understand how the entire press in India publicised this news in a distorted way and still the sequence of these clear facts have not come out in any one of the newspaper except the 'Hindu' so far. It is rather very painful to me to note this fact. Secondly, it is quite gratifying that the authorities have brought the situation immediately under control in order not to allow that situation to deteriorate any further Apparently the entire situation there no doubt is silent but I personally believe it is a deceptive silence as it may flare up at any moment and suddenly become another Villupuram episode, because the entire Harijan population in that surrounding area now is under panic. All the places of Harijan habitation there gave a deserted look when I personally went there. It clearly appears meanwhile there is an indiscriminate harassment of Harijans and also an indiscriminate arrests of mainly Harijans and this must be stopped forthwith otherwise it would be very difficult to restore the sense of confidence in the innocent Harijans in order to enable them to return to their houses soon.

Thirdly, there should be a proper inquiry commission (a) Firstly, to find out whether and to what extent these incidents could have been prevented by timely and effective interference by the local police authorities when there were open challenges and counter challenges between those caste-Hindus and the Harijans for about three weeks earlier and (b) secondly, to conduct a thorough and unbiased enquiry to correctly find out the real culprits and bring them to book.

(iv) REPORTED INCIDENT OF SHOP-LIFTING IN LONDON BY A DEPUTY SECRETARY OF MINISTRY OF LAW

श्री निर्मल चन्द्र जैन (सिवनी) : अध्यक्ष महोदय, मैं आप की अनुमति से आविलम्बनीय लोक महत्व के निम्नलिखित विषय का उल्लेल करना चाहता हूं ।

विधि, न्याय एवं कम्पनी मामलों के मंत्रालय के अन्तर्गत काम कर रहे एक उपसचिव को लन्दन में एक दुकान से चोरी करते हुए पकड़ा जाने पर लन्दन में उस पर मुकदमा चल रहा है । उससे न केवल विधि मंत्रालय वरन् भारत की प्रतिष्ठा को धक्का लगा है । चाहिए तो यह था कि उस व्यक्ति के विरूद्ध तुरन्त कार्यवाही की जाती और उसे तुरन्त निलंबित कर के उचित दंड दिया जाता । परन्तु सरकार अभी उस की जांच की कर रही है । शासन से मेरा अनुरोध है कि ऐसे व्यक्ति पर शीघ्र उचित कठोर कार्यवाही करे, जिसने भारत के उज्जवल मुख पर कालिख पोती है ।

(v) REPORTED ATTENDANCE OF 'INDIAN DELEGATES' AT THE ISLAMIC CONFERENCE HELD AT KARACHI

DR VASANT KUMAR PANDIT (Rajgarh) : Sir, under rule 377, I wish to mention the following matter of urgent public importance in the House :

The reported attendance of Indian Delegates including journalists from India and Heads of Indian Muslim Organisations including representatives of Dawoodi Bohra Mullaji in the Islamic Conference recently held at Karachi, the passing of an unanimous resolution by that conference demanding plebiscite in Kashmir, the strange manner in which 'Indian Delegates' went for the conference at Karachi, the gross failure of C.B.I. and State intelligence to find out or warn the Government of this move, the inquiries and investigation done by the Indian Embassy at Karachi and the Government of India from the persons who participated in that conference

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12.22 hrs.

INSOLVENCY LAWS (AMENDMENT) BILL

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

> "That the Bill further to amend the Presidency-towns Insolvency Act, 1909 and the provincial Insolvency Act, 1920, as passed by Rajya Sabha, be taken into consideration."

The Law Commission of India, had in its Third Report on the Limitation Act, 1908, recommended that the most effective way of instilling a healthy fear in the minds of the dishonest debtor who evades the execution of decrees would be to enable the court to adjudicate him an insolvent if he does not pay the decretal amount after notice by the decree-holder by specifying

[Shri Shanti Bhushan]

a period within which it should be paid on the lines of the Presidency-towns Insolvency and Provincial Insolvency(Bombay Amendment) Act 1939 (15 of 1939). The aforesaid recommendation was reiterated by the Law Commission in its Twenty-sixth Report on Insolvency Laws. To the same effect were the views of the Expert Committee on Legal Aid which observed that such a simple amendment may be done in the Insolvency Laws without waiting for the enactment of a comprehensive law on Insolvency.

The Bill seeks to give effect to the recommendations of the above expert bodies and provides for the amendment of the Presidency-towns Insolvency Act 1909 and the Provincial Insolvency Act 1920 for the purpose of including a new act of insolvency. The Bill enables the decree-holder to send an insolvency notice. The notice can be served in respect of any decree or order for the payment of money due to a creditor, the execution of which has not been stayed. If the judgment-debtor fails to pay the amount within the period specified in the notice which shall not be less than one month or furnish security for the payment of such amount to the satisfaction of the creditor this would deemed to be an-act of insolvency. Where the judgement-debtor is residing outside India, the insolvency notice shall be served only after obtaining the leave of the Court and the period for compliance of the said notice will be specified by the Court. It would however, be open to the judgment-debtor to satisfy the court that he has a counter-claim or set-off which equals or exceeds the decretal amount or the amount ordered to be paid and which he could not lawfully set up in the suit or proceeding in which the decree or order was passed against him. The judgment-debtor would also be permitted to raise the defence that the amount is not payable by or under any law for the time being inforce for the relief of indebtedness and is entitled to have the decree or order set aside under the provisions of that law. The Bill also seeks to amend the rule-making power to enable the High Court to make rules with regard to the form of the insolvency notice and the manner of service thereof.

As the subject matter of the Bill is relatable to a matter in the Concurrent List, the views of the State Governments were obtained regarding the proposed amendments. Most of the State Governments have agreed to the amendments.

A question has, however, been raised that by this provision, the judgment-debtors would be harassed by the decree-holders. There is no cause for apprehension on this ground as the proposed provision would apply only when the operation of the decree has not been stayed. The main object of the amendment is to prevent the harassment of the decree holders by dishonest judgement-debtors who tend to take advantage of every technicality to defeat and delay execution proceedings with the result that the decree often becomes virtually a scrap of paper. It may in this connection be mentioned that the Bombay Amendment has worked satisfactorily for about a quarter of a century and does not seem to have led to any abuse. The State of Karnataka has also adopted a similar amendment in 1963 by the Provincial Insolvency (Mysore Extention and Amendment) Act, 1962 (Mysore Act 7 of 1963) and the experience of the State Governments of Maharashtra, Gujarat and Karnataka had been that the Act had worked without any difficulty.

There were certain apprehensions that the judgement-debtors may be harassed in the execution of ex-parte decrees and by the non-service of insolvency notice. The Bill itself provides that insolvency notice may be served in the execution o. a decree or order which has become final and the execution thereof has not been stayed. Ex-parte decrees become final only after the period for setting aside such decrees expires and no application is made for setting aside the decree within that period. The Bill empowers the High Courts to provide by means of rules the form of the insolvency notice and the manner in which such notice may be served. As such, there may not be any cause for apprehension that the insolvency notice will not be served at all.

An objection was also raised that the period specified in the Bill for compliance of insolvency notice is too short and it should be increased. It may be mentioned that the period specified is only the minimum period and it is open for the decree-holder to specify a longer period. In respect of persons residing outside India, the court has been given the power to specify a longer period depending on the circumstances of the case. Seconly the period of notice specified in the Bill is only for the purpose of enabling the judgement-debtor to arrange for the payment of money. He is already aware of the existence of the decree and, as such, it is felt that he will not be put to any difficulty.

Another point raised was that the recommendation of the Law Commission for comprehensive law on insolvency has not been brought out so far though the Law Commission had submitted its recommendations more than ten years before and only this minor amendment has been brought forward. It may be pointed out

that we had already taken action to implement the recommendation of the Law Commission to bring out a comprehensive law on insolvency. But as the House is aware, the subject of insolvency. is in the concurrent list and any legislation proposed to be brought forward should be done only after consultation with the State Governments. This would take some time. But as the Expert Committee on legal aid has recommended that this beneficial provision should be implemented immediately without waiting for a con prehensive law on Insolvency, the Bill has been brought forward.

The provision of the Bill are noncontroversial and I hope, that it will receive acceptance from all sections of the House.

MR. SPEAKER : Motion moved :

> "That the Bill further to amend the Presidency-towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, as passed by Rajya Sabha, be taken into consideration".

Mr. Ram Kishan has given notice of referring the Bill to the Select Committee. He is not here; so, that amendment falls.

SHRI R. VENKATARAMAN (Madras South) : Mr. Speaker, Sir, the Bill brought before the House is not so innocuns as the Law Minister has tried to make it. It imposes onerous conditions on an honest debtor. The Law Commission which the Law Minister quoted, said as follows:

> "The most effective way of instilling a healthy fear in the minds of.." (please note the words).. "dishonest judgment-debtors would be to enable the court to adjudicate him an insolvent...."

He has used this provision against even an honest judgment-debtor who has no resources, to be adjudicated as an insolvent. My objection is to that part of the Bill. You are aware, Sir, that in Roman times, a judgment-debtor who did not pay his dues, was flogged. Under the Common Law, a judgment-debtor who did not pay this dues was sent to jail. And our Civil Procedure Code also provided for a person who has not paid the dues to be sent to jail until nearly fifty years ago.

In 1936 the Civil Procedure Code was amended whereby a judgment-debtor who has no assets, who has no means to pay, could not be sent to a civil prison. I want to quote from the Civil Procedure Code the relevant portion which says that it is only a person who has dishonestly dealt with his assets that could be sent to prison. It says:

> "It must be proved to the satisfaction of the court that the judgment-debtor has or has had, since the date of the decree, the assets to pay the amount of the decree or some substantial part thereof and refuses or neglects to pay the amount."

It is only then he can be sent to jail.

If you take the Bill, this is what it says:

> "Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed, has served on him a notice hereinafter in this section referred to as the insolvency notice) as provided in sub-section (3) and the debtor does not comply with that notice within the period specified therein:"

There are honest debtors who have no means to pay, there are dishonest debtors who have means to pay and yet refuse to pay. What the Law Commission said as the easiest way to enforce payment is only of the dishonest judgment debtor, but in this case the clause provides that even if he is an honest debtor, if he has no means to pay, he can be adjudicated insolvent. Going to prison is a lesser evil than being declared insolvent. Some day he can become a Minister, but if he is declared an insolvent, he has no hope, his family will be ruined.

Under what justice can we say that a judgment debtor who has no means to pay and who cannot, under the present system of our Civil Procedure Code, be sent to jail, can be adjudicated insolvent. In order that a person may be adjudicated insolvent, he must have committed one of the acts of insolvency, and the various acts of insolvency, as you know are selling assets, making fraudulent payments etc. Here is a debtor who has no assets, who has not committed any of these offences, and yet merely because he has not complied with the notice which has been issued as an insolvency notice, he can be adjudicated insolvent. This, I consider, runs contrary to the spirit of the legislation which has been adopted in this country.

I know the arguments that will be advanced, and I will meet them even before they are raised. It will be said that we are only copying the provision of the British Bankruptcy Act, of 1914; it contains exactly the same provision as the one which is now before the House.

[Shri R. Venkataraman]

But I want to point out: have we not travelled in ideas of social justice far from the days of 1914? Should what the British Bankruptcy law enacted in 1914 be re-enacted at this time, overlooking the protection which we have given in the Civil Procedure Code against arrest and detension of a debtor who has no means to pay ? Therefore, the whole idea of trying to enforce payment of debts through the shortest method of providing for insolvency is contrary to the spirit of the Insolvency law.

The purpose of insolvency is two-fold. One is to give protection to the debtor against harassment by the creditor. The second is to give an equal distribution of the assets among the creditors. Where a man has no assets, what is the point in declaring him insolvent and putting him to social odium? That is why in the amendment which I have suggested, I have copied a phrase in the Civil Procedure Code, that "if a debtor having the means to pay refuses to pay, then he can be adjudicated insolvent. But a person who has no means to pay should never be adjudicated insolvent by barely giving a notice that he has not complied with the decree which has been issued against him. Therefore, I submit that this is not such an innocuous Bill as the Law Minister has brought it forward. He has overlooked the words in the Law Commission Report which says that it is the easiest and the best way of enforcing payment against a dishonest judgment debtor. He has used it against the honest judgment debtor who has no means to pay. That is my submission.

SHRI SOMNATH CHATTERJEE (Jadavpur) : Mr Speaker, Sir, I endorse the views of Mr Venkataraman.

Sir, the position is this. The Law Commission in its 26th Report did not suggest the amendment for incorporation of this provision alone. They had suggested for a thorough revision of the insolvency law and for fusion of the Presidency-towns Insolvency Act and the Provincial Insolvency Act and for making it one comprehensive measure. That was in the 26th Report. After years the hon. Minister states that a study is still being undertaken, no decision has been arrived at and now this piecemeal amendment is being brought to the old Act of 1909. Is it a good legislative practice? When there is a recommendation of the Law Commission to enact a comprehensive legislation and to incorporate the entire insolvency law in one statute then one paragraph of the Law Commission Report after years suddenly becomes so important for which a separate amending Bill has to be brought. I do not understand what is the logic behind it and suddenly why for the decree-holders the Government becomes so anxious that a special provision has to be made. Therefore on principle also we are having a surfeit of legislations some well-conceived, many ill-conceived and this is only giving rise to more and more litigation which is not good for the society.

Sir, the supposed objective of this amendment is that fear has to be instilled in the minds of judgment-debtors. Well the Law Commission says 'dishonest judgment-debtors' It is also known that the Privy Council said many years back that the trouble of the decree-holder in India starts from the date he gets the decree. That is true. So far as the procedures are concerned, I should have thought that the courts can also look into the matter. There is already an Act of Insolvency which provides that if an attachment is levied and remains not complied with, then it is an act of insolvency. The question is if there are *bona-fide* alert decree-holders we can find out the means also to execute the decree against those persons who are able to pay. A very vital point has been raised by Mr Venkataraman. The Civil Procedure Code has been amended to give protection to a certain section of the people from civil arrests. Now they will come under this odium of being declared insolvent although they may not have means to pay. This attitude, I submit will not fulfil the objectives for which this is sought to be enacted. So, if there is no means to pay what is the good or how the society benefits by declaring such a person insolvent? How the decree-holder benefits by that ? The answer is : Why should the decree-holder even give an insolvency notice to such a person? But taking advantage of a decree some personal animosity also sometimes is ruthlessly pursued in the form of various proceedings against the person who cannot defend. Therefore. I have not being able to follow what is the urgency for this piece of legislation. It does not serve such an important social objective for which we have to have an amendment. The Law Commission's recommendations are not being considered fully till today whether there should be one comprehensive law or not. The Ministry has not yet had the time to have a comprehensive survey or study of the matter in consultation with the State Governments. Sir, I have not understood the hurry or the basis on which this Bill been brought forward.

You kindly see one aspect. The Bill seeks to provide that an application may be made by the judgement-debtor for setting aside of the insolvency notices and sub-clause (5) of the proposed amendment under Clause 2 of the Bill provides that he

can make an application but on certain specified grounds. One ground is that he has a counter-claim or set-off against the creditor and the second one is that he is entitled to have the decree or order set aside under any provision for the relief of indebtedness and the third one is that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application that means, the law relating to relief of indebtedness. No other provision is mentioned, either claim for set-off or counter-claim or under some relief of indebtedness law.

There is some provision under which a decree can be set aside. Suppose, there is a suit challenging the decree on the ground of fraud. But that is not the ground on which an application under sub-section (5) can be made. Unless somebody is able to get an injuction in that suit, he will have no opportunity to make an application under the proposed sub-section (5).

The other provision is, under the ordinary law, as it is, if on the ground of attachment to a decree which is enforceable and which remains unsatisfied then it is an act of insolvency. But there the so-called debtor can challenge the decree in that very insolvency proceedings, as you are aware and the Insolvency Court is not bound by the Civil Court's decree as such and can go behind the decree to find out either the basis of the date or the validity of the decree itself. Now that ground will not be open under sub-section (5). Therefore, I would like to know from the hon. Minister, whether a debtor who is entitled to make an application under sub-section (5) to get relief on specific gounds can make an application on other grounds. Will it be open to him? It is a doubt that I am having because the proviso to sub-section (2) of Section 2 says:

> "Where a debtor makes an application under sub-section (5) for setting aside an insolvency notice—(a) in a case where such application is allowed by the Court, he shall not be deemed to have committed an act of insolvency under this sub-section;and (b) in a case where such application is rejected by the Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice.."

Therefore, now, only very limited grounds to resist an application for insolvency will be open to a judgement debtor who may not have even the means to pay. Apart from this, whose interest is going to be served because of the sub-section (5) read with the proviso. I would like to know under the Bombay legislation, which is no doubt there for some years, how many persons have taken recourse to it. How many decree holders have been otherwise prevented from executing a decree in the normal manner ? How was this provision in the Bombay legislation utilised for giving proper lessons to the dishonest judgement debtors, how was this used for the purpose of harassment? The hon. Minister says he has experience I do not know what material he has, what statistics he has. Therefore, on an impression that there is no harassment, I do not think that this was the reason for which this Bill was justified. I know that previously he has got the Bill passed by Rajya Sabha and he will pursue it, press it. There is no doubt about it. But at least let him give an assurance that a time limit would be indicated within which a comprehensive bill for bankruptcy legislation will be made.

Second, at least the rule should make ample provisions for giving as much protection as is necessary, because the law is going to be passed. What is the protection that this will not be utilised for a personal vendetta against persons who do not have the means to pay ?

These assurances are not there. On the other hand, the grounds for resisting an application are being restricted. Therefore, these are the apprehensions and, I hope, the hon. Minister will consider and try to see that the honest judgment debtors who, unfortunately have not got the means to pay are not harassed.

श्री निर्मल चन्द्र जैन (सिवनी) आपके महोदय, जितने एतराज इस में उठाये गये हैं वे तो प्रश्न को देखने के अलग अलग नजरिये से उत्पन्न होते हैं । दोनों प्रकार के कर्जदार हुआ करते हैं ईमानदार और गैरईमानदार । कुछ तो ऐसे भी हैं जो महर्षि चार्वाक की उक्ति मानते हैं जिस में यह कहा है कि घी पियो और जरुर पियो और आवश्यकता पड़े तो उधार लेकर पियो । ऐसे भी लोग हैं जिनका दिवालिएपन स्टेट्स सिम्बल है । कभी शादी के लिए उन के यहां जाना होता है तो कहा जाता है कि यह तो बहुत अच्छा घर है इस घर का चार बार दिवाला पिटा है । अतः दोनों प्रकार के लोग हैं ।

[श्री निर्मल चन्द्र जैन]

कुछ लोग ईमानदारी से पैसा देना चाहते हैं लेकिन उनके पास पैसा नहीं है । वे परिस्थितियों की मार के कारण परेशान हो जाते हैं । इस के अन्तर्गत एक अनुभव हुआ है । अभी जो वर्तमान कानून है, उस में डिक्री तो मिल जाती है और जल्दी मिल जाती है लेकिन सालों लग जाते हैं पैसा वसूल नहीं हो पाता है । कुछ ऐसे भी लोग हैं जिनके पास पैसा नहीं है लेकिन कुछ सरकारी कर्मचारी भी हैं जिनके ऊपर डिक्री हो जाती है तो भी वसूली नहीं होती । उनका स्थानान्तरण हो गया है, लिखते रहते हैं पता नहीं लगता कि कहां हुआ है । कभी उनको नोटिस नहीं मिलता है, कभी नोटिस लेते नहीं हैं । इस प्रकार की परेशानियां होती हैं । कई साल इस प्रकार लग जाते हैं । कोई ले डिक्री हो गई है लेकिन वसूल नहीं हो रहा है । अब वह डिक्री एक कागज का पृष्ठमात्र बन कर रह जाती है । इसके अलावा उसका और कोई कीमत नहीं रहती ।

इन सब दृष्टियों से अगर देखा जाए तो यह जो कानून बनने जा रहा है, वह स्वागतयोग्य है और इसका मैं स्वागत करता हूं । इसमें एक संशोधन मैं ने दिया है जिसके कारण में मैं अपने विचार रख रहा हूं । ऐसे मामलों में सब से बड़ी परेशानी नोटिस देने और नोटिस प्राप्त करने में होती है । जिस तरह से नोटिस जाते हैं और जिस तरह से एवाइड किये जाते हैं वह हम सब को मालूम है । जिस एड्रेस पर नोटिस जाते हैं वहां वे प्राप्त ही नहीं किये जाते । यदि आप नीचे की अदालतों में देखें, दीवानी अदालतों में देखें तो पायेंगे कि नोटिसों का तामिल करना इतना कठिन हो गया है कि तलबाना देने के आठ-आठ, दस-दस साल बाद तक नोटिस तामील नहीं हो पाते । मैंने यह संशोधन दिया है कि इसमें एक यह प्रावधान होना चाहिए कि नोटिस एकनॉलिजमेंट रजिस्टर्ड डाक से भेजा जाएगा । अगर नोटिस उसके रजिस्टर्ड एड्रेस पर भेजा जाता है और वह मिलता नहीं है, या वह एवाइड करता है तो भी नोटिस को तामील किया जाना माना जाना चाहिए । यह संशोधन मैंने दिया है ।

एक मैंने संशोधन और दिया है । इस बिल में एक प्रावधान है कि कितनी रकम है, कितनी रकम उधार दी है, उसके बारे में चाहे तो कोई विरोध कर सकता है कि इतनी रकम मैंने उधार नहीं ली है । अब मान लो मैंने दस हजार रुपए की रकम का नोटिस दिया है कि यह रकम तुम्हें देनी है । वह यह कह सकता है कि दस हजार रुपए की रकम नहीं है और इस पर फिर गवाही चलेगी कि कितनी रकम है । मैं यह चाहता हूं कि जब कोई यह एतराज उठाता है कि इतनी रकम नहीं है तो उसको उस समय यह भी बताना चाहिए कि कितनी रकम है, उसके ऊपर कितनी रकम रहती है । उसे यह बताना चाहिए कि मैंने दस हजार रुपया उधार नहीं लिया है, आठ हजार रुपया उधार लिया है । उसके ऊपर इसकी जिम्मेदारी होनी चाहिए कि वह यह बताये कि इतनी रकम है । इसलिए मैंने यह संशोधन रखा है ।

जहां तक ईमानदार कर्जदार का सवाल है, धारा दो और धारा तीन की उपधारा पांच में उसका प्रावधान बड़े निश्चित रूप से दिया गया है । वह सामने आए, अदालत में कहे कि इस कारण से पैसा उसको नहीं मिला है, इस कारण से मैं यह चाहता हूं कि मुझ को दिवालिया घोषित न किया जाए । चूंकि इस प्रकार का इसमें प्रावधान है इसलिए जो ईमानदार कर्जदार है उसका संरक्षण इस बिल के द्वारा भी होता है, ऐसा मैं मानता हूं ।

इन शब्दों के साथ और मेरे संशोधनों को विधि मंत्री जी स्वीकार करें इस निवेदन के साथ मैं इस बिल का स्वागत करता हूं ।

SHRI DHIRENDRANATH BASU (Katwa) : It is really very unfortunate that an efficient Minister, a Law Minister of Shri Shantibhushan's eminence has come forward with such piece-meal amendment to the Act enacted in 1909 and 1920 i.e. 60 to 70 years ago. He

should have come forward with a comprehensive Bill, stating the details therein.

I do not understand how honest Judgement debtors who have no assets to repay, who are very eager to repay the debt but have no assets, can be declared insolvent. I do not understand. This is really very wrong under the present social conditions of our country, in our free country. This Act was enacted when India was under foreign rule, but we are now living in a free country: we have got our freedom. The social conditions have to be taken into consideration.

It is not only unfortunate, but we expected that a comprehensive Bill about the Insolvency Act—an Act which was enacted in 1909—would be placed here. But, instead of placing a comprehensive Bill, he has placed an Amendment in a very tactful way, and in his introductory speech he made us understand that this is not very important, it is of a technical nature. This is not only of a technical nature, but is very important, and this fact has to be taken into consideration that the social conditions of the country must be given careful attention.

Honest judgment-debtors and dishonest judgment-debtors should not be taken on par, as explained by Mr. Venkataraman and the eminent lawyer Shri Chatterjee. I would request him to at least accept this modification as suggested by Mr. Venkataraman.

Also, on p. 3, Clause 3(2) (a) and (b) say :

> (a) in a case where such application allowed by the District Court, he shall not be deemed to have committed an act of insolvency under this sub-section ; and
>
> (b) in a case where such application is rejected by the District Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later.

MR. SPEAKER : Mr. Basu, are you likely to take some time ?

SHRI DHIRENDRANATH BASU: I am likely to complete within two to three minutes.

13 hrs.

So, he should not have depended on District Courts: he should have stated that the decision of the High Court should be taken into consideration.

In such important cases, the judgment of the Disrtict Courts should not be enough. I have seen this on various occasions, and I can show many examples, where dishonest judgment-Debtors have come out, they are not going to pay, they have been declared insolvent—merely by transferring their assets in other names. If you go through the Balance Sheets of the Bank of Baroda or the Balance Sheet of the United Commercial Bank, you will see that an amount of Rs. 2 crores has been written off due to declaration of insolvency.

Now I would like to say that the dishonest judgment-debtors should not be spared. The money must be realised from them. Let them be sent to prison; let all steps be taken by the Central and State Governments. But in the case of honest judgment-debtors, why should you try to send them to prison' why should they be declared insolvent? By this, not only the person concerned, but the whole family will not be able to come out in public life.

So, I would appeal to the hon. Minister to withdraw this Bill. This should not come in a piecemeal way. He should withdraw this Amendment Bill and come forward in this House with a comprehensive Bill which will receive all support.

MR. SPEAKER : The House stands adjourned for lunch till 2·0' Clock.

13·02 hrs.

The Lok Sabha adjourned for Lunch till Fourteen of the Clock.

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The Lok Sabha re-assembled after Lunch at six minutes past Fourteen of the Clock.

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

INSOLVENCY LAWS (AMENDMENT) BILL—*contd.*

डा० रामजी सिंह (भागलपुर) : उपाध्यक्ष महोदय, जो दिवाला विधियां (संशोधन) विधेयक प्रस्तुत हुआ है उसे आश्चर्य है कि विरोधी दल के सदस्यों ने क्यों उसका इतना विरोध किया है जबकि राज्य सभा में उन्हीं के लोगों ने उसका समर्थन किया है । विरोधी

[डा० रामजी सिंह]

दल के माननीय सदस्यों ने तो यहां तक कह दिया कि इस विधेयक को वापस ले लेना चाहिए । शायद उन्होंने थर्ड ला कमीशन की रिपोर्ट को नहीं देखी है जिस में उसमें यह अनुशंसा की थी :

> "Such provisions should be inserted in the Provincial Insolvency Act."

मई, 1973 में एक्सपर्ट कमेटी ने अपनी अनुशंसा में स्पष्ट कर दिया था :

> "It would also be necessary to make the process of execution simpler, at least insofar as simple money claims are concerned. In this connection attention is invited to the amendments made to the Presidency-towns Insolvency Act and the Provincial Insolvency Act of Bombay, by Act XV of 1939, by which if a money decree is unsatisfied and no stay has been obtained, the decree-holder may serve a notice of insolvency requiring the judgement-debtor to pay the money or to furnish security for its payment. Non-payment would be regarded as an act of insolvency."

मैंने यह बात इसलिए कही है कि यह कोई ऐसा विधेयक नहीं है जिस का विरोध किया जाये । विधि मंत्री जानते ही हैं कि यह विधेयक इतना संतोषप्रद नहीं है इसलिए इस बारे में एक कांप्रिहेंसिव बिल लाना चाहिए था ।

ला कमीशन ने अपनी 26 वीं रिपोर्ट में इस बारे में अनुशंसा की है कि एक कांप्रिहेंसिव इनसाल्वेंसी ला बनाया जाना चाहिए । यह तो मालूम ही है कि प्रेजिडेंसी-टाउन्स इनसाल्वेंसी ऐक्ट, 1909 और प्राविंशियल इनसाल्वेंसी ऐक्ट 1920 इंग्लैंड के बैंकरप्ट्सी ला के आधार पर बने थे । इसलिए इस विधेयक को और ज्यादा ब्राड कनटेक्स्ट में बनाया जाना चाहिए था । लेकिन फिर भी जो संशोधन हमारे सामने उपस्थित है उसके चार उद्देश्य हैं ।

पहला उद्देश्य यह है कि डिग्री-होल्डर्स को परेशानी से बचाया जाये और यदि यह संशोधन डिग्री होल्डर्स की थोड़ी सी भी परेशानी बची देता है तो वह काफी अच्छी बात है ।

इस का दूसरा उद्देश्य है कि सचमुच में हम लोगों को देखना चाहिए कि ऐसे कर्जखोर होते हैं जो कर्ज को पचा जाते हैं उन के ऊपर कोई भय और आतंक नहीं होता है, इस लिए इस संशोधन का दूसरा उद्देश्य यह भी है कि —

> "That a person who is really entitled to the enforcement of a legal right can get the legal right enforced and the other person who is defying it will not be able to defy it for a very long time."

एक्सपर्ट कमेटी आन लीगल एड ने भी इस बात की अनुशंसा की थी । वस्तुतः भारतवर्ष में जो कुछ पेशेवर कर्जखोर हैं वे पचा जाते हैं और खास कर के इस लिए कर्ज ले लेते हैं कि उन को पचाना है और फिर दिवाला निकाल देते हैं । इन्साल्वेन्सी के इतिहास में अगर हम जायें तो हमें पता चलेगा कि दिवाला कानून जो पहले प्राचीन काल में रोमन कानून के सम्बन्ध में था तो वहां सिविल राइट से भी वंचित कर दिया जाता था । लेकिन वर्तमान काल में हम लोग जानते हैं कि केवल बहुत आर्थिक संकट होते हैं जिस के कारण ही दिवाला निकाला जाता है, इसलिए जो ऐसे इन्साल्वेंट लोग हैं उन को रिहैबिलिटेट करने के लिए भी यह इन्साल्वेंसी कानून लाया जाता है । इसलिए रोमन कानून में जो प्राचीन समय में था कि उन को नागरिक अधिकार से वंचित कर दिया जाए, ऐसा आज मान्य नहीं है । मध्य युग में भी इटली जैसे देशों में बड़े से कड़े दण्ड की व्यवस्था थी जिस को Rumpentes et fallitti कहते हैं । यह भी मध्य युग की बात थी । आज के समय में भी इंग्लैंड जैसे देशों में 1542–43 से ही यह चीज चल रही है

लेकिन वहां भी ऐसी व्यवस्था है कि लोग स्वेच्छा से अपना दिवाला घोषित कर सकें। अभी जो हमारे यहां कानून का संशोधन हो रहा है उस से जहां तक इस का ताल्लुक है, उस के सम्बन्ध में मैं आप से कहता हूं कि हमें दो उद्देश्य तो इस के साफ ही हैं, तीसरा उद्देश्य जो थर्ड ला कमीशन ने भी कहा था अपनी अनुशंसा में वह यह है --

"It would also to be necessary to make the process of execution simple at least in so far as simple money claims are concerned. Non-payment would be regarded as an act of insolvency."

सचमुच में अगर हम अपना कर्ज चुकता नहीं करते हैं तो हम को दिवालिया घोषित कर देना चाहिए। लेकिन एक बात है कि एक तो पेशेवर दिवालिया हैं और एक सच्चा दिवालिया है. इन दोनों के बीच में, फेक इन्साल्वेंट और रियर इन्साल्वेंट के बीच में भी हमें विभेद करना चाहिए। इसीलिए जो संशोधन आया है उस में खास कर आर्टिकिल 182 में विधि, मंत्री जी देखेंगे, वह स्वयं एक वकील रहे हैं, मैं उन की कदर करता हूं. लेकिन इस आर्टिकिस 182 के अन्तर्गत मुकदमे और वकीलों के लिए एक उर्वर भूमि है क्योंकि इस का इस्तेमाल बेईमान डिफीधारी भी कर सकता है और बेईमान कर्ज देने वाला भी कर सकता है। इसीलिए हमें लगता है कि अदालत की जो चार्जेज इस में दी गई है शायद उस पर पुनर्विचार करने की जरूरत है।

एक चीज और है। कर्ज खोर के साथ साथ कर्जदार को भी देखना चाहिए। दूसरे देशों में खास कर के जो क्रेडिटर्स हैं उन के हितों के विषय में भी काफी ध्यान दिया गया है कि किस तरह से उनके स्वार्थों की सुरक्षा की जाए। खास कर के इंग्लैंड में यह है --

"Creditors gained an active role. With the legislation of 1716 they have been vested with important power except for the interval of 1831 to 1869."

उस में भी क्रेडिटर्स आटोनामी की बात कही गई है। इंग्लैंड के कानून में आफिशियल रिसीवर तक की बात की गई है। कैनाडा के कानून में भी ट्रस्टीज एप्वांइट किये गये हैं और आस्ट्रेलिया में आफिशियल रिसीवर की बात कहीं गई हैं। इसीलिए जहां हम कर्जखोर के हितों की तरह देखते हैं वहां कर्जा देने वालों के हितों को भी हम लोगों को इस में देखना चाहिए।

एक चीज और है। इन्होंने कहा है कि यह कानकरेन्ट लिस्ट में है और इस पर ज्यादा विचार अन्य राज्यों से नहीं किया गया है लेकिन संशोधन के लिए तो उनकी राय मिल गई है। जैसा कि मुझे ज्ञात है, संशोधन उपस्थित करने के लिए उन्होंने राज्यों से राय ले ली है। दस वर्ष पहले 26वीं रिपोर्ट में ला कमीशन ने कहा था कि एक कांप्रिहेंसिव बिल लाया जाये। हमारे विधि मंत्री जी इतने कुशल हैं, सम्पूर्ण संविधान जब गारत कर दिया गया था उसके पुर्नसंशोधन का बिल वे ला सकते हैं तब यह तो उनकी रुचि अभिरुचि का सवाल है, इसके सम्बन्ध में भी डेढ़ वर्ष में वे बिल ला सकते थे या. फिर 6 महीने और ठहर जाते तो कोई बात नहीं होती और तब हमारे वेंकटरमण जी और दूसरे लोगों को कहने का कोई अवसर नहीं मिलता।

जैसा मैंने पहले निवेदन किया है, इस संशोधन में अदालत को क्लेम्स और काउंटर क्लेम्स के लिए थोड़ी छूट मिल जाती है। यह इस बिल का आब्जेक्टस ऐंड रीजंस में स्पष्ट ही कहा गया है। मुझे लगता है क्लेम्स और काउंटर क्लेम्स की बात तो चलती रहेगी पर कौन से इन्साल्वेंट आर्टिफिशल हैं और कौन से रियल हैं इसके सम्बन्ध में विचार करने की आवश्यकता है। फिर भी यह संशोधन चूंकि इस लिए आया कि कुछ लोगों को परेशानी से बचाया जाये अतः हम इसका इस शर्त के साथ समर्थन करते हैं कि निकट भविष्य में इसके लिए एक कांप्रिहेंसिव बिल लाया जायेगा और

[डा० रामजी सिंह]

हमारे सदस्यों की जो आपत्तियां हैं उनको निर्मल कर दिया जाएगा ।

SHRI NARENDRA P. NATHWANI (Junagadh) : Sir, I rise to support the Bill.

The Statement of Objects and Reasons which has been given to us explains the necessity for having this kind of provision.

Now, such a provision does exist in the States of Gujarat and Maharashtra for the last 40 years and in my opinion, such an amendment was long overdue.

A doubt was expressed about the soundness of including such a ground for declaring an individual as an insolvent.

Sir, if we look at the existing grounds of insolvency,—apart from the law which is amended in the two States of Gujarat and Maharashtra—it would be seen that there is generally some element of dishonesty on the part of persons who are sought to be adjudicated insolvent.

It has been suggested that an honest person may find himself in financial difficulties and he may not be able to meet his demands; then, such a person should not be visited with the consequence of being declared an insolvent. But, Sir, I do not see any force in this kind of approach. A person may be temporarily in a genuine difficulty may have sufficient assets, but he may not be able to convert them into cash to pay off his debts. He may be in such a situation. As every prudent man knows, he could then easily raise funds or easily satisfy the creditors .. about the need for postponing his demand for some time and even after all what would happen if such a man is declared an insolvent? What would be the position ? Temporarily he might find himself in a difficulty. Once a receiver, or an official assignee in cities like Bombay, Calcutta etc. is appointed, he would look into the affairs of his estate and if there are sufficient assets all his creditors will be satisfied and in any event he would get clear discharge if there is no fraud or dishonesty involved on his part.

This difficulty is sought to be pointed out in respect of a person who may probably only temporarily be in genuine difficulty. But against this it has to be borne in mind that the creditor faces the difficulties even after getting a decree. While on this aspect of the difficulties of a creditor I would like to point out how legislation has rather not kept abreast of the economic situation; it lags behind and it falls far short of the realities of the situation because even after a final decree is passed, the real difficulties of a judgement creditor begins. The judgement debtor tries to delay or defeat execution of the decree, amongst other reasons, for the simple reason that on the decretal amount he has to pay an interest at the rate of 6 to 9% per annum whereas particularly in rural parts the ruling rate of interest is 16 to 18%. Even in cities in respect of commercial transactions whereas after a decree is passed— I am subject to correction, the Hon. Minister may correct me if I am wrong—under Section 34 of Civil Procedure Code the maximum rate of interest is 6% only. But even the nationalised banks charge generally more than 15% rate of interest. Therefore, a debtor finds it to his own advantage to try to resort to every kind of device to delay or defeat the execution of the decree. It has been repeatedly pointed out very forcefully and cogently that the difficulties of a creditor begin after he obtains a decree. I am sorry to say that. When I was last at Bombay I was talking to some lawyer friends and they pointed out to me that even for executing decree in the first instance, they have to obtain a certified copy of the decree and it takes 6 to 9 months. I am sorry to say this. I am referring to a situation prevalent in cities like Bombay, in Civil Courts even to get a certified copy of a decree within a reasonable period, some monies have to be paid. Unless you do it, you may not get it for six or nine months. Therefore having regard to all these difficulties and having regard to the experience available to the public from the courts in two States of Maharashtra and Gujarat, I can say that there should be no fear of any difficulty being experienced by honest debtors from such a provision being enacted. By this sort of legislation it would help creditors to recover their dues within a reasonable time. I therefore, wholeheartedly support this Bill and I may repeat that such a legislation exists in these two States for the last 40 years with no adverse effect on honest debtors. With these words I support this Bill.

SHRI SHANTI BHUSHAN : Mr. Deputy-Speaker, Sir, I am happy that the Bill has received whole-hearted support from some hon. Members. I am sorry that it did not get that kind of approval from some other hon. Members. I would like to dispel the doubts which perhaps have arisen in the minds of some hon. Members in regard to some features of the Bill.

Shri Venkataraman, particularly felt, and he quoted from the report of the Law Commission and as he read it it seemed to him, if I have understood him rightly that the Law Commission did not intend,

a provision of this kind to be brought and they probably intended that a provision would be brought which would make a distinction between the so-called dishonest judgement debtors and the so-called honest judgement debtors; namely that the Law Commission had in mind a classification of the judgement debtors both of them unable to pay their debts or pay the amount of a decree on service of a notice, but some who were not prepared to pay the same even though they had the means to pay and therefore could be regarded as dishonest judgement debtors as well as those who did not have the means to pay and therefore that inability was responsible for their not being able to pay those decreed debts and therefore could not be regarded as dishonest debtors. Firstly I would like to dispel this impression of Shri Venkataraman that there was any such intention on the part of the Law Commission when they recommended in their report on the Insolvency Act that such a distinction should be made. The Law Commission probably thought that the judgement debtor is not taken by surprise. There are so many steps. First of all even before a person files a suit for the recovery of the amount due to him he tries not to go to a court and he approaches the person from whom the amount is due to pay the amount. It is no pleasure for any person to proceed in a court of law because it is known that it is quite inconvenient; a person has to suffer a fair amount of harassment even for invoking his legal rights which are due to him. Then ultimately when he cannot receive payment of the amount which is due to him he has perforce to take recourse to a court of law and file a suit. The suit also goes on for some time because the reply of the debtor has to come, evidence has to be recorded, issues have to be framed and judgement has to be delivered. Normally, there is recourse to a higher court also either by way of appeal or a revision or otherwise before the decree can become final. This Bill stipulates that it is only after the decree has become final that it will be open to the decree holder to serve a notice of insolvency on the judgement debtor giving a certain period of time within which he should receive payment of the decreed debt. Now if having all this time he still does not find it possible even at this fag end when a notice is served on him to make the payment of the amount evidently, Shri Venkataraman is right that there can be only two reasons either he has no desire to make the payment, he wants to take advantage of the protracted litigation etc. and the steps which are available to him to defeat the true and justified claims of the decree holder or that he is not in a position to pay the debt. Shri Venkataraman agrees that in that case in which the decree holder has the means to pay and does not pay it is quite right for this Bill to provide that he can be declared an insolvent on that ground. His anxiety is that if the judgement debtor is not in a position because he does not have the means, he does not have the assets, he is a poor person and unfortunately he had happened to take some debt, but according to his current financial position he does not just have the assets to pay the debts, then why punish him. He cited the instance of civil prison, namely in what circumstances a person can be sent to a civil prison. He said that the provision which provides for sending a person to a civil prison says that if he having the means to pay, fails to pay then only there is a ground for sending him to a civil prison. Quite true because civil prison is a punishment but to equate a person being sent to civil prison with his being declared to be or adjudicated to be insolvent I submit. with great respect to Shri Venkataraman is to miss the point.

We must be clear as to what was the purpose of the Insolvency law. In fact what he has suggested, with great respect to him, would amount to this, that only those persons who have the means to pay their debts, can alone be insolvent, but a person who is unable to pay his debt cannot be and should not be insolvent : it would just be the reverse of the situation. This is because we conceive and we understand an insolvent primarily to be a person who does not have the means to pay his debts, viz. whose debts are so large that his total assets would not suffice to clear those debts. Then we say "All right; this man has become insolvent." He might have incurred loss in a business, or whatever might have been the reason. He might have been a spendthrift. But whatever be thereason, if unfortunately the situation issuch that the value of his total assets falls far short of his debts, then the society says, "All right; this man has declared insolvent." But the insolvency law is not merely to punish the insolvent. In fact, it is not stipulated in that manner.

So far as sending a person to civil prison is concerned, yes; it is intended as a punishment to a person, because this is a dishonest conduct. He is in a position to pay, and yet he does not pay his rightful dues. All right; he deserves going to prison. But so far as adjudicating a person to be an insolvent is concernd,' I would submit with great respect that it would be a complete misconception to think that the main intention of the law of insolvency is to punish him and to visit him with punishment. There are a host of provisions of the insolvency legislation which are for the benefit of the so-called insolvents. Let us see this : if a person is not declared insolvent, what happens ? Even though he may not be possessed of sufficient property which might go to discharge the debts which are due by him

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to-day, every income that he gets his every earning in future and every propety that he gets in future—either by inheritance or otherwise—would also become liable for payment for the recovery of those debts; and, therefore, a situation might arise when he thinks that there are such heavy debts against him and so, what is the point in his working or earning ? Because everything that he earns can be got hold of, except to the extent to which protection has been given on humanitarian grounds to every debtor, viz. wearing apparel tools of trade, etc. which are made exempt even by the insolvency legislation and the Code of Civil Procedure.

Apart from that, the very incentive to start a new life, to turn a new leaf would not be there, but for the insolvency laws. It was in that spirit that insolvency laws were conceived. The idea was, "All right; if the situation is such that a person is unable to, or does not have assets enough, pay his debts, let us call a stop to this situation. Let us declare him an insolvent." As a result, the creditors must forego part of the amounts which are due to them, because here will be an Official Assignee or Official Receiver or somebody, who will get hold of the entire property, except those which cannot be proceeded against, on humanitarian grounds. And thereafter rateably, it will be distributed, i.e. after the value of those assets have been realizsd, it will be rateably distributed among the creditors who are entitled to their claims. Thereafter, when he has discharged the insolvency, it will be a new life, even though the creditors have not been able to recover the whole of their debts and even if they have been able to recover only 1/10 of their debts and 9/10 of their debts will be deemed to be wiped off. The debtor would be in a position to start a new life, with new hope, new vision and new aspirations because why should he be in a life-long sentence, in some kind of civil debt that he has no incentive etc. to work, earn and so on ? What was the main spirit behind it.

Of course, there were certain provisions for the benefit of the so-called creditors also For instance, there is a provision in these laws, viz. that so long as a person is an undischarged insolvent, he cannot incur a fresh debt of more than Rs. 50/- without informing the person from whom he is taking that debt, viz. by telling him "I am an undischarged insolvent." The idea is this. Will any hon. Member like that even though a debtor is not in a position even to discharge his existing debts, he should be able to dupe other people, law-abiding citizens, without disclosing to the latter the fact that he was not in a position and he did not have the assets, even to meet his present liabilities? Should he be able to get and contract loans from them ? Should not the law introduce the safeguards and say : "All right; upto Rs. 50/- i.e. for daily needs, etc. you can have it; but if you want to contract a larger debt and if you are not in a position to discharge your existing debts, you must at least inform the person from whom you are taking the debt that your position is such-and-such. You are an undischarged insolvent."? Of course after discharge it will be a new life. He will be entitled to all the rights and so on; but that is why this law has been conceived. It is not a measure of punishment on the insolvent, but it is to adjust the rights and liabilities; and that is why the Law Commission had said this. In fact, the Law Commission had not merely made their recommendation. They had actually drafted a bill. A draft bill had been appended; and this was precisely the provision which was contained in the draft bill—i.e. in these terms :

"A debtor commits an act of insolvency." I am reading the relevant provision from the draft bill drafted by the Law Commission itself.

> "A debtor commits an act of insolvency—if a creditor who has obtained a decree or order against him for the payment of a sum of money being a decree or order which has beome final and the execution whereof has not been stayed has served on him an insolvency notice as provided hereunder and the debtor does not comply with such notice within the period specified therein."

Although in one of their reports, they happened to refer to dishonest debtors, it was not the idea that they proceeded on that basis that if a person was not in a position to pay his debt, then all the more reason why he must be declared to be insolvent; because then he is truly an insolvent; he is truly and literally insolvent; he must be declared to be insolvent and get the benefit of his insolvency as well as not being able to exercise those rights which should not belong to insolvent people who are not in a position to pay their debt. Therefore, this was precisely the recommendation of a high-powered body and expert body which has gone into this question.

It was reiterated by the law Commission on two occasions and then it was said : well, even if it is a good provision, even if it would be for the peoples' benefit—because these days we hear so much and so loudly and very correctly criticism of the

administration of justice—The procedures are there so dilatory. In fact, in classic words, it has been said that the trouble of a decree holder starts when he has obtained a degree. Of course, there is lot of trouble even in the process of obtaining a decree. He has to go through so many courts. And thanks to the ingenuity of a large number of people belonging to the tribe to which I have the honour to belong, These miseries are protracted to a considerable extent. The society is trying to tackle that problem as to how these miseries should be reduced, if not eliminated altogether. How the delays in procedures etc. could be tackled.

We have launched an assault on this problem and we hope to overcome this problem and see that no person is denied justice within a reasonable time. Of course, due to backlog, etc. it will take some time to achieve that ideal, but the Government hopes that we shall be able to achieve that ideal because that is the basis of rule of law. Unless a person has not only the right to go to a court of law but also is assured that witnin a reasonable time—which reasonable time shall not be measured in years but will be measured in months—he would be able to get an adjudication so that his right will be enforced, till then it will not be possible to say that rule of law has been brought about in this country or enforced in tnis country. So, there ha s been an attempt which has been highligrnted so many times by the Law Commission, an expert body, that this is an easy method, that such a person will be prevented from going to a potential creditor and ask for a loan of more than Rs. 50 without having to tell him that look here, this is my financial condition. I am not in a position to discharge my debt. I am an undischarged insolvent. Therefore, I should be declared insolvent. Of course, a person, who is not in a position to pay, certainly he will not pay in spite of this notice also. But then there is a very good reason that he should be declared as insolvent so that he is unable to drop many other potential creditors, etc. But if he is in a position to pay, this will act as a salutary safeguard, because then he would not like to be a person who has the means to pay, who is earning a lot of amount, etc. and yet he does not pay, then in that case, as soon as he receives this notice, he would like to comply with the notice; he will promptly pay with the result that a creditor, a poor creditor will not have to undergo all these miseries of the execution.....

(*Interruptions*)

You would welcome being declared what ?

(*Interruptions*)

MR. DEPUTY-SPEAKER : I think he has understood your point.

SHRI SHANTI BHUSHAN : The other point which was made was why this piece-meal legislation; this insolvency has so many aspects. Why only one aspect of it is brought out ? I think I had said in my opening speech that it is a comprehensive....

(*Interruptions*)

SHRI SOMNATH CHATTERJEE : I believe you have a legacy.

SHRI SHANTI BHUSHAN : Of course, the responsibility for those ten years..... The mere fact that we are sitting on this side cannot be fastened to us only in one year and four months.

(*Interruptions*)

As I said, this being a concurrent subject we must consult the States. Otherwise, my hon. friend Shri Somnath Chatterjee would protest; many other hon. Members would protest.

(*Interruptions*)

SHRI SOMNATH CHATTERJEE : If you go agaist the Constitution, I shall protest.

SHRI SHANTI BHUSHAN : No, no; in a concurrent legislation, in a concurrent field, it may not be constitutionally obligatory to consult the State Governments.

But it has been the convention since in the concurrent field both the state and the centre have a say ; the convention has been to consult the State Governments also before you finalise your scheme of things, etc. That process has been going on. There are a large number of States who are preoccupied also. So, they take time in expressing their views and therefore it has not been possible. There are two courses. One is this; so long as you are not in a position to do the ultimate good, do not try to do even a little good which you are capable of; that is one philosophy, that unless we are in a position to bring about utopia in this country, why should we do anything; it is only when we make this land a full heaven where honey and milk are flowing, we should do; until then why should we try to attempt a little — that is one philosophy. This Government doe not subscribe to that philosophy. Whatever good we can do in the shortest possible time, let us keep on doing that good without waiting for the maximum good that may come some time. The other side perhaps has been the believer of that ideology; they did not do even a

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small good to people because they were waiting for the day when they would be in a position to do people full good; that day never came and that is an alibi for not doing even small good.

SHRI VAYALAR RAVI (Chirayinkil) : You were a party to it till 1969.

SHRI SHANTI BHUSHAN : If we have learnt our lessons, we would expect you also to change your views. After all one lives and learns. I suppose with this clarification the Bill will receive wholehearted approval from all sections of the House.

Shri Jain raised the point that so for as service of notice is concerned in all the proceedings of the court, sometimes it is very portracted and it becomes very difficult to serve a person in this county. I fully share his sentiments. He has suggested that notice by registered post acknowledgement due should be subsituted. He would see from the Bill that it is a matter of procedure and therefore it has not made any definite procedure for serving notices. It is stated: prescribed form, prescribed manner of service. So that, it has been left to the court to determine. What kind of decree is there, whether the notice could be registered post, etc. are left to the Court. In many civil cases, there is a provision in the Code of Civil Procedure for filing registered notice to an address. For some other thing there may not be a similar provision. The court would know best as to which method of service would be available and should be applied. It is a matter of detail which has been left to the court . . *(Interruptions)* I am saying that the court would be in a position to adopt the suggestion which the hon. Members had made. There may be certain situations where it may not be able to adopt that suggestion and some other suggestion may be more convenient. Therefore this rigidity was not required and the matter had been left to the courts.

MR. DEPUTY-SPEAKER : The question is :

"That the Bill further to amend the Presidency-towns Insolvency Act, 1909 and the Provincial Insolvency Act 1920, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

Clause 2--(Amendment of Act 3 of 1909)

MR. DEPUTY-SPEAKER : We take up clause 2. There are two amendments.

SHRI R. VENKATARAMAN (Madras South) : I am moving olny 3 not 2. I beg to move :

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after "debtor" *insert*—

"having the means to pay the amount" (3)

You have heard a very elaborate and laboured explanation from the hon. Law Minister. In fact it has been very unconvincing. The first point he said was that under the present law a person who was unable to pay his debts could be declared insolvent I should like to remind him that according to the law as it stands to day a person who is unable to pay his debts cannot be declared insolvent under tne Presidency-towns Insolvency Act. Apart from various factors the debtor must have property which has been either sold or under attachment for 21 days to constitute an act of insolevency.

Under the Provincial Insolvency Act, a debtor's property must be sold in order to constitute an act of insolvency. Only when the property of a debtor, is under attachment and sold, can a person be declared insolvent as the law exists to-day ? If a person has no property and if it is not under attachment, as he has no property, it cnnnot be attachment, therefore, under the existing law it is not an act of insolevncy and he cannot be declared insolvent. But what does the law propose ? If a person is a debtor, even though he has no means to pay he has no property, still a notice of insolvency is served., and if he deos not comply with it, then he can be declared insolvent. I ask the Law Minister, is it not a great change in the law of insolvency to-day that he proposes to make. At the present moment, as I have stated if a person has no property, a property which is not under attachment, a property which has not been sold, it does not constitute an act of insolvency. Therefore, the man is saved under the odium of being declared insolvent. But under the law which the hon. Law Minister proposes, a debtor who has no property or no means to pay and who has not committed any of the other offences can be said to have committed an act of insolvency on his being served with a notice and he fails to comply with it. Therefore, to say that a man who is unable to pay his debts is insolvent and he must be declared insolvent is not the legal position. It may be etymological position. It is not the legal position.

The hon. Law Minister said it is to save the poor man from harassment from the creditor that he should be declared insolvent. There are two types of petitions the debetor's petition and the creditor's petition. The debtor can go to the insolvency court and ask himself to be

declared insolvent irrespective of whether he has property or not. But a creditor cannot go to a court and ask a person to be declared insolvent unless he complies with the provisions of the Provincial Insolvency Act and Provincial insolvency Act provides that there must be attachment of the property or sale of the property. Therefore, if the debtor fees that he is being harassed by the creditors, it will be open to him to go to the court and then to present a debtor's petition for insolvency. How can a creditor go and declare a debtor insolvent when under the law, as it exists to-day, he cannot be declared insolvent ? Then, it is my view that under this provision you are putting a great strain on an honest debtor, without means to pay, in order to avoid the odium of being declared an insolvent to go and beg, steal and borrow to pay the debt. The odium of being an insolvent is much greater, as I said, than the odium of having gone to jail.

The Law Commission itself has referred to the odium of being declared insolvent. The Committee on Legal aid, presided over by an eminent judge, Mr. Justice Krishna Iyer also said, this provision of using insolvency for the purpose of enforcing a debt will bring an odium on the debtor and that odium will compel him to pay. Is it fair and just to compel a man who has no means to pay to subject himself to the odium of being declared an insolvent ? After all, we have been shouting from house-tops that poverty is no sin ; poverty is no crime and the entire structure of the insolvency law is to restore concealed property and fraudulant transfers for the benefit of the creditors and not to compel expeditious payment of debt. It is a distortion of the insolvency law to say that we can use it for the purpose of expeditious payment of debt. Therefore, I should like to make it clear that by bringing this particular provision and saying that an honest debtor who has no means to pay can be declared an insolvent, you are subjecting him to a social odium which will compel him and in fact it will be exercising undue pressure on him to resort to some means shomehow to pay it.

The third point which the Law Minister made was that the Law Commission itself has recommended it. That is why I read that portion. The Law Commission, when it came to this conclusion must have had in its mind the case of a dishonest debtor who all the time goes on evading payment of the debt. I have quoted it in the morning. If as a consequence of this particular provision some person who is not a dishonest debtor is roped in unintentionally and subjected to a certain social odium, is it proper to say that the Law Commission recommended and therefore we must accept it ? I would like to go one step further and say, to err is human. The Law Commission is also a human being. In my opinion, to the extent to which they ignored the provisions of the amended C.P.C. which gave protection to an honest debtor from being arrested and detained in prison, that should be extended also to the case of an honest debtor not being subjected to the odium of insolvency. Therefore, I press my amendment.

SHRI SHANTI BHUSHAN : The hon. member said that the existing law does not provide for a person being declared an insolvent merely because he is not in a position to pay the debt. If that was the situation there would have been no need for this amendment. This was a lacuna which was noticed by the Law Commission not once but twice and for the third time, the Krishna Iyer Committee stressed the fact that this should be done So there is need for such a provision and that is why it is being brought. The hon. member referred to the odium of being declared an insolvent. But the law of insolvency is not based on sentimental considerations. On the one side the hon. member says it is an odium. On the other side, some hon. members say, it is a slatees symbol. If you had been declared insolvent, it enhances your status. People are prepared to offer their daughters' hand to you if you had been declared insolvent. The more the number of times a person is declared insolvent, the higher the status he gets ! There are these two competing view-points, some people considering it an odium and others considering it a great honour. The law is impartial in the matter.

It is not considered an odium. It is merely a matter of an arrangement namely, what is in the interest of society and the idea was that a person who does not have the means to pay his debts, should not be able to borrow at least a heavy sum from another person without cautioning that person that he was not in a position to pay his debts. Therefore, the recommendation of the Law Commission was perfectly right. It was re-iterated by another Law Commission after 7 years and by the Legal Aid Committee.

श्री ओम प्रकाश त्यागी (बहराइच): यदि वही आदमी अपने लड़के और स्त्री के नाम से फर्म खोल कर फिर कर्जा ले लेता है तो उस के लिए क्या है ?

श्री शांति भूषण: वह तो अलग बात है । उस के लिए तो अलग से होगा ।

श्री ओम प्रकाश त्यागी : अलग क्या है ? वह तो एक ही बात हुई ।

श्री शांति भूषण : इस में वह बात नहीं है । इस में तो यह है कि अगर वह नहीं पे कर सकता है तो कोई वजह नहीं है कि उस को वह सब ऐडवांटेजज रहें फिर से कर्जा लेने के बिना यह बताए और वह वहां बढ़िया कपड़े पहन कर जाय, अपने को मेंठ दिखलाए और फिर कर्जा ले ले जब कि वह आज भी इस हालत में नहीं है कि अपने कर्जों को दे सकें । इस के लिए वह यह प्रावधान कर रहे हैं कि ऐसी सूरत में या तो वह डिग्री का रुपया दे दे अगर देने की हैसियत में है और नहीं है तो उस को इन्साल्वेंट होकर जो उस की लिमिटेशंस हैं उस के अन्तर्गत रह कर काम करना होगा ।

इन शब्दों के साथ मैं श्री वेंकट रमन से फिर अपील करूंगा कि वह अपने संशोधन को प्रेस न करें, वापस ले लें ।

15 hrs.

MR. DEPUTY SPEAKER : The question is :

Page 1, line 17,—

after "debtor" *insert*—

"having the means to pay the amount"

The Lok Sabha divided

Division No. 3] [15·03 hrs.

AYES

Ashan Jafri, Shri

Badri Narayan, Shri A. R.

Banatwalla, Shri G. M.

Barman, Shri Paras

Bhagat Ram, Shri

Bhakta, Shri Manoranjan

Chandrappan, Shri C. K.

Damor, Shri Somjibhai

Deo, Shri V. Kishore Chandra S.

Faleiro, Shri Eduardo

Gopal, Shri K.

Gotkhhinde, Shri Annasaheb

Halder, Shri Krishna Chandra

Jeyalakshmi, Shrimati V.

Joarder, Shri Dinesh

Kisku, Shri Jadunath

Kolur, Shri Rajshekhar

Kosalram, Shri K. T.

Krishnan , Shrimati Parvathi

Krishnappa, Shri M. V.

Lakkappa, Shri K.

Mallikarjun, Shri

Mirdha, Shri Nathu Ram

Mohanarangam, Shri Ragavalu

Mukherjee, Shri Samar

Murthy, Shri Kusuma Krishna

Naik, Shri S. H.

Patel, Shri Dwarikadas

Pertin, Shri Bakin

Pradhan, Shri Amar Roy

Rachaiah, Shri B.

Ramamurthy, Shri K.

Rangnekar, Shrimati Ahilya P.

Reddy, Shri G. S.

Sangma, Shri P. A.

Seyid Muhammad, Dr. V. A.

Thorat, Shri Bhausaheb

Venkataraman, Shri R.

NOES

Argal, Shri Chhabiram

Bal, Shri Pradyumna

Baldev Prakash, Dr.

Basappa, Shri Kondajji

Berwa, Shri Ram Kanwar

Bharat Bhushan, Shri

Borole, Shri Yashwant

Chakravarty, Prof. Dilip

Chandan Singh, Shri

Chandrashekhar, Shri

Chaturbhuj, Shri
Chaturvedi, Shri Shambhu Nath
Chaudhry Shri Ishwar
Chauhan, Shri Nawab Singh
Chavda, Shri K. S.
Dave, Shri Anant
Desai, Shri Morarji
Dhara, Shri Sushil Kumar
Digvijoy Narain Singh, Shri
Dutt, Shri Asoke Krishna
Gawai, Shri D. G.
Godara, Ch. Hari Ram Makkasar
Gulshan, Shri Dhanna Singh
Gupta, Shri Kanwar Lal
Jain, Shri Nirmal Chandra
Jaiswal, Shri Anant Ram
Joshi, Dr. Murli Manohar
Kasar, Shri Amrut
Khan, Shri Kanwar Mahmud Ali
Kishore Lal, Shri
Kotrashetti, Shri A. K.
Krishan Kant, Shri
Kureel, Shri Jawala Prasad
Kureel, Shri R. L.
Machhand, Shri Raghubir Singh
Mahata, Shri C. R.
Mandal, Shri Dhanik Lal
Mangal Deo, Shri
Mankar, Shri Laxman Rao
Mehta, Shri Prasannbhai
Mhalgi, Shri R. K.
Miri, Shri Govind Ram
Nathu Singh, Shri
Nathwani, Shri Narendra P.
Nayak, Shri Laxmi Narain
Negi, Shri T. S.
Pandit, Dr, Vasant Kumar
Paraste, Shri Dalpat Singh
Parmar, Shri Natwarlal B.
Parulekar, Shri Bapusaheb
Patel, Shri H. M.
Patnaik, Shri Biju
Pradhan, Shri Pabitra Mohan
Raghvendra Singh, Shri
Raghavji, Shri
Rai, Shri Gauri Shankar
Rai, Shri Narmada Prasad
Ram Awadhesh Singh, Shri
Ram Charan, Shri
Ram Dhan, Shri
Ram Gopal Singh, Chaudhury
Ram Murti, Shri
Ram Sagar, Shri
Ramji Singh, Dr.
Ranjit Singh, Shri
Rao, Shrimati B. Radhabai Ananda.
Rao, Shri Raje Vishveshvar
Rathor, Dr. Bhagwan Dass
Rodrigues, Shri Rudolph
Sai, Shri Larang
Sarangi, Shri R. P.
Sarkar, Shri S. K.
Satpathy, Shri Devendra
Shaiza, Shrimati Rano M.
Shastri, Shri Ram Dhari
Shastri, Shri Y. P.
Shejwalakr, Shri N. K.
Sheo Narain, Shri
Shrikirshna Singh, Shri
Shukla, Shri Chimanbhai H.
Singh, Dr. B. N.
Suraj Bhan, Shri
Suryanarayana, Shri K

Tiwari, Shri Brij Bhushan

Tyagi, Shri Om Prakash

Varma, Shri Ravindra

Varma, Shri Raghunath Singh

Yadav, Shri Jagdambi Prasad

Yadav, Shri Ramji Lal

Yadav, Shri Sharad

Yadava, Shri Roop Nath Singh

Yadvendra Dutt, Shri

MR. DEPUTY SPEAKER : The result* of the dvision is : *Ayes* : 38. *Noes* : 92

The motion was negatived.

MR. DEPUTY-SPEAKER : The question is :

"That clause 2 stand part of the Bill."

The Motion was adopted

Clause 2 was added to the Bill.

Clause 3

MR. DEPUTY-SPEAKER Mr. Venkataraman.

SHRI R. Venkataraman : I am not moving.

MR. DEPUTY-SPEAKER : The question is:

"That Clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

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

SHRI SHANTI BHUSHAN : I beg to move :

"That the Bill be passed"

MR. DEPUTY SPEAER : The question is :

"That the Bill be passed."

The motion was adopted.

15.05 hrs.

CALLING ATTENTION TO MATTER OF URGENT PUBLIC IMPORTANCE

REPORTED HEAVY LOSS OF LIFE AND PROPERTY CAUSED BY FLOODS IN VARIOUS PARTS OF THE COUNTRY.

श्री ब्रज भूषण तिवारी (खलीलाबाद) : उपाध्यक्ष महोदय, मैं आपकी आज्ञा से अविलम्बनीय लोक महत्व के निम्नलिखित विषय की ओर कृषि और सिंचाई मंत्री का ध्यान दिलाता हूं और प्रार्थना करता हूं कि वे इस बारे में एक वक्तव्य दें :

"देश के विभिन्न भागों, विशेषकर उत्तर प्रदेश, बिहार और असाम में आई भीषण बाढ़ से जन-धन की भारी हानि और राज्य सरकारों द्वारा अपेक्षित संगठित देने में असफलता तथा केन्द्र से सहायता की मांग।"

कृषि और सिंचाई मंत्रालय में राज्य मंत्री (श्री भानु प्रताप सिंह) : 1 जून, 1978 से 26 जुलाई, 1978 तक समूचे देश में कुल मिलाकर, अधिक या सामान्य वर्षा हुई। 26 जुलाई, 1978

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* The following members also recorded their votes.

AYES : Sarvshri A. K. Roy, Shri K. P. Unnikrishnan, A. Sunna Sahib, Jalagam Kondala Rao, D. K. Borooah, V. Tulsi- ram, Chhitubhai Gamit and M. V. Chandrashekhara Murthy;

NOES : Sarv shri Narsingh Yadav, Surendra Jha Suman, Vinayak Prasad Yadav, Mahendra Narayan Sardar, L.L.Kapoor, Yuvraj, Birendra Prasad, Vinodbhai B. Sheth, Shiv Ram Rai, Prafulla Chandra Sen, Mukhtiar Singh Malik, Ramapati Singh, Chandra Pal Singh, Heera Bhai, Parmar Lal and Bagum Sumbrin.