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

RE: ATROCITIES ON HARIJANS

MR. DEPUTY-SPEAKER: We now resume discussion on the Companies (Amendment) Bill. Mr. Gokhale.

SHRI P. G. MAVALANKAR (Ahmedabad): Mr. Deputy-Speaker. Sir, I have a very serious information to give to the House. One Harijan young man of 35 years age and by name Dahyabhai mithabhai Parmar was almost beaten to death in his village Mithaghoda in Surendranagar district of Gujarat, in the same district where the Kanmalpur tragedy had earlier taken place. This young man was brought in an unconscious state to the VS Hospital, Ahmedabad where he succumbed to the injuries and died. More than 2000 Harijans joined the funeral procession and went into the cremation ground. The matter is so serious. I would like the Home Minister, since Gujarat is under President's rule, to come before the House and give us a statement. This is a very important matter, all the more so because one of the Harijans has issued a statement that all the Harijans must join Islam, since they are being given such bad treatment! It is a very serious thing. I do not want this thing to be repeated in the Surendranagar district or elsewhere in Gujarat. I would therefore request the Home Minister to make a statement on this.

14.36 hrs.

COMPANIES (AMENDMENT) BILL—*contd.*

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): I began my speech yesterday. I shall resume it wifh your permission.

Uuder clause 2, the provisions of section 2 of the principal Act relating to defictions are being amended in certain respects.

The most important in this regard, is sub-clause (i) of clause 2 of the Bill by which a new clause (18A) is being inserted defining the meaning of the expression "Group". The Committee felt that in order to achieve the objective of the proposed provision, the definition should be more comprehensive so that the cases where two or more individuals, associations, firms or bodies corporate, or any combination thereof are in a position to exercise control could also be covered so that no merely the initial object of controlling but the resultant control may be duly kept in view. The definition has, therefore, been modified accordingly.

Further in view of the insertion of the definition of 'Group' the Committee felt that it is advisable to provide a forum for the decisions of any doubt or dispute as to whether two or more individuals, associations firms or bodies corporate or any combination thereof do or do not constitute a 'Group'. The Committee has decided that the Company Law Board should determine whether a group exists or not and incidentally whether control necessary to constitute a group exists or not whenever the question may arise. Accordingly, an Explanation to the definition of 'Group' has been added by the Committee. As Hon'ble members are aware the Company Law Board is a body to which functions and powers of the Central Government under the Act may be delegated. The decision on questions relating to the applicability of the definition in individual cases, will, however be made by the Company Law Board in terms of the recommendation of the Joint Committee and this will not be a jurisdiction derived by it from the Central Government by delegation but will be a jurisdiction directly conferred upon the Company Law Board by this Act. This will provide the Company Law Board in letter as well as in spirit, with the quality of an independent judgment, that is expected of an impartial quasi-judicial tribunal.

(ii) *Clause* 3: Section 4A and 4B were proposed to be inserted by this clause. Section 4B contained an enlarged definition of the expression

"same management" and it was the intention of the Bill as originally introduced to make the definition applicable to inter-corporate loans and investments no less than to the determination of inter-connection of undertakings under the M.R.T.P. Act.

The Committee felt that the new definition of "same management" is so wide that it is likely to restrict the operations of small and medium sized companies and is also likely to retard formation of capital and impede inter-corporate investments which are needed for the sturdy growth of the corporate sector. The Committee, therefore left that the existing definition of 'same management' in the principal Act should continue to apply to the companies governed by the Act. But in so far as the Companies governed by the M.R.T.P. Act 1969 are concerned, the wider definition of 'same management' as proposed in the Bill should be applicable to them. Accordingly, the proposed section 4B has been transferred to M.R.T.P. Act, 1969 under clause 43 of the Bill as reported by the Committee.

(iii) Hon'ble Members will notice that in view of the proposal to transfer to the Company Law Board some of the powers which were so long exercised by the High Courts, the Committee felt that the Cenral Government should be empowered to increase the strength of the Company Law Board to nine, if need be so that the matters in relation to which the powers of the High Court are proposed to be transferred to the Company Law Board could be disposed of expeditiously by one or more benches formed by the Board. Further in order to enable the Company Law Board to discharge properly the functions and the powers of a Civil court to enforce the attendance of witnesses and production of documents and so on and also powers of punishment for its contempt have been provided for so that this Board's quasi judicial functions may be efficiently discharged.

(iv) *Clause* 6: Hon'ble Members are aware that the existing Section 43A(1) of the Companies Act provides that where one or more bodies corporate hold not less than 25 per cent of the paid-up share capital of a private Company, such private companies shall become a public company. The Bill as introduced sought to reduce the said percentage from 25 to 10. The Joint Committee, however felt that the reduction of percentage of shareholdings to ten is likely to hamper the formation and growth of private limited companies in the small scale sector especially in the rural areas, and therefore, the provision of the existing section 43A(1) in this regard need not be disturbed. Further the Committee thought that private companies which are less capital—intensive but have a considerable consumer and employee and public interest because of its high turn-over should be brought within the scope of the deemed public companies irrespective of the paid-up share capital. Accordingly it has been provided in the Bill under consideration that a private company irrespective of its paid-up share capital, shall become a public company if it has an average annual turn-over of 1 crore of rupees or more calculated during a period of three consecutive financial years.

The Bill as originally introduced sought to provide that a private company holding ten per cent or more of the paid-up share capital of a public company will be deemed to be a public company. The Joint Committee, however felt that this limit of ten per cent is likely to hamper growth of and formation of capital of public companies. As such the Committee raised this percentage to 25. The proposal contained in the original clause to delete the existing exemption under section 43A(6) has been omitted as the Committee was of the opinion that where the entire share capital is held by another private company it need not be treated as a public company.

(v) Another important provision in the Bill is concerning acceptance or invitations of deposits by companies in general. Hon'ble Members are well aware that the Reserve Bank of India has been controlling such deposits by issuing directions under the provisions of Reserve Bank of India Act, 1934. It has, however, been the experience that despite the enforcement of the directions issued by the Reserve Bank of India, the companies have been accepting deposits and trying to circumvent the law. Hence, the proposals have been included in the Bill so as to make it obligatory that the financial position, capital structure and credit-worthiness of the companies accepting deposits should be disclosed to the depositors in advance so that the unwary public are protected. The rules which prescribe the particulars to be disclosed etc. will be framed in consultation with the Reserve Bank of India, so that as and when deposits are invied or accepted it would be only on healthy lines.

(vi) I wish to draw the attention of the Hon'ble Members to the Statement of Objects and Reasons set out in the Bill as originally introduced in the House. It would be seen there from that of all the provisions contained in the Bill, a great significance has been attached to the provisions of the Bill seeking to regulate the transfer of shares by every body-corporate or bodies corporate under the same management whether holding singly or in aggregate ten per cent or more equity share capital of a company. I am referring to clause 12 of the Bill as reported by the Committee which relates to new Sections 108A to 108H. The Committee has inserted a new section 108H under this clause, as it was of the opinion that the regulation of transfer of shares which would result in takeover of companies should be made applicable only to the companies having undertakings within the ambit of part A of Chapter III of the M. R. T. P. Act. 1969 which deals with the concentration of economic power to the common deteriment. In this context, I would also like to refer to clause 15 of the Bill as reported under which the menace of Benami transactions is sought to be eliminated.

(vii) Now I would like to say a word about the problems being faced by the Members of the Accountancy profession. The provision of the Bill as originally introduced, in this respect, was based upon the principle of rotation of audit work amongst the auditors with a view to bringing about a dissociation of auditors from the management of companies so that they can discharge their obligations in a more detached spirit and at the same time there would be a gradual deconcentration of company audit to the benefit of the members of profession in general. At the Joint Committee stage it was felt that a ceiling on the number of audits would achieve the objective which the Government had in view in a more effective manner. Accordingly, the Joint Committee has proposed to put an overall ceiling of 20 companies for one Chartered Accountant to audit at a time, and within this ceiling of 20 he can have only 10 companies of Rs. 25 lakhs paid-up capital or more.

Sir, I do not wish to take up the time of this House by dealing in detail with all the provisions of the Bill. I would like to emphasise that the provisions, on the whole, are designed not only to streamline the administration of the Act but also to promote greater efficiency and social justice in the working of the corporate sector. There is a greater and greater anxiety among the public to have as far as possible the fullest information about the activities of the companies, foreign as well as Indian, and it is our endeavour to satisfy the general desire for such information consistently with standards of reasonablentss. If the public are well-informed through disclosure of information there can be little or no scope for misunderstandings. If the share-holders the creditors and the general public interested

in corporate affairs thus know that a company is using its capital to the best advantage and is being run efficiently and with an all round sense of social responsibility expected of it, that by itself would be sufficient to achieve the objectives.

Before I resume my seat, I would like to bring to the notice of the House that the Government has given notice of some amendments to some of the clauses in the Bill to improve upon the provisions in drafting so as to achive the objectives. In this context, I would specifically mention the changes proposed in clause 8 relating to amendment of section 73 of the principal Act. Hon'ble Members are aware that questions were raised in Parliament about the failure to refund large amounts of money obtained by companies in respect of shares offered to the public through prospectus to which listing on the recognised Stock Exchanges had not been granted or in cases where the issues were over-subscribed. This failure has resulted in some cases in misappropriation of the concerned applicants' money. This fraudulent practice is sought to be removed by including suitable provisions in clause 8 of the Bill as reported by the Joint Committee.

I am confident that there is a general consensus of opinion in favour of the provisions in the Bill and I commend it for acceptance by the House subject to the amendments given notice of by the Government.

PROF. MADHU DANDAVATE (Rajapur): He did not read the last sentence that he would concede all the amendments.

SHRI H. R. GOKHALE: I shall concede some of the amendments those which appeal to me as reasonable and good... (*Interruptions*)

MR. DEPUTY-SPEAKER: I am here to regulate the proceedings, otherwise you should have a robot here. Kindly sit down. I was going to say that this is a complicated and wide ranging Bill; even so I would draw the attention of the hon. Members that only three hours had been allotted...(*Interruptions*) This is why I said that you should have a robot here and not a human being. I am quite aware of this and that is why I say that only three hours had been allotted by the House. I know the difficulties of Members but I should like them to keep this in mind.

Motion moved:

"That the Bill further to amend the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969, as reported by the Joint Committee, be taken into consideration."

Shri Panda.

SHRI N. K. P. SALVE (Betul): I will not be here on Monday and since we will be taking up other business, may I make a request to you?

MR. DEPUTY-SPEAKER: Could Mr. Panda yield to him?

SHRI D. K. PANDA (Bhanjanagar): I would be going away tomorrow.

MR. DEPUTY-SPEAKER: In that case I am helpless. You have only ten minutes.

SHRI D. K. PANDA: The stated objective of the Bill is to deal with the problems of concentration of economic power and monopolies which they achieved through the take-over bid and other means. It has been said on an earlitr occasion by the then Company Law Minister that this would be a step towards achieving socialism but I disagree with that statement made by him. The objective is laudable but the present amendments are not going to take us so far. It will not touch

even the fringe of the problem of concentration of wealth in the hands of monopolists.

There are certain amendments and the whole objective is only to curb and restrict their activities which are antisocial. A great economist, Karl Marx, has said:

> "Crime must be not punished in the individual, but the antisocial source of crime must be totally destroyed and each man must be given the social scope for the manifestation of his being."

From the long experience of the advanced capitalist countries and even from our own experience in this country, we know that for the last several decades we failed to control and restrict the antisocial activities of these monopoly houses. In the note circulated by the Company Law Ministry it has been said:

> "It has been the experience that not a single case of take-over bids could be regulated or undesirable one prevented by the Government."

That is our experience of the last 25 years. We are still clinging to the root lies somewhere else i.e. the same mixed economic policy. The existing legislation has all along conceded the position that the growth of private monopoly in industry and finance is intrinsically conducive to the development of industrial efficiency and economy of scale, and as such, to the development of national production. This assumption is totally wrong. If there is backwardness in any State, price rise, wage-cut, value of wages going down—at the root of these things, it is the monopoly hand that is playing havoc. Therefore, the amendments being made are quite insufficient. I do not oppose the amendments which are already there to the oringinal Act. At the same time, I have also given some amendment to restrict these monopoly activities and their antisocial performances.

Considering particularly the abnormal price rise in prices, I would like to say that the real cost of production can be detected only by cost audit. In the case of all companies having a paid-up capital of Rs. 25 lakhs and more, their accounts must be audited by a cost accountant. That will help us in so many other ways. If there is underutilisation of capacity, the cost audit can point out how there can be a proper and full utilisation of capacity. Improved inventory policies can be there if there is cost audit. It is felt that there is further scope for improvement by introducing continuous stock-taking on a day to day basis instead of having it annually. It is further suggested that return of used tools by shops to stores should be made for gross quantity originally issued through Inspector which could examine the condition of each and stores could take on charge serviceable tools only. The rejected ones can be defaced to prevent the possibility of their preservation for further replacement. Therefore, cost audit has to be included.

Before coming to my amendment, I would like to point out that under the Company Law Ministry, there was a case against Bird and Company for under-invoicing and the Customs Additional Collector imposed a fine of Rs. 2 crores. On appeal, it was reduced to Rs. 50 lakhs, but there was a stricture passed against the conduct of Shri S. K. Ghose, the present Chairman of the company. There was also a CBI probe. In spite of all those—things, I do not know how his name could be approved by the same Ministry. I want to know whether under the law such a man against whom such a stricture has been passed can be approved. The

Union has represented this matter to the minister. I want a categorical answer.

About Hindustan Lever, the top-most leaders of the union have been dismissed for asking for more production of Dalda and they have not been taken back. During the half-hour discussion on shortage of Dalda on 25th March 1974, the Agriculture Minister admitted that the fall in production of vanaspati was more in Hindustan Lever as compared to other vanaspati units in the country. With regard to this, the workers have pointed out that the same raw materials are being used for manufacturing other things. Why should there be a diversion?

MR. DEPUTY-SPEAKER: You have referred to it. You can give the details to the minister and he will look into it, I am sure.

SHRI H. R. GOKHALE: The hon. member can write to me about it.

15.00 hrs.

SHRI D. K. PANDA: The camouflage for production of Golden Seal Margarine is that it is meant for bakeries. It contains 10 to 20 per cent moisture and the ratio of profit of Margarine as compared to Dalda is about Rs. 5,000 per tonne extra. If this ratio is multiplied on the basis of the total production of Margarine by Hindustan Level at Bombay, Calcutta, Ghaziabad and Trioby the total extra earning would be to the tune of about Rs. 2 lakhs per day. I am bringing it to the notice of the hon. Minister that they are not producing vanaspathi, they are diverting it to some other items and so we are suffering. So, my amendment is to the effect that where the amount involved is above Rs. 25 lakhs there should be audit by the cost accountants.

MR. DEPUTY-SPEAKER: We now take up Private Members' Business.

15.01 hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

FORTY-THIRD REPORT

SHRI C. K. CHANDRAPPAN (Tellicherry): Sir, I beg to move:

> "That this House do agree with the Forty-third Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 1st August, 1974."

MR. DEPUTY-SPEAKER: The question is:

> "That this House do agree with the Forty-third Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 1st August, 1974."

The motion was adopted

15.02 hrs.

RESOLUTION RE: FRESH ELECTIONS TO LOK SABHA—Contd.

MR. DEPUTY-SPEAKER: We now take up further discussion of the Resolution of Shri Samar Guha. Shri Samar Guha may continue his speech.

SHRI DINESH CHANDRA GOSWAMI (Gauhati): Sir, I rise on a point of order under rule 30(1) and 30(2). As you will recall, this discussion started on the last day of the last session, when it was adjourned because the House was adjourned and we are starting it this time on the resumption of the adjourned debate on Private Members' Bills and Resolutions. Rule 30(1) says:

> "When on a motion being carried the debate on a private member's Bill or resolution is adjourned to the next day allotted for private members' business in the same or next session, it shall not be set down for further discussion unless it has gained priority at the ballot.