

name him. And yet he persisted. It is not in the spirit that he should not be in the House that I said he must withdraw. I would be the last person to deny any hon. Member the privilege of being in this House. If, as Shri Basu says, he is willing to make amends, I will consider it.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): May I say, Sir, that I welcome what you have been pleased to observe? Naturally, it is for you, occupying this high office, to keep and preserve order and the dignity of the House and every hon. Member should try to maintain that dignity and observe any direction that you give. You have been pleased to say, as I understand you, that in the event of the hon. Member who has been asked to withdraw expressing his regret, you will be pleased to consider the matter afresh. May I say, Sir, with all respect, that that is a very correct attitude to take, and I am sure the dignity of the House also will be maintained thereby. If there is an apology—an expression of regret—then you should be pleased to consider the matter afresh.

Shri M. S. Gurupadaswamy: Apology for what?

Mr. Deputy-Speaker: Shri Jhunjhunwala will please resume his speech.

COMPANIES BILL.—contd.

Clauses 81 to 144

Shri Jhunjhunwala (Bhagalpur Central): My amendment, as I was submitting yesterday, is No. 396 to clause 110. There are various elements involved in this clause. I do not dispute the salutary principle behind the power given to the managing agent for refusing the transfer of shares without giving any reasons. The only thing which I want is that this power is not arbitrarily and capriciously exercised by the managing agent to the detriment of the shareholder.

The second thing is that the managing agents have not had this power up till now. What the shareholders had to do was to go to the court and to prove the *mala fides* of the managing agents. It was very difficult for the shareholders to prove the *mala fides* of the managing agents and it took them years and years in order to get their case decided. So, Government have taken back the power in their hands and the Government wants that the shareholders should come to the Government for redress of their grievances against the refusal by the managing agents to transfer the shares. My hon. friend Shri Tulsidas is very uncompromising, knowing full well how the people are being put to trouble in going to the court and that the case takes years and years. By going to the courts, the people have to spend a lot of money, but still Shri Tulsidas insists and he wants that the Government should not have this power but the court should have that power. You can see the attitude of the managing agents. We have to examine the new provision which has been introduced in this clause. Instead of the court, the Government has got that power now. Now, let us see how the shareholder gets redress and how his hardships are minimised. I shall take into consideration three elements. One is that the managing agent's power to refuse transfer without giving reasons is not disputed. If the managing agents were to refuse transfer they can do so. I do not dispute that. But before doing that, they should come to the Government and give their reasons saying that "these are the reasons on which we want to refuse the transfer of shares". If, on reading all the reasons, the Government finds that they have got sufficient grounds for refusing the transfer of shares, the Government should call the other party—the shareholders—and ask them whether they have got to say anything. After hearing the shareholders, if the Government finds that the refusal to the transfer of shares is all right, then the matter ends there. But, under the clause as it stands, what will happen

[Shri Jhunjunwala]

is that the managing agent will refuse the transfer of shares and it will take two months. Two months' time has been given to the managing agent to decide this question. So, for two months, the shareholder will remain in suspense. Then, after two months, the shareholder will come to the Government and say that such and such an order has been passed, and then the Government will ask the managing agents to give their explanation as to why they have transferred their shares. This was made clear yesterday by the Finance Minister. It was not clear to us till yesterday that after the explanation has been given by the managing agent, the shareholders will be acquainted with those explanations. Then the shareholders will put their point of view before the Government. After that, it might take two months, three months or even four months for them to decide the thing. During this period, the shareholder will remain under suspense. He has sold his share and the person to whom he has sold the share—the transferee—will also remain under suspense. So, the shareholder is not in a position to sell his shares. The transferee will say, "unless the shares are transferred in my name, I cannot accept them." So, there will be suspense for a long time. In order to avoid the suspense of the shareholder and the hardship which will be caused by this procedure, what I propose is that the managing agents should go to the Government and give their reasons as to why they refuse to transfer the shares. If the Government finds that the explanations and the reasons given by the managing agents are not good enough, then straightaway the Government should tell the managing agents, "No, you have to transfer the shares." But if the Government finds that the reasons given are good, in that case, the Government can ask the shareholders to come and put their point of view and decide the case immediately. So much delay and so much waiting for the shareholders will be saved and there will be no difficulty

for the managing agents to come and take the opinion of the Government. This will minimise the trouble of the shareholders and also the suspense under which they will remain till the managing agents send them their refusal or acceptance of the transfer of the shares. The Government also will not lose anything. So far as the Government is concerned, the time taken will be the same, rather in this case it will be less. Also, the shareholders will be saved the trouble of the waiting and suspense under which they will remain till the shares are transferred. This is all I have to say on this point.

There is another point regarding the issue of shares. My friend Mr. Bansal had moved an amendment which appeared today. Normally, the issue of new kinds of shares should not be there and the managing agents and the shareholders of that company should find out before such shares are issued all other means whereby they can run the concern. But if they find that they cannot run the concern without issuing such particular kinds of shares and if the company is working at a loss, in that case and in that case alone, without giving some special power of voting to the people who will subscribe the new shares, the shareholders should sit, decide and then write to the Government; afterwards with the permission of the Government they can issue such shares on such terms as the Government may decide. But so far as shares which have already been issued are concerned, this disproportionate voting should be removed. They should be all put on a par. I have found that there was some salutary principle behind everything which has been in the old Act. Therefore, while putting in new clauses, we should see that that salutary principle is kept. For this purpose I would support the amendment moved by my hon. friend Mr. Bansal. But so far as the shares which have already been issued are concerned, the disproportionate voting rights should be done away with.

Shri N. P. Nathwani (Sorath): I want to make some observations on clause 110. Yesterday there was some discussion as regards this clause. It provides for an appeal to the Central Government against the decision of a company refusing to register the name of an applicant, whether it is by way of transfer or by way of transmission by the operation of Law. Now, some hon. friends have suggested that the appeal should lie to the court and not to the Central Government. Apart from the merits of this proposal, as I understand clause 110, there is nothing in it to deprive any applicant of his right to approach the court for enforcing his rights. No doubt sub-clause (5) of clause 110 provides that if the decision is given against the company, the company shall give effect to the decision of the Government forthwith, but it does not say whether the decision is to be binding on the applicant or not. Again, this clause does not say that the decision of the Government shall be final and that no suit can lie against it. Sir, you know there is the rule of construction which says that we should avoid as far as possible that construction which seeks to transfer the determination of rights and liabilities from a court of law to an executive officer. Therefore, at least, so far as that applicant is concerned, his right to enforce his remedy through a court of law is not barred. His right is of a civil nature and unless such right is taken away expressly or by necessary implication, he can always seek a remedy through a court of law.

There is one more point about sub-clause (5) which says that a company shall give effect to the decision of the Government forthwith. But it does not provide what would happen if the company refuses to carry out the decision or the order given by the Central Government. I know that the Government is alive to this position and so far as I understand, Government propose to bring forward a suitable amendment, so that the decision which might be given by the Central Government can be implemented. I only wish to say that the

proposed amendment should not merely give effect to the decision which might be given by the Central Government, but there should be a provision also made for imposing some punishment on the company or on the officer who is in default.

Shri K. K. Basu (Diamond Harbour): The hon. Member is referring to an amendment; where is the amendment?

Shri N. P. Nathwani: I am only saying that I understand that the Government is alive to this situation and I expect Government to bring forward an amendment either to clause 110 or to some subsequent clause. I do not know what they exactly intend to do. But my suggestion is this. It will not be enough to say that if the company is in default in carrying out the order of the Government, the applicant shall be treated as a registered shareholder. The clause should also provide for some punishment. Otherwise, the company and its officers can defy the decision of the Government with impunity.

But there is one aspect which my learned friend Shri Jhunjhunwala stressed very much. Sub-clause (5) is not wide enough to indicate whether the Central Government can require the companies to give reasons for refusing to register the transfer. But if we came to sub-clause (7), the meeting becomes tolerably clear. It says the proceedings shall be confidential. This means that the officers of the company are being enabled to disclose facts freely which might otherwise be of a confidential nature.

But there is one aspect about sub-clause 7. Its implications are not clear to my mind. Is it the intention that no information which might be obtained by the applicant or the company is to be utilised elsewhere by any party? Because, if that is the intention, then the provisions which are incorporated in the Income-tax Act, particularly in section 54, should have been incorporated here. This merely says that the proceedings

[Shri N. P. Nathwani]

shall be confidential. Therefore, any party cannot call for or cannot get these documents produced in a court of law. It may also be that the officer concerned cannot be required to state or to give evidence about the information received by him, but there is no ban on the parties concerned saying what they have gathered as a result of these proceedings. On the whole, I feel that this provision will strengthen the hands of an applicant. He would be able to know the precise grounds on which the refusal is being made.

Then there is one thing more, and that is in respect of clause 86. Clause 86 defines the quantum and extent of voting rights. It carries out the recommendations made by the Company Law Committee. Hereafter, the voting rights in the case of all shares, whether they are ordinary shares or preference shares, are to be in strict accordance with the capital paid up on such shares and the voting right of an individual shareholder is to be in strict proportion to the paid-up capital of the company. This may in some cases work a hardship at the time of exercising the votes, because any one who has some experience of company management knows that when the occasion comes for members to exercise their votes, they rush to the company's office, try to pay up their arrears of call so that they might be able to exercise their votes. In clause 180 it is provided that the articles may provide for a situation where a member has been in arrears of call money. Because of that he might have incurred the disability to exercise his vote. So, in a big company where you have to work out the individual voting right of every member, some difficulty will be experienced because it involves an intricate calculation of figures and if at the eleventh hour several members approach and offer to pay and pay their arrears of call, the paid-up capital would be increased and it would affect the individual rights of the shareholders. Therefore, if we

qualify this provision by saying that the paid-up capital which will be taken into consideration will be the capital as it stood say 48 hours or 24 hours before the voting has to take place, it will save considerable hardship.

Shri U. M. Trivedi (Chittor): I want to offer some comments on this provision in clause 93. I have given my amendments No. 115 and 116.

It is provided under sub-clause 1(e) of clause 93 that the company shall have the power to cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled. This and sub-clause (2) are going together. I make a very small suggestion about it and it is this, that such cancellation of shares shall not take place without notice to the party affected and at the same time must require the confirmation of the court.

There may be several reasons for cancelling shares. The man may not have received notice and may not know. He may have changed his address. So many things might be there. Without giving a hearing to the person affected by the cancellation, there is forfeiture of the money that he may have paid on the shares on allotment. He may have been handicapped for some reason or other. It is not fair that he should be deprived of his property without any proper hearing in this matter. This is a small suggestion which I am making and I hope the Finance Minister will look into it to see whether it is proper that shares which have been allotted should be cancelled and that all the moneys of such persons should be forfeited without giving them a proper hearing.

Then, we come to this very vexed question under the provisions of clause 110. The first point that strikes me is this. It is a very dubious pro-

vision of law that we want to incorporate here. There is to some extent, I should say, force in the arguments advanced by Shri Nathwani, but the way the Government has put this case and the way it was supported by Shri C. C. Shah who has been always the spokesman of the Government in this respect, it appears that the Government does not trust the High Court. I have yet to see the reasons for advancing such an argument that the Government is not trusting the High Court.

Shri C. C. Shah (Gohilwad-Sorath): I did not advance any such argument. My hon. friend is putting into my mouth words which I never said or uttered.

Shri U. M. Trivedi: They are words which I heard.

Shri Gadgil (Poona Central): Something wrong with the ears.

Shri K. K. Basu: He is reading your mind.

Shri U. M. Trivedi: Why this policy of keeping all control in the hands of the Central Government? One argument that was advanced against this provision was this, that a man having a company in Madras or in Trichinopoly or in any other part of India will have to run up to Delhi before the Central Government for the purpose of getting some redress, whereas if it is in a court of proper jurisdiction, he may be able to approach that court and get a decision nearby.

Then there is another thing. When we read this whole provision and when we read sub-clause 7, it gives the show away, and shows that it is only for some political grounds or for some reasons which cannot be disclosed to the public at large that this power under clause 110 is to be kept in the hands of the Government. Sub-clause (7) says:

".....All proceedings in appeals under sub-section (3) or in relation thereto shall be confidential,

and no suit, prosecution or other legal proceeding shall lie in respect of any allegation made in such proceedings, whether orally or otherwise."

You can give a bad name to a dog and hang it. From the very beginning the argument advanced by Shri C. C. Shah was this, that a man may be undesirable. What is this undesirability? It is the most relative of terms. A man may not like a particular person on account of his face, on account of the hair he wears, the dress he wears.

Shri K. K. Basu: Or the white cap.

Shri U. M. Trivedi: Whatever it may be, I do not come to that. We are all white-cappers.

An Hon. Member: Are you?

Shri K. K. Basu: I hope you have changed into black.

Shri U. M. Trivedi: I never put on a white one at least.

Shri K. K. Basu: That is good.

Shri U. M. Trivedi: The question is that of propriety.

We have to see whether we should give such vast powers in the hands of Government as to deprive a man of his right. At one end, we have made the provision in our Constitution that no one shall be deprived of his property. At the other end, here we want to put into the hands of a body corporate or the managing director or the board or whoever controls this whole thing or the managing agents, power to say, all right, you may have purchased the shares but we are not going to transfer them. At one end, we have been liberal in one respect, and at the other end we are providing like this. I do not see the consistency about it.

Shri T. B. Vittal Rao (Khammam): May I point out that there is no quorum in the House?

Mr. Deputy-Speaker: Is it not such time now?

Shri T. B. Vittal Rao: Not yet.

Mr. Deputy-Speaker: The bell is being rung. Now, there is quorum. The hon. Member, Shri U. M. Trivedi, may continue.

Shri U. M. Trivedi: Formerly, we could not have an outsider acting as a proxy. Now, we have been liberal enough to say that any outsider not connected with this company itself may be a proxy and may exercise the vote. Though we have been liberal enough to allow a man, whose antecedents are not known, and who is a complete stranger to others, to come and attend the meeting, and also to exercise the vote or do all the functions which a proxy is allowed to do, yet we say here that a man who invests money, and who has some stake may not be allowed to be registered because he is considered by some superman sitting there to be undesirable. That is what we call the height of tyranny that you want to practise through the process of this company law.

We do not know what political considerations may come in, because as this law now stands, practically the power goes into the hands of the Central Government to allow or not to allow a man to run his business; and discrimination may be there. The object of the present measure is to reserve as much power in the hands of Government as possible; to oppress as much as possible, to please those who are sycophants to you, and to ruin those who cannot agree with your views. It is with this object in view that this company law is now being framed in this manner. When such a law is being framed, it is the duty of the House to see whether it will act oppressively or not.

The hon. Finance Minister said, and he was to some extent justified in saying, that we are not dealing

with ordinary men, and therefore we should not presume that they are very honest. I should say that we are also not dealing with officers who are very straight forward persons; and they are bound to act according to the dictates of their masters, and all those masters are not very honest. That being the case, we have to safeguard through law the position of such persons as are actuated by mere desires of investing their money and nothing else. According to this provision, such persons, in whose case refusal is made, will have to run up to Government; and if they hold a particular type of view, the man sitting at the Centre will tell him, look here, we may get it registered, my dear fellow, but we will do it only if you change your colours, if you agree to contribute so much to our funds, if you agree to pay so much to our party, if you agree to give up that particular party, if you do all these things, we agree to get the shares registered, otherwise, you go away, and so on. All this can be said against the person concerned, and it may have been put down in black and white also, but it cannot be the subject-matter of an enquiry by any court of law. It is with this fear that I say that if the registration of a person's shares is refused, he must be given reasons in writing as to why it is being refused. Further, the appeal should not lie to Government, but must lie to the court having proper jurisdiction. I know—and what Shri N. P. Nathwani has said has some force in it—that notwithstanding this provision of law, which says that the appeal shall be made to Government, and the decision of Government shall be there, and without assigning any reasons, Government will say anything, and the company shall have to obey that order forthwith, there is a provision, in the Constitution, very wisely put there, and liberally too, namely the provision of article 226, which can compel Government to change its order. But then it is a very lengthy process for anybody. It is a very

costly thing. In the case of a transfer of a few shares by a few persons, why should a person always approach the High Court for this purpose?

The Minister of Finance (Shri C. D. Deshmukh): Is the hon. Member sure that recourse to court is barred by anything that we are saying in this Bill?

Shri U. M. Trivedi: You give no provision to go directly to the court. It is a question of interpretation whether a person will have to exhaust the remedy which has been provided under this law or whether before exhausting this remedy, he can approach a court of law. That is the point.

Shri C. C. Shah: This provides only an additional remedy to the person, if he chooses to take advantage of it. Otherwise, he has the right to go to a court of law.

Shri U. M. Trivedi: I would welcome some provision to be put somewhere here in the language in which Shri C. C. Shah has tried to put it.

The Minister of Revenue and Civil Expenditure (Shri M. C. Shah): It is absurdly unnecessary. If you will read it very carefully, you will find it is quite unnecessary.

Shri U. M. Trivedi: It is quite necessary. Unfortunately, you have passed the stage when you have to go before a court of law, and you do not know it. There are difficulties that arise in this matter.

Just now my hon. friend Shri N. P. Nathwani has said—I do not know whether he knows so much the mind of Government or not—that Government has this position in view, namely that all such orders will be enforceable, and Government might make some provision in the same terms as the provision existing in clause 628.

Shri M. C. Shah: Shri N. P. Nathwani simply pointed out that under

this new sub-clause (8), there is a provision that an order can be passed under sub-clause (5), saying that the transfer may be effected. But now he says, suppose a party does not accept it then what is the result, can Government enforce its orders, are there any provisions to that effect, and if not, do Government propose to have such a provision later on.

Shri U. M. Trivedi: That is what we also want to know. How does the mind of Government work about it? If we find that you have already agreed to such a provision, then we may not advance such arguments.

Shri M. C. Shah: That will come in the clauses which we shall just consider. If we want to add any penal clause there with a view to penalise a company that does not carry out the orders of the Central Government, then you will have ample opportunity to discuss the matter.

Shri K. K. Basu: Shri C. C. Shah also has said that there is nothing to bar a person from going to a court of law. Under the existing law, you have to prove the *mala fide* of the director. But under this particular provision, so far as the Central Government are concerned, you say that they should not only be guided by grounds of *mala fide* but something else also. Is it open to the court of law, after the statute comes into being, to go into any other ground apart from *mala fide*? That is the whole point.

Shri C. C. Shah: It does not provide any further ground except those that exist in law at present.

Shri K. K. Basu: So far as the Central Government are concerned, after this clause 110 is put into effect, if they so choose, they can go into other reasons also apart from *mala fide*; and since the specific right is provided, they can give notice to the company and ask for the reason, and they can go into other grounds also apart from grounds of *mala fide*. But so far as the courts are concerned, they have to follow the existing practice only.

Shri U. M. Trivedi: The court is bound to go by what the law, as it stands, says. The court is not going to travel beyond what is said here. I heard the Minister of Revenue and Civil Expenditure to say that they are proposing some change in some clause, and the way that he has suggested means that the remedy that a man can have by way of an ordinary civil court will be barred immediately you provide that it will be penal for any man not to obey those orders. The penal clause itself will suggest that that order is final, and the penalty will be attached to it. So we must know how you are going to have this provision moulded, and what is the strength behind it, what sort of sanction you are going to provide behind it. Therefore, my suggestion is this. I do not think that anything is lost to the Government in any manner, except if there is something hidden or something *mala fide*. You can easily provide that this can be determined by a court of law. Why allow this big power in the hands of those very people whom, you say, you are not trusting? Why allow them the power to exercise the right of refusal of registration? Why have it both ways? You cannot blow hot and cold in the same breath. At one stage, you say that you do not want these people, they are dishonest, you are trying to plug all these loopholes; at another stage, you want to give these very people this power to refuse registration of transfer, to call anybody undesirable and throw him out; you allow the board to say something dirty about a man who wants the shares transferred and do all sorts of things. Why not allow him to open those proceedings? I say that there is a very strong case for such a course. You should agree that the man must have a right of appeal and he must be given the reasons why registration of transfer is refused. He must have the right of appeal...

Shri K. K. Basu: After the Central Government decides.

Shri U. M. Trivedi: I say, do away with the Central Government. It must go to the proper officer or a court with proper jurisdiction. This is a question of right.

Then I come to a small suggestion about clause 112(2). I suggest that in sub-clause (2) after the words 'sub-section (1)', we may add 'subject to the provisions of sub-section (3)'. As it now stands, it says:

"If default is made in complying with sub-section (1), the company and every officer of the company who is in default shall be punishable..."

I say that he should not be punished automatically, but he must be served with a notice requiring him to make good any default in complying with sub-section (1). So I want to add, 'subject to the provisions of sub-section (3)' after 'sub-section (1)', so that it reads:

"If default is made in complying with sub-section (1), subject to the provisions of sub-section (3), the company and every officer of the company..."

That will be in the fitness of things, read with the provisions of sub-section (3). This will help the company, if it is an honest company, to carry out the ordinary transactions in a proper manner and we shall not be called upon to punish a man without hearing him.

Shri M. S. Gurupadaswamy (Mysore) rose—

Mr. Deputy-Speaker: When a special forum for appeal is provided by statute, it is open to the court to have jurisdiction over the matter? Under clause 110, the appeal is to be made to the Central Government.

If nothing is said in regard to appeal, it is another matter. But when an appeal is prescribed to a particular agency, is it open to the court to have jurisdiction?

Shri S. S. More (Sholapur): There are certain powers under the Constitution for the courts to superintend or issue writs of *certiorari*, *mandamus*.....

Mr. Deputy-Speaker: Writ is a different matter.

Shri S. S. More: When a special procedure is provided, no party will be permitted to deviate from it, unless the special machinery is utilised.

Mr. Deputy-Speaker: I do not want to create any innovation. If Government want to avoid any reference to a court, it may be made clear. If on the other hand, the hon. Minister in charge feels that they may have recourse to a court, there is nothing preventing appeal to the court. But when a special procedure is provided for appeal to a particular agency, I doubt whether the appeal can lie to a body other than that. I am afraid there are certain cases which say that reference to a court of law is prohibited. If it is a question of substance in which the hon. Member feels that we are not going to allow the court to interfere in this matter and the Central Government must have the authority, there is no going behind it. On the other hand, if he feels that the court's jurisdiction ought not to be excluded, it is somewhat doubtful.

Shri C. D. Deshmukh: The court's jurisdiction today is of a particular kind. That does not cover all cases of refusal to register. As one hon. Member pointed out, it is a question of *mala fides*. The question of *mala fides* can always go to court. Below that or short of that, there was no remedy available to the party today. What we have provided is a summary kind of remedy for a matter which is not always a justiciable matter, if *mala fides* do not enter the transaction, because there are various other issues that may have to be taken into

consideration—but certainly not politics. Of course, it is open to hon. Members to fling mud at anything, about anybody's *bona fides*, so long as their *bona fides* are not suspected. But we do not play that game. We say, we are trying to deal with a particular problem to the best of our judgment. We find that today a party has no remedy. Therefore, we say, may be the company may not wish to make a justiciable issue of it, and yet it may have very good reasons, say, the shares have been cornered, somebody wants to oust someone else. It is a kind of game played in the business world, but not necessarily raising issue of moral turpitude. And yet from the point of view of the conduct of a particular enterprise, Government may feel that a change that will come about as a result of these transfers is a change which will not be desirable.—I am sorry I am making a speech which I should have made later, but I am trying to answer your point.—There are many other powers of a cognate nature which have been vested in Government. What is the meaning of saying we will approve the new managing agents, a new managing director, the composition of a new directorate? All these are powers vested in us. Hon. Members might say, why not transfer all these powers to the High Court? My answer is that these are not essentially justiciable matters; these are matters of judgment in ordinary everyday affairs of the market-place, and therefore, other considerations than the provisions of law have to be borne in mind. That is why we are entering into difficulties in regard to labour tribunals. Although those matters go before judges and so on, you find 100 judges give 100 different judgments, because there is no substantive law which governs this matter. We do not know what bonus is, we do not know what profit sharing is, we do not know what social justice is. All these vague matters have, therefore, to be dealt with on a different plane. That was

[Shri C. D. Deshmukh]

why we felt that in this matter the Central Government, who are not hampered by rules of evidence, rules of procedure and so on, might be able to do rough justice whereas the court may not be. And there is the other point, that it is not proved that the law's delays are less than the delays of the Central Government—I mean we have a greater capacity of cutting red-tape than the High Court has of abridging its procedure. They are bound by procedure; unless the law is changed, they are helpless. We can change our procedure as we go along, and I have given general assurances to the House that we shall see that delays are minimised. Therefore, I am hoping that most of these matters will be settled very quickly. Secondly, the very existence of these new powers in the hands of Government will make it almost unnecessary for them to exercise them. As far as I can foresee, in about 99.99 cases, the names would be registered. Because the party has to come, and if he does succeed in proving in an isolated case that there is every case for not registering it, that would be a matter in which no court could interfere—because I am excluding *mala fides*. If there is *mala fide*, and that may include even political *mala fide*—it is open to a party to go to the court and say, "I heard the Minister say 'I will see that that person who belongs to that party does not get the share'" —if he can prove it, it is open to the High Court to decide it.

1 P.M.

Mr. Deputy-Speaker: The hon. Minister therefore says that the present jurisdiction of the court is not curtailed. The present jurisdiction is in cases of *mala fide* and dishonesty, if it is proved. An additional remedy is provided now which was not in the previous Act. Therefore, far from abridging he has enlarged it.

Shri C. D. Deshmukh: Much enlarged.

Mr. Deputy-Speaker: And in favour of Government. Because, where an appeal lies to Government they are not governed technically and strictly by any rules of evidence as in a court of law, and they may do justice in a summary manner. Wherever even they are actuated by malice, dishonest intentions or by a partisan spirit, the jurisdiction of the court is not ousted.

Shri U. M. Trivedi: In regard to *mala fides* of Government being challenged I may inform my friend that all the courts including the Supreme Court have said that *mala fides* of Government is a thing most difficult to prove and is never at issue. It is taken for granted that whatever the Government has done is right.

Shri C. D. Deshmukh: It cannot be alleged and it is very difficult to prove.

Shri U. M. Trivedi: That is why I was suggesting that the remedy must be with the courts from the very beginning.

Mr. Deputy-Speaker: The hon. Minister says it is not purely judicial and there is something more as in the case of managing agents.

Shri U. M. Trivedi: So long as he is Finance Minister it is all right.

Mr. Deputy-Speaker: We hope all Finance Ministers will be equally good.

Shri M. S. Gurupadaswamy: This group of clauses deals with debentures, shares, transfers and other cognate matters. With regard to shares, the Bill provides for two kinds of shares, namely equity shares and preference shares.

Shri C. D. Deshmukh: May I know on which amendment the hon. Member is speaking?

Shri K. K. Basu: It is only a suggestion for action.

Shri M. S. Gurupadaswamy: I am speaking on clause 84. This clause provides for two kinds of shares: preference shares and ordinary shares. The one happy feature about this Bill is that it has completely eliminated the continuation of deferred shares. Shri C. C. Shah pointed out yesterday that the continuation of such shares has been the cause of much abuse on the part of the deferred shareholders. They are none else than the promoters or the founders of the companies. In companies where there is unusual and extraordinary accumulation of profit, the deferred shareholders always take the greater portion of the net profits, after providing of course for the dividends for the ordinary shareholders as well as the preference shareholders. Though the face value of the shares of the deferred shareholders was very small, say one rupee, normally in the past the profits they used to get used to be much more than the profits of an ordinary shareholder or any kind of shareholder. Now this has been eliminated. This way the Bill is a definite improvement upon the old Act. So it must be commended.

But I have to make one submission in this connection Shri Asoka Mehta while dealing with the question of shares asked: would it not be better to give sufficient power to Government to allow the issue of more kinds of shares if they are deemed necessary, instead of confining only two kinds namely equity shares and preference shares? Of course we do not want the continuation of the deferred shares, even though we want to give powers to Government to enlarge the kinds of shares. I am glad that the Finance Minister agreed with some of us that the transfer of shares is being done sometimes with a view to cornering a large number of shares. That is, shares are purchased and sold, they are acquired by a certain group of people or persons with a view to changing the complexion and charac-

ter of the company. In England the practice was that any shareholder could sell his share to anybody he pleased; blank transfers and sometimes colourable transfers to undesirable persons used to be allowed. Normally, it is true that a shareholder is the owner of the share; he enjoys all the rights over the share and can dispose of the share to anybody. That is a normal right. But this normal right has to be restrained, because certain practices have developed in India, particularly due to the activities of managing agents and managing directors or directors who corner the shares and exploit the shareholders with a view to capturing the company. So by mere selling or buying operations of shares it is quite possible that the complexion and character and the managerial structure of the company might be changed. Therefore, with a view to preventing such a monopolistic tendency, it would be better that restrictions are placed on the transfer of shares.

Shri K. K. Basu: How can you prevent monopoly under this?

Shri M. S. Gurupadaswamy: It could be. Because by refusing to register the shares of certain people it is possible to keep the complexion and character of the company intact.

Shri K. K. Basu: Usually the persons in the management develop the monopoly. Shri Tulsidas will have no chance of developing a monopoly in that organisation!

Shri C. D. Deshmukh: There are other Tulsidas who want to oust this Tulsidas!

Shri M. S. Gurupadaswamy: On the ground that there is already in existence in the company a sort of a monopoly holding of shares by a group of people or some persons, should we on that ground justify again that the same tendency should be repeated by another group coming and taking over? If there are normal transfers, there is no objection. Suppose a shareholder is in difficulty, he wants

[Shri M. S. Gurupadaswamy]

to sell away his shares and have money. There should be no objection to sell his shares. Normally the company should not come in the way of such transfers. But the Government should see that the transfers do not in any way change the complexion or the character of the company or, if they want to change it, it should go into desirable hands.

Some hon. Member was suggesting that the High Courts should be given powers in respect of appeals. I am inclined to agree with the Finance Minister in this matter that the administration of Company Law is a matter for Government. And I suggested on another occasion that instead of a governmental machinery it would be desirable to have a Central authority, an independent or autonomous Central authority for this purpose.

Pandit Thakur Das Bhargava (Gurgaon): May I point out to my hon. friend that under clause 154 of this Bill, it is the court which can rectify a register of members? The powers of the court have not been taken away. The final authority of the civil rights of the people rests with the courts alone. How does my friend say that the jurisdiction of the court should be ousted?

Shri M. S. Gurupadaswamy: I am not saying that it should be ousted. I am only saying that if there is a refusal of transfer by a company the parties, the transferor and the transferee should be given some chance of appeal to Government and that is the only thing provided. I think that it is right that the power should not be entrusted to the court. The administration of company law should remain with the Government. It is the Government's responsibility to see that the company's affairs are managed properly. So, I say the provision that the Joint Committee has made in this respect is completely reasonable and satisfactory.

In so far as delay is concerned, it all depends upon the administration

to impress upon us how far they will be able to cut down their red tape. I know various instances in which the officers dealing with company law and other matters have always waited for the orders of the Ministers. They do not act quickly and expeditiously; as a result there is a lot of delay and harassment to the parties. It would be better if the Minister takes care to see that red tape is cut short. I welcome his assurance in this matter.

The officer dealing with such important matters should act in a very responsible manner. But, unfortunately, today in India generally the officers behave as if they are the servants of the Ministers and not servants of the public. This has been the cause for the long delay, the red tape and all that. So, if the officers behave properly and think that they are not servants of the Ministers but servants of the public....

An Hon. Member: You want to sow seeds of disloyalty.

Shri M. S. Gurupadaswamy: I do not mean that there should be disloyalty to the Minister. I say that they should not always think that they are the servants of the Ministers, that is, that they should not always act according to the will of the Minister and not according to the rules and regulations provided under the law.

Shri C. D. Deshmukh: They should consider that they are Ministers?

Shri K. K. Basu: Sometimes they are.

Shri M. S. Gurupadaswamy: I do not want them to consider that they are servants in attendance to Ministers.

Shri C. D. Deshmukh: They are public servants and they are under the orders of the Minister. Do you want anything else?

Shri Bansal (Jhajjar-Rewari): On the other hand, the complaint is that the Government servants are too

bureaucratic and they do not listen to the advice of Government.

Shri M. S. Gurupadaswamy: Lastly, I must say something about the disproportionate voting rights and the time provided for their adjustment. It is rather too long. My friend, Mr. Gadgil suggested one year. The Bill has provided for three years and I would request the Minister to consider whether it will not be possible to reduce the disproportionate shares within one year or at least less than three years. I think it will be better to reduce the period from three years to two years or one year, as the case may be.

Shri K. K. Basu: There has been a long discussion on this group of clauses and I think most of the points which I wanted to say have been covered. I wanted to move some amendments, but unfortunately, because notice was not given in time, they have not appeared on the list today. We wanted the deletion of these shares which are income-tax free.

An Hon. Member: What is the number of the amendment?

Shri K. K. Basu: I do not know; we gave notice yesterday but, probably, as the notice is not sufficient we do not see them here.

Yesterday my friend Shri Sadhan Gupta emphasised why there should be no provision in law which will permit the issue of income-tax free shares. Today there may be different types of shareholders whose financial position and standards may be different. Let them issue dividends on the basis of the earnings they have. It is for the individual shareholder, according to his own ability, to pay income-tax.

There is an amendment which the Finance Minister has moved, for the deletion of Explanation II which deals with cumulative preference shares. But, I do not see any other provision either in the definition clause or anywhere else which defines what a cumu-

lative preference share is. We know it fully well because ever since the working of this company law in our country there have been judicial interpretations and there is the definition in English Company Law which we have been following. But, in view of the fact that our new Bill is a comprehensive one we should have said somewhere what is a cumulative preference share. It is open to issue cumulative preference shares, also. If you drop out that explanation, unless some definition is made somewhere it may not be possible to know what it is. In the new Bill we have put everything conceivable either in the body of the Bill or in the schedule. I would urge the Finance Minister to consider whether some such provision should not be made if the Finance Minister's amendment is accepted.

Then I come to the point that has been urged by my friend, Shri Gurupadaswamy. We have also moved an amendment to the effect that the period of three years should be reduced to one year for the adjustment of these shares with disproportionate rights etc. We are including in the new Bill provisions which will alter to a large extent the relationship *inter se* between the managing agent and the parent company or the parent company and the subsidiary companies and so on. Therefore, we consider that this three years' period will run counter to the provisions which we are incorporating in this Bill. We all desire that the body corporate should fall into line with the law that we are going to pass soon.

Regarding clause 89, it has also been dealt with by some of the previous speakers. Unfortunately the notice of an amendment which we gave yesterday was too late. Under the saving clause only section 80 is covered. What about the provisions regarding any right attaching to dividend capital or otherwise? We would like to emphasise that every kind of thing should fall in line with the provisions of this Bill, because under

[Shri K. K. Basu]

this Bill we want that there should be two types of shares mainly, the equity shares and the preference shares, and among the preference shares, they will be on a par and there will be no such differences. Under clause 89, in the case of existing companies they may have rights which are not in line with the provisions of clauses 86 and 87 that we are going to pass under this Bill. I would urge the hon. Finance Minister to consider not only the rights under clause 88, but all other rights also which should be made to fall in line with the provisions under discussion, which will be put soon on the statute of this country.

Regarding private companies, it is true that normally it is more or less family concern. But we have also seen that sometimes in private companies, after a certain stage, due to quarrels within the family troubles occur—the number of family members might not exceed 50. We have seen that when a section of the family members falls out with the other, the majority section controls and they tyrannise the other section. I know a very important company in Calcutta originally founded by three brothers and subsequently one branch of the brother had no male issue and it went to the daughter. The result was that the daughter's people were pushed out of the company. Therefore, even in the case of a private company, a provision should be included to the effect that if the Government is satisfied....

Shri C. D. Deshmukh: Which clause is he referring to?

application of a certain section of of holdings, which is basically con- of Government is satisfied, in the to the basic principles of the Bill case of a private company, on the of rights attached to particular type considered to be unjust and runs counter clause (b). There are certain classes **Shri K. K. Basu:** Clause 89, sub- the shareholders whoever they may

be, that such classes of rights are basically unjust and run counter to the basic principles of the Bill, then it should have a right to force upon the company to fall in line with this and amend the provisions of its articles of association accordingly. I fully agree that there should not be a general provision that all private companies should be on a par. As I have given an example, sometimes such quarrels occur. Therefore, it should be open to the Central Government, if it is satisfied, to call upon such private company to amend its articles so as to fall in line with clauses 86 and 87.

Shri Bansal: I have not been able to follow the hon. Member. How will the situation be improved by making such amendments in the articles, as suggested by him?

Shri K. K. Basu: I have not suggested any line.

Shri Bansal: The hon. Member has a particular instance in view. How will the minority shareholders, or the people who are looking after the interests of the daughters, be benefited by the kind of provision which the hon. Member has in mind?

Shri K. K. Basu: There are different types of shareholding, and they naturally have different rights. In the case of a private company, if the Government is satisfied that one class of shareholders is going to tyrannise or dominate over the other type of shareholders and that those rights run counter to the provisions which we are passing, then the Government will have the right to ask the particular company to amend its articles and fall in line with these provisions. Therefore, I do not say that all private companies should be put on the same par as public companies, but this right I would like to give to Government.

Regarding the earlier part of clause 86, I am not sure whether deletion will solve our problem. Some other

amendment should be put in. Unfortunately I was late. It is too wide a power—the rights attached to shares as to dividend, capital or otherwise—which many of us do not wish.

The most important provision is the provision in clause 110. Before that, one point has also been urged by my friend, Shri Sadhan Gupta, that the percentage of shareholding should be reduced from 10 to 5. There will not be any harm because the court will be there and it will judge the soundness of the argument that the five per cent shareholders are giving. If there is a *prima facie* case, the Court may issue an injunction that the variation that has been sought by the majority shareholders shall not have any effect. Our experience is that it is very difficult often to get hold of ten per cent shareholdings. In many cases, usually the ruling party, who holds majority shares, will be on one side and a very small minority section, who might not see eye to eye with the ruling party, will be on the other side, and surely it must have a right to come to the court.

Shri C. D. Deshmukh: Which clause the hon. Member is referring to?

Shri K. K. Basu: Clause 106, which says:

"If, in pursuance of any provision such as is referred to in section 105, the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than ten per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court."

This right applies only if the percentage is ten, and I want it to be

reduced to five, because knowing the position of the shareholders as they are today, we want to reduce it from ten to five.

Now I come to the most controversial clause so far, that is section 110. The Joint Committee also discussed this and I fully agree that it is much better to have some machinery set up by Government instead of a court. Apart from the delay in the court, it may not be possible always for the judge, in taking up such matters, to determine, apart from the *mala fides*, the economic effect of it. It is very difficult for the court to enter into such matters. Possibly they have to base their judgment *vis-a-vis* the facts that may be given by the applicant or on behalf of the company. Therefore, it is much better and more practicable if only the Central Government appoints such authority who will be in the know of the market position, apart from the Government's economic policies or their desire as to how the body corporate should work. It is much better to have that power given to the Central Government. But in view of doubts expressed by some of our friends here that Government may not always be right, I would only suggest, if it is possible,—unfortunately I have not tabled any amendment—that a provision should be made by which an appeal against the decision of the Government could lie with a court of law or competent jurisdiction. I do not agree with those friends that immediately they should go to a court of law. The expert machinery will be more competent to go into the matter than a court of law. If some such thing could be provided here or subsequently in this Bill, that is, appeal against the decision of the Government, then it will be better.

Shri Jhunjhunwala said that before they actually refuse, they should come to the Government, but he now says that in the case of such a decision, the other side should be given a hearing. If that is possible, well and good. If the administration of

[Shri K. K. Basu]

the Company Law could be decentralised to some extent, it may be easier so that a shareholder from Madras will not have to come to Delhi every time; it may somewhere near about.

Shri C. D. Deshmukh: This particular thing is likely to be decentralised because it is in a rare case where a particular view has to be taken of the passing of the control of the company and that is a matter which a Registrar or the Registrar-General is not likely to be able to handle.

Shri K. K. Basu: It may so happen. When there is a case of large-scale cornering which may involve a question of policy it is all right. But there may be cases where it may have just crossed the limit of private company; there may be a family jealousy or some other trouble and there it does not involve a very big question of change of control or policy. In those cases can this categorisation be made? A single shareholder having five or six shares have to come because their share has not been registered on the ground that the management do not like it. I would ask the Government to consider whether this categorisation can be made that a certain type of cases can be looked after by the Registrar-General because I understand that he will be quite a senior officer.

Shri C. D. Deshmukh: The point is that the small man is not likely to have such a complaint because registration is a matter of no moment in it; it is only a big man with a large block of shares who may have some grounds if his registration were refused by company for reasons of their own.

Shri K. K. Basu: That is a normal case. We have heard in Calcutta a case where it had just crossed the limit of the membership of 90 or 80 and there were some groups and they did not want any other groups to come. I fully agree with what the

Finance Minister said but I hope some decentralised power can be given in cases not involving change of policy. I would request the Finance Minister to consider this because I am not moving some of the amendments I had tabled.

Pandit Thakur Das Bhargava: So far as clause 110 is concerned, I want to make one or two observations. According to the articles of association every shareholder agrees or is deemed to agree with the rest of his shareholders that the directors have got absolute power to disallow the transfer but in the articles of association it is not provided as to what should be the grounds on which such transfers should be disallowed and usually it happens that no grounds are given and therefore the transferee comes to Court. The question arises: was it due to the *mala fides* of the administration that they have disallowed the transfer. The persons who want the transfer are in a dilemma; they cannot ordinarily succeed in any court also because it is very difficult to prove *mala fides*. We do not define the circumstances or reasons or on what occasions this power should be exercised. If you can say that this should not be done on account of certain reasons then it is all right. If, for instance, as my friend said, some undesirable person comes on, you will say that. Usually it is so. But what is the quality of that bad man? If that person has already purchased a large number of shares and if it is clear that he wants to take possession of the entire company, I can understand that. After all according to the original agreement, it is quite clear that the transferee has agreed that he will not be able to transfer the shares at his sweet will and power has been given to the directors. The power yet remains with the directors. In what circumstances and for what reasons should the power be exercised? Unless and until that is made clear the courts and the Cen-

tral Government will be in difficulty. With what allegations can he go to the court? He does not know why the transfer is not allowed. An attempt should have been made to put in the articles of association on what grounds the company could disallow the transfer of shares. For instance, I have got some shares and when I go to the company they say "disallowed". It is a good sale; consideration has passed and there is absolutely no reason why it should not be allowed to be transferred in the books of the company. I have purchased it in an open or private sale; my title is good; everything is good but only the rule comes against me. But the rule is there and I quite see the force of the law and I do not want the entire discretion to be taken away. But at the same time, I do want it may be defined under what circumstances and for what reasons, the power can be exercised because once it is defined, he can certainly come to the Central Government. If the reason is that this man is buying shares and cornering them and therefore the transfer may be disallowed, in a particular case it may not be true and he can go to the Central Government and say that this is not true or fair. Unless he knows the reason and the administration is forced to give reasons by some provision in the articles of association and you force them that the articles of association would be good only if they defined the reasons this difficulty will always be there and he will have no fair solution.

Mr. Deputy-Speaker: Are there any provisions in the Bill for making rules in connection with clause 110 and saying that the circumstances should be given.

Shri C. D. Deshmukh: When there is a representation in writing both parties are to be invited and I take it that representation will mean the particulars of the share that is to be transferred by each party and that will mean the reasons. There is distinction between defining reasons in the articles of association and giving

reasons when an occasion arises. So far as giving the reasons is concerned, I take it that it will come under sub-clause (5) before the Government.

Pandit Thakur Das Bhargava: I have not been able to make myself clear. Let us examine it step by step. The company should not be allowed to disallow a transfer except for good reasons, for instance cornering. There might be some other reasons also. It is not a good reason that I am a bad man. If a person wants to usurp or corner I can understand and you may not allow it. But it should not be at their sweet will, without assigning any reason. How am I to specify the reasons while applying to Government? I do not know on what grounds it has been disallowed unless I know them.

Shri C. D. Deshmukh: I am assuming in the course of the enquiry you will be told all the reasons that have been advanced by the other party.

Pandit Thakur Das Bhargava: Where is provision for an enquiry? Who is going to tell me the reasons?

Shri C. D. Deshmukh: That can be provided by the rules.

Shri C. C. Shah: When there is an appeal to the Central Government, the Central Government will issue notices to the company under sub-clause (5) asking the company to show reasons why they refused and then the man will be called upon to reply those reasons.

Pandit Thakur Das Bhargava: I was asking this. What is your objection to make a provision in the articles of association?

Shri C. D. Deshmukh: It becomes justiciable which is the very thing we want to avoid.

Pandit Thakur Das Bhargava: It is not. According to the procedure, I apply to the company for a transfer and then it will be disallowed. They do not give any reasons. You may say that they must give reasons so that I may be able to concentrate upon those reasons.

Shri C. D. Deshmukh: If this is the sort of cases which are likely to come, up, both the parties would know very well what the reasons are.

Pandit Thakur Das Bhargava: As a matter of fact, I may tell the hon. Finance Minister that very often we do not know what the reasons are: the only reason is perhaps jealousy, perhaps the animosity between a managing director and the person who applies. In such cases transfers are disallowed without any reason being assigned. My hon. friend says that the company would be asked why they have done so. But your provision says that both the parties will be asked to give reasons. Either you provide that after one party has made the complaint the other party will be asked to give the reasons, or straightway provide that reasons for such refusals should be given. There is not even a provision for an enquiry. There is no reason to think that after you receive a reply from the company you will allow the aggrieved party an opportunity to controvert it. I may come with a blank paper to you.

Shri C. D. Deshmukh: Is there any reason which would prevent me from doing that?

Pandit Thakur Das Bhargava: What is the purpose of this law then? You ask me negatively, "where is the occasion for believing that you will not exercise those powers." After all this is a positive matter. If a person comes to you with a blank paper and says: "My application for transfer of shares has been disallowed" will you tell him the reasons?

Shri C. D. Deshmukh: Within the four corners of this section, one could make rules in order to elaborate that procedure: that is not barred by the substantive portion of the sub-clause.

Pandit Thakur Das Bhargava: That means at the first stage you do not want to provide. Why do you not provide for it but give arbitrary powers to the company. Secondly, you make a provision that you would enquire into the matter.

Mr. Deputy-Speaker: Even at the first stage rules can provide for it.

Shri C. D. Deshmukh: My answer is a general one: why do you want to provide something here which can be provided in the rules. One has to make a distinction between the statute and the rules.

Mr. Deputy-Speaker: Is there any provision for making such a rule?

Shri C. D. Deshmukh: There is a general section—"and for carrying out the purposes of this Act."

Pandit Thakur Das Bhargava: There is a general provision and principle that Government will not do wrong. Therefore, I am asking...

Mr. Deputy-Speaker: In any case after the statement of the hon. the Finance Minister here....

Shri C. D. Deshmukh: We are bound to take notice of every reasonable suggestion made by an hon. Member. It is that which helps us to make rules, apart from the specific important matters for which rules have to be made.

Pandit Thakur Das Bhargava: Supposing Government disallows the transfer. Then that man goes to court. Even then he does not know why Government has disallowed the transfer. He does not know on what grounds Government have approved the decision of the company and disallowed the transfer. In the court he has to prove *mala fides*. How can he show *mala fides* unless he knows what the grounds are? Unless and until you change the basic thing and you say that on these grounds alone a company can disallow, unless you do that, no justice will be done and there will always be difficulty; there will always be some conflict between the two parties. The aggrieved person will naturally feel that an arbitrary rule is coming in his way.

It may be difficult to define those conditions, but an attempt should be made to define circumstances in which a disallowance can be made. I would, therefore, humbly request

the hon. the Finance Minister to kindly consider the point and see if he can do anything to put something in the articles of association, so that these arbitrary powers may not be left in the hands of certain persons.

Shri C. D. Deshmukh: I shall deal with these clauses in the order in which they occur. As regards clause 84, two or three points have been raised.

Mr. Deputy-Speaker: Does Dr. Krishnaswami want to speak? How long will he take?

Dr. Krishnaswami (Kancheepuram): About seven or eight minutes.

Mr. Deputy-Speaker: Then, I shall give him a chance.

Dr. Krishnaswami: I should like to deal with only five clauses: clauses 85 to 89. I have to make a few observations on these clauses and I hope the Finance Minister will consider them.

First of all we have made clear in this Bill that we are not going to give preference shareholders anything else except a few limited rights. Now, preference shares are generally "charges" on capital rather than "equities" and it is considered not proper to give them equal voting rights with ordinary shareholders. Mr. Morarka's amendment, however, deals with preference shareholders' rights—rights which had already accrued and which he wants to do away with altogether. On this matter I should like to place before the Finance Minister two considerations which he may take into account. This clause can be made a permissive clause. There have been instances where preference shares were issued after the ordinary shares were issued and the managing agents have cornered these shares and achieved control. On the other hand, there have been cases where preference shares have been issued after ordinary shares and trustees have invested in these preference shares, because they naturally felt that they were as safe as

debentures. It would be most unfair if we were to abolish these rights, which have accrued.

Recent surveys which have been made of the holdings of preference shares by trustees have revealed the fact that they hold quite a sizable proportion of such securities. Therefore, in the present circumstances if we did away with their rights this would seriously affect the trustees and others who have invested in these on the basis of safe investment.

Shri C. D. Deshmukh: Does the hon. Member mean that disproportionate voting rights should be preserved?

Dr. Krishnaswami: I do feel that they ought to be preserved in certain cases.

Shri C. C. Shah: I think he is referring to sub-clause (a) of clause 89: he is opposing Mr. Morarka's amendment.

Dr. Krishnaswami: I am dealing with disproportionate voting rights also.

I feel that we should have disproportionate voting rights in the circumstances ruling in our country. I know that the basic principle is that those who have equal financial stake should have equal voting rights. As a principle it is excellent. But there are reasons for suggesting that we should have these disproportionate voting rights. My hon. friend Mr. Bansal has moved an amendment which on technical grounds has not been admitted. The amendment to clause 85 reads as follows:

"Provided that Government shall have power to authorise the issue of any other kind of share capital in special circumstances carrying special voting rights."

Now, I should like to point out that Government are going to promote many public companies. Supposing, for instance, a group of foreign investors invest in a state enterprise a large amount of capital. Would, it not be advisable on grounds of national interest for the Government to have shares which carried dispropor-

[Dr. Krishnaswami]

tionate voting rights so that they might be able to exercise proper control over the company? It has to be taken into account. Of course, the Finance Minister might turn round and suggest: "We can exempt public companies altogether from the purview of the provisions of the company law and thus be in a position to issue shares with disproportionate rights." This I do not think would be a happy state of affairs and when that clause pertaining to exemption of nationalised companies comes up I shall have my say.

But apart from this consideration I should like to point out that disproportionate voting rights, while in certain cases have led to abuses, have in many instances led to capital development.

Shri C. C. Shah: May I point out to the hon. Member that under clause 87 there was such a power given to Government to exempt certain companies from the operation of that clause, but the Joint Committee amended that power. If he will see paragraph 42 of the Joint Committee's report, he will find that the joint Committee has said that there should be an absolute prohibition and that no power should be reserved to the Government.

Shri U. M. Trivedi: If it was there, it would have offended against the Constitution. That is why it has been taken out.

Dr. Krishnaswami: It would not have offended against the Constitution. I think the Joint Committee acted unwisely as they have done in several instances in this Bill in having omitted this salutary provision which was part of the original Bill.

What I would like to point out is that there are economic circumstances which justify these disproportionate voting rights being given. I think while in certain cases there have been abuses in many other instances the small man, the man who is technically efficient but with relatively

small capital and who has got disproportionate voting rights, is in a better bargaining position relatively to others who are merely financiers. What would happen is—and this fact has to be taken into account—that certain companies which have become prosperous might become the happy hunting ground for speculators and financiers who can in future purchase a sizeable proportion of the shares which will be on an equal basis with those held by the technical experts. In other words, it would be easy for the monopolists to corner shares and capture enterprises. Supposing, for instance, there is an efficient business. Let it be in any area such as Maharashtra or Karnataka or Tamil Nad. The man in charge or men in charge have certain voting rights and whether they are managing agents or a director-controlled company,—we need not go into that aspect for the moment—they are able, by a process of judicious management, to run the company well and the shares are quoted at a high price; in future there will be no check against outsiders coming in and buying shares of such companies to obtain their control due to abolition of disproportionate voting rights. If we make the voting rights equal on the principle of 'equal stake, equal voting rights' what would happen as that there would be a cornering of shares and some of these managements which have built up their companies through labour and industry would find them slipping out of their hands. I do not think it is the purpose, either of the Joint Committee or of the Finance Minister to promote such cornering. In fact, the trend of discussions in this House has been that we should, as far as possible, prevent an increase in monopoly, but by the abolition of disproportionate voting rights, we are likely to strengthen the hands of the monopolists in many cases. This would happen particularly in those areas and in those newer industries where a great deal of technical skill and industry have been spent in building them

Only about two days ago, we discussed possibilities of the Press being controlled by those who have knowledge of the craft. I can well imagine the constitution of companies for starting newspapers in which the editors and those who are craftsmen are given disproportionate voting rights. This would by itself act as salutary check on the financiers. Hereafter, as a result of the abolition of disproportionate voting rights, such companies cannot be found. So far as Government are concerned, the only way in which they can get out of this awkward situation in their dealings with foreign businessmen is to have the State sponsored companies exempted from the provisions of company law, but this I do not think, is a salutary method. I wish the Finance Minister would reconsider these things and have disproportionate voting rights in certain cases.

Mr. Deputy-Speaker: What will happen if the contrary is true?

Dr. Krishnaswami: That is why I am suggesting let us have a permissive clause. Let there be discretionary authority given to the Government. If we accept the principle of unequal voting rights in certain specified cases and if the Government are given the discretion to examine, I have no objection.

Mr. Deputy-Speaker: It is only a saving clause.

Shri Bansal: My amendment is only permissive.

Dr. Krishnaswami: Yes, the amendment is only permissive. Shri Bansal's amendment reads as follows:

"Provided that Government shall have power to authorise the issue of any other kind of share capital in special circumstances."

So, in special circumstances, Government can have the power to authorise the issue of such capital. The circumstances in which they can use their discretion can be put in the

rule-making powers. It would be quite useful.

Mr. Deputy-Speaker: That is for the future also?

Dr. Krishnaswami: Yes, also for the future. I should wish this to be considered because it would be useful from many points of view.

Shri C. D. Deshmukh: One difficulty in dealing with this discussion has been that in many cases hon. Members have expressed wishes or made suggestions which have not taken a specific form or, if they have taken that form, those amendments have, for one reason or another, either not been admitted or not been moved. Now, at this stage, even if one were inclined to think that there was something in the arguments, it is almost impossible to suggest a suitable form of words....

Mr. Deputy-Speaker: Does the hon. Minister mean that with respect to any notice of amendments that might have been given, Government is willing to accept those amendments and that there is a technical difficulty?

Shri C. D. Deshmukh: Now, that position does not hold today, because those amendments which were not admitted yesterday have been admitted today, but I refer particularly to wishes or suggestions made by hon. Members which have not taken the form of amendment at all. It really seems to me to be fruitless at this stage even to consider all those matters.

Pandit Thakur Das Bhargava: With due deference, I would very humbly point out that this will not be the right approach. In this House we have been, even at the nick of the moment, given amendments and they have been accepted. Even suggestions from the Chair without any specific amendment have been given effect to. We are all here to see that consideration is given to everything.

Mr. Deputy-Speaker: All that the hon. Minister says is that even now there is no amendment.

Pandit Thakur Das Bhargava: He can draft an amendment if he is willing.

Shri C. D. Deshmukh: That is putting too much of a burden on the Minister in charge. I can say a small word here and there, and it might be possible, but I should imagine that is an untidy procedure. I have known many instances even in my short parliamentary experience of bad drafts having been accepted on the spur of the moment and having formed part of the laws passed by us. So I think generally that unless there is some kind of amendment it is not easy to deal with those suggestions. But so far as the particular suggestions made by the hon. Member, Pandit Thakur Das Bhargava, are concerned, it is not even in that form. I do not know how to include that on the spur of the moment here, in this particular sub-clause.

Pandit Thakur Das Bhargava: If the hon. Minister agrees, we can certainly adjourn discussion on that particular issue if he is willing to consider some amendment.

Shri C. D. Deshmukh: I do not consider it as important as all that. But as a matter of procedure, I think it can be provided for by rules. I have assured him that I shall take note of what he has said when the rules are framed. It is a very simple matter to say that certain representations have been received.

Pandit Thakur Das Bhargava: I do not refer to my amendment alone.

Shri C. D. Deshmukh: I am speaking with reference to his amendment.

Pandit Thakur Das Bhargava: If it is acceptable to him, he has the means to adopt it.

Shri C. D. Deshmukh: I have made an exception.

Mr. Deputy-Speaker: The hon. Minister says that he will provide for them in the rules.

Shri C. D. Deshmukh: In regard to that particular amendment, I see no

difficulty. Even if there is a suggestion and even if we cannot do very much about it except by adjourning, I say that there is a way out, and one could consider it when rules are framed. That is the general observation I would like to make.

In regard to clause 84, there is some confusion, I think, with respect to the tax-free dividends. The law by itself does not permit or does not prohibit the issue of tax-free dividends in regard to preference shares or any other form of shares. It only takes note of the fact that certain dividends may be tax-free. Now, whether that is tax-free or not, the question of its being tax-free arises because we say it is a fixed dividend. In trying to define a preference share, we say 'fixed dividend'. Now, where a dividend is tax-free, the gross dividend really is not a fixed quantity and it seems to me that for that purpose, the law has said that whether it is taxed or tax-free, it is only to define or to enlarge the meaning of fixed dividend. Therefore, it is not a substantive clause.

Secondly, I think the hon. Member Shri Sadhan Gupta—I do not know all their constituencies, but when I once painstakingly use the constituencies, other hon. Members complain that they could not identify the Members.....

Shri C. C. Shah: It is not possible here.

Mr. Deputy-Speaker: There are as many as 500 constituencies.

Shri C. D. Deshmukh: Shri Sadhan Gupta has said that this was unfair on the small shareholder, because apparently, somehow he thought he had to bear the burden of the tax which would have to be paid by the bigger shareholder. I believe that he is not familiar with the way in which this is calculated. The sum and substance of the situation is that the company pays at a certain rate—four annas—and then note is taken

of the fact that the pre-payment has been made. Then, when a particular shareholder's income-tax is assessed, when the probable income-tax is assessed, note is taken of the fact that a part of it has been pre-paid by the company. It has no other meaning. Indeed, in some cases, where a man is entitled to a refund, he obtains a refund. Therefore, there is nothing of an enormity in this matter. In other words, really the term "tax free" is somewhat misleading. They are tax free in other sense under the privilege given by our law in regard to the new companies when we say that for the first five years if the dividend does not exceed 6 per cent, then it will be tax-free. That is a different kind of tax-free exemption. So far as these dividends are concerned, I have got a long note on it, but because I think most hon. Members have followed the point, it is not necessary to enlarge it. There is nothing in this particular point that need alarm hon. Member.

2 P.M.

I now come to clause 85. That was in connection with the question of giving the power to Government to have preference shares with either disproportionate rights or any other rights not given here. Much may be said on both sides; whether it would be advantageous at all depends upon what sort of situation one conjures for oneself. If one thinks of the good and virtuous man who has nursed and fostered an industry, he feels very sorry for him; the law ought to enable him to continue his hold on the company for the good of the company. But there is no guarantee that that particular virtuous man will keep his hold for ever; after sometime when he finds that the premium on the shares is very high, he may be inclined to sell it to someone who he thinks is more capable than himself, in which case the whole scene will change and then we shall be faced with all kinds of abuses which we have been trying to remove. Therefore, I think that the Joint Committee has done

rightly in taking away this power, because, as I said, the incidence of malpractices that has come to our notice has been too large for us to connive at it and in the beginning at any rate, it is best to be severe. If in the light of experience, we find that the number of virtuous men in the business world is increasing very fast, as I hope it would be, then it must be possible for us....

Shri K. K. Basu: It is a possibility.

Shri C. D. Deshmukh: Yes, it is a possibility; the whole law is based on that optimism.

Shri K. K. Basu: The definition has been changed.

Shri C. D. Deshmukh:... it may be possible for us to consider the matter and to see if, with the necessary safeguards, we could restore some sort of a clause like the one that has been removed. So much about clause 85 and the amendments of Shri Krishnaswami and Shri Bansal.

Then I come to clause 87. Here again, it is urged that so far as the director-managed companies are concerned....

Shri Tulsidas (Mehsana—West): That is on clause 89.

Shri C. D. Deshmukh: That also arises out of these disproportionate rights and I may deal with it as well now. The idea is that director-managed companies are somehow different from those managed by managing agents. It is true, as I said the other day, that one need not take it as axiomatic that all abuses that have come to notice are due to the managing agents. In other words, one does not know what would have happened had all these companies been managed by directors for a number of years so far as one's experience goes, it is the men who are acting on these things that matter. That is to say, by changing the system, you are not going to change the men who are playing a predominant role in the world of business. It may be

[Shri C. D. Deshmukh]
 that the managing agent of today may be the tycoon, the forceful director of tomorrow. Therefore, one is somewhat conservative in trying to give to director-managed companies powers which we are not prepared to give to managing agents. As you know, there is a saying in Sanskrit :

प्रावतेद्बुद्बुद तरणामयान्त्रि कारान् ।
 अत्रे यया सलिलमेव तु समग्रम् ॥

"It appears in the form of a vortex or bubble or wave, but it is water all the time."

I am not quite sure if in this business world also we are not dealing with water all the time, whether it is a vortex, or whether it is a bubble or whether it is a wave. Here also, a certain amount of caution is required before we relax these conditions for another system of management. I think the hon. Member who has made this suggestion believes in it, that we are putting too many restrictions on good people, because some bad people have mismanaged some companies. Although I have a great deal of sympathy for him, nevertheless, I feel fearful of accepting the kind of amendments that he has proposed.

Shri A. K. Gopalan (Cannanore): But no active assistance.

Shri C. D. Deshmukh: Yes, there is a great deal of sympathy but no active assistance.

Shri Bansal: At the moment.

Shri C. D. Deshmukh: Yes, only at the moment. I am always prepared to look at these things in the light of experience.

Shri Tulsidas: Am I to take it that thereby the hon. Minister feels that in future it would be better to have director-managed companies, if the system of managing agency is not encouraged?

Shri C. D. Deshmukh: As I said the other day, it is not possible to predict the choices of people under the uncertainties which hang over them. In five years' time, I do not

know what the composition of the industrial world will be. It may be that many managing agents may liquidate themselves; many will turn themselves into something else. I am quite certain that most of the new companies which will be started will be director-managed companies. As I said the other day, I know of a company which was floated recently very successfully and that has got a managing Agent. They certainly have faith in themselves and in the future."

Shri Tulsidas: I have one other point. As you know, the banking and insurance companies were formerly under the managing agency system; they have reverted back by force to the non-managing agency system and there has not been so much progress. There is a certain amount of evidence for this.

Shri C. D. Deshmukh: In no other country in the world is banking so rigorously regulated as in this country. In other words, there is nothing corresponding to the Reserve Bank of India in other countries. The Act concerning the banking companies was passed in 1949 and since then for the last six years and even before that, banking has been very rigorously controlled. There again, we cannot get experience unless we exercise most of these powers that have been vested in us for a number of years. Before that I cannot make a statement which would either confirm or refute the statement that the hon. Member has made. As regards insurance companies, I am not quite sure whether they have given a good account of themselves; so I would not make any statement in this regard. Even after the law has been passed, I am not satisfied that the last amendment of the law has been successful from that point of view. We are trying to deal with many abuses in the insurance world.....

Mr. Deputy-Speaker: There is a Board and a Controller. But he is a

young man and there is no such institution like the Reserve Bank to which the Controller is responsible.

Shri C. D. Deshmukh: That may be the reason. He is young in years. Then I come to clause 88.

Shri Tulsidas: My amendment to clause 87 has not been replied to.

Shri C. D. Deshmukh: So far as clause 87 is concerned, my reading of the situation is that the moment you issue a share which has other rights, which carry voting rights which are disproportionate to rights attaching to ordinary shares, any kind of voting rights or any kind of other advantages as to dividend, capital or otherwise, then it becomes a preference share. In other words, we have defined preference share in such a way that any share of that kind will become a preference share as soon as it is issued, and then when it becomes a preference share, under clause 86 it will have only restricted voting rights. Now, what I understand the hon. Member wants is that it should be possible to issue shares which are not preference shares in the ordinary parlance and therefore which should not be regarded as preference shares. They should be regarded as a species of equity shares and therefore it should not come within the mischief of clause 86 in regard to the limitation of voting rights. For that matter, what was wanted was not this amendment to clause 87 but a different definition of preference shares. Now, that amendment he has not given, and that illustrates the difficulty to which I referred in the beginning that hon. Members sometimes have intentions or interpretations which are not portrayed or reflected in the amendments of which they have given notice, and it is not possible at the last minute to think of some suitable form, because at least the Members of the Joint Committee will realise that these clauses took us days before we could settle on the definition of preference shares and determine on voting rights. And that is

the reason why I am sorry I cannot accept the amendment that is suggested in regard to clause 87.

Now I come to clause 88. In regard to clause 88, the only point made was that three years is too long a period.

Mr. Deputy-Speaker: Reduced to one year.

Shri C. D. Deshmukh: Now there is a definite amendment, No. 453 by Shri Gadgil. This period of three years was put in the Bill when it was framed originally. Already a couple of years, I think, have passed and the holders of these shares have therefore, in effect, exercised the rights which they would have exercised had the law been passed then. In other words, two years out of the three have already passed and therefore they have had the advantage of exercising these rights, and I am therefore inclined to accept the amendment of Shri Gadgil that only one more year would be sufficient. I think it is well known that most of these shares are really deferred shares which have been kept by people specifically for the purpose of control, and it is also common knowledge that this control has not always been exercised in a beneficent kind of way. Therefore, I think one year is a sufficiently long rope for these voting rights, and that they should go after one year from the commencement of the Act.

Shri C. C. Shah: I may point out that there will have to be a corresponding amendment to line 8 in sub-clause (3) in page 51.

Shri K. K. Basu: It has to be done.

Shri C. D. Deshmukh: That is right. That will be a purely consequential, almost drafting change.

Mr. Deputy-Speaker: Wherever "three" occurs, substitute "one" in that clause.

Shri C. D. Deshmukh: Then there is another amendment to sub-clause (2) of clause 88—amendment No. 394. I accept the substance of this amend-

[Shri C. D. Deshmukh]

ment in regard to the appointment of directors. That is to say, you do not allow them to exercise these rights in regard to managing agents and so on, but they might come by the backdoor, so to speak by the appointment of directors, and if one has to be logical, then I think one must agree that in the case of the appointment of directors, also, they will not exercise these disproportionate voting rights. Now it is a matter of only one year, it is not a matter of three years, but nevertheless I think they should not. But so far as the form of the amendment is concerned, I would suggest this:

Page 50, line 43—

before the words "of a managing agent", insert the words "of a director or".

Shri K. K. Basu: Nomination or appointment.

Shri C. D. Deshmukh: I think the word "appointment" will cover that.

The Minister of Legal Affairs (Shri Pataskar): "Appointment of director" is the correct thing.

Shri C. D. Deshmukh: We have got the green light from the Minister.

Shri K. K. Basu: He is more concerned with affairs.

Shri Pataskar: It is all legal.

Shri C. D. Deshmukh: Again:

Page 50, line 45 —

before the words "its managing agent" insert the words "a managing or whole-time director thereof or".

It effects the same change. If the House will be pleased to accept this amendment in this amended form, I accept it.

Then we come to this important issue of what one should do in regard to existing preference shares apart from this question of disproportionate voting right. I should like to give a little more factual information here.

There are preference shares which seem to partake of the character of both equity shares and preference shares as we know them to mean in common parlance. Here is one company. The first preference shares are entitled to a cumulative preference dividend at the rate of 4½ per cent. per annum free of tax. The B shares are entitled to 4½ per cent. per annum free of tax after payment of the dividend to first preference shares. The participating preference shares are entitled to a fixed cumulative dividend at the rate of 5 per cent. per annum free of tax after payment of the above dividends, and to a further share of profit equal to 50 per cent. of the profit remaining and available for dividend, after payment of dividends to preference shares as indicated above, the ordinary shares being entitled to a share of the profit equal to the balance of the 50 per cent. That is one case.

Then, in another case the preference shares are also entitled to participate with ordinary and deferred shares in dividend up to 10 per cent. when declared in any year but shall not have any right to further profits.

Then, in the third case, the preferred ordinary shares shall carry the right to receive out of the profits available for dividend in each year a fixed preferential dividend for such year at the rate of 5 per cent. per annum and also the right to participate in the surplus profits available for dividend in such year rateably with the ordinary shares in proportion to the capital paid-up on such shares whether preferred ordinary or ordinary. There are many cases, and I have called about four here. The last one is the case of preference shares which are entitled to a fixed cumulative tax-free dividend at 6 per cent. per annum, and also to a right to an extra non-cumulative dividend of 2 per cent. per annum on such paid-up capital out of the surplus profits, after paying dividend

at 7 per cent. on the ordinary shares. So, one does not know which is the preference share, and which is the ordinary equity share. There is one more example. And that is that preference shares are entitled to a fixed cumulative preferential dividend of 5 per cent. per annum, and after the ordinary shares have been provided with a similar dividend, to participate in a further dividend of one per cent. per annum rateably with ordinary shares up to a maximum of 10 per cent.

So, we do not really know what is the distribution of these kinds of shares, preference and equity as we understood in the old days, or preference and equity as they would be defined now. And it may be that in some companies the important shares are really the preference shares. Therefore, to say now that the company, so far as the old companies are concerned is owned by the equity shareholders and not by the preference shareholders may not be correct. In the second place, as I said, one does not know who is who, who is a preference shareholder and who is an equity shareholder. That is the principal reason why we thought that we should not grope in this dark in regard to these 30,000 companies, until we have a very clear statistical picture, and even then until we can analyse the implications of it, we should not be justified in interfering with existing rights of voting except disproportionate voting rights which, we are convinced, are an abuse. Now, therefore what is the criterion? The criterion is: After accepting the principle, has one come across cases where abuse is rampant? We know that so far as disproportionate shares are concerned, abuse was rampant, and therefore we said, no matter what the rights of parties might have been in the past, we should not have disproportionate shares. And indeed the Joint Committee went so far as to say, we shall not give power even to the Central Government to make any exemption in regard to this particular

matter, because we feel very strongly. Now, I have respect for that point of view, and I have accepted it.

So far as the other rights are concerned, I do not clearly see the justification for taking away their right to speak on other matters if they have equal rights, and not only when their dividends and other things are in jeopardy. In the light of that, what Shri Morarka said in his very able exposition of the case is really beside the point. He has quoted Palmer, Gower, Levy and Ballantine. All these worthy gentlemen only prove the principle which we have accepted, that in the case of preference shares generally one would find that they are fixed creditors, so to speak. After 50 years of conflicting rules in courts, one seemed to have come to the conclusion that they are fixed creditors, and therefore, they should not have votes except when their particular interests are in jeopardy. Then, those conditions are prescribed in clause 87 or whatever it is. But that principle we have also accepted. We say that so far as preference shares in future are concerned, that shall be the case. Now, it does not involve any injustice to anybody, because people will be putting their money into these ventures with their eyes open. But that is no reason why we should interfere with the somewhat inquiet state of rights existing as between preference shareholders and equity shareholders. There is one very important difference between the state of affairs there in the countries to which these rulings relate, and our country. Palmer, Gower, Levy and Ballantine are speaking of a state of affairs where the law has not interfered in the matter. What they are tracing is the historical growth of the incidence of voting rights as between preference shares and equity shares. What they say in effect is that in the past, originally, it was customary to give voting rights in the same way to the preference shareholders as to equity shareholders. Then, as traditions developed, and rulings came from the courts, it was realised that they were really

[Shri C. D. Deshmukh]

more in the nature of fixed creditors, and therefore, they should not have those voting rights, because a greater degree of freedom should be left to the equity shareholders, who so to speak had to pay the hazards of the situation to make decisions. As I said, that is a historical growth, but one must remember that in these countries, all these matters are ordered by the provisions of the articles. In other words, if the articles say that the voting will be this way, then it will be this way. Therefore, you will find in an article belonging to 1910, there is one kind of arrangement; in another article belonging to the year 1950, there will be another arrangement. But the law has not said that the arrangement which existed according to the articles in 1910 shall be changed so as to bring it into line with those in 1950: whereas, what is suggested here, when we make a new law and when we accept that principle which shall affect all the existing powers of the preference shareholders, is that that seems without sufficient justification. Therefore, I am unable to accept either Shri Morarka's or any other arguments or amendments in this particular sense. And I think that the scheme which has been adopted by the Joint Committee is the most equitable in the circumstances. That is as regards clause 89.

Then, there was a small point about the definition of 'cumulative' and so on. As I said while moving my amendments, we cannot really find a very satisfactory definition. Our legal advisers say that all these definitions are not really satisfactory; and perhaps they are unnecessary, and I fear that we shall have to leave the thing as it is. I enquired whether a definition of 'cumulative preference shares' had been attempted in any other law, either USA or UK and so on. I have not verified it, but I have been told that no such definition occurs. If so, I think, like the 'camel' we better leave the 'cumulative preference shares' undefined. When we

see the animal, we can at once recognise it, but is very difficult to put a definition of a camel into a statute.

I come next to clause 92. There is the question of whether 'may' should be 'shall' and so on. But that is not the only issue. I thought at first that the issue raised was purely a matter of drafting as to whether 'may' shall be construed as 'shall'. But what Shri Sadhan Gupta wants is that the whole of the phrase 'if so authorised by its articles' shall be omitted. In other words, he thinks that the moment a man pays more, then he should be entitled to a larger dividend. And there is history to this matter. In the old days, on every share the same dividend was paid, no matter what a man paid; in other words, it was in the opposite sense of what has been advocated by Shri Sadhan Gupta. For a long time, that was regarded as the natural thing to do. Then, the English law came to adopt this arrangement, which we have taken from them, namely that only if so authorised by the articles they should be paid, otherwise they need not be paid. That is section 59 (3) of the English Act. And there is a possibility that this thing might be misused. People might deliberately put some more money in, and ask the founders and others to provide for it in the articles, and then they might get some kind of advantage. After all, as Shri C. C. Shah has pointed out, if the companies did not really ask for the extra amount, then, only if there is a previous agreement they need be paid; otherwise, if it is made available by the shareholders of their own accord, that is no reason by itself why they should get additional dividend. I think it would be best to leave the matter as it is. Therefore, I am unable to accept amendment No. 448.

Shri K. K. Basu: That has not been moved, because you did not waive notice.

Shri C. D. Deshmukh: Yes, I took objection. I take a note of it. I forgot

that it has not been accepted even in today's paper.

Shri K. K. Basu: It is not in the list of amendments moved.

Shri T. B. Vittal Rao: It is already 2-30 P.M.

Shri C. D. Deshmukh: So, one need not take notice of what he has said.

Mr. Deputy-Speaker: How long is the hon. Minister likely to take?

Shri C. D. Deshmukh: I have dealt with most of the points except clause 110. In regard to clause 110 I think I have already dealt with the points raised by Shri U. M. Trivedi and my point of view has been supported by some Members including Shri K. K. Basu. I do not really think that the arrangement suggested by Shri Jhunjhunwala will serve any purpose. It is obvious that he feels very strongly about it and if his amendment is not accepted then one would be inclined to say: "Oh! the pity of it." But, I have a good reason why I am not able to accept it and that is that a period of two months is required for the company to make up its mind and some period will be required for Government to make up its mind. Since these two parties will be involved in this decision even under his scheme the company is bound to take a little time before it decides whether it will in accordance with his policy accept the transfer or not. When it goes to Government, then Government also will take a little time. Therefore, I do not think it is going to save time and it might only introduce this complication that Government would have to act *ex-parte*, in the first instance; because, when a company goes to it and says: "We feel, in this case the transfer should be refused" it will always have the good reason that it is a bad man and that is all the evidence that the Government will have before it. Therefore, it seems to me that nothing is to be gained by accepting his amendment and we shall try and secure the point by having proper rules and perfecting the procedure 261 L.S.D.

in this matter, that we give as quick a decision as possible, leaving only the question of *mala fides* which would be a very rare case to be decided by the courts.

Sir, I think I have covered most of the important points. There is only one small amendment of Shri Tulsidas which I am inclined to accept and that is amendment number 188 to clause 139. I think it is right that when the registrar acts under 138 instead of clause 137 the company would not know anything about it because no intimation has been received. It is only in clause 137 that the company will say that satisfaction has been given; but where a memorandum of satisfaction has been recorded under clause 138 the company may be in entire ignorance of it. Therefore, there is no question of "if so required" and I think he is right in saying that these words should not be there and it should be an absolute duty cast on the registrar to give a copy. Therefore, I have great pleasure in accepting his amendment number 188.

I have dealt with most of the points.

Mr. Deputy-Speaker: Now, I will put the clauses and the amendments to the vote of the House. There are no amendments to clauses 81, 82 and 83.

The question is:

"That clauses 81 to 83 stand part of the Bill."

The motion was adopted.

Clauses 81 to 83 were added to the Bill.

Mr. Deputy-Speaker: The question is:

Page 48, sub-clause (1) line 24 and lines 29 and 30—

in paragraph (b) after the words "winding up", in both the places where they occur insert the words "or repayment of capital".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 84, as amended, stand part of the Bill."

The motion was adopted.

Clause 84 as amended, was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 85, stand part of the Bill."

The motion was adopted.

Clause 85, was added to the Bill.

Mr. Deputy-Speaker: The question is:

Page 49—

In lines 13 and 14, for the words "Sections 87 and 88" substitute the words "Section 88".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 49, line 28—

In the Explanation to sub-clause (2) (a), before the word "reduction" insert the words "repayment or"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 49-50—

for the existing Explanation 1 to sub-clause 2 (b), substitute the following:

"Explanation.—For the purposes of this clause, dividend shall be deemed to be due on preference shares in respect of any period whether a dividend has been declared by the company on such shares for such period or not—

(a) on the last day specified for the payment of such dividend for such period, in the articles or other instrument executed by the company in that behalf; or

(b) in case no day is so specified, on the day immediately following such period."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 50, lines 4 to 11—

Omit Explanation II to clause 84 (2) (b).

The motion was adopted.

Mr. Deputy-Speaker: The Member concerned has not stood up. So, the other amendment I take it, is not pressed.

The question is:

"That clause 86, as amended, stand part of the Bill."

The motion was adopted.

Clause 86, as amended,* was added to the Bill.

Mr. Deputy-Speaker: The question is:

Page 50, lines 22 and 23—

Omit "or rights in the company as to dividend, capital or otherwise".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 87 stand part of the Bill."

The motion was adopted.

Clause 87 was added to the Bill.

Mr. Deputy-Speaker: There is amendment No. 394 to clause 88.

Shri C. C. Shah: Instead of amendment No 394 the hon. Minister has moved another amendment.

Mr. Deputy-Speaker: It stands in the name of Shri K. P. Tripathi.

Shri C. D. Deshmukh: It was moved by Shri K. P. Tripathi. I am prepared to accept it if it is redrafted in the way it has been given by me.

*In par. (c) of sub-clause (2) of clause 86, line 15, the figures and word "87 and" were omitted as printing error and in the direction of the Speaker.

Mr. Deputy-Speaker: Why should he not move it?

Shri K. P. Tripathi: I accept the alteration.

Mr. Deputy-Speaker: Who is to move and who is to accept? Very well. I will put the amended amendment as moved by Shri K. P. Tripathi and accepted by the Government.

The question is:

Page 50—

(i) line 43—

before the words "of a managing agent" insert the words "of a director or"

(ii) line 45—

before the words "its managing agent" insert the words "a managing or whole-time director thereof or".

The motion was adopted.

Mr. Deputy-Speaker: Then there is amendment No. 453 in the name of Shri Gadgil.

Dr. Krishnaswami: He is not here.

Mr. Deputy-Speaker: May not be here; but the amendment is before the House. The House cannot make a man a woman and a woman a man; but these matters of procedure can always be waived. He need not be here.

The question is:

Page 50, line 32—

for "three years" substitute "one year".

The motion was adopted.

Mr. Deputy-Speaker: Amendment No. 453 is carried and a consequential amendment is carried in similar terms to sub-clause (3).

There are no more amendments to clause 88.

The question is:

"That clause 88, as amended, stand part of the Bill"

The motion was adopted.

Clause 88, as amended, was added to the Bill.

Shri N. P. Nathwani: I press my amendment No. 175.

Mr. Deputy-Speaker: What about the hon. Minister?

Shri C. D. Deshmukh: I am not accepting it.

Shri Tulsidas: I press amendment No. 176.

Mr. Deputy-Speaker: The question is:

Page 51—

omit lines 27 to 30.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 51—

(i) line 32, after "company" add "or"; and

(ii) after line 32, add:

"(c) apply to a public company or a subsidiary of a public company, which is not managed by a managing agent or secretaries and treasurers".

The motion was negatived.

Mr. Deputy-Speaker: The other amendment, I take it, is not passed.

The question is:

"That clause 89 stand part of the Bill"

The motion was adopted.

Clause 89 was added to the Bill.

Mr. Deputy-Speaker: There are no amendments to clauses 90, 91 and 92.

The question is:

"That clauses 90 to 92 stand part of the Bill"

The motion was adopted.

Clauses 90 to 92 were added to the Bill.

An Hon. Member: We have got Private Members' Business.

Mr. Deputy-Speaker: I will allow some more time after five o'clock.

Shri U. M. Trivedi: I press amendments Nos. 115 and 116.

Mr. Deputy-Speaker: The question is:

Page 52, line 32—

add at the end "except the exercise of the power under clause (e) of sub-section (1)".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 52—

omit lines 33 to 35.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 93 stand part of the Bill".

The motion was adopted.

Clause 93 was added to the Bill.

Mr. Deputy-Speaker: There are no amendments to clauses 94 to 109.

The question is:

"That clauses 94 to 109 stand part of the Bill."

The motion was adopted.

Clauses 94 to 109 were added to the Bill.

Mr. Deputy Speaker: I will put the Government amendments to the vote of the House first.

The question is:

Page 59, sub-clause (1)—

in line 39, for "sections 107 and 109" substitute "sections 107, 108 and 109".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 59, sub-clause (1)—

in line 40, after the words "refuse to register the transfer of" insert the words "or the transmission by operation of law of the right to,"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 59, sub-clause (2)—

in line 44, after the words "any such transfer," insert "or transmission of right".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 59, sub-clause (2)—

in line 45, after the words "the instrument of transfer", insert the words "or the intimation of such transmission, as the case may be,".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 59, sub-clause (2)—

in line 47, after the word "transferer" insert the words "or to the person giving intimation of such transmission, as the case may be".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 60, sub-clause (3)—

in line 5, after the word "trans-free" insert the words "or the person who gave intimation of the transmission by operation of law, as the case may be,".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 60, sub-clause (3)—

in lines 8 and 10, after the word "transfer" insert the words "or transmission".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 60, sub-clause (4)—

in the 12, omit the words "by the transferer or transferee".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 60, sub-clause (4)—

in line 15, after the word "transfer" omit the comma and insert the words "or transmission".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 60, sub-clause (5)—

in line 21, after the words "to the company," insert "and also to".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 60, sub-clause (5)—

in lines 21 and 22, after the words "transferer and the transferee", insert the words "or, as the case may require, to the person giving intimation of the transmission by operation of law and the previous owner, if any".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 60, sub-clause (5)—

in line 24, after the word "transfer" insert the words "or transmission."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 60, new sub-clause (8)—

after sub-clause (7), add the following sub-clause:

"(8) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of, the company, is transmitted by a sale thereof held by a Court or other public authority, the provisions of sub-sections (3) to (7) shall apply as if the company were a public company; provided that the Central Government may, in lieu of an order under sub-section (5), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid within such time as may be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefor or such other sum as the Central Government may determine to be a reasonable compensation for the right in all the circumstances of the case".

The motion was adopted.

Shri U. M. Trivedi: I press my amendment No. 117.

Shri Tulsidas: I press amendments Nos. 180, 181, 182 and 184.

Mr. Deputy-Speaker: The question is:

Page 59, line 47—

add at the end "and giving its reasons therefor"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 60, line 7—

for "the Central Government substitute "the High Court".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 60, lines 12 and 13—

for "the Central Government" substitute "the High Court".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 60, line 20—

for "the Central Government" substitute "the High Court".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 60, line 27—

for "the Central Government" substitute "the High Court".

The motion was negatived.

Mr. Deputy-Speaker: The other amendments, I take it, are not pressed. The question is:

"That clause 110, as amended, stand part of the Bill".

The motion was adopted.

Clause 110, as amended, was added to the Bill.

Mr. Deputy-Speaker: There is an amendment to clause 112. But no one has stood up; it is not pressed. I shall put clauses 111 to 138.

The question is:

"That clauses 111 to 138 stand part of the Bill."

The motion was adopted.

Clauses 111 to 138 were added to the Bill.

Mr. Deputy-Speaker: Now, we come to clause 139.

Shri Tulsidas: My amendment No. 188 is there.

Shri M. C. Shah: It has been accepted.

Mr. Deputy-Speaker: The question is:

Page 71, line 30—

omit "if so required".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 139, as amended, stand part of the Bill."

The motion was adopted.

Clause 139, as amended, was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 140 to 143 stand part of the Bill."

The motion was adopted.

Clauses 140 to 143 were added to the Bill.

Mr. Deputy-Speaker: The question is:

Page 73, after line 18—

insert the following paragraph as a sub-paragraph of this clause

"Nothing contained in this section shall be deemed to affect the relative priorities as they existed immediately before the commencement of this Act, as between charges on the same property".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 144, as amended, stand part of the Bill."

The motion was adopted.

Clause 144, as amended, was added to the Bill.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS
THIRTY-FIFTH REPORT

Mr. Deputy-Speaker: We shall now take up Private Members' business.

Shri Altekar (North Satara): I beg to move:

"That this House agrees with the Thirty-fifth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 24th August, 1955."