you mean the auditor to the Government companies? If so, I do not mind that.

Shri K. K. Basu: That is what my amendment says, and the Government amendment No. 1067 refers to the Government companies.

Shri C. D. Deshmukh: So, you want the words "on the advice of".

Shri K. K. Basu: Yes.

Shri C. D. Deshmukh: I accept it.

Mr. Chairman: The question is:

"That clause 610 stand part of the Bill."

The motion was adopted.

Clause 610 was added to the Bill.

Mr. Chairman: There are some amendments to clause 611. I shall put them.

The question is:

Page 285—

for clause 611, *substitute*:

"611. *Definition of 'Government Company'*.—Government Company means—

(a) any company to which the Central Government, or a State Government or Governments or a Government Corporation, either alone or in combination with others mentioned above, have contributed finance in the shape of share capital, debenture capital or loans and advances of an aggregate value exceeding 50 per cent. of the total of the paid up share capital and debenture capital of the company; and

(b) any subsidiary of a Government company or institution.

Explanation.—For the purpose of this section, a Government Corporation shall mean any body corporate established by an Act of the Central or State legislature."

The motion was negatived.

Mr. Chairman: The question is:

Page 285—

for clause 611, *substitute*:

"611. 'Government company' means any company—

(a) not less than half of whose subscribed share capital is held by the Government, or

(b) to which the Government has made advances exceeding half the total amount of the loans taken by the company:

Provided that sub-clause (b) above shall not apply where the total loan amount is less than one-fourth of such subscribed capital.

[Mr. Chairman]

Explanation. — Government means the Central Government, State Government or both together or any Government company."

The motion was negatived.

Mr. Chairman: The question is:

Page 285, line 14—

for "fifty-one per cent." *substitute* "eighty per cent."

The motion was negatived.

Mr. Chairman: The question is:

Page 285, line 14—

for "fifty-one per cent" *substitute* "thirty per cent."

The motion was negatived.

Mr. Chairman: The question is:

Page 285, line 17—

add at the end:

"or in which the Government is a guarantor for any loan or rate of interest."

The motion was negatived.

Mr. Chairman: I shall put clauses 611 and 612 together.

The question is:

"That clauses 611 and 612 stand part of the Bill."

The motion was adopted.

Clauses 611 and 612 were added to the Bill.

Mr. Chairman: I now take up clause 613. There is Government amendment No. 1067. Then again, there are Government amendments Nos. 1068 and 1069.

Shri K. K. Basu: Government have accepted my amendment No. 1150 which is an amendment to Government amendment No. 1067.

Mr. Chairman: I am putting it first.

The question is:

In the amendment proposed by Shri C. D. Deshmukh, printed as No. 1067—

for "after consultation with" *substitute* "on the advice of"

The motion was adopted.

Mr. Chairman: So, I shall put amendment No. 1067, incorporating Shri Basu's amendment.

The question is:

Page 285—

after line 24, *add*:

"(1A) The auditor of a Government company shall be appointed or re-appointed by the Central Government on the advice of the Comptroller and Autditor-General of India."

The motion was adopted.

Mr. Chairman: The question is:

Page 285, line 33 —

for "such persons" *substitute* "such person or persons."

The motion was adopted.

Mr. Chairman: The question is:

Page 285, line 34—

add at the *end*:

"and for the purposes of such audit, to require information or additional information to be furnished to any person or persons so authorised, on such matters, and in such form, as the Comptroller and Auditor-General may, by general or special order, direct."

The motion was adopted.

Mr. Chairman: I shall now put the other amendments to clause 613.

The question is:

Page 285—

for clause 613, *substitute:*

"613. (1) Without prejudice to the provisions of sections 223 to 232 it shall be lawful for the Central Government to authorize an independent audit of Government companies by persons to be specified by notification in the official Gazette.

(2) Copies of the reports of such persons shall be placed before the annual general meetings of the companies concerned and shall also be periodically laid before Parliament by the Central Government."

The motion was negatived.

Mr. Chairman: The question is:

Page 285, line 28—

after "shall be" *insert* "compiled and".

The motion was negatived.

Mr. Chairman: The question is:

Page 285, line 31—

add at the *end:*

"being instructions which shall conform with the best commercial standards."

The motion was negatived.

Mr. Chairman: The question is:

Page 285—

after line 41, *add:*

"(5) The auditor's report together with the comments of the Comptroller and Auditor-General shall be placed before Parliament."

The motion was negatived.

Mr. Chairman: The question is:

Page 285, *after* line 41, *add:*

"(5) The annual report, the balance sheet the Auditor's report along with the comments of the Auditor General shall be submitted to the Parliament.

(6) The annual budget and the progress report of the previous year of all Government companies shall be submitted to the Parliament."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 613, as amended, stand part of the Bill."

The motion was adopted.

Clause 613, as amended, was added to the Bill.

Mr. Chairman: The question is:

Page 285—

after line 41, *insert:*

"613A. *Government companies to have twenty-five per cent. directors from amongst the employees.*—In the case of a Government company, twenty-five per cent. of the total number of directorships or two, whichever number is greater, shall be elected from amongst the employees of the company in the manner prescribed by the Central Government."

The motion was negatived.

Mr. Chairman: I shall now put amendment No. 1070 and amendment Nos. 1171 and 1172 as redrafted, to clause 614.

Shri C. D. Deshmukh: Amendment No. 1070 is a consequential one.

Mr. Chairman: The question is:

Page 285, line 45—

for "sections 612 and 613" *substitute* "sections 612, 613 and 631A."

The motion was adopted.

Amendment made: Page 286—

for lines 4 to 6, *substitute:*

"(2) A company of every notification proposed to be issued under sub-section (1) shall be laid

[Mr. Chairman]

in draft before both Houses of Parliament for a period of not less than thirty days while they are in session and if within that period either House disapproves of the issue of the notification or approves of such issue only with modifications, the notification shall not be issued or as the case may require, shall be issued only with such modifications as may be agreed on by both the Houses."

[*Shri C. D. Deshmukh*]

Mr. Chairman: I shall now put the other amendments.

The question is:

Page 285, line 45—

after "613" *insert* "and 613A".

The motion was negatived.

Mr. Chairman: The question is:

Page 286—

after line 3, *insert*:

"Provided that before doing so, the Government shall consult the Advisory Commission constituted under section 409 of this Act."

The motion was negatived.

Mr. Chairman: The question is:

Page 286—

after line 3, *add*:

"Provided that no such notification shall be issued unless the subject matter of the notifications have been referred to the Advisory Commission and the Government have considered that advice of the Advisory Commission."

The motion was negatived.

Mr. Chairman: The question is:

Page 286, line 6—

add at the *end*:

"and Parliament will be competent to make such modification as it likes within a period of one month from the time such notification is laid at the Table of the House."

The motion was negatived.

Mr. Chairman: The question is:

Page 286—

after line 6, *add*:

"(3) No such notification shall be issued unless a resolution containing the purport of the proposed notification has been moved and adopted by both Houses of Parliament."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 614, as amended, stand part of the Bill 55."

The motion was adopted.

Clause 614, as amended was added to the Bill.

Mr. Chairman: The question is:

Page 286, line 15—

after "company" *insert*:

"or on the application of the registered union where there is any."

The motion was negatived.

Mr. Chairman: The question is:

Page 286, line 16—

add at the *end*:

"*suo motu* or on the application of not less than 50 employees."

The motion was negatived.

Mr. Chairman: The question is:

That clause 615 stand part of the Bill.

The motion was adopted.

Clause 615 was added to the Bill.

Mr. Chairman: The question is:

"That clauses 616 to 618 stand part of the Bill."

The motion was adopted.

Clauses 616 to 618 were added to the Bill.

Mr. Chairman: I shall now put amendment No. 1144, as redrafted with a new number in respect of clause 619.

The question is:

Page 287—

(i) line 7 *for* "was frivolous or vexatious" *substitute* "was false and either frivolous or vexatious;" and

(ii) line 17, *for* "was frivolous or vexatious" *substitute* "was false and either frivolous or vexatious".

The motion was adopted.

Mr. Chairman: I shall now put the other amendment.

The question is:

Page 287, line 7—

for "frivolous or vexatious" *substitute* "false and frivolous or vexatious."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 619, as amended, stand part of the Bill."

The motion was adopted.

Clause 619, as amended was added to the Bill.

Mr. Chairman: The question is:

"That clauses 620 and 621 stand part of the Bill."

The motion was adopted.

Clauses 620 and 621 were added to the Bill.*

Mr. Chairman: I take it that the amendments to clauses 622 to 624 are not pressed. I shall now put clauses 622 to 629 together.

The question is:

"That clauses 622 to 629 stand part of the Bill."

The motion was adopted.

Clauses 622 to 629 were added to the Bill.

Mr. Chairman: I shall now put amendment Nos. 1071, 1072, 1073 and 1074 to clause 630. They are all Government amendments.

The question is:

Page 290, line 23—

omit "225".

The motion was adopted.

Mr. Chairman: The question is:

Page 290, line 24—

after "268" *insert* "273(2)".

The motion was adopted.

Mr. Chairman: The question is:

Page 290, line 25—

after "345" *insert* "346(2)".

The motion was adopted.

Mr. Chairman: The question is:

Page 290—

for line 26, *substitute*:

"409, 410(b), 446, 604, 608, 614, 631, 632 and 633."

The motion was adopted.

Mr. Chairman: The question is:

"That clause 630, as amended, stand part of the Bill."

The motion was adopted.

Clause 630, as amended, was added to the Bill.

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* In part (ii) of sub-clause (1) of clause 621, line 16, the words "and time", were inserted after the words "at a place", as patent error under the direction of the Speaker.

Mr. Chairman: I take it that amendment No. 1157 to clause 631 is not pressed.

The question is:

"That clause 631 stand part of the Bill."

The motion was adopted.

Clause 631 was added to the Bill.

Mr. Chairman: I am now putting Government amendment No. 1075.

The question is:

Page 290—

after line 35, *added*:

"Annual reports on Government Companies

631A. *Annual reports on Government companies to be placed before Parliament etc.*—(1) in addition to the general annual report referred to in section 631, the Central Government shall cause an annual report on the working and affairs of each Government company to be prepared and laid before both Houses of Parliament together with a copy of the audit report and any comments upon, or supplement to, the audit report, made by the Comptroller and Auditor-General of India.

(2) Where any State Government is a member of a Government company, the annual report on the working and affairs of the company, the audit report, and the comments upon or supplement to the audit report referred to in sub-section (1), shall be placed by the State Government before the State Legislature or where the State Legislature has two Houses, before both Houses of that Legislature.

631B. *Validation of registration of firms as members of charitable and other companies.*—Any firm which stood registered at the commencement of this Act, as a member of any association or company licenced under section 26 of the Indian Companies Act, 1913 (VII of 1913) shall be deemed to have been validly so registered with effect on and from the date of its registration."

The motion was adopted.

New clauses 631A and 631B were added to the Bill.

Mr. Chairman: I take it that amendment No. 1160 to clause 632 is not pressed.

The question is:

"That clause 632 stand part of the Bill."

The motion was adopted.

Clause 632 was added to the Bill.*

Mr. Chairman: The question is:

Page 291—

lines 18 and 19—

for "each House of Parliament" *substitute* "both Houses of Parliament."

The motion was adopted.

Mr. Chairman: I take it that amendment No. 1174 is not pressed.

The question is:

"That clause 633, as amended, stand part of the Bill."

The motion was adopted.

Clause 633, as amended, was added to the Bill.

Mr. Chairman: I take it that amendment No. 1161 to clause 634 is not pressed.

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*In the proviso to sub-clause (2) of clause 632, line 3, the words "or addition", were omitted as patent error under the direction of the Speaker.

The question is:

"That clause 634 stand part of the Bill."

The motion was adopted.

Clause 634 was added to the Bill.

Mr. Chairman: The question is:

Page 292—

lines 26 and 27—

omit "to the extent specified in the fourth column."

The motion was adopted.

Mr. Chairman: The question is:

"That clause 635, as amended, stand part of the Bill."

The motion was adopted.

Clause 685, as amended, was added to the Bill.

Mr. Chairman: The question is:

Page 292—

after line 27, insert:

"635A. Nothing in this Act shall affect the provisions of any special law relating to any particular types of companies, and compliance with such law by companies governed by it shall be deemed to be compliance with the provisions of this Act."

The motion was negatived.

Mr. Chairman: The question is:

"That clauses 636 to 649 stand part of the Bill."

The motion was adopted.

Clauses 636 to 649 were added to the Bill.*

Clauses 273, 516, 516A and 609A

Mr. Chairman: The House will now take up consideration of clauses 273, 516, new clause 516A and new clause 609A which had been held over.

Shri M. C. Shah: To this clause we are accepting an amendment No. 128 already moved:

Page 142, line 18—

after. "offence" *insert* "involving moral turpitude".

We have given notice of another amendment No. 1170.

I beg to move:

Page 142—

(i) line 21, *omit* "or any firm in which he is a partner"; and

(ii) line 23, *for* "or the firm" *substitute* "whether alone or jointly with others."

Shri K. K. Basu: How can we move an amendment now? These clauses were discussed and only voting was held over. How is it possible to move a basic amendment now?

Shri M. C. Shah: The first one was already moved by Shri Rane; the other one was circulated.

Pandit Thakur Das Bhargava: May I submit that I had given notice of an amendment similar to No. 128 You should either be logical and accept all, or not accept any.

Shri C. D. Deshmukh: The Hon. Member is perhaps referring to clause 335. There is nothing that can be done about it, because it was not left open.

Pandit Thakur Das Bhargava: If there is a mistake, it can be rectified even now.

Shri C. D. Deshmukh: It is not a mistake. On merits I see the managing agents may be different. We are talking of directors and others. On merits we may join issue with the hon. Member. I am taking the point that clause 335 is already finished.

Mr. Chairman: The two amendments under consideration are 128 and 1170. Both are to clause 273. Since

*In clause 640, lines 20 and 21 the words "enactment of this Act", were substituted by the words "enactment in this Act", as patent error under the direction of the Speaker

[Mr. Chairman]

the clause was postponed they are in order.

Shri K. K. Basu: Theoretically they may be in order. The clauses were discussed threadbare and only voting remains now. How can the Government move a new amendment?

Shri M. C. Shah: This is just to remove a patent inconsistency.

Shri K. K. Basu: If it takes seven days for the Minister to remove a patent inconsistency and that with the help of the Official Gallery, how long do you expect the other Members to take?

Shri Bogawat (Ahmednagar South): So long as the Chair holds an amendment to be i norder, why should it not be admitted?

Mr Chairman: I hold the amendments are in order.

[SHRI BARMAN *in the Chair.*]

Shri K. K. Basu: Is there an additional new Minister? We find Shri Morarka there. There are now Ministers of so many affairs, that we do not know whether there is a Minister for Company Affairs.

Mr. Chairman: I shall now put the amendments to vote.

The question is:

Page 142, line 18—

after "offence" *insert* "involving moral turpitude".

The motion was adopted.

Mr. Chairman: The question is;

Page 142—

(i) line 21, *omit* "or any firm in which he is a partner"; and

(ii) line 23 *for* "or the firm" *substitute* "whether alone or jointly with others"

The motion was adopted.

Mr. Chairman: The question is:

"That clause 273, as amended, stand part of the Bill."

The motion was adopted.

Clause 273, as amended, was added to the Bill.

Shri M. C. Shah: You may put to the House clause 516. Then, we can take up 516A.

Mr. Chairman: The question is;

"That clause 516 stand part of the Bill."

The motion was adopted.

Clause 516 was added to the Bill.

Shri M. C. Shah: Now, the new clause 516A may be put to the House.

Mr. Chairman: The question is....

Shri K. K. Basu: Is it amendment No. 1147? I am told that there is a further draft. Is it the old draft that you are putting to the House.

Shri M. C. Shah: We have got a revised draft. We had circulated an amendment. Only one word 'Official Liquidator' has been omitted.

Shri C. D. Deshmukh: This is a new clause for giving power to the liquidator to make a report similar to a report that an official liquidator can make.

Mr. Chairman: The point is whether it is amendment No. 1147 as it was.

Shri C. D. Deshmukh: The word 'Official Liquidator' has been omitted in consultation with Shri Kamath.

Mr. Chairman: I should like to read it out.

Shri K. K. Basu: They should have given us some more copies at least.

Shri M. C. Shah: We have already circulated. The wording was 'Official Liquidator or Liquidator'. Now

after consulting the Law Ministry, we have put in clause 516A like this:

"516A. Application of liquidator to court for public examination of promoters....

Mr. Chairman: I shall read it out.

Page 241—

after line 37, *insert:*

"516A. *Application of liquidator to Court for public examination of promoters, directors, etc.*— (1) The liquidator may make a report to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the Company or by any officer of the Company in relation to the company since its formation; and the Court may, after considering the report, direct that that person or officer shall attend before the Court on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.

(2) The provisions of sub-sections (2) to (11) of section 475 shall apply in relation to any examination directed under sub-section (1) as they apply in relation to an examination directed under sub-section (1) of section 475 with references to the liquidator being substituted for references to the Official Liquidator in those provisions."

Shri K. K. Basu: I would like to know what is the idea of dropping out the word "Official Liquidator"?

Shri Rane: It is provided in clause 475.

Shri K. K. Basu: After clause 516, when you are making a new clause, you are dropping this word. Is it because it is covered by clause 475 or is it something else? You said that you have consulted the Law Ministry. What is that?

Shri M. C. Shah: As a matter of fact, yesterday, it was pointed out by some Members that this clause 516A as was circulated was not necessary in view of clause 475. Therefore, we consulted the Law Ministry. The Law Minister said that the Official Liquidator comes under clause 475 and so in clause 516A the Official Liquidator may be dropped, and only liquidator may be kept. As I said the other day, I accept the principle of Shri Kamath's amendment. We wanted to have it redrafted. In clause 516, it cannot fit in. Therefore, this clause 516A has been brought forward.

Shri K. K. Basu: In clause 516A, you are giving powers to liquidators other than Official Liquidator, more or less on the lines of clause 475. Official Liquidator comes under clause 475. That is the whole thing.

Shri M. C. Shah: Yes.

Mr. Chairman: The question is:

Page 241—

after line 37, insert:

"516A. *Application of liquidator to Court for public examination of promoters, directors, etc.*—(1) The liquidator may make a report to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation; and the Court may, after considering the report, direct that that person or officer shall attend before the Court on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.

(2) The provisions of sub-sections (2) to (11) of section 475

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shall apply in relation to any examination directed under sub-section (1) as they apply in relation to an examination directed under sub-section (1) of section 475 with references to the liquidator being substituted for references to the Official Liquidator in those provisions."

The motion was adopted.

New clause 516A was added to the Bill.

Shri M. C. Shah: Then, we may take up clause 609A, a clause which was before the House. It has been redrafted.

Shri C. D. Deshmukh: I should like to explain the matter. I said yesterday in suggesting postponement of clause 609A that I should like to think over it in the light of observations made by hon. Members. I should like to make a little statement in regard to this to explain the position.

I referred yesterday to the Collection of Statistics Act which was passed in 1953. One thing that I have discovered is that this Act has not yet been brought into force although two years have elapsed since it was passed. There is some difficulty in regard to embodying in the rules to be made under it rules which had been made by the Labour Ministry in a similar Act of 1943. Some time has been taken in reconciling these internally in the Government. Although we expect that it will soon be finalised, in any case, I have come to the conclusion that that Act is entirely for a different purpose, that is to say, for the collection of statistics. Indeed, there is an officer designated under that Act. Therefore, the general policy would be to prescribe forms by the rules for the collection of various information required by the departments of Government which are interested in economic and cognate matters and to issue those forms to industrial or commercial concerns at large.

Mr. Chairman: Under that Act?

Shri C. D. Deshmukh: Under that Act. Therefore, it is essentially a statistician's Act. I have therefore come to the conclusion that that Act will not serve our purpose. What we want is an Act which will enable us to call for information which we require to administer this Act. Now, hon. Members will ask, are there not powers given under the Act itself for various purposes. The answer is, yes to a certain extent. The Registrar has been given powers to call for certain returns and so on. But, these are only *ad hoc* powers given for specific purposes. There are other purposes of the Act for which we have not got any means of eliciting information. Wide powers are proposed to be vested in the Government for exercising control over various matters relating, for instance, to the management and working of companies. We feel that precise information as to the working of companies will be required by the Government to enable us to discharge our responsibility by exercising these powers effectively and judiciously. General powers therefore for obtaining information will be required for these purposes. I shall give a few examples.

Under clause 323, the Central Government will have power to notify that companies engaged in a specified class of industry or business shall not have managing agents. Obviously, we shall require data relating to the companies engaged in a class of industry or business to enable us to take a decision in the matter. We may choose one industry after another. It would be very awkward if some particular unit refused to give us information, because that is not anything that concerns necessarily its own fortunes. Similarly, under clause 43 (5)(b), a prospectus will

be deemed to be untrue if certain relevant facts are omitted from it. Now, to enable Government to decide whether the prospectus is really untrue or not, it is necessary for us to ascertain the true facts from the company.

Under clause 325 we have to decide whether certain persons are fit and proper for purposes of appointment as managing agents. For this purpose it may be necessary for us to ascertain the details of working and management of the company with which the person concerned may be connected.

Under clause 236 we have the power to appoint inspectors to inspect the affairs of a company if in our opinion the business of the company is being conducted for a fraudulant or an unlawful purpose or in a manner oppressive to its members or where the management has been guilty of fraud, misfeasance or other misconduct or where the company has withheld essential information from the members. Here again, it is necessary for us to obtain from the company concerned all information that may require us to come to a decision.

Under clause 233, the Registrar has the power to call for information or explanation from a company for the purpose of deciding whether a fuller investigation is called for.

Where an inspector has been appointed, the directors and officers of the company are required to produce before them all the books and documents that he may require. It has been found from experience that in a number of cases the management of companies were agreeable rather to face the penalties prescribed for non-production of books and documents than face an investigation by producing the books and documents. It is necessary therefore that we should have directly the power to obtain the necessary facts from the companies and as a matter of fact, our experience has been that in a number of cases where inspectors were appointed, the management of the companies refuse to produce the books and documents before the inspectors. As a result, the investigation in those cases had practically to be abandoned. I have here the names of about seven companies which have behaved in this manner. And therefore, if we had the resources to secure further information from the companies then obviously we could have taken some effective step in the matter.

In one case, when the Registrar of a State asked for certain information about managing agencies at our instance through a circular letter addressed to several joint stock companies in that State, one Chamber of Commerce objected to this action. In another instance, when the Registrar of Companies asked from another company for particulars of their investments at our instance, the company declined to furnish the information unless the Registrar undertook not to use the information for the purpose of section 137(1), that is for the purpose of any contemplated investigation.

So, in view of this unsatisfactory position we have now almost refrained from asking companies for information. It is true that in certain cases they do give information; for instance, the Commerce and Industry Ministry has been asking for information in regard to the employment of Indians in certain companies—not foreign companies, but subsidiaries and so on and so forth where foreign interests predominate—and they have supplied the information, but that is because they know that although the Statistics Act is not in force it could be brought into force and then they would expose themselves to the sanctions and penalties of that particular Act. Therefore, where information is of a general nature, it is usually easy to obtain it, but where it is a matter affecting the company itself and probably exposing it to the perils and

[Shri C. D. Deshmukh]

jeopardy of prosecution or whatever it may, or disciplinary action, there we have found it difficult to collect the information. That is why I think a special section for our purposes, and strictly for our purposes—not to find out what the labour situation is, not to find out what profits were made or any other purpose, but enable us to discharge our duties, the duties that have been cast on us by the company law we want an instrument, and this amendment, namely, the new clause 609A, purports to be that instrument.

Mr. Chairman: Modified or....

Shri C. D. Deshmukh: I have modified it a bit. I am explaining it.

Shri M. C. Shah: It has been given a new number—1201.

Pandit Thakur Das Bhargava: I would like the Minister to circulate it. He may circulate it even now, so that we may see it.

Shri C. D. Deshmukh: I am pointing out where the changes have been made. I am explaining that two changes have been made.

There was some objection taken to the use of the words "summary investigation". We thought we would soften it by using "summary inquiry". The new sub-clause (5) reads:

> "The Central Government may also, by order, direct a summary inquiry to be made by any person or persons named in the order—"

The rest is the same. That is one.

Then, we have taken notice of the criticism that foreign companies as defined in the Act should not be excluded. Since our purpose is to collect information for purposes of effectively administering the Act, I do not see why and where the Act applies to foreign companies or where the investigation of their affairs is necessary for carrying out our duties, we should not obtain information from them. A case in point is a Sterling company which is the managing agency of a company here, an Indian company. Now, supposing we are investigating the affairs of the Indian company and find it necessary in some connection—under 323 or 325 and so on—to obtain information which is available only with the managing agents, now, as managing agents they might feel that they are exempt from the operation of this 609A, and therefore I think it is right that we should include them within the scope of 609A, the object, as I said, being strictly to be able to discharge effectively the duties that have been cast on the Central Government by this Act as amended.

Now, therefore, we have added a sub-clause here, sub-clause (8). That is the second change we have made.

Shri K. K. Basu: Sub-clause (8) is already there.

Shri C. D. Deshmukh: It is substituted. Sub-clauses (5) and (6) have been combined into new sub-clause (5). Sub-clause (7) has been renumbered as (6), and (8) has been re-numbered as (7). What I am reading is a new one, which is (8).

Shri K. K. Basu: Sub-clauses (5) and (6) you have combined?

Shri C. D. Deshmukh: Yes. Only "summary inquiry" instead of "summary investigation".

Mr. Chairman: Sub-clauses (5) and (6) of the original one have been combined. The original amendment is 1146.

Shri C. D. Deshmukh: Instead of sub-clauses (5) and (6) we have now a new sub-clause (5) which more or less is of the same substance, but only instead of "investigation" we have "inquiry". And then, as I said, the other sub-clauses are re-numbered as

(6) and (7), and I am going to read out the eighth which is a new matter:

> "Where a body corporate incorporated outside India and having established an office within India carries on business in India, all references to a 'company' in this section shall be deemed to include references to the body corporate in relation and only in relation to such business."

3 P.M.

Pandit Thakur Das Bhargava: May I say a word in respect of this change from "investigation" to "inquiry". These two words have been defined in the Criminal Procedure Code. Investigation is always by some person other than the court, whereas an inquiry refers to an investigation by a court. For instance, we say 'police investigation', but 'court enquiry'. Here it is investigation by an inspector. So, there is no use changing the word here into 'inquiry'. After all it will not be discourteous if you use the word 'investigation', because you say that the powers of the inspector will remain unchanged in regard to clauses 239 to 245, and therefore all the consequences flow from the report of the inspector. So, there is no difference at all. I am glad that there is no difference, because I do not want that there should be any difference or discrimination. The only difference, therefore, is one of words. Instead of the word 'investigation', the word 'inquiry' is used. Does the hon. Finance Minister kindly agree with me that nothing will be gained by changing the word 'investigation' into 'inquiry'? I know that some persons raised an objection to this yesterday, and that is why you have not got the words 'summary investigation' today. But the word 'summary' may be regarded....

Shri C. D. Deshmukh: The word 'inquiry' has been defined in the Criminal Procedure Code, and therefore it pursues it throughout, wherever an inquiry has to be made. Here, for instance, we may say in economic matters an inquiry may be made. I am quite certain—although I cannot place my finger on it—that in hundreds of places we shall find the phrase 'and shall direct an officer to make an inquiry'. When the two words 'inquiry' and 'investigation' are used, it may be necessary to define the one as against the other. But where we are using the word 'inquiry' here, I do not think one can import the meaning of the definition given there.

Shri K. K. Basu: What are you gaining by this change?

Shri C. D. Deshmukh: Nothing except to mollify an eminent lawyer.

Shri K. K. Basu: Summary investigation or investigation or whatever it might be is restrictive in scope. Therefore, by changing the word 'investigation' into 'inquiry' what do you gain, except that you may be satisfying somebody who wanted it?

Pandit Thakur Das Bhargava: So far as the changing of the word is concerned, if the Finance Minister wants to use the word 'inquiry' I would not object to that, because I know that the word 'inquiry' has been used indiscriminately here, and the word 'investigation' also has been used indiscriminately, so that both the expressions mean the same thing.

Shri C. D. Deshmukh: I would choose the word 'inquiry'.

Pandit Thakur Das Bhargava: Then, we shall have the word 'inquiry'.

Now, what is the significance of the word 'summary'? So far as the other provisions relating to the inspector are concerned, the word 'summary' has not been used in them.

Shri C. D. Deshmukh: It was intended to save trouble. There is no taking of evidence, and so on. You know all these things. 'Summary' is 'Summary'.

Pandit Thakur Das Bhargava: How can there be any investigation without taking evidence?

Shri C. D. Deshmukh: In a formal kind of inquiry, the man goes and says: 'Where are your books, produce them' and so on.

Pandit Thakur Das Bhargava: But why say 'summary'? It is an investigation or an inquiry, conducted under the powers which are given to the inspector. The word 'summary' is objectionable from the point of view of those people who objected to it yesterday. They do not want any summary enquiry. My point also is the same. If you say 'summary inquiry', then that inspector will not go deeply into the matter. So, I would say that you may simply say 'investigation' or 'inquiry'. The word 'summary' may be taken away, for there is no sense in using that word.

Shri C. D. Deshmukh: I do not know what the feeling of the House is. I am entirely indifferent if the word 'summary' is omitted. I do not mind if that is the feeling as I have gathered. We can have 'inquiry' without the word 'summary'.

Shri Morarka: The inquiry is only to the extent of the statistics which will have to be supplied. So, the purpose of the inquiry is limited, namely whether the statistics are genuine or not. That is the only purpose. So, what difference would it make?

Pandit Thakur Das Bhargava: Kindly look at the amendment, and also clauses 239 to 245 of the Bill which relate to the powers given to the inspector. The same words which are used in those clauses are used in this amendment also. So, it is not right to say that the inquiry will be confined only to the statistical purposes. All the consequences that flow from the report of the inspector in the other case will follow in this case also, with regard to winding up of the company, or the matter going before the court, or prosecution or anyone of the things that are mentioned in clauses 239 to 245. I am very glad that the powers of the inspector are not restricted at all in this case. If the powers are not restricted, I do not see what the sense is in using the word 'summary'. So, I should say that it ought to be 'inquiry'. And 'inquiry' includes summary inquiry as well as plenary inquiry.

What difference does it make if you omit the word 'summary'? Those who objected to it yesterday will be satisfied if you delete that word, and those who object to it today will also be satisfied. So, you may take away the word 'summary' and make it only 'inquiry'.

Shri C. D. Deshmukh: I take it that that is the voice of the House, because no other Member has spoken. I agree to the deletion of the word 'summary' and having only the words 'an inquiry'.

Mr. Chairman: I think that is accepted, and there is no objection to that. I shall now put this amendment to vote with the change that has been accepted now. This amendment is the same as amendment No. 1146, but with the addition of one sub-clause, namely sub-clause (8), and with the change of the words 'direct a summary inquiry' into 'direct an inquiry'—the word 'summary' being deleted.

Mr. Chairman: The question is:

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after line 38, *insert:*

"Collection of information and statistics from companies.

609A. *Power of Central Government to direct companies to furnish information or statistics.*—(1) The Central Government may, by order, require companies generally, or any class of companies or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

(2)(a) Every order under sub-section (1) addressed to companies generally or to any class of companies, shall be published in the Official Gazette and in such other manner, if any, as the Central Government may think fit.

(b) The date of publication of the order in the Official Gazette shall be deemed to be the date on which the demand for information or statistics is made on such companies or class of companies, as the case may be.

(3) Every order under sub-section (1) addressed to an individual company shall be served on it in the manner laid down in section 51.

(4) For the purpose of satisfying itself that any information or statistics furnished by a company in pursuance of any order under sub-section (1) is correct and complete, the Central Government may require such company—

(a) to produce such records or documents in its possession or under its control for inspection before such officer and at such time as may be specified by the Central Government, or

(b) to furnish such further information as may be specified by the Central Government and within such time as may be fixed by it.

(5) The Central Government may also, by order, direct an inquiry to be made by any person or persons named in the order—

(a) for the purpose of obtaining any information or statistics which a company has failed to furnish as required of it by an order under sub-section (1); or

(b) for the purpose of satisfying itself that any information or statistics furnished by a company in pursuance of an order made under sub-section (1) is correct and complete; and in so far as such information or statistics may be found to be incorrect or incomplete, for the purpose of obtaining such information or statistics as may be necessary to make the information or statistics furnished correct and complete; and a person or persons so appointed shall, for the purposes of such inquiry, have such powers as may be prescribed.

(6) If any company fails to comply with an order made under sub-section (1) or sub-section (4) or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company, and every officer thereof who is in default, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(7) An order requiring any information or statistics to be furnished by a company may also be addressed to any person who is, or has at any time been, an officer or employee of the company, and all the provisions of this section so far as may be, shall apply in relation to such persons as they apply in relation to the company:

Provided that no such person shall be punishable under sub-section (5), unless the Court is satisfied that he was in a position to comply with the order and made wilful default in doing so.

(8) Where a body corporate incorporated outside India and having established an office within India carries on business in India, all references to a company in this section shall be deemed to include references to the body corporate in relation

[Shri C. D. Deshmukh]

and only in relation to such business."

The motion was adopted.

New clause 609A was added to the Bill.

Schedules I to XII and clause 1

Mr. Chairman: The House will now take up Schedules I to XII and clause 1, for which four hours have been allotted. Hon. Members who wish to move their amendments to these clauses will kindly hand over the numbers of their amendments, specifying the Schedules to which they relate, to the Secretary at the Table, within 15 minutes.

Shri M. C. Shah: The following are the Government amendments to the schedules: Amendments Nos. 1078 to 1081 to Schedule I, amendments Nos. 1082 to 1088 to schedule III, amendments Nos. 1089 to 1095 to schedule IV, amendments Nos. 1096 to 1098 to schedule IX and amendment No. 1099 to schedule XII.

These are all small amendments, which seek to correct some mistakes and inconsistencies which are there. I do not think I should take the time of the House in trying to explain them. The first amendment to schedule I corrects an error there. There is no reference to schedule I in clause 13, and therefore, the word '13' is sought to be omitted.

Shri K. K. Basu: What error? Printing error or substantial error?

Shri M. C. Shah: The first amendment to schedule I reads:

Page 295, line 3 *omit* '13'.

The word '13' is sought to be omitted, because there is no reference to schedule I in clause 13.

The other amendments also seek to correct such error and inconsistencies. I do not think I should take the time of the House in trying to explain the whole thing, for it is not necessary.

Shri N. B. Chowdhury (Ghatal): I have amendments from No. 1175 onwards to No. 1189 standing in the names of Shri K. K. Basu and myself. I shall speak only on the First Schedule, that is, with regard to amendments Nos. 1175 to 1183. The first amendment is to the effect that in the agenda for the general body meeting of the company, there should be an item like this:

> "List of business to be transacted which shall include the charities made during the year along with the organisation and their character thereto."

Already, in connection with a relevant clause, we moved an amendment seeking to make provision that no contribution should be made to any political party or any other organisation with which responsible Ministers or others are connected without the matter being referred to the members. Here we want a specific provision to the effect that whenever a charity is given, it should be brought before the general body meeting for consideration. That is our object in moving this amendment. We know there are various kinds of charities. Sometimes charity is made in order to get something in return. In the name of charities in this country, so many things take place. So we want that there should be a specific provision to this effect.

Regarding amendment No. 1176, the object is to restrict the amount of dividend payable. You know very well that many companies, particularly the tea gardens, tea companies, now give dividends even to the extent of 100 per cent. There are other companies who pay dividends of 25 per cent. and 30 per cent. and so on. There is no limit at present, and in this new consolidated company law, they have not also made any provision to restrict dividend. Now, in this country we have come to a stage when it is very necessary that there should be some restrictions put upon the amount of dividend that may be granted by companies. So we have put in the words

"eight per cent. unless sanctioned by the Central Government" instead of "the amount recommended by the Board". We want that in case they want to pay more than 8 per cent. dividend, they should require the formal sanction of the Central Government; otherwise, they would continue to give huge percentages of dividend and that will not be in the best interests of the country at present.

Then I come to amendment No. 1177. Here we want that while making provision for inspection of accounts etc. we should include the branches of these companies also. They may be spread all over the country. So it is very necessary that branches should also be included here.

Then I come to the most important point in this connection—I refer to the reserves. These reserves accumulate due to the sacrifices made by the workers. When these reserves are created, we find that sometimes they are not utilised for the purpose of having new plant or machinery, but when they seek to capitalise it, they do so without paying anything to the workers. So my object in moving this amendment is to see that the workers who have sacrificed to create these reserves should get at least 50 per cent. of these reserves by way of bonus. We are not opposed to any bonus shares in principle, but at this stage when we are not paying adequate wages to the workers, it is very necessary that before capitalising these reserves, we should pay bonus to the workers. With this object we have moved certain amendments, Nos. 1178 to 1180. The object is to see that there should be some provision, a specific legal provision, for paying to the workers bonus at least equal to three months' wages, before making any attempt to capitalise the reserves. There is another reason for this. By maintaining these reserves, they are also depriving the exchequer of taxes. Now, it has been said that they will later on make some law to see that these reserves are not maintained without payment of any taxes. But up-till now, there has been no such provision. So we must make a specific provision thereby assuring the workers their due bonus before any such capitalisation takes place. Bonus, as has been pointed out by Shri K. P. Tripathi, in India should be regarded as a sort of deferred wage, because the workers are so much under-fed and have sacrificed so much for the creation of such reserves, that there is no justification for capitalising these reserves without payment of due bonus to them.

Then I come to amendment No. 1181. The objects should not be more than six, which are all connected with and ancillary to one another. In the course of the debate on this Bill, many Members have referred to the present position. We know that so many managing agencies and companies are doing innumerable kinds of business. We have heard of a cloth mill, which is primarily meant for manufacturing cloth, starting sugar factories, vegetable oil factories and so on. So it is very necessary that this should not be allowed; they should not be allowed to meddle in so many things. They should confine themselves to certain specific fields so that they can devote their full attention to those fields and develop the things in a more competent way than would be possible if they were allowed to undertake so many different things. With this object, we have moved certain amendments, and we want a specific provision made in this law so that a company or a managing agency may not meddle in so many things.

Shri Bansal (Jhajjar-Rewari): I have only a brief observation to make, in regard to Schedule VI, part III, clause 7(2). The meaning of this clause, shorn of all verbiage; is that in future as soon as this Act comes into force, all companies will have to declare their secret reserves. Now, as you know, secret reserves consist of investments in properties, mainly,

[Shri Bansal]

or in the case of a mill, if, for example, depreciation has been fully written down, then nothing will be shown against the asset item while the value of the actual asset will be there, and that value analysed in the balance sheet will be secret reserve. The effect of this amendment will be that all the companies will have to revalue their assets and liabilities all at once. That will not be all. When the markets go down and the values of the properties go down in the market, then the assets will have to be written down. But, if after a few years, the values go up, then the assets will have to be written up. So, I think, this particular provision will not be very helpful either to the companies or for the purpose for which it is meant.

This situation was fully considered when the U.K. Companies Act was being amended and to safeguard the position at least of certain companies where it was found that the secret reserves do play a very wholesome part in the financial structure of the companies, Government took powers to exempt certain companies from declaring their secret reserves. If you make a reference to Schedule A of the U.K. Companies Act of 1948, Part I, 6B, it will be seen that the Board of Trade is given the discretion to exempt a company from showing details of secret reserves when such withholding of information does not prejudice the company or public interests. I want similar power to be given to Government in India also.

Shri K. P. Tripathi (Darrang): The amendments which I have tabled are 1152, 1153 and 1154. In 1152, I have said:

> "The company in a general meeting or the Board may declare bonus to workers. This may be wholly in cash, or partly in cash, and partly in bonus shares of the company."

I agree with my friend that in India wages are not yet at the living wage stage. Most of them are minimum wages. Obviously, any industry which pays wages has a duty to pay living wages. If it is paying less than the living wages, then, to that extent, it is starving out labour. Therefore, labour has a right to get out of profits, by way of deferred wages, bonus and this right has been accepted in India. Therefore bonus has become a part of the wage structure of this land.

In the last tribunal that was set up for banking, the award has proved that actually such bonuses are deferred wages. Bonuses cease to be deferred wages only when they are given after the living wage stage. All bonuses paid before the living wage stage continue to be wages. Here is a ruling of the tribunal:

> "If that be true, in that case, obviously, bonus when it is said should be paid in cash, and should go for raising the standard of living of the workers. It should not be freezed as bonus shares."

In that case, why have I put it here is a question. Why do I then advocate that the Government may have the right or duty to declare bonus shares to the workers? There is a contradiction in this amendment and the position which I took earlier. The reason is this. Although we have been advocating this theory which has been accepted by tribunals that bonus is part of the deferred wages in this country, yet in practice we have found that bonus is not declared particularly when profits are not distributed in dividends and they are freezed as reserves or capitalised as bonus shares for the shareholder.

Recently, it will be remembered that in the plantations there has been so much of profit that this industry is rolling in profits and the employers do not know what to do with them. And yet, when the demand for bonus is made, nothing is granted. We asked the State Government and we were told that the Commerce Ministry has issued instructions to go slow

and so bonus is not issued. A committee was set up and that committee has set up another committee to find out whether bonus is paid in the plantation industry and, if so, how much. Here is a patent case in which although there is huge profit, bonus is not given although the workers are getting only minimum wages and although the workers agreed to share during the crisis in 1952. What does it mean? It means that the Government as well as the industry think that bonus should be given but the industry should be permitted to capitalise reserves by way of bonus shares so that labour welfare measures might be undertaken—like house-building etc. Now, what happens? Supposing the tea garden capitalises the reserves and out of that begins to build houses. That becomes the property of the industrialists but does not become the property of the workers. You are permitting bonus shares to be issued to the shareholders so that any property acquired out of these in the name of labour welfare also becomes the private property of the industrialist. It does not become the property of the worker. Therefore, we have felt that ultimately it may be necessary in such cases that the distribution of bonus shares also might be on an equitable basis. The idea is that so far as cash distribution of dividends and bonuses is concerned, it should be on an equitable basis between the workers and the employers, that is, the shareholders. So far as the non-distributed profit is concerned, that is profit which is converted into reserves or which is converted into bonus shares for the shareholders there also there should be equitable distribution. Then only will the labour interests be fully protected. Otherwise, there seems to be no way in which we can get substantial justice because although the Government has accepted in principle the theory of bonus to workers, yet, in practice, they have not accepted it fully and they have always acted in a way which has been a support for the employers—the shareholders—rather than for the workers. Therefore, in utter disgust I have been forced to move this amendment so that at least where Government thinks that the major portion of the profits should be capitalised, there the workers' share may be permitted to be capitalised in the same manner so that the worker may at least get from the dividend what he is not getting by way of bonus which he was fully entitled to.

The second amendment which I have tabled is:

Page 308, line 31—

for "meeting contingencies or for equalising dividends"

substitute: meeting contingencies like compensation for lay off and retrenchment or for equalising dividends, wages and bonus".

Now, it is very well-known that employers have begun the practice of setting up separate reserves for separate purposes. One of the most important funds is the dividend equalisation reserve fund. Similarly, there is reserve for machinery and those things; there is reserve for taxation and so on. But the only reserve which is missing is the reserve for the workers.

Mr. Chairman: I think the hon. Member will take more time. He may continue the next day. It is time we take up the other business.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

THIRTY-SIXTH REPORT

Shri Raghunath Singh (Banaras Distt.—Central): I beg to move:

"That this House agrees with the Thirty-sixth Report of the Committee on Private Members'