Shri Hathi: I have no information on that point.

Mr. Speaker: This is a serious situation which has affected the Ordnance factories also. The hon. Deputy Minister of Defence has just now said that it is a serious situation and that they are doing their best. I am sure there must be a kind of co-ordination between the Ministers at the Centre also in this matter. The hon. Minister of Irrigation and Power, I am sure, will look into this matter. It may be a State subject, but the States are part of India.

So far as the Calling Attention Motion is concerned, we allow only one such motion, a day. But I am making an exception in cases where adjournment motions are tabled on a subject on which a Calling Attention Notice is also received. Some adjournment motions were tabled on this subject and, therefore, I am making an exception and instead of treating them as adjournment motions I am treating them as Calling Attention Notice and am allowing this Calling Attention Notice so that we could have the replies of Government.

Shri Tyagi: It is the confusion of politicians in Uttar Pradesh that has caused all these difficulties.

Shri Braj Raj Singh: Of the Congress Party!

Mr. Speaker: If there is a quarrel among statesmen, can it makes the Ganges also recede?

Shri S. M. Banerjee: The Labour Minister is also here. This has affected 30,000 workers. The mill-owners actually want that they should compensate this loss by working on Sunday. In 1938—

Mr. Speaker: I am not concerned with mill-owners now.

Shri S. M. Banerjee: They force the workers to work on Sunday.

That is another point. The Labour Minister must protect their interests.

Mr. Speaker: Overnihgt he cannot expect all the Cabinet Ministers to answer one question . . . (*Interruptions*).

Shri S. M. Banerjee: He has been apprised. It is a serious matter.

12·11 hrs:

COMPANIES (AMENDMENT) BILL—*Contd.*

Mr. Speaker: The House will now resume further clause-by-clause consideration of the Bill further to amend the Companies Act, 1956, as reported by the Joint Committee—consideration of clause 79. Shri Morarka may continue his speech. The time taken by him is 22 minutes.

Shri Tangamani (Madurai): The time allotted was 2 hours for clauses 2 to 16, 2 hours for clauses 17 to 56 and 3 hours for clauses 57 to 70—altogether 7 hours. We have nearly reached that limit of 7 hours. So, some more time may be given to clause 79, because many Members would like to speak on that.

Mr. Speaker: Then hon. Members will cut out the time for other clauses.

Shri Morarka (Jhunjhunu): Mr. Speaker, Sir the other day I moved my amendments Nos. 89, 90 and 91 which stand in the name of my colleague, Shri Nathwani and myself. While speaking on amendment No. 89, I was saying that the powers given under clause 79 under section 250 are of a drastic nature and are very wide. Sub-clause (1) of clause 79 which amends section 250 says:

> "Where it appears to the Central Government, whether in connection with any investigation under section 247, 248 or 249 or otherwise, that there is good reason to find out the relevant facts about any shares (whether issued or to be issued) and the

Central Government is of the opinion that such facts cannot be found out unless the restrictions specified in sub-section (2) are imposed, the Central Government may, by order, direct that the shares shall be subject to the restrictions imposed by sub-section (2) for such period not exceeding three years as may be specified in the order."

In sub-section (2) those restrictions are enumerated.

Section 250 was originally copied from the provision in the English Act and the relevant section in the English Act is section 174, which I shall quote in order to explain the meaning of our amendment:

"Where in connection with an investigation under either of the two foregoing sections it appears to the Board of Trade that there is difficulty in finding out the relevant facts about any share, whether issued or to be issued and that difficulty is due only or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Board may by order direct that the shares shall until further order be subject to the restrictions imposed by this section."

The whole scheme of the section was, under section 247, 248 or 249, the Government had a right to investigate the ownership of certain shares, the ownership of certain companies and the ownership of certain associates. If that investigation could not be carried out properly and if that investigation was not carried out because of the hindrance of certain shareholders, under section 250 (1), the Government had a right to impose certain restrictions, which would last for a period of 3 years. During that period of 3 years, the shareholders could be deprived of their proprietory rights. This is a very important point. Under the new amendment, you are seeking to deprive the proprietary rights of certain shares and rebentures not only if the investigation under sections 247, 248 or 249 become difficult, but even for any other reason.

I would like to understand what can be the other possibility where without making any investigation, the investigation would become difficult. There must be, first of all, an investigation. Secondly, there must be difficulty created in the investigation and thirdly the difficulty must be created by the person concerned. If the person concerned creates that difficulty, then power is given to Government to deprive that person concerned of the proprietary rights. Sub-sections (3) and (4) of section 250 deal with managerial right. Only sub-section (2) deals with the proprietory right, which can be deprived of under specific conditions.

The specific condition is that the person concerned must be causing hindrance to the proper investigation. In other words, the Government or the inspector must be in a position to say that he cannot find out the relevant facts about the share under sections 247, 248 or 249 without certain restrictions being imposed. Only under that condition power was given to the Government to impose those restrictions. Under the new amendment, we are making the scope of the section very wide. For finding out the relevant facts about the shares, you should make an investigation under section 247, 248 or 249. I cannot understand how you can impose restrictions envisaged under section 250 (1) and how you can say that you want to find out the relevant facts about the shares without making any investigation under one of the three sections.

In this connection, I would like to submit that the Shastri Committee which examined the matter and on the basis of whose recommendations this Bill is framed, did not make any recommendation to this effect for widening the scope of sub-section (1)

[Shri Morarka]

of section 250. Also, when the Bill was introduced in the House, this provision did not exist. It was at a very late stage in the Joint Committee that this provision had been introduced. I must confess that at the time when this important amendment of the Government was introduced in the Joint Committee, I did not appreciate fully the implications of this chage. Now I feel that if this clause is accepted as it has emerged from the Joint Committee, there would be immense potentiality of the arbitrary power being exercised in an arbitrary manner and immense harm could be done to the confidence in the joint-stock enterprise.

I would also submit that in the latest annual report of the Company Law Administration, we find that during the last three years, there have been only 2 cases of investigation under section 247 and there has been no case at all of imposing restrictions under section 250. That is the evidence before us. The Company Law Administration had not found any difficulty. The cases have been very few and there has been no case under section 250. Secondly, the Shastri Committee did not make any recommendation and thirdly when the Government originally brought the Bill, the Bill did not contain this provision. Finally, in the last stages in the Joint Committee, this amendment was introduced, if I may say so with respect, in a little bit of hurry. I personally failed to appreciate the implications of the amendment then.

Therefore, I would beg of the Minister to reconsider this thing as to when this amendment can be of any use or assistance to him, except that it may give very wide and arbitrary powers to the department. This power can be exercised only in order to find out the relevant facts about the shares. What are the relevant facts? True ownership, to whom the share of the company belongs. In order to find that out our Company Law Administration provides that there must be an investigation under sections 247, 248 and 249. If you want to make any investigation whatsoever under any one of those sections and, if some shareholder obstructs them, how can you do it except by imposing restrictions or depriving the shareholders of the propritary rights? At this stage I am talking only of the propeietary rights of the shareholders; I am not talking of the managerial rights, that is, voting rights or any other rights. But, so far as the proprietary rights are concerned, you cannot deny them without there being something very serious and a *prima facie* investigation.

It has been stated "Why worry? After all, these restrictions are only for three years and after three years the restrictions would be removed". That is not so. So far as sub-section (1) is concerned, the period of three years for which you take away the proprietary rights is a very dangerous period because if within this three year period the company declares bonus shares or right shares or converts the debentures into shares, then the rights of the shareholders and debenture holders will automatically be lost and they could not have those rights revived at a later date at all. Once those rights are lost during the period of three years, the company is not going to reinstate those rights after three years. Therefore, I feel that the amendment moved by my hon. friend, Shri Nathwani, and myself, namely, amendment No. 89, which seeks to delete the words "or otherwise" is an eminently reasonable amendment and the acceptance of this amendment is not likely to create any difficulty for the Government whereas the non-acceptance of this amendment will make it a little more complicated and confuse the issue. So, I would beg of the hon. Minister to consider this position carefully and see whether he cannot find it possible to accept this amendment.

Coming to my amendment No. 90, sub-section (3) of the proposed section 250 appears to me, as my hon. friend, Shri Nathwani, said the other day, almost a repetition of the provisions which already exist in this Act. Sub-section (3) provides:

> "Where a transfer of shares in a company has taken place and as a result thereof a change—
>
> (a) in the composition of the Board of directors or
>
> (b) where the managing agent is an individual, of the managing agent, or
>
> (c) where the managing agent is a firm or a body corporate, in the constitution of the managing agent,
>
> of the company is likely to take place and the Central Government is of the opinion that any such change would be prejudicial to the public interest, that Government may, by order direct that.."

Now the transfer of the shares in the company has taken place under sub-section (3).

Mr. Speaker: Is there any time-limit? How long after the transfer of the shares?

Shri Morarka: There is no time-limit. That is the point I am coming to—and retrospectively without any limit they can do it. Under sub-section (3) transfer of the shares has taken place. Because of that transfer, a change in the management is likely to take place. So, one is past perfect tense, namely, the transfer of the shares and the other is a future contingency, namely, change in the management which is likely to take place. In that case Government may direct. But in that directing power they say:

> 'no resolution passed or action taken to effect a change in the composition of the Board of directors or of, or in the constitution of, the managing agent before the date of the order shall have effect unless confirmed by the Central Government."

Transfer since when? The transfer of the shares might have taken place five years ago, the resolution might have been passed, again, two or three years ago and the change in the directors might have taken place two or three years ago. All these things are very vague. In any case, Government have already taken power under section 409 to prevent a change in the Board of directors. If the Government so desires, it may be provided that one of the directors or one of the managing agents should come to the Government and complain. Also, under 346 Government can always prevent a change in the managing agents. So, change in the managing agents can be prevented under one section and change in the Board of directors can also be prevented by another section. When Government have already power under those sections, there is no reason why Government should have duplicate powers under this clause.

So far as sub-clause (4) is concerned, I can understand it; that is a prospective section and in order order to prevent the transfer of the shares Government are taking powers. That is quite all right. But when the transfer has already taken place, and, as a result of that transfer having taken place, whether a change in the Board of directors is likely to take place or not, if the Government is of the opinion that change is likely to take place, then the Government can give directions, and the directions may contain the order that all the resolutions passed before the date of the order would be inoperative. That, according to me, is, apart from anything else, very vague and unless some definite period is prescribed, even today Government can say that the resolutions passed in the year 1936-37 are all void. They may not say that but there is a possibility under the law as it at present stands.

[Shri Morarka]

Therefore, I would like the hon. Minister to clarify what they have in mind when they say:

> "that Government may, by order, direct that—
>
> * * * *
>
> (ii) no resolution passed or action taken to effect a change in the composition of the Board of directors or of, or in the constitution of, the managing agent before the date of the order shall have effect unless confirmed by the Central Government."

Within what period would Government give confirmation? Even if you want to give retrospective effect to this provision, there must be some time-limit and the companies should be asked to come before the Government for confirmation within that time.

There is another comparatively small point in sub-clause (4). There subclause (c) says:

> "where the managing agent is a firm or a body corporate, in the constitution of the managing agent, of the company is likely to take place and the Central Government is of the opinion that any such change would be prejudicial to the public interest, that Government may by order direct that any transfer or shares in the company during such period not exceeding three years as may be specified in the order shall be void."

My point is that you could not by order direct that 'any transfer' of shares would be void. You can only prevent the transfer of certain shares —the shares of corporate raiders or proxies pirates or of certain undesirable elements. You cannot prevent the transfer of every shares of the company. What you are now saying is that if the Government feels that a change in the management is likely to take place then the Government may by order, direct that any transfer of shares in the company during such period not exceeding three years shall be void. This requires clarification and I hope the hon. Minister, when he replies to this particular clause, will clarify it.

As I said, this clause on the whole is a very desirable clause except for the fact that the new amendment creates some vagueness and arbitrariness about the power. I feel that on the whole the provisions of this clause are very desirable. In fact, this is one of the clauses which would give some amount of security to good management and would protect the companies from the nefarious activities of certain persons who indulge in cornering or who try to raid a company from collecting proxies etc. But, there again, the Government should not indiscriminately treat everybody who purchases shares in a company, even majority shares, as an undesirable element or as a corporate raider because many times the management of a company is transferred by negotiation. They come to an arrangement, take the price for selling the shares, goodwill etc. and then sell these thing. So, until and unless the management of the company is itself aggrieved and, as the provision exists in section 409, a person in the management, that is, either the director or the managing director, comes before the Government to complain, there is no reason for the Government to feel that anybody who purchases shares is *per se* a nefarious citizen. After all, the corporate philosophy is based on the fact that the shares of a company will be freely bought and sold just like any other commodity in the market. Therefore, merely because the shares have been purchased, majority shares if you like, it does not follow that the person has become undesirable or that a change in the management has become inacceptiable. What I feel is that the powers as contained in section 409 are really enough and are more concise and more specific than the power which is sought to be given under

sub-clause (3) of clause 79. I can understand the provision in sub-clause (4) because we do not have in the Act any provision parallel to it. That is a prospective clause and prevents the transfer of shares. That is all right. But so far as sub-clause (3) is concerned, I think it is nothing but mere duplication in one way or the other. So far as sub-clause (1) is concerned, I feel that the point which I have urged upon is an important point and the hon. Minister, I hope, will take into consideration and, if possible, will accept my amendment.

Mr. Speaker: Shri Tagamani Who are all the hon. Members who want to participate in the discussion on this clause?

Shri Somani *rose—*

Mr. Speaker: Any other hon. Member?..None except Shri Somani.

Shri Tangamani: Mr. Speaker, Sir, before I go into the clause in detail I would like to answer some of the points raised by my hon. friend, Shri Morarka. While advancing his arguments in support of his amendment No. 89.....

Mr. Speaker: Why not he advance his arguments once for all after Shri Somani has spoken?

Shri Tangamani: Shri Somani's amendment is here before me and I can speak on that.

When this particular clause was discussed two words, namely, 'or otherwise' were put in the deletion of which will really take away the spirit of the clause itself. With respect I will have to submit to my hon. friend that the Shastri Committee did consider it and they did not come to the conclusions which have been advanced by my hon. friend, Shri Morarka. I would refer him to paragraph 99 of the Shastri Committee's Report on page 95 towards the end of which they deal with section 250. This is what they say:

> "These provisions are not sufficient and sections 247 to 250, which are to some extent preventive, are in our opinion necessary."

As my hon. friend knows sections 247, 248 and 249 are those sections under which inspectors are appointed under certain circumstances. Section 250, as in the original Act, says that where proceedings have started under sections 247, 248 and 249 then certain things will follow. Here, the next sentence says:

> "Section 250, as it stands, is restricted to the particular situation envisaged therein."

The particular situation being where an investigation has been started under sections 247, 248 and 249. If we go further we find that they go into the operative clause. They say:

> "It might be amended so as to confer power on the Central Government in a case where a change in the ownership of shares, a change in the managing agency or directorate of a company is likely to take place which, if permitted, would in his opinion be prejudicial to the public interest to direct by an order that for a specified period of three years voting rights shall not be exercised by the transferees of those shares. In view of the recourse to courts allowed by section 250 (3) no irreparable injury is likely to be caused by any action taken by the Government."

12.36 hrs.

[SHRI MULCHAND DUBE *in the Chair.*]

Shri Morarka: This Report confines itself to section 250, sub-section (3). It does not touch sub-section (1) at all. All my speech was based on sub-section (1).

Shri Tangamani: Actually, sub-section (1) is more in the nature of citing instances where this particular intervention will take place.

Shri Morarka: No.

Shri Tangamani: Please allow me to develop that point. My understanding of the Shastri Committee's Report is that it says that section 247, 248 and 249 are the sections under which certain action takes place and when that action takes place, it will give a right to the Central Government to proceed in a particular way.

Shri Morarka: No. That premise is not correct.

Shri Tangamani: The Shastri Committee says that it is restricted. So, when you want to make it restrictive, the words 'or otherwise' become absolutely important.

Shri Morarka: No. You are misleading. Please excuse me.

Shri Tangamani: Please allow me to speak.

Mr. Chairman: Please do not interrupt him. Let him proceed in his own way.

Shri Tangamani: That is my reading of it. That is the understanding that I also got when we were in the Joint Committee. For the sake of completeness I will also read the paragraph to which you were also a party in the Joint Committee.

The Joint Committee's Report says:

> "The Committee are of opinion that the scope of sub-section (1) of section 250 should be widened so as to enable the Central Government to impose restrictions in suitable cases although there may not be any investigation under sections 247, 248 or 249 of the Act."

So, originally as section 250 stands, it will give jurisdiction only where investigations have started under sections 247, 248 and 249 and the Committee rightly felt that that jurisdiction alone is not necessary. We must have that jurisdiction extended under certain circumstances also. That is why the words 'or otherwise' have been put in. You may take it *sui generis*. It may be that there may be certain cases where an investigation has not started. Paragraph 64 of our Report makes it abundantly clear. It only supports my contention. It says further:

> "They further feel that the Central Government should be authorised to vary or rescind any order made by it under sub-sections (1), (3) or (4).
>
> The Committee also feel that no order of the Court whether interim or final under sub-section (6) should be made without giving the Central Government...."

I think it should be 'others'.

> "an opportunity of being heard."
>
> It has also been provided that an order of the Central Government shall be served on the company within fourteen days after the making of the order.
>
> The clause has been redrafted accordingly."

I think in his dissenting note, Shri Masani has made it very clear. He has not referred to sub-section (1) at all. He has only referred to the other part. In fact, he is almost opposing the entire thing. A position like that I can understand. Shri Masani has rightly attacked the intervention under section 250 restricting the transfer of shares or the voting rights by saying that you are interfering with the proprietary rights. That position I can understand. But having accepted that, it is very necessary that the words 'or otherwise' are included. If you are supporting clause 79, the deletion of the words 'or otherwise' will take away the spirit of that clause. Otherwise, my contention will be that it is nothing but redrafting the clause.

Shri Morarka: You would excuse me. I do not want to interrupt you, but this is a point about which, for

the sake of clarification, the House must be given a clear picure. It is not a question of whether we agree or not. There is no philosophical disagreement on this point. Sections 247, 248 and 249 give the power of investigation. If that investigation is impeded or hindered, under section 250 the Government has the power to put restrictions on those shares. That is the point. By putting the words 'or otherwise', it is presumed, whether there is an investigation or not under sections 247, 248, or 249 or not, even wthout an investigation, Government can put restrictions on transfer of shares.

Shri Morarka: My only point was..

Shri Tangamani: He has explained it half a dozen times.

Shri Morarka: He is misleading the House, I am sorry to say that.

Mr. Chairman: No, no.

Shri Tangamani: What I say will be on record. I am only reading what we had agreed.

Shri Morarka: So far as the Joint Committee is concerned, I agree. I did not understand the full implications of it then. Did I not say that?

Shri Tangamani: The Joint Committee has said....

Shri Morarka: I again say that this amendment had clearly....

Mr. Chairman: I feel, only one Member can speak. Let him finish. After that, the hon. Member can speak.

Shri Tangamani: He has spoken for 40 minutes.

Shri Morarka: I have not spoken like this.

Shri Tangamani: Do not expect to speak in the same way.

Shri Morarka: Let him speak and explain the point.

Shri Tangamani: If he can give some other interpretation, I will be glad to hear. It is said here:

> "The Committee are of opinion that the scope of sub-section (1) of section 250 should be widened so as to enable the Central Government to impose restrictions in suitable cases although there may not be any investigation under sections 247, 248 or 249 of the Act."

To this sentence, my hon. friend Shri Morarka is also a party.

Shri Morarka: Did I not say that? What is the use of repeating it?

Shri Tangamani: He may disagree now. But, the purpose of introducing the words 'or otherwise' is, there may also be circumstances where an investigation may not have started under section 247 or 248 or 249. A circumstance may arise so you are entitled to impose....

Shri Morarka: Give one example where a circumstance can arise.

Shri Tangamani: I am going to say that it should be the duty of the Company Law Administration, although I congratulate them for bringing out reports which are year by year, to give instance after instance of this kind of malpractices. More such instances will have to be in future. That is a submission I am going to make later. I want the Company Law Administration to be clothed with much more powers and that the area should be developed to have much more links with the other sections of the Commerce and Industry Ministry. That is going to be my submission.

Dr. M. S. Aney (Nagpur): May I put a question to the hon. Member? Does he admit that this section was taken from the English Act? Does that section also contain the words 'or otherwise'? If not, I want to know why they are inserting them now.

Shri Tangamani: The original section 250 was taken from the English Act.

[Shri Tangamani]

Subsequently, we have also worked the Indian Act. Having worked that, a Committee went into this question for one year and that Committee submitted a report. In that report, they submitted that restrictive provision is not enough and they are for expanding it. Sub-section (1) is more like a preamble. In sub-section (1) we give extra powers in addition to investigation started under sections 247, 248 and 249. That would be my submission. Let me make my other points.

Originally, the clause was clause 84. The Explanation which was given to us while this clause was introduced was that we must render the cornering of shares by unscrupulous persons more difficult and for making it more difficult, it is proposed to make it permissible to the Government to exercise the power to impose restrictions on voting rights relating to any transfer of shares, when, in the opinion of the Government, it is in the public interest to do so. It is also considered desirable to make a provision so as to allow the aggrieved party to represent against the order and for the revision of the order after consideration of such representation. This was the explanation which was given to us when the Bill was introduced with the original clause. The original clause introduced only certain amendments, keeping section 250 intact and amending only sub-section 2, leaving sub-section 3 and adding sub-sections 4 and 5. The new clause has more or less recast the entire section 250. In that, I find that sub-sections 2, 4, 5, 6, 7, and 8 are retained, except that they are re-numbered as 2, 7, 8, 10, 11, and 12. Sub-section (1), is also subsection (1) now except for the words 'or otherwise'.

Shri Morarka: There is another change also.

Shri Tangamani: That is the material change.

Shri Morarka: There is another material change also.

Shri Tangamani: The other changes are to sub-sections 3, 4, 5, 6 and 8. Instead of 8 sub-sections in the original section, we have got 12 subsections.

As I have already stated, the Committee felt that the scope of section 250 (1) should be widened so as to enable the Central Government to impose restrictions in suitable cases although there may not be any investigation under sections 247, 248 or 249 of the Act. As the House is aware, these investigations are about ownership, investigation about information regarding persons having interest, or investigations regarding associateship of the managing agent, etc. The Central Government is now authorised to vary or rescind any order made under subsections 1, 3 and 4. The Committee felt that no order of the court whether interim or final under sub-section 6 should be made without giving the Central Government an opportunity of being heard. It has also been provided that the order of the Central Government shall be served on the company within 14 days after the making of the order. I have made a reference to this already.

The Company Law Administration's Second Annual report makes certain reference which I shall quote when dealing with the other sections regarding purchase of shares and one company trying to swallow another company, etc. Regarding *malafide* transfers and cornering of shares also, they have made certain pertinent observations. In the *Second Annual Report on the Working and Administration of the Companies Act*, 1956, on page 57, they say:

> "The investigation into the cases of the Mundhra group of companies brought to the surface several important issues of company practice."

What they mean is many malpractices.

> "But, as some of these matters are still *sub judice* they cannot be commented upon at this stage.

"Nevertheless, they have thrown up the question of making the provisions of the law more effective for

(a) control of spurious shares,

(b) prevention.

(c) imposing more effective control over inter-company loans granted on the basis of guarantee given by persons connected with company management whose solvency is apt to be affected by such inter-company involvements."

They impress upon us that it is necessary that shares will have to be controlled in some form or other. I was really interested to hear how shares are managed when I listened to the hon. Member the other day. He was telling us about the various instances of corporate raiders, how they raid these companies, how they corner shares etc. It is for preventing such evils that certain measures are adopted. I do not say that the measures that we have adopted are fool-proof, but this is an attempt in the right direction.

As I was saying in the beginning, after the Companies Act of 1956 came into operation, we did realise that there were certain difficulties in its actual working. For finding out the difficulties and for making suggestions to amend the Act, a committee had to be set up under the chairmanship of Shri Viswanatha Sastri. The Sastri Report, I believe, is more interesting to read now when we know of the several malpractices to which attention has been drawn as a result of the Mundhra deal, as they have been visualised directly or indirectly in the Sastri Report also. The way Shri Morarka is nodding, I think he agrees with me.

I want the company law administration not to give stereotyped reports, but to go into the many issues which were raised in the Joint Committee and which have also been raised in this House about the malpractices which have taken place, because that is the organisation which has rich material and can supply us with it also. The entire question of commerce and industry gyrates round this company law administration today, and if this administration functions properly and supplies the Ministry with the right kind of material, it will not only develop commerce and industry but also help us to proceed more and more towards the implementation of the Industrial Policy Resolution. Though it is is not within my domain to say how it should be reorganised, I suggest that officers of the company law administration should visit important centres and see how these corporate raiders, if any, are operating.

Representations have been received by us from small companies, companies which have to get permission because their paid-up capital has just gone beyond the optimum minimum which has been announced. They are not in a position to supply the necessary particulars as and when necessary, and they are being penalised. So, the procedure must be much more simplified. The big companies, with their legal advisers and experts, can not only comply with the requirements, but also act in subtle ways not discernible even to the company law administration. But the small companies that are being floated must be helped, and for that I think if a handbook is issued giving them at a glance the things to be done, it will be very useful.

The original amendment of subsection (2) was much more comprehensive, there was more life in it than in the present one. Though it has been watered down, because we do not want genuine transfers to be styled as malicious cornering of shares, and gives a clear opportunity for the affected persons to engage in malpractices, I do submit that after Clause 70, this is one of the most useful clauses which has emerged from the Joint Committee, and the Joint Committee's recommendation to amend section 250 by this clause 79 is commendable.

[Shri Tangamani]

In passing, I would like to mention that I do not support the amendment of Shri Masani, Amendment No. 13, which seeks to take away the powers of the Government and invest them in the hands of the shareholders. It is more in the nature of a substitute motion.

I am also not able to understand Amendment No. 98 of Shri Somani. The new section 250(1) proposed in Clause 79 reads as under:

> "Where it appears to the Central Government, whether in connection with any investigation under section 247, 248 or 249 or otherwise, that there is good reason to find out the relevant facts about any shares (whether issued or to be issued) and the Central Government is of the opinion that such facts cannot be found out unless the restrictions specified in sub-section (2) are imposed, the Central Government may, by order, direct that the shares shall be subject to the restrictions imposed by sub-section (2) for such period not exceeding three years as may be specified in the order."

To this Shri Somani wants to add the following proviso:

> "Provided that the Central Government shall not take any action in pursuance of this subsection if the company in general meeting so decides by a resolution passed by a two-thirds majority."

I am not able to make out how this fits in with the original clause. How can we take away the powers given under sections 247 to 249 by a resolution passed by two-third majority? Perhaps his intention is that where in a genuine case, the majority of the shareholders of a company are in a position to say in their general meeting that the transfer is not *mala fide*, this should not apply, but that is not clear by the wording of his amendment. Anyway, I will be happy to listen to him.

I once again commend the Clause for acceptance as it is. The amendments of Shri Masani and Shri Morarka may be rejected.

Shri Somani (Dausa): As has already been pointed out, this Clause is of a rather drastic nature.

The fundamental principle of company law is that the affairs of a company should be carried on according to the wishes of the majority of its shareholders. This Clause seeks to encroach upon the legitimate rights of the majority of the shareholders.

I am aware of the cases of speculators, those who engage in cornering activities and take over control of companies. I am also aware of cases where the management has very little stake in the shareholding of the company. I think it should be the policy of the Government in the interests of the development of the corporate sector that everything should be done to encourage those in charge of management to have a substantial stake in the shareholding of the company. Absolutely no protection is called for in the case of those who have got 50 per cent or more holding in the company's shares, *i.e.* for those in charge of management who have a substantial majority in the shares of the company concerned. They are quite competent to take care of themselves. The entire idea in this clause is one of protecting the interests of those who are in charge of the management of a company, but who have no substantial stake in the shareholding of the company, who may be holding only a very nominal stake in the affairs of the company, that is, who may be holding only 10 per cent or 15 per cent or 20 per cent only of the shareholding of the company, and who, when certain groups or certain parties are able to secure a major

portion of the shares which are floating in the market, do seek protection from Government saying that their rights of management should not be affected by those who have secured the majority shareholding in the company.

13 hrs.

What my amendment seeks to clarify is that when any company passes a resolution at its general meeting by a two-thirds majority, then, no action, even of an investigating nature is called for, and the matter ends there. The majority of the shareholders by a two-thirds majority decide on a certain course of action, and it should not then be open to Government to challenge that action or to come in the way of those who by a two-thirds majority have decided on a particular course of action for the management of the company.

I am prepared to give many instances of important companies where those who have been holding a two-thirds majority or even 75 per cent of the sharholding of the company have waited patiently for years and years either on their own voluntary decision or because of various negotiations which they had carried on with those who were in charge of the management or because of various other factors. As soon as a change of management was brought about, the facts prove that there had been a substantial improvement in the working of those companies. The shareholders have benefited, and the national economy has also benefited as a result of the change-over of management. So, there are a number of cases of very important companies where those in charge of management had very little stake, and did not bother at all because their stake was so little, and yet, those who were holding a very substantial portion of the shareholding had to wait for a number of years.

So, my submission is that even without any restrictions by Government, the change-over of management is not a smooth affair. It is not just an easy walk-over. It is not as if those who have got the majority shares just get into the management. There are various litigations, and there are various other ways by which those who are in charge of the management try to lengthen the process by which a change-over in the management can be effected. The instance of Mr. Mundhra was given, but so far as Mr. Mundhra's dealings were concerned, they were not in the nature of 'corporate raiders', about which Shri Morarka explained the other day in quite good detail. So far as I know, he had direct negotiations with those who were holding the majority shares in these companies, and he was able to negotiate purely on a voluntary basis, to take the majority shareholdings from those who were holding them; and, naturally, once there is a voluntary arrangement between those who are in charge of management and the party that seeks to buy those shares, this clause does not come in, and Government do not come in, and there is a simple transfer of management. So, so far as the Mundhra affair is concerned, the majority of his dealings did arise out of his direct negotiations with those who were in charge of those companies; he hardly secured his majority by the market operations.

The point that I am submitting to Government is that so far as the normal process of change-over of management is concerned, if any managing agency house or if those who are in charge of management choose to continue their management on the basis of a very insignificant stake in the company, then, naturally, Government should not go out of their way to encourage the tendency on the part of the management holding a very minor portion of the shareholdings to stick to the management

[Shri Somani]

and continue to be protected by Government in case at any stage they are faced by a group holding a major portion of the company's shares.

Nevertheless, I do recognise that there may be certain occasions where such action may be called for. Shri Morarka himself admitted that so far as India was concerned, the evil was not on a very big scale. But there may be a few rare cases where some action may be called for, and where in the interests of the sound management of the company or the shareholders or in the interests of the national economy, it may not be desirable that some speculator or somebody with ulterior motives, who may have been able to control a majority of the shareholding either by his direct investment or by some other questionable methods, should get into the management. In such exceptional cases, certainly, by all means, but subject to certain safeguards, Government may protect the management from being passed over in such a state of affairs. But my submission is that in the normal course, Government should not at all come to the rescue of those who continue to have very little stake in the affairs or in the shareholdings of the company, and it should be the responsibility of those who are in charge of the management either directly or indirectly to manage to have a majority percentage of the shares under their control. If any management chooses not to be prudent enough to take care of that majority control, then, that management need not expect protection from Government under this clause, so long as the other factors are equal.

But, as I said, in a very few rare cases, where such contingencies may arise, and where the Company Law Administration may feel it necessary to protect the interests of the company, then, some action may be called for. But, here again, as I have said in my amendment, if the shareholders, by a very overwhelming majority decide that the change of management should take place, then I do not see any justification on the part of Government to again intervene.

As a matter of fact, I have come across one or two cases, where the Company Law Administration came in the way of the change-over of management, but, later on, either due to voluntary arrangements or due to other factors, there was a compromise, and the change-over was made. The subsequent working of those companies has shown a very substantial improvement in their working. Thus, the apprehensions of the Company Law Administration that the change-over in management would adversely affect the affairs of the company did not materialise. On the other hand, as I said, the working of the company has shown that the change-over has been quite desirable and has acted in the interests of the shareholders.

My submission and my complaint is that in a majority of cases, it is those who have been holding a major portion of the company's shares, who have suffered for long periods, before they have been allowed to take control of the company's affairs, to which they are legitimately entitled. If certain persons are holding a major portion of the company's shares, and they want to exercise their rights in a legitimate manner, I see absolutely no reason why they should be deprived of their legitimate rights. Of course, it is quite natural that those who are in charge of management and who have very little stake in the company will feel aggrieved, if they are faced by some group holding the major portion, and naturally, they would seek the protection of the Company Law Department under this clause. But my appeal to Government is that the action under this clause should be taken only after a very thorough scrutiny, and after satisfying themselves that the circumstances of change-over are such that, or the alternative party holding

the major portion of the company's shares is of such a character that intervention by Government is absolutely necessary. In the ordinary course, I would very strongly plead with Government that the power under this clause should not be exercised. I would also emphasise once again that when the shareholders by a very overwhelming majority decide in favour of a change-over of management, then, the Company Law Department should not come in the way of the decision of the shareholders being carried out, unless there are circumstances of any exceptional or compelling nature. In the ordinary course of circumstances, simply because somebody has made an appeal to the Company Law Administration seeking protection against the wishes of the majority being carried out, the Company Law Administration should not take action under his clause. This matter requires very deep thinking. I would also plead with the hon. Minister to analyse the cases of companies where the management has changed hands during the last few years. So far as my reading of the situation goes, those who have been holding majority shares have had to suffer a lot, and they have had to wait for years and years before they could take charge of the management, to which they were legitimately entitled; they had to negotiate for it, they had to fight litigation and so on and they had to face various other obstacles that were put in their way. But, ultimately, when they took over charge of the company's affairs, they did show a remarkably better result than was possible with the previous management.

I therefore plead that this clause requires a lot of re-thinking. Action should be taken only in very rare and exceptional cases. In the ordinary course, it should be the policy of the Company Law Administration not to go into the case of a change-over of management where the shareholders are legitimately entitled to exercise their majority rights.

The Minister of Commerce (Shri Kanungo) I am grateful to Shri Morarka for the very thorough analysis of the implications of the clause, as it stands today. The very reasons which he has advanced for some control to prevent what they call cornering or take-over operations convince me that the powers which have been provided in this clause are not too drastic.

As Shri Morarka has rightly pointed out, the words 'or otherwise' are the bone of contention. In fact, broadly speaking, these are the words which have been added to the clause; of course, there has been addition of other sub-clauses also. But the point is that sub-clause (2) where, as he has pointed out, drastic powers are there, interfering with the proprietorship of negotiable instruments like shares, has been there not only in the Act of 1956, but in the U.K. also. What was the reason for putting in 'or otherwise' which certainly gave much wider scope to the clause as it stood? It will be realised that the section, as it stands, can come into operation only when sections 247-249 have been brought into operation, not otherwise. Sections 247—249 deal with investigations to find out the ownership of shares. The reason why this wider power has been taken is that in some cases it would take a considerable length of time even when under sections 247—249 similar powers provided are exercised to find out the actual ownership of the shares of a company. It may take a very very long time. But apart from that, even before any action can be contemplated or taken under section 247, the mischief might have been done.

It is conceivable, and it is a fact also—it has happened in other countries; it has happened in India also—that the cornering operations can be carried on in a very short time. Without mentioning names, I can say that the shares of a particular company, a large company, were cornered and acquired through the operation of 24 companies and firms within the course

[Shri Kanungo]

of a couple of days or about that time. Of course, it can be said that such cases are rare, but I would draw the attention of the House to the fact that this type of operation, which my hon. friend, Shri Morarka, has characterised as 'corporate raiding'—a very apt phraseology—has been rampant in other countries, more so in ours. That is why at the present moment, the law being what it is in U.K., the Government there have thought it wise to appoint a Commission to consider revision of the law. Of course, their terms of reference are much wider; they will go into various aspects of the law of their country as it stands. But it is common knowledge from reports in the Press that the urgency of such an investigation for the possibility of changing the law was because of operations of this type.

Regarding the apprehensions which were mentioned by Shri Somani, that these powers would enable the management which has the support of a minority of shareholders, to continue as against the wishes of the majority, it is true that such a situation can be envisaged. But I would humbly submit that sombeody has got to be the judge of the circumstances.

Shri M. R. Masani (Ranchi East): The courts are there.

Shri Morarka: The provision regarding courts is there.

Shri Kanungo: This is merely an interim power. What I am trying to make out is that it is not necessarily the wish of a majority which is in the public interest; there may be a genuine change of shareholding of a company in the normal course where, I feel, the wishes of the majority have got to prevail. But hon. Members will appreciate that the whole structure of this particular clause is meant to prevent unholy and unfair conditions which may arise in this sense that where the acquisition of a majority of shares in a company is not with the *bona fide* intention of acquiring those shares but with the ulterior motive of cornering or taking them over, it certainly is not desirable. It is possible, as has been argued by Shri Somani and others, that by negotiations and arrangements there can be amalgamations or joining up of several companies by transfer of shares for the *bona fide* purpose of furtherance of better operations.

But these factors are such that there must be somebody to judge and differentiate between *mala fides* and *bona fides*. I certainly agree with Shri Masani that the court is the organ which should judge this. This clause exactly provides that the courts will decide it. All that it does is the taking of preventive measures by Government for a limited period of time. These limited powers are also subject to alteration and modification by courts. In other words, whatever action Government takes is subject to a review by the courts. But quick action is necessary because, after all, when the mischief is done, it cannot be undone. That is what is happening. Those powers under the various sections about management, 409 and others, are held up for a certain time. But the beneficial interests of these shares passing out to the marauders—as my hon. friend Shri Morarka said—this is a telling word—is there. They will have the fruits of their robbery. They cannot be deprive of that. Even here, in this clause, what is attempted to be done is that for a period of years they may not be able to enjoy the fruits of their robbery. Certainly, it is limiting the full proprietary rights of shareholders. But, it is done in the larger interests of the company itself and of the public.

Shri Naushir Bharucha (Khandesh East): The right shares.

Shri Kanungo: This again raises the question of right shares and bonus shares. It is asked why, during the period of freezing, a shareholder should be deprived of properties

which he otherwise could have got. (*Interruption*). This is meant to prevent marauders from attempting it. It is quite possible that, in the process, some genuine persons might be hit. It is not inconceivable. But you cannot make exceptions. In any case, for all practical purposes, as far as I can see, under such circumstances no company is likely to issue what you call right shares and bonus shares. The issue of right shares and bonus shares is also governed by other provisions of law where sanction has got to be obtained. And, it is inconceivable that Government will agree to the issue of right shares and bonus shares where the provisions of this section have come into operation.

Shri Naushir Bharucha: But the frozen shares might belong to a different company altogther and that company will not be prevented from issuing right shares; and at the end of three years Government would find that the party whose shares have been frozen has nothing and that party has been deprived of the right.

13.24 hrs.

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

Shri Kanungo: That is what I said. There might be some chances of miscalculation. But, broadly speaking, such a contingency is not likely to arise. The provisions of this clause have been purposely made deterrent so that the tendency for cornering and take-overs may be reduced to the minimum.

Shri Naushir Bharucha: But you are deterrent in striking the innocent party.

Shri Kanungo: I have mentioned that it might be conceivable. I am not sure; I have not gone into the details. But, I consider the chances are infinitesimal because the right shares and the bonus shares can be issued without reference to another company with the sanction of Government. I have tried to explain, as far as I could that these powers have been taken for the limited purpose of preventing the widespread practice of taking-over.

I, certainly, do not agree with my hon. friend, Shri Somani that as a result of the taking-over bids and various other means of piractical action, companies changing hands have shown better results. I claim to have a certain knowledge of the textile industry. I believe that such operations, apparently showing higher profits, as Shri Somani claims that the take-over bids have resulted in showing better profits, have resulted in complete ruining of the assets of the companies. I know of several such cases.

I am grateful to Shri Masani for the amendments which he has suggested do not object to the structure and the purpose of the clause but are based upon his philosophy to which I do not, certainly, subscribe. He is consistent in that there should be the least interference by outside authority in the matter of corporations and it should be left to the shareholders to take care of themselves. But, I do not agree that there is any merit in these operations of take-over bids or whatever they might be. In any case, there is enough protection for genuine amalgamation and genuine coming together to get through. Even though these provisions are there, I am not sure that ingenuity of the class of people which my hon. friend, Shri Morarka mentioned, will not find ways and means of getting over them.

I am sorry I am not able to accept any of the amendments. I submit that this clause, as passed by the Joint Committee, may be accepted.

Mr. Deputy-Speaker: I will put amendment No. 13 of Shri Masani to the vote.

Amendment No. 13 was put and negatived.

Mr. Deputy-Speaker: I will now put amendment No. 89 of Shri Morarka.

Amendment No. 89 was put and negatived.

Mr. Deputy-Speaker: Can I put all the amendments of Shri Bharucha together?

Shri Naushir Bharucha: Yes, Sir.

Mr. Deputy-Speaker: Then, I will put amendments 65 to 68 to the House.

Amendments Nos. 65 to 68 were put and negatived.

Mr. Deputy-Speaker: There is amendment No. 98 of Shri Somani.

Shri Somani: I do not press it, Sir.

Mr. Deputy-Speaker: Has the hon. Member leave of the House to withdraw his amendment?

Amendment No. 98 was, by leave, withdrawn.

Mr. Deputy-Speaker: Amendments Nos. 90 and 91.

Shri Nathwani: I do not press them, Sir.

Mr. Deputy-Speaker: Has the hon. Member leave of the House to withdraw these amendments?

The amendments were, by leave, withdrawn.

Mr. Deputy-Speaker: I wil now put the clause to vote.

The question is:

"That clause 79 stand part of the Bill."

The motion was adopted.

Clause 79 was added to the Bill.

Clauses 80 to 97

Mr. Deputy-Speaker: Clauses 80 to 97.

Shri Kanungo: Clause 98 has to be taken separately; it may be taken at the end of all these clauses.

Shri Tangamani: Three hours were allotted for clauses 80 to 98; and we expected that most of the time will be taken up by clause 98—practically the whole of it. So, the 3 hours reserved for clauses 80 to 98 may be retained for clause 98.

Mr. Deputy-Speaker: It goes without saying.

Shri M. R. Masani: May I draw your attention to the fact that my amendment No. 1, for adding new clause 5A, was also held over to be taken up along with clause 98? So, it may be held over along with clause 98.

Mr. Deputy-Speaker: That would also have time out of the 3 hours for which Shri Tangamani is so anxious. I will now put clauses 80 to 97 to vote.

The question is:

"That clauses 80 to 97 stand part of the Bill."

The motion was adopted.

Clauses 80 to 97 were added to the Bill.

Mr. Deputy-Speaker: The next group is clauses 99 to 147.

Shri Naushir Bharucha: We are moving very rapidly and there may not be many amendments. I do not know whether it is possible to take up clause by clause so that if anybody wants to speak in any particular class, he may speak.

Mr. Deputy-Speaker: We are taking them, clause by clause. We shall first take up clause 99 in this group of clauses—99 to 147. There are some amendments. Are they moved?

Shri M. R. Masani: I Would like to move my amendments Nos. 15, 16 and 17.

Shri Tangamani: I would like to move my amendment No. 107.

Mr. Deputy-Speaker: There is one more amendment No. 54. It is not moved.

Shri M. R. Masani: I beg to move:

Page 53,—

for line 25, *substitute*—

"agent for any area for the first time for a term exceeding ten years at a time". (15).

Page 54, line 29,—

for "three years" *substitute* "one year". (16).

Pages 54 to 56,—

omit lines 33 to 42, 1 to 42 and 1 to 30 respectively. (17).

Mr. Deputy-Speaker, this is yet one more clause which in its present form is objectionable and it will do great harm if adopted in its present form. During the discussion on the last two clauses, we have seen a peculiar phenomenon whereby amendments have been moved from various parts of the House but in spite of the fact that almost all speakers have backed them there has been no attempt on the part of the Government to accept modifications which may improve the Bill. In fact, the only support that has come to Government has been from the Communist Benches and in the Minister's place I at least would find it very embrassing.

Now, Sir, this clause 99 was an eleventh hour after-thought which came up in the Joint Committee—to interfere with the appointment of sole selling agents. Sales is part of an organisation and is an integral part of management and you cannot tamper with it any more than you can tamper with any other part like industrial engineering or personnel management or the general management of a company, without doing great harm to the integrity and the organic unity of the management. This clause gives the Government power indirectly to veto the appointment of a sole selling agent: it does not give them power directly. It gives power to dictate the terms on which the selling agent should be appointed. I can very well conceive that this discretion to dictate the terms or write the contract on behalf of the company for a sole selling agent may be misused as a bargaining lever to exercise a veto on the appointment of a particular selling agent. To be quite frank, the department may say: so long as you insist upon appointing A, our conditions will be very difficult to satisfy; if you appoint B we shall be very reasonable. I do not want to suggest nor do I say that I doubt the honesty of those who are in charge of our Company Law Administration. As I have said before—and I repeat—we are legislating for all kinds of people—good businessmen and bad businessmen, honest officials and dishonest officials. We cannot assume dishonesty on the part of businessmen and universal honesty on the part of the officers of the Government. They came from the same strata of society; one society; one brother is an officer and the other is in business. The tendency of legislation to assume that the man in business is dishonest while the brother in Government is honest takes no account of the realities of human nature and human society. Again, the phrase "prejudicial to the interest of the company" is so wide that almost anything can be brought within it.

Now, Sir, by my first amendment the amended clause would read as follows:

> "No company shall, after the commencement of the Companies (Amendment) Act, 1960, appoint a sole selling agent for any area for the first time for a term exceeding ten years at a time."

That is to say, only the appointment of a new selling agent would be banned, not the continuation of a selling agent now in office. The other change in that clause would be that I have substituted 'ten years' at a time instead of 'five years' at a time.

[Shri M. R. Masani]

In the amended form, I have circumscribed this clause so that it may not do much harm. In its present form I think it is a completely unjustified interference with the normal functioning of companies.

Sub-clause (4) speaks about the attempt to prevent the existing managing agent leaving his managing agency and later being appointed the sole selling agent. In itself there is nothing wrong in that transaction. But it is suspected that the managing agent would misuse his present hold over the company. If that is the case—it could be so—I would think that one year interval or cooling off period between the handling over of the managing agency and the entering into office of the selling agent under the new agreement would be enough for that influence to be removed. I do not see any need for as long a period as three years. My second amendment seeks to reduce this period from three to one year.

My third amendment is for the deletion of sub-clauses 5 to 8. This would take away the very extensive power of writing the contract for the company to which I had referred earlier and only the veto power would remain and the administration of the day would not be given very wide powers to write the contract for the company.

These are my three amendments. They are modest in nature and try to limit the mischief of this clause and I, therefore, move them.

Shri Tangamani: Mr. Deputy-Speaker; I beg to move:

Page 53,—

for lines 23 *to* 29, *substitute*

"(1) No company shall, after the commencement of the Companies (Amendment) Act, 1960, appoint a sole selling agent for any area for a term exceeding three years at a time." (107).

Before I come to my amendment, I would like to say that although the restriction that is to be imposed upon the sole selling agent after the coming into force of the 1956 Act has been felt, the Joint Committee has, to some extent, watered down the original provision introduced here. I have also made a reference to this in my dissenting note. Originally, that clause was numbered 104. This practice of a managing agent resigning and then seeking appointment as a sole selling agent and getting that appointment was not to be encouraged.

In the Joint Committee, Sir, some of the witnesses referred to this, that because of the restriction that has been imposed upon the remuneration of the managing agency by fixing a ceiling on the managing agency commission many managing agents were going in as sole selling agents. They said that this Act has more or less driven them into the field of sole selling agents. There is also a reference to this in the second report of the Company Law Administration for the year ending 1958. On page 55 of that report it is said:

> "It was reported to the Government that in some cases managing agents of some companies or their associates resigned from office and became sole agents of the same companies in order to earn a higher remuneration than was admissible to them under the Companies Act, 1956. This was apparently done to avoid the necessity of obtaining prior permission . . ."

So this practice of the managing agents resigning and taking up the job of sole selling agents was noticed by the Company Law Administration. Therefore, it was felt that there must be a complete ban on the managing agents taking up the position of sole selling agents for three years. That has been made clear in the Sastri Committee Report. Paragraph 17 on

page 115 of the Sastri Committee Report says towards the end:

> "A provision might accordingly be made in section 294 that no managing agent who has resigned his managing agency shall directly or indirectly, either by himself or through an association with others, take or acquire any interest in the sole selling agency of the products of the company of which he was a managing agent for a period of three years from the date of his resignation."

This is categorical enough. I do not want to read the actual clauses. The clause, as it has emerged from the Joint Committee, says that a managing agent who has resigned for the purpose of getting bigger remuneration can with the approval of the Government operate as the sole selling agent. So to that extent it has been watered down. My purpose in voicing this is to point out that the original intention of the Sastri Committee and the intention of the original Bill which was moved in this House should be carried out and only in exceptional and extra-ordinary circumstances such a step should be provided.

Sir, the purpose of this amending Bill is something different. The original section 294 regulates the appointment of bodies corporate as managing agents, I believe. The changes suggested to this section 294 are designed to regulate the appointment of former managing agents of companies or their associate as sole selling agents of the same company. It is proposed that no sole selling agent should be appointed for a period exceeding five years. Another thing is, when the sole selling agent is a firm or a body corporate the term of office etc. is already regulated by section 204 of the Act. Where it is an individual, there is no express provision in the Act regarding his term of office. That is why we in the Committee felt that section 294 should regulate his terms of office. Therefore, by this amending clause 99 which seeks to amend section 294 we are providing not only for those managing agencies which are firms or bodies corporate but also for individuals. Thereby we are making it much more complete and comprehensive. But, as I have already stated, this watering down of the three-year period by allowing approval by the Government is not a welcome thing. It is definitely a departure from the Sastri Committee Report.

Now, under this amending Bill the Government have taken power to call for information from the company regarding the terms, and if the terms are found to be not in the interests of the company or the terms are found to be such that no normal business concern will accept them the Government have got the power to vary them—I believe, that is what is stated in the amending clause where it is said: "whether or not such terms and conditions are prejudicial to the interests of the company;". There is also the other mischief which is likely to arise and which is sought to be cured by saying "where there are made selling agents than one in more than one area or in the same area". Although there may be diffierent selling agents in name, in fact there may be only one selling agent. That aspect also is now covered by this new amending Bill, which is a very welcome thing.

Shri Masani wants by his amendment that the period of five years should be increased to ten years. Five years or even less is not a very serious matter. I wanted to say that even five years in the first instance is a long period. They are given powers to extend the period. If there is a good managing agent or a good sole selling agent who is after the interests of the company and is really promoting the interests of the company, no one shall deny extension of the period to him. That is why I have suggested in my amendment that instead of five years three years would meet the ends of justice. Shri Masani wants an indefinite period. But three years I

[Shri Tangamani]

thought was more normal and more reasonable than a five year period. In the original Act, of course, the period is five years. Though I may not seriously oppose this, I would like the Government to consider whether when they have taken away the ban on these managing agents taking up posts as sole selling agents at least in the appointment of managing agents this period can be reduced to three years.

Again, in section 294, sub-sections (1) and (2) are now replaced by this new amending clause whereby sub-section (3) is retained as it is and after sub-section (3) sub-sections (4) and (5) are added. So the new section 294 as it stands now will have five sub-sections instead of three sub-sections. From the dissenting notes of some of my hon. friends like Shri Masani and Shri Chinai I find that what they think is, when once a particular selling agent sole or otherwise has been appointed and the remuneration and terms and conditions have been approved by the company at the general meeting it is not proper for the Government to interfere. That is the spirit of the dissenting notes that they have given. But the point made by the witnesses before the Joint Committee is abundantly clear, that the managing agents are now becoming sole selling agents because the present managing agency is not remunerative. So once the people are avoiding becoming managing agents and are going in as sole selling agents for the purpose of getting better remuneration, then there must be some check. It is on their own that they are becoming sole selling agents. Many selling agents have now come into existence because of the restriction imposed by the 1956 Act. It is, therefore, necessary that there must be some power which will control the remuneration and terms and conditions of these appointments of selling agents.

Sir, I once again submit that although the general restriction is there in the 1956 Act, this watering down of the three-year period by adding the words "with the approval of the Government", you have not really carried out fully the intention of the Sastri Committee Report. In the other case, in the case of appointment in the first instance, if it is for a period of three years there will be a greater control over the selling agents and there will also be a greater confidence in the minds of the shareholders. With these observations, I support clause 99 subject to the amendments which I have just moved.

Shri Naushir Bharucha: Mr. Deputy-Speaker, Sir, one has been noticing all through these discussions an attempt, on the one hand, to water down the provisions of the Bill as it has emerged from the Joint Committee and, on the other hand, to make the provisions more stringent. Rightly or wrongly, the Government has taken the credit that it has struck the middle path. Here also, the same is the position: on the one hand, Shri Masani is not satisfied with the five year period,—the time-limit,—and on the other hand, Shri Tangamani wants the period to be restricted to three years.

In the first place, so far as the purposes of the clause is concerned, I think it was the tactics of the sole selling agent which really brought about major changes and gave an impetus to the movement for the reform of the company law. After the managing agencies were abolished, so many managing agents simply put on the cloak of sole selling agents that they were able, not only to circumvent the provisions of the Act but they actually made profits with lesser work, and that thing has been condemned. Therefore, this is the basic clause which has got to be accepted by the House unless we are prepared to give the go-by to other clauses regarding maximum managerial remuneration and appointment of only one category of managing personnel as we have done under section 197A. Unless we are

prepared to give a go-by to those sections, which will make the whole Bill again ridiculous, this type of clause has got to be accepted because the device of sole selling agency was one big loophole which we did not foresee in 1956 and now it has got to be properly blocked.

I do not agree with Shri Masani's principle that the companies have a sort of divine right to manage their affairs in the way they like and that the Government should not intervene in their affairs. I do not believe that the autonomy of the companies can go to such an extent that it can torpedo some other clauses by giving the sole selling agents any amount of benefit. But the actual, practical difficulty may arise this way. For instance, on page 54 of the Bill, we have got subsection 5(a) which runs as follows:

> "Where a company has a sole selling agent (by whatever name called) for an area and it appears to the Central Government that there is good reason so to do, the Central Government may require the company to furnish to it such information regarding the terms and conditions of the appointment of the sole selling agent as it considers necessary for the purpose of determining whether or not such terms and conditions are prejudicial to the interests of the company."

A clause of this character is very necessary. But it will also apply to petty footling sole selling agents who may be appointed for taluks or districts. There are thousands of companies; but there are also 250 districts or so in India. So, if various companies appoint sole selling agents for various districts, they will be covered by this clause because there are sole selling agents "for an area". How is the Government to determine that the terms and conditions of contract of the footling sole selling agents are prejudicial or not? My hon. friend, the Minister in charge, may say that if we do not put in for the entire country minus a district. Therefore, I suggest that some *via media* should be struck without changing the language of the Bill.

I am of the opinion that this clause is not intended to cover those footling sole selling agents, and even if the Government attempted to do so, the work that the Company Law Administration would have to do will be so vast and voluminous that practically the Company Law Administration will fail in the task. I suggest that the Government should issue departmental instructions to the Company Law Administration that as a matter of administrative policy, the sole selling agents for such areas, as a district or two districts or whatever unit of area the Minister might think fit, may be left to be appointed as companies desire in such areas. Unless some such thing is done, and a practical *via media* is struck, I am afraid that in the first place the work of various companies even with regard to the appointment of petty sole selling agents would be affected. I am not sure that such applications, when they come in such large numbers as a result of these amendments to this clause, would be so very expeditiously dealt with. They might take anything between three to six months as and when the work-load increases. Therefore, I think there is some justification in the complaint that the appointment of sole selling agents of a very petty type would also be held up and no company can function unless it promptly appoints sole selling agents in the place of those who are required to resign as a result of this particular section coming into force. I say so because it should be appreciated that subsection (4) will apply to all types of sole selling agents irrespective of their being sole selling agents for a district or a State or the entire country. Therefore, I think that some sort of working arrangement will have to be made and resorted to, and I feel that the only way that we can get out of this difficulty is for the hon. Minister to issue directives to the Company Law Administration that in matters of sole selling agents affecting a district or

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two, this proviso should not be enforced at all.

With regard to the other clauses, I may say this. My hon. friend, Shri Masani, complained that the Government is assuming too much power. The trouble is that either you assume sufficient power or you leave a loophole. For instance, it is open to a company which desires to circumvent the provisions of this section to appoint two or three selling agents—one being a favourite or a person whom they want to favour, and the two others being *benami* agents. When more than one sole selling agent is appointed, if the Government feel suspicious or has reason to believe so, they can call for the terms and conditions to ascertain whether in reality one is appointed as a selling agent and the rest are only camouflage or screens to hide the real intentions of the company. So, this provision is also necessary.

But I have a feeling that if we try to implement those clauses—and there are quite a few of them—by their letter and word, it will be extremely difficult, and the administration of *bona fide* companies will be brought to a standstill. Secondly, the company law administration would also be saddled with such kinds of work that it will not be able to cope with in proper time. I, therefore, submit that in all these cases the Government should exercise their discretion and give some sort of administrative latitude for the company law administration or prescribe some sort of principles by which automatically certain applications of sole selling agents which are of a minor nature would be granted without any interference unless there is some special case to intervene. I do not know whether the Government propose to issue such directives and, if they do, it is very necessary that it should be announced in this House so that businessmen might know at least that only in such glaring cases where the attempt is made to circumvent the provisions relating to maximum managerial remuneration and other things, that action will be taken.

Shri Morarka: My hon. friend, Shri Tangamani, made a remark just now that clause 99 as it has emerged from the Joint Committee has been much watered down as compared to the original clause 104 in the Bill. I think it is just the opposite. There is a slight misunderstanding on the part of Shri Tangamani in saying that the provisions of clause 104 in the Bill have been watered down by clause 99. I will explain in a minute why I feel that clause 99 has been made much wider in scope than the original clause 104.

14 hrs.

Before that, I want to say a word about the managing agents becoming sole selling agents. This point was discussed even in the Joint Committee. Last time when the Bill was amended, the main policy of the Government was to discourage the managing agency system and to encourage the companies to have any other form of managers. As a matter of fact, Government took specific power to name certain industries and once they were notified, there would be no managing agents in any unit of that industry. Of course, Government has not issued any such notification, but it was the Government's desire and wish that as far as possible the managing agency system should be discouraged.

Here is the evidence of the company law administration about the floatation of new companies, how many of them have managing agents, how many managing directors and how many only directors. They have given figures for the last three years. In 1956-57, out of 848 new companies floated, there were only 14 companies managed by managing agents. In 1957-58, out of 961 new companies, only 15 were managed by managing agents. In 1958-59, out of 1095 new companies, only 7 companies were managed by managing agents. So, the main desire of the Government to discourage the managing agency system was substantially fulfilled. This is only about new floatation, apart from the existing

companies, in which also many managing agents have resigned.

Even at that time, it was never envisaged that no managing agents should be entitled to appoint themselves as selling agents. The main idea was a person who is a managing agent should not also be a selling agent at the same time. There should be a check on the same person acting as managing agent as well as selling agent. But if a person wanted to resign his managing agency and transfer himself to a selling agent, there was no objection. The managing agency system was objected not only on the ground of remuneration, but various other abuses were also alleged against the system. It was said that it was no more necessary in the interest of the industrial development of the country. Therefore, it was the policy of the Government that as far as possible, the managing agency system should be discouraged. But that did not mean that if the managing agent resigned from office of managing agency he incurs any disqualification to become a selling agent or managing director or anybody else in relation to that company or any other company. So, one must disabuse one's mind that merely because a person acted as a managing agent of a certain company he incurred a certain disqualification.

The Sastri Committee which went into the matter felt that managing agents were anxious to become selling agents. So, they suggested that for a certain number of years those persons who resigned the managing agency should not be allowed to become selling agents. The period suggested was 3 years. The Joint Committee kept that period at 3 years, but they have made one provision that if before those three years, a similar person has to be appointed, previous consent of the Central Government will be necessary. So, a managing agent who wants to become a selling agent can either wait for 3 years or if he wants to become a selling agent earlier, he has to come to the Government for permission. So, I do not feel that the provision of clause 104 has been watered down in any respect.

On the other hand, I feel that the original clause 104 did not contain the provision for asking for the selling agency agreement of individual companies and scrutinising it. Shri Tangamani quoted something from the Sastri Committee's report. Unfortunately, he did not quote it in full. In the same para, on the same page 115, the Sastri Committee report says:

> "It would not, however, be practicable for the Government to interfere in the management of a company's affairs to the extent of sanctioning every selling or buying agency agreement or scrutinising every transaction of the company with the ex-managing agent or his or its associates."

In the new clause 99, Government have taken the power to call for selling agency agreements and scrutinise them. If the Government feel that the terms of the selling agency are onerous or unreasonable, they can ask the company to correct it. But I still disagree with Shri Masani when he says that this power of Government would be a power of veto and Government would be able to influence personalities. I do not think even by implication one can feel that the Government can exercise the power in such a way that it can dictate to the company who should be appointed as selling agents.

Shri Tangamani's amendment reducing the period from 5 years to 3 years is impracticable for the simple reason that when a selling agent is appointed, the selling agents has to incur certain expenditure initially. It is not as if every selling agent is only for name's sake for drawing the remuneration and he does not do any service. He has to organise the service station, show room, a certain nucleus of experts and engineers and all that. For that, he incurs certain expenditure. Unless and until there is some length of time for which the agency is secure and he is assured of that thing, it would not be possible for the companies to appoint

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sole selling agents for a period less than 5 years and certainly not for a period of 3 years, as Shri Tangamani suggested.

On the other hand, Government should have taken power to extend the period to 10 years in suitable cases, as Shri Masani said. While a general permission may not be given to all companies, in some suitable cases of a special nature, where the product is such that it requires a lot of sale service, Government could have aken this power to extend the period to 10 years. I feel that on the whole clause 99 as it stands is a fair compromise between two extreme views and the amendments suggested by Shri Tangamani as well as Shri Masani are not seriously needed to improve this clause, except that in suitable cases, Government can take the power to extend the period to ten years.

Shri Somani: At the outset, I would like to clarify that I am not at all opposed to the principle of ensuring that the managing agents or those who are in charge of management will not be allowed directly or indirectly to add to their over-all maximum remuneration. I am not opposed to taking any steps that are necessary for this. I would further not oppose any restrictions placed on the powers of the Board of Directors so as to secure the necessary approval from the shareholders for any period that the Government may think feasible.

What I would like to oppose is what I think is a power of a very sweeping and far-reaching nature as the power conferred under sub-clauses (5) and (6) of clause 99, under which Government are entitled not only to ask for all sorts of information about the terms and conditions of the selling agency agreement, but also they want to act as judges as to whether the terms and conditions are in the interests of the company; if they feel that the terms are not fair, they want to take the power to dictate to the company that the terms and conditions should be amended accordingly. Personally, I do not think this can have anything to do so far as the managerial remuneration is concerned, about which Shri Bharucha referred, because Government are not taking any powers to do away with the selling agency contract itself; they are taking powers to amend the terms and conditions of that selling agency. The responsibilities which the Company Law Administration are taking under this clause are of such a character which, I humbly submit, they will find it impossible to cope up with.

I will give the example of the textile industry, which is a very old industry, very well-known and functioning for a very long time, apart from the case of the new industries which have got their own complications about sales techniques which they follow. In regard to textile industry, mills produce hundreds of varieties of cloth, apart from the broad classification of coarse, medium, fine and superfine. The terms and conditions of selling agencies vary not only according to the varieties coarse, medium, fine and superfine but also from mill to mill and centre to centre. In a centre like Bombay there are mills which are selling their goods without any selling agency and there are others which pay 2 per cent. commission to their selling agents. There are some other mills which pay ¾ or ⅝ per cent. commission to their selling agents in the same centre for the very same varieties.

I would like to know what criteria or principle the Company Law Administration will apply when they are faced with the problem of examining the selling agency agreements of two textile mills in Bombay who are paying, in one instance ¾ per cent and in another instance 1¼ or 1½ per cent selling agency commission. It is just possible that the companies, when they appointed their selling agents, may have been approached by a number of parties, they had to make a selection and those who have been

aggreived may just go on flooding the office of the Company Law Department with all sorts of complaints about the very unreasonable terms which the companies have contracted with their selling agents when they appointed their selling agents in that particular area. This will open the floodgate to all sorts of complaints by aggreived parties and may result in blackmailing the company by those who may not have been successful in securing the selling agency contracts for those parties may tell the Company Law Department that a particular contract which a mill has entered into with a selling agent includes terms and conditions which are prejudicial to the interests of that company. They may even give examples saying that so and so is prepared to act as selling agent on terms and conditions which are more favourable to the company than those which have been contracted for by the company.

My point is that we are on the threshhold of a very huge programme of industrialisation when the establishment of new industries and new expansions are taking place. It is true that now we have got a protected market and many of the industries do not feel so much difficulty to sell their products. But in these modern times of technological advances all over the world the sales techniques employed by various industrial companies differ so radically from one company to other that it is really a very impossible task for the Company Law Department, however efficient and competent the personnel in its organisation may be, to determine the nature and the fairness of the terms and conditions which the companies may have offered to their selling agents.

So far as the sales commission or the terms and conditions are concerned, they are purely internal matters of the shareholders of the company concerned. As I said at the very outset, I am not at all opposed to taking any measures to plug any loophole so far as the overall maximum managerial remuneration of those in charge of the management are concerned. But when you go a step further and when the Company Law Department is being empowered to go into each and every selling agency agreement of the hundreds of industries which we have, and which we want to go on adding year in and year out, I think it is something which will really mean placing a responsibility on the shoulders of the Company Law Department which it will find it very difficult to discharge. I would, therefore, like to submit that whatever may be the nature of the restrictions to plug the loopholes and to ensure that those who are in charge of the management, directly or indirectly, through their associates or otherwise, do not get more remuneration than what is prescribed in the Act, Government may take whatever powers they choose, but so far as the internal sales organisation of the companies are concerned, I do not think there is any justification for taking any powers to scrutinise the hundreds of selling agency agreements which the companies have entered into with their selling agents. Shri Morarka has just now read from the Sastri Committee Report, where also they have pointed out the practical difficulties of the Company Law Department scrutinising each and every selling agency agreement. My point is that it will not be possible for the Company Law Department to exercise those powers with a fair degree of responsibility and in a manner to do justice to the responsibility which is going to be taken in hand by the Company Law Department; since the terms and conditions even in the same industry, in the same centre differs from one unit to another on such a radical scale, it will really be a very hard task for any organisation to determine the fairness or otherwise of the terms and conditions. So, I want to point out to the hon. Minister that the responsibilities which are being undertaken in this respect by the Company Law Department are such which they will find it very difficult to discharge.

Shri Kanungo: Sir, I thought that this clause would not evoke any comment because, as my hon. friend, Shri Morarka, has mentioned, we have gone through it very carefully in the Joint Committee and the clause, as it has emerged, is in a rather attenuated form, to which Shri Morarka has objected. First of all, let us see why this clause came in at all. The original section 294 of the Act was merely confined to the procedure by which a company can appoint its selling agents. Broadly it stated that the selling agents should be appointed at a general meeting by a procedure by which the shareholders should have notice of the time; that is all. That means, the Board of directors or the managing agents should not by themselves commit to an arrangement without knowledge or the concurrence of the shareholders. The clause found a place in the Bill because, to my knowledge, during the period of shortages following the war, selling agencies became remunerative. In a market where there is no effort required for sales these agencies were being paid for doing nothing. Maybe, there was a justification in the previous years. In the earlier stages, that is, in the promotional or building up stages of a trading company or a manufacturing company selling agents might have done considerable work. Therefore the attention of the public at that time was focussed upon the managing agency and the sole-selling agency and the provisions were made in section 294.

As Shri Morarka has rightly pointed out, the whole objective of the 1956 Act was to set a tendency in motion which will do away with the system of managing agents. As subsequent events have proved, that objective has succeeded to a certain extent. In other words, the managing agency has become a bit onerous from the point of view of that type of persons who wanted to make easy money. But since the Act was put into operation another new type of malady has been discovered, that of the managing agents, I would not say managing agents by themselves but these undesirable tendencies being sought to be operated through the provision of selling agents. That is the logic why a period of cooling-off has been provided for.

Shri Masani agrees that a period of cooling-off is necessary, but he would like to put it at one year. I would submit that there is nothing to prevent the period being reduced to one year or even less, but again, I know, Shri Masani will object saying "Why ask somebody else to decide about it?" I wish that the conditions in our society and particularly the management in the corporate sector were such that there would be no occasion for writing out these laws and amending them so quickly. I hope Shri Masani will agree that he is perhaps more optimistic than I am.

Shri Masani: I have got faith in the people.

Shri Kanungo: Yes. Those conditions do not exist now. The very fact that we have today to make this provision, even a period of barely three years, is certainly shocking to me. It is shocking in the sense that in a study of a limited number of various companies which we have been able to make the remuneration of the selling agency has been in certain cases much more than that of the managing agency. In the previous dispensation after all a managing agency commission, even the minimum managing agency commission, could be collected when there is a profit to the company. But a selling agent is not fettered with that. In a period of shortages in industries like textiles, sugar and various other consumer commodities, where it is a market of scarcity, selling agency has been going on for which there is no necessity from the point of view of the corporations unless they wanted to lie in somebody else's pocket.

I can conceive that sole-selling agencies are necessary for special type

of products and for a very long period. Perhaps in the case of a heavy machine factory it will be necessary for the company, if it wants to spread its sales properly and have a proper outlet, to appoint selling agents who can act effectively. They can act effectively only if they are able to invest large sums of money in setting up the necessary service arrangements and other things in the promotional world. I am told that it is not uncommon in certain industries, particularly, in heavy engineering industries where the commission can go up to as much as 20 per cent or 25 per cent even. It is perfectly justified. Therefore the Bill, as it was introduced, provided that every such contract should be subject to the approval of the Government. But the Joint Committee, after a great deal of deliberation, came to the conclusion, namely, let us try for a period and see how the trends develop and that the Government need not be given those powers for which they had asked in the original Bill.

The present clause merely arms the Government with the power to call for an agreement, nothing more. If the Government finds out that it is onerous for the company to enter into such an agreement, it might direct that it might be altered. Shri Masani's objection, consistent with this philosophy is: Let the shareholders hang themselves if they choose to. That is the attribute of autonomy. That is the attribute of development. They are not responsible because unless you are saddled with responsibility you do not know how to behave. True, but in the mean time events happen and that cannot be undone. Worst of all, tendencies are set in motion which it will be difficult to curb and which by itself, to say the least, is unethical.

Though the provisions of this clause go to almost three full pages, most of it is procedural. In substance it means that a managing agent should have a cooling-off period before he can convert himself into selling agents and that cooling-off period should be normally three years so that there will be complete association between the company and the corporation of which it has been acting as managing agent. In genuine cases that period can be shortened to even less than one year. In other cases where companies are free to appoint sole-selling agents or otherwise, they are free to do it. The shareholders have got the full right to exercise their own vigilance. Government always acts in the public interest, nothing else. When it finds that there is something wrong about certain operations, it can call for the agreement and direct certain alterations in the process.

I can fully understand Shri Bharucha's point which he has made out. It should not be made an instrument by which the operation of a company should be hampered in any way. It is perfectly true that however efficient a Government organisation might be, it will be impossible for it to appreciate the day-to-day principles of marketing and selling of thousand and odd products. They cannot have the knowledge. Therefore I hope and I can assure Shri Bharucha that we will make all efforts to provide in the rules and executive instructions in such a manner that the provisions of this section are used with circumspection and with the object of helping a company and not of hindering its operations. Sir, I hope that the mere presence of this section would be a warning to those unscrupulous persons who want to milk companies in different ways. As far as those efficient managements, managements of integrity are concerned, of which fortunately in our country there are quite a number, they have nothing to worry about, because their operations shall not be covered by this clause and I hope that a trend will set in where this practice of, I should say bleeding, companies for practically no work done, will cease to operate. I hope that this clause as approved by the Joint Committee will be accepted by the House.

Mr. Deputy-Speaker: I shall now put amendment No. 107 of Shri Tangamani to the vote of the House.

Amendment No. 107 was put and negatived.

Mr. Deputy-Speaker: I am now putting amendment Nos. 15, 16 and 17 to vote.

Amendments Nos. 15 to 17 were put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 99 stand part of the Bill."

The motion was adopted.

Clause 99 was added to the Bill.

Clauses 100 to 119 were added to the Bill.

Clause 120.—(*Amendment of section 332*).

Shri M. R. Masani: Sir, I beg to move:

Pages 66 and 67,—

for clause 120, *substitute*—

'120. *Amendment of section 332.*— In section 332 of the principal Act, in sub-section (4), for clause (b), following clause shall be substituted, namely:—

"(b) where the managing agent of the company is itself a company, such number of its directors as are directors of and constitute the majority of the directors in another company."' (18)

Section 332 of the Act already limits the number of companies which can be managed by one managing agent. This clause seeks to prevent a single individual from being a member of two managing agency companies. I suppose that the idea is to stop or prevent interlocking of managing agencies. One would have understood this clause if it had provided that there should not be two managing agency companies where the majority of the Board of Directors of one company form the majority of the Board of the other managing agency company. Then the control would be common and there would be inter-locking.

But what does the clause say? It says someting quite different; something quite unnecessary. It says that you may not be a member of two managing agency companies if you hold 10 per cent of the voting power in a public company or 5 per cent of the total voting power in a private company. In other words anyone who is a minority shareholder in a managing agency firm with anything from 5 to 10 per cent. of the voting power, from 1/20th to 1|10th voting power in a company may not hold a share in the other managing agency company. I fail entirely to see the purpose of this quite needless interference with a normal process. It is very hard that a man cannot have 1/20th voting power in a company if he happens to have 1/10th voting power in another company. That does not show any control. What shows control is having a majority on the boards of the two managing agency firms. Therefore, my amendment No. 18 seeks to restrict this bar to interlocking to cases where the majority of the Board of Directors of one managing agency also form the majority of the Board of Directors of the other managing agency. I think this is as far as we need to go. Anything more than that is vexatious and oppressive.

Shri Kanungo: The substance of the objection to the clause would be what should be the criteria to judge the tendency for interlocking: whether it should be 10 per cent or 5 per cent of the various companies or more. Whatever be the per cent you write out, even if it be 1 per cent, it is quite possible that he might be working under the directions of somebody else. It cannot be prevented. But we have tried to prevent this tendency of interlocking as best as could be done. There is nothing sacrosanct about the 10 per cent or 5 per cent. It has been assumed that this will be a sufficient criterion by which it can be

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judged. To leave it alone as Mr. Masani would suggest, would be much more dangerous than what it is now. Today there is a tendency like Chinese box, one group of persons operating through dozens of companies which are themselves managing agency companies and control as many as 20,30 or 40 companies. Though apparently one company controls managing agency by 10 per cent, that company itself is controlled by somebody else. The evil is there. We hope with this provision it can be checked to a certain extent. Somehow or other I am not very optimistic that this is enough, but this is what it is and therefore, I would suggest that this clause should be accepted as it is.

Mr. Deputy-Speaker: I shall now put amendment No. 18 to the vote of the House.

Amendment No. 18 was put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 120 stand part of the Bill".

The motion was adopted.

Clause 120 was added to the Bill.

Clauses 121 to 124 were added to the Bill.

Clause 125.—(*Amendment of section 349*).

Mr. Deputy-Speaker: There is an amendment by Shri Tangamani.

Shri Tangamani: I am not moving my amendment.

Mr. Deputy-Speaker: The question is:

"That clause 125 stand part of the Bill."

The motion was adopted.

Clause 125 was added to the Bill.

Clauses 126 to 132 were added to the Bill.

Clause 133.—(*Amendment of section 37*).

Shri Tangamani: Sir, I beg to move:

Page 74,—

after line 23, *add*—

'(a) in sub-section (1), for the words "any body corporate which is under the same management as the lending company", the words "any body corporate which, in the opinion of the Government, is under the same management as the lending company" shall be substituted.'. (73)

I submit, this is a very important amendment. Presently, I shall explain also the reasons why I want this amendment to be accepted. As the House is aware, sections 369 and 370 deal with loans to companies under the same management. Section 369 deals with loans to managing agents direct and section 370 deals with companies under the same management. Certain amendments have been moved and accepted and clause 132 has been brought by the Joint Committee to make certain clarifications about loans to managing agents. That has followed more or less the lines indicated by the Sastri Committee.

Coming to section 370, these are loans to companies under the same management. Section 370 says:

"No company (hereinafter in this section referred to as "the lending company") shall—

(a) make a loan to, or

(b) give any guarantee, or provide any security, in connection with a loan made by any other person to, or to any other person by,

any body corporate which is under the same management as the lending company, unless the making of such loan, the giving of such guarantee or the provision of such security has been previously

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authorised by a special resolution of the lending company.

This has been retained in the Amending Bill also and in the new clause 133 also. My purpose is this. If it is left as it is, a company which is a subsidiary or which is a company under the same management is now left in the air. If the Government decides that a particular company is under the same management the question whether it is under the same management or not, can be raised before a court of law and litigation is also likely. There was reference to this particular section 370 during the first reading by Shri H. N. Mukerjee, I believe. If, in the opinion of the Government, a particular company is a company under the same management, then, sections 369 and 370 will operate.

The working of section 370 has been studied by the Company Law Administration and the Sastri Committee has also given detailed attention to sections 368, 369 and 370. The Sastri Committee has devoted 3 or 4 pages to this particular purpose. The intention of the original clause, namely, clause 136 and the present clause 133 and the Sastri Committee's report are the same. That has been substantially accepted by this House and the Joint Committee. Having accepted it, my fear is, if this amendment is not accepted, it may lead some complications and avoidable litigation. That is the main point on which I want to speak.

Having said that, I would like to remind the House that when this Bill was brought before the House and when the original clause 136 was explained to us, it was said that this amendment proposes to provide a more comprehensive definition of the expression "companies under the same group" or companies under the same management in the light of the experience gained of the working of section 370. There are certain other amendments also. Those amendments are more of a clarificatory nature. In the Amending Bill clause 136, we had this sub-section (1) retained, and sub-section (1 A) was added which was really the Explanation given to sub-section 1. Sub-section 2 was recast and sub-sections 3 and 4 were added. That was, more or less, the set-up in the original Bill. In section 370, there are 2 sub-sections, 1 and 2. To sub-section 1, there was an elaborate Explanation. The Amending Bill brought in sub-section 1 and sub-section 1A and retained sub-section 2 and added sub-sections 3 and 4. As it has emerged from the Joint Committee, we find that sub-section 1A is added, which is very well drafted. This is one of the clauses which is very well drafted as it has emerged from the Joint Committee. Sub-section 1B will be the Explanation. Sub-sections 1C, 1D, 1E and 1F deal with registers. Sub-section 2 is recast and sub-sections 3 and 4 are practically the same as the original one. That is how the set up has come now.

The Sastri Committee also went into this question and they have said:

> "Instances of inter-company loans opposed to the spirit of section 370(2) have come before the Department."

They give a hypothetical instance. They say:

> "Lending company A has subsidiaries B, C, D and E of which B alone is a public company. F, a subsidiary of B gives loans to C, D and E as well as to A. The loans given by F would not strictly fall under section 370(2). To make the position clear the word "or" might be added at the end of clause (ii) to the Explanation . . . etc."

The intention of this has been very ably carried out here.

The point that I would like to urge again is this. When the intention was accepted by the Joint Committee, when the original amending clause and the Sastri Committee's recommendations have been before us, the Committee considered and felt that it should be made clear that section 370 of the Act would be attracted also in the case of a loan made or guarantee given by a company to a partnership firm, any partner of which is a boy corporate under the same management as the lending company. This is a new point which has been clarified and which has been added as the Bill has emerged from the Joint Committee. That is, a partnership firm, any partner of which is a body corporate under the same management, has also been brought in. The Committee further felt that every lending company should keep a register showing the names of all bodies corporate under the same management as the lending company and the name of every firm in which a partner is a body corporate under the same management as the lending company and detailed particulars regarding the loans made, guarantees given etc. should be entered in the register, which shall be open to inspection by the members of the company. Failure to maintain the register is made punishable.

For the sake of completeness, I shall read the sub-sections. As I have already stated, the sub-sections in the old Bill have become sub-sections (c) (d), (r) and (f). It is stated:

"(c) after sub-section (1B) as so numbered and lettered, the following sub-sections shall be inserted, namely:—

"(1C) Every lending company shall keep a register showing—

(a) the names of all bodies corporate under the same management as the lending company and the name of every firm in which a partner is a body corporate under the same management as the lending company and

(b) the following particuluars in respect of every loan made, guarantee given or security provided by the lending company under this section:—

(i) the name of the body coporate to which the loan has been made whether such loan has been made before or after that body corporate came under the same management as the lending company,

(ii) the amount of the loan,

(iii) the date on which the guarantee has been given or security has been provided in connection with a loan made by any other person to, or to any other person by, any body corporate or firm referred to in sub-section (1) or (1A) together with the name of the person, body corporate or firm.

(1D) Particulars of every such loan, guarantee or security shall be entered in the register aforesaid within three days of the making of such loan, or the giving of such guarantee or the provision of such security or in the case of any loan made, guarantee given or security provided before the commencement of the Companies (Amendment) Act, 1960, within three months from such commencement or such further time not exceeding six months as the company may by special resolution allow.

(1E) If default is made in complying with the provision of sub-section (1C) or (1D), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees and also with a further fine which may extend to fifty rupees for every

[Shri Tangamani]

day after the first during which the default continues."

That is why I said any default is also now punishable. This is a new thing which has been introduced.

"(1F) The register aforesaid shall be kept at the registered office of the lending company and—

(a) shall be open to inspection at such office, and

(b) extracts may be taken therefrom or copies thereof may be required,

by any member of the company to the same extent and in the same manner and on the payment of the same fees as in the case of the register of members of the company; and the provisions of section 163 shall apply accordingly."

These are very salutary principles, very well laid down, and the clause, as it has emerged from the Joint Committee, is self-explanatory and comprehensive, but there is this lacuna that the status of a lending company or a company under the same management or in the same group is still an unknown quantity.

To make the position clear the opinion of the Central Government was brought in, so that there would not be any doubt and the protection sought to be given after our experience of the functioning of section 370 may not be lost. That is the purpose of my amendment, and I trust the House and the Government will accept it.

Shri Morarka: I think the amendment of Shri Tangamani would not fit in with Section 370. The Explanation to Section 370(1) reads:

"*Explanation.*—For the purposes of this sub-section, two bodies corporate shall be deemed to be under the same management——

(i) if....."

And then it describes the characteristics. There is no question of the Government's opinion here as to when a company would be considered to be under the same management.

Shri Tangamani: Under the original section that is so, but in the new clause as it has emerged from the Joint Committee, it is said:

"(b) the *Explanation* to sub-section (1) shall be numbered and lettered as sub-section (1B) and in sub-section (1B) as so numbered and lettered,—

(i) for the words "For the purposes of this sub-section" the words, brackets, figures and letter "For the purposes of sub-section (1) and (1A) shall be substituted;"

Shri Kanungo: So, the Explanation remains there.

Shri Morarka: It is after sub-section (1). So sub-section (1) would remain as it is, and with it remains the Explanation also as it is.

Shri Tangamani has referred to the Sastri Committee Report. In page 145, it says:

"It is pointed out that the provisions of section 370 are restricted in scope as they cannot be made use of in cases where managing agents hold 33 1|3 per cent. or more of the shares in companies in the same group because they would be associates of the managing agents to whom loans are forbidden under section 369. These provisions, though stringent, are designed to safeguard the funds and the interests of the lending company and we cannot recommend any change therein."

The volume of evidence before the Sastri Committee was to make the provisions of section 370 less vigorous, to lighten them, to make them a little more flexible, but the Committee, while agreeing in principle, have said

that in order to safeguard the interests of the lending company, they would not agree to any change.

The main purpose of clause 133 is this. Section 370 refers to loans etc., to companies under the same management. It has been found that sometimes the loans are not made to companies under the same management, but to firms in which a company under the same management is a partner. In order to bring such firms also within the scope of section 370, this amendment is made.

The opportunity has been taken to mani's amendment was based on a register and regulate various other things, which, according to me, are very healthy and very necessary provisions. These safeguards did not find a place at all in the Bill as it was introduced in the House, but the Joint Committee, in its wisdom, has done all this.

It is now clear that Shri Tangamani's amendment was based on a slight misunderstanding. I am sure he will be fully satisfied when sub-section (1) and its Explanation remain intact. His amendment will not also read well if incorporated. I therefore hope he will not press it.

Shri Kanungo: I have nothing more to add. I am not prepared to accept the amendment.

Mr. Deputy-Speaker: The question is:

Page 74, *after* line 23, *add*—

'(a) in sub-section (1), for the words "any body corporate which is under the same management as the lending company", the words "any body corporate which, in the opinion of the Government, is under the same management as the lending company" shall be substituted.' (73).

The motion was negatived.

Mr. Deputy-Speaker: The question

"That Clause 133 stand part of the Bill".

The motion was adopted.

Clause 133 *was added to the Bill.*

Mr. Deputy-Speaker: The question is:

"That Clauses 134 and 135 stand part of the Bill".

The motion was adopted.

Clauses 134 *and* 135 *were added to the Bill.*

Clause 136— *Substitution of new section for section* 372.

Shri C. R. Pattabhi Raman: I beg to move:

Page 78, line 21, *after* "purchase" *insert*—

"(Whether by itself, or by any individual or association of individuals in trust for it or for its benefit or on its account)". (83).

Shri M. R. Masani: I beg to move:

Page 78, *omit* lines 28 to 30. (19).

Page 78, lines 38 and 39,—

for "[whether before or after the commencement of the Companies (Amendment) Act, 1960]". *substitute*—

"after the commencement of the Companies (Amendment) Act, 1960." (20).

Page 79, line 2,—

after "corporate" *insert* "in the same group" (21).

This clause deals with investment companies whose main business is to invest funds in other companies, and this is a class of companies which I should have thought we would have encouraged and given facilities to, because we all agree that greater investment in industrial enterprises is required in this country.

I find that the clause as it is at present tends to hamstring the activities of genuine investment corporations and companies by tying their hands

[Shri M. R. Masani]

with a number of restrictions which appear to me to be completely needless. Not only that, but even these restrictions are given retrospective effect, For instance, if a company has by now, in the course of its business, invested so much in another company, and that amount touches the proportion that is laid down by the clause, then that company may not invest any more in the other company. In other words, we are legislating for the past as well as the future, and we are doing it in a way which would really come in the way of legitimate, healthy investment for the development of the country's economy.

These three amendments that I have moved seek to lessen the mischief, though it cannot be altogether undone. One of these amendments, Amendment 20, tries to restrict the operation of these limitations to things happening after the commencement of the Companies Act as now amended and not with retrospective effect. In other words, investments made by an investment company in another company in the past will not be taken into account for the purpose of tying the hands of the investment company.

15 hrs.

Another amendment is to make it clear that, unless there is interlocking in the same group, the limitation should not apply. If these amendments were accepted, on the one hand, a needless intervention by the Central Government would be eliminated, and on the other, the retrospective effect of these amendments would not operate, and a certain amount of elbow-room would be given to investment companies to carry on their business. Otherwise, I can only deplore the actions of a Government which in one voice claims to be interested in industrial investment in this country, and with the other tries to pass provisions which are bound to cripple and hamstring the operations of investment companies.

Shri C. R. Pat abhi Raman (Kumbakonam): I beg to move amendment No. 83 to clause 136.

Section 372 refers to purchase by a company of shares of other companies in the same group, and section 372 as proposed to be redrafted by clause 136 of the present Bill has a loophole; it may enable a company to evade the restrictions of this section. While investment made by a public company directly in shares or debentures of a company would attract the provisions of the section, the section could be rendered ineffective by making a loan through an intermediary who may be an individual or a partnership. Matters may be so arranged that the first company, that is, the investing company might advance some money in the shape of a loan to an individual (or even in a partnership, with the sanction of a special resolution under section 370 where that is applicable); and if the individual or partnership invested that money on behalf of the first company in another company, the provisions of section 372 would not be applicable.

My amendment, namely amendment No. 83 seeks to plug the loophole and prevent such indirect investments.

Sir, I move the amendment.

Shri Nathwani (Sorath): I want to say a few words on this clause. This clause enlarges the scope of the existing provisions under section 372. At present, the restrictions are confined merely to investments by one company in other companies under the same management. Under this clause these restrictions would be applicable to investments in other companies also, irrespective of the question whether they are under the same management or not.

One of the serious objections that has been raised in regard to this clause is that it would prevent an investing company from enlarging the scope of its activities, in other words,

it cannot undertake in the form of a new joint-stock enterprise any other venture; and a certain amount of nervousness exists on this score in certain quarters. I do not think that this apprehension is justified, because if a company wants to start another new venture, and wants to invest any amount of moneys in that new venture, there is no prohibition, and no leave or sanction either from the company at the general meeting, or from Government is necessary.

In this connection, I wish to point out the provisions of the proposed sub-section (14) of section 372, particularly, the provisions of sub-section (14) (d) which says that this section shall not apply *inter alia* to the investments by a holding company in its subsidiary, so that any existing company can invest more than 50 per cent in any new company and start any new enterprise; there is no objection to that.

As regard, the enlargement of the scope, it is well known that the intention is to prevent, so far as is possible and desirable, the concentration of economic power in certain hands only. But, even here, in suitable case, exemption may be granted.

Again, it is stated that this would hamper further investment in other companies. I cannot quite understand it. Even now, what is the effect? The total amount that can be invested would be only 30 per cent. Supposing Government does not permit any particular company to invest its moneys in other companies, the result would be this namely that either that company can start a subsidiary company, or even if it does not think of doing it, it would be constrained to distribute its surplus amongst the shareholders, because it cannot invest further, and it does not want to expand its own activities. The net result would be that the surplus which is available there and which would be lying idle and which could not be availed of by that company itself for its own expansion or by way of investment in other companies would be distributed amongst the shareholders. With this distribution, the shareholders having got further dividends or increased dividends, these moneys can be invested by the shareholders.

Therefore, on the whole, I am of the view that this new clause does not impose any unnecessary restrictions, and the apprehension that it would operate against the investment by existing companies seems to be misconceived.

Shri Morarka: I want to make only two points on this clause. One is in respect of the amendment of my hon. friend Shri C. R. Pattabhi Raman: Frankly, I cannot understand the import of this amendment. It reads thus:

"Page 78, line 21,

after 'purchase' *insert*—

"(whether by itself, or by any individual or association of individuals in trust for it or for its benefit or on its account)".".

The restrictions sought to be placed by clause 136 are on the investment of the company's funds in purchasing the shares of another company. If the investing company makes a loan to other persons, then, it would come within the mischief of section 369 or 370; if the other individual purchases the shares on behalf of this company, then, certainly, it would amount to investment by this company, and it will have to be disclosed. So, I cannot understand how the addition of these words would clarify or help the position in any case.

If the company makes a loan, it comes within the mischief of section 369 or 370. If it makes an investment, then it comes under section 372.

As my hon. friend Shri Nathwani explained just now, the main change that is being made in this clause is this. Till now, there were restrictions only on the investment in the shares

[Shri Morarka]

of companies in the same group or under the same mangement. Now, the scope of this section 372 is widened, and it is now provided that there would be an overall limit for the investment of a company's funds in the bodies-corporate. That may act, as Shri Nathwani said, to some extent, in preventing the concentration of wealth. But, if his other interpretation is correct that the company can still have its subsidiary holdings and other things, then, to that extent, that purpose would be defeated. I do not know whether we must have such rigid provisions that under no circumstances can a company invest more than 30 per cent of its capital in any other body-corporate, because the capital of a company varies from time to time. Companies which were started with a very small capital many years ago have today got huge funds and they have got, though a small capital, very big reserves, and they are in a position to make a lot of investment. If you were to say that not more than 30 per cent of the capital could be invested in all other companies, to that extent, joint-stock enterprise would suffer.

The second point is about sub-clause (14), which says that this section shall not apply (a) to any banking or insurance company and (b) to a private company, unless it is a subsidiary of a public company. I want to know whether a public investing company would be free to purchase shares of a private company to any extent subject only to the overall limit of 30 per cent, or whether just as there is another provision saying that an investing company cannot purchase more than 10 per cent of the subscribed capital of any other company, that restriction would also apply to a private company. By saying under this sub-clause that this section will not apply to private companies, I think Government are exempting private companies from the purview of this section. In other words, a public company would be able to purchase the shares of a private company even beyond 10 per cent, the only limit being the overall limit of 30 per cent. I do not think that was the intention or that could have been the intention, because this limit of 10 per cent should apply to all companies, public or private. The real intention of sub-clause (14) is that these restrictions must apply whether the company invests in a public company or a private company. But as the clause stands, it would mean that if a public company invests in purchasing the shares of a private company, the restriction of 10 per cent would not apply.

Shri Naushir Bharucha: No restriction would apply.

Shri Morarka: To that extent, the main purpose of this would be defeated. I would request the hon. Minister to get it examined and make the necessary change if he thinks it necessary or, if he does not think any change is called for, to leave the matter as it is.

Shri Somani: The restrictions proposed to be further widened under this clause concerning inter-company investments will, in my opinion, retard the industrial development of our country. If you go through the history of industrial development during the last few years, you will find that inter-corporate investment has played a significant role. In my opinion, it should be allowed to play its important role under present conditions when personal savings are so difficult; when we have such a high rate of taxation in the personal sector, naturally the investments available from individuals cannot play that significant role which the surpluses in the corporate sector can play. When basic objective is to industrialise as fast as possible and create additional wealth, I do not see the logic of any policy which will come in the way of that objective.

I can understand provisions for curbing some undesirable features of

inter-company investments. Certainly Government have got adequate powers to deal with those companies. They can be very effectively dealt with, but to curb the development of industry by restricting investment by one company in another cannot but defeat the very objective we have in view. Such inter-company investment is free in U.K. As a matter of fact, the history of the growth of the corporate sector in other countries will show the nature of the role which these inter-corporate investments have played. It is true that from the ideological poit of view, of preventing concentration of economic power and other factors, it might be argued that the policy of enabling certain groups to go on building and adding to their economic power, which is inherent in it, should not be countenanced. But my point is that under present conditions when the basic objective is industrialisation and the greatest need for us is to go as fast as we can to utilise the resources we have got, nothing should be done under the company law to restrict utilisation of resources of any company in creating new wealth and new productive enterprises.

Of course, the nature of the restrictions at present proposed under this clause takes away the distinction from investments in the same group of companies; a company cannot invest in any other outside company more than 30 per cent of its capital. Take, for example, the textile industry. According to the policy of the Planning Commission, the textile industry is not allowed to expand its spinning or weaving capacity due to a certain deliberate policy of helping handlooms or other factors. Therefore, if any textile company has got surplus money at its disposal, there is no reason why it should not be allowed to invest it in any other company for the development of any other industry. Any policy which restricts this will come in the way of our rapid development. Even under the Income-tax Act, there are incentives for investments in certain industries defined therein; if any company invests in those industries, the devidend received is exempt from tax. The basic idea is to encourage investment of companies in certain industries. We should follow a similar policy here in encouraging the flow of surplus funds to other companies. The utilisation of that surplus is, in any case, subject to the various restrictions that we have under the Industries (Development and Regulation) Act and other laws which require any new entrepreneur to seek the approval of Government. These will take care of the channelising of the funds of a company in the desired directions. So my submission is that this restriction to utilise surplus funds should not be there. You should be able to divert the surplus to whatever industry is regarded as of vital importance to the national economy.

So far as channelising of the funds in a particular industry is concerned, I have nothing to complain. Government have got adequate powers to see that the surpluses of the corporate sector are diverted into particular industries according to the policy laid down by the Planning Commission, but the overall policy of restricting companies in investing not more than 30 per cent will under present conditions, when we have got a shortage of internal resources and of capital, cannot but come in the way of the process of the speedy industrialisation of the country which we have in view. From that point of view, I think this is a retrograde provision and requires to be looked into to see that we do not tighten restrictions which already exist in the company law, and leave the whole restrictions untouched as they stand at present.

Shri Naushir Bharucha: I want to refer to only one aspect which has been repeatedly stressed, that restrictions on intercorporate investments are likely to slow down the pace of industrialisation. I think statistics are available to show that at no time

[Shri Naushir Bharucha]

has any company made use of inter-corporate investment except perhaps for the purpose of cornering or controlling any concern, to the extent of more than 11—12 per cent of its capital. In view of that, I am of the opinion that the restriction which has been proposed in sub-clause (2) of the proposed section 372 would not be prejudicial to the growth of industry in this country.

I have been noticing that all along several speakers who have urged the relaxation of these restrictions have been overlooking the fact that there is a sub-clause (4) on page 79, which says that the investing company shall not make any investment in share of any other body corporate in excess of the percentage specified unless the investment is sanctioned by a resolution of the investing company in a general meeting and further unless it is approved by the Central Government.

Shri M. R. Masani: Why should the Government approve?

Shri Naushir Bharucha: The point that I am making is that assuming for a moment that in some cases *bona fide* investment in excess of the percentage becomes necessay, if it is in the interests of the company, surely, it would not be difficult for the directors to call a general meeting and to have the sanction of the general meeting for that purpose. With regard to the approval of the Central Government, my friend, Shri Masani, has been objecting to it all along, namely, that there should be no interference. If you wish to follow that principle to its logical conclusion, then, you cannot have any type of company law at all because every section implies some sort of restirction on the so-called autonomy of the companies. In ordinary practice it has been found that this 30 per cent is not reached. We are told that it is 11 or 12 per cent.

In exceptional cases, in *bona fide* cases, where this percentage is required to be exceeded, surely, I do not think, the Central Government would be so very perverse as to deny the approval just to spite the company. I think he is proceeding on the assumption that the Central Government is there to deny any and every possible expansion of any industrial concern which desires to expand.

But, if we do not keep these percentages, as my hon. friend Shri Somani desires,—by his amendment he wants these percentages to be eliminated—then the whole flood-gate will be opened to inter-corporate investments against which we have been struggling. Either it is a case for having restrictions which are sufficient to prevent or remedy the mischeif or you permit things to go on as they are. Really, the choice is not between percentages, this or that or government sanction or not; but it is whether you desire to put up with a mischief or not. The mischief has got to be remedied, because we have got the bitter experience of how these inter-corporate investments have played havoc with the shareholders' money. I therefore, submit that the clause be accepted as it is.

I also feel that the amendment which has been moved by my hon. friend Shri Pattabhi Raman plugs an important loophole because what you cannot do in one way you cannot be permitted to do in another way in the shape of ostensible loans which, in reality are intended to purchase the shares of the company.

I think the clause, as amended by Shri Pattabhi Raman's amendment, should be accepted by the House.

Shri Kanungo: Of the amendments moved, I am agreeable to accept the amendment of my hon. friend, Shri Pattabhi Raman, No. 83.

This clause is the balancing of two opposing forces in the sense that it is conceded that the companies should not be prevented from investing their funds in expansion within

their group or outside their group. At the same time, the tendency of cornering or interlocking should be prevented. As far as genuine investments are concerned, I can straightaway refute the apprehensions of Shri Somani because the curb is not on expansion as against cannibalism, or eating up other corporations.

15·25 hrs.

[SHRI JAGANATHA RAO *in the Chair*]

A sample survey was made in respect of assets of Rs. 15 lakhs and over during the past three years by companies registered in the important centres of the country. What has emerged? Out of Rs. 17·25 crores issued by 24 companies, the share of the manufacturing companies has been Rs. 1·55 crores and miscellaneous and other companies has been Rs. 0·46 crores. These miscellaneous and other companies include the Industrial Credit and Investment Corporation Ltd. and other companies which cannot be definitely categorised as investing companies.

So, this will very clearly show that the corporations are not anxious or even willing to invest in new floatations. The more important factor is that the new floatations are being subscribed not by corporations or by the corporate savings but mostly by individuals and other sources. The bogey that has been going on for the last several years that these restrictions, whatever they are, will hamper industrial progress and economic regeneration of the country, I submit, is not justified.

As against that, this clause is a considerable liberalisation from the section as it stood. The previous section took care of inter-company investment within the same group. The quantum has been increased. I forget the exact figure. I think it was 20 per cent. Now, it is 30 per cent, the maximum. This applies both within the group and outside the group. Therefore, general investment of surplus funds in productive enterprise within the group or outside the group is permitted.

As Shri Bharucha has so kindly pointed out, even this percentage can be exceeded if the shareholders pass a resolution to that effect which is approved by the Central Government. These things, however much Shri Masani may dislike them, are there, to have an agency to differentiate between genuine investments and investments for purposes of cannibalism.

I believe that the provisions as they stand will result in creating conditions where only genuine investments for purposes of expansion are undertaken and other tendencies are curbed. In any case, let me hope that even after a number of years it may not be necessary to tighten this more.

I would submit that the clause, as amended by amendment No. 83, be accepted.

Mr. Chairman:. Shall I put the amendments of Shri Masani, Nos. 19, 20 and 21 together?

Shri M. R. Masani: Yes, Sir.

Mr Chairman: I will now put these three amendments, Nos. 19, 20 and 21 to the vote.

Amendments Nos. 19 to 21 were put and negatived.

Mr. Chairman: I will now put amendment No. 83.

The question is:

Page 78, line 21,—

after "purchase" *insert*—

"(whether by itself, or by any individual or association of individuals in trust for it or for its benefit or on its account)". (83).

The motion was adopted.

Mr. Chairman: The question is:

"That clause 136, as amended, stand part of the Bill."

The motion was adopted.

Clause 136, as amended, was added to the Bill.

Clauses 137 to 147 were added to the Bill.

New Clause 147A.

Shri C. R. Pattabhi Raman: Sir, I beg to move:

Page 83.—

after line 13, *insert*—

"147A. *Omission of section* 389.— Section 389 of the Principal Act shall be omitted." (84).

The effect of this amendment is the omission of section 389 of the principal Act. Section 389 of the Companies Act provides that a company may, by written agreement, refer to arbitration, in accordance with the Arbitration Act, 1949, an existing or future difference between itself and any other company or person.

In a recent Judgment, *Societa Italiana per Lavori Marittimi versus Hind Constructions Ltd.*—appeal No. 63 of 1959—the Bombay High Court held that this section prevents Indian Companies from having recourse to any arbitration agreement otherwise than in accordance with the provision of the Arbitration Act, 1940 and since this Act contains no provision for foreign arbitration, Indian companies are debarred from entering into contracts with foreign companies or other organisations providing for arbitration by foreign arbitral bodies. The judgment has created a difficult situation for Indian companies, many of whom now carry on business with foreign collaboration and the contracts for such collaboration often contain a provision for arbitration by foreign bodies, namely, in accordance with the rules of the International Chamber of Commerce. Representations have been received from trade associations as well as from official organisations urging the repeal of section 389 of the Act. If this section is repealed, Indian companies would be free to refer disputes to foreign arbitral bodies. Under the Arbitration (Protocol and Convention) Act, 1937 they are empowered to do so. The amendment is necessary also in view of the fact that India was one of the signatories of the New York Convention on the recognition and enforcement of foreign arbitral awards held in 1958. This convention has already been ratified by the Government of India. Therefore, I move that amendment 84, which creates a new clause 147A be accepted by the House.

Shri Kanungo: I accept the amendment.

Mr. Chairman: The question is:

Page 83,—

after line 13, *insert*—

'147A. *Omission of section* 389— Section 389 of the principal Act shall be omitted." (84).

The Motion was adopted.

Mr. Chairman: The question is:

"That Clause 147A be added to the Bill."

The Motion was adopted.

Clause 147A was added to the Bill.

Clauses 148 to 150 were added to the Bill.

Mr. Chairman: Is Shri Masani moving his amendment No. 22?

Shri M. R. Masani: In view of the rejection of my amendments to clause 79, there will be no purpose in pressing for this amendment and so, I do not move this amendment.

Mr. Chairman: The question is:

"That Clause 151 stand part of the Bill."

The Motion was adopted.

Clause 151 was added to the Bill.

Clause 152 (*Amendment of section 408*)

Shri Jhunjhunwala (Bhagalpur): There are two amendments which stand in my name to this clause.— Nos. 119 and 120. I beg to move:

Page 83, line 35.—

after "two persons" *insert*—

"one of whom should preferably be from amongst the aggreived minority shareholders" (119).

Page 84, line 9,—

after "Central Government" *insert*—

"at any time, if in the opinion of the Central Government he is not acting for furtherance of the objects for which he was appointed or the reasons for which he was appointed have ceased to exist." (120).

Section 408 reads as follows:

"Notwithstanding anything contained in this Act, the Central Government may appoint not more than two persons being members of the company, to hold office as directors thereof for such period not exceeding three years on any one occassion as it may think fit, if the Central Government, on the application of not less than two hundred members of the company or of members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company:"

This section was inserted in the principal Act for the first time in 1956, out of a motion by Shri Morarka and Shri Nathwani to the effect that the election of directors should be by proportional representation. There was a great discussion on this and it was pointed out that most of the evils and oppressions to the interest of the minority shareholders arose because the majority shareholders took undue advantage of the present system. Many clauses were discussed even now about these evils. Most of these evils would be obviated if power is given to the shareholders to elect directors by means of proportional representation. In that case the minority shareholders would have had a right to come and partake in the management and the majority shareholders would be on guard not to do things to exploit the minority shareholders or to do things against the interests of the whole company by mismanagement, etc. But the Government was reluctant to accept that amendment of Shri Morarka and there was a great deal of discussion for three or four days. Ultimately the Government inserted this section and obviate intention of holding election by proportional representation would be carried out by appointing two directors from amongst the minority share-holders. It was then stated that there was option given to the company to adopt proportional representation for the appointment of directors. Section 265 reads:

"Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a public company or of a private company which is a subsidiary of a public company, according to the principal of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise, the appointments being made once in every three years and interim casual vacancies being filled in accordance with the

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provisions, *mutatis mutandis*, of section 262."

Sir, the idea of giving an option in this section 265 was, supposing under section 408 such directors are appointed by the Government who are acting against the interests of the company or any company afterwards find that it is better that they should make a change in their articles of association by giving the shareholders the right of appointing directors by proportional representation, in that case there will be no necessity of section 408. Sir, four years have passed since this Act was passed. It was being administered for the last four years. I do not know what has been the experience of Government in this respect. I find from the report which has been submitted by the Government that after holding a proper enquiry, after making a thorough investigation under the various sections of the Act they came to the conclusion that there was a *prima facie* case that the company was acting against the interests of the minority shareholders, the company was not acting in the interests of the shareholders and of the company as a whole and it was exploiting. If there had been less than one-tenth representation the Government would not have entertained any applications. From the report I find that application on behalf of the minority share-holders of about 23 companies had applied to the Government under section 408 for the appointment of additional directors as contemplated under section 408. There was some difficulty in the appointment of directors.

In that section it was said that only members could be appointed. It so happened that in certain cases the persons who were ultimately chosen by the Company Law Advisory Commission were not members of the company. The result was that they had to purchase shares in the market. They purchased the shares in the market but the company against whom the charges were made refused to transfer those shares in the name of the persons who were appointed by the Company Law Advisory Commission. In this respect, Sir, the Government has come with an amendment that in place of "members" the word "persons" should be inserted. So this difficulty has been avoided.

Sir, I had the opportunity of knowing some persons who were recommended by the Company Law Advisory Commission. They were good businessmen. They said: "What is the use of appointing us? Why do they not appoint persons from among the aggrieved shareholders who know the matter in a better way, who will take more interest in the matter, who can go to the meetings of the directors and place the real grievances and point out the way in which the company was misappropriating and taking to anti-social activities in the administration and management of the company?" I do not know what has been done. I do not know whether there is any single director who has been appointed by the Government and who is sitting on the board of directors of the companies concerned.

My amendment No. 119 reads like this:

> Page 83, line 35,—
>
> *after* "two persons" *insert*—
>
> "one of whom should preferably be from amongst the aggrieved minority shareholders."

At the outset, Sir, I would say, it is very necessary that there should be a homogeneous management. But when it has been proved to the satisfaction of the Government and a *prima facie* case of mismanagement has been made out after making investigation continuously for three or four years, I do not know why there should be any difficulty in appointing one person from amongst the shareholders who have made certain representations and

who are aggrieved, as a director of the company. After all, he will be only one from amongst those shareholders and he will not be able to do any thing as will be against the interest of the company. It will be the majority of directors whose voice will prevail. Only after making enquiries about the personality and capability of the man, only after taking into consideration whether he is a desirable man or not should one be appointed as a director, otherwise anybody appointed from outside will have absolutely no interest and he will not be in the know of the facts as to how the affairs of the company were being mismanaged.

As I said in the beginning, it is very salutary that there should be a homogeneous management and no undesirable element should go in. But when it has been proved and a *prima facie* case has been made out that in a particular company there is mismanagement and misappropriation of money, in that case the Government should not have any objection in appointing one of the aggrieved shareholders as an additional director, such applications of minority shareholders against 23 companies were received by the Government. Nothing has been mentioned in the report as to what has been done. If the administration is effected in this fashion that there is no use inserting such sections. This doe not speak well of the administration. On one side, the impression goes that the administration is in the hands of the companies and, on the other, they do not ultimately do anything. I would, therefore, suggest that if it is found that a particular company has been mismanaging its affairs, they should put in such persons who will be acting effectively and not persons who will do nothing.

The second amendment that I have suggested is for the insertion of:

> "at any time, if in the opinion of the Central Government he is not acting for furtherance of the objects for which he was appointed or the reasons for which he was appointed have cased to exist."

The amendment which is sought to be made to this clause 152 is to provide for the additional directors to be removed by the Central Government from that office at any time. I fully agree that the Government should have the power of removing the directors whom they have appointed as additional directors to look into the case of mismanagement or to help the board of directors in the proper management of the company. Of course, the Government first appoint those directors and they can be removed by the Government and the Government should have that power, because the company itself has not got the power of removing them afterwards, but on that power of the Government there must be a restriction. Otherwise, no respectable man would agree to act as a director. The Government, in the exercise of their whims, might say, "We do not want you." But before doing so the Government should give reasons. So, my amendment is to the effect that the Government should not remove the director so long as he is functioning well, but the Government may remove that person at any time, if in the opinion of the Central Government he is not acting in furtherance of the objects for which he was appointed or the reasons for which he was appointed have ceased to exist.

Supposing it is found that the reasons for which that director was appointed no longer exist, and the company's work is going on all right even without the two additional directors being there, in that case, the Government has got the right to remove him. Secondly, the Government should remove him if it finds that he is acting against the interests of the company or he is not helping in the furtherance of the cause for which he was appointed.

So, these are my amendments. I commend them to the acceptance of

[Shri Jhunjhunwala]

the House. Unless these two amendments are accepted, no outsider will come, to be suddenly removed without any cause. Further, unless the man who is aggrieved and who knows the facts is in the Board of Directors, it will not be of any use, and anybody coming from outside will not be of much use and the section will remain absolutely ineffective.

Shri Achar (Mangalore): I have also joined my hon. friend Shri Jhunjhunwala in these two amendments. Shri Jhunjhunwala has fully explained the implications of these two amendments. So, I wish to add only a word or two, since he has fully given the history of this section as well as the necessity for these amendments.

The first amendment is a very simple one. Probably the Government had a difficulty of finding persons who are shareholders, and that is the reason why they have suggested the present clause. Even now, with this amended clause of theirs, there is no absolute necessity for having only the shareholders in this connection. If there is a contingency of not having the shareholders, the Government can appoint others even as the clause stands. The only reason for our amendment is that, if possible, one at least should be the shareholder. It is the basic principle of any democratic body. In fact, the renowned authors on politics also say that the best qualification for a person to represent a particular class or a particular interest is that the person should have that knowledge and he should be a person belonging to that class or body and should be interested in that body. From that point of view, the amendment is a very simple one. All that it says is that, if possible—it does not compel the Government—out of two, at least one should be a person who is interested. After all, it is to protect the minorities and for the purpose of protecting the minorities, one member should belong to that particular section or body. The person who wears the shoes knows where it pinches. It is the minority section that will feel it and yet, absolutely no harm will be done by accepting our amendment. I hope the Government will find its way to accept it.

The next amendment is a corollary to this. All that it says is that the director is appointed for a particular purpose, to carry out a particular duty. He should not be removed through any whim on the part of Government. If he does not carry out his duties or he is unfit for the purpose for which he was appointed, within the scope of the section, then alone, such a person should be removed. In fact, Shri Jhunjhunwala has fully explained the reasons. I hope the Government will accept these two amendments.

Shri Kanungo: As the hon. Member Shri Jhunjhunwala explained, I am quite familiar with the operation of this section as pertaining to a particular case where all the difficulties were faced, and in spite of the matter being finally settled by the Supreme Court, there was the lacuna, and a ridiculous situation had arisen that the person appointed by the Government from amongst the shareholders and who had acquired the shares, could not sit on the Board, because the company did not permit the transfer to be regarded in the manner Shri Jhunjhunwala mentioned. So, Shri Achar's point is answered there. That means, you cannot legislate for all contingencies.

Therefore, all I would like to say on the present amendments is that Government have taken powers to see that they can appoint any person irrespective of his being a shareholder or not. The purpose of selecting two persons not elected by the shareholders is to hold the fort for the time being. The clause itself says that it is for a period of three years. Government would like to have it as a much lesser period. The whole structure and the whole construction of the Act is to see

that the shareholders are able to manage their own affairs. Wherever the Government has got to step in in public interest or in the interests of the company or of the shareholders, then, it should be for the minimum time and to the minimum extent.

Here again, the Government has got to remember—apart from what is written in the law—in the administration itself that the majority is not able to harass the minority. There are plenty of provisions in the Act itself where the rights have been given to courts and also to various agencies whereby the minorities may not be oppressed, but the majority also, as Shri Morarka in another context has mentioned, sometimes need protection. Therefore, as a matter of policy, the Government has not and will not tilt the balance in favour of anybody. Their only objective will be to see what is in the best public interest and what is in the interest of the company irrespective of the minority or majority view.

The amendments proposed in this clause—the minorities have been reduced from 200 to 100 as also various other persons—and to other clauses through the amending Bill will create a situation where there will be very little room for minorities to be oppressed. In other words, the conditions under which the minorities could be oppressed and section 408 be attracted thereby would be very much less after the amending Bill is passed and several other sections are amended and brought into operation. Therefore, I would urge upon the House to accept the clause as it has emerged from the Joint Committee and pass the same without the amendments of Shri Jhunjhunwala.

Mr. Chairman: I shall put the two amendments Nos. 119 and 120 to the vote.

Amendments Nos. 119 and 120 were put and negatived.

Mr. Chairman: The question is:

"That clause 152 stand part of the Bill".

The motion was adopted.

Clause 152 was added to the Bill.

16 hrs.

Clause 153— (*Amendment of section 409*)

Shri Morarka: Clause 153 seeks to amend section 409. In view of our having accepted clause 79 which already covers the points contained in section 409, I think it is an unnecessary duplication in our statute to have section 409 and also clause 79, *i.e.* section 250 in the amended form. I hope the Minister would reconsider the whole thing and see whether it is in fact necessary to have section 409.

The heading of section 409 says: "Power of Central Government to prevent change in Board of Directors likely to affect company prejudicially". That is amply covered by clause 79. Section 409 requires a formal complaint to be made by the managing director, directors, managing agents secretaries or treasurers. Now we are seeking to add the word "manager" also. Under section 250, anybody can make a complaint and even without any complaint, Government can act *suo motu*. So, I would request the hon. Minister to get the matter examined, because I feel that what we provide under section 409 is amply covered in a wider form in section 250.

About the operation of section 409, I want to say something which I recently learnt from a lawyer friend of mine, who appeared before the advisory commission. It is interesting and I thought I might share that information with the House. Under section 409, certain directors made a complaint to the Central Government and under section 411, that complaint was referred to the advisory commission. The commission called both the parties. The party representing

[Shri Morarka]

the company explained that the particular person whom they wanted to remove from directorship was not acting in the interests of the company and so, it has been considered desirable that he should be removed. As you know, for removing a director you have to pass an ordinary resolution of the general body. Such a resolution was passed. An interesting question put by the commission to my lawyer friend was, "It is all right for you to say that you have passed a general body resolution. But, after all, in that general body meeting, only 30 per cent of the shareholders were present." For a moment, my friend was at the end of his wits. But another friend of mine, who is fortunately a Member of the House, was present and he said: "It is all right for you to raise this objection, but when this particular clause was passed in the House, we hardly had 20 Members present. Therefore, can you say that the company law is not a validly passed Act?" It is all right for the commission to raise such points that when the resolution was passed, only 30 per cent of the shareholders were present and voted. But once a resolution is passed in accordance with the provisions of law, it must be treated as a representative resolution and the advisory commission or the company law department should not then go behind it unless some malpractice or *mala fides* are alleged.

I do not want to raise the question of quorum, but if you kindly count the number of Members—I Counted it a little while ago—it is only 19. On account of that, one cannot say that the clauses we are adopting are not representative or they do not have binding force.

This is just by way of an illustration. My main point is, in view of section 250 in the amended form which already covers the provision contained in section 409 the hon. Minister may kindly reconsider the whole thing.

Shri Kanungo: Very humbly I beg to submit that I wholly dissociate myself from the analogy just mentioned by Shri Morarka or his friend before somebody else. It is the privilege of Parliament to judge its own affairs and to take its own decisions. It is the privilege of the Members of Parliament to be present in the House or not, as they like. So, to draw analogies of the rights and responsibilities of Members of Parliament and of members of some other organisation is certainly not desirable.

Shri Morarka: I do not want to interrupt the hon. Minister. As a matter of fact, I said I did not raise it as a constitutional point. But while there is a definite obligation to have quorum.....

Shri Kanungo: Again I object to the analogy being drawn between some other organisation and Parliament.

Shri Tangamani: There may not be many Members present, but when there are persons like Shri Morarka and others who are well versed in company law contributing to the discussion, it is all right.

Shri Morarka: Before the general body meeting is held, notice is given and the meeting is properly held. So, irrespective of the number of shareholders present, the resolution is binding.

Shri Kanungo: The advisory commission was free to come to its conclusion considering various aspects. I am not competent to say anything about what the commission has done.

Regarding the point that this section is redundant, I would say that this is a right conferred upon members of the management. In fact, by the amendment we are trying to extend it to others forms of management which are not included in the original Bill. Section 250, which was discussed for quite a long time, does give power to the shareholders under section 247 and to the Government to take some action *suo motu* if necessary. But under section 409, the right is confined to the mem-

bers of management, I do not think I will be justified in taking it out, because this was put after a great deal of deliberation and presumably because it was anticipated that factions in the management itself should be enough to bring matters to the attention of Government, which can be corrected. So, I submit that the clause as it has emerged from the Joint Committee may be accepted by the House.

Mr. Chairman: The question is:

"That clause 153 stand part of the Bill."

The motion was adopted.

Clause 153 was added to the Bill.

Clause 154.—(*Amendment of section 411*)

Shri M. R. Masani: I would like to oppose this clause which deals with section 411. Section 411 of the Act had entrusted the Advisory Commission with the task of advising Government on applications made to it under certain sections. The Joint Committee discussed this matter and this clause has now emerged as clause 154. Now the hon. Minister for Commerce and Industry, in the course of his reply on the second reading, thought that I should not have raised this matter in the House because the present clause was by way of a partial concession made to a point of view that had been put in the Joint Committee. I think the hon. Minister will appreciate that a partial concession made to a point of view does not necessarily follow that it will satisfy the other point of view and I hope he will take it in the spirit in which it is put. I still feel that having created the Advisory Commission, so far as the applications under sections 408 and 409 are concerned, the original position under the Act, that is, section 411, is very much better than doing anything which limits or detracts from its authority. This clause does not take away the authority of the Commission. What it does is to remove from its purview certain applications which need not go to them and allow the Government to pass orders on certain other. I feel that the confidence in the Commission should be undiluted and that the original section 411 is better than this section. So, I would like to dissociate myself from this clause.

Shri Naushir Bharucha: In fact, I was anticipating this argument from my hon. friend, Shri Masani, and I think there is some force in what he says. But we have to balance practical convenience with what is required to be done. I am of the view that while in the Joint Committee a compromise was arrived at, namely, that the Government undertake not to pass any final orders until the Advisory Commission was consulted, a further safeguard might be introduced without altering the section by the Government saying or undertaking that where any member of the Advisory Commission requires that a particular complaint should be placed before it, then the Government should place it before it. The idea is that a particular complaint on an important question might have appeared to the Government frivolous but, in the light of the background material which any particular party possesses, may not be so frivolous as might have appeared at first sight. I would say that as a matter of administrative policy also Government should make it a point that where any member of the Advisory Commission requires any particular complaint, it should be placed before it for consideration. I am sure the members of the Advisory Commission will use this privilege very sparingly and only when certain matters are brought to their notice and they really feel that this is a matter which the Advisory Commission must look into. Otherwise, basically the section as it has been drafted seems to be all right.

I have some experience of the working of some committees. On the BEST committee we had to make numerous appointments and we received

[Shri Naushir Bharucha]

so many applications that it was humanly impossible for the committee as a whole to go through them. Therefore, we always asked the General Manager to sift those applications and reject those applications which are not up to the standard and place before us about 8 or 10 applications from which we called 4 or 5 candidates for interview. That helps the committee to carry on its activity expeditiously. Side by side, we have also developed a convention or practice that when a member of the Committee demanded that a particular application should be considered, then the General Manager placed that application also for the consideration of the committee. And if any member wanted that particular candidate should be invited for interview it was also done. But this privilege was excercised only in very exceptional cases. I think some such working arrangement should be arrived at. There will be such a host of applications that the Advisory Commission, in its own interest would not like to go through all of them. Personally, I receive so many complaints on several matters that I see the top heading and the subject matter only; I do not go through the whole of them as it is humanly impossible. The same thing would apply here also. As the corporate sector expands, there will be numerous complaints. As the knowledge of company law becomes more widespread many more complaints will come and quite a good number will be frivolous. It is therefore, necessary that sifting should be done. At the same time, the objection of Shri Masani that power is being taken away from the Advisory Commission can be removed by developing a healthy convention along the lines I have suggested. I hope Government will accept the clause, as it is.

Shri Kanungo: I would draw the attention of Shri Bharucha to the last part of the proviso says:

> "but it shall not make any final order on such application except after considering the advice tendered by the Advisory Commission".

So, the Commission is the final authority. The limited point of view about frivolous applications is a very temporary affair. There is nothing to prevent the Commission from asking for any records, because those cases will have to go before them. Ultimately they will have to go to them. There is nothing to prevent them from seeing them. But I am sure that the Commission.....

Shri Naushir Bharucha: If you will permit me to say so, probably the hon. Minister is labouring under some misapprehension. So far as frivolous applications are concerned, once Government reject them, there is an end to them; they are not going to come to the Advisory Commission. There is no point in putting the frivolous applications before the Advisory Commission. I think the scheme of the section, as we have amended it in the Joint Committee is that the frivolous applications once and for all will be disposed of by the managerial or secretarial staff and they will not go before the Commission. What you say is applicable only in such cases which you desire to place before the Commission. Therefore, the convention I was suggesting to you is that even where the secretarial staff has disposed it of as a frivolous application, if any member says that a particular complaint should be examined, that should be done. A case like this would very rarely occur but it will effectively meet the argument of some people that the powers or rights of the Advisory Commission are being whittled down. It is only a question of developing administrative practices.

Shri Kanungo: The first proviso reads:

> "Provided that it shall not be necessary for the Central Government to refer to the Advisory Commission any application under

section 408 or section 409 which, in the opinion of that Government, is of a frivolous nature or deals with matters of minor importance;"

Then we have provided:

"Provided further that the Central Government may, in the case of any application under section 408 or section 409 which has been, or may be, referred to the Advisory Commission, make such interim order as it thinks fit but it shall not make any final order on such application except after considering the advice tendered by the Advisory Commission."

It means that in those cases which are not frivolous, they are referred to the Commission and the Government are authorised to pass some interim orders. I take it that Shri Bharucha suggests that even in cases where they are considered as frivolous, the applicant should have the right to ask the Commission to consider it or the Commission should have the right to ask for such applications. Well, I am not prepared to write it in the law but.....

Shri Naushir Bharucha: You need not write it in the law; it is a matter of developing conventions.

Shri Kanungo: As a matter of fact, we are very chary of taking any action without the advice of the Commission.

In fact, I suppose while considering some of the clauses, I have suggested that where it is not obligatory to refer the matter to the Commission we would usually refer it to the Commission. Therefore it can be taken for granted by the House that we will consult with the Commission and as advised by them will find out administrative procedures or *via media* through which we can act.

Mr. Chairman: The question is:

"That clause 154 stand part of the Bill."

The motion was adopted.

Clause 154 *was added to the Bill.*

Clauses 155 *to* 180 *were added to the Bill.*

Clause 181— (*Amendment of section* 530).

Shri Tangamani: I have my amendment No. 45 to this clause. There is also amendment No. 74 standing in the name of Shri Bharucha and amendment No. 124 in the name of Shri Ramsingh Bhai Varma.

Shri Surendranath Dwivedy (Kendrapara): Are you moving all the amendments?

Shri Naushir Bharucha: I am moving my amendment. I move:

Page 92,—

for clause 181, *substitute*—

'181. *Amendment of section* 530— In section 530 of the principal Act, in clause (b) of sub-section (1),—

(i) for the words "not exceeding four months", the words "not exceeding twelve months" shall be substituted.

(ii) after the words "relevant date", the following words letters and figures shall be inserted, namely:—

"and any compensation payable to any workman under any of the provisions of Chapter VA of the Industrial Disputes **Act, 1947**",' **(74)**.

Shri Tangamani: Sir, I beg to move:

Page 92,—

after line 25, *add*—

'(b) in sub-section (2), for the words "one thousand rupees", the words "two thousand five hundred rupees" shall be substituted.' **(45)**.

[Shri Tangamani]

About this clause in the beginning itself I would like to submit that there has been consensus of opinion among the representatives of the trade unions which have been interested not only in labour but in administering certain important provisions of the Industrial Disputes Act. In the dissenting note the group represented by the All-India Trade Union Congress and also the group represented by the Hind Mazdoor Sabha have stated that this amount of Rs. 1,000 must be increased to Rs. 2,500. It would have been a proper thing if there was no ceiling at all. As you are now aware, in this House also the group represented by the Indian National Trade Union Congress have given notice of an amendment, namely, amendment No. 124 which has been circulated to us.

16·23 hrs.

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

So, on this particular issue of enhancing this amount from Rs. 1,000 to Rs. 2,500 there has been unanimity.

What is the actual purpose of this amendment and what is the purpose of clause 181? Originally this was clause 179. The old clause 179 and the new clause 181 are practically the same—not only practically the same but they are the same except that the present clause is well-drafted. Original clause 179 reads as follows. Just for the sake of comparison, as it is a very short clause, I would read it. It reads:

> "In section 530 of the principal Act in sub-section (1), in clause (b), for the brackets and words "(including wages payable for time or piece work, salary earned wholly or in part by way of commission)", the brackets, words, figures and letter "(including wages payable for time or piece work, salary earned wholly or in part by way of commission or compensation payable to any workman under any of the provisions of Chapter VA of the Industrial Disputes Act, 1947)" shall be substituted."

It is cumbersome in the sense that they wanted to add what is included in brackets by putting in the word compensation which they wanted to include by this amendment Bill. All that this amending Bill states is that the compensation payable under Chapter VA of Industrial Disputes Act of 1947 shall be added to the section. It is concise and at the same time brings home in a forceful way what the intention is.

Section 530 deals with prior payments in the case of winding up, whether it is voluntary or otherwise. In the case of winding up, they say, there should be priority to certain debts like—

> "all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next before that date;"

It is more or less the same in almost all these Companies Acts. I am now quoting clause (b), which says:

> "all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date, subject to the limit specified in sub-section (2);"

The limit laid down in sub-section (2) is as follows:

> "The sum to which priority is to be given under clause (b) of

sub-section (1), shall not, in the case of any one claimant, exceed one thousand rupees:

Provided that where a claimant is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date."

This is the relevant section and in this I would like to substitute "two thousand five hundred rupees" in place of "one thousand rupees", because it is subject to the limits specified in sub-section (2). That in brief is the purport of my amendment.

In this section there are also clauses (c), (d) (e) and (f) and I am not going into this matter although it deals with labour. Prior payments to labour like workmen's compensation or provident fund that is due to them are all mentioned here. I will not also go into the question of the relevant date because that is for the lawyers to argue. But here is the question of wages.

All along while industrial relations have developed wages have included not only the salary that has been paid but also the bonus that has been paid and in certain cases those which they have earned because they have worked for a period of years. It is something like this.

I believe it was in the year 1946 or so that there was an amendment of the Factories Act which said that when a person has worked for twenty days he has not only earned for twenty days but he has also earned for another day for having worked for twenty days he earns an extra one day which later on came to be known as earned leave. Today a worker coming under the Factories Act will be entitled to 15 to 20 days in a year which is reckoned as earned leave. He has earned that leave. In the same way this worker is now thrown out for no fault of his. He has served the company, say, for twenty years and the company goes into liquidation. It is no fault of the worker that the company has gone into liquidation. This worker is now sent out. When the worker was sent out, unless there was a scheme known as the gratuity scheme under the old law, not a single penny was paid to this worker. That was the position till 1953. It was only in 1953 because there was involuntary unemployment due to power shortage—there was a reference to power shortage this morning—and owing to circumstances beyond his control, for example, if a business is closed, the workman must be entitled to some kind of compensation. That was the Bill.

There were decisions in the Industrial courts, and there were decisions of the Labour Appellate Tribunal which went to say that where a worker has been retrenched or a worker has been sent out of employment for no fault of his, he will be entitled, as compensation, if it is only for a temporary period, to 50 per cent of the wages and if it is for a long period, or if it is a permanent closure, compensation must be calculated on the basis of the work that he has done. In other words, if he has served for 20 years, we must take into consideration the 20 years' service for actually calculating compensation. For the 20 years' service, the compensation that is payable now under the Industrial Disputes Act, to which reference has been made in the Amending Bill clause 5A, is half a month's average wage for every year's service, including dearness allowance—whatever he has earned by basic wages, dearness allowance and other allowances. Average wage is also defined in the Industrial Disputes Act. When he has put in 20 years of service he will be entitled to 10 months average wage. Here,

[Shri Tangamani]

let us take the case of a worker. Today, an un-skilled worker in the petroleum industry, or even according to the new Awards which have come, in textiles or cement, will be getting about Rs. 100 or 120 a month. That would be his average salary. He serves for about 10 years or 20 years or 30 years. If he serves for 30 years, he will get his average salary multiplied by fifteen. It may be Rs. 1000 or Rs. 1500. It may not be more than that. This is the worker in the lowest rung of the ladder. For semi-skilled and other workers, they may get Rs. 200. It may be at least Rs. 100 per month and if it is 15 months salary, it may be Rs. 1500. If this is included as part of the wages it may come to Rs. 500 to 1500 easily, in these organised industries. We are saying by this Bill that a worker will be entitled to Rs. 500 to 1500. I am putting my claim at the lowest level. The original Act was passed in 1956. They have also tabulated the prior payments. When they tabulated the prior payments, they said, wages payable in respect of service rendered to the company and the money that is due to them, up to a certain limit. They visualised that the money that is due to them not only for work done, but for other things also, may come to Rs. 1000 and they fixed the ceiling at Rs. 1,000 or Rs. 1,500. This was when new wages were not to be included. Even assuming that the new compensation is not to be included as part of the wages, he will still be entitled to more and the ceiling will have to go up 50 per cent, in view of the increased cost of living. Even without this amendment, there is a case for amending sub-section (2) for enhancing the ceiling from Rs. 1,000 to Rs. 1,500. If we are including this also if we are including compensation also, naturally, they will have to pay more than Rs. 2,500. In the Dissenting note, they have pointed out that the proper thing would have been not to include sub-section (2) at all. Delete sub-section (2). If you include prior payment of wages,—wages including so and so—do not bring in sub-section (2) which limits the compensation to Rs. 1,000. It may be even less than Rs. 1,000. It may be less than Rs. 2,500; it may be much less. Any way, do not fix a ceiling when you know that the worker may be entitled to more. If he is entitled to at least Rs. 2,500, why should he be denied Rs. 1,500? You are giving him something by the left hand and taking it away by the right hand. That would be the impression that would be created. Not only the amendments here and the dissenting note, all the trade unions have generally welcomed this provision of giving priority payment regarding wages, and on the question of wages, including the compensation that is payable under the new Retrenchment Compensation provision.

I would only for the sake of emphasis recapitulate. The original clause 179 seeks to include retrenchment compensation which is payable to the workers, which certainly is a step in the right direction, because it is included as a preferential payment under section 530 of the original Act. As I have said, if the proviso is allowed to continue and the ceiling of Rs. 1,000 for such preferential payment is laid down there, the trade unions opine that the benefit that has been promised is now taken away from them, as long as the workmen have no effective say in the management of the company. If things had been left to the management and the workmen or if it had been left to the workmen, this would not have happened also. I know of instances of textile mills where because of the mismanagement certain things happened and 1,500 workers were thrown out. It is not because the price of cloth has gone down. It is not because they are not having a market. It is not because there is electricity cut. Because of mismanagement, 2200

workers in a particular textile mill have been thrown out. The workers have been always making suggestions that they will be in a position to contribute. In that particular unit, which is well known to the hon. Minister also, for nearly 4 or 5 months, the workers were prepared to work without wages. Because of certain complications amongst the partners, some serious thing happened. In the same way, it has happened a year ago in Coimbatore. There is one important industrialist. He is now charge-sheeted for serious offences, for counterfeiting, etc. He is the chief controller of 4 or 5 textile units. One of the units has already closed down—the Palar textiles in Chingleput. There is another textile mill at Tiruchengode which may probably be closed down. There is the oldest and best run textile mill known as the Stanes mills—Coimbatore Cotton spinning mill. We do not know what is going to be its fate. This is an important unit under this management. In such cases, is it because the workers have misbehaved that this closure is taking place? Is it because the workers have misbehaved that the workmen are being thrown out of employment? No. I say as one of the dissenters have stated that they have no effective say in the management of the company. That is why it is not fair to put this in the category of ordinary debt. It should be made preferential payment. Even the original provision of the Bill is likely to be defeated in many cases unless maximum is raised, although we would certainly like that there is no maximum fixed at all.

My amendment is quite simple. I do appreciate the point because in the Joint Committee also many of the witnesses on the employers' side were not happy with clause 179 as it then was. When pointed questions were put to them as to what will be the commitment, and whether they could give an estimate of the additional commitment in case this is also included as wages, no employer was in a position to say, and no employer witness was prepared to say. They were opposed to this. A good measure which is being welcomed by the workers is included in the Companies Act. The workers must be also allowed to benefit from the good intention. Good intention alone is not enough unless some benefit accrues to the beneficiary. If you say that they are going to get retrenchment compensation also as part of the wages, when the worker is already entitled to Rs. 1500 as wages exclusive of this retrenchment compensation, if the maximum is Rs. 1000, the worker is not going to benefit. So, the beneficiary must be benefited. If that intention is to be carried out, I submit this amendment of mine, which is a simple one, should be accepted. I had proposed it in the Joint Committee and could not succeed. I have mentioned it in my Dissenting Note. Again now, I have come forward with this amendment. I am strengthened by the fact that on this particular question, the central trade union organisations which matter in this country, the AITUC, the HMS and the INTUC, are all united. I therefore suggest that it will be really respecting the wishes of the workers and those interested in their welfare if this amendment is accepted by the Government and the House.

Shri Naushir Bharucha: I have moved my amendment 74. The only object of it is this. In the matter of priorities, where the salaries or wages of workmen are due, it has been provided that in the event of liquidation of a company, they should rank to the extent of four months salary only. I desire that instead of four months, it should be twelve months, and that for a very simple reason.

Section (2) of the principal Act limits the amount to Rs. 1,000. Therefore, who are the people who are likely to benefit if we change it from four to twelve months. It would mean people drawing a salary of Rs. 80 per month or less. And these are the people who require

[Shri Naushir Bharucha]

priority. I therefore suggest that so long as the overall limit remains, at least this change may be introduced so that the poorest category of workers may obtain relief in the shape of a larger share before the share to others is distributed.

I welcome the change introduced in section 530 by clause 181, seeking to add in sub-section 1(b) of the principal Act the following:

> "and any compensation payable to any workman under any of the provisions of Chapter VA of the Industrial Disputes Act, 1947."

That is, that also should rank for priority. However, one thing has got to be observed. Where an industrial concern is closed completely and the court holds that it is not due to the fault of the management, retrenchment compensation is not payable. But the Industrial Disputes Act states there will be retrenchment compensation where retrenchment takes place, not where there is complete closure. Therefore, when we provide for priority for retrenchment compensation being paid to the workers, let us understand very clearly that in most cases of liquidation, unless it is shown that the closure was due to the fault of the management, no compensation or benefit will be available to the workers under this clause. I therefore submit that it is very necessary that the smallest of the workers should be protected, and hence my amendment.

It is not a rare phenomenon that not only retrenchment compensation is not paid, not only salaries are not paid for months together, but actually provident funds have been swallowed by employers. In my own constituency there was a very pathetic case of an industrial concern which was closed as a result of absolute mismanagement and quarrel among the partners and the provident fund of workers of many years standing, which this industrial concern was supposed to deposit with the Commissioner for Provident Fund, was not only not deposited, but completely swallowed by the employer. And yet what has happened? No criminal proceeding has been launched against him. Nothing has been done. Therefore, I appeal that while we are putting down on paper the rights of workers, let us not be so very niggardly as to say that a worker who has carried on for six to eight months without salary should rank for only four months salary and nothing more.

So far as the rest of the distribution is concerned, unless one comes within the rank of priority for the balance, there is no hope of getting anything when a company has gone into liquidation, because when a company goes into liquidation, our experience is that long prior to that all its assets have been fully mortgaged and there is very little that the poor workman will get by way of balance unless he ranks as one of the persons entitled to get any amount.

I therefore submit that this is a very modest amendment which the Government should accept.

श्री राम सिंह भाई वर्मा (निमाड़) : श्रीमान, मूल धारा ५३० और वर्तमानक्लाज १८१ में मेरा एक छोटा सा संशोधन है। वह इस प्रकार है मैं प्रस्तुत करता हूं :

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after line 25, *add*—

'(b) in sub-section (2), for the words "one thousand rupees" the words "two thousand rupees" shall be substituted." (124.).

मैं यह मानता हूं और मेरा विश्वास है कि मेरा संशोधन हाउस को तो जंचेगा ही, मंत्री महोदय को भी जंचेगा क्योंकि वह न्याय संगत है। मैं समझता हूं कि ज्वाइंट कमेटी ने असावधानी के कारण ही जो एक हजार की रकम मूल ऐक्ट में थी उसी को इसमें

भी वैसा ही रखा दिया है। मूल एक्ट में यह प्रावीजन था कि अगर कोई कारखाना बाइंड अप किया जाता है तो मजदूरों को जो रकम मिलनी है उसके देने में प्राथमिकता दी जाए। उस रकम में वेजज, डिअरनेस एलाउंस बोनस को छोड़, सभी प्रकार की रकम शामिल थी और वह रकम एक हजार तक ठहरायी गयी थी। लेकिन उस वक्त ग्रेच्यूइटी या रिट्रेंचमेंट कम्पेन्सेशन या ले आफ का सवाल नहीं था। ज्वाइंट कमेटी ने बड़ी समझदारी के साथ उस में रिट्रेंचमेंट कम्पेन्सेशन और ले आफ क भी जोड़ा है और उसको प्राथमिकता देने की बात कही है। इंडस्ट्रियल डिस्प्यूट्स एंक्ट की धारा ५ ए० के अनुसार जो रिट्रेंचमेंट कम्पेसेशन और ले आफ की रकम मजदूरों को मिलनी चाहिए वह भी ज्वाइंट कमेटी ने अपने क्लाज १८१ में शामिल की है। लेकिन उन्होंने कुल रकम १००० ही रखी है जो कि पहले ही थी जब उसमें रिट्रेंचमेंट कम्पेन्सेशन और ले आफ का सवाल नहीं था। तो इसका मतलब क्या निकला। इसका मतलब तो यही होगा कि पृथ्वी गोल है और हम घूम कर वहीं आ गए जहां से चले थ। मैं पांच फीट २ इंच का आदमी हूं और मुझ से कहा जाए कि १० फीट के ऊपर ५०००० की थैली टंगी है और बिना हिले झुले उसको ले लो तो यह कैसे सम्भव हो सकता है। ज्वाइंट कमेटी ने उस में रिट्रेंचमेंट कम्पेन्सेशन और ले आफ को तो जोड़ दिया है लेकिन उस रकम को नहीं बढ़ाया है। इसका कोई मतलब नहीं ।

मैं यह निवेदन करना चाहता हूं कि आज बहुत से उद्योगों में ग्रच्यूइटी के सिद्धान्त को एग्रीमेंट से मान लिया गया है और ट्राइबुनल और इंडस्ट्रियल कोर्ट के फैसलों में भी उसको मान्यता दी गयी है, तथा सुप्रीम कोर्ट ने भी इस को मान्यता दी है। अब आप देखें कि उसमें एक वरकर की एवरेज सरविस २०–२५ साल की मानी है, उसकी रकम कितनी होगी। मान लीजिए कि कोई कारखाना चल रह है और उसको बन्द किया जाता है। तो उसमें कुछ की सरविस एक साल की होगी, कुछ की दो चार साल की, कुछ की १५, २० साल की और कुछ की ३० साल की सरविस होगी। एवरेज सरविस करीब २० और २५ साल के बीच में आती है। आज एक वरकर की टैक्स्टाइल मिल में वेज, डिअरनेस एलाऊंस आदि मिलाकर ११० रुपए की एवरेज होती है। कानून के अनुसार उनको मंहगाई भत्ता और मूल वेतन का आधा रिट्रेंचमेंट कम्पेन्सेशन मिलना चाहिय उनकी सरविस के हिसाब से। आप देखें कि एक महीने के वेतन आदि आधा प्रति साल की सरविस के लिए दिया जाए तो एवरेज कम्पेन्सेशन की रकम ११०० रुपए होगी। इसको ट्राइबुनल ने, इंडस्ट्रियल कोर्ट ने और सुप्रीम कोर्ट ने मान्यता दी है। तो ११०० तो रिट्रेंचमेंट कम्पेन्सेशन होगा और आप ने रखा है केवल १००० रुपया जो कि पहले सन् १९४६ के मूल कानून में था जब कि उसमें रिट्रेंचमेंट कम्पेन्सेशन नहीं था।

श्रीमान्, यह तो वही हालत हो गई कि लेने गये पूत, खो आये खसम। जो वह सारी रकम मिलने वाली थी उससे भी कम हो गई। इंडस्ट्रियल डिस्प्यूट्स एक्ट के अनुसार रिट्रेंचमेंट कम्पेंसेशन का ११०० रुपए वैसे ही हो जाता है। ११०० रुपया हर मजदूर लेने का अधिकारी है। लेकिन कम्पनी एक्ट में हम १००० की रकम छोड़ रहे हैं। मैं निवेदन करना चाहूंगा कि माननीय मंत्री को इस बारे में विचार करना चाहिए कि जो ज्वाइंट कमेटी ने उसमें रक्खा है उसके द्वारा आप मजदूरों को क्या दे रहे हैं? मैं मानता हूं कि यह जो हमारे वकील लोग हैं यह कुछ इस तरह के पेंच खड़े कर देते हैं कि हमारे अनपढ़ मजदूर पहुंच नहीं पाते

[श्री राम सिंह भाई वर्मा]

और उनका नुक्सान हो जाता है। वह कहेंगे कि कम्पनी एक्ट के अन्दर कुल मिला कर १००० रुपये की रकम है और रिट्रेंचमेंट कम्पेंसेशन और वेजज वगैरह की वह सारी रकम १००० रुपय की है। लेकिन इंडस्ट्रियल डिस्प्यूट्स एक्ट के अनुसार जो प्रति मजदूर ११०० रुपये टेक्सटाइल में लेने का अधिकारी हो जाता है तो रिट्रेंचमेंट कम्पेन्सेशन जो इंडस्ट्रियल डिस्प्यट एक्ट में जो पहले ही है वह सारा का सारा चला जाता है और उसे ११०० रुपये के बजाय भी वही १००० रुपये मिलते हैं जो रिट्रेंचमेंट कम्पेन्सेशन शामिल न करने पर मिलना था। यह टेक्सटाइल की बात है। हमारे इंजीनियरिंग कारखानों के अन्दर जहां लगभग १३० रुपया प्रति श्रमिक का एव्रेज पड़ता है, उन्हें क्या मिलना है?

इसलिए मेरा यह निवेदन है कि इस बारे में माननीय मंत्री विचार करेंगे। मैंने कोई ज्यादा राशि नहीं रक्खी है। १००० रुपया तो आपने पहले मूल में रिट्रेंचमेंट कम्पेंसेशन का रक्खा है और एव्रेज हम मान लें कि ११०० या १२०० रुपया होगा तो मैंने तो घटा कर १००० रुपया ही रक्खा है। मैं चाहता हूं कि १००० की जगह २००० रुपये कर दिये जायें और यही मेरा अमेंडमेंट है।

Shri K. N. Pande (Hata): My amendment in this connection is very simple. I am very thankful to Shri Ramsingh Bhai Varma who has also supported my contention in this behalf. This figure of Rs. 1000 was fixed in 1956. But, since then, the wages in each and every industry, particularly in the large-scale industries, have gone up. Naturally, if the wages get accumulated, they will come to more than Rs. 1000.

From my experience, I can cite the case of the Padrauna Sugar Factory. This factory was auctioned, because it was not able to pay the wages to the workers for the previous eight to nine months. Besides, they had not also paid the Government dues, and, therefore, the factory was auctioned; and the workers had to be satisfied only with 60 per cent of their wages.

The figure of Rs. 1000 was fixed when the wages were low, including gratuity and other things, so that the workers might get their reasonable dues. But there is a great difference between retrenchment compensation and gratuity, because retrenchment compensation is always higher than the gratuity; retrenchment compensation is at the rate of half the monthly wages of the worker, for each completed year of service. Supposing a worker has served in a factory for twenty or thirty years, when the factory is closed, the worker will be entitled to retrenchment compensation, and that amount will obviously be higher than the gratuity which he will be getting. In the Joint Committee, this retrenchment compensation was not allowed, but it was allowed this time; and yet the amount was kept at only Rs. 1000. I fail to understand the reasoning in this connection.

Therefore, I would request the Commerce and Industry Ministry to consider this point because there will be a great hardship, if the amount is maintained the same.

Therefore, while supporting Shri Ramsingh Bhai Verma I want to urge the House to support my point so that the workers may not lose the wages for which they have worked hard.

Shri T. B. Vittal Rao (Khammam): I rise to support the amendments moved by my hon. friends, Shri Tangamani, Shri Naushir Bharucha and Shri Ramsingh Bhai Varma. Shri Naushir Bharucha's amendment is to raise the period from 4 months to 12 months. Shri Tangamani's amendment is to raise the limit of wages payable from Rs. 1000 to Rs. 2500 and Shri Ramsingh Bhai Varma's amend-

ment is to raise the figure from Rs. 1000 to 2000.

I do not want to traverse the ground covered by the previous speakers. The Industrial Disputes Act covers all those workers whose salary is Rs. 500 or below. Originally, the figure was Rs. 200; then it was changed to Rs. 400 and then it was raised to Rs. 500. Why? It was because during the course of so many years, so many changes have taken place; salaries and wages have also increased. So to provide for a wider coverage, the ceiling was raised to Rs. 500. Let us come to the Payment of Wages Act. Originally, it was applicable only to those workers drawing up to Rs. 200. But in 1957, we amended it and now it is applicable to workers drawing upto Rs. 400. Again, take the Workmen's Compensation Act. This was also amended two years ago. Originally, it was applicable to those drawing only Rs. 300 or less. Now the figure is Rs. 400 and it is in Government's contemplation to further amend it and make it applicable to those drawing upto Rs. 500.

Therefore, when we consider this question of payment of wages or compensation, we should take into account the maximum. Only the other day we found in the Annual Report for 1958-59 of the Employees' Provident Fund Scheme that the Commissioner had said that there are companies which have defaulted to the extent of Rs. 2:5 crores, and he was finding it very difficult to recover it. Of course we have collected under the scheme a huge amount of about Rs. 210 crores, and in comparison with that, Rs. 2:5 crores is not a big amount. But he has recommended to Government to consider whether any contribution to the Employees Provident Fund should not have over-ridding priority over all other payments. That was the intention. It shows how our concept is developing.

Therefore, when we want to raise the limit from Rs. 1000 to Rs. 2500, there is strong reason behind it. I welcome the new amendment which the Joint Committee has put in, that retrenchment compensation should also be considered for preferential payment. If a worker is getting about Rs. 400 a month and the factory or mill goes into liquidation, he is entitled to get retrenchment compensation at the rate of Rs. 200 for every completed year of service....

Mr. Deputy-Speaker: Is he concluding now or is likely to take some more time?

Shri T. B. Vittal Rao: I will take some more time.

Mr. Deputy-Speaker: Then he may continue the next day.

17 hrs.

*NALAGARH COMMITTE

Mr. Deputy-Speaker: Now, we will take up the half-an-hour discussion. Shri Malhotra.

Shri Inder J. Malhotra (Jammu and Kashmir): Mr. Deputy-Speaker, Sir, at the very beginning I would like to say that the Agricultural Administration Committee submitted its report in October, 1958. It is a very important one and it has pointed out some of the basic needs of our agricultural reorganisation. This report was submitted in 1958 and about 2½ years have gone by and it is still lying in the pigeon hole. In answer to Unstarred Question No. 14 on 15th November, 1960, it was stated that only the Punjab State had submitted its proposals to implement the recommendations of this Committee and the Centre has approved those proposals; and proposals from other States are being awaited.

I would like to point out the main basic facts which have been emphasised in the report for the reorganisation of the agricultural administration in our country. This report, at the same time, created a stir among the

*Half-an-hour discussion.