[Mr. Deputy-Speaker].

Substitute—

"Dramatic Performances (Delhi Repeal) Act, 1963". (3).

(*Shri Hajarnvis*)

Mr. Deputy Speaker: The question is:

"That Clause 1, as amended, stand part of the Bill".

The motion was adopted.

Clause 1, as amended, was added to the Bill

Enacting Formula

Amendment made:

Page 1, line 1,—

for "Thirteenth" *substitute*— "Fourteenth". (2).

(*Shri Hajarnavis*)

Mr. Deputy-Speaker: The question is:

"That the Enacting Formula as amended, stand part of the Bill".

The motion was adopted

The Enacting Formula, as amended, was added to the Bill

Long Title

Amendment made:

Page 1, in the Long Title,—

for "Union territories of Delhi, Himachal Pradesh and Manipur". (1).

substitute—

"Union territory of Delhi".

(*Shri Hajarnavis*)

Mr. Deputy-Speaker: The question is:

"That the Long Title, as amended, stand part of the Bill".

The motion was adopted.

The Long Title, as amended, was added to the Bill

Shri Hajarnavis: I move that the Bill, as amended, be passed.

Mr. Deputy-Speaker: The question is:

"That the Bill, as amended, be passed".

The motion was adopted.

15:10 hrs.

LIMITATION BILL

The Deputy Minister in the Ministry of Law (Shri Bibudhendra Mishra): On behalf of Shri A. K. Sen, I beg to move:

"That the Bill to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith, as passed by Rajya Sabha, be taken into consideration".

I do not propose to waste the time of the House by repeating all that I said while moving the motion for reference of the Bill to the Joint Committee. I would only remind the House that the most important recommendations of the Law Commission were with regard to the articles of the Indian Limitation Act. So far as the articles are concerned, the Law Commission's recomendations were threefold. Firstly, they suggested that the articles should be arranged according to their subject matter. The second suggestion was that the period of limithation should be the same, as far as practicable, for the same class of suits. The third suggestion was that the starting point of the period of limitation should be the accrual of the cause of action.

So far as the first suggestion is concerned, namely that the articles should be classified according to the subject-matter, that recommendation has been accepted, and it will be seen that broadly the articles have been

classified under ten heads. So far as the second recommendation is concerned, namely that the same period of limiation should be prescribed in suits of the same class, as far as practicable, that also has been accepted. I may only point out here that all the recommendations regarding period of limitation for suits based on contract have been accepted, whereas the recommendations regarding suits based on torts have not been accepted, for the simple reason that in the case of torts, the Law Commission also recommended that the period of limitation should be three years. Under the existing Act, the period of limitation for most of the suits based on torts is one year. So, that recommendation was not accepted, because no justification could be found as to why the period of limitation in the case of suits based on torts should be raised from one year to three years.

So far as the third suggestion is concerned, namely that the starting point of the period of limitation should be the accrual of th cause of action, that has not been accepted at all for the simple reason that it was thought that the Limitation Act was quite an old one and it had stood the test of time, and if now we put the accrual of the cause of action as the starting point of limitation, it might prove hazardous to the parties concerned. It is well known that cause of action is a bundle of facts, that has to be proved, and sometimes, the lawyers have to go through a labyrinth of arguments in order to prove when actually the cause of action arises. Therefore, it will put the litigants, and the plaintiff in a very difficult position to find out when actually the cause of action in a suit arises. Therefore, it was thought that the present method is more suitable, and, therefore, the said recommendation of the Law Commission has not been accepted.

I would come now broadly to the recommendations made by the Joint Committee. It is my duty to thank the Members of the Joint Committee for the care that they bestowed. The Joint Committee fortunately consisted of many eminent lawyers who are Members of Parliament. I shall refer now to some of the important changes made by the Joint Committee, briefly.

I shall first of all refer to clause 4. As will be seen, clause 4 provides that when the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens. The question that arose was what would happen if the court were not closed on a particular day but it was only partly closed. Sometimes, it so happens, and we have seen from our experience that the court has to close all of a sudden for various reasons after sitting for an hour or two, and it is not within the knowledge of a party. Supposing it is the last day for filing a suit, or the last day of limitation, and the party comes prepared, and he knows that the court is open, but then he finds that it is closed, and that becomes the last day of limitation, then, what is to happen? Therefore, an explanation has been added on to this clause by the Joint Committee which runs thus:

> "A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.".

Then, I shall turn to clause 6. I shall not read the whole clause and waste the time of the House. Clause 6 provides for certain benefits to the minor. If a cause of action accrues in favour of a minor, the period of limitation is extended so that when the minor becomes a major, for three years after he becomes a major, he is entitled to file the suit. That is the provision for the benefit of a minor.

[Shri Bibudhendra Mishra].

The question arose whether a child in the womb is a minor or not. There are some High Courts like the Lahore High Court who took a very technical view and held that the term 'a person' meant a person born, and could not obviously include a child in the womb, whereas there were other High Courts, like, I believe, the High Courts of Calcutta, Madras and probably Allahabad, which held that for the purpose of law, it would be inequitable to say that a child in the womb was not a minor. It is not unknown that in the Hindu law, for example, a child in the womb gets right to property. In the Workmen's Compensation Act also, a child in the womb is considered as a person entitled to certain benefits. In view of these conflicting decisions, it was thought by the Joint Committee that if the object of this clause was to give certain benefits to a minor, it would be inequitable and unjust not to include in the definition of 'minor' a child in the womb, because that would be unthinkable. Suppose a cause of action accrues today; suppose a child is born today, and the father dies tomorrow, he gets the right, whereas if the father dies today but the child is born tomorrow he does not get the right. Since the whole clause is intended to give a benefit to a minor, on the ground that he is a minor, the Joint Committee thought that it would be inequitable and unjust not to include in the definition of the term 'a minor' a child in the womb.

Then, I would refer to clause 13 which is completely new, which provides for exclusion of time in cases where leave to sue as a pauper is applied for.

Then, I would refer to clause 29. We had formerly provided that after the coming into force of this Bill, the period for filing a suit would be two years, and the period for filing an application would be thirty days. The Joint Committee thought that since the Bill is a new one, and it would take some time for the parties to be conversant with the provisions of the new measure because of its wholesale change, it would be just and proper that they should be given time. Therefore, the period of two years provided for suits has been extended by the Joint Committee to five years, and the period of thirty days provided for applications has been extended to ninety days.

Then, there are many articles where the period has been changed. Members will see it from the report of the Joint Committee. Because from their experience they have found that it works out certain hardships, they have changed it from one year to two years and so on. It is in the field of applications and appeals that a major change has taken place in the Joint Committee, and we have deviated from the recommendations of the Law Commission. So far as articles 155(a), 132, and 133, all of which deal with either appeal to the High Court or appeal to the Supreme Court or application to be filed before the High Court or the Supreme Court are concerned, a uniform period was suggested by the Law Commission, namely thirty days. But the Joint Committee thought that it would be better, in view of our experience, that we stuck to the old arrangement of sixty and ninety days, the period varying of differing from case to case. Therefore, in the field of appeals and applications before the High Court and the Supreme Court, the recommendations of the Law Commission have not been adhered to.

These are, in short, the main recommendations made by the Joint Committee. There was one incidental amendment which was overlooked, so far as 44(B) was concerned, which was not recommended by the Joint Committee, but which was accepted by me when it was brought to my notice in the Rajya Sabha.

With these words, I move.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith, as passed by Rajya Sabha, be taken into consideration".

Shri Daji (Indore): This Bill to amend the Limitation Act is, really speaking, a very important piece of legislation, and I am sure it will leave an indelible mark on the future course of litigation in the country.

Shri Bade (Khargone): In my dissenting note, there is a misprint. I gave a dissenting note about article 136, not 135. But it is printed as 135. Either it may be my mistake or it may be a printing mistake. It should be read as 136.

Shri Daji: The context is very clear.

Shri Bade: Yes.

Shri Daji: As I was saying, it is bound to leave a permanent mark for many years to come. Such laws as the law of limitation are not usually changed very often. They are changed after a period of years. In fact, we are undertaking this change in consonance with the recommendations of the Law Commission after more than half a century.

The idea underlying the change has been explained ably and it is a laudable object, namely, to simplify and classify the law of limitation in such a way that like-nature suits are treated on a par, alike. The Joint Committee, of which I had the privilege of being a Member went into the aspect very closely. The law of limitation is based on the principle that the law cannot possibly help the lazy and laches cannot be permitted to be pleaded for every one's acts.

Shri U. M. Trivedi (Mandsaur): On a point of order. The hon. Member was a member of the Joint Committee. Is he entitled to take part in this debate? Is it for supporting the Bill?

Mr. Deputy-Speaker: We are at the consideration stage before the final stage. All Members are equally entitled to participate.

Shri U. M. Trivedi: He has not appended any dissenting note.

Mr. Deputy-Speaker: There is no such distinction.

Shri Daji: Litigation should come to a close at a certain point of time. That unending delay or that unending hanging in the air of the sword of Democles over the parties concerned should not be there. At the same time, there is another consideration that in a country like India, vastly illiterate, people not fully knowing the law and their rights, we should not so hustle the law as to actually prevent the remedy. The Joint Committee had the task of balancing these two main viewpoints in regard to the Limitation Act. It is a very technical law about the enforcement of rights. The Joint Committee considered the whole question with the least acrimony purely from the point of view of improving the law and tried to change it largely in the background of the Report of the Law Commission. It has, therefore, been possible to arrive at a large measure of agreement almost a wide measure of agreement. I must also express my thanks to the members of vasious parties as well as to Government for the common language adopted, because the logic and the purpose was commonly appreciated. It was with this point of view that we found it necessary to make certain changes.

One very important aspect is the increase of limitation in the case of Fatal Accidents Act. When a man is killed, possibly his widow or the orphan is not able, in a period of one year, to bring up a suit. Some

[Shri Daji]

months are passed in absorbing the shock.

12.25 hrs.

[SHRI KHADILKAR *in the Chair*].

Then they have to take advice. So we have increased the limitation to two years. I think it is a very beneficial provision. Both on principle and from practice, I can say that the period of one year was found to be very short.

But in this connection, I would like to recommend through you to Government, and would seek the help of my youthful friend, the Deputy Minister, a change in another law. The rules under the Motor Vehicles Act providing for a tribunal for speedy settlement of cases have provided for a limitation of only 60 days, whereas we are increasing the limitation in the case of the Fatal Accidents Act from one to two years. The tribunal constituted under the Motor Vehicles Act is a very beneficial provision, but there is provided only a limitation of 60 days. Many litigants in villages—in the case of people who are overrun by buses or trucks—come to know and seek advice only after the period is over. For thirty or sixty days they cry and then they come to town to seek advice. By that time, the 60 days are over. So that this really requires some thinking. Since we are increasing the period from one year to two years in the case of the Fatal Accidents Act, this may also be considered.

Similarly, very salutary is the provision in regard to the time allowed for pauper appeals. If it is disallowed, the time taken from the date of filing an appeal should be given credit to and additional time should be given to the man to file the appeal.

These are some important changes which will really benefit. The other important change which was thought necessary was this. The original Bill radically cut down the period of limitation of appeals. It was really a revolutionary change. As I said, we have to balance the need for speedy closure of litigation and conditions prevailing in the country. Therefore, after hard deliberation, we thought that the period of limitation prescribed for appeals be left undisturbed by and large. It is not very long-60 days or 30 days or 90 days in some cases. What had already become recognised and well known by long practice had better be left untouched. That was, I consider, the most important amendment that the Joint Committee introduced and was accepted. I think it is very highly commendable.

In one aspect, the Committee has done good work, and that is the limitation for leave to appeal to the Supreme Court. In the case of death sentences, the limitation has been increased from 30 to 60 days. Here again, I must say, though it is not quite germane, that the Supreme Court is becoming a very costly institution. It is almost becoming a prohibitive institution in even criminal cases. It has become too costly for the ordinary man to seek redress in the Supreme Court. Whether it be criminal cases or civil cases—in civil cases the valuation would be beyond Rs. 30,000; so perhaps the man can afford—or even fundamental rights, but particularly in criminal cases, the Supreme Court is becoming almost prohibitive.

As every practising lawyer knows, there are very many cases where even manifest injustice has been tolerated by the person concerned because he could not find the means to go to the Supreme Court. The whole machinery is expensive, the advocacy is expensive, the filing is expensive, and it is miles away from the man's home town, and perhaps he is in jail. One is constrained to remark with all respect that unrepresented appeals to the Supreme Court do not receive that

much attention from the Judges as they ought to. I say this because a jail appeal to the Supreme Court is seldom represented, and therefore, the limitation period has been raised to 60 days. I do not know how far even this will help. This may help to some extent to relieve the distress, but this is not the remedy. This is only a palliative that we have sought to give. The remedy is to take some radical measures to see that justice in the Supreme Court is not so expensive and prohibitive as it is today.

The old adage says that justice delayed is justice denied. We can easily say, in keeping with our avowed goals and objectives and proclamations of socialism and democracy and welfare State, that costly justice is no justice at all, it is worse than justice denied. We all cherish the Supreme Court and we have all sought to build it up as the highest court of appeal, as the highest legal institution, where every one can go and, in keeping with the emblem of the Supreme Court, hope that the scales of justice will be help even between the rich and the poor, and that, in keeping with the injunction of the Constitution, every citizen will be treated equally before the law, but the rules framed under the Supreme Court and the expenditure heaped on the common man have actually meant the virtual denial of this injunction of the Constitution, and this bulwark of democracy is fast turning into a bulwark of the moneyed classes to fight out matters against the poor litigants, to torture the poor by going to the Supreme Court, or to fight cases against the Government. The common man seldom dares to approach the portals of this temple of justice. The temple of justice is shut to the poor. When the temples of gods and goddesses were shut to the Harijans, Gandhiji led the great satyagraha movement to open them. Now this temple of justice is closed to the poor. It is neither a temple nor is there justice.

Shri Bade: You can lead a satyagraha.

Shri Daji: Yes. If this continues, oneday somebody will have to do it, shall have to lead a satyagraha to see that the portals of the temple of justice are not locked wth such locks which can only be opened by silver or golden keys.

Raising the limitation period from 30 to 60 days is a small attempt. It is only a palliative, it is not a remedy, but I think it is an important step which will help in a large measure.

I would only like to add one thing. My very dear friend Shri Trivedi I hope will not again object to my saying so. I would support the Bill. The learned Minister has said that something was left by oversight and was added in the Rajya Sabha. I say something else has been left out by the Joint Committee which has been pointed out by our hon. friend Shri Bade, which is about the limitation prescribed for the enforcement of decrees. The limitation is 12 years, and article 136, as amended, reads as follows in column 3:

> "Time from which period begins to run: Where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place:"

We stop here. The original article corresponding to article 136 is article 182, which reads as under in column 3:

> "Time from which period begins to run:
>
> 1. The date of the decree or order, or
>
> 2. (where there has been an appeal) the date of the final

[Shri Daji]

decree or order of the Appellate Court, or the withdrawal of the appeal, or

3. (where there has been a review of judgment) the date of the decision passed on the review, or

4. (where the decree has been amended) the date of amendment,.....".

This fourth item has been omitted from the present article 136. The effect of this will be that the period of limitation of 12 years will be an iron bar, and no increase in the limitation period can be made even by mutual agreement. It very often happens, as we know in common practice, that by mutual consent two parties agree to get the decree amended, so that a fresh period of limitation begins. Supposing there is a bad harvest, the rice crop has failed, and the decree holder wants to attach, the village elders bring the two together, and ask them to get the decree amended, since the man is not able to pay that year because of failure of crops, so that the period of limitation is extended, and the dues are also not lost to the creditor. By the omission of this sub-clause (4) to the entry, even by mutual consent, the time cannot be extended. Therefore, the decree holder or the sowcar, who either by his own willingness or social pressure could be forced to extend the time, will not be able to do so now, and that will lead to a spate of execution applications even in a hard or lean year. This seems to be a little harsh and not in consonance with the general spirit which motivated the Joint Committee.

Dr. M. S. Aney (Nagpur): The discretion of the court will be there.

Shri Daji: The court cannot have discretion because 12 years will be the final time. Even by agreement you cannot extend it. That means that even if the Supreme Court wants to postpone executing the decree, we will prevent that, we will force the decree holder to execute the decree even in a lean year. It was not so sharply present before the Joint Committee, and so I think this point really deserves consideration.

This new Limitation Act is an essay in re-laying the law of limitation which has stood by us for the last 50 years. Maybe this also will stand the test of time for another half a century. We are laying down a law of enforcement of rights. I really think that the Joint Committee has done good work, but I appeal to the Government to take my observations over article 136 into careful consideration, and to think over it, and maybe by tomorrow accept some amendment or bring forward some amendment which will set right this small defect which was overlooked by the Joint Committee, in keeping with the general trend of lack of acrimony in the Joint Committee, and give the country and the people a Limitation Bill which will really help simplify litigation, help quicken litigation and protect the just rights of the people.

Shri U. M. Trivedi: From the time that this Bill was introduced I have had the feeling that this amendment of the Law of Limitation is merely a waste of time and energy on our part. It has made no difference whatsoever in the law that exists. It is a difference of tweedledum and tweedledee. Absolutely nothing very progressive is found in this law except at one place. Jammu and Kashmir has been accepted as part of India. In the former law it was by an adaptation order treated as a foreign country. Yet, that position remains; we have not developed the guts to say that this law shall also apply to Jammu and Kashmir. Why do we make a negative law, I cannot understand. Everytime, we repeat: It shall not apply to Jammu and Kashmir. In other words, it implies that we can make a law for Jammu and Kashmir

but we are not prepared to do it. That means that a man just across Ravi is governed by another law while the man on this side at Madhopur has a different type of law and a contract enforceable with different limitation period. It is inconceivable that it should go on in our country and that this differentiation between Jammu and Kashmir and the rest of India should be perpetuated by our own hands. We are in a very difficult position on account of this complex that we have created in our minds and we are in consequence suffering greatly. The whole country is faced with a situation unprecedented in history. It is part of our country; it is within the definition of India given in article 1 of the Constitution. Yet it is not our country. Who is responsible for this? We sitting in Parliament are responsible. Some who have not more than a nodding knowledge of Constitution say that we cannot make laws for Jammu and Kashmir. We negative that proposition inside this House always with a formula, the *mantra*, repeatedly: this law shall apply to India except Jammu and Kashmir. Why do we say it? Immediately we say it, we admit that we are in a position to make a law for Jammu and Kashmir. The Law Ministry should apply its mind to this question: why should we not have a unified law for the whole of India, especially those laws falling under the Union List.

Now, I come to this proposition made by Mr. Daji who has very rightly drawn attention to the most abnormal, abominable and horrible position under the Motor Vehicles Act. It is just cheating the public and the masses—this provision under the Motor Vehicles Act about a tribunal. By the back-door you cannot bring in the Motor Vehicles Act. Once a tribunal is appointed to adjudicate the damage or compensation to be paid in the case of an accident, applications for damage should be filed within sixty days whereas the period of limitation has now been extended under the Fatal Accidents Act from one year to two years.

Shri Bibudhendra Mishra: Which Act?

Shri U. M. Trivedi: The Fatal Accidents Act, section 3. Very recently in 1961, a very poignant position arose, when hundreds of pilgrims were killed in motor accidents on the road to Badrinath. Who were the pilgrims? Not one of them was from U.P. But Uttar Pradesh has got a tribunal appointed under the Motor Vehicles Act. The victims were either from Gujarat or from Madhya Pradesh or from Rajasthan and from somewhere else, as far away as from the State of Mysore. They could not know, and their families could not know that the tribunal has been appointed as provided in the Motor Vehicles Act, because the appointment of the tribunal is not a uniform affair. Even up to date, no tribunal has been appointed in Rajasthan, and thus in Rajasthan if an accident takes place, you can sue for one year. But if a Rajasthani dies somewhere in Uttar Pradesh or Madhya Pradesh, the man is handicapped, because he knows only the law which applies in his land. He waits to file a suit; gathers money and gives notice. By the time the heir makes up his mind the whole claim is barred. I would like to bring this peculiar position to the notice of the Government and request that this anomalous position must be removed. It creates a good deal of heart-burning. Hundreds of people—I do not want to say thousands—who died on the Badrinath route were deprived of their legitimate compensation which their relatives could have easily got but for this position. The Government did not do anything; the Accident Committee did not do anything. The motor-owners reaped the benefit out of it and ultimately the benefit went to the insurance companies which had insured and which ought to have been made to pay the real compensation which was due.

[Shri U. M. Trivedi]

Then I must draw the attention of the House to this doing away with the provisions of section 48 of the Civil Procedure Code and to replace it by the provisions contained in article 136 of the Schedule to this Bill. Why the provisions of section 48 have been taken away is not explained in any manner. The language has been more confusing than anything in the present Bill. Section 48 put a limitation of its own. By virtue of that, a decree once passed, whether executed within three years or not, and whether continued to be so executed by the provisions of article 183 kept alive by the provisions of article 183, would also die a natural death at the end of 12 years, but it also made a provision that where the decree or any subsequent order directs any payment of moneys or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree, the time shall expire at the end of 12 years therefrom. The change that has now been made is this:

> "Where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place."

It puts certain limitations which were only explanatory in themselves as enumerated in section 48(1)(b). I do not see why this language was changed in this manner. I do not want to express the fear to the same extent as expressed by Shri Bade in his dissenting note and also by Shri Daji. No doubt, the language is capable of meaning that a subsequent order might be executed and the limitation may run from that time. But then it comes to this position that an order will have to be obtained for the purpose of this and if a private arrangement has been made in any manner extending this by mutual adjustment or by mutual compromise entered into between the parties, the decree will be dead.

Another difficulty that will arise is this, that for 11 years a man may remain silent, and then when everything is forgotten raise it up. A child who was only 18 years when his father died and when the decree was passed against him, when he comes to be 29 years of age never knowing that a decree has been passed against his father will be faced with this difficulty without any knowledge on his part. The period of 3 years that was provided, I submit, therefore, was a very reasonable thing because the case will appear fresh.

Why is there this law of Limitation? For an honest man no limitation is necessary. But the limitation on suits, on applications, has merely been put on the statute-book so that no stale claims should be entertained and no stale matters be brought before courts. In this case, when a decree has already been obtained why should the decree remain dormant for a period of 11 years and 11 months? I see no conceivable grounds for allowing this stalemate to be produced in the execution of decrees. Because no amendment has been tabled by me, and I see that no amendment has been tabled by any other hon. Member, I can only try to persuade the hon. Minister to consider this position and see whether it is in the interest of the citizens of this country that this position be taken by the Government.

There is a saying in Latin: *Interest republicae ut sit finis litium,* which means that it is in the interest of the litigant that the litigation is finished at the earliest. But here we are making a provision saying that a litigation cannot be finished for some more years. Even the execution has been allowed within a year, two years or three years. Then there is the end

of it and that is the end of the litigation. It may take a man 12 years to finish a suit. It may take another 12 years for him to carry on the execution. For another 12 years the debtor would be made to suffer.

Then there is another thing which requires a very urgent application of the mind of the Government. Why should the Government take this advantage? The Government which is mighty, the Government which has got all the resources at hand, the Government which is well advised, the Government which has got a machinery to get advice, the Government which has got a machinery to recover its dues, should not take it into its head that where all other litigations will be barred by one year, two years or three years, litigation by and on behalf of the Government will continue for a period of 30 years. Why is there this protection to the Government for 30 years? What justification is there to differentiate between one person and another? Why this law of an unusual type to give protection to the Government? An ordinary litigant is denied the right to file a suit for the recovery of an amount due on a promissory note after three years. Under the fatal accidents clause the period of limitation is two years; for some torts probably it is one year. Here we have been told that Government can sue for thirty years. Why this thirty years business? On the contrary, my own submission would be that, so far as Government is concerned, the period of limitation must run against the Government in the same manner as it runs against an ordinary litigant, an ordinary citizen. Nay, something more must be there. There must be a provision in the law itself that limitation shall not be pleaded as a bar to a suit by a cienzen against the Government. Government must be precluded from pleading limitation. Section 3 of our Act must be amended suitably so that this provision of law shall not apply to the State. We have got a peculiar law. It says:

> "Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

I remember, Justice McCardie once said to the Attorney-General in England: 'Is Government going to take the dishonest plea of limitation?' The Attorney-General kept quiet and did not press it. Therefore, so far as Government is concerned, there should not be any plea of limitation. If there is suit by a citizen for the recovery of dues from Government and if the Government is satisfied that it is real debt, then the Government must make an effort to pay it off. It should not plead limitation in such cases.

I know many cases where cases against the Government involving lakhs and lakhs of rupees are thrown out because of limitation or other highly technical grounds. Government advocates, if they are geniuses even if they are not geniuses, they learn these tricks all right—they always plead that notice under a particular section is not delivered, or the delivery is not proper, or the suit is barred by limitation. All sorts of technical pleas are taken. Why? Because Government wants to save money. When Government is taxing the people, when Government is getting benefits out of the citizen, it should not take this plea of limitation against its own citizen. Now a citizen who is handicapped, who has not got the money even to purchase court fee stamps, who cannot go to an ordinary advocate for getting some proper advice, who cannot spend money to engage a good counsel, when he goes through all these formalities finds himself handicapped in this respect because the suit is barred by limitation.

Why should the Government be treated differently in matters of litigation from its citizens? Since the period of limitation against the

[Shri U. M. Trivedi]

citizen will now be extended for a period of thirty years, why not make it thirty years against the Government also? Let it be both ways. If you want to sue for thirty years, let the citizens also be permitted to sue you for those thirty years. I am sorry, I used the word "you". I meant the Minister. I say that this sort of discrimination in favour of the Government in these days of democracy sounds ill.

16 hrs.

Then, personally I would have suggested that in this law of limitation a salutary provision ought to be made. Just as section 48 of the Criminal Procedure Code has been amended by virtue of this law, an amendment to the Civil Procedure Code ought to have been made where an appeal *in forma pauperis* is to be filed. When an appeal *in forma pauperis* is filed in the High Courts, the High Court Judges bound by the law run to the rescue of Government in realising the court fees. They look to it whether a particular point of law is involved or not and unless a point of law is involved they do not look into the facts with the net result that the leave to appeal *in forma pauperis* is generally refused. I would say that it would have been a salutary thing to embody in this law of limitation this proposition, namely, that that particular provision of the Civil Procedure Code shall be taken out and all appeals shall also be treated at par as if they are appeals which are filed under the provisions of Order 41. It is no use giving a little limitation time and saying that if an appeal *in forma pauperis* is rejected, that particular period of time will be counted and will be given credit of. Wherefrom will the man get the money to file the suit? It is nothing; it is just an eyewash. I will, therefore, submit that when this provision in section 48 of the Criminal Procedure Code could be amended by the present Bill, we could have gone a little further in amending the law of appeal *in forma pauperis*.

With these remarks I say that I am not very happy over this Bill. However, since the criticism offerred by the Opposition falls always on deaf ears, I do not want to raise my voice very much; yet, I hope that the hon. Ministers will take lesson from this and will not always turn deaf ears to the requests coming from the Opposition.

16·03 hrs.

Shri K. L. More (Hatakanangle): Mr. Chairman, Sir, I am here to support this measure. This measure has come before this august House after a great deal of thought and deliberation. So, in my opinion there is no lacuna left in the present measure. After the hon. Deputy Minister has very lucidly placed before this House all the points I do not think that I have anything to add, but I will say a few things because I was a member of the Joint Committee.

As the hon. Deputy Law Minister has stated, the recommendations of the Law Commission were three. The first recommendation of the Law Commission was that the articles should be classified according to the subject matter; the second recommendation was with regard to the period of limitation and that it should be according to the nature of the suit and the third recommendation was regarding the accrual of the cause of action.

Now, as regards the first one, that is, classification according to the subject matter, that has been accepted by the Joint Committee. As regards the second one also, that has been recommended. But as regards the third one, it has not been accepted. On the whole, we have given a very careful thought to this measure and the present measure emerges out of careful deliberations.

Another thing that I want to say is this. Great care has been taken to see that no honest citizen is denied justice and clause 29 has been drafted accordingly.

As regards clause 4, there was some doubt expressed about the word 'closed' and accordingly an Explanation has been embodied in the Bill.

As regards clause 6 also, the right was denied to the minor. But the Committee has recognised that right.

Now, I do not wish to go into the other clauses that have been amended, but I want to say something about the observation made by my hon. friend who preceded me, Mr. Trivedi. He observed that the laws of the country should be applicable to all the territories. Unfortunately, that lacuna is there, but to some extent that has been covered by item 112 of the Schedule of the Bill which says:

> "Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir".

This shows that the Government do realise the position.

Lastly, I may say that there is a reflection of the liberal views of this august House on this measure and we find that there is an attempt to increase the period of limitation. With regard to the death sentence also, previously it was 7 days and now it has been increased to 30 days. Due to there being appeals to the Supreme Court, the period has been increased.

So, we find that the Joint Committee and the Ministry of law, especially the Deputy Minister of Law, have paid great care in amending this Bill and have put in great labour in this direction. I feel it my duty to pay a tribute to the Deputy Law Minister and also the Members of the Joint Committee. With these words, I commend the Bill, as amended.

Shri Gauri Shankar Kakkar (Fatehpur): Mr. Chairman, Sir, the Indian Limitation Act is a very old Act. When we are to make certain changes or amendments, I think the Law Commission's Report should not be taken as the only basis or criterion. But other things also should be taken into consideration while making amendments in the old Act. Here, I would like to point out one thing. In various States, there is a tendency to increase the court fee. Just to cite the example of UP, at present, the court fee has been doubled as compared with what it was previously, say, two or three years back. There has been a regular enhancement of the court fee. Justice is thus getting expensive every day, and so, that thing is also to be scrutinised minutely from the point of view of whether the poor man will be able to get petty resources to have a resort to the law court and get justice done in his favour.

Then, there are different social environments prevalent in different States. So, when the provisions of the law of limitation are to be amended, we have also to take into consideration the poverty of the people and the other social environments that are prevalent.

I have gone through the Joint Committee's Report and also the dissenting note appended to it by my hon. friend Shri Bade as also the original Bill which was introduced in the Rajya Sabha, and I would like to make a few observations in this connection. As my hon. friend the Deputy Law Minister has stated, certain recommendations of the Law Commission were implemented, while certain others were not. I would like to point out here that those recommendations of the Law Commission which give harassment or trouble to the poorer classes are being enforced.

[Shri Gauri Shankar Kakkar]

Especially, I shouldd like to refer to sections 19 and 20 of the old Limitation act.

Sections 19 and 20 of the old Act deal with the acknowledgment in case of part-payment of the debt or the interest. The moment part-payment of debt or interest is made, the limitation is extended again and a fresh lease is given to limitation. These sections were previously applicable in the case of execution proceedings as well. The judgment-debtor, if he was making part-payment of the decretal amount was getting the benefit of the extension or enhancement of the limitation period. The Law Commission is of the view that sections 19 and 20 apply to execution applications also, and as has been made clear in the explanation to these sections, they have stated:

> "We recommend the deletion of articles 182 and 183 and the substitution of the provision of section 48 of the Civil Procedure Code; and it is our intention that the time-limit of twelve years laid down by that section should be absolute; subject to the exception therein, we are of the view that there should be no scope for extension of time on acknowledgment and part-payment in respect of execution applications. Sections 19 and 20 should be amended suitably.".

My submission is that this would cause hardship to the poor judgment-debtor. In the rural areas, when the decree is passed, the judgment-debtors against whom the decree is passed are normally poor people, and they cannot afford to pay the entire decretal amount in a lump sum. So, the provision in section 19 of the old Act was that in case of part-payment of the decretal amount, the privilege of extension of the limitation period was enjoyed by the poor judgment-debtor belonging to the rural areas. I would plead for the deletion of execution proceeding from sections 19 and 20. Actually, it snatches away a very valuable right which previously the village folk or the judgment debtors were enjoying. As the present position is, howsoever congenial the attitude or compromise or understanding between the decree holder and the judgement debtor might be, they cannot possibly extend the period of 12 years and even with mutual consent, it would not be possible with the present provision to extend that period for the enforcement of the realisation of the decretal amount. If there is any recommendation of the Law Commission which is causing hardship to a section of people who belong to the rural area or who really cannot afford to pay in a lump sum, it could very easily have been ignored and by amending the Limitation Act we should have seen that relief is given to those who really deserve it, those who are at the mercy of those who are capitalists who have suffient means with them. Of course, I know that no amendment has been tabled. But this is a very important and salient feature which I am pointing out.

Shri Bade: I have tabled an amendment.

Shri Gauri Shankar Kakkar: Then I stand to support that amendment in this respect. I would agree with the dissenting note of Shri Bade. I would once again appeal to the hon. Minister to make this provision to give sufficient relief to those who are really very poor. The judgment debtor cannot pay the entire sum in one instalment.

Coming to the other clauses and articles, an attempt has been made by the Joint Committee to give certain extension in the case of certain suits. That is praiseworthy. Still, even with the present provisions, articles and clauses, it is not giving sufficient relief to those litigants who have no resources at their command and who

actually need to collect them. There are numerous cases in rural areas almost all over the country where people are not able to have resources, howsoever petty, at their beck and call at a time unless the harvest period approaches. That should also be kept in mind. In the case of these persons, the limitation period should be enhanced so that they may be able to have speedy justice and they may be able to have their grievances redressed in law courts.

As has been pointed out by hon. Members, with the enhancement of the court fee, with the present huge expenses being incurred in higher courts especially in the Supreme Court how far is it possible for the poor man to get justice? It can very safely be said that it is not only a case of justice being delayed but justice denied. I would say that justice is not at all got by a huge number of persons who cannot afford to go to the High Court or the Supreme Court. Simply because they have got no means of resources, they are unable to get justice in their favour.

I am glad that in the case of torts, the time has been extended, and that in the case of murder appeals the time has been extended from 30 to 60 days, but I find that all the declaratory suits, according to the recommendation of the Law Commission, have been taken together and the same period of limitation has been prescribed. Here I agree with the dissenting note of my friend Shri Bade, and I would appeal to the hon. Minister to look into one category at least, the case of adoption according to Hindu law. If there is a declaratory suit for cancellation of an adoption or relating to an adoption, and if the same period of limitation is fixed for a case of this nature, it would mean a great hardship, because ordinarily when the deeds are registered, they are not known, and when the information is actually got, the party has to collect resources in order to file a declaratory suit because it is a huge amount. So, there should be some distinction between suits where adoption and such matters are the subject matter of the suit and other declaratory suits. They should not be on the same footing.

With these remarks I would once again appeal to the Law Minister to accept the amendment in respect of clause 19 which I have suggested in order to give relief to the poor judgment debtor.

श्री बड़े : सभापति महोदय, मैं इस ज्वाएंट कमेटी का मैम्बर था । मैम्बर होने की हैसियत से जितने इस लिमिटेशन बिल के प्राविजंस थे उन पर मैंने अपना मत दिया हुआ है । कुछ प्राविजंस पर मैंने अपना डिस्सैंटिंग नोट दिया है ।

उन में विशेषत: ऐगजिस्टिंग लिमिटेशन एक्ट में जो आर्टिकल १८२ है और अभी के वर्तमान बिल में आर्टिकल १३६ है वह मेरे नोट आफ डिस्सैंट में १३५ छप गया है । मेरी गलती से यह ऐसा हुआ है या प्रिंटिग की गलती से १३६ के बजाय १३५ उसमें छप गया है यह कह नहीं सकता । वह आर्टिकल १३६ समझा जाय । जेसा कि मैंने अपने नोट आफ़ डिस्सैंट में भी कहा है मैं बिल के १३६ आर्टिकल में अमेंडमेंट चाहता हूं । ऐगजिस्टिंग ऐक्ट का आर्टिकल १८२ इस प्रकार है : ——

"For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908.

Three years; or where a certified copy of the decree or order has been registered, six years.

1. The date of the decree or order, or ....

[श्री बड़े]

4. (where the decree has been amended) the date of amendment, or"

मैं बिल के आर्टिकल १३६ में चाहता हूं कि यह शब्द जोड़ दिये जायें :—

"or where the decree has been amended the date of the amendment."

यह शब्द बिल के आर्टिकल १३६ में नहीं है । उसमें से इनको निकाल दिया गया है । अब इन शब्दों के न रहने से क्या होगा ? जब काश्तकारों की फसल का सीजन खराब होता है या कोई अकाल पड़ता है या वे इतने गरीब हैं कि वे उन पर वाजिब आने वाली रकम अदा नहीं कर सकते हैं तो मौजूदा बिल के प्राविजन से डिक्री होल्डर हार्स हो जायेंगे और वह अपनी रकम डिक्री की गरीब कर्ज में लदे हुए किसानों के खेत व मवेशी और घरबार आदि नीलाम करके वसूल करने की कोशिश करेंगे । अभी तक तो हालत यह है कि जब काश्तकार फसल की खराबी, अकाल पड़ने आदि की वजह से रकम अदा नहीं कर पाते हैं तो गांव में सब पंच इकट्ठे हो कर साहूकारों को समझाते हैं कि अभी इसकी हालत बहुत खस्ता है, वे थोड़ा ठहर जायें और उसके खेत, बैल व मकान आदि जब्त न करें। वे यह मांग करते हैं कि उसके लिए पैसा अदा करने की तारीख आगे बढ़ा दी जाये । उसके लिए समय बढ़ा दिया जाये । वे कोर्ट में जाते हैं । और कम्प्रोमाइज होने से किसानों को मुद्दत मिल जाती है जिससे साहूकार का भी काम होता है और काश्तकार का भी काम होता है लेकिन ला कमिशन ने इसकी तरफ ध्यान नहीं दिया है । ला कमिशन ने अपनी रिपोर्ट में पेज ६५ पर यह लिखा है :-

"There is, therefore, no need for a provision compelling the decree holder to keep the decree alive by making an application every three years. There exists a provision already in section 48 of the Civil Procedure Code that a decree ceases to be enforceable after a period of 12 years. In England also the time fixed for enforcing a judgment is 12 years. Either the decree holder succeeds in realising his decree within this period or he fails and there should be no provision enabling the execution of a decree after that period. To this provision an exception will have to be made to effect that the court may order the execution of a decree upon an application presented after the expiration of the period of 12 years, where the judgment debtor has, by fraud or force, prevented the execution of the decree at some time within the twelve years immediately preceding the date of the application. Section 48 of the Civil Procedure Code may be deleted and its provisions may be incorporated in this Act."

इस के सम्बन्ध में उन्हीं ने यह राय प्रकट की है :—

"We are of opinion that some effective, nay even drastic provision is necessary to discourage, if not altogether stop the large scale evasion of the execution of decrees by judgement debtors. The decree of a court is meant to be obeyed and should be obeyed if courts are to command the necessary respect and confidence of the public. From the point of view of the decree holder there is nothing so distressing as an infructuous execution application and it has been truly said that his troubles begin only after the decree."

इस के साथ में आगे जाकर कहते हैं :—

"We consider that the most effective way of instilling a healthy fear in the minds of dishonest judgment debtors 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...."

यानी इसका मतलब यह है कि उस वक्त ला कमिशन का दिमाग इंगलैंड में जा रहा था। लेकिन उन्हें मालूम होना चाहिए कि इंगलैंड हम से शायद १००, २०० साल आग होगा। हमारे गांवों की परिस्थिति क्या है? वहां के आदिवासियों की परिस्थिति क्या है उस की तरफ उनका ध्यान नहीं है। केवल शहरों की तरफ ही उनका ध्यान रहा जान पड़ता है। इसलिए उन्होंने यह शब्द कहे हैं। ला कमिशन के यह रिमार्क इंगलैंड के वास्ते लागू होते हैं। असलियत तो यह है कि हमारे यहां कोई डिस्ग्रौनेस्ट जजमेंट डैटर्स नहीं रहते हैं। जब उसके पास पैसा देने की परिस्थिति नहीं रहती है, बिलकुल कंगाल हो जाता है तब वह कर्ज अदा नहीं कर सकता फिर उसको डिसग्रानेस्ट कहा जाता है और जब डिक्री का एक्जीक्यूशन होता है उस वक्त यदि इस प्रकार का इस बिल में, मैं कहता हूं, वैसा प्राविजन नहीं रखा जायेगा तो फिर उन गरीब कर्ज में डूब हुए काश्तकारों का क्या बनेगा? कर्ज अदा न होने की सूरत में उस पर डिग्री आयेगी, कुर्की साहूकार लायेगा और उसका मकान, खेत और मवेशी बैल आदि सब नीलाम करा लेगा। पहले खेती नीलाम नहीं होती थी लेकिन आज कल के लेंड रेवेन्यु टैनेंट्स ऐक्ट के अन्तर्गत उसकी सारी खेती नीलामहोने लगी है। मकान और ढोर आदि सब नीलाम हो जायेंगे। आज साहूकार और काश्तकार के बीच एक बन्धुत्व भाव है। काश्तकार समझते हैं कि यह हमारे मां, बाप हैं और यह हमारा रक्षण करते हैं और साहूकार भी उनको लड़का समझते हैं, यह गांवों में जो एक भाई चारे और बन्धुत्व की भावना है वह ख़त्म हो जायेगी। मौजूदा बल की धारा अगर अमेंड नहीं की गई और साहूकारों को फौरन और बगैर मुद्दत दिये कुर्क कराने और कर्जदार का सब कुछ नीलाम करने का अधिकार रहने दिया गया तो किसान की हालत बड़ी दर्दनाक होने वाली है। इस तरह का प्राविजन रख कर काश्तकारों की तरफ़ ला कमिशन ने देखा नहीं है। वह इंगलैंड की बात कह देते हैं कि डिस्ग्रौनेस्ट जजमेंट डैटर्स के संग सेख्ती से पेश आना चाहिए। लेकिन हमारा देश इंगलैंड नहीं है। यहां अगर डिस्ग्रौनेस्ट होते भी हैं तो गरीबी के मारे मजबूर हो कर करते हैं। काश्तकारों में इतनी गरीबी है कि व कर्जे में ही डूबे रहते हैं। एक दफा कर्जे का खाता खुल गया तो फिर उसके बन्द होने की नौबत ही नहीं आती है। वह जीवन पर्यन्त उसी कर्जे के बोझ के नीचे दबा रहता है। वह कर्जे से कभी बाहर नहीं निकल पाता है। कोर्ट के दरवाजे उसके वास्ते इस कदर बन्द हो गये हैं कि वह वहां अपनी फरियाद कामयाबी के साथ नहीं कर पाता है। एक दफा कोर्ट में दावा हो गया। उसके बाद में कोर्ट फीस और वकील के लिए उसे पैसा चाहिएं। एप्लीकेशन गुजारने के लिए कोर्ट फीस स्टाम्प्स लगाने पड़ते हैं। अगर एडजर्नमेंट कराना है तो अर्जी पर जहां पहले एक रुपये की कोर्ट फीस लगती थी वहां अब डेढ़ रुपये के स्टाम्प्स लगते हैं। अदालत में दावा वगैरह का खर्चा पहले ही अधिक था और और भी बढ़ गया है जब कि उस बचारे की आर्थिक हालत दिन पर दिन बद से बदतर ही होती जा रही है। अब किसानों के लिए अदालत में दावा करने और अर्जी दायर करने के बारे में एक कहावत मशहूर हो गई है :—

"जूता हो तंग, खिसा हो वम और गवाह हो संग तब आता है रंग मुकद्दमे में।"

चूंकि कोर्ट में आते जाते, इधर से उधर चक्कर काटने और पेशियां बढ़ते बढ़ते काश्तकार का जूता ढीला पड़ जाता है इसीलिए कहा जाता है कि उसका जूता तंग होना चाहिए। अदालत में इतना रुपया लगता है और हर कदम पर किसान को पैसा खर्च करना पड़ता है कि जब तक उसका खिसा वम न हो अर्थात् पूरी तरह उसका जेब भरी न हो तब तक उसका कोर्ट में जाना व्यर्थ है। आजकल कोर्ट

[श्री बड़े]

गरीबों के लिए नहीं है । इसके अलावा किसान के पास उसकी तरफ से बोलने के लिए गवाह भी होने चाहिएं । अब जाहिर है कि गवाह अपने लिए रखने के लिए किसान को उनकी चाय, पानी आदि का बन्दोबस्त करना होता है तभी वह कि न का पक्ष लेकर गवाही देंगे । अब इसके लिए भी पैसा दरकार होता है । यह सब इंतजाम होने से ही मकद्दमे में रंग आता है अन्यथा उसका मुकद्दमा लड़ना व्यर्थ रहता है और वह मुकद्दमा जीत नहीं सकता है ।

इसलिए मैं चाहता हूं कि बिल के मौजूदा आर्टिकल १३६ को जैसा मैंने सुझाया है अमेंड किया जाये । श्री होमी दाजी भी इससे सहमत हो गये हैं । श्री गौरी शंकर कक्कड़ भी कहते हैं कि इस प्रकार का इसमें प्राविजन जुड़ना चाहिए जैसा कि ऐ गजिस्टिंग ऐक्ट का आर्टिकल १८२ है उसी प्रकार का इसमें प्राविजन रहना चाहिये । कि जब तक वह अमेंडमेंट हो जाता है या पेटेंट होता है तो फिर उसको आग मुद्दत मिलेगी । सरकार ने कोर्ट के हाथ बांध दिये हैं और सेक्शन १६ और २० में भी अमेंडमेंट कर दिया है । इस बारे में ला कमिशन की रिपोर्ट में पेज २२ पर पैराग्राफ ५१ में लिखा है :—

The question whether any acknowledgment made after a transfer would bind a transferee has been considered by several High Courts and there have been conflicting decisions.... As it is our intention that the time limit of 12 years laid down by that Section should be absolute subject to the exception therein, we are of the view that there should be no scope for extension of time by acknowledgments and part payments, in respect of execution applications."

यदि वह कुछ पेमेंट देता है, तो उसके लिए आगे मियाद नहीं बढ़ती है । मैं शासन को अपील करना चाहता हूं कि चूंकि यह एक वेलफ़ेयर स्टेट है, एक कल्याणकारी राज्य है, इसलिए जहां तक काश्तकारों का सम्बन्ध है, हालांकि उनके रिलेशन्ज़ अच्छ हैं और व कभी कोर्ट में दावा नहीं करते हैं, लेकिन अगर कभी कोर्ट में मियाद देने के लिए प्रार्थनापत्र दिया जाये, तो फिर साहूकार को फ़ोर्स न किया जाये कि वह कुर्की करके काश्तकार का खेत, आर्नामेंट्स और मवेशी आदि को नीलाम करे । इस तरह का प्राविजन नहीं होना चाहिए । इस सम्बन्ध में मेरी एक अमेंडमेंट है जो कि मैंने आज ज़रा लेट दी है । मैं चाहता हूं कि शासन उसको स्वीकार है करे । यदि अपोज़ीशन की अमेंडमेंट होने की वजह से उसको स्वीकार करने में कुछ आपत्ति हो, तो शासन अपनी अमेंडमेंट दे और हम आनन्द से उसको मन्जूर करेंगे । मैं यह निवेदन करना चाहता हूं कि यह दृष्टिकोण कमेटी के सामने नहीं रखा गया है । अनफार्टुनेटली मैं उस वक्त यहां पर नहीं था । आखिर में जब मैं आया, तो मुझे कहा गया कि ऐसा नहीं हो सकता है, आप नोट आफ़ डिसेंट दे सकते हैं । इसीलिए मैंने नोट आफ़ डिसेंट दिया ।

इसके बाद मैंने अपने नोट आफ़ डिसेंट में कहा है :—

"By keeping the above point in view, I think the article Nos. 56 and 57 represent existing articles 92 and 118 and article 58 combines existing articles 93, 119 and 129. All these articles relate to suits for declaration in respect of different maters. As they relate to suits for declaration for different matters the limitation for such suits should be different."

उस में ला कमीशन की सिफ़ारिश का जिक्र किया गया है । मैं समझता हूं कि ला कमीशन ने यह दृष्टिकोण ध्यान में नहीं रखा । कमीशन के मेम्बरों ने आराम से कुर्सी पर बैठ कर इस प्रश्न को देखा होगा, लेकिन हमने देखना है कि दरअसल गांवों की परिस्थिति क्या है, दरअस्ल हम कितना आगे बढ़ हैं । जब

मैं दिल्ली से गांवों में जाता हूं, तो दोनों की परिस्थिति को देख कर ऐसा मालूम होता है कि कल मैं राजा था और आज मेरे हाथ में झाड़ू दे दिया गया है । गांवों में आज रास्ते नहीं हैं, आने जाने के लिए मार्ग नहीं है । यदि हैं तो धूल से भरे पड़े हैं । बैल गाड़ी पर यात्रा करनी पड़ती है । वहां के लोगों को पढ़ना नहीं आता है । डवलपमेंट ब्लाक्स के बड़े बड़े बोर्डज पर जो यह लिखा होता है कि घस लेने वाला और देने वाला दोनों फंसते हैं, उसको व नहीं समझ पाते हैं । अगर कोई व्यक्ति पढ़ कर उनको समझाता है, तब व समझते हैं । इतने अशिक्षित और इतने पिछड़े हुए देश में इस प्रकार के प्राविज़न लाना कहां तक उचित है ? जहां तक इस बात का ताल्लुक है कि ला कमीशन की सिफ़ारिश के अनुसार ऐसा किया गया है, मैं कहना चाहता हूं कि शासन को भी इस तरफ कुछ ध्यान देना चाहिए । ला कमीशन ने तो एक उत्तम किताब तैयार कर दी, ताकि अगर इंगलैंड में कोई आदमी उसको पढ़े, तो कहे कि उसने बड़ा अच्छा काम किया है, बहुत अच्छी रिपोर्ट दी है, लेकिन हमको देखना चाहिए कि उस थ्योरी को एप्लाई करने के लिए हिन्दुस्तान में वैसी परिस्थितियां भी हैं या नहीं ।

जहां तक डिक्लेरेशन के सूटस का सम्बन्ध है, सब के लिए एक ही लिमिटेशन रख दी गई है—तीन वर्ष की । एडाप्शन में दो तरह की बातें होती हैं । एक तो दत्तक पुत्र (एडाप्टिड सन) होता है, जिसको दत्तक कहते हैं । वह कभी डिक्लेरेशन करता है । उसकी प्रापर्टी भी रहती है । उसको यह भी मालूम नहीं रहता है कि अपने ख़िलाफ़ कुछ हुआ है या नहीं उसके लिए छः वर्ष की लिमिटेशन होनी चाहिए । दूसरे लोगों को मालूम नहीं होता है । मरने के बाद उनको मालूम होता है कि बूढ़े ने जो लड़का पाला था, उसकी एडाप्शन हो गई । इस तरह की एडाप्शन में कम्पलशन होती है । आस पास के रिश्तेदार एडाप्शन को इनवैलिड कराने के लिए , उसको सैट एसाइड कराने के लिए कोशिश करते हैं । इस प्रकार की प्राविज़न इसमें होनी चाहिये लकिन वह प्राविज़न इस में नहीं रखी गई है ।

इस बारे में स्टेटमेंट आफ आबजकटस एंड रीजन्स मे बता दिया गया है कि चूंकि ला कमीशन ने कहा कि इस प्रकार होना चाहिए, इसलिए हमने कर दिया है—बाबावाक्यं प्रमाणं, अर्थात बाबा ने कहा, इसलिये हमते मान लिया । ऐसा नहीं होना चाहिये । क्या सरकार ने इस बारे में कुछ सोचा है और परिस्थितियों को देखा है ? शासन के सदस्य गांवों से चुन कर यहां आते हैं, लेकिन उन्होंने इस तरफ कुछ भी ध्यान नहीं दिया है । चूंकि हम गांवों से चुन कर आते हैं, इसलिए वहां के लोगों के दुःख दर्द हम ज्यादा जानते हैं और हम वह शासन के सामने रखते हैं । इसमें पोलीटिकल पार्टी का प्रशन नहीं है । आल सूटस एंड डिक्लेरेशन के लिए छः वर्ष रख दिए गए हैं । लेकिन डिक्लेरेशन फ़ार दि टाइटल, डिक्लेरेशन फ़ार एडाप्शन, डिक्लेरेशन फ़ार मेंनटेनेन्स आदि होते है । कई सूट्स फ़ार डिक्लेरेशन होते हैं । इनमें डिफ़रेंशट करना चाहिए और आवश्यकतानुसार छः वर्ष या तीन वर्ष होने चाहिएं । मैंने लिखा है :

"In cases of pledge and pawn the period of limitation should be 6 years as transaction always takes place in villages and the poor cultivators cannot redeem pledged ornaments within a short time."

हमारे यहां तीन प्रकार के कर्ज होते हैं : लांग टर्म, मीडियम टर्म और शार्ट टर्म । आजकल तो किसी पर्सनल क्रडिट पर या पर्सनल सिक्योरिटी पर काश्तकार को कर्जा नहीं मिलता है । आजकल आर्नामेंट्स प्लेज किये बिना कोई साहूकार कर्जा नहीं देता है । ऐसी परिस्थिति में इसका पीरियड छः वर्ष होना चाहिए । तीन वर्ष का जो पीरियड रखा गया है वह थोड़ा है । तो फिर परमिसरी नोट्स में और आर्नामेंट्स

[श्री बड़े]

गिरवी रखने में क्या फर्क है ? आर्नामेंट्स प्लेज करने से कम से कम इतना तो होता है कि काश्तकार को कर्जा मिलता है । वह सुविधानुसार पैसा देकर अपने आर्नामेंटस छुड़ा लेता है । इस प्रकार उसके घर में एक छोटा सा बैंक तैयार होता है ।

इन बातों की तरफ कोई ध्यान नहीं दिया गया है । ला कमीशन ने भी कुछ साउंड ग्राउंड्ज नहीं दी हैं । उसने केवल बाहर के उदाहरण दिये हैं । क्या डिफ़ेक्ट होता है, क्यों नहीं रखना चाहिए, इस बारे में उन्होंने कोई कारण नहीं दिये हैं । उन्होंने कोई रीज़न नहीं दी है कि क्यों प्लेजिंग का पीरियड कम होना चाहिए, जब कि जब से लिमिटेशन एक्ट आया, तब से ही पचास साठ वर्ष से प्लेजिज का पीरियड वही चल रहा है । यदि शासन उसमें एकदम परिवर्तन करता है, तो गांवों का आर्थिक ढांचा खत्म हो जायेगा ।

अन्त में इस बारे में मैं काम्प्रोमाइस करने के लिए तैयार हूं और यदि आवश्यकता हो, तो मैं ला मिनिस्टर साहब से डिस्कस करने के लिए तैयार हूं । लेकिन मैं उनसे फिर अपील करूंगा कि आर्टिकल १३६ को बदलना चाहिए । अगर वह नहीं बदलेंगे, तो हमारे काश्तकार पर बहुत बड़ी विपत्ति आ जायेगी । कोर्ट्स में एक्सीक्यूशन्ज पाइल अप हो जायेंगे, एटैचमेंटस और कुर्कियां हो जायेगी । शासन को मालूम है कि गांवों के साठ से अस्सी प्रतिशत लोग कर्ज में हैं । उन पर डिग्रियां हैं । उन पर हर साल कुर्कियां आती हैं । हम लोग उनको समझाते हैं और गांवों के पंचों से उन पर फोर्स लाते हैं और साहूकार को कहते हैं कि यदि यह नहीं समझेगा, तो गांव में नहीं आने देंगे । तब साहूकार भी मानता है कि ठीक है, आप गांव वाले कहते हो, तो अगले साल लूंगा, लेकिन कुछ न कुछ पेमेंट देना चाहिए । वह चार, पांच, पन्द्रह, बीस, चालीस रुपये ले लेता है और कोर्ट में जाकर सर्टिफाई कर दिया जाता है । यह परिस्थिति साहूकार के लिए अच्छी रहती है । वह भी टाइम बढ़ाने के लिए तैयार रहता है, लेकिन सरकार ने यह बिल्कुल खत्म कर दिया है और किसान को बचाने के दरवाजे बिल्कुल बन्द कर दिये हैं और कोर्ट के हाथ बांध दिये हैं ।

ला मिनिस्टर साहब मेरी हिन्दी को नहीं समझते होंगे । मैं उनको इंगलिश में समझाने को तैयार हूं । आर्टिकल १३६ में इस प्रकार का प्राविज़न होना चाहिए ।

"where the decree has been amended from the date of the amendment the time will begin"

माननीय सदस्य, श्री होमी दाजी तथा श्री गौरी शंकर कक्कड़ और मैं इस बात के पक्ष में हैं ।

हमारी पार्लियामेंट के जितने भी काश्तकार मेम्बर हैं, वह भी मैं नहीं समझता हूं, इसके विरोध में जायेंगे । इस वास्ते मेरी प्रार्थना है, कि इसमें अमेंडमेंट किया जाये । परसों अगर मेरा अमेंडमेंट आ जाएगा, तो उसको मैं प्रार्थना करता हूं कि स्वीकृत कर लिया जाए और अगर ऐसा नहीं किया जाता है तो शासन खुद अमेंडमेंट रखे और हम उसको मंजूर करने के लिए तैयार हैं ।

Dr. L. M. Singhvi (Jodhpur): Mr. Deputy-Speaker, Sir. I thank you for the opportunity you have afforded to me for offering a few remarks on the Limitation Bill which is before us. I fell that in spite of certain criticism of this Bill, it is essentially a step forward in the process of rationalisation of our statute book. It is no doubt true that the rationalisation of the Limitation Act was overdue. Our limitation regulations came to be in existence under the East India Company, as it then was, and ultimately there was a Bill, quite comprehensive to start with, in 1859. It was in 1908 that the present Act was enacted, and we are now endeavour-

ing, after some 55 years of the Limitation Act, to revise it, to recast it. It must also be borne in mind that the Limitation Bill, as it is before us, does not seek to revolutionise any essential concepts underlying the law of limitation. All that it does is, in pursuance of the recommendations made by the Law Commission, to rationalise the structure of the law of limitation and to bring it in tune with modern conditions, both of litigation and of life as a whole.

In that sense essentially speaking, this is a Bill which must be welcomed by all of us and the profession would certainly owe a debt of gratitude to the government for pursuing this reform measure, this rationalisation measure with all care and speed. This Bill comes to us after it has been distilled and it has percolated through various agencies. It was considered by the Law Commission, which has made various recommendations.

Shri Kashi Ram Gupta (Alwar): Is it watered down also?

Dr. L. M. Singhvi: Well, it is a figure of speech. Distillation is certainly different from dilution.

After the Law Commission made its recommendations, they were screened by the Select Committe and the Rajya Sabh also discussed it in very considerable detail. Therefore, it is quite appropriate for us not to be too concerned, not to be too worried about the format or substance of the Bill; it need not, I can assure the House, raise any grave anxieties, as has been voiced by some hon. Members.

It is nevertheless true that perhaps the urabnisation of litigation, which is a predominant feature of law and litigation in our country, has prevailed with the Law Commission as well as with the Government in giving the Bill its present form. It is almost a compelling feature of the present day litigation in India that it is conducted in urban circumstances. So, this Bill is conceived and framed in more or les urban circumstances. It is, nevertheles, true that litigation has also to take into account the circumstances of life from which it arises. Therefore, what my hon. friend, Shri Bade and my hon. friend Shri Kakkar had to say in respect of certain provisions of the Bill which may cause hardship to the judgment debtor, or more to the rural population in general, has to be considered.

The whole thing is that if we give too much weight to that, we can never proceed to rationalise the statute book as it exists. That is why perhaps on the whole the measure of reform and change contemplated by the Bill are to be welcomed and it is to be hoped that in due course we will adjust ourselves to this more uniform pattern of the law of limitation.

I have, however, some doubts more as a professional lawyer than as a representative of the people in respect of the wording of the Bill as it stands before us and the underlying legal concepts. I should draw attention in particular to clauses 6 and 11 in this respect. Clause 6 is in respect of legal disability and the explanation appended to clause 6 says:—

> "For the purposes of this section, 'minor' includes a child in the womb."

Now, this is an entirely unnecessary explanation, to say the least. It may cause some difficulty, I feel. We have to distinguish between the right to sue and the basis for bringing about a suit. A right may exist; yet, a remedy may not. Therefore even if there is no remedy, even if a child is not born, he has no right to institute a suit. The right accrues and arises, though retrospectively, only on the birth of the child. Therefore, while an idiot or a lunatic could institute a suit that is to say, a friend of a lunatic or an idiot could institute a suit, a child who is still in the womb could not, though ultimately a right may arise after the birth of this child who is within the womb for

[Dr. L. M. Singhvi]

bringing about an action. Therefore I feel that the explanation appended to clause 6 is certainly not necessary or warranted. The notion that Hindu Law enforces in respect of conferring certain rights on a child in the womb is not in any way affected or fortified by this explanation and I, therefore, think that it is actually legally speaking anomalous.

I would draw the attention of the House also to clause 11. Clause 11, sub-clause (2) says:

> "No rule of limitation in force in the State of Jammu and Kashmir or in a foreign country shall be a defence to a suit instituted in the said territories on a contract entered into in that State or in a foreign country unless—
>
> (a) the rule has extinguished the contract;"

This also is legally speaking quite anomalous. I am sure, the Law Ministry and the hon. Deputy Law Minister who is piloting this Bill are not unaware of the anomaly underlying this particular explanation. A rule cannot extinguish a right that may arise. The remedy may not be available, but that is an entirely different matter. I think that these things are in a sense fundamental because they reflect the conceptual thinking and when conceptual thinking is inadequate or is not sufficiently backed and scrutinised, it may sometimes ensue in conceptual miscarriages and misdescriptions.

We have also to remember that somewhat shorter durations have been provided in the proposed enactment. These shorter durations may ultimately, as in the case of a suit for declaration which has already been pointed out, have the effect of reducing the litigation to a certain extent and certainly of suppressing possible frauds. But the other side of the coin cannot be ignored. In this country, everything moves in a very slow way. In our country the Government is certainly not immune from the allegation of being slow. That being so, we have to take into account the fact that life being what it is in our country, awareness being what it is in our country, legal advice and its availability being what it is in our country, we cannot in justice and fairness shorten the durations of limitation. In some cases, as it has been pointed out by some of my friends who preceded me, this may actually cause very great hardships. The large masses of the people in this country are illiterate. There is no legal advice easily available to them. In their cases, whenever they are affected, it is quite likely that the rights get debarred by limitation because you provide for a relatively shorter duration.

16.51 hrs.

[MR. SPEAKER *in the Chair*]

This has to be considered as a general matter, not only in the case of adoption or some such specific provisions. Let me hope that we would acquire some experience in the matter and perhaps the Government would be open-minded enough to consider the possibility of keeping a close watch on the impact of these provisions, of making a sort of socialogical investigation of the consequences of these provisions of limitation and how they affect the illiterate and uninformed people in the country. If they find that their rights tend to be exploited by shorter duration, I am sure the Government will consider restoring the earlier limitation provided in the present Act.

I should like to finish by quoting a piece from a celebrated authority about the purpose of the laws of limitation. Story in his book *Conflict of Laws* says:

> "Statutes of limitation are statutes of repose, to quiet title to

suppress frauds and to supply the deficiency of proofs arising from the ambiguity and obscurity or the antiquity of transactions. They proceed upon the presumption that claims are extinguished or ought to be held extinguished whenever they are not litigated within the prescribed period. They quicken diligence by making it in some measure equivalent to right. They describe litigation by burying in one common receptable all the accumulations of past times lest they should be immortal, while men are mortal".

I hope that the purpose of the law of limitations as described in this celebrated observation is not over-emphasised, because while it is true that the law of limitation is to suppress frauds, while it is true that the law of limitation will render pointless controversies impossible to agitate in courts of law, it is also true that very short durations, very short limitations, may work hardship on the common and illiterate people of this country. This has to be studied by a close and watchful eye and I am sure the Ministry will not consider its work completed after this Bill is enacted, but that it would keep a close watch on the impact of these provisions, as indeed it must keep a close watch on the impact of various enactments which we are putting on the statute book day in and day out. Once that is done, I am sure, there is the assurance that this law which has been rationalised to a very great extent, particularly in the systematisation of the categories of causes of action, would be able to satisfy the purpose for which it is meant.

With these words, I conclude. I thank you very much for giving me an opportunity to speak on this Bill.

Shri K. K. Verma (Sultanpur): Mr. Speaker, Sir, the previous speaker is not agreeable to the addition of the explanation to clause 6 on the ground that a child in the womb would, of course, be entitled to institute a suit after he is born and that if we add this explanation to clause 6, it may create some confusion. But I would submit that the adding of the Explanation that the term 'Minor' includes a child in the womb extends the period of limitation in favour of that child. Suppose, for a moment, that the period of limitation that would accrue to the child in the womb may expire while the child is in the womb, then, the remedy or the redress that would be available to him having expired before the child is born, he would have no remedy at all. Therefore, I think that it is very necessary to extend the period of limitation to that period while that child is in the womb. So, the addition of the Explanation to clause 6 is very necessary, and I do not think that there is any reason to suppose that it will create any confusion.

श्री यशपाल सिंह (कैराना) : अध्यक्ष महोदय, हम यह कल्पना कर रहे थे कि आजादी के बाद हिन्दुस्तान के किसान और मजदूर डेटलेस हो जायेंगे, उऋण हो जायेंगे । आज जो किसान कर्ज की चक्की में पिसता जा रहा है उससे उसे राहत मिल जायेगी । लेकिन इस बिल से बात उल्टी हो जायेगी । पहले तो किसान जमीदार से अपनी जान बचा लेता था, एक चौथाई या पांचवां या बीसवां हिस्सा दे कर अपने आप को बचा लेता था । लेकिन अब यह होगा कि बारह साल में डिक्री हासिल की जायेगी और उसकी जायदाद और बैल सब कुछ ले लिये जायेंगे ।

जरूरत इस बात की थी कि मियाद बढ़ाते लेकिन उसे और घटा दिया गया । मुझे यू० पी० के बारे में पता है कि यू० पी० की सरकार ५ लाख रु० रोजाना कमाती है कोर्ट फीस से । मान लीजिये कि मेरा केस है । आज मेरे पास कोर्ट फीस नहीं है, दस दिन बाद, चार दिन बाद, बीस दिन बाद, महीने दो महीने बाद, कोर्ट फी स का इन्तजाम हो जाता है, तो मैं अपील में जा सकता हूं ।

[श्री यशपाल सिंह]

आज उल्टा हिसाब यह है कि मेरे ऊपर ही तो ज्यादती होती है और मुझे ही कोर्ट फीस देनी होती है । मेरे ऊपर जुल्म होता है और मुझे ही कोर्ट फीस देनी पड़ती है । जिस चंगुल से हम लोग निकलना चाहते थे, जिस चीज से हम यह खयाल करते थे कि हमको राहत मिलेगी, उसमें ही हमारे बन्धन और ज्यादा मजबूत कर दिये गये । अब हम उसके बाहर नहीं निकल सकते । हमने जो डेटलेस इंडिया का स्वप्न देखा था, उऋण काश्तकार का, जिसके कर्ज बेबाक हो गये हों, वह ख्वाब मिट्टी में मिल गया है और जंजीरें और ज्यादा मजबूत हो गई हैं । जो चीपेस्ट बैंकर आफ दि वर्ल्ड था, गांव का बनिया, जो कि हमारे हजार काम आता था, जो हमारे बच्चों की एजुकेशन और बच्चों की शादियों का इन्तजाम करता था आज उसी चीपेस्ट बैंकर आफ दि वर्ल्ड के सामने यह दिक्कत आयेगी कि वह हमारी कोई इमदाद नहीं कर सकेगा । अब तक जो हेल्पिंग और कोऑपरेटिव थी वह इस तरह से खत्म कर दी जायेगी इस बिल के मुताल्लिक यह पता नहीं . .

श्रोब्लाइजिंग मूड में था, अब तक जो हमारी फैमिली का एक पार्ट था, वह हमसे अलग हो जायेगा । यह जो हमारी बनी हुई

अध्यक्ष महोदय : क्या माननीय सदस्य कल जारी रखना चाहेंगे ?

श्री यशपाल सिंह : अभी मैं और बोलना चाहूंगा क्योंकि हमारे जीवन का सवाल है ।

अध्यक्ष महोदय : मैं आपको बनिये से अलग नहीं करना चाहता हूं । आप अगले दिन बोल लीजियेगा ।

The Lok Sabha then adjourned till Eleven of the Clock on Friday, August 16, 1963/Sravana 25, 1885 (Saka).