15.23 hrs.

COMPANIES (AMENDMENT) BILL

MR. CHAIRMAN: We will now take up the Companies (Amendment) Bill.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): I beg to move:

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

The Bill is a short one and I hope it would be a non-controversial one. As the hon. Members are aware, the Companies Act was last amended in 1974 fairly comprehensively and even so a need was felt to review the entire Companies Act as also the sister legislation namely the Monopolies and Restrictive Trade Practices Act of 1969 and the Central Government have appointed a Committee to review these Acts under the chairmanship of Mr. Justice Rajinder Sachar, a sitting Judge of the Delhi High Court. This Committee is presently going into the various provisions of the Companies Act as well as the Monopolies and Restrictive Trade Practices Act for a complete review and it is expected to submit its report within a few months. After that report has been considered, a comprehensive piece of legislation in regard to the two Acts will be brought before the Parliament. In the meanwhile, there were some other matters of an urgent nature and, therefore, this Bill has been brought before the House and I would just briefly indicate as to what are the main provisions with which this Bill deals.

First of all, there was a provision introduced by the 1974 amendment to the Companies Act in regard to the deposits taken by the companies, and certain provisions had been indicated by that amendment of 1974 regulating the taking of deposits by the companies, upto what limit and in what manner those deposits should be taken and in regard to the deposits taken earlier, there were provisions laying down the period of time during which those deposits had to be returned. If they were not returned within the time which was prescribed by those provisions then in that case it was a criminal offence on the part of the companies and officers in default. It has been found that in many cases this provision could not be applied, because obviously when these deposits were taken at that time there had been no provision and, therefore, deposits had been taken in the belief that they were entitled to take those deposits, etc., and in the case of many companies on account of strikes and other difficulties beyond the control of those companies it was not possible for a number of companies to comply with those provisions and, question, therefore, arose as to whether it was not possible for the companies to apply that the requirements of Section 58(A) of the Companies Act as was introduced by the 1974 amendment whether there should be a provision in which somebody should examine as to whether the default in complying with those requirements was on account of some genuine difficulties of the companies themselves even though they were in a position to comply with the requirements they were not complying with the requirements that the genuine cases can be differentiated from the non-genuine cases the requirements of law can be enforced in the case of genuine hardship. Those cases in which there is no hardship and there is deliberate non-compliance of the law are mixed up together. Both of them are equally guilty under the law.

What happens is—a person who is not deliberately complying with the requirements of law, even though there is no genuine difficulty, he takes advantage of the fact and others who are in genuine difficulty on account

of various factors beyond their control since they are not also complying with it and the law places them on the same footing take advantage of that fact and is not prepared to comply with it.

It is in order to remedy this situation that this amendment has been proposed by this Bill so that it shall be the duty of the person whenever he is not able to comply with the requirements of Section 58(A), then in that case it will have to come before the Government and the Government will have to apply its mind and the objective summary on the basis of which Government will apply its mind and find out what is the remedy. Is further extension of time called for in the circumstances of the case? The Government will have to apply its mind and only if it considers it necessary for avoiding any hardship or for just and sufficient reason to make an order. Then only an order can be made by this provision which is being introduced by this Bill either to grant extension of time because facts will differe from cases to case either for extension of time to comply with the requirements of law or the Company or class of companies could be exempted from any provision of this section either generally or for a specified period and all this order could be subject to such conditions as may be spesified in the order, so that the order which will have to be made by the Government will be have to be limited by the requirements of the given situation in a particular case.

It is further provided that if an order is in relation to a class of companies then such order could be issued only after consultation with the Reserve Bank of India. Therefore, the object of this proposed amendment to the amendment to the Act is obvious—namely to distinguish between cases which are on account of any hardship, on account of any difficulty, etc., are not in a position to comply with the requirements which were introduced by 1974 amendment and those companies which are in a position to comply or if they are in a position to comply after a little while and they can objectively do so. If that is not done that will suffer unintended hardship—either extension of time could be given or exemption could be given subject to such conditions, etc., as were to be prescribed.

There is another amendment of a minor character. There is Section 108(h) of the Companies Act. In 1972 the Companies Act was amended and the expression 'same management' so far that amendment when the Bill was introduced in 1972, the expression 'same management' had the same meaning both under the Companies Act as well as the Monopolies and Restrictive Trade Practices Act. That Bill went to the Joint Committee and then the expression 'same management' had been given two meanings—one meaning for the purposes of Companies Act and the other meaning for the purposes of Monopolies and Restrict Trade Practices Act. The Joint Committee provided that the provisions of Sections 108A to 108C shall apply to the shares of monopoly companies only. If these provisions were applicable to monopoly companies only then it would be more appropriate that the expression 'same management' should have the same meaning which has been assigned to it for the purposes of the MRTP Act. Therefore this amendment has become necessary.

Another amendment has become necessary on account of the decision of the Supreme Court in 1973 with regard to the submission of balance sheet and profit and loss account of a company. The requirement has been that after the annual general meeting the profit and loss account and the balance sheet have to be filed with the registrar. A question arose that when a company committed a default of not holding the annual general meeting at the proper time, can it do away with the requirement of

[Shri Shanti Bhushan]

filing the profit and loss account and the balance sheet with the Registrar. There had been difference of opinion but the Supreme Court held the view that in case the annual general meeting was not held, this requirement (of filing the copy of the balance-sheet and P & L Account with the Registrar) was not applicable and no action could be taken against the company for default. That lacuna is sought to be corrected by this proposed amendment. Under this amendment whether or not annual general meting was held or not there would be this requirement of filing the balance-sheet and the profit and loss account with the Registrar.

There is another amendment to Section 293 of the Act relating to the monetary limit of Rs. 25,000 for the purposes of contributions for charitable purposes. During the course of many years the value of the rupee has gone down and it is proposed that this ceiling of Rs. 25,000 be raised to Rs. 50,000 so that these contributions for social and charitable purposes get paid at increased cost. There should be such a provision so that they can go up to the extent of Rs. 50,000 instead of the old ceiling of Rs. 25,000.

Regarding Section 620 of the Companies Act, there was a provision that so far as delegated legislation is concerned, the draft notification is to be laid before each House of Parliament for a period 30 days and then only it would have operation. The difficulty was that from 1975 onwards one of the two Houses has not had a session of this period of 30 days. On one session it was laid. The session was not for a period of 30 days. Then it was laid again. Then also it did not have 30 days of session. Therefore it had to be laid again. Therefore this amendment has become necessary to provide for the entire period to be counted. Even the broken periods would be counted together in order to count this period.

There are certain other amendments which are corollary to the transfer of certain powers which have been transferred to the Company Law Board. There are provisions how the orders made by Company Law Board should be executed. The courts can execute those orders as if they were decrees and orders of the court itself. These are the main provisions of the Bill and I hope that the House will pass this Bill. With these words I move.

MR. CHAIRMAN: Motion moved:

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

DR. V. A. SEYID MUHAMMAD (Calicut): This Amending Bill seeks to amend Sections 58A, 180, 293(e), 620 and 634A. As you are aware and as the House is aware and the hon. Minister has just now stated in the House that a High-Powered Committee is appointed to go into the Companies' Act and also the MRTP Act.

The report is expected very soon and it is amusing why the Minister had to go into the exercise of piece-meal legislation at this stage. He said that there are compelling reasons but the House is yet to hear what those compelling reasons are? What is the urgency about it? When the whole matter is seized of by a high-powered committee going into the entire gamut of the thing one cannot understand why the hon'ble Minister has come before this House with this piece-meal legislation.

Sir, I do not propose to go into the details of the various proposed amendments except to say a few words on 293(e) I am sure the Minister and the Department will see to it that this increase to Rs. 50,000/- will not lead to abuses and siphoning of company moneys into private pockets in the name of donations to charities. I am sure the Minister and the Company Law Department will have appropriate

procedural and other rules and regulations to see that the abuse does not take place.

Having started this exercise which is absolutely uncalled for—in the circumstances already stated—I wonder why the Minister did not go to the next Section, namely, 293(A) regarding the prohibition of company donations to political parties. You are aware, Sir, it has been said by Lord Birkenhead with his characteristic penchant for sarcasm and satire that Law is an ass. I have never seen in the annals of legal history where law has been made to look more assinine than in the matter of interpretation of Section 293(A) recently.

The previous Law Minister gave a certain interpretation in the matter of donation, contribution or payment as the case may be for publication of advertisement in souvenirs. The same opinion was given by another eminent lawyer. The same opinion was given by a retired Chief Justice of the Supreme Court and on these advcies and opinions the Director of a company or comapny in which a Director who is now a Cabinet Minister—if my information is correct—made such contribution, payment or donation as the case may be in the matter of publication in the souvenirs. The position is that the Law Minister who gave that opinion is prosecuted for corruption; the former Chief Justice who gave the same opinion is presiding over a Commission to go into the excesses of Emergency and Corruption. Another eminent lawyer who gave the same opinion as the Law Minister represents this country in the United States and the Director whose company paid on the same interpretation for this souvenir is a Cabinet Minister. So, Sir, in the annals of legal history Law has never been made to look so foolish. So when the hon. Minister started the unnecessary exercise of this piecemeal legislation, it would have been better if he went further to Section 293(A) and clarified the situation at least for the future. They the Janata Party went to the election promising innumerable new legislations; repeal of the 42nd Amendment of the Constitution, I am not commenting on that. The exercise is going on. With the best intentions, the Government is proceeding. I do not wish to say anything about it.

Another promise was the repeal of MISA and we heard the statement made by the hon. Prime Minister in this House. The name MISA will be changed and what he meant, was that the substantial provision should be continued, but the name MISA will be taken out. That is, the old wine will be put in a new bottle. That is all. Another promise, which has been made to the people at time of the election is to introduce a lot of electoral reforms. Even a whisper about it is yet to be heard. Another promise which has been made to the people is about the anti-defection Bill. Certain exercises have been made. I do not know at what stage it is. So, I do not wish to say anything further about it. But in the course of the whole two Sessions or three Sessions we had, since they came to power, we have noticed that Ordinances insignificant and totally not urgent matters have been brought. Enactments and Bills are being introduced in this Companies Amendment Bill which could very well wait till the committee on companies Act and M.R.T.P. renders their report. The whole time of this House is taken for this. In spite of the promises which they had made, we find either frivolous sort of legislations or insgnificant legislations which could wait for more appropriate time. This has been the history of the legislation of this Government after the promises made to people of this country.

Sir, I do not wish to say much further in this matter. Regarding the detailed provisions of his Bills, my hon. friend who had the opportunity to preside over the Company Law Administration for a considerable period, will address the House. So, I do not

[Dr. V. A. Muhamm d]

want to repeat or anticipate what he is going to speak so that what I have to say is to stress the total bankruptcy and the total failure of the promises which they made to the people, on which they came to power in this country. I hope that under the leadership of hon. Law Minister, about whose capacity and earnestness I have great respect, will not waste the time of the House in this insignificant and uncessary legislature excercise I am not able to find the exact word. This is the situation wherein we cannot approve of the legislative programme. I hope we will have better legislative programme next time when we meet. Thank you very much.

SHRI NARENDRA P. NATHWANI: May I ask the hon. Member who spoke last about one point? He referred to the opinion given by the ex-Chief Justice of the Supreme Court. Has it appeared in any newspaper, so that we may read it? I know about Palkhiwala's opinion; it appeared in newspapers. Has the other opinion also appeared in newspapers so that we can read it and try to meet the points raised by him?

DR. V. A. SEYID MUHAMMAD: It has appeared in important newspapers, magazines and weeklies.

SHRI NARENDRA P. NATHWANI: Could you refer to any newspaper? Could you give me a copy so that we can go through it?

DR. V. A. SEYID MUHAMMAD: That I may not able to get.

श्री गंगा सिंह (मंडी) : चेयरमैन महोदय, क्योंकि मन्त्री महोदय ने हाउस को यह एस्योर किया है कि वे कम्पनी ला के बारे में एक कम्पलीट रेजिसलेशन लाना चाहते हैं, इसलिए मुझे इस बिल के बारे में कोई विशेष बात नहीं कहनी है । केवल एक बात मैं मन्त्री महोदय के ध्यान में लाना चाहता हूं । जब किसी रेजिसलेशन में पेनेल प्रोवीजन प्रोवाइड किया गया हो । और उसके तहत किस को पेनेल्टी देनी पड़ती हो, फिर कोई लेजिसलेशन लाना और उसको माफ़ कर देना, ठीक नहीं जंचता है । मन्त्री महोदय ने अभी कहा है कि कई ऐसे केसेज होते हैं जो जन्यून होते हैं और इसलिए उनको माफ़ी देनी पड़ती है । लेकिन मैं यह समझता हूं कि इस तरह के प्रोवीज़न को उल्टा इस्तेमाल किया जाता है । बहुधा केसेज जन्यून नहीं होते है लेकिन वे अपने आप को जन्यून बनाने की कोशिश करते हैं और इस तरह के प्रोवीज़न से फ़ायदा उठाते हैं । अभी पीछे मन्त्रियों की सेलरीज के बारे में भी इस प्रकार का प्रोविज़न किया गया । रूल्स के विरुद्ध उन्होंने पैसे सरकारी खजाने से ले लिये और बाद में पार्लियामेंट में आकर उसको रेगूलेराइज किया गया । तो मन्त्री महोदय से मेरा यह निवेदन है कि इस प्रकार से जब पेनेल प्रोविज़न में छूट देते हैं, तो जो जन्यून केसेज नहीं होते हैं, वे भी फ़ायदा उठाते हैं और उठाएंगे । इसलिए मैं यह समझता हूं कि यह प्रोविज़न जो बिल में लाया गया है, यह ठीक प्रोवीजन नहीं है ।

इन शब्दों के साथ मैं इस बिल का समर्थन करता हूं ।

SHRI R. VENKATARAMAN (Madras South): I shall confine myself to the provisions of the Bill. I want to say at the outset that the Law Minister has shown a great deal of sympathy to the erring companies rather than to the poor depositors. If we look at the history of company deposits and the need for regulation that arose, we find that it was to prevent social abuses that 58(A) and earlier regulations came into existence. It is no doubt true that in order to mobilise resources for industrial development companies did raise deposits and a certain measure of industrial development and resource mobilisation took place through these deposits. But later on it was found that many of the companies which had black money brought in that money as company deposits either in the name of fictitious persons or benami in the name of some relations and friends. In fact the first regulation of the Reserve Bank in respect of companies' deposits insisted that the name and address of every member or person who was depositing in a company should be furnished and in those days actually the income-tax department did make some searches to find out if those persons in whose name the deposits stood had really deposited the amount or not and whether they were only fictitious names. Then it was found that some of the impecunious and insolvent companies took advantage of the gullibility of the people and offered very high rates of interest, 15 per cent, 18 per cent and so on, and then tried to attract deposits and when the time came for redemption, they defaulted. Then the Reserve Bank again intervened and fixed the rates of interest beyond which they cannot go. They also regulated the receipt of these deposit for the purpose of checking the companies which are not solvent and companies which cannot honour their commitments from enticing deposits under false pretences.

Then, Sir, the Government also realised that the companies were diverting large amount of savings which would have, otherwise, gone into public savings by way of small savings, bank deposits, etc. by the offer of very high rates of interest. They said that no company should take more than a particular percentage of deposits in relation to their capital and assets and it is at this stage that 58(A) amendment was brought and the amendment was carried out in the House. The object was two-fold, firstly, to prevent the gullible public being cheated by offer of very high rates of interest by impecunious and insolvent companies and the other to prevent diversion of national resources from channels which will be available for public investment to channels which go to finance private industries. Therefore, it is not the question of merely showing some kind of concession to the companies, as the hon. Minister has stated. It is really a question of trying to save investible resources of the country and diverting them into public channels of investment like bank deposits, small savings etc. That is why in 58(A) they said that within a year i.e. by 1st April 1975, those companies which had taken deposits more than the one prescribed by the Reserve Bank shall return and it was also provided that if they do not do it, they will have to incur penalties mentioned in the Act. The penalties were, firstly, a fine which amount to double the amount of deposits taken and where they invited these deposits in contravention of the regulations, a fine of Rs. 1,00,000 and the Officers of the Company, who violated the rules, are obliged to put in jail for a period of five years.

At this stage, I would like to ask the hon. Law Minister, as to how many cases have been prosecuted under this clause, how much fine has been levied and what action has been taken from 1st April 1975 right upto this day under the law that was enacted and placed before the House.

I must also bring at this stage to the notice of the House, the abuse that has taken place, viz., a number of companies are not returning the deposits.

[Shri R. Venkataraman]

I have written a number of letters to the Finance Minister and he has been good enough to reply to me that he will see that proper action is taken against those who have failed to return the deposits through the Company Law Administration. I am quite sure that the Finance Minister would have forwarded some of these letters to the Ministry and I would like to know what action has been taken against those companies which have failed to return the deposits on maturity.

Now, the whole situation is so upset that the poor depositor may make the mistake of believing some of the gullible advertisements of companies offering an interest of 16 per cent or 18 per cent and so on, but human nature being what it is, it is the law which has to protect the depositors who have been deceived and not the company which deceives the depositors. But I charge that this Section only helps the companies which deceive depositors and it does not help by lifting its small finger in favour of the depositors who have been deceived. Therefore, I am cautioning that this kind of concession will only lead to greater abuses and will lead to only greater numbers of people who have deposited their money with the companies losing their money. I have given an amendment, but in due course I will move that amendment. In that I have suggested that by all means you have given time till now. You have given time from 1975 till 1977. Now, 1977 is over. You may give time till the 1st of April 1978 and if any of the companies do not comply with the provisions of this Section 58A, then all of them should be liable to the prosecution and penalties mentioned in that Section. You can give six months more, but if they do not comply with the provisions of this Section, they should be liable to prosecution as well as penalties. This is my suggestion in respect of the first amendment to Section 58A.

With regard to the next point, the Law Minister has sought to amend Section 220 of the Companies Act. I agree with him that a situation has been created by an earlier judgment of the Supreme Court which said that if a company did not hold their Annual General Meeting and consequently did not file their returns with the Registrar of Companies, then they cannot plead their own lapse in defence of their action and that they are liable to be punished. But the subsequent decision of the Supreme Court said that in so far as the Annual General Meeting has not been held, the obligation to file the balance sheet and the Profit and Loss Account has not arisen and therefore, the Supreme Court said that penalty under this Section does not arise. I want to draw the attention of the Minister to this because the Supreme Court says that penalty under Section 220 will not arise, but penalty under other provisions of the Company Law for not holding a General Meeting and for not filing the returns will arise.

I have no quarrel in so far as the amendment says that if a company does not hold the Annual General Meeting, then the company shall file within 30 days from the day on which the annual accounts ought to be filed a statement of the balance sheet, the Profit and Loss Account etc., with the Registrar, but this does not take into account the rights of the shareholders. Under Section 219 the company shall circulate to all the Members 21 days before the Annual General Meeting a copy of the Balance Sheet and the Profit and Loss Account etc. It is a statutory obligation. If the company does not hold the meeting, there is no provision now brought forward by the Law Minister for circulating the Profit and Loss Account and the Balance Sheet to the shareholders. My view is that we welcome the amendment, but it should be improved upon and my suggestion is that not only should the company be compelled to file with the Registrar the Profit and Loss Account and the Balance Sheet, but it should also be compelled to circulate to the shareholders of the company as well as the

trustees and the debenture holders and the creditors a statement of the Profit and Loss Account and the Balance Sheet. This is the suggestion that I make; and I have given an amendment to the effect—which I shall pursue later.

MOTION *RE.* PUBLIC SAFETY ORDINANCE ISSUED BY JAMMU AND KASHMIR.

SHRI JYOTIRMOY BOSU (Diamond Harbour): I beg to move:

> "That this House do consider the statement laid on the Table by the Minister of Home Affairs on the 2nd December, 1977 regarding the Public Safety Ordinance to assume special powers to detain persons, place curbs on newspapers etc., issued by the Jammu and Kashmir Government."

Sir, I will read out the important portions from the J and K Ordinance. They have talked about espionage and Press publications. I would like to know, first of all, what relation espionage has got to do with Press publications. This is a very important point. Press publications cannot further the cause of espionage because the latter usually works under cover. Therefore, that is a matter which should receive the attention of the House.

If you look to page 6 of the Ordinance, you will find the following mentioned:

> "*Prescription of certain documents*: (1) where in the opinion of the Government any document made, printed or published, whether before or after the Ordinance comes into force, contains any prejudicial report...."

Prejudicial for whom? Is it for the individual leaders and officers of the Government? We want to know—for whom. Is it in the interests of democracy, or of a limited few?

Now, the words 'security of the State' have also been used. We have known these words to be misused, a lot more than they have been used in the proper sense. We have got that experience.

If you look to Section 14, you will notice the headline, "*Protection of action taken under the Ordinance.*" Officials acting with *mala fide* intentions will be protected.

If you come to page 11, you will see the following:

> "*Grounds of an order of detention to be disclosed to a person affected by the order*: When a person is detained in pursuance of an order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds...."

There is no rigid provision in this. In page 13 of the Ordinance, Section 27 deals with the duration of detention in certain cases. This is the most important Section. It says:

> "Notwithstanding anything contained in the Ordinance, any person detained under a detention order made in any of the following classes of cases or under any of the following circumstances may be detained for a period longer than three months, but not longer than six months from the date of detention, without obtaining the opinion of any advisory body, namely...."

etc., etc. The most important thing here is the revocation of detention orders. Many of us were behind the bars. As far as my own case is concerned, I know. Whenever my lawyer went with a writ petition—and the writ was supposed to have been heard on a particular day—on the previous