

As a result, the concerned persons in the IOC apprehended that they would be arrested under the provisions of the Forest Act. Therefore, they went to the sessions court to get anticipatory bail, but, still, they have not got anticipatory bail. The question is this. Necessary action has to be taken to remove the three-inche layer of oil in the sea - it is being tossed over by winds from one area to another area. But, definitely, because of this leakage, a number of dolphins and turtles have died. It is more difficult for the turtles to swim and come to the shore and, therefore, they are dying. Therefore, my submission is that the Government of India should take a very serious note of this report. They may send some senior officer from the Forest Department, or, the persons who are in charge of this National Marine Park, to see what is happening there and how that can be controlled. If the leakage is still continuing from the IOC pipeline or from the refineries which are working there, that should be stopped and plugged. Adequate measures should be taken to prevent any further spilling into the sea, at places where such small islands are located, where this beautiful National Marine Park is situated. Preventive measures should also be taken to see that the flora and fauna of the National Marine Park should not die because of the mistake and hazardous action by the IOC and the refineries which are working there. Therefore, I would urge upon the Central Government, as this park is under the control of the Forest Department, under the Forest Act, to send a responsible person immediately to that area to see what is happening there and also to see how that damage can be restricted. And the layer of oil which is there on the sea, should be removed so that these beautiful creatures of the National Marine Park are saved.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): We shall now take up the Securities Laws (Amendment) Bill, 1999. Mr. Minister.

THE MINISTER OF FINANCE (SHRI YASHWANT SINHA): Sir, before I move the Bill, I would like to make a submission before the House. This Bill and the Securities Laws (Second Amendment) Bill, 1999 may be taken up together for discussion because they both relate to the Securities Contracts (Regulation) Act. If the House approves this, then I will move both the Bills together.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): We can take up both the Bills together.

# **I. THE SECURITIES LAWS (AMENDMENT) BILL, 1999**

[1 December, 1999]

RAJYA SABHA

**II. THE SECURITIES LAWS (SECOND AMENDMENT) BILL, 1999**

THE MINISTER OF FINANCE (SHRI YASHWANT SINHA):

Sir, I beg to move:

"That the Bill further to amend the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, as passed by Lok Sabha, be taken into consideration".

Sir, the Bill proposes to expand the definition of securities under the Securities Contracts (Regulation) Act, 1956 to include derivatives and instruments of the collective investment scheme. This would enable development and regulation of markets for derivatives of securities and units of collective investment scheme. The Bill also proposes to authorize the Central Government to delegate powers to the Reserve Bank of India under this Act. This would enable the Reserve Bank of India to regulate transactions in Government securities and other related instruments as may be specified by the Government. Sir, the Securities Contracts (Regulation) Amendment Bill, 1998 was introduced in the Lok Sabha on 4th July 1998. The Bill was later referred by the hon. Speaker of the Lok Sabha to the Standing Committee on Finance on 10th July, 1998 for examination and report thereon. The Committee submitted its report on 17th March, 1999. Many of the important recommendations of the Committee have been accepted by the Government and incorporated in the Bill. Sir, I move this Bill.

Sir, I also move:

"That the Bill further to amend the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996, as passed by Lok Sabha, be taken into consideration."

Sir, in order to bring greater transparency and impartiality of appellate bodies, the Bill proposes to amend the securities laws, namely, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996 to empower the Securities Appellate Tribunal, SAT to dispose of all the appeals under these Acts instead of the Central Government or SEBI. The Presiding Officer of SAT

has been consulted in this matter. He has suggested that the securities laws may be amended to transfer and delegate appellate functions to SAT. He has also informed that SAT has received only seven appeals since they started functioning from the 1st November, 1997. Since SAT is well equipped and is in a position to take additional workload, the Government wishes to make full use of its capabilities. In view of the experience gained so far in disposal of appeals by the existing appellate authorities and in view of the suggestions of SAT and in order to dispel the perception that the orders of the appellate authorities are orders of the Central Government, the Government considers it necessary to transfer the appellate functions under the securities laws to SAT. Sir, I move the Bill.

*The questions were proposed.*

THE VICE-CHAIRMAN(SHRI SANATAN BISI): Shri K. Rahman Khan - not here. Shri C. Ramachandraiah.

SHRI C. RAMACHANDRAIAH (Andhra Pradesh): Sir, I need some time.

SHRI VEDPRAKASH P. GOYAL (Maharashtra): Sir, I welcome the Bill and support it wholeheartedly. In the period of two-and-a-half years that has passed, there was a lot of hue and cry on the small investors' money being lost. I recall that somewhere in June, 1997 there was a real problem in the whole country because of thousands and thousands of NBCs where small investors put in their life savings and they were in trouble. At the same time, a lot of plantation companies had come in, where collective investments were taken. Innocent people were taken in by the tall claims and big names associated with those companies which were taking monies. It is a common weakness that people like to make good money in less time, and they were lured into this. At the same time, it is a joint responsibility of a responsible Government to take care that they are not put to a loss. With that in mind, when we met the Governor of the Reserve Bank in Mumbai, we were surprised to hear that they had no role to play in that, and that they were very much handicapped. Also, the SEBI was more or less helpless. I understand that the Bills were brought in; some modifications took place, and registration of these companies was brought in. But not many companies registered, not many companies submitted their returns. One of the things which comes to my mind, while reading the Statement of Objects and Reasons, is that it was stated that trading in derivatives might be possible

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within the framework of this Act. Some apprehensions have been expressed that the advantages of this trading may go to bigger investors, to those who are able to play in the market, and to the speculators. I would request the hon. Minister to throw some light on how the interest of the small investors will be protected. Another point which arises from that is that the monies lost by the investors even before these Bills came up, are a matter of concern. Has the Government made any plan to see to it that those monies, as much as possible, are returned to those poor investors? Have any steps been taken, or have any plans been made, or are there any schemes in hand, in this regard? I would request the hon. Minister to amplify them and make them known so that the people can take advantage of the steps that the Government is thinking of taking. Sir, it is also stated here and I read: "To take care of these investors' interests, the Securities and Exchange Board of India (SEBI) would frame regulations with regard to collective investment schemes." That is where the plantation companies come into the picture. I have seen particularly in Maharashtra and Gujarat where a lot of such companies mushroomed in that period; but, most of them evaporated in ten years, and the promoters are nowhere to be seen. We do not know whom to contact, and how to approach them. I would like to know whether there is any scheme to arrest their activities and to punish them for what they have done in the past. They are big people. There are many other assets with them apart from these plantations. Would anything be done to seize those assets to recover the money? It does mention here: "The Committee was of the opinion that the introduction of derivatives, if implemented with proper safeguard and containment measures, will, certainly, give a filip to this sagging market." I welcome this. I would like to know what the safeguards are which are there in the mind of the Government. It was in July, 1998, in response to a Calling Attention Motion, that the hon. Minister had said that 'the last two years had seen a rapid growth in the non-banking financial companies and in deposits taken by unincorporated bodies in large parts of the country. These are to be addressed by the Government. Certain instances of failure have led to a considerable loss being suffered by organisations as well as individuals who have deposited their savings with these unincorporated companies. Prior to 1997, it was stated in that reply that there were more than 40,000 companies registered with the Registrar of Companies.

But only 10,000, 25% of the companies, were filing their returns. Of that, only 832 opted for registration with the R.B.I. and the R.B.I. came into

the picture. This was the dismal state of affairs. The rate of interest was anywhere between 25% and 30%, as against 12% to 16%, which could be considered as a reasonable rate for any good investment. So, these were runaway investments where the monies were put and the risky sector has not paid back those monies. When some of them were still unable to pay, they started holding up and the process went on and on and that is why the hue and cry in that period.

Now, I would like to know how many of these plantation companies, about which reference has been made, have now received the rating. There was a mention that credit rating has been introduced. I would like to know which and how many of these companies have received the credit rating. Then, there was a mention, which I think was very important, that these companies have also played a very important role where the commercial banks could not help the individuals. So, the case is not to kill them, but it is to regulate them, to control them and to give a legal protection to the investor. That is the interest. It is not to close these companies but to promote them selectively and to see to it that they do not play havoc with the people.

Now, it is a fact that since the Securities Contracts (Regulation) Act of 1956, a fifty year old Act, the situation has changed a lot in the capital market, in the whole financial market, in the country. Whereas that Act included only the sale and purchase of securities, now the derivatives have been included and they have also been defined. There was a need to define them and that has been done, which is a welcome step. All these contracts include units or any other instrument issued by any collective investment scheme which I have referred - to the investors in such schemes, and that now the contracts and derivatives shall be legal and valid if these contracts are traded in recognised stock exchanges and settled at clearing houses, etc. That is another important step that has been taken. Then, as per para 5, after the words 'public company', the words 'or collective investment scheme' shall be inserted, as I mentioned, and this again is another good step that has been taken. Now, it also explains clearly on page 4, which are the companies or which are the different arrangements which do not fall under this collective investment scheme. It was necessary to define that so that it was not left to interpretation; and what are included in that have also been separately defined. That is an important step that has been taken.

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Some comments have been made off and on on the working of the SEBI and its decisions. I would like to know whether there is any set mechanism to periodically review the working of the SEBI. A lot of powers have been given to them and I would like to know whether those powers have been exercised evenly, in the interest of the people, not necessarily in the interest of only the big people. At the end, I would like to request the hon. Minister to throw some light as to what steps would be taken to enable the people to get back the money that they had put in, out of allurements. I put it in Hindi:

"चौबे जी गए छब्बे बनने, दूबे रहकर लौटे" अनफोरच्युनेटली वे अब दुबे भी नहीं रह गए, जीरो हो गए। उन लोगों के लिए फाइनेंस मिनिस्टर जी क्या करने वाले हैं। उस पर वह प्रकाश डालें तो बहुत अच्छा होगा। धन्यवाद

THE VICE-CHAIRMAN (SHRI SANATAN BISI) : Now, Shri N. Thalavai Sundaram.

SHRI N. THALAVAI SUNDARAM (Tamil Nadu) : Sir, I don't have to say anything on these Bills.

SHRI PREM CHAND GUPTA (Bihar) : Mr. Vice-Chairman, Sir, thank you very much for giving me an opportunity to speak on these Bills, at short notice.

SHRI C. RAMACHANDRAIAH : Sir, we should be given some more time to express our views on these Bills.

THE VICE-CHAIRMAN (SHRI SANATAN BISI) : No, no.

SHRI PREM CHAND GUPTA : First of all, I would like to congratulate the hon. Finance Minister for bringing in this Securities (Amendment) Bill so that the fifty-year old Securities Act can be updated. This is a much awaited amendment which has been brought in. Sir, I was a Member of the Standing Committee on Finance in the previous Parliament. This Bill was considered therein also. After having a lot of discussion on it, we were somehow able to recommend this Bill to Parliament.

Sir, there are about 5,000 non-banking finance companies which are existing in the country. Millions of people, particularly the people who have saved from their hard-earned money, have deposited money with these companies. Many of these non-banking companies are neither in existence

today, nor do the depositors know as to what would happen to their deposits, whether they would get back their money or not. Here, I would like to give one example. One young depositor of Delhi committed suicide in Haridwar because the money he had deposited in a non-banking finance company could not be recovered. One day, the shutters of the company were down, the company was closed and the promoters disappeared. Sir, same thing has happened in the case of plantation companies. These companies promised very heavy returns, by stating that the money would double in two years or three years, whereas, in fact, there was no re-investment by the directors or the promoters of such companies. The money was siphoned off and the depositors were deprived of their deposits.

Sir, the SEBI has its own limitations. There are certain issues which are neither taken up by the Reserve Bank of India, nor by the SEBI. I would request the hon. Finance Minister to ensure that either of these two agencies should take a lead and ensure that these non-banking finance companies are brought under the ambit of one single agency. Today, the position is, in the case of the non-banking finance companies, the Reserve Bank of India thinks that it should be the SEBI which should take the lead. On the other hand, the SEBI thinks that it is the Reserve Bank of India which should monitor these companies. I have a humble submission to the hon. Finance Minister. That is the interest of the millions of depositors, the guidelines must be made clear so that the depositors are not deprived of their life's earnings. Thank you, Mr. Vice-Chairman, Sir.

SHRI GURUDAS DAS GUPTA (West Bengal): Sir, the Bill is not controversial. At the same time, it must be said that laws are being made in abundance, but most of the laws are only on paper. They are not being implemented and are not being enforced. The benefit that the common people would like to derive from a particular enactment is not of the desired result. The question is with regard to the secondary market, about the non-banking financial institutions.

I remember, I had moved a Calling Attention Motion in this House on the functioning of the non-banking financial companies. Very loud promises were made then. The Government had assured that something would be done to discipline these non-banking financial corporations. I also remember to have raised in this House the problem of aberration affecting the trading in the secondary market, which went on an unusual speculative drive. It appears as if the Government has nothing to do.

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Just look at the stock market, Sir. When the economic fundamentals of the country were wrong -- ,as they -- are wrong at the moment when the Government had to spend so much money on the Kargil War, when recession was continuing unabated, the secondary market was tracking a new height. There was an unbridgeable gap in the revenue account, in the fiscal account. It had crossed 5000 points. How was it possible? It was possible because the foreign financial institutions had been pumping in money, and the common people were lured. Ultimately, that speculative transaction ended after some time. The Bombay Stock Exchange index came down to 4200. It was an automatic action and reaction in the market. Despite the SEBI being in place, despite the Finance Minister's assurance that the Government would be vigilant, the unproductive, unprecedented and speculative movement in the Bombay Stock Exchange market was not immediately corrected.

Some people have lost money. The 'vigilance' ended in inaction. There was nobody to act. You will remember what happened during the Harshad Mehta period. Even at that point of time, the stock market did not reach this figure. Ultimately, it is the small investors who lose. Foreign institutional investors never lose. There is no protection for the small investors, despite the Government itself getting armed itself with enactments one after another, This is one side of the picture.

Another side is of non-banking financial companies. My friend says, there are 5000 non-banking financial companies. Who told him? Where is that figure? Where are the statistics? Is there any reliable survey? Is there any report? Has the Government been active enough to find out as to how many such bogus companies are there in the country, who are fleecing and duping the common people, promising a higher rate of interest?

Sir, you must understand the money market today. Interest rates in the banks are going down, as per the Government's policy. When the interest rates in the nationalised banks and the private banks are going down, people are looking for higher returns.

There is even a talk that the interest on the small saving instruments, including on deposits in the post-offices, will go down. The rate of interest in the post-offices is 12 per cent and it is 10 per cent in banks. In some other places it is more than ten per cent. In our country there is a large number of

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senior citizens. It is a curse to live long. These senior citizens deposit their money in banks to get returns because they do not have any other income. Since the rate of interest in the bank is on the decline, since they cannot put all their funds in the post-offices because there is a limitation, a curb, a legal limitation, they look out for investment where they can get a higher return. This section of community is very large and they are putting their funds in private non-banking financial institutions and also in plantation companies. They are very large in number. I have received a large number of complaints even from a number of leading doctors of Calcutta who had put in their funds in such companies. They all have been cheated. My short point is that there is a provision for registration. Supposing, a company does not register, what is going to happen to it? I do not register my company deliberately, what is going to happen to me? What is the law? Secondly, people who are doing business above a particular level, may be, Rs.50 lakh or Rs. 2 crore, they have to get themselves registered.

But they do not register themselves. What is going to happen to them? Secondly, I get myself registered under companies regulations. But what about the misdeeds that I committed before getting myself registered? I committed misdeeds before registration; I did not pay back the money; I did not give the interest; I did not keep my promise; I cheated people, there is no law which takes care of the criminality of this nature. My friend the Law Minister is here. I am privileged by his presence. Sir, there is no law. People can be cheated, the money can be eaten away and non-banking financial institutions can run away with the funds. There is no legal provision by which you can compel them to pay back the money. Sir, kindly remember that there is no provision for this in the CrPC. All that we are taking about is a civil procedure, a civil law. Supposing I violate the law, I will be asked to be that generous to pay the money in instalments. Jawswantji is very generous and he would ask the people to be generous. But what about the people who do not get back their money? You cannot compel them; you cannot arrest them; you cannot seize their assets; you cannot send them to jail. There is a big gap between the civil law and the criminal law. Why should it not be a part of the CrPC? Why are they not hauled up? This reminds me of the people who had been defaulting with the Provident Fund of the lakhs of employees. My friend knows it. they are all big people and, may be, his

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clinets once upon a time, I don't know. They are all big people. The defaulted with the money. But, what is the law? The law is like this. If you default with payment of workers' money, you can be sent to jail. But if you default with the payment of the employer's share, you will be let off. I do not believe in God. Otherwise, I should have said God save this country, God save the law makers, the brilliant law makers. He should also bless our graceful Ministers because they are piloting the laws. I raised this problem in the past on different occasion about the Ministers because they are piloting the laws. I raised this problem in the pst on different occasion about the defaults being made with by the non-banking financial institutions. Where is the agency? Secondly, if you send a complaint-- I have been forwardidng a number of letters-- the routine reply is, 'the matter is under investigation'. And the matter is under investigation all the time to come. There is no time frame. Nobody can get a better deal under the Indian law. It is as bad as anarchic law. Nobody can get a good deal. Secondly, even if they give any reply, they say that the payment would be made in instalments. Why? Why is his house not confiscated? Why is his foreign car not seized? Why? Because, I can run away with the money. And, Yashwant Sinhaji will say that this is market economy. Market economy! People can run away with the money and people can eat away money. And when we ask, What is this?, he will ask: "Why have you put in your money there?" The problem is with the depositors. Sir, we are in a market economy! Therefore, the Ministry is helpless. Therefore, after making the law, the Parliament is also helpless. Let us put an end to this mockery. Let us put an end to the mockery of bringing in Bills, enacting laws, taking the time of the Parliament, without creating any machinery for implementation or enforcement of that law. It is a colossal wastage. I have my respect for the legal luminaries -- one must have -- because they will protect us if somebody files a case against me in a court. I will have to run to him. And, also I have equal love and respect for my friend, Yashwantji. He knows more politics than economics. Of course, he is a competent Finance Minister of the country. Therefore, I will ask him, since he knows politics: What about the people? Therefore, I urge upon him to kindly let this House know what are the -- it is not enough to make a law - agencies that implement the law expeditiously. What is that part of law, which will take care of the criminality, if a company does not register itself? Which part of law will take care of the criminality of the non-banking financial companies, which will commit misdeeds before registration? Sir, I

want the Ct.P.C. to be properly amended in tune with this, so that those who will be cheating the people can be sent behind the bars. I believe any law is good if there are teeth. Without teeth, any law is just a piece of paper. Let me expect that the hon. Minister will assure the House as to what are the teeth that are there to ensure that the people get benefited out of the enactment that he has brought before the House. Thank you.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): The House is adjourned for lunch till 2.00 PM

The House then adjourned for lunch at three minutes past one of the clock.

The House reassembled after lunch at five minutes past two of the clock,

[THE VICE-CHAIRMAN (SHRI SANATAN BISI) in the Chair.]

THE VICE-CHAIRMAN (SHRI SANATAN BISI) : Shri K. Rahman Khan.

SHRI K. RAHMAN KHAN (Karnataka) : Mr. Vice-Chairman, Sir, I welcome the two Bills which are now under discussion, regarding the securities. The first Bill seeks to amend certain provisions of the Securities Act and also the Securities Contracts Act, to include derivatives. This Bill is based on the recommendations of the Standing Committee. In the Statement of Objects and Reasons, it has been stated that derivatives may be possible within the framework of the Act. Recently, many companies, especially plantation companies, have been raising capital from investors through schemes which are in the form of collective investment schemes. However, there is no adequate regulated framework to allow an orderly development of this market. So, the recommendations of the Standing Committee have been taken into consideration and they are bringing in these amendments. The second Bill seeks to transfer the appellate power of the Central Government to the Securities Appellate Tribunal. No doubt, these two Bills will help in bringing some orderly development in the capital market, but what is of great concern today is the volatility of the capital market. Mr. Vice-Chairman, today, the capital market has grown four-fold. The combined annual trading in the stock exchange which was 2,500 billion rupees has risen to 10,500 billion rupees. Now, the question is, this increase in the aggregate trading

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volume in the stock exchanges will not reflect the real liquidity value of all the listed shares in the stock exchange. This is a major concern. Only certain types of securities are being traded. There are still a large number of securities which are not traded despite the fact that they are having very good fundamentals and which have an intrinsic value. Liquidity in these shares is very essential. I would like to urge upon the Finance Minister to ponder over these things. Trading in stock exchanges of certain types of shares will not be conducive to the growth of the capital market. It will not be conducive to certain industries which are basic industries which have got good fundamentals, but are not being traded. People are not investing in such shares which will reflect the growth of such industries, and which, ultimately, will reflect the effectiveness of the capital market. Take, for example, the recent invasion of, what I should say, the I.T. shares. Are there fundamentals? It may be Infosys or Zee TV or Satyam. No doubt, they are very good companies. But there is no correlation between the price of their shares in the market and the intrinsic and fundamentals of those companies. Because of some types of securities, the mutual funds and other investments in FII are trading in those shares. Imagine a situation when those shares crash. The entire capital market will crash. The security scam situation may arise, and people's faith, the investors' faith in the capital market or in the stock exchanges will be lost. So, we have to be very cautious.

Some companies are mushrooming. You are bringing a regulatory system for plantation companies and for collective shares. It is a good measure because we have to regulate them. But what is the regulation made by the SEBI or other laws thereto to curb such tendencies. Whether those tendencies which are prevalent are healthy or not is a question to be debated.

What types of companies are we trading in? Are we or the SEBI or any other regulatory authority giving much importance to corporate governance? Yes, there are some provisions on how a company should be listed in a stock exchange. Certain formalities have to be completed. But experience has shown that unscrupulous companies have also entered into the stock market, and they have played with the stock exchange by giving an exposure which is not true. In fact, this is a matter of concern. There is a lot of debate that they publish some disclosures in some unknown newspapers because it should be put in the local newspaper or something else. They satisfy some legal provisions. Unscrupulous companies have also entered the stock market. Has the SEBI identified them? Is there any monitoring system with the SEBI

to see that it is not only a question of having some regulations and that it is not only listing of some procedures? Are those procedures properly followed? After the shares are listed, there should be a continuing procedure to monitor all the listed companies, their balance-sheets and their disclosures. How the inside traders are doing it is also very essential.

I cannot imagine that the share of Zee TV which was quoted at Rs.400/- one year back, is today quoted at around Rs.6,000/-. Now the question for an ordinary person is: what is that extraordinary thing that has happened in that company? What is the profitability of that company? Why have the prices of its shares gone up from Rs.400/- to Rs.7,000/- or Rs.6,000/-? What is the future of that company? Why are the shares of parallel companies which are functioning, are not quoted to such an extent? These are very essential. Sir, in this connection I would like to know whether SEBI is doing its functions properly. The Securities and Exchange Board was established to regulate and develop the growth of the capital market. Section 11(1) of the SEBI Act propounds that: It shall be the duty of the Board to protect the interests of the investors in securities and to promote the development of, and to regulate the securities market by such measures as it thinks fit.

Now, what is the role of the SEBI in the post-issue situation. Till the issue, SEBI will regulate fees and other things. The point is whether post-issue regulation is taken up by the SEBI. The regulator has taken measures by way of issuance of guidelines. That is what SEBI has done. Notification to regulate issue of securities is to protect the interests of the investors. These are all in the nature of disclosures intended to ensure transparency in the other documents. Now, what is the control of SEBI on lead managers? The lead managers will be interested in getting business. No doubt, certain responsibility has been put on the lead managers of the issue, but here is the catch. The lead managers are not doing their job properly and the SEBI is not able to control the lead managers or properly manage the activities of the lead managers.

In this situation, what is the role of SEBI? SEBI should be a regulatory authority and a monitoring authority. A transparent monitoring system has to be evolved. For example demat is there. I have a share and I apply for demat. In one case that I know of, an investor had applied for demating to a stock-holding corporation. The stock-holding corporation had forwarded the shares. For three months nothing happens as there was no time limit

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fixed, within which date the company had to demat the share and return it. That is the lacuna. Now, the company is keeping the share which was sent to it. They have not demated it within a specific period. In one case, for three months the Zee TV has not demated it and sent it, because the prices were going up. The investor cannot trace. So, what is the action SEBI is going to take, because there is no time-limit fixed? When the stock-holding corporation is approached, they say there is no time-limit. We cannot insist upon the companies that they should do it within a certain time. So, the investor is not able to do anything. He has no say. He has to appeal. Now, the appellate provision has been transferred from the Central Government to the Tribunal, but these are all time-consuming. There should be an effective monitoring system within the SEBI. SEBI has taken these measures in a half-hearted manner. Mere introduction of options, futures and derivatives cannot lead to growth as these instruments are being traded in materialised and demat form. Only FIs have opted for dematerialisation. If the capital market has to be revived, something drastic needs to be done. More than that the regulators should take a proactive approach rather than play the role of a policeman. I hope the hon. Finance Minister will make the SEBI to discharge its duties consciously as a correct protector of the investors' money and try to see that there is an orderly growth of the capital market, not the type of capital market which we have today. Thank you very much.

SHRI NARENDRA MOHAN (Uttar Pradesh) : Mr. Vice-Chairman, Sir, now this House is going to pass the Securities Laws (Amendment) Bill, 1999 and the Securities Laws (Second Amendment) Bill, 1999. I also support these Bills. I am grateful to the Congress Party for having agreed to pass these Bills. But the concern which they are expressing is most unfounded because the Bills which we are discussing does not deal with the SEBI Act. It only strengthens the SEBI Act. In a way we are going to make derivatives as a part of security. Derivatives are economic vehicle. Derivatives must be included in the definition because ~~this~~ is the future of our economy. You cannot say that all our Stock Exchanges are in a bad shape. The National Stock Exchange and the Bombay Stock Exchange have electronic trading on the screen. The Bombay Stock Exchange have overhauled itself. Therefore, the apprehension that has been expressed here no longer exists. Still, I would like to request the Finance Minister to look into the requirements of the small investors and help them.

I had a discussion about this matter in the Standing Committee. I had been told, "The minimum value of derivative contractor which can be traded has been fixed at Rs.1 lakh which has virtually eliminated participation by small investors. The investors' money will be completely segregated from the brokers' fund and will not be available for or against any shortfall of trading members or for clearing members or for any other client." Therefore, we cannot say that the changes which our Government are bringing forth, in any way, affect the small investors. Sir, it is very clear that we have given a new dimension by taking the Reserve Bank of India into confidence, by delegating the powers to the RBI. This is going to be of big importance to us because we knew that there was the CRB fiasco. They have done it because RBI powers and SEBI powers were not properly defined. Mr. Finance Minister, that apprehension still exists. We have to look into that matter. Although, we are delegating powers to the RBI, we have to ensure that there are no further misunderstandings which have occurred in the past. It is very important because a fiasco like the CRB occurs, a number of investors will be put to loss. I know that many of the small investors are not going to come under the purview of this definition. But, still, the money involved is going to be colossal. Even financial institutions have to be protected because when there is no proper definition and proper rules regarding the powers which are being delegated, there will be some sort of misregulation or misapprehension. These problems do arise: There is a need to trade derivatives. As has already been explained by the Finance Minister, there is a need to strengthen the economic vehicle. It has been accepted here and also in the Lok Sabha. But the point is, how to give a little more transparency to the capital market? There is a forward trading. There is a future trading. In future trading, there is some transparency. But in forward trading, Sir, how are we going to have more transparency? That is to be examined. The SEBI has not been able to give the transparency which is being demanded by the shareholders as has been explained by my Congress friends. But that is a different issue. However, the point has been raised. I request the hon. Finance Minister to look into it.

Sir, more has been said about collective investment schemes. They have referred to plantation companies which have really duped millions of investors in this country. In this Bill, in this amendment, you have not included cooperative societies, chit funds and nidhis. I do not think that the intention of the Government is that a cooperative society can frame a collective investment scheme and can dupe its members by chairmen or

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directors colluding. How to stop that? We all know that hundreds of *nidhis* in Tamil Nadu have really duped the small investors. In U.P., in my own State, crores of rupees of small investors have been taken away. They have been duped. How to stop that? This is where the problem arises. Now, the mechanism which you are creating will not give any benefit because you have yourself deleted cooperative societies and you have not said even a word how you are going to regulate *nidhis* and *chit funds*. Sir, the Supreme Court, in several of its judgments, has considered *chit funds* and said that there is a need to regulate them. I urge upon the Finance Minister to bring a suitable legislation to cover and regulate *chit funds*, regulate *nidhis*, so that the small investor is not duped.

Since derivatives are going to be in our stock exchange tradings, there is a need to educate the investors. There is no mechanism or apparatus to educate small investors or even medium investors where to invest, how to invest, how to hedge the risk. These provisions have to be somewhere framed. The modern economy, with liberalisation, is moving very fast and our legislations are slow and they are not able to keep pace with the developments, economic developments, which are going on in the world. With liberalisation, everything is coming. Multinationals are coming. Multinational investment companies are coming. How they are going to behave, we do not know. With the electronic trading, with the e-commerce, the scenario is going to change. In other countries, even electronic signatures are there. You need not sign a contract by going somewhere.

With these things in mind, I do not know, Sir, how the present enactment is complete. If these measures are taken into consideration, perhaps, much will be done. Although already much has been done by bringing derivatives, a new investment climate is being created; a new financial climate is being created. It is a sign of economic strength, it is a sign of vibrant economy, it is a sign of confidence which the Finance Minister has shown. But then the problems may come and they are there. So, I request the Finance Minister to look into them. Thank you.

**SHRI N. THALAVAI SUNDARAM :** Mr. Vice-Chairman, Sir, I thank you for giving me this opportunity to speak on this Bill. Sir, in fact, two Bills have been taken up together. As far as the Securities Laws (Amendment) Bill, 1999 is concerned, this Bill was recommended by the Departmental-related Standing Committee on Finance during the 12th Lok

Sabha. I would like to bring to the notice of the hon. Finance Minister that I strongly oppose the insertion of section 11AA and section 11, sub-section (3) in this Bill. Both these sections are contradictory. As far as the collective investment is concerned, the term collective investment scheme means: "any scheme or arrangement which satisfies the conditions specified in section 11AA. Section 11AA" says: "Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme." What is the collective investment scheme? It will not come within the purview of the proposed Bill. The Cooperative Societies are also conducting and transacting business. They are also collecting money. But they are excluded from the purview of this section. I would like to draw the attention of the hon. Minister to the latter part of the Bill which says

"Notwithstanding anything contained in sub-section (2), the following transactions or the following material will not come within the purview of this section: any scheme or arrangement--(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912...."

The point is that it is not a collective investment scheme as per the present provision. The Insurance Act is also excluded and the Employees Provident Fund and Miscellaneous Provisions Act, 1952 are also excluded from the purview of this Bill. Then, what is the exact meaning of the term "collective investment?" By collective investment we mean, "without any mutual understanding or without any definition or without any bye laws." What you say is the contribution or payment made by the investors. As far as our State is concerned, a lot of investment is being made, and now they are going before the court and the Company Law Board. When they approached the Company Law Board, the Company Law Board asked them to approach the police. When they approached the Police Commissioner, the Police Commissioner referred the matter to the Company Law Board. Sir, the SEBI has set a limit. The object and function of the SEBI is to receive the application forms from the companies and to organise the issue of shares. As far as section 22E is concerned, it clearly states:

"No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in

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pursuance of any power conferred by or under this Act."

The powers of the court were taken away by this Amendment. Now, as far as the Amendment is concerned, it was recommended by the Department-related Parliamentary Committee on Finance. Suppose you want to take the help of the C.P.C. In that case, section 22B(1) defines the procedure and powers of Securities Appellate Tribunal. 22B(1)says:

"The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings."

I would like to know from the hon. Minister which law is applicable to this Tribunal--CPC or IPC. The second para says:

The Securities Appellate Tribunal shall have, for the purpose of discharging their their functions under this Act, the same powers as vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters,.....

"The problem is this. As far as the Tribunal is concerned, it shall not be bound by the procedure laid down by the CPC, but under the provisions of the same Section, 23(B)(2), it shall have, for the purpose of discharging its functions, the same powers as are vested in a civil court under the Code of Civil Procedure. I want to bring it to the notice of the hon. Minister that if he is going to amend this Act, then he should clearly mention the provisions of the Act and the rules to be framed in the Amendment Bill.

Under the original Act, the Government has power to entertain all the appeals filed before the Tribunal or the orders passed by the Tribunal. Now, the provision is as follows:

"Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order....."

As far as the appeal is concerned, we have no objection. They can file an appeal before the Appellate Tribunal. I want to know whether the rules are going to be framed by the Tribunal or by the Government. As per the

provisions of the original Act, the Government is making the rules. As far as this Tribunal is concerned, the Government cannot give directions to money lenders. I would like to know how far this appeal will be lying before the High Court and whether there is any direction from the Government to monitor the money circulation.

As far as SEBI is concerned, we have a limited scope under this Act. We are very happy that you have brought this Amendment Bill to strengthen the rules and regulations of SEBI, but, at the same time, you must move another amendment because the provisions of both the Sections are contradictory. Section 11AA clearly mentions about the collective investments. In sub-clause (iii) of the same Section you are excluding the insurance companies and cooperative societies. all investments are through cooperative societies. I request the hon. Minister to take necessary steps to take the help of the poor people of our country and to take necessary action under this Act.

SHRI FALI SAM NARIMAN (Nominated): Sir, I crave the indulgence of this House to say a few words on the knitty-grity of this Appellate adjudication under the Securities second Amendment Bill. The Bill confers additional powers on the existing

Appellate Tribunal already set up under the SEBI Act to entertain and decide appeals against decisions of stock exchanges. And this is, therefore, very commendable because it avoids needless multiplicity of tribunals. But there are two points which I wish to make.

The first one is, since the power of civil courts to grant injunction is expressly taken away under clause 22E which my learned colleague has just read. Some provision should be made clarifying that the Appellate Tribunal will have power to pass all interim orders or injunctions which it considers necessary in the interests of justice. This, Sir, need not be provided in the Bill itself. It could be provided by rules framed under clause 22B(2)(g) which says: "any other matter that may be prescribed". Interim orders are essential and there is an infinite variety of them, depending on the needs of each given case, and although six months' time is given for final disposal of appeals before the Tribunal, our experience is that time stipulations are rarely adhered to. Election appeals are an instance in point. My second point, which I refer to is somewhat more important. It is that as a trend setter, for this Tribunal and for all future Tribunals, there should be included a provision

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in bills like these which again, in the present case it can be done by a rule under Clause 22(b) 2(g), namely, that written arguments should be encouraged and supplemented by time-bound oral arguments. The emphasis is on time-bound. Sir, we lawyers are a loquacious lot. And Chartered Accountants, who are also entitled to appear before this Tribunal often try to emulate lawyers. So, the policy of the Parliament and the Government should be made known. In civil law systems there are written arguments only. But in the American Law system, where common law prevails, there is a useful mix of written and oral arguments. It has been tried and found to be time saving.

My point is that once a time saving device in the form of a limited oral argument is introduced, we can persuade the constitutionally appointed judges to introduce it in the High Courts and help solve at least some of the delays in these courts. This system has been tried on an adhoc basis in some of the Division Benches of our own Supreme Court and with the cooperation from the Bar, it is found to have worked extremely well.

My point is either by the Bill itself, or, by rules to be framed thereunder, after it is enacted, the message should go out that the House is anxious to see that fair adjudication in any form takes the least possible period to time so long as the procedure adopted is in consonance with natural justice.

SHRI S. VIDUTHALAI VIRUMBI (Tamil Nadu): Mr. Vice-Chairman, Sir, I rise to support the Securities Laws (Amendment) Bill, 1999 and the Securities Laws (Second Amendment) Bill, 1999. Sir, in the capital market new systems and methods are emerging every year. The derivatives and other systems are newly introduced in the Continent as well as in the U.S. Now this has come to stay in our land also. Sir, these systems are chainging and this is not the final one. Even if an amendment takes places now, again next year also -- as development is going to take place this year - another amendment may also be needed. I don't want to take much time of the House. I want to say that these two amendments in one Appellate Tribunal are more or less away from the North Block. In one way it is good. I hope the Finance Minister would not be put in an embarrassing situation, if a different decision is taken as was previously done. Therefore, the Tribunal taken away from the North Block is a welcome step. I feel that it is in the liberalisation policy; it is good for the people.

Then, Sir, in the Appellate Tribunal, a new system, that is, the Triple Option Convertible Debenture, has been introduced in the market. This has also come into the market. Then there is the Secured Premium Notes, which is totally different from the convertible debentures. If it is debentures, it means that they have to reserve some money for the redemption. In the case of Secured Premium Note, there is no such condition. They need not reserve any money for redemption. If it is so, it is also under speculation. I want to know whether the collective investment scheme would include this type of secured premium notes which need not reserve money for redemption like the Triple Option Convertible Debenture. Sir, actually various are involved. When we are talking about the derivatives, I want to know whether this option is included or excluded. Suppose the Board gives a written order with the consent of the parties, the same parties cannot approach the Securities Appellate Tribunal. If the consent is reduced to writing, it is all right. Even if it is reduced to writing, sometimes the parties signing it put the words "subject to". I want to know whether the party who puts his signature "subject to" is also excluded from this condition. You have mentioned about the consent. The consent is taken by the SEBI either orally or in writing. If it is in writing, it is all right. If it is oral, it may lead to litigations afterwards. That is what I feel.

Now the other point is about the exclusion of co-operatives and nidhis. I welcome it. In case the Centre feels that they want to improve further the working of the co-operatives at the all-India level, they can call the Ministers concerned and have a meeting on nidhis and other things. You have mentioned about Tamil Nadu and U.P. In Tamil Nadu we have taken stern action against those who try to cheat the public. Some people are behind the bars. What we feel is that still the law should be strengthened further to see that the public money is not swindled by individuals and anti-social elements.

Finally, the amendments, which are brought before us for discussion, are going to further strengthen the capital market and provide security to the public. Therefore, I support these two Amendment Bills. With these words, I conclude and thank you.

SHRI C.P. THIRUNAVUKKARASU (Pondicherry): Sir, by participating in this discussion, I support these Bills. I would like to make only one point. About 100 years ago "legal practioners" have been defined in the Statute Book. A "legal practitioner" means "an advocate, vakil or an

attorney of any High Court, and includes a pleader in practice". What I say is that the same definition is found in clause 2 2(c) as well as in clause 15 (a). I submit that there are no vakils at present. There are no advocates of High Court. I don't know what the meaning of "pleader in practice" is. The system of pleader has been abolished. There are no pleaders in practice. A "pleader in practice" means any person can come and say, "I am a pleader and I am practising. So, this definition should be deleted from this Bill. The definition should be very simple, "an advocate enrolled under the Advocates Act". This itself is sufficient. Instead of incorporating the 100 years-old definition, it should be made simple. This definition was prevailing in our country for the last 100 years. Now, we are at the fag end of 1999. Still we are following this definition. This may kindly be modified. This is my submission. Thank you.

SHRI C. RAMACHANDRAIAH (Andhra Pradesh): Sir, I rise to support these two Bills, the Securities Laws (Amendment) Bill, 1999 and the Securities Laws (Second Amendment) Bill, 1999 with some suggestions. These should have been brought much earlier. If it was done much earlier, the hardships of the poor investors and the gullible public could have been avoided. Thank God, at least, wisdom has dawned now and an attempt has been made to protect the interests of the small investors. But to what extent this piece of legislation is going to be effective has to be seen. In every State, in every district, dubious companies are coming up. They are trying to mop up the savings of the small investors to earn their incomes. Overnight, they are unable to locate the officers of the company, or, the members of the company. The Government is totally incapable, neither at the Central level nor at the State level, to protect the interests of these investors. Sir, an overall view has to be taken and a comprehensive legislation has to be brought out. I don't think the present amendments will fully protect the interests of the investors. It is true that these amendments are brought forwarded to include derivatives, plantation companies under the purview of SEBI. But I would like to know as to what extent the SEBI is equipped with the powers to protect the interests of these investors. Even the environment which is nowadays prevailing in the capital market is not at all transparent. Unless the capital market is transparent and mature, even the present amendments are not going to help. I would suggest to the Finance Minister to create an atmosphere, keeping in view the effects of liberalisation of our economy, and thereby strengthening our capital market. He should initiate appropriate

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measures so that a congenial atmosphere is created. Sir, I would like to make one more suggestion with regard to the Appellate Authority. It is good that the powers have been shifted from the North Block. But it should be a multi-member body, rather than a single-member body. There are some apprehensions with regard to the extended definition of collective investment scheme. In some quarters, apprehensions have been raised, that it ultra vires the Constitution. It is violative of other laws also. Sir, I quote two examples. "...the contributions or payments to this scheme or arrangement by investors with a view to receiving immovable property..." - it would mean that it includes advance sale of property, including agricultural land. Agricultural land is a State subject under Entry 18 of List II. To that extent, it includes advance sale of agricultural land. Sir, any legislation or any statute that takes away the subject of Agriculture from the State List is ultra vires the Constitution. "... And the contributions or payments to this scheme or arrangement by investors with a view to receiveing immovable property.." - it would mean that it includes advance sale against sale or supply of goods, merchandise and services which are governed by the Sale of Goods Act, and the Indian Contract and the Sales Tax Act. To that extent, it is infringement of the said laws. I would like to know whether the Finance Minister has taken care of the fact that if somebody approaches the court of law, it is likely to be struck down. So, all the efforts that have been initiated will go in vain. Sir, instead of all these things, there should be an overall review, as far as the point of protecting the interests of the investors is concerned. This is because, with the existing powers of the SEBI, we could not prevent certain unscrupulous operators in the stock market from playing havoc with our economy. What are the material changes that have been brought about till now to protect the capital market, or, to protect the economy? Sir, that is the least punishment that can be given in this country to persons for indulging in such economic offences. You cannot expect the small investors to be well-versed in capital market with all its intricacies and implications. Therefore, the small investors should be taken care of properly. A machinery should be built up with this in view, and a comprehensive review should be taken. There is need for a comprehensive legislation to protect the interests of the small investors in good faith. Thank you.

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**SHRI YASHWANT SINHA:** Mr. Vice-Chairman, Sir, I am extremely grateful to the hon. Members of this House for their participation in the discussion on these two Bills. I am also grateful to them for the suggestions which have been made in the course of the discussion. I would like to assure the hon. Members that all these suggestions will be taken into consideration while framing the rules under the Act. I cannot stand here and say that this is the final thing because it is a developing situation. As and when we need to strengthen our legislations to deal with the regulations in regard to the capital market, the Government would not hesitate to come forward with such amendments or such laws. The present amendments themselves are a result of the position which has evolved over a number of years. We have learnt from the experience of the successive Governments. What I have brought before the House today is the result of a thinking which has gone into this over a number of years. Mr. Vice-Chairman, Sir, we are trying to achieve, through these two amendments, three separate things. The first thing is, we will allow trading in derivatives to take place in our stock exchanges. This was an area of doubt. In fact, I would like to take the House into confidence and say that the National Stock Exchange had prepared all the rules and regulations which were necessary to permit trading in derivatives until it was pointed out to us by legal experts that the definition of securities as in the Securities Regulation Act did not include derivatives and we were, therefore, advised that we should come with an amendment specifically to permit trading in derivatives. It is in pursuance of that legal advice that we are coming up with this amendment.

[THE DEPUTY CHAIRMAN in the Chair]

Madam, Deputy Chairman, the second amendment relates to collective investment schemes, plantation companies, where again we, that while through a notification which the Government issued in August, 1997 collective investment schemes were brought within the framework of SEBI, we were advised that because this has been challenged in various courts of law, we would be on a safer wicket if collective investment schemes were made a part of the law of the land and that powers in this regard were given to SEBI. The third item which is a part of the second Bill is in regard to transferring the appellate powers, arising out of the orders of SEBI and being dealt with in the Ministry of Finance, to the Securities Appellate Tribunal which is already in existence. Madam, as I explained, when I introduced these two legislations for the consideration of the House, the SAT

was somewhat under-worked. Now, I take up this issue first and then go on to deal with the other issues. You will recall, Madam, that there was a case where the SEBI had passed an order against Hindustan Lever Limited -- I am specifically referring to it because that is what moved me to take this step. The SEBI passed an order, and according to the law which existed then, the appeal against that order was filed with the appellate authority, namely, the two senior officers of the Ministry of Finance. These two officers, in their quasi-judicial authority, heard the case and set aside the order of the SEBI in their judgement. The SEBI then went on appeal before the High Court, and we had a peculiar situation where one arm of the Government was contesting a case against another arm of the Government. That is one part of it. The second part of it was, I received a number of enquiries whether the Ministry had passed that order. I was hard pressed to explain that the Ministry had nothing to do with it, that it was the two senior officers of the Ministry who, in their quasi-judicial capacity, had passed that order. But there was an element of confusion created as a result of that high-profile case. It was then that I started thinking that this power be better given up by the Ministry of Finance and be vested somewhere else. And then we came to the conclusion that, perhaps, the power could be vested with the Securities Appellate Tribunal which was already in existence and which was somewhat under-worked. So, all the orders which will be passed by the SEBI would now be heard by the SAT rather than by the officials of the Ministry of Finance; whether they are under the Securities Control Regulation Act or they are under the Depository Act or they are under the SEBI Act. And this is the arrangement which we are seeking to make. Now, it is not our intention, in any manner, to belittle the importance of the courts, of civil jurisdiction. It has been done only because the SAT is a quasi-judicial body. It has been so created in order to render justice expeditiously, and appeals against the orders of the SAT can be filed before the High Courts. In fact, the presiding officer of the SAT, according to the rules, is a person who has been, or who is qualified to be a judge of a High Court, and, therefore, if appeals against the orders of SAT are filed before a High Court, this will, entirely, be in order.

Madam, I am grateful to the hon. Member, Shri Nariman, for two very eminent suggestions which he has made. I will, certainly, take care of his suggestions when we are framing the rules under the Act.

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Madam, with regard to derivatives, a number of issues, a number of points, have been raised about the functioning of the stock markets. I would not like to go into the details. I would only like to assure the House through you, Madam, that the markets are absolutely safe. There has been volatility; there have been fluctuations in the market, and the SEBI has ensured, through a series of regulations, that the market remained absolutely safe. There are risk- containment and safety measures such as strict implementation of margin, -- now, the margins are so significant today that the market just cannot fall, whether the index falls by 800 points or by 1000 points, over a period of time -- exposure controls, on-line surveillance, and so on. And, Exchanges have taken additional measures such as scrip specific market, reduction of carry-forward limit and imposition of carry-forward margin. Exchanges also have an additional power in the form of raised-capital and settlement guarantee funds. There are circuit breakers which are in operation. If a scrip goes up or down, there is volatility, then automatically the circuit breakers will come into operation. So, over a period of time, S.E.B.I. has taken a number of steps to make sure that the markets are safe, that the bubble in the market does not burst. I can say confidently that the markets are safe. But whether the markets should behave in a certain way, the prices of certain stocks should be in a certain range -- the point which hon. Member, Shri Rahman, was raising -- that is neither within the power of the Government, nor is it within the power of the S.E.B.I. It should not be within the power of the Government or within the power of the S.E.B.I. to suggest as to what should be the stock price of a certain scrip. That is for the stock markets to decide as to what should be the price. We will not deal with the price. It is up to the markets to determine how they want to deal with it. They look at the fundamentals. They look at the economic fundamentals. They look at the corporate fundamentals and then they decide as to what exactly has to be done. That is not an area where we can, or should, interfere.

Now, what is it that we are trying to do as far as derivatives are concerned? We are going to move extremely cautiously. This is in order to bring greater transparency, greater liquidity, greater depth in the market. Take forward contracts. The hon. Member, Shri Gurudas Das Gupta, is here. He and I were together in that famous Joint Parliamentary Committee...

**SHRI GURUDAS DAS GUPTA:** Infamous!

**SHRI YASHWANT SINHA:** ...or infamous Joint Parliamentary Committee, as you might like to put it. But we went into a number of

questions; and what was the basic and the most important fundamental conclusion to which the JPC came? The JPC came to the conclusion that liberalisation without regulation could be disastrous and, therefore, there is need to strengthen the regulators, to strengthen the regulations. What is it that we are trying to do. There are futures and options. There are various kinds of derivatives. Now, we are proposing to proceed extremely cautiously. In the first instance, we will be dealing only with futures and not with options. In the first instance, what will be permitted will be trading in index of futures and nothing else. Now, forward trading is not very transparent. Forward trading is not guaranteed. Here, if the futures trading takes place in the stock market, Madam Deputy Chairperson, with margining requirements and all that, it is a safe and transparent way of conducting business. Futures in commodities has been going on in this country since time immemorial. It still goes on. Now, what we are trying to do is to make a distinction between forward market and the futures market. We are trying to make a distinction between futures and options and we are trying to proceed very carefully, not only in regard to the derivative product, but also in regard to which exchanges will deal with it. Only those exchanges will be permitted by the S.E.B.I. to deal in futures which have the necessary wherewithal, the necessary regulations, the necessary mechanisms, to deal with it so that absolutely no accident takes place. We will be extremely cautious in that regard. But it is inevitable that some day, a country like India will have to learn to deal with derivatives. The time has come when we cannot avoid it. The world over now, in advanced capital markets, this instrument is being traded and there is no reason why we should fight shy of dealing with derivatives.

The third issue on which a number of hon. Members have expressed a great deal of concern, and I share that concern, is in regard to the collective investment schemes. Now, Madam Deputy Chairperson, there are collective investment schemes which cover the plantation companies, there are the non-banking finance companies, to which a reference was made here, and there are other kinds of companies like the Nidhis and Chit Funds, etc. which are also collecting money.

As far as the non-banking finance companies are concerned, let me say quite frankly that this is not a legislation which is going to deal with non-banking finance companies. The House would be aware that in February, 1997, through a legislation, the RBI Act had been amended to deal with the non-banking finance companies, which bestows certain powers on the RBI,

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under which the RBI has acted, and a number of companies have been dealt with so far under that Act. There were certain practical difficulties which came up in the implementation of that amendment when it became law. Points were made here in this House and elsewhere, Madam Chairperson, that even the properly functioning non-banking finance companies had been put to undue stress as a result of that amendment. The House will recall that I had appointed a committee, under the chairmanship of the then Banking Secretary. That committee has given its report. They have made some valuable recommendations. I had stood up in this House, I remember, once, and I had said, that based on the recommendations of that committee, we proposed to bring amendments to the RBI Act in order to be able to deal more forthrightly, more properly, with the non-banking finance companies. So, that is a subject which is being dealt with separately. It is not the subject matter of the amendment here.

Now, a point has been raised as to why we have made certain exceptions. We have made certain exceptions in defining the collective investment schemes because, if you go through all these exceptions which have been incorporated here, you will find that there is some law or the other which is dealing with those exceptions. For instance, co-operative societies; there is a law which deals with co-operative societies. Therefore, there is no reason to bring those instruments also within the definition of collective investment schemes, and that is why they have been excluded, and hon. Members should have absolutely no apprehensions in regard to their exclusion. After the SEBI was authorised in this regard, they had appointed an Expert Committee, under the chairmanship of Mr. Dave. The Dave Committee went into the whole thing. They came up with a definition of collective investment schemes, and they suggested that the SEBI Act should be amended so that the jurisdiction of the SEBI could not be challenged by the collective investment companies. Therefore, we are incorporating the definition of collective investment schemes, as given by the Dave Committee, into the Act. We are clearly saying in the Act that the SEBI will be authorised, empowered, to deal with these collective investment schemes so that the various cases which are pending against the SEBI would now be clearly within the framework of a well-defined law. Therefore, I share the concern of the Members in regard to moneys of small depositors, hard-earned money of investors, which have been lost either in the NBFCs or in the collective investment schemes, and I would like to assure the House that as a

result of the empowering which has been done over the years, both the Reserve Bank of India and the SEBI have taken a number of steps to put the whole thing on a more stable basis. They have taken steps against companies which have defrauded the investors, which have vanished. As I said, there are three types of such companies. One is, NBFCs, which we will be dealing with separately. The collective investment schemes where the SEBI, under the empowerment given in 1997, has already moved in respect of the companies which had 80 per cent of the deposits, and there are some very famous names against which the SEBI has moved. The SEBI has also moved the High Courts to ensure that they are restrained from disposing of their properties or their assets so that those are available for ultimately meeting the obligation of the depositors.

Then, we have the vanishing companies on the stock exchange for which-- in the last year's Budget Speech, I had talked about it, the Prime Minister spoke about it -- we have set a multi-disciplinary team, consisting of the SEBI, Finance Ministry, Department of Company Affairs so that these companies could be traced and action could be taken against these paper companies, companies which existed only on paper.

We are trying our best to ensure that action is taken against those companies which have cheated the people, cheated the small investors in the past and have run away with their money. I would like to say that anyone who indulges in cheating, who indulges in fraud, is, even today, governed by the various provisions of the Indian Penal Code. There is nothing to prevent them from being proceeded against, from being moved, in any court of law. In fact, Mr. Virumbi said that a number of such companies have been brought to book in Tamil Nadu. In fact, as I mentioned in this House, Tamil Nadu had been a progressive State and they have framed their own legislation to deal with non-banking and other kinds of financial companies.

We are trying to clear up the thing, we are trying to streamline the measures, we are trying to create a situation where it will not be possible for any one to cheat the small investors. I would like to say, Madam Deputy Chairman, that we, in this Government, realise that the Indian stock market, the savings rate, the entire growth of the Indian economy, based on Indian resources, would be ensured only when we provide protection to the small investors, and it is with a view to providing protection to the investors, especially the small investors, that I have brought forth these amendments.

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I did not hear any great opposition. In fact, I am grateful to Mr. Gurudas Das Gupta who said that he did not find the amendments controversial. He was raising the issue of implementation. I would like to assure him that we will be as prompt about implementation as we have been in bringing these amendments. I am grateful to my Congress friends for having lent support to these legislations. With these words, Madam Deputy Chairman, I would suggest that we pass these legislations.

THE DEPUTY CHAIRMAN: Thank you, Mr. Minister. For the last few days I have noticed that all the legislations coming before the House are getting passed without much difficulty. There were lots of praise and compliments given to the Law Minister. I am sure, you too have them.

I will now put the first Bill to vote. The question is:

"That the Bill further to amend the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, as passed by Lok Sabha, be taken into consideration."

*The motion was adopted.*

THE DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 to 11 were added to the Bill.

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

SHRI YASHWANT SINHA : Madam, I move:

"That the Bill be passed".

*The question was put and the motion was adopted.*

THE DEPUTY CHAIRMAN: I will now put the second Bill to vote. The question is :

"That the Bill further to amend the Securities Contracts (Regulation) Act, 1956 the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996, as passed by Lok Sabha, be taken into consideration."

*The motion was adopted.*

THE DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 to 16 were added to the Bill.

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

SHRI YASHWANT SINHA: Madam, I move :

"That the Bill be passed."

*The question was put and the motion was adopted.*

SHRI GURUDAS DAS GUPTA (West Bengal): Madam, there is a Supplementary List of Business stating, Shri Murasoli Maran to move for leave to introduce a Bill. Has he come back? ...*(Interruptions)*....

THE DEPUTY CHAIRMAN: Mr. Murasoli Maran has some juniors. ...*(Interruptions)*..... They can also do that. ....*(Interruptions)*....

SHRI GURUDAS DAS GUPTA: Madam, in that case it could have been done by a junior Minister. I do not think there is any harm in it....*(Interruptions)*....

THE DEPUTY CHAIRMAN: If a Bill stands in the name of a Minister *(Interruptions)* The name is given by the Government. ....*(Interruptions)*.... It is a joint responsibility of the Government. ....*(Interruptions)*.....

SHRI GURUDAS DAS GUPTA: Madam, I agree with all that you say. *(Interruptions)* What I am trying to say is that Mr. Maran is in a controversial situation *(Interruptions)* We have been given to understand that he is here. ....*(Interruptions)*....

THE DEPUTY CHAIRMAN: Just one second. (...*Interruptions*).....

SHRI NILOTPAL BASU (West Bengal): Madam, I have a point for clarification. *(Interruptions)*....

SHRI GURUDAS DAS GUPTA: Is that the price for supporting the Government? ...*(Interruptions)*.....

THE DEPUTY CHAIRMAN: Mr. Das Gupta you have said that he is in a controversial position. Before making this statement in the House, you

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will have to substantiate it as to how he is in a controversy .....(Interruptions).....

SHRI GURUDAS DAS GUPTA: There is no Government business, I suppose. ..(Interruptions).....

SHRI NILOTPAL BASU: Madam, we have been given to understand that the Prime Minister will be making a statement in the other House sometime in the afternoon regarding the controversy that has broken out with regard to some of the proposals with the Government agreeing to, and which were not agreed to among the parties, before the delegation went to Seattle. We would like to know from the Government whether this statement will be made simultaneously because this is a very serious issue which is agitating the mind of the people.

उपसभापति : जी, मैं सुन रही हूँ ।

श्री मोहम्मद सलीम (पश्चिम बंगाल) : मामूली सी बात है मैडम, कि अगर हंगामा होगा तभी गवर्नमेंट स्टेटमेंट देगी? हम तो सोच रहे थे कि सप्लीमेंटरी में सुओ-मोटो सरकार यह कहेगी आकर कि आप खामोश रहे लेकिन हम बताना चाहते हैं यह बात । जब दूसरे सदन में हंगामे के बाद आप बता रहे हैं तो क्या इंतजार कर रहे हैं कि यहां भी हंगामा हो और उसके बाद बताया जाए?

उपसभापति : नहीं-नहीं, देखिए, अगर उस हाऊस में कोई स्टेटमेंट होगा तो अवश्य इस हाऊस में भी स्टेटमेंट होगा । आप निश्चित रहिए ।

श्री नीलोत्पल बसु : सप्लीमेंटरी बिज़नेस में नहीं है, इसीलिए यह सवाल उठाया गया .....(व्यवधान)

उपसभापति : प्लीज़, यहां हंगामा मत मचाइए । यहां बहुत सी बातें बगैर हंगामे के हो जाती हैं .....(व्यवधान) हो जाएगा, अभी समय है ।

SHRI GURUDAS DAS GUPTA: In that case.....(Interruptions)....

THE DEPUTY CHAIRMAN: If there is any statement that I know of is by Mr. Yashwant Sinha.

SHRI GURUDAS DAS GUPTA: Madam, I seek, through you, the elucidation from the Government whether the hon. Prime Minister is going to make a statement in the other House. If so, shall we have the same privilege

of listening to him or shall we have to read his speech tomorrow in the newspapers? *...(Interruptions)...*

THE DEPUTY CHAIRMAN: I can assure you if the Prime Minister is going to make a statement in the other House, he will have to make it here also. I am not aware of it whether he is making a statement there. *...(Interruptions)...*

SHRI GURUDAS DAS GUPTA: Let the Government react. *...(Interruptions)* The most energetic the Parliamentary Affairs Minister is here, let him respond...*...(Interruptions)...*

SHRI DIPANKAR MUKHERJEE (West Bengal): Why should we have a Supplementary List of Business when... *...(interruptions)...*

THE DEPUTY CHAIRMAN: It does not call for getting agitated just now. *...(Interruptions)...* The time has not yet come for that. We still have a Bill here - the Indian Majority Bill. *...(Interruptions)...*

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION TECHNOLOGY (SHRI PRAMOD MAHAJAN): Madam, the first thing is that the Prime Minister is not making any suo motu statement in the Lok Sabha. As you have rightly said, when the Government makes a statement, it makes it both the Houses of Parliament. There is no question of making a statement in one House and not making it in the other House. The Prime Minister was reacting to the points raised there during the Zero Hour on the demand of the Opposition. But at this point of time the Prime Minister is busy with the Vietnamese Prime Minister. I will talk to him. Now, in the Lok Sabha, he is likely to make a statement or react to the queries at 5.00 P.M. After that, if possible, I will try to bring him here also. *...(Interruptions)....*

SHRI GURUDAS DAS GUPTA: No *...(Interruptions)...* There is no question of possibility *...(Interruptions)...* It is a convention...*...(Interruptions)...* Do not break that convention...*...(Interruptions)...*

श्री नीलोत्पल बसु : वही तो बात हो गई । अगर हम हंगामा करते तो.....*...(व्यवधान).....*

SHRI PRAMOD MAHAJAN: Madam, what I am saying is, if we are ready to sit late *...(Interruptions)...* Once he makes any statement there *...(Interruptions)...* No clarifications are allowed in the Lok Sabha, but, as a

special case, there may be a short discussion. If the House is ready to sit after Lok Sabha adjourns, I will bring him here also ...*(Interruptions)*.... Both the Houses are same for the Government...*(Interruptions)*...

THE DEPUTY CHAIRMAN: Just one minute...*(Interruptions)*....Mr. Gurudas Das Gupta, just one minute...*(Interruptions)*....Please, one second...*(Interruptions)*... I should be heard*(Interruptions)* What I heard from the Minister of Parliamentary Affairs is, there is no suo motu statement. One thing is clear. That is the reason why it is not there on the Supplementary List of Business. What he is saying is, there were certain queries during the Zero Hour to which the Prime Minister is reacting. I have no evidence, during the stint of my presiding over this House, that if any Minister reacts to a query in a particular House, during the Zero Hour, he reacts in the other House also*(Interruptions)*...It happens there ....*(Interruptions)*....Just one second ...*(Interruptions)*... Have some patience...*(Interruptions)*.... Many times the concerned Minister has reacted like the Leader of the House reacted yesterday on his visit to a temple in Japan. Do you think that he should go to Lok Sabha and say the same thing, in spite of the fact that nobody raised the issue there? It is not a question of hangama; it is a question of your raising a particular issue. You did not raise it, so the Prime Minister is not reacting; had you raised the issue, he would have reacted as he is going to react there...*(Interruptions)*.... So, we just cannot make a precedent now by saying that if somebody raised an issue here, the Minister should react here as well as in the other House ...*(Interruptions)*....

\*SHRI MD. SALIM: Madam, that is precisely what we wanted to say *(Interruptions)* कि यह और दस मसलों की तरह नहीं है कि कुछ दवां सवाल उठा और मंत्री जी ने रिप्लाय किया । सिपटल के मामले पर पहले भी हम लोग बात कर चुके हैं । .....*(व्यवधान)*.....

SHRI PRAMOD MAHAJAN: Madam, we are starting a discussion on Seattle ...*(Interruptions)*....

\*श्री मोहम्मद सलीम : मैडम, हमने यह कहा कि वह सुओ मोटो स्टेटमेंट नहीं है । लोक सभा में क्योंकि हंगामा हुआ, हाऊस एडजॉर्न हुआ, तो प्रधान मंत्री स्टेटमेंट दे रहे हैं । राज्य सभा में अभी हम मेजॉरिटी बिल ला रहे हैं । यह मेज्योर्ड हाऊस है, हाऊस ऑफ लीडर्स है तो हमने हंगामा नहीं किया । क्योंकि मंत्री जी गए हैं देश का प्रतिनिधित्व लेकर,

\*Transliteration of speech in Persian Script is available in the Hindi version of the Debate

यह कोई एक-दिवस का सवाल नहीं है। पूरे देश के सवाल को लेकर मंत्री जी यहां गए हैं और अगर कोई सवाल वहां उठा है तो हमने तो यही कहा कि क्या जब हम भी यहां सवाल उठाएंगे, हंगामा होगा, हाऊस एडजॉर्न होगा क्या उसके बाद स्टेटमेंट आएगा या सरकार खुद ही आकर कहेगी कि ऐसा कुछ नहीं है।

**उपसभापति :** देखिए, मंत्री जी ने स्पष्ट रूप से कहा है कि प्रधान मंत्री बिज़ी हैं विएतनाम के प्रेज़ीडेंट के साथ। मंत्री जी उनसे विचार करेंगे कि अगर वे लोक सभा में पांच बजे जवाब दे रहे हैं और अगर वे ज़रूरी समझते हैं कि यह मामला सीरियस है, जैसा कि आप समझ रहे हैं तो आपको भी आकर संबोधित कर देंगे उस विषय में। अब कृपया आगे बिजनेस चलने दीजिए - अब इंडियन मेजॉरिटी अमेंडमेंट बिल, 1999 ...*(व्यवधान)*.....

**\*श्री मोहम्मद सलीम :** मैडम, पार्लियामेंटरी अफेयर्स मिनिस्टर टाइम तो बताएं। अभी साढ़े तीन बज रहे हैं, वे कहें कि अगर हाऊस पांच बजे के बाद बैठने के लिए तैयार है और अगर प्रधान मंत्री जी के पास भी समय है तो आधे घंटे के बाद या पैंतालीस मिनट के अंदर.....अब सदन को तो बताना पड़ेगा।

**THE DEPUTY CHAIRMAN:** Mr. Salim, are you going to speak on it or not? ...*(Interruptions)*....

**श्री प्रमोद महाजन :** मैडम, प्रधान मंत्री जी के पास राज्य-सभा के लिए समय ही समय है, इसमें कोई शक नहीं है।

**उपसभापति :** कोई चिंता की बात नहीं है।

**श्री प्रमोद महाजन :** लेकिन अब लोक सभा का कामकाज कब खत्म होगा, इसका अंदाज़ मैं तुरंत कैसे यहां बता सकता हूँ ? .....*(व्यवधान)*.....मैं फिर कह रहा हूँ... It is not a suo motu statement. He is reacting to a few queries. If he makes any statement there, he will make here also ....*(Interruptions)*...

**SHRI GURUDAS DAS GUPTA:** Please understand the point *(Interruptions)* I agree with what you have said *(Interruptions)* If any hon. Minister is responding to a question or a query, convention is not like that, he will have to repeat the same thing without being asked for in the other House. I agree with you. But, the issues that were discussed and raised and to which the hon. Prime Minister like to react is not a normal, ordinary or just any

**\*Transliteration of speech in Persian Script is available in the Hindi version of the Debate**

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other thing. It is a very important thing. The Prime Minister is agreeing to a request or not is not the point. The point is we would like to have the privilege of information being shared with us, if the same is shared with the other House. That is the point... (Interruptions)....

**उपसभापति :** अगर कोई सवाल चेयर से किया जाए तो कृपया चेयर को इतनी तो इजाजत दीजिए कि जबाब दे दे, नहीं तो यहां बैठने का क्या फायदा। मैं खाली अपनी तस्वीर रख दूँ। आप लोग आपस में बातचीत कर लीजिए। गुरुदास जी ने एक सवाल मुझसे किया।

**श्री प्रमोद महाजन :** मैडम, चेयर का जवाब बैंच से नहीं आना चाहिए।

**उपसभापति :** जवाब बैंच से तो नहीं आ सकता और न बैंच का जवाब चेयर से आ सकता है।

**श्री मोहम्मद सलीम :** मैडम, जो बात आप में है वह बात आपकी तस्वीर में नहीं है।

**उपसभापति :** शुक्रिया आपका कि आपने यह महसूस किया है। I am very happy that you appreciate that my physical presence is more important than my photograph. But the main thing is -- Gurudasji, perhaps, you could not follow because I spoke in Hindi -- you think that the matter is serious. I am sure the Prime Minister must also be thinking that the matter is serious. I think the Lok Sabha Members, who raised this issue, also thought that this was a serious issue. The Prime Minister will perhaps reply or react to it. So, if that is the question, your concern is being conveyed to the Minister; and the Prime Minister is not going to deprive this very important House of his reaction. So, do not worry. We are going to protect your fundamental right as a Member ... (Interruptions)....

**SHRI GURUDAS DAS GUPTA:** At least within the House... (Interruptions)....

**THE DEPUTY CHAIRMAN:** Now, let us take up the Indian Majority (Amendment) Bill, 1999. Shri Ram Jethmalani.

**श्री बालकवि बैरागी (मध्य प्रदेश) :** मैडम, ....

**उपसभापति :** जी, शायरी करनी है।

**श्री बालकवि बैरागी :** मैडम, इस प्रसंग में मुझे भी दो पक्तियां कहनी हैं। आपने अभी दुआ दी है जेठमलानी जी को, आपने दुआ दी है यशवन्त सिन्हा जी को.....

**उपसभापति :** मैंने नहीं दी थी, हाउस ने दी थी।

**श्री बालकवि बैरागी :** हम तो उन्हें बद-दुआ नहीं दे रहे हैं। सिन्हा साहब को आपने काम्पलीमेंट दी है, प्रमोद भाई को दी है और हमारे अटल जी को भी आपने काम्पलीमेंट दे दिया है। सारा मामला आपने ठीक कर दिया।...

**उपसभापति :** नहीं, I want to put the record straight. Please do not twist the things. I never gave any compliment to anybody for anything. It was the Members of Parliament ...*(Interruptions)*... Why do you have to attribute good things always to me?

**श्री बालकवि बैरागी :** मुझे तो केवल एक कमेंट कहनी है।

**श्री प्रमोद यज्ञजन :** मैडम, सब लोग इनसे काम्पलीमेंट्स चाहते हैं, लेकिन इनके क्वेश्चन पूछने से सारी गड़बड़ होती है।

**श्री बालकवि बैरागी :** मुझे केवल एक कमेंट कहनी है। फिर बाद में डिजनिस् ले लीजिए।

"कोई किस तरह से उनके सिर का अब सौदा करे,

जब आपने अपना ही आंचल उनके सिर पर रख दिया।"

**उपसभापति :** मेरा आंचल तो एक्जुअली आपकी तरफ है। उनकी तरफ तो पल्लू भी नहीं है। Let us now go ahead. Mr. Jethmalani.

### THE INDIAN MAJORITY (AMENDMENT) BILL, 1999

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS  
(SHRI RAM JETHMALANI): Madam Deputy Chairman, I beg to move:

"That the Bill further to amend the Indian Majority Act. 1875, be taken into consider action."

while I move the Indian Majority (Amendment) Bill, 1999 for consideration, may I say that, one after the other, I have three Bills to move? I think this House has the opportunity of getting into the Guinness Book of Records by passing all these three Bills within three minutes. These are very innocuous Bills. One is the Indian Majority (Amendment) Bill, 1999.