[Shri Biju Patnaik]

the Chhattisgarh people. That is not my fault. Hon. Members should take it up with the M.P. government. I am sending the secretary of the Steel ministry within a week there to sort out this problem. I am equally anxious as my colleagues here to see that the local people, poor people not only get employment but they get it all around. I have ordered the steel authorities to adopt villages around the steel plant and to give them help. They are poor people I have ordered that the local school, women's college, hospitals, etc., should be assisted by the steel authority and the steel plants I have informed Shri Mohan Bhaiya, M.P. in the form of a letter; this is a commitment of the government and I am making the same commitment here. But if local pasions are roused, I should like to caution them in this House that the same passion can be aroused ten times over from other parts of the country. This must not happened; this should not happen. This happened in Bombay some time back when Shiv Sena started an agitation.

श्री शरद यादव : उपाध्यक्ष महोदय, मैंने यह बात ही नहीं कही। मैंने कहा कि कुछ लिमिटेशन रखिए।

SHRI BIJU PATNAIK: For one man from outside, you will have three men. If you are satisfied at 50:50, you should be satisfied with this. I hope I have explained the position to the hon. Members' satisfaction.

श्री एच० एल० पटवारी : (मंगलदाई) मेरा प्वांइट आफ आर्डर है। आज की कार्य सूची में छठें नम्बर पर प्राथमिक अध्यापकों की पेटीशन है जिस में मेरा नाम था। वह पेटीशन मेरे पास है। वह पेटीशन पेश नहीं की गई है। उस समय 1 बज गया था...

उपाध्यक्ष महोदय : पेटीशन तो हाउस में प्रेजेन्ट हो गया।

श्री एच० एल० पटवारी : नहीं हुआ। पेटीशन हमारे पास है।

उपाध्यक्ष महोदय : श्री दिलीप चक्रवर्ती ने उसे प्रेजेन्ट कर दिया है।

श्री एच० एल० पटवारी : नहीं, वह प्रेजन्ट नहीं हुआ। वह पेटीशन हमारे पास है। दो लाख अध्यापक यहां आए...

MR. DEPUTY-SPEAKER: Shri Dilip Chakravarty's name was also there and the petition had been presented.

श्री एच० एल० पटवारी : मगर वह पेटीशन दाखिल नहीं हुआ।

उपाध्यक्ष महोदय : दाखिल हो गया है।

श्री एच० एल० पटवारी : उपाध्यक्ष महोदय, यह अध्यापकों का मामला है। हमको अभिशाप हो जाएगा... (व्यवधान)

MR. DEPUTY-SPEAKER: You have said enough. I am telling you that the petition had been presented. If you insist on continuing like this whatever you say will go off the record.

14.33 hrs.

COMPANIES (AMENDMENT) BILL
—contd.

MR. DEPUTY-SPEAKER: We take up further discussion of the Companies (Amendment) Bill.

SHRI R. VENKATRAMAN (Madras South): Yesterday, I was dealing with clause 5 of the Bill which refers to section 220 of the Indian Companies Act. I was pointing out that under section 219 of the Indian Companies Act a shareholder was entitled to receive a copy of the balance sheet as well as the profit and loss account before the annual general meeting. If the annual general meeting is not

held it should not deprive the shareholder of his right to receive a copy of the balance sheet as well as profit and loss account. The amendment of the hon. Minister only says that even in cases where annual general meeting is not held, the company is obliged to file with the Registrar of companies the documents mentioned in section 219. My submission is this. It is notorious that the shareholder is treated with scant respect in various companies. Even if you do not give them the balance sheet and profit and loss account to which they are entitled under the company law, you are putting them in the same position as an outsider and make him go to the Registrar's office and pay a fee of one rupee or two rupees as the case may be and then have inspection of those documents. Is it right to place a shareholder of a company, who constitutes the company and who has the right to receive the annual balance sheet and profit and loss account, in the same position as an outsider and make him go to the Registrar's office to inspect those documents? I submit for the government's consideration that along with the filing of the balance sheet and the profit and loss account with the Registrar, the company should also sent these documents to the shareholders of the company as well as to those persons who are entitled under section 219 to receive it like debenture trustees and creditors.

I come to clause 6. Under existing section 293, a company is empowered to make donation up to the extent of 5 per cent of its average annual net profit or Rs. 25,000, whichever is higher. The minister in his amendment has suggested that the limit of Rs. 25,000 may be raised to Rs 50,000. The argument he has advanced is that the value of the rupee has gone down. I consider that this is a very specious argument because if a company makes a profit of Rs. 1 lakh or less or even if a company does not make a profit, this section will enable the company to transfer Rs. 50,000 to charitable purposes. It is notorious that most of the charities are only controlled by the companies or their directors and their sections and their own men. It is only transfer of money from the right hand to the left hand. When the shareholders do not get a dividend, why should there be such profuse charity? If the minister had said that they cannot transfer anything to the charitable purposes without declaring a dividend I can understand. But as the clause stands, they need not declare a dividend but they can be profuse and generous in transferring money from the company funds to charitable purposes. It has been our experience in courts and outside that many of the companies have their own trusts and charitable purposes and they are only diverting resources from the company to these so-called institutions largely to control them with their own men. I am, therefore, very much opposed to this clause. I can understand DA being raised because the value of the rupee has gone down. I can understand certain other things being done for economic benefit but I can't understand how a company which does not even make a profit can be allowed to transfer such a large sum as Rs. 50,000 for charitable purposes on this basis. Rs. 50,000 implies that if there is no clause like this, the company must make at least a profit of Rs. 10 lakhs on the basis of 5 per cent of annual net profit. The section as it now stands, provides that the company can transfer 5 per cent of its average annual net profit to such charities. In order to transfer Rs. 50,000/-, they will have to make Rs. 10 lakhs; and yet the amendment which the Minister has brought forward will enable the company, without making any profit or making only nominal profits, to transfer Rs. 50,000/-. There is absolutely no justification whatsoever for this amendment and so we will oppose this clause.

While I am on this subject, I want to draw the attention of the Government to certain other abuses which

[Shri R. Venkataraman]

take place. People ordinarily do not understand the difference between a company and a limited company. Very many people advertise, saying that it is say, Goodwill Company. We do not know whether it is Goodwill Company or Goodwill Co. Ltd. There is a provision in section 58-A for regulating the deposits; and the deposits are controlled under this Act, if it is a limited liability company. But a large number of people are advertising in the newspapers to-day, and inviting deposits, putting such grandiose names as 'X Company' or 'X Financial Corporation'; and the gulible people, not understanding the difference between a company registered under the Indian Companies Act and a so-called company which is merely a company or a partnership or only a private firm, deposit moneys. and find later to their cost that they have been cheated. While in law, companies which are not registered under the Companies Act or the so-called Finance Corporations are only borrowing money, they use the technical expression which has gained acceptance in the country because of the Company Law permitting companies to raise deposits, saying that the deposit has been controlled, approved or at least that it conforms to the Reserve Bank Act and rules. Therefore, a law must now be enacted saying that only limited liability companies can invite deposits; and partnerships, firms and individuals which use the names *viz.* firm, company or finance corporation or the like, they cannot invite deposits by advertisements, because they are not now controlled by the Reserve Bank. My suggestion is that while we are trying to protect the interests of the depositors, the law as it is now brought forward by the Law Minister, showers all the sympathy and all the facilities on companies themselves. What are those companies? They are the erring companies which do not conform to the regulations enunciated by the Reserve Bank, companies which have taken deposits outside and beyond these rules and companies which have not fulfilled the conditions laid down in Section 58-A of the Act. Therefore, I would submit for the consideration of the Law Minister that he should give a peremptory date, say 1st April 1978 and thereafter prohibit such activities or insist on the companies observing all the provisions of Section 58-A. Clause (4) of Section 58-A says:

> "Companies which do not comply with these provisions are prohibited from inviting fresh deposits."

We have no idea whether companies which have been prohibited under the Act have invited further deposits or not. In fact, when the advertisement appears, it does not bear out to the public whether it has complied with the provisions of the Act, or not. If there are cases in which a company has invited deposits in contravention of clause (4) of Section 58-A, then strong and penal action must be taken. It is not a case for condonation. I, therefore, submit that the Law Minister should consider whether he should not enforce Section 58-A with a time limit fixed upto 1st April, 1978.

श्री कंवर लाल गुप्त (दिल्ली सदर) : मैं इस बिल का स्वागत करता हूं। इन संशोधनों से कुछ तो कठिनाइयां जो कम्पनियों को हो रही थीं वे दूर होंगी। जो लोग कुछ दान देना चाहते हैं अच्छे कार्य के लिए, उनको भी इन से लाभ होगा और साथ ही साथ साधारण जनता को भी लाभ होगा।

पहले कानून में एक लेकूना था। अगर रायट हो जाता था, स्ट्राइक हो जाती थी या कोई और दिक्कत हो जाती थी और उसके कारण यदि कम्पनी अपनी वार्षिक मीटिंग नहीं कर पाती थी और बलैंसशीट वगैरह भी नहीं दे सकती थी तो दिक्कत हो जाती थी। सरकार या रिजर्व बैंक के पास कोई पावर नहीं थी कि वह उसको समय दे सके या आगे को

तारीख डाल सके । इस संशोधन से यह लाभ तो होगा कि अगर कोई ऐसी चीज हो जाती है तो सरकार का अधिकार थोड़ा बढ़ जाता है और वह कम्पनी को कह सकती है कि आप तीन महीने के बाद या चार महीने के बाद अपनी मीटिंग करके बैलेंसशीट उसके सामने रख सकते हैं । यह प्रावधान इसलिए किया गया है कि जो डिपाजिटर है, जो अपना रुपया उसमें जमा कराते हैं उनका रुपया सुरक्षित रहे । मेरे विचार से यह जो बिल है यह एक हाफ हार्टिड मैजर है और एक कम्प्रिहैंसिव बिल आपको पेश करना चाहिए था ताकि जो कम्पनी ला में दिक्कतें पेश आती है उनको दूर किया जा सकता । वैसे मंत्री जी ने कहा है कि कोई कमेटी बनी है और उसकी रिपोर्ट आने के बाद कार्रवाई की जाएगी । लेकिन अच्छा यह होता कि इसी समय एक कम्प्रिहैंसिव बिल ले कर वह आते । यह चीज आधा-आधा करके, पीसमील तरीके से नहीं आनी चाहिए थी ।

एक बात मेरी समझ में नहीं आई है । आपने टोटल एग्जेम्पशन की बात इसमें क्यों रखी है । कोई कारण हो सकता है जिसमें कम्पनी मीटिंग नहीं बुलाती है और उस सूरत में बैलेंसशीट और प्राफिट एंड लास एकाउंट आदि लोगों के सामने नहीं आएंगे । इस वास्ते यह टोटल एग्जैम्पशन की पावर कम्पनी ला में क्यों दी गई है यह मेरी समझ में नहीं आया । यह नहीं होनी चाहिए । अभी आप इसको नहीं कर सकते हैं तो आप इस पर विचार करें क्योंकि टोटल एग्जैम्पशन का मतलब होता है कि वह चीज कभी नहीं हो सकेगी । एक महीने का या दो का या जितना आप ठीक समझते हैं वह समय दे सकते हैं लेकिन टोटल एग्जैम्पशन का मतलब तो यह है कि एक तो मजदूरों को दिक्कत होगी और दूसरों को भी होगी । किसी को पता नहीं चल सकेगा कि क्या घोटाला हो रहा है, कितना पैसा खाया जा रहा है और डिपाजिटर भी अंधेरे में रहेंगे । जिनका रुपया लगा हुआ है उसमें बंगलिंग होगा ।

एक नया तरीका फ्राड करने का कुछ कम्पनियों ने निकाला है । कम्पनी को पहले ही सिक बना दिया जाता है, जान बूझ कर ऐसा किया जाता है । अगर किसी ने अपना दस लाख या एक करोड़ रुपया कम्पनी में लगाया होता है तो गवर्नमेंट का, बैंकों का और फाइनेंशियल इंस्टीट्यूसंस का उसमें पच्चीस करोड़ लगा होता है । अब एक करोड़ जो होता है तो वह बिल्डिंग बनाने में, मशीनरी खरीदने में बिलो को इनफलेट करके निकाल लिया जाता है और उसके बाद आहिस्ता-आहिस्ता जो नफा होता है उसको वे खींचते रहते हैं, और जैसे ही एग्जैम्शन का समय आता है या कुछ और करने को होता है उसको न करके जितना भी ज्यादा से ज्यादा सिक उसको वे बना सकते हैं बना डालते है और जितना रुपया ज्यादा से ज्यादा खींच सकते हैं खींचते हैं । उन्हें नुकसान कुछ नहीं होता क्योंकि उनके जो शेयर्स होते हैं, पब्लिक लिमिटेड कम्पनी होने के नाते, पहले ही निकाल लिए होते हैं । नतीजा यह होता है कि जो छोटे शेयरहोल्डर्स और डिपाजीटर्स होते हैं उनको तकलीफ होती ऐसे उदाहरण मंत्री महोदय की निगाह में आये होंगे जहां जानबूझ कर मिलों को सिक बना दिया जाता है । उसके लिए क्या प्रोटेक्शन दिया है, यह मैं जानना चाहता हूं । मैं चाहूंगा मंत्री महोदय इस पर विचार करें और इतनी कड़ाई से इस कानून को बनाया जाना चाहिए ताकि डिपोजिटर्स को नुकसान न हो । गवर्नमेंट और फाइनशियल इंस्टीट्यूशन्स

[श्री कंवर लाल गुप्त]

के डायरेक्टस भी बोर्ड पर होते हैं, लेकिन उनका क्या रोल होता है वहा पर क्या कंट्रीब्यूशन होता है, यह हमको कभी देखने को नहीं मिला। इंडस्ट्री वाले उनको मीटिंग में बुलाते हैं और उनको अच्छी तरह से ऐन्टरटेन करते हैं, और अच्छी तरह से जो करना है वह करते है, और वह करने बाद यह अपने चुप बैठे रहते है और जो इंडस्ट्रियलिस्ट करना चाहते हैं वह करते रहते हैं। तो मैं चाहूंगा कि आप जो गवर्नमेंट के डायरेक्टर्स हैं उनका क्या कंट्रीब्यूशन हुआ. उन्होंने ऐमबेज़लमेंट और फ्रौड और एकनेमिव ऐक्सपेंडिचर को रोकने के लिए क्या कदम उठाए, यह चीज़ सरकार को देखनी चाहिए। और जो नोमिनेटिड मेम्बर्स जाते है सरकार की तरफ से वह ऐसे होने चाहिएं जो उसमें ऐक्टिवली पार्टिसिपेट करें। और उनका क्या असेसमेंट है उसकी रिपोर्ट सालाना या 6 महीने के अन्दर सरकार के पास आनी चाहिए ताकि सरकार देख ले कि उन्होंने कुछ काम किया है कि नहीं।

मैं अपने मित्रों से इस बात पर सहमत नहीं हूं कि चैरिटी के लिए 25,000 रु० की जगह 50,000 रु० क्यों कर दिए। मैं समझता हूं कि चैरिटी अधिकांश अच्छे कामों के लिए होती है। इसमें बढ़ाना कोई बुरी बात नहीं है। यह सरकार ने ठीक किया और मैं सरकार को इसके लिए बधाई देना चाहता हूं।

लेकिन मैं मंत्री जी से पूछूगा कि आपका पोलिटिकल डोनेशन्स देने के बारे में क्या ऐटीट्यूड है ? क्योंकि जो कुछ इस चुनाव के पहले हुआ, माननीय लाकप्पा फिर नाराज़ हो जायेंगे, करोड़ों रुपया कांग्रेस ने लोगों से लिया सूविनियर निकालने के लिए, लेकिन वह निकाला नहीं। और एक-एक, पेज के 10,000 रु०, 25,000 रु० लोगों से लिए। आपने उनको नोटिस दिया हुआ है।

SHRI K. LAKKAPPA (Tumkur): This is also true that Mr. H. M. Patel, the Finance Minister, and Mr. Palkhivala, who has been appointed Ambassador, were also directors of companies and show cause notices have been issued to them. Will you ask the Government to withdraw them?

SHRI KANWAR LAL GUPTA: What is the point of order?

SHRI K. LAKKAPPA: He has referred only to the Congress people and said that they have looted crores of rupees. What about the crores of rupees that have been looted by these two people? Don't tell all these things.

SHRI KANWAR LAL GUPTA: The souvenir should at least be published. To that extent I think Mr. Lakkappa will agree with me. But there are many cases where the money was taken and the souvenir was not published at all. This is a fraud. If this fraud has been committed by Kanwar Lal Gupta, action should be taken against him irrespective of the fact whether he belongs to the Congress Party or the Janata Party. Whether he is "A" or "B" But, unfortunately or fortunately, this fraud has been committed by the Congress party alone and no other party. That is the difficulty.

SHRI K. LAKKAPPA: No, no. Notices have been issued to Mr. H. M. Patel and Mr. Palkhiwala. Let him ask the Minister about it.

श्री कंवर लाल गुप्त : मैं मंत्री महोदय से यह जानना चाहता हूं कि पोलिटिकल डोनेशन्ज के बारे में सरकार का क्या एटीट्यूड है ? मेरी अपनी राय है कि पोलिटिकल डोनेशन्ज कंपनीज़ से लेना कानूनी तरीके से बन्द करना चाहिए। माफ कीजिए गवर्नमेंट के इनकम टैक्स

डिपार्टमेंट की तरफ से जो सरकुलर निकाला गया, उसमें कहा गया है कि आप डोनेशन्ज दे सकते हैं, यह कानून के हिसाब से ठीक है। जिन्होंने सरकुलर निकाला, उनके खिलाफ कार्यवाही नहीं हुई, बल्कि उनको तरक्की दे दी गई, आज वह सीनियर मोस्ट पर बैठे हुए हैं, और उस सरकुलर को मानने वालों का चालान किया जा रहा है।

मैं पूछना चाहता हूं कि एमर्जेन्सी के दिनों में जब कि यह सदन यहां तक भरा हुआ था, उधर अपोजिशन के होगें, यहां एक आदमी भी उस डिक्टेटर के खिलाफ आवाज नहीं उठा सकता था तो किसी को कहां हिम्मत हो सकती थी कि सरकुलर आने के बाद भी उसको पैसा न देता? सरकार को इस बारे में अपनी पोजिशन क्लैरीफाई करनी चाहिए। बराबर का मौका मिलना चाहिए। क्योंकि पार्टी इज पावर आज हम हैं, कल दूसरे आ सकते हैं। इस बारे में सिद्धान्त बनाने चाहिएं, एड-हाक डिसीजन्स नहीं लेने चाहिए। आज हम पार्टी इज पावर हैं तो अपने मतलब की बात कर दें, कल दूसरा आ जाए तो वह भी उसका फायदा उठा सकता है।

देश के हित में, फेयर एंड फ्री इलैक्शन्ज के इन्टरेस्ट में क्या है, यह सोचने के लिए मंत्री महोदय से प्रार्थना है कि वह पोलिटिकल डोनेशन्ज के बारे में अपना रवैया साफ करें।

जो डिफाल्टर्स हैं, जो बैंकों में अपना पैसा न लगा कर कंपनीज में लगाते हैं क्योंकि कम्पनी रेट आफ इन्टरेस्ट ज्यादा देती हैं और बैंक रेट आफ इंटरेस्ट बहुत कम देता है, इसके परिणामस्वरूप सरकार के पास जितना पैसा आना चाहिए, वह नहीं आता। इसका क्या असर बैंकों पर और उनकी इकनामी पर पड़ता है? एक आश्चर्य की बात यह है कि बैंक इन्टरेस्ट देता तो बहुत कम है, लेकिन जो लेता है, वह बहुत ज्यादा लेता है। उसके एड-मिनिस्ट्रेटिव एक्सपेंसेज बहुत ज्यादा होते हैं। इतना फर्क नहीं होना चाहिए।

The rate of interest given by a bank and a company should be, more or less, the same. Otherwise, what will be the effect? I think, it has a very adverse effect on the credit of the banks. This aspect should also be examined by the Government.

SHRI BEDABRATA BARUA (Kaliabore): Mr. Deputy-Speaker, Sir, having been in-charge of the Department for six years and also being associated with the Department in some other capacity, I would normally tend to see both sides of the question and I would not like to offer anything by way of criticism as such. But, I think, that the particular provision which is very important for the companies system in the country, a vital provision, Section 58A to which an amendment has been proposed needs some sort of re-thinking even at this stage by the Government I would like to associate myself with the discussion on that subject. I know that other provisions are also there. I do not want to dilate on those points particularly when the Minister has said that those matters will all be before an expert committee and that most of them are of consequential nature.

15 hrs.

So far as Section 58A is concerned, this Section came as a result of an amendment of the Company law over which the previous House sat in a Joint Committee and prepared its amendments.

This particular amendment was intended to achieve a certain objective. In Clause 3 it has been reposed:

'The Central Government may, if it considers it necessary for avoiding

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any hardship or for any other just and sufficient reason, by order, issued either prospectively or retrospectively...

It has taken an enormous amount of discretion.

"...from a date not earlier than the commencement of the Companies (Amendment) Act, 1974, grant extension of time to a company..."

To an individual company, not only to a group of companies.

".....or class of companies to comply with, or exempt any company or class of companies from, all or any of the provisions of this section either generally or for any specified period subject to such condtions as may be specified in the order.'

This is taking too much of a discretion I feel very uneasy about it because there is so much of discretion, I want to state, that it would not be possible for the Government to exercise this type of discretion either judicially or reasonably. Please see what this provision really means if read with the penal provisions. I beg to differ with my hon. friend becuase I want to discuss it as far as possible from the point of view of the company system as a whole and not only from the point of view of the people concerned. The penal provision at every stage is imprisonment upto five years. This type of a penal provision makes it all the more necessary that discretion is not to be exercised. When the penal provision was imposed by the House previously, 'discretion' was not there; it was made absolutely clear that no discretion would be exercise. That is why, this amnedment has been brought forward. I know the difficulties of the Minister; I know why this has to be done—because there may be cases of hardship which have to be given relief. My suggestion is that this amendment is no solution to this problem. This five-year penal provision makes it an offence equivalent to burglary or culpable homicide or that type of thing. In all criminal actions, the offence must be proved beyond all shadow of doubt. This is the most important point. Here who is supposed to prove the offence beyond all reasonable doubt? The Department itself. If the Department says that such and such a thing is not to be condoned, the man goes for five years' imprisonment; and if the Department says that for any sufficient reason, which the Department is not bound to divulge, the man is to be exempted, he has to be exempted. The Department can declare a man to be a crimnal for no particular reason or declare him to be innocent. This is arrogating to themselves functions more than those of the Supreme Court of India. This is a very dangerous provision.

Exempting a class of companies is all right. But how is it going to be sustained in a court of law, I do not know. I think, the fate of this provision in the normal course would be that either it will not be applied or the courts would not give any punishment at all—perhaps only the fine—or there would be the worst that one could think of. I do not want this House to pass knowingly an unconstiutional law because this should simply be not constitutional to say that any penal provision where imprisonment is involved, the judicial system would authorise a departmental inspector to say that this is a criminal act or not without going into the evidence because the law does not provide for that. Really the whole thing started when the provision was discussed, at one stage, before the Committee. Government had given its notes on Clauses, and there Government had said—and that was the original purpose of the amendment:

"It has been the practice of companies to take deposits from the public at a high rate of interest. Experience has shown that in many cases deposits so taken have not been refunded on due dates."

It was a wrong objective, although I was associated at that stage also with the Committee. I always thought that this was a wrong objective because

it is only an effort to set up a rival banking system. If we really want the banking system to grow, why should the companies take deposits and utilise those deposits? This objective was wrong, but this was an objective which comes naturally to a political worker or a Member of Parliament. Whether I used to go, I used to find a number of people who had been deluded in depositing their money in the companies. I used to tell them that they were speculators; 18 or 20 per cent interest was offered to them and they went for that. How can we make a speculative dealing as safe as fixed deposits in a bank? It cannot be. But that was the objective and it was partly fulfilled in the sense that deposits under the rules would certainly be regulated and companies would not be able to secure more than 25 per cent of their fixed deposits and free reserves. Companies could take deposits only equivalent to that, not more than that. This is good, but then no sooner this Act was passed than the provision was made that in consultation with the Reserve Bank, the rules will be laid down. When it came to the Reserve Bank, contradictory objectives got introduced; very laudable, very good, but totally contradictory. The Reserve Bank said that the banking system should only provide credit. Here, the Reserve Bank forgot two things. I do not say that the Reserve Bank was doing it, it is the Government that was doing that. If the banking system was to supply the credit, and if a company had no money and it had taken some good deposits from the public under the existing laws in those days, Reserve Bank regulations were never applied. The Minister possibly knows that Everybody used to take deposits whatever the regulations. There is no such assurance from the Reserve Bank or the Minister that if the companies return the deposits, they would pay back the money to them. There is no such assurance at all.

It is all right that they must not function as a rival banking system, but there is one thing. The bank rate is so high today because of their salary structure and other things; in their credit policy they have to raise the interest rates very high because of their expenses etc. If a private company gets some deposits, I do not think it is a criminal act, although it could be criminal if they do not return. If the point is that no rival banking system is to be set up, then was it propounded in the original objectives of the Act that there should be security to the creditors who are putting their money in the companies, which is a rival banking system?

The second objective is equally laudable and I have no quarrel about that. The objective is good as was mentioned by my hon. friend Shri Venkataraman. And that was that black money tends to be deposited, but black money tends to be deposted in a different area. Twenty-five per cent deposits made by the public which are not sought to be controlled and are being progressively made will continue. That twenty-five per cent is not sought to be disturbed. What is sought to be disturbed is this. The deposits from the Directors and guaranteed by the Directors which had been brought down to 15 per cent are sought to be brought down to zero. This was not really the original purpose. This is because the Directors are not sought to be protected. These are the Directors themselves who have never asked for protection. It may be black money, it may be brown money, it may be blackish money or it may be pure black money. The point is that these are Directors' deposits and they have not asked for security. So, the Reserve Bank and the Department together formulated a set of rules and made them very stringent in the interests of control of black money and the main axe fell on deposits guaranteed by the Directors or the Directors' deposits and unfortunately, it did not at all disturb the big companies in India except 2-3 companies. They squarely fell on the small companies. I had been to Coimbatore a year ago. It was interesting to find that all the textile mills of Coimbatore were affected, practically all of them. It became a vast problem not only in Coimbatore

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but it has become a problem throughout South India. That is why I understand the reason why it was proposed —exemption in individual cases. But this is impossible because all these got affected. But the big companies would not be affected. If a big house has 20 companies or 10 companies or 200 companies, they can provide the credit by inter-corporate loans. Even deposits by one company in another would not come within the definition of 'deposits'. So no big company is going to be affected unless it is big like the Oberoi Hotels or the other famous case where this has happened when people wanted to utilise deposits for vast expenses and for that matter I would not go into that. The real point here is about these small companies. What is the objective? Suppose the government exempts them— I do not think the government has examined it to find out the reason. The only possibility is that if a big company is doing something wrong in having deposits, since the penal provision is there, they will send the company into liquidation. Here the question is: is it proper at this time of vast unemployment to send existing companies into liquidation? If this section is to strike even 500 companies which it is bound to strike if the section is enforced— it is no matter that it has not been enforced— it will create an explosive situation. The hon. House should know that it has not been enforced. When I was there, I used to extend it every time by 3 months or 6 months and the Minister might also do the same thing. And this extension went on because at no stage the government was in a position to strike down and send a number of companies into liquidation although a number of cases were filed. This filing of a number of cases itself is very inequitable because certain companies are not being prosecuted.

In any case, after taking this power I think it is being taken to be exercised and it will be exercised only by prosecuting some people and exempting some other people which will be highly inequitable. How will exemption in individual cases be given? We cannot go into the blackness or the whiteness of the deposits and I do not think the Company Affairs Department is competent to go into it or, for that matter anybody, to go into the question of blackness of or whiteness of the deposits. You can make laws and you can confiscate that black money or you can convert it into equity or loan from the financial institutions. There are hundred ways to do it. But the question is: whether the department can really find out which company is managed properly and which is mismanaged. They say 'strikes' and somebody says 'no strikes'. You are not entitled to examine this. This type of things is likely to happen. So, the government will be under all types of pressure to give this exemption and the government will end up. There are some cases which are very bad and if you want to help those cases, probably you will have to help everybody else. It is not proper to have anything like this in the statute book. I advise the hon. Minister not to provide for exemption of one single company if he can do so. This High Power Committee has been appointed, which is looking into these things. Personally, I think, if the penal provision is to be there, this individual exemption can be very unconstitutional. That is a point on which I have been very much worried. The High Power Committee is expected to give its report by the middle of next year. Consideration by the Government after that will take another six months or one year. After that a Joint Committee may look into the matter and it may come into effect only after a couple of years. What happens is this. This is a law which impinges upon everybody in any case. It is going to affect thousands and thousands of companies. What I feel is that Government should make a straight, formal, decision to back out of the situation. Under the rules laid down in consultation with the RBI, the deposits by the Directors have to

be brought down to Zero, within a short period of time. I don't think the financial institutions will be able to provide the credit to replace these deposits. So, Government will have to find out other measures for that purpose.

With these suggestions I conclude my speech and I hope that the hon. Minister will consider these suggestions and avoid the charge of favouritism and whimsicality.

SHRI NARENDRA P. NATHWANI (Junagadh): Mr. Deputy Speaker, Sir, I rise to support the Bill generally The hon. Minister stated yesterday that this is a short Bill and of a non-controversial nature. Essentially it is non-controversial though some of its provisions do require proper consideration.

Certain criticisms levelled by my hon. friend Dr. Seyid Muhammad are totally unjustified. He said that Government ought not to have come forward with this type of piecemeal legislations. He referred to the Expert Committee which has undertaken to review the working of the Companies Act and stated that its report would be available soon, and therefore no justification is there for bringing this piecemeal legislation. However, as the hon. Minister has stated, the report of this committee will not be available for a few months. After that Government will have to consider that report and a Bill has to be drafted. Before it is enacted into a law it would take about a year or more than that. Dr. Seyid Muhammad had not proceeded to point out in what respect, if at all, any of the provisions of this Bill was not of sufficient immediate importance, not to be brought forward at this stage. He left the question open. He left it in a vague manner.

But, I think, his second criticism is rather more objectionable. This concerns the interpretation of Sec. 293A, which deals with the Company's right to advertise.

And he stated that the ex-Law Minister had given his opinion and had interpreted it in a particular manner. Pursuant to that, several companies spent various sums of money and even fantastic amount by way of advertisement. He proceeded to state that the same opinion was taken by an expert, though he did not mention the name, it was Shri Palkhiwala's opinion. The same opinion was given by Shri Palkhiwala and also by the former Chief Justice of the Supreme Court. I understand that the reference is to Mr. Justice Shah. What I am trying to point out is this. He made an incorrect statement by saying that the same opinion or same interpretation had been given by Mr. Palkhiwala and Mr. Justice Shah. I specifically asked Dr. Seyid Muhammed whether the contents of the opinion of Mr. Justice Shah had been published in any newspaper to which his answer was evasive. Later on, he was good enough to tell me that his opinion had not yet been published. What was published was the fact that he had given an opinion and the view was expressed by Mr. Justice Shah was similar to the one expressed by Mr. Palkhiwala. So the companies had the right to spend any amount they liked by advertisements and there was no violation of section 293A.

Now, I have got a copy of opinion given by Mr. Palkhiwala and his opinion begins with:

> "It has appeared in an issue of Secular Democracy on October 1, 1977. He did not give a categorical opinion that there was no restriction over the right on the company to give advertisement. No, not at all."

On the contrary, he starts—this is his first sentence—with his answer to the first question:

> "In my opinion, it depends on the facts of the case as to whether the amount spent for advertisement in souvenirs published by a political

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party should be treated as a contribution to a political party or for political purposes".

So, he lays stress that it depends upon the case of each particular case. And then he goes on to say—I am quoting from his opinion published in an issue of Secular Democracy dated 1.10.1977. Kindly listen to me.

It is a question of fact. What are the questions of fact that arise? Firstly, whether the intention or idea is to advertise. He proceeds to state on that:

"The essential point is whether the payment was made for gaining some benefits through advertisement."

According to him also, therefore, if the predominant idea is not to advertise for publicity but in order to get some favour, some benefit or some patronage from the Government what else it is but a donation? I do not like to state that. I can cite several such instances where contributions have been made by companies with a view to getting reduction either in the customs duty or in excise duty. I do not want to dilate on that. He has summarised it.

Mr. Justice Palkhiwala gave the same opinion. He summarised it....

SHRI R. VENKATARAMAN: He is not Justice Palkhiwala.

SHRI NARENDRA P. NATHWANI: I am sorry for the slip made. Justice Shah gave similar or same opinion. It was his opinion. Dr. Muhammad also said that similar was the view expressed by Mr. Justice Shah. It is not, therefore, correct to say that both of them—Shri Palkhiwala and Mr. Justice Shah—expressed the same view as was taken by the former Minister of Law, Shri Gokhale. But it was open to Shri Seyid Muhammad to point out that Government should have availed of this opportunity....

SHRI VASANT SATHE (Akola): So, you say that Justice Shah is a partisan man.

SHRI NARENDRA P. NATHWANI: Sir, I object to it. You cannot criticise the conduct of any commissioner. I appeal to the Chair to ask the hon'ble Member to withdraw his remark. Justice Shah is enquiring. You cannot criticise his conduct.

SHRI VASANT SATHE: I am not criticising his conduct.

MR. DEPUTY SPEAKER: Mr Sathe has just walked into the House. He does not know what you are speaking about.

SHRI NARENDRA P. NATHWANI: It was open to Shri Seyid Muhammad to point out to the hon'ble Minister that this opportunity should have been taken to clarify the position. So far so good. It is legitimate. But in this context one has to remember that when the whole matter is under examination or consideration of the Government you cannot expect them to introduce any provision in this Bill. I leave the matter at this stage. I only hope that Shri Seyid Muhammad had spared himself of the manner in which he expressed his opinion, namely, that Law has not been made to appear more foolish than in this matter.

Sir, I now go to the provisions of this Bill. I stated that I generally support the provisions of this Bill. Let me first take up Clause 3. As regards this clause while I support generally the principle underlying Clause 3 I wish to point out that in some respects it deserves full consideration by the hon'ble Minister and even at this late stage he would apply closely his mind to the various suggestions that are made in this debate. My first submission is that there seems to be some overlapping with Clause 7

of Section 58A and the new proposed sub-clause 8. If you look to the existing sub-clause 7 it exempts a banking company from the operation of Section 58. Again it authorises the Central Government not to apply the provisions of Section 58A to any other company. In other words, sub-clause 7 authorises Central Government to exempt certain kinds of companies whereas new sub-clause 8 also says so in express words. It also seeks to empower the Government to exempt a company or a class of companies. To that extent it appears there is some overlapping. This overlapping should be avoided.

Secondly, my friend Mr. Venkataraman rightly pointed out that the object of the original Section 58A was two-fold, that is, to give protection to members of public who may not come to grief by reason of being attracted by high rates of interest offered by various companies; and secondly to some extent to divert the savings into what is considered by the Government to be more profitable investment in national interest, so that if rights are curtailed and restrictions are placed, some savings might flow into banks thereby enabling the government to carry out its economic policy.

I fully support government's proposal to give relief to companies in certain cases and I quite understand that. There may be genuine cases in which a company may not find that. There may be genuine cases deposits and so it is highly necessary that in such circumstances on such grounds, relief by way of extension of time should be given. But such grounds such reasons of genuine hardship and difficulties should be specified in the new provision instead of making them wide and general. As the law stands at present, it reads: "The Central Government may if it considers it necessary for avoiding any hardship or for any other just and sufficient reason...." These words are very general whereas in the statement of objects and reasons specific cases have been given. Suppose there is a riot, there is a strike, you can say they are circumstances beyond one's control, or what are known as acts of force majeur acts of God and so on. You should try to specify them. You should not vest to wide discretion in the hands of government officers. It is not in keeping with the broad policy of the government to introduce unnecessary regulations. Some regulations may be necessary. I quite see the necessity of bringing a regulation to grant exemption in certain respects. But do not try to word it or phrase it in such a manner where unlimited discretion has been conferred upon the government. Secondly, for the same reason I object against—I refer to the words—'if it considers it necessary'. Why should the Central government be authorised to have this kind of satisfaction before taking action? It is proper to provide straightaway for the contingency. You can say "in order to avoid genuine hardship...." And you can specify those hardships.

Lastly I should like to say that whatever power is to be conferred upon the government by reason of the proposed new clause 8, you should also see that such power relates only to a class of companies and not to any individual company because again it confers wide discretion in respect of even any particular company. In such a case a company is virtually made dependent upon or placed at the mercy of the Company Law Board or and its advisers. Please take the power to grant exemption, to extend the time or do whatever is necessary but do that in respect of certain class of companies only and specify that. Do not extend such power with respect to any individual company. In any case even if you want to relate that power to any individual company, prior approval of the Reserve Bank should be taken. There are amendments given notice of to that effect.

(Shri Narendra P. Nathwani.)

I have a feeling that unless new sub-clause 8 is administered with great care and circumspection, poor investors would be scared away and companies' finances may suffer and it may divert funds though it is not the intention of the government. I have read; very carefully the statement of the hon. Minister. If it is not the intention of the government to accentuate the flow of savings in particular channels only, namely, bank and other semi-Government agencies, you have to administer the new provision with great care and caution because, whether one likes it or not it is bound to have some effection the minds of the depositors, because the depositor will not now be quite sure whether he wou'd receive or not his money at the end of the fixed period.

Coming to another clause dealing with Balance Sheet, it was my misfortune to argue the first Supreme Court case where I pleaded for one of the directors of a Company that a person cannot be held responsible for not filing a balance sheet whether an annual general meeting was not held but the Supreme Court took the view, "Now, it was his fault and he is liable". Fortunately that decision has been reversed and the law has been correctly laid down. But such a position is not for the benefit of the share holders and the company. Therefore, the proposal being made now that even if no annual general meeting is held, a balance sheet should be filed is welcome and deserves support. However, I request the Hon'ble Minister to consider Mr. Venkataraman's suggestion whether a copy of the balance sheet and profit and loss account should not be sent to the shareholders.

The provisions of clause 6 relating to charitable purpose has been criticised. There I beg to differ from my hon. friend, Shri Venkataraman, who said, it is a specious plea. No; even in the last Finance Bill, we raised the permissible limit for amounts which can be donated to charity and nobody raised the argument that it was a specious plea. It is true that one has to see that money purported to be given by way of charity is used for the same purpose, but that relates to an aspect of administration. Otherwise, nobody has raised any objection that charity is not a worthy cause which should receive as much help from companies and individuals as possible.

SHRI R. VENKATARAMAN: What about shareholds?

SHRI NARENDRA P. NATHWANI: They have the right, as a class, to criticise such donations in the annual general meeting.

SHRI VASANT SATHE: Is there any company where the shareholders have met and talked?

SHRI NARENDRA P. NATHWANI: I do not know whether you have ever been a shareholder.

SHRI VASANT SATHE: Yes I have been a shareholder. The annual general meeting which I attended was over in five minutes.

SHRI NARENDRA P. NATHWANI: I have not under-tood him. It is inconsistent—my friend being present in a meeting and the meeting being over within five minutes!

Sir, with these words, I support the Bill.

SHRI JAGANNATH RAO (Berhampur): Sir, I am not going to argue that no piecemeal legis'ation should be brought forward and that only a consolidated amendment of the law is required. There are situations where piecemeal legislation is necessary and perhaps this may be one. But what did not impress me was the urgent need for bringing this piecemeal legislation. The company law is a regulatory measure which regulates

the functioning of companies by government having some supervisory control. I was a member of the select committee on the Bill introduced in 1971. We went round the country for two and half a years, collected evidence from all interested sections and ultimately the Bill was passed in the House—Act No. 41 of 1974. This Section 58A, came into effect from 1st February 1975. The very object of introducing it was to protect the gullible and poor depositors who made deposits allured by the high rates of interest offered by the companies and many of whom came to grief. In fact, one ICS officer put all his savings in deposit in a company and lost the entire amount. Therefore, it is mainly intended to protect the interests of the depositors.

I do not see any reason why, within a span of 2½ years, this, Government is trying to take powers to exempt a company, or a class of companies from the operation of Section 58-A. The power to exempt is already there under sub-section 7 of Section 58-A. I do not know why Government wants additional powers to exempt companies. I will appreciate it if Government lays down certain principles on which to exempt a particular company or class of companies from the operation of Section 58-A. Or, the Reserve Bank can lay down that no company taking deposits should not give a rate of interest higher than that paid by the nationalized banks. This would have put some restriction on the deposits; and it would also avert any mischief on the part of the companies.

When Parliament is required to give its approval to a bill, there should be some guidelines mentioned in the bill, so that we can apply our minds to them and give our approval. But here a blanket power is given to the Government to exempt companies. How can we approve it? The Law Minister must consider this, and should tell us, at least in his speech, that such-and-such are the guidelines to be applied, even though they are not specifically mentioned in this bill.

I now come to Clause 5 which deals with Section 220 of the Act, which requires an annual general meeting to be held for the approval of the profit and loss account and balance-sheet of the company. This clause, as also the earlier, one is loaded in favour of the company. Where the company is not able to hold the annual general meeting for the approval of the profit and loss account and the balance sheet, why should it get a further, privilege, by depriving the members of the company who are entitled to copies of these documents at least 21 days before the date fixed for the holding of the meeting? The Minister has now given companies 30 days' time to file copies in triplicate with the Registrar, if the meeting is not held. That means you are driving the members of the company and the shareholders to go to the Registrar for inspecting the documents Why should you deprive them of this right to get copies of documents; if the meeting is held, they have the right to have the documents 21 days earlier. Now that the meeting is not going to be held, why are you favouring one company? If there are valid reasons for not holding the meeting, the right of the shareholder or debenture-holder to have copies of the documents should not be taken away I would have appreciated it if, simultaneously, you had amended section 219 by giving this right to the member, debenture-holder or share-holder to get copies of the documents, and also approved of the companies filing copies with the Registrar. That would have been even-handed. While taking into consideration the difficulties of the company resulting in not holding the meeting in time, you should at the same time have protected the rights of the shareholder to have copies of the documents,—which he has a right to have.

[Shri Jagannath Rao]

This is about clause 5. Clause 6 deals with section 293 (e), i.e. regarding 'charitable purposes'. The expression 'charitable purposes' is a very vague and elastic one; and under this term, as per the existing Act, Rs. 25,000/- or 5 per cent of the net profit, whichever is greater, can be transferred. The reason given for enhancing this limit to Rs. 50,000/- s the fall in the value of the rupee. The fall in the value of the rupee is not a sudden development. If that is the consideration, every one should have this corresponding benefit. It is now said that the value of the rupee is 25 or 30 paise. Therefore, every one should get 3 times the salary etc. I do not see any reason for raising it from Rs. 25,000 to Rs. 50,000/-. As stated by Mr. R. Venkataraman, every big company has its charitable trust. What is the charitable purpose in which these companies indulge, except the fact that the money is transferred in those names for their own use?

Therefore, I am not very happy with increasing the ceiling limit from Rs. 25,000 to Rs. 50,000. On the other hand, I would have very much liked it, if there had been a provision in the clause that every industry should adopt three or four villages round about the location of their industry and develop them economically, because that would be doing very great economic justice to the poor people who would be getting employment, apart from the development of the local area. If such a condition is put in the statute, it would be a better substitute than allowing a company to make donations for charitable purposes, not exceeding five per cent, and according to this Bill not more than Rs. 50,000. I had some experience with companies earlier, and I know how this clause relating to charitable purpose is being utilized by some of them.

I find that one of the amendments is by a progressive Member of the Janata Party, Dr. Ramji Singh, to the effect that companies should be permitted to give donations to political parties.

DR. RAMJI SINGH (Bhagalpur): I have said that they shall not give donations.

SHRI JAGANNATH RAO: In that case, you need not bring any amendment. I thought you were in favour of such donations. If he is against such donations, then his amendment is redundant, because section 293A already prohibits it. Therefore, I was rather intrigued by his amendment. I thought there was at least one Member with progressive views, who appreciates the need for permitting companies to give donations to political parties. When advertisements are allowed in the journals of political parties, I see no reason why donations also should not be made to the political parties. As Justice Chagla argued in 1957 in the TELCO case, the springs of democracy would not be sullied if donations are made by companies to political parties. Tatas wanted to amend their articles of association to include a clause enabling them to make donations to political parties, which was held legal, and the argument given by them was that it will foster and develop their business. Therefore, if Government are thinking on those lines, they should bring an amendment to that effect.

डा० रामजी सिंह (भागलपुर) बहुत विद्वान और विधि वेत्ता लोग इस बिल पर बोल चुके हैं। इस में मैं कुछ विशेष जोड़ना नहीं चाहता हूं। लेकिन मैंने दो संशोधन प्रस्तुत किए हैं उन पर मैं कुछ कहना चाहता हूं। पहला तो सैक्शन तीन के क्रम में है। जैसा जस्टिस नथवानी जी ने बताया है सरकार को इतने ज्यादा अधिकार नहीं लेने चाहिएं। इस में सरकार को पहले की ओर आने

को गलतियों को माफ करने का बहुत अधिकार दिया गया है। हो सकता है कि यह सरकार अच्छी हो और यह इन अधिकारों का सही ढंग से, समुचित रूप से उपयोग भी करे। लेकिन आप तो जानते ही हैं कि पावर कुरप्ट्स मैन एण्ड एक्सोलूट पावर कुरप्ट्स एबसोलूटली। इस वास्ते शक्ति पर जरूर अंकुश लगना चाहिए। इसीलिए मैंने सोचा है कि सरकार की कार्यपालिका या सरकार के कार्यपालकों के हाथों में किसी भी कम्पनी की गलतियों के लिए हर चीज के लिए एग्जम्पशन देने का अधिकार न हो, यह अधिकार उनके हाथ में न छोड़ा जाए और इसके लिए या तो न्यायी या अर्द्धन्यायी जैसी भी कानून मंत्री जी उचित समझें, व्यवस्था कर सकते हैं। वरना आप अच्छे हो सकते हैं, इसका बहुत दुरुपयोग हो सकता है। और केवल हार्डशिप के नाम पर यह करप्शन ब्रीड कर सकता है। इसीलिए हम समझते हैं सरकार को खासकर जो मर्यादा में विश्वास करती है, उस सरकार को हार्डशिप के नाम पर इतना अधिक अधिकार नहीं लेना चाहिए।

दूसरा मेरा संशोधन धारा 6 के बारे में है जिसमें अभी इन्होंने बताया कि इसमें मूल कानून की धारा 293 के संशोधन की बात कहीं गई है। इसमें दिया गया है कि 25,000 रु० से बढ़ा कर के, क्योंकि रुपये का मूल्य 30 साल में कम हो गया है, जो हम जानते हैं, इसी लिए 25,000 रु० से बढ़ा कर 50,000 रु० किया गया है वह तो ठीक है। लेकिन मैंने जो संशोधन दिया है, मुझे देख कर तो आश्चर्य हुआ कि वह प्रिण्टर्स डैविल है, मैंने "शैल नैट" कहा है। सचमुच में राजनीतिक दलों को और उनके आर्गन्स को चाहे वह विद्यार्थी संगठन हो, चाहे मजदूर संगठन हों, जो भी राजनीतिक दलों के आर्गन्स हैं उनको चंदा नहीं दिया जाय। यह कम्पनी ऐक्ट में अगर नहीं होगा तो यह भ्रष्टाचार की जननी होगा। जब हम राजनीतिक शुद्धि की बात करते हैं जिसके लिए दलबदल विधेयक ला रहे हैं, लोकपाल बिल ला रहे हैं, हमारे कानून मंत्री जी मेरी प्रार्थना को स्वीकार करेंगे और हमारा यह संशोधन "शैल नोट" कम्पनी को, राजनीतिक दलों और उसके अन्य संगठनों को कोई भी पैसा नहीं दिया जायगा। हां आन्ध्र, केरल और तमिलनाडु में जैसा संकट आया है उस बारे में मुक्त हस्त होकर दान दें जैसा कि हमारी पब्लिक अण्डर टेकिंग ने दिया है, 10 लाख—25 लाख दिया है, तो ऐसे ही हमारी कम्पनीज भी दान दें। तो ऐसे मानवीय कार्यों के लिये दान दिया जाना चाहिए। लेकिन राजनीतिक दलों या उसके उपकरणों को किसी प्रकार का दान देना भ्रष्टाचार को शुरू करना है। इसीलिये अगर हम राजनीतिक भ्रष्टाचार का निराकरण करना चाहते हैं तो आवश्यक है कि हम उसकी गंगोत्री को ही अवरुद्ध कर दें ताकि गंगा जल ही खाराब न हो। मैंने रचनात्मक दृष्टि से दो संशोधन रखे हैं, मुझे विश्वास है कि विधि मंत्री जी इसको स्वीकार करेंगे।

SHRI C. N. VISVANATHAN (Tiruppattur): On behalf of the All India Anna DMK I support the Companies (Amendment) Bill which is before the House.

Though there are only a few amendments, we must appreciate the spirit in which the have been introduced.

Sub-Section (7) of section 58A empowers the Central Government to give total exemption to a company from the provisions of the section after consulting the Reserve Bank of India. Some times the companies may not be able to repay their depositors because of circumstances beyond their conrol, but all the same

[Shri C. N. Visvanathan]

the shareholders stand deprived of repayment.

15.55 hrs.

[SHRI N. K. SHEJWALKAR *in the Chair.*]

If something is introduced, there may be some demerits but we have also to see what is the motive behind the introduction of this amendment and in what way it will help the companies. So many companies are sick and so many are closed due to non-payment of dues to share-holders. It has led to strikes and also violence. This is what is happening. My hon. friend said about Coimbatore mills in Tamil Nadu as to what was happening there, how the mills are running and how they have become sick mills. The Government had to take them over. We have to analyse what are the reasons why these companies are not run properly by the directors, how they become sick and how they have to be closed. We should not oppose the amendment for the sake of opposition alone.

There are other good provisions also in the amendment Bill. There is Section 222 which makes it obligatory on the companies to give the balance-sheet even when there is no annual general meeting. It has to be appreciated that the Government has brought in this provision. One hon. Member said that the share-holders have been depreived of their rights. It is not so. Within 21 days, they will get the balance sheet. At the same time, the share-holders are getting a right to inspect in the Registrar's office, within 30 days, all the documents of the companies, what are the assessments, what are the annual reports, etc. It is giving the share-holders more powers rather than depriving them of their powers.

Regarding the increase in the ceiling of donations for charitable purposes, it is welcome. The hon. Member, Shri Kanwar Lal Gupta, also said about it. But it does not say what are the charitable purposes, what are the charitable institutions, under what circumstances, the amount can be donated upto Rs. 50.000. My hon. friend, Mr. Venkataraman said that he would not accept that there has been the devaluation of the rupee. I do not agree with him. This Act was made in 1954. Everybody knows what was the cost price in 1954 and what is the cost price in 1977. There has been the devaluation of the rupee. So, an increase from Rs. 25,000 to Rs. 50,000 is most welcome.

I would like to support Mr. Kanwar Lal Gupta in saying that it should apply to political parties also. I would not agree with Mr. Ramji Singh's amendment that it should not apply to the political parties. In the recent days, we have seen how the political parties have fought the elections. The political parties definitely need some funds for elections. We need some funds, whether we belong to this party or that party, this group or that group. If it applies to the political parties, there will not be any souvenirs needed, there will not be any secret collections and there will not be any black-money put in the accounts of the political parties. The political parties can freely collect the funds. So, I support the increase in the donations for the charitable purposes from Rs. 25,000 to Rs. 50,000 and also in regard to the donations for the politial parties.

In conclusion, I say that this amendment is one of the feathers in the cap of the Government by coming forward with this amendment to the Companies Act of 1954. I support this amendment Bill on behalf of the Anna DMK.

16.00 hrs.

SHRI VAYALAR RAVI (Chirayinkil): Mr. Chairman, Sir, my colleagues on this side have elaborately discussed this and brought out various relevant points which I want the hon. Minister to consider. This Amendment moved by the hon. Minister has

to be gone through very carefully because it is not so innocent as it appears. The first amendment, amendment of section 58A, will have serious repercussions and will affect more the poor people who have deposited the money and helped the banks than the Directors.

The hon. Minister, in his opening remarks, has said that a high-powered committee is being appointed and they will be examining thoroughly and make suggestions for amendments in respect of both the Companies Act as well as the MRTP Act. I welcome his move in appointing a high-powered Committee. But at the same time it has aroused some doubt whether the approach to this new look at the Companies Act and the MRTP Act will also be on the same lines as this Amendment. We are suspicious because with all this book on Company Law, there are enough loopholes. Mr. Shanti Bhushan can very well say that it was the Congress Government which did it. I admit. Enough loopholes are there—he himself, as one of the eminent lawyers, must have argued cases—or the big companies to escape. He was previously on the other side—on the side of the comapany; but now is sitting on this side, namely, on the government side. Therefore, whichever loopholes he had come across when he had argued cases, he should now ensure that those loopholes are plugged. So, when the report of the Committee comes, he should examine that with this outlook.

I have a suspicion—you may not like the word 'suspicion'—because of this Amendment. Now, let us deal with this Amendment. As Mr. Bedabrata Barua put it, there are rival banking systems in the country today. The banking investment has gone up to Rs. 17,000 crores, invested by different sections of the people in the banks. Here Rs. 1,000 crores have been channelised through another way. That is why Mr. Barua raised the point that there was a parallel banking system We have encouraged that without any proper check. Not to speak of proper check, there is not even a provision to protect the interests of the depositors who are expected to deposit money in the banks for national purposes. And this money has gone to a fixed groop of companies and Directors—and they can swindle that money.

Now, what will be the impact of this amendment of section 58A? That impact has to be examined thoroughly. I can point out examples if the Minister allows me. One case is—the hon. Minister is very well aware of this—that recently an allegation has come about a company, National Rayons Corporation, where their public debts are said to be amounting to Rs. 52 crores. In the morning the matter came up in the House in the form of an Adjournment Motion. It is because it has been reported that a ig fraud has been committed against nationalised banks to the tune of Rs. 24 crores. This comapny is now trying to transfer their equity shares to the Modi Group of companies—at a different value; at 350 or so; I do not know exactly. I know, Mr. Shanti Bhushan will say. 'Your Government, during the Emergency, withdrew the government directors'. You can tell me. I admit. I am not justifying or supporting it at all. Even at that time I was not supporting Kapadia. He was one of the exploiters during the Emergency. I want you to put that gentleman in the proper place. He was exploiting the previous Government and the Emergency—to loot the public money to the tune of Rs. 52 crores. He managed it; he managed to have the government directors withdrawn those days. Your Government has appointed eight directors. But are they functioning properly? Still the old evil influence prevails. I suspect, the old influence still prevails through Mukund Steel. There are allegations against Mr. Patel, Chairman. This transfer of equity shares will amount to cheating the poor people, who deposited money

[Shri Vayalar Ravi]

in the banks, to the tune of Rs. 52 crores. This Amendment will help this company. This amendment can help for a decision to give exemption. Under Section 372 of the Companies Act, your intervention may stop exchange of these shares. Section 372 is very clear; under this Section, Government consent is necessary for the investing company. It is not the National Rayon Corporation, but the Modi Group of Companies need your permission. Before giving permission to the Modi Group of Companies, it is necessary for the Government to examine the whole issue altogether. It is not that you should examine the functioning of the Modi Group of companies, but also the functioning of the National Rayon Corporation, its Chairman and the eight directors appointed by you. These directors have always been supporting the decision of the Chairman during the Emergency and after the Emergency. I would appeal to you not to support the actions of the Chairman, who has been acting in a way only to continue there. These directors have also given their consent for the transfer of equity shares which they were not expected to do. They have flouted the rules and guidelines laid down by the previous directors during the pre-emergency time. Even Mr. Patel was a member of the purchase committee along with Sudhir Kapadia and another Kapadia. All of them ganged up to cheat the public. This amendment will further help them. That is why, I demand a thorough enquiry into the whole affair. It is for your Ministry to see that the public money to the tune of Rs. 52 crores is not wasted by the transfer of equity shares from the National Rayon Corporation to Modi Group of Companies. I do not want to go into further details at this moment.

I have got a great respect for the Prime Minister and I would only like to take this opportunity to appeal to him and the hon. Minister. As has been pointed out by some hon. Members at someother occasions, a new clique has been formed; some ICS officers have ganged up together. I only want to warn the Prime Minister that he must be careful about his Secretary, Mr. Shankar. I want to give a warning that the way in which Mr. Shankar is functioning today will bring a bad name to him. I say nothing more than that now.

Now, look at the amendment, Clause 8. According to the Act, the whole money was to be returned by April, 1975. As Shri Venkataraman said, now it is 1977; two years have passed. These people have not returned the money. If the hon. Minister would not get angry, I would say that it is meant to help the friend of the godfather of your Party, who still relaxes at the Bombay Nariman Point Tower. I hope, he will not deny that.

Section 58A of the Original Act, under 5(b) says:

> "Every officer of the company who is in defaut shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine."

This is the clause under which you have to prosecute one of the newspaper magnates in the country, who is supposed to be your close friend relaxing at the Nariman Point tower. Ten crores of deposits have been taken by him; it has been widely publicised and has been criticised on the floor of the House. I want to know what action has been taken against him and in order to protect the interest of the depositors. I would like to know what the Minister has got to say if I say that we suspect that your intention to amend this is to protect that gentleman only. And there are other amendments I have tabled along with my friend, Mr. Venkataraman.

I have tabled an amendment about the circulation of the balance-sheet Under the present section 219 every share-holder is eligible to get a balance sheet and he will be able to know what is happening. Merely filing a copy

with the registrar is not sufficient. Every depositor should get it. In regard to this amendment we take a very strict view and I hope the hon Minister will consider it. It is very harmless and there is no difficulty. The company will have only to print a few more copies and distribute it to the depositors....

SHRI JAGANNATH RAO: They have a right to get it.

SHRI VAYALAR RAVI: Please accept that amendment. It is harmless and it will only help the people.

Then, with regard to giving exemptions, you say that it is because of the hardships they have passed through and the labour strike and so on. This is against your basic concept and then we all know that since 1974—77 there was not much of a strike and these companies simply exploited the poor to the maximum during emergency. I concede that. They are trying to flourish themselves. I do not deny that fact. Then I cannot understand why the Minister comes here and says that they are in a bad state. I am admitting that they have exploited the people and enriched themselves to the detriment of the companies. But you come here and say that they have to be exempted because they are in a bad state. I am not able to accept this reason and it is not convincing to us—this amendment to clause 58A and inserting a new clause.

These are the points I have to make and I wish the hon. Minister will consider them. These are very important. This exemption will entrust the power into the hands of executives and some officers in the Company Law Board and it will only give room for more corruption amongst your officers. Then what will be the criterion for exemption? That will lead to under-hand dealing by the company, its manager and directors who will try to influence the officials. Why do you give scope for this evil influence to be exercised on your officials. I wish that you keep them free from this evil influence. That is why I will say, don't give exemption further and limit it to the period till 1978. That is the best thing.

Lastly, Mr. Gupta himself has said about donations to the Congress Party. Now the Minister might have found himself in difficulties. Yes, we got donations, the Congress got donations. But what about you to-day? We have taken money but that is white money. But what about you? You have taken black money. As an honest political party, have you come out with your income and expenditure statement? You say that you are fighting again against corruption and are fighting the Congress Party. But you should have come out with your accounts. Can you? It all suits you very well when you accuse the Congress of living on black money. But you yourself now live on black money and unnecessarily, you want to blackmail the Congress that 'We are going to prosecute everybody.' But now you have found the difficulties. I would only submit that this kind of blackmailing will not lead us anywhere. I would like them to see that the loopholes in the law are plugged and the exploitation of the poor depositors by these companies is stopped. If you do that, we will join in your effort and extend you all the co-operation.

Before I sit down, I will appeal to the hon. Minister to accept some of our amendments which we consider very important. I hope you will concede our request.

With this request, I conclude.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): When I made my opening speech which was a brief one, I anticipated that it would be, a dull debate....

SHRI VAYALAR RAVI: When we are here, it cannot be dull.

SHRI SHANTI BHUSHAN: Because the Bill contains a few provisions and

[Shri Shanti Bhushan]

they are a so not of a very big magnitude.

SHRI JAGANNATH RAO: Innocuous.

SHRI SHANTI BHUSHAN: But I am really very happy that hon. Members have used all their ingenuity in finding out matters for debate. It is a very interesting and useful discussion which we had and I will try as briefly as I can to deal with the points which have been raised.

Dr. Seyid Muhammad's main point was this. He did not criticise all the provisions of the Bill, but he asked what was the need for the Bill at all if a committee has already been appointed by the Government. My friend opposite Mr. Bedabrata Barua happens to be a member of the Committee which is going into revision of the Companies Act and Monopolies Act. Dr. Seyid Muhammad said, there was no need to bring in a piecemeal measure. He asked, why can't you wait till next year when the report of the committee would be available when you can solve the problems of the people in one lot, and have no piecemeal affairs at all. I can appreciate that kind of approach because he happens to belong to a party which for the last 30 years believed that they must solve the problems of people all at once and that there should be no piecemeal approach; all the proplems of the people should be allowed to remain as they were till then. This is the sort of approach which was applied to the affairs of the country, with what disaster, we all know. My point is, even if you are able to do something it is better. There are some people who think.

कल करे सो आज कर, आज करे सो अब ।

There are others who say.

अभी तो जीना है बरसों ।

Some have that sort of approach, everything should be done together. But I do not see as to what is wrong with adopting piecemeal approach.

So far as Section 58A is concerned, a Study Group under the Chairmanship of Mr. James I Raj had been appointed and as a result of the recommendations of that Study Group this problem was settled.

There was another point which was made in strong terms by some Members. There were many hon. Members who were appreciative of this measure. The criticism was voiced that this is a measure which is intended to help the big companies which are exploiting the depositors' money, that this is going to hurt all the poor depositors and so on and so forth. They tried to paint a picture as if the whole object behind this Bill was to somehow save the dishonest companies; cheating the depositors and so on. I would like to pose a question. What was the experience of the amendment of Sec. 58A., introduced in 1974, for the purpose for which it was introduced? There have been some who have been representing to me and some who have been seeing me and they had certain apprehensions but many of them became quite appreciative of the object of the Bill I explained this to them. If I can give you an example, if you have a law, the main purpose of law is this, namely, how to prevent a course of conduct which is not in the interest of society. How to bring it about?

If you have an artificial law which brings within its scope all kinds of people, whether they can be persuaded to give up that kind of actively or not, that is a different matter. Supposing a law was framed—I am just giving you an illustration to illustrate my point—that every person or every citizens shall pay one lakh of rupees for the cyclone victims of Andhra Pradesh. Anyone who does not do so, shall be liable to be prosecuted with an imprisonment for five years. Then what will happen to those who can afford to pay one lakh of rupees but who fail to pay this? They would know that this law is equally binding or equally applicable to everybody. They would know that by and large so many

poeple are not in a position to pay that one lakh of rupees. In that case, everyone will be found guilty and everybody will either be prosecuted or nobody will be prosecuted and if, even those who might be in a position to donate that one lakh of rupees will not comply with that law, then the law itself will come into disrepute because either the law as it stood can be fairly and reasonably enforced or, if the law becomes so artificial that it cannot be reasonably and properly enforced. In that case, it fails to serve its purpose. This is what exactly has happened, I submit with great respect, to Section 58A as it stood. After all, what was the object? The provision was that by the 1st April, 1975 all those deposits should be returned. The law has stood for 2-1/2 years since 1st April, 1973. If the law was well defined or if Section 58A was well defined, and, if any amendment or any tinkering with 58A is now going to be a sort of frustrating the purpose for which it had been enacted, then may I ask what has it achieved? Has it achieved that all those deposits which had been taken and which were required to be returned by 1st April, 1975 had been returned? Has it succeeded?

Enough time has been given to see that Section 58A as it was enacted has been allowed to remain in the statute book for more than 2½ years. If at all it has not achieved that purpose, then what is the good of paying now that that section was designed to achieve a very important purpose and now you are tinkering with that Section. That purpose would not be achieved. You have already seen as to whether that purpose has been achieved or not. It has not been achieved.

An hon. Member was pleased to ask as to how many prosecutions have been there so far and what has been their fate? I have collected figures so far as prosecutions which were launched for the violation of Section 58A are concerned. Well, 35 companies were prosecuted during this period and. out of 35 companies, the cases of thirty three companies are still pending. Of course we know there is law's delay and so on and so forth.

Of the two companies for which the prosecution came to an end, in one case, the directors were also accused persons but they were acquitted by the court. he company was fined a sum of Rs. 400/ . In the other, prosecution case, it was obviously felt that this is a provision which has not been complied with by anybody. There are so many companies who are not physically in a position to company with the provisions. The law becomes artificial. The court may also adopt that course. There is a technical offence. They are convicted and some sentence was made. But the provisions of the law do not take a serious notice of that contravention on account of the fact that it is found that the law itself, in many respects is artificial. In the case of the other company, eight directors were convicted. In this case, the directors were convicted and they were also sentenced to imprisonment till the rising of the court. In addition to that, they were fined Rs. 300 each these 8 directors were fined for Rs. 300 each-totalling to Rs. 2,400 in all.

This is the experience so far as the provision of the act as it stood. The maximum period is five years. It does not compel the person.

SHRI R. VENKATARAMAN· If you were not in a position to do that, you could have brought an amendment and you could have punished them with imprisonment to life.

SHRI SHANTI BHUSHAN: I am happy about the suggestion which has been given namely to make the law more artificial although a person is not in fault. Btcause he is not able to comply with the provisions of the law he should be sent to jail. Of course this was the mentality which was in vogue during the period of emergency when if somebody has done something, then he should be sent to jail as if that is going to be a solution. The purpose of penal law, I would like to say with great respect, is not to find some accommodation for some people in jail

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The main purposce is to persuade them to act in a particular way so as to punish them with imprisonment for life or even death sentence. If they will not be able to act in the way in which the society wants them to act, then what is the purpose of that penal offence? If, by merely sending them to imprisonment for life, would achieve something, then the amendment need not have been made. On the other hand, if a provision is made that this deterrent will enable or make the person to act in a particular way which the society wants, then, in that case, the law will have to see to it that the law imposes a sanction of a criminal law only against the persons who are not in a position to act in the way in which the society wants him to act, and has the option either of acting or of not acting. That precisely is the reason why this Bill has been brought.

Some hon'ble Members have found fault with the vesting of discretion. The purpose of discretion has been spelt out in the Bill. I will deal with that point. But if I assume and one proceeds on the assumption that the discretion is going to be honestly exercised, it is going to be bonafide exercise and it is going to be exercised for the purpose for which the discretion has been given, let us see what is the purpose of giving this discretion. The purpose is to distinguish between two classes of cases. The law which was introduced in 1974 in the shape of Section 58A had a certain objective. Firstly, to provide some kind of security to the poor depositors because they might be taken by the inducement of a very high rate of interest, namely, to impose certain limitation on the rate of interest which could be given by the companies. Secondly, the limits to which the companies could take these deposits so that, by and large, there is security for the depositors. Those were good objectives. Merely because the amendment was brought by the Congress Government, I am not saying it was wrong. But naturally it is quite possible at that stage it might not have been anticipated in actual working what will be the result. Now, during the experience of two and a half years it has been found that this provision—such a stringent provision which has the sanction of criminal law—has not succeeded in achieving its object. It has not succeeded in compelling the companies to pay for all these deposits. So, we have to sit and think why is it that such a serious provision has not succeeded in its professed purpose. When we sit down to think we find that the law does not take account of the various difficulties—which may not be the difficulties within the making of the Directors—and even those who are anxious to comply with the requirements of the law are not able to physically comply with the same. So, it shall be the duty of the Government to apply its mind to the facts and circumstances of each company or each class of company. Whenever any company wants that the sanction of this criminal law should not be applied to it, it will have to make out a case of hardship. It is not a blank discretion which is being given to the Government. Government will have to apply its mind to the relevant facts and come to the conclusion whether there is any just and sufficient case. The scheme of the Act is to find out the relevant circumstances and to honestly apply the criteria to the facts of each case. The real thing is to ensure that the Government does not misuse the power or exercise the power for extraneous purposes. That, I submit, has been ensured in two ways. Firstly this power shall be—if the power is exercised by the Government for extraneous reasons or not for the purpose for which it is meant—certainly it shall be questionable before a court of law and nobody could dispute with the court if it finds that power or discretion had been exercised on extraneous consideration or malafide intention and certainly it would be in a position to annul that exercise of power. That sanction itself would, in my humble submission, be sufficient.

The other point was that the purpose of the vesting of discretion should

be in the law. Why should the justification not be spelt out, what kind of hardship, what just and sufficient reason—these should be specified. If the problem had been so simple it could be stated that for this reason and that reason, these are the various reasons which might create genuine difficulties wherein a company might deserve the exercise of this power. But these are of such multifarious nature that it is not possible for any law to specify or make out a list of reasons and circumstances in which it might become necessary. But so long as government exercises that power *bona fide* for the purpose for which it was meant, I submit there should not be any serious objection to the exercise of that power.

The hon. Seyid Muhammad utilised this opportunity to refer to Section 293A and the opinion of Shri Palkhiwala and the former Chief Justice of India, Justice Shah. These are matters which have already been dealt with my hon. friend Shri Nathwani. All that is prohibited by Section 293A is giving donation to a political party or to a person for a political purpose. Every kind of dealing by a company with a political party had not been prohibited. For instance, a political party has some organisation which is manufacturing, say, paper weights. Merely because the company buys paper weights which are manufactured by a political party and pays the price of the paper weight to that political party, nobody can say that it is contravention of Section 293A; it would be untenable to say that the company is making a donation to the political party. But suppose the paper weight costs Rs. 5 and the company pays an amount of Rs. 5 lakhs saying that that is the price of the paper weight, it gives a cheque for that amount, the bill is made, a voucher is made and all other formalities are completed, would anyone have the slightest doubt that it is not in reality the price of a paper weight.

SHRI JAGANNATH RAO: It is political weight.

SHRI SHANTI BHUSHAN: So it will depend upon the facts and circumstances of each case. That is precisely what Mr. Palkhiwala and Justice Shah had said. In their opinion you have to go into the various circumstances and that is the purpose why this information is being collected from different companies. Every case must stand on its own footing. Until all the facts are examined, it is not possible to say whether a particular company or a director of a company is guilty of contravention of 293A or not.

He also repeatedly asked why the repeal of the 42nd amendment which was promised had not been brought forward. Why the promised electoral reforms and the anti-defection Bill had not come. Now what have those to do with the Company Bill. The repeal of the 42nd amendment is being discussed between the ruling party and other parties in both the Houses. Very soon with the cooperation of everybody we hope to bring a proper Bill before this House and the other House about that matter. I have had other occasions in the past to refer to electoral reforms. It is a very difficult matter; it is a problem which bristles with all kinds of difficulties and it is not a matter on which you can come forward with a Bill straightaway. The matter has to be considered carefully. Various proposals are before the government. Various committees and parties and so on have been making all kinds of suggestions. They are engaging the government and ultimately that would also be a matter which would be discussed with all sections of the two Houses. I hope perhaps a consensus would emerge and it would be possible to reform the elelctoral law of the country to the satisfaction of everybody, because evidently democracy depends upon proper electoral laws.

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Similarly about the anti-defections Bill also, discussions are going on. That also raises certain complicated questions and it is in the process of discussion.

Mr. Kanwar Lal Gupta expressed the apprehension that sometimes the benefit is given to the non-genuine cases. The criteria have been laid down in the provision itself and the courts are there to see whether for proper reasons the power is being exercised. So, there should be no anxiety, particularly in a democracy when Parliament's supervision is there. Every act of the government is questionable in the Parliament. The government is responsible to this House. All these procedures and rules are there by which this House exercises supervision over each and every action of the government. So, there should be no anxiety about such things happening.

Mr. Venakataraman said that this provision should be limited to 1st April, 1978. In that case, it will meet the same fate which the original provision met. If irrespective of the conditions in each individual case you put down an arbitrary date, whether it is 1975 or 1978, it will make no difference. Even 1st April 1975 was not during the period of internal emergency. 1st April, 1978 would be after the emergency. So, there would be no difference. That is why the proposal is you may exempt partly or for a particular period so that the companies can be induced to act on the facts of a particular case. Depending on the facts of a particular case, the company can be told "Yes; your difficulty can be understood. But this is how you can find out funds to pay for the depositors within such and such period. Therefore, the exemption can be granted only for such and such period." So, it will depend upon the circumstances of each case and there can be hope of the order being able to be enforced.

About Section 220, while the proposed amendment was welcomed by all sections of the House, it was said, why is the provision requiring filing of balance sheet and profit and loss account only with the Registrar and not going further to say that copies will have to be sent to all the shareholders also I very well appreciate the sentiment behind this criticism. After all why does a company not supply the balance sheet and profit and loss account to the shareholders? It is because either it is not ready or it is not willing to make it public. I submit that as soon as it is compelled to make them public by being required to file them with the Registrar, any incentive to withhold it from the shareholders would not be there. Also, it would be open to any shareholder to inspect it in the Registrar's office. There is already Section 219(2) which says that any member can insist and ask for it.

SHRI R. VENKATARAMAN: Will it apply only to Section 219 or will it apply also to 220? Sub-section (2) applies only to Section 219 where the company holds a general meeting and is obliged under Section 219 to send 21 days before a copy of the balance sheet and profit and loss account to all the members. But there is no such thing in Section 220, because no general body meeting is held. Can you say that there is the same obligation under Section 220 as in Section 219?

SHRI SHANTI BHUSHAN: I should not express a legal opinion on a question like this, because I have had to surrender my enrolment certificate when I came and joined here. But I can say that Section 219(2) is not conditional on the holding of an annual general meeting. Therefore, it can be construed as an independent requirement. Sub-section (1) imposes one requirement; sub-section (2) gives an additional right, viz., the last balance sheet. If the balance sheet has already been prepared and filed—in that case—under sub-section (2), why can't a member insist and say, "Here you have got the balance-sheet—because the balance sheet has

been filed with the Registrar—and it is our right to have the last balance sheet. This becomes a last balance sheet which has already been prepared and is ready and available before the Registrar. Therefore, we are entitled on demand to have a copy of the balance sheet?" Therefore, I submit that even if the provision had not been there, once the balance sheet is required to be filed before the Registrar—and it is filed—it is available. It is ready and it can be inspected; and when it can be inspected, why should the management unnecessarily, and without any corresponding gain, try to displease the members by not giving them the copy—if the latter can get the copy and inspect it before the Registrar? Therefore, my submission is that perhaps it is not necessary to go further; and the provision which is being introduced is quite sufficient to meet every situation, so far as the difficulties are concerned.

Many hon. Members welcomed the amendment for raising the amount from Rs. 25,000/- to Rs. 50,000/-, in Section 293. Some of the hon. Members, however, criticized it and asked why was it necessary. Even Dr. Seyid Muhammad asked wnere was the urgency. I am leaving aside those who want to act contrary to law and sometimes get away with it. That happens with the Indian Penal Code also. All kinds of offences are there; but at the same time we know cases in which people commit all kinds of offences and get away with them. Society can only try to prevent, or at least as far as possible to prevent, them from getting away. But that does not mean that if there is a provision which, if worked properly will do good, it should not be introduced because some people do something wrong under that provision. Therefore, the question is whether it is correct to give the power or right to a company to make a donation. And Section 293(e) is meant for two purposes—not only for charitable purposes, but also for the welfare of employees. For these two objectives, the amount is sought to be raised from Rs. 25,000/- to Rs. 50,000/-. The concept of charity is well known. After all, companies are making money. They are carrying on business. Normally they are big people, at least in comparison with the poor people. They are the well-to-do section of the society. No person who is below the poverty line will have a share in a company. If these people will get an opportunity, under this provision, to help poor people, through charity; or even to spend money for the welfare of the employees otherwise, what is the harm? Earlier the limit was Rs. 25,000/-; now it is being allowed upto Rs. 50,000/-. I thought that it would be a step which would be welcomed by each and every individual hon. Member, rather than be criticized. But, then, in a parliamentary democracy of this kind, what would the Opposition do if the ruling party brings in only good and proper measures? After all, they should have some role. They should criticize; and they should use their ingenuity to criticize even the good measures etc. So, we can quite appreciate it.

A point was made that even companies which are not really companies, viz. not limited companies, also sometimes advertise and take deposits. So far as this subject is concerned, I quite appreciate the sentiment behind that criticism; but that would not be a matter which would be relevant to Companies Act, because obviously the Companies Act is there for the purpose of regulating the conduct of limited companies which are registered under the Indian Companies Act—not firms, individuals and so on. That may be a matter of debate i.e., whether it should be open for an individual or a firm to invite loans or deposits of a centain kind or to advertise for that purpose. But that matter can be left to be dealt with in other forums for discussion, rather than during a discussion on the amendment of Companies Act.

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Shri Kanwar Lal Gupta supported the Bill, and I am grateful to him for that. He also said that it is a half-hearted measure etc. Well, he tried to look fair, that he was not completely satisfied with it. Because he is a member of the ruling party, therefore, he found some occasion to add some qualifications to show how fair and objective he is.

Then he asked: why is provision being made for total exemption? He probably mixed up between holding an annual general meeting and making deposits. He probably thought that section 58A was also designed for the purpose of compelling a company to hold the annual general meeting within 58 days. This is not meant for that purpose. It is in regard to making deposits in the companies and so on. Therefore, that question does not arise.

Then he said some companies deliberately mismanage the affairs and make them sick, take out all the money their own investment and also the investment from the financial institutions and so on and asked: what is the remedy, why some remedy was not provided by this amendment. I think that the existing remedies are known. Under section 408, Government can appoint their own directors, if there is a complaint of mismanagement, public interest being affected etc. Shri Ravi referred to this fact of Government directors. He has been very charitable to me. I am very grateful to him for that, because in his speech all the time he said "my party has been mismanaging things doing dishonourable things" this, that and the other, and he expects, and very rightly expects, this Government to right every wrong that has been done by the party then in power. We do not intend to disappoint him. We do expect to set right every wrong which might have been done earlier

Then it was asked what about political donations and so on? The hon. Member, Dr. Ramji Singh, who is especially kind to me always, I was expecting that he would give me another bouquet today, abstained from doing that. He has given notice of an amendment for banning company donations. Probably he has read only section 293, and not 293A, under which that ban is already there.

Of course, one hon. Member said that the ban is unnecessary and it should be done away with. Shri Bedabrata Barua is a member of the Committee. All kinds of suggestions which may come from any section of the House, or any section of the public, can be examined by the Committee. All those things can be considered. But this ban on company donations is still there under section 293A. Therefore, the question of considering that amendment does not arise.

It was stated by Shri Bedabrata Barua that there is too much of a discretion contemplated by this proposed amendment to section 58A, by sub-section (8) which is sought to be introduced. May I invite his attention to sub-section (7) which is already there? Is the discretion proposed larger than the discretion which is already there?

Then a question is asked: if total discretion was already there in sub-section (7), where was the need to bring in this sub-section (8)? I will immediately explain it. Even though a very wide discretion has been given by sub-section (7), the purpose is a limited one, namely, to identify particular companies, on account of the kind of business, or the kind of composition, or the kind of companies so that the provisions of that section can be made inapplicable to that company. So, the purpose of that section, even though it confers a wide discretion is a particular purpose. The purpose is

not that even though a company would be a proper company to be governed by section 58A, yet there should be the power to exempt it, either totally or partially, or for a certain period, from a particular requirement or the other and so on, or merely extend the time. So, the purpose of sub-section (8) is entirely different from the purpose behind sub-section (7). Sub-section (7) does not give power to the Government to impose conditions. If you have to come to the conclusion that the company is not to be goverend by section 58A, then you pass an order under sub-section (7). But if you come to the conclusion "all right, there is a case of exemption, you shall do this, within so much time you shall pay so much", it can be done only under sub-section (8) and not under sub-section (7).

A criticism was levelled by Shri Barua that giving this power to the Government would be unconstitutional because it will be arrogating the functions of the Supreme Court. On what concept of law or legal principle this would amount to arrogating the functions of the Supreme Court I have not been able to understand and hence I must frankly confess that I am unable to reply.

SHRI VAYALAR RAVI: What he meant was that it is for the court to punish and that Government is taking away that right.

SHRI SHANTI BHUSHAN: This is a case of criminal legislation. There are certain circumstances in which there is no guilty mind or *mens rea* on the part of a person which is reprehensive or must be deprecated because difficulties have really been responsible for it. So far as this provision is concerned, that power is not with the Supreme Court to identify these cases. If it had been said that it should be done whether the reason is good or bad, the position would have been different. Granting of exemption for a certain period for certain r asons is not a power which the courts can exercise in a criminal case. It cannot say that exemption is given for such and such a period on these conditions so as to look after the interests of the depositors. These are not things which can be done by the court at all.

I am grateful to Mr. Nathwani for giving general support to the Bill. He also said that there was overlapping between sub-sections 7 and 8, but the point which I have just made, I believe, would satisfy him.

He further said that hardship should have been specified as riot, strike etc. As I said earlier, it is not possible to identify all kinds of situations because if one makes an attempt to identify the various kinds of situations in this complex world and the companies functioning in a complex area, one would fail, the attempt would not succeed at all.

Then, he had another criticism, against the use of the words "in the opinion of."

SHRI NARENDRA P. NATHWANI: The wording in the Bill is "if it considers it necessary". That means the opinion or the satisfaction of the Government. A subjective element is introduced. Instead of that, an objective test should be introduced, and the wording may be "in order to avoid hardship".

SHRI SHANTI BHUSHAN: I fully appreciate the spirit behind what he has said, but may I appeal to the vast experience of Mr. Nathwani as a Judge and say if you make it objective and not subjective, then litigation can start and go on for ten years that it has been exercised for extraneous considerations or is *mala fide*? If the other language is used, then the court must judge in each case, with the result that these matters will hang fire for years and years, with the result that everything gets frustrated. The only objection can be that the Government might try to abuse or misuse the power. So long as that is obviated

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and the court can intervene to find out if the power has been misused for extraneous reasons, it is good enough. It is not a case where the court can be said to be better equipped than the Government, when both are functioning honestly and for proper considerations. There can be only two reasons for giving the power to the court rather than to the Government, namely that it is better equipped or distrust. Distrust is avoided because the court can always be brought in.

SHRI NARENDRA P. NATHWANI: If it is a subjective test, the court cannot go into the question of the sufficiency or otherwise of the material on which such satisfaction or opinion is arrived at.

Secondly, when you put these words, it creates a psychological atmosphere. When any person looks at it, reads it, instead of focussing the attention on the genuineness or otherwise of the ground, he has to depend on "if you consider it necessary". Ultimately, it is your discretion. That is why I thought it would be better to have this phraseology.

SHRI SHANTI BHUSHAN: So far as the points made by the hon. Member, Shri Jagannath Rao are concerned they have already been covered.

I am grateful to Mr. Viswanathan of the Anna DMK party who gave me the most unconditional support so far as this Bill is concerned, even more than what the hon. Members of my party have given. I am specially thankful to him and I am grateful to him for that.

Lastly, coming to the irrespressible Shri Vayalar Ravi, his main objection was that this Bill does not look so innocent as it is made out to be. I do not know whether he referred to the Bill or to the mover of the Bill. However, he has given some interesting and very useful statistics that the banking system has, at present Rs. 17,000 crores and the companies are also having deposits to the tune of several hundred crores. The object of Section 58A is not frustrated. It is only a sort of device to really enforce Section 58A. Therefore, he need not have any apprehension so far as that is concerned.

As is usual with him, whether something is within the framework of the matter which is engaging the consideration of the House, because his vision is so wide and his scope is so broad that he can oversee everything and he cannot forget his obsession, he referred to Kapadias and the National Rayon. He brought them even in this debate. Except saying generally which I have already said, I do not propose to disappoint him so far as his general desire is concerned that we should under all the mischief and evil for which he might be at least nationally responsible. I would not like to digress much into the National Rayon, etc. As he knows, the Government directors have already been appointed. He was very sorry that Government directors appointed earlier had been removed. He thought that there was no justification for removing Government directors earlier. I take it that he wanted to pay me a compliment that Government directors have been appointed. I thank him for that; I am grateful to him for that.

Then, he said that the Janata Party has taken some black money from somewhere. Of course, he knows, all these colours and recognises black, white, grey, red, pink, green and so on, all kinds of money. But I must frankly admit that I am almost colour blind as to where and how the black money etc. is taken. So, I will not be able to contribute to this part of the debate.

With these words, I again express my gratefulness to the hon. Members and I request them to support the Bill and adopt it.

MR CHAIRMAN: The question is:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration"

The motion was adopted.

17 hrs.

MR: CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill

There is no amendment given notice of to Clause 2.

I shall put it to the vote of the House.

The question is:

"That Clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3—(Amendment of section 58A)

SHRI R. VENKATARAMAN: I beg to move:

Page 1, line 16,—

after "time" *insert*—

"till 1st April, 1978" (4)

Page 1, lines 17 and 18,—

omit "or exempt any company or class of companies from," (5)

Page 1, line 18,—

omit "or any of" (6)

Page 1, lines 18 to 20,—

omit "either generally or for any specified period subject to such conditions as may be specified in the order" (7)

SHRI NARENDRA P. NATHWANI: I want to speak on a particular aspect of my amendment. Therefore, I am moving that—though I know that my suggestion has no chance of being accepted.

I beg to move:

Page 1, lines 12 and 13,—

for "if it considers it necessary for avoiding any hardship"

substitute "in order to avoid any undue hardship" (10)

SHRI R. VENKATARAMAN: I have heard with very great attention and respect the explanation given by the hon. Law Minister. He has said that this law is not capable of enforcement. I was really shocked. He gave an instance which, to me, appears something like 'from sublime to the ridicule'. He said, 'If I make a law today that every one of you must pay Rs. 1 lakh to the Andhra Pradesh Cyclone Relief Fund and if I am not able to enforce it, then the law will be absurd; I do not think that any sane man reading section 58A will come to the conclusion that it is such an absurd proposition as passing a law saying that every one must pay Rs. 1 lakh to Andhra Pradesh Cyclone Relief Fund I want to make this clear. He is a good lawyer, a very clever lawyer; we have read his arguments; and we have now heard him with great attention. I was reminded of a Shakespearian passage:

"In law what plea
so tainted and corrupt
but being seasoned by a sober brow
obscures the show of evil."

That applies to him very well. The point is this, Parliament, in its wisdom, wanted to regulate taking of deposits by companies. That was for the purpose of protecting the small investors who have been drawn into depositing money into companies which are not able to honour and pay them back. I can understand the Government saying 'all right, we will give them some more time for the purpose of repaying". But if the Government wants to take the power to exempt totally from all or any of the

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provisions of section 58A, it is an unthinkable proposition. It may happen, according to this amendment, that some of the members who have deposited money with some companies will never see the colour of the coin. Government may totally exempt them from section 58A, or give such exemption from time to time for such a long time that the depositors would be dead and even their progeny will not be able to see that money. So, there should be a time limit. That is all what I say.

It is true that the companies have some problems. Some of the companies have accepted deposits when there was no regulation, and those companies should be given time to repay. We have no objection to giving time. If you say time up to 1st April 1978 is not enough for the companies to repay deposits, I would even suggest that you take away that time limit, but let the Government take the power to extend the time. But there should be a time limit to enforce all the provisions of section 58. The depositors have put their money into the companies, and they must get it back. If the Government takes a blanket power to exempt companies from the operation of section 58A and there is no time limit within which they should repay, what happens to the poor depositors who have deposited their money in good faith? Are they not entitled to some sympathy? Who is entitled to sympathy—the erring company or the poor depositors? I leave it to the House to decide it.

I am glad the Finance Minister is present here. I have written letters to him, complaining of a number of instances in which the depositors have not got back their money from the company. The Finance Minister was good enough to tell me that he has forwarded it to the Company Law Administration. But what we get from the Company Law Administration is not extension of time for applying the provisions, but total power to exempt them from the operation of section 58A. I would say that the provisions of section 58A should be enforced, the money of the depositors should be returned to them, but some time may be given to the companies. I have no objection to that. But to say that blanket power should be assumed by the Government to extend the time, as they feel just in each case, is to deprive the poor depositor, for whose benefit section 58A was introduced, so that the depositors may get back their money. That is why I have moved this amendment.

SHRI VAYALAR RAVI: In reply to the suggestion of Shri Venkataraman, the hon. Minister made a funny statement. The question is who will decide as to who is at fault? Suppose some people have deposited some money in a company and there is mismanagement in that company. Who will decide it? In this case, the Government have taken the right to decide who is at fault. This provision gives discretion to the Government to show favouritism. That is why we object to it. We are insisting that there should be a time limit. It should not be unlimited.

It is true that in order to protect the interests of the depositors you can appoint Government directors. But even after appointing Government directors, you are losing control because the same pattern of functioning is there, as the same provisions of the Companies Act continues.

It is true that I have admitted some mistakes of the previous Government. That does not mean that all that we have done is wrong. Like every human being in the world, the Congressmen in power might have made some mistakes. I only appeal that better wisdom must prevail upon the hon. Law Minister to accept the amendments to protect the interests of the depositors, rather than the

interest of a few companies and their managing directors. That is all I have to say.

SHRI NARENDRA P. NATHWANI: Sir, I am trying to draw the attention of the hon. Minister to the words 'any hardship' in the sentence, i.e., "if the Government considers it necessary for avoiding any hardship'. The words 'any hardship' would have as wide a meaning as possible. In the absence of any limitation on qualification it would mean every kind of hardship. I am appealing to the hon. Minister to accept instead the words, "any genuine" or "any undue hardship". This will make the position clear. I know the intention. The intention is not to treat every kind of hardship. Whenever a person has to part with money or he is discharging a debt, he feels some kind of hardship. Therefore, I am suggesting that the word 'genuine' or 'undue' may be inserted before the word 'hardship' so that such protection may be there.

SHRI SHANTI BHUSHAN: I need not make a speech. I will deal with the points raised very briefly. As an illustration I gave the instance of Rs. 1 lakh as donation by each person to Andhra Cyclone relief. It is not my intention that that kind of situation has to be equated with the provision contained in Sec. 58A. That was an illustration and an extreme example only. To illustrate an argument this is what we sometimes do, namely, take some extreme example, to bring home the argument. Then a question was asked as to what will happen to the depositors. So far as they are concerned, I have said this earlier, their right against the company are left completely in tact. They have all the remedies for recovering the amount, including statutory notice and filing winding-up petition. Therefore, their rights are very much in tact. They can report to all those method permissible under the law. So far as Mr. Vayalar Ravi's point is concerned, he had something to say and he obviously has tried to say something and I have also replied to.

My hon. friend Mr. Nathwani has great experience and he knows that no order could be made on a non-genuine hardship and it would not be accepted by the court. That is all that I have got to say.

MR. CHAIRMAN: I will now put amendments Nos. 4, 5, 6, and 7 to the vote of the House.

Amendments nos. 4, 5, 6 and 7 were put and negatived.

MR. CHAIRMAN: Amendment No. 10 Mr. Nathwani.

SHRI NARENDRA P. NATHWANI: I want to withdraw it. I seek leave to withdraw it.

MR. CHAIRMAN: Has the hon. Member leave of the House to withdraw his amendment.

Amendment no. 10 was, by leave, withdrawn.

MR. CHAIRMAN: Now the question is:

"That Clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

Clause 5—(Amendment of Section 220)

MR. CHAIRMAN: I now come to clause 5. There are two amendments to this clause. Are you moving?

SHRI R. VENKATARAMAN: I move:

Page 2, line 133—

after 'Registrar' *insert*—

"and be sent to every person entitled to receive under section 219 of this Act" (8)

SHRI VAYALAR RAVI: I move:

Page 2, line 13,—

after "Registrar" *insert*—

"and be sent to all persons entitled under section 219 of this Act." (9)

SHRI R. VENKATARAMAN: Mr. Chairman. I will say only a few words. Of all the arguments which the hon. Law Minister has advanced, his case is very weak when he comes to Clause 5. He himself conceded that the shareholders have a right to have copies of the balance sheet and the profit and loss account. He said they can go and inspect them in the Registrar's Office. There, my simple question is this. Should the shareholders, as part of the company, who have contributed to the capital be put in a position of an outsider to go to the Registrar's Office and inspect the documents? Is he not entitled under Sec. 219 of the Companies Act to receive a copy of these documents before the annual general meeting?

Then, the Law Minister said that Clause 2 of Sec. 219 will apply to Sec. 220 also. On that point his interpretation is that even when under Sec 220, where an annual general meeting is not held, there is an obligation cast on the company to circulate the balance sheet and the profit and loss account to the members of the company. Then, he said that he had not been called upon to give a legal opinion on this matter. It is a very simple one. A shareholder of a company is entitled to receive the balance sheet. When an annual general meeting is not held, you compel him to file the documents with the Registrar. How does it affect the Government if the company is told or forced to do that? After all, it is being sent to the persons entitled under Sec. 219. You throw in the post boxes the documents for being given to all the members as well as those entitled to receive them under Sec. 219, namely, the debentures trustees and creditors. Are they not entitled to get them? Why should the Law Minister stick to it? It is not a matter of prestige; there is no a question of serious implication in it. After all, you are going to extend the same facility which already exists in 219 under the new clause which you have brought forward. I also support it by saying that you give them to the shareholders of the company also. I think that this is a very reasonable amendment and I am surprised with all the reasonableness which the Law Minister has put forth in his very able arguments he is unable to find his way to accept this. I would only appeal to him to accept my amendment.

SHRI SHANTI BHUSHAN: I would like to draw the attention of the hon. Members to sub-section (2) of Sec. 219. The language is very clear. If somebody rises a difficulty, I think, the court will meet with that difficulty because the language is very clear.

> "Any member or holder of the debenture of the company, whether he is entitled or not to get the copies of balance sheet, shall on demand, be entitled to be furnished without any charge....."

Therefore, this is un-conditional and I should take it *prime facie* this itself creates the right. If it does, it would be wrong to duplicate the provision when it is not required.

SHRI R. VENKATARAMAN: Sir, I just want one clarification. 219 relates to the situation in which the company holds a general meeting and the Section says that before holding a general meeting—twenty-one days before holding the general meeting—you should circulate to the members the documents mentioned therein. If such a document is not circulated and general meeting is held then Section 219 (2) says you have the right to receive. Now, read the Section as a whole. It will relate only to cases where general meeting is held and not, perhaps, to cases where a general meeting is not held.

SHRI SHANTI BHUSHAN: So far as sub-section (1) is concerned it applies to cases where general meeting is held and so far sub-section (2) is concerned it gives general right to a member to demand the documents and they have to be supplied.

MR. CHAIRMAN: I shall now put amendments No. 8 and 9 to the vote of the House.

Amendments nos. 8 and 9 were put and negatived.

MR. CHAIRMAN: The question is:

"That Clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

MR. CHAIRMAN: There is one amendment No. 12 on Clause 6 by Dr. Ramji Singh. He is not moving. The question is:

"That Clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

MR. CHAIRMAN: There is one amendment by Mr. Kapoor on clause 7. He is not moving. The question is:

"That Clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

Clauses 8 and 9 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI SHANTI BHUSHAN: Sir, I move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

17.22 hrs.

SUPPLEMENTARY DEMANDS FOR GRANTS—(GENERAL) 1977-78

MR. CHAIRMAN: Now, we take up discussion and voting on the Supplementary Demands for Grants in respect of the Budget (General) for 1977-78.

Motion moved:

"That the respective Supplementary sums not exceeding the amounts on Revenue Account and Capital Account shown in the third column of the Order paper be granted to the President out of the Consolidated Fund of India to defray the charges that will come in course of payment during the year ending the 31st day of March, 1978 in respect of the following demands entered in the second column thereof—

Demands Nos. 2, 5, 7, 12, 16, 32, 34, 40, 49, 53, 56, 63, 64, 82, 84, 86, 89, 100 and 105."

List of Supplementary Demands for Grants (General) for 1977-78 submitted to the vote of Lok Sabha

No. of Demand	Name of Demand	Amount of Demand for Grant submitted to the vote of the House	
1	2	3	
		Revenue Rs.	Capital Rs.
	MINISTRY OF AGRICULTURE AND IRRIGATION		
2	Agriculture	10,00,00,000	..
5	Forest	1,00,000	..