Directors on Tatas' Board of Directors. So, nothing of the sort is going to happen. If at all, in the steel sector the public sector will assume, what is commonly known in his jargon, more and more commanding heights. If that satisfies him, I can commit myself on behalf of my Government.

With these words, Sir, I commend the Bill to the House.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The question is:

"That the Bill to provide for restructuring of the iron and steel companies in the public sector so as to secure better management and greater efficiency in their working and for matters connected therewith or incidental thereto, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill. There are no amendments.

Clauses 2 to 27, the First Schedule and the Second Schedule were added to the Bill.

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

SHRI BIJU PATNAIK: Sir, I beg to move:

"That the Bill be passed."

The question was proposed.

SHRI KALYAN ROY: Sir, may I submit one thing? Mr. Biju Patnaik has correctly said that Government financial institutions today control roughly 49 per cent of the share of TISCO—48 or 49 per cent.

SHRI BIJU PATNAIK: Forty-seven per cent.

SHRI KALYAN ROY: Forty-seven or Forty-nine, does not matter much. Hardly one or two per cent less.

SHRI BIJU PATNAIK: It does matter very much.

SHRI KALYAN ROY: The Tatas are now getting crores of rupees from the banks in order to develop the Ranchi and Hazaribagh coal deposits, which is denied to the public sector steel plants, and it is giving an opportunity to Mr. Patnaik to import coal from Australia which will cost Rs. 900 per tonne.

SHRI BIJU PATNAIK: I have already said that these figures are wrong.

SHRI KALYAN ROY: Now the question is, when the Bill is going to be passed, may I ask him to take over TISCO and bring it under SAIL and for two years see what is the outcome?

SHRI BIJU PATNAIK: Sir, he has asked exactly a million dollar question because it will cost a million dollars to take it over. I shall certainly consider it, Mr. Kalyan Roy.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The question is:

"That the Bill be passed."

The motion was adopted.

THE INSOLVENCY LAWS (AMENDMENT) BILL, 1978

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

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

[Shri Shanti Bhushan]

Sir, the Law Commission of India, in its Third Report on the Limitation Act of 1908, had recommended that the most effective way of instilling a healthy fear in the minds of the dishonest debtors who evade the execution of decrees would be to enable the court to adjudicate him as an insolvent if he does not pay the decretal amount after notice by the decree-holder, by specifying a period within which it should be paid, on the lines of the Presidency-towns Insolvency Act of 1939. This recommendation was reiterated by the Law Commission in its Twenty-sixth Report on the Insolvency Laws, and the Expert Committee on Legal Aid has also observed that such a simple amendment could be done in the Insolvency Laws without waiting for the enactment of a comprehensive Insolvency Law.

Sir, this Bill seeks to give effect to these recommendations. It is a very simple Bill. The purpose is to include a new act of insolvency. The Bill enables the decree holder to send an insolvency notice. This notice can be served in respect of any decree or order for payment of money due to a creditor. It is well known that after a decree has been obtained by a creditor, his real troubles begin. So far as the normal processes of execution of a money decree are concerned, there are so many ways in which a judgement debtor can frustrate a decree holder, and it goes on and on. Even after having got a decree from the court in his favour, it takes a very very long time for a creditor to get his money back. Therefore, the Law Commission as well as the Expert Committee on Legal Aid had come to the conclusion that this simple device should be introduced. It was introduced in Bombay long time back. Twenty-five years of its working had been very good. No abuse has been discovered and the provision cannot therefore, be abused. After obtaining a decree the creditor could serve a notice of insolvency on the judgement debtor, and if within the period specified in the notice the judgement debtor fails to pay the amount in respect of which a decree has already been passed, of course the period cannot be less than one month, and within that period he has to either pay the amount or furnish a security for such payment to the satisfaction of the creditor—or does not comply with the notice in one of these two ways, then it will be deemed to be an act of insolvency. So this new sanction is sought to be introduced for the purpose of enabling the creditors who have obtained decrees for the debts due to them, to obtain satisfaction of their debts. It would be open to the judgement debtor to satisfy the court that he has a counter claim or a set off which equals or exceeds the amount of the decree and which he was not in a position to lawfully set up in the suit in which the decree or order of payment had been made against him. The judgement debtor according to this Bill would also be permitted to raise a further defence that the amount is not payable by or under any law for the time being in force for the relief of indebtedness because many a time it happens that there are various laws providing for relief against indebtedness, and a judgement debtor may be entitled to the benefit of those laws. Of course, if he is entitled to the benefit of any provision of those laws, then that would also constitute a defence against his being declared insolvent on the basis of non-payment of decree money. If under the law providing for relief against indebtedness, he is entitled to have the benefit, the decree shall be set aside in accordance with that law.

The Bill further seeks to amend the usual rule-making power so that rules could be made to provide for the manner of service of notice of insolvency, the period during which it could be served and so on. These matters of detail have to be left to the rules.

Since the subject-matter of this Bill is relatable to an item in the Concurrent List in respect of which both Parliament and the State Legislatures are competent to enact laws, the views of the State Governments were also obtained regarding the proposed amendments, and I am happy to say that most of the State Governments have agreed to these amendments.

A question perhaps could be raised as to whether these provisions would provide for some kind of a harassment to the judgment debtor by the decree holders. I would like to assure the House that there is no cause for such an apprehension as the proposed provisions would apply only when the operation of the decree has not been stayed, namely, if the judgment debtor feels that he has some just cause against the decree, he has gone in appeal or taken some other legal proceedings against that decree, obtains stay order which stays execution or operation of that decree. In those cases provisions of this law would not be applicable. As I said, the main objective of this amendment is to prevent harassment of the decree-holders because the experience is that it is not the judgment-debtors who are harassed in these ways; it is the decree-holder who is harassed, the poor fellow who happened to give some money to another person who did not repay it when it became due, and who thereafter files a suit and after protracted trial obtains a decree and for whom thereafter the major trouble begins as to how to recover the money from the judgment-debtor even after obtaining an enforceable decree. And that is why a new sanction is being taken to simplify the process. Sir, as the House is aware, these days there is a lot of stress and demand on simplifying the process of law so that a person who is really entitled to the enforcement of a legal right can get the legal right enforced and the other person who is defying it will not be able to defy for a very long time. Therefore, the system has to find a simple remedy for such a situation. The Law Commission, after going into this matter, has found that this is one of the very effective ways because insolvency is a matter which every person wants to avoid. Therefore, if a certain amount is due against a person and if a notice is served, there is no reason why protracted proceedings for the execution of the decree have to be taken. If the money is due, he has to pay it. If he does not have the means to pay, then certainly insolvency can be declared even otherwise. So there is no reason why a notice should not be capable of being served on him giving a month's time to make that payment. And if he does not pay, there is no reason why he should not be adjudicated an insolvent. As I said earlier, the Bombay amendment has worked satisfactorily for about a quarter of a century...

SHRI LAKSHMANA MAHAPATRO (Orissa): We had suggested an amendment making it three months. Do you stick to one month or change to three months?

SHRI SHANTI BHUSHAN: It is one month because these days there is a complaint that the processes of justice are too slow. One month is quite enough for the man because, after all, the decree is not obtained in a day. A suit has to be filed and the suit goes on for a long time. So the man has ample notice that there is an amount which is due from him even before the filing of the suit; and when the suit is filed, then he has ample notice that he has to pay the amount if the amount was really due from the person concerned. He has notice not merely at the time when this notice is served. When the suit is filed, when the suit goes on, when the proceedings are pending in a court of law, he has all the time to arrange for the money. Even after the decree is passed, he

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gets another notice. And it will take the decree-holder some time to serve this notice. If every stage is multiplied—one month, two months, etc.—the position is that in the aggregate, it becomes a life time or sometimes more than a life time. So, if I may say so with great respect, the modern trend is to reduce the periods rather than to increase the periods.

SHRI U. R. KRISHNAN (Tamil Nadu): What about *ex-parte* decrees?

SHRI SHANTI BHUSHAN: If there is an *ex-parte* decree, that *ex-parte* decree can be reopened. It is certainly open to the judgment-debtor to make an application for reopening it, for setting aside that *ex-parte* decree. If there is a proper case, he will then obtain a stay order staying the operation of the decree. Then in that case the provisions of this Bill would not apply. There will be no trouble so far as that is concerned.

As I said, the period which is specified in the Bill is only the minimum period. The court will have to prescribe the actual period. I may refer to the relevant clause which says:

> "An insolvency notice under subsection (2) shall specify for its compliance a period of not less than one month after its service on the debtor or, if it is to be served on a debtor residing, whether permanently or temporarily, outside India, such period (being not less than one month) as may be specified by the order of the Court granting leave for the service of such notice;"

So, normally if the notice can be served in India, in that case it could be one month, a minimum of one month. But if the person is outside India, then it shall be the duty of the court to fix a period, after seeing the circumstances as to where the judgment-debtor is residing, which should not be less than one month. But how much that period would be is for the court to decide. (*Interruption*) normally it is for the creditor to specify the period in the notice. It is only when the judgment-debtor is residing outside India that the court has to specify the period which should not be less than one month during which the notice will have to be complied with. In Karnataka also there was an amendment made on the same lines in 1963 and I understand that has also worked well. So there is no reason why the benefit of this Bill should not be available to all the decree-holders in any part of the country in order to obtain satisfaction of the money-decrees which they obtain against any judgment-debtor. I therefore take it that the provisions of this Bill are absolutely non-controversial and they would be welcomed by all sections of this House. With these words....

SHRI LAKSHMANA MAHAPATRO: In the Statement of Objects and Reasons the Expert Committee on Legal Aid and the Law Commission have been cited. It is said that the Expert Committee on Legal Aid made a recommendation and so on. I have got a Report with me. But I am unable to trace the recommendation. Could you tell me the number of the para of the Report and the page number so that we can effectively participate in the discussion? Please tell me the number of the page of the report of the Legal Aid Expert Committee.

SHRI SHANTI BHUSHAN: What they have said is that it is not necessary to wait for the enactment of a comprehensive Bill . . .

SHRI LAKSHMANA MAHAPATRO: Who said? The Expert Committee on Legal Aid? Which page of the report?

SHRI SHANTI BHUSHAN: Unfortunately, I do not seem to be having that report in my hand. But that Committee said, because this is a very simple provision, it should be enacted so that it will also help the poor people. Supposing a poor man has obtained a decree against a person and

that person is a rich man. The poor man, after he has obtained the decree, has to get his money from the rich man. But the rich man may get angry; he does not pay that amount. The poor man is entitled to recover his amount from the rich man. But the rich man, in order to harass the poor man, will try all means to drag the poor man to all the courts, and not pay the decretal amount. He will think, of course, ultimately I may have to pay more costs; but I don't mind it. Let that man go through the whole mill. Now, in those circumstances a provision like this could provide an effective weapon to the poor man. He can just give a notice to the rich man and the rich man will have to decide: Is he prepared to be declared an insolvent even though he may be having lakhs and lakhs of rupees in his bank, just to harass that poor man who has obtained a decree? Is he prepared to be declared an insolvent? I am sure he will invariably pay the money rather than be declared an insolvent. That is why in the scheme for legal aid, it was found that such a provision could be very useful for giving the benefit of the legal process even to the poor people. This is what the Expert Commitee said in May, 1973—I am quoting from their report—

> "It would also be necessary to make the process of execution simpler, at least in so far as simple money claims are concerned. In this connection, attention is invited to the amendments made to the Presidency-towns Insolvency Act and the Provincial Insolvency Act of Bombay, by Act XV of 1939, by which if a money decree is unsatisfied and no stay has been obtained, the decree-holder may serve a notice of insolvency requiring the judgment-debtor to pay the money or to furnish security for its payment. Non-payment would be regarded as an act of insolvency. In its third report on the Insolvency Act, the Law Commission recommended that such a provision should be inserted in the Provincial Insolvency Act. It is a matter of regret that this has not been implemented until now. We recommend that this may be done. It is not necessary to hold up his amendment which is of a relatively simple nature, pending enactment of a comprehensive law on insolvency as suggested by the Law Commission in the 26th report on the law of insolvency."

So, they expressed regret and they expected that so far as a comprehensive law on insolvency is concerned, it might take a long time....

SHRI LAKSHMANA MAHAPATRO: On what page?

SHRI SHANTI BHUSHAN: I will check up and let you know on what page it has been said.

With these words, I commend the provisions of the Bill for the consideration of the House.

The question was proposed.

SHRI L. R. NAIK (Karnataka): Mr. Vice-Chairman, I rise to support the Bill. While doing so, I must say that my support is based on the experiences I had as a District Revenue Officer for a long time in Karnataka. As you know, all these money decrees are recovered as arrears of land revenue and whenever the decrees are passed, they are sent to the revenue officers for execution. So, I know that several such money decrees used to come to our revenue officers as they were responsible to implement or execute them. But while doing so, I know for certain that several years used to pass for getting the money satisfaction in respect of these decrees. As a matter of fact, these money decrees were entrusted to one or two compilation clerks in the revenue offices. As the inspecting officer, I have known that the upper division clerks in these offices were fighting one another to be in charge of this compilation because it was a very paying proposition for them. What used to happen was that several ways were found out

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to see that the decrees were never implemented and for years and years these used to be dragged on. We were always worried as to how to see that these decrees were satisfied. In the absence of the law like the one that has now been brought by the hon. Law Minister, it was not possible ordinarily to satisfy the creditor and to discredit the dishonest judgement debtor. Every means used to be adopted by the dishonest judgement debtors to see that all sorts of obstacles were placed in the way of the creditors for getting their legal rights satisfied. I would like to congratulate the hon. Law Minister for having brought forward this Bill and of course, he has very lucidly explained that his bringing forward this Bill has been based on the opinion of several legal experts. He said that the Law Commission has said this. He said that the Expert Legal Aid Committee has also said it. He also said that the Privy Council had said so. It is very evident that these opinions had been expressed perhaps a long time back and there was no time to bring forward such a law. The hon. Minister said that it was the State of Bombay which did it. That was also rather very late. Anyway, better late than never.

I am very happy that this Bill has been brought and I am sure it will go a long way to settle these money decrees rather amicably. No doubt; when the Judgement debtor is given a notice of one month saying that he must pay the money within this period and if not he will be declared insolvent under the Insolvency Act, he will pay it because this will certainly create a fear in him. This in itself will go a long way to see that all such litigations are settled amicably.

With these few words, I again say that I support the Bill wholeheartedly.

SHRI LAKSHMANA MAHAPATRO: Sir, the honourable Minister said, while recommending the Bill for the consideration of the House, that these are very small provisions and these provisions have been thought of because of the recommendations of different bodies, especially the Law Commission. Sir, in our country, we have got two sets of law to deal with insolvency. One relates to the Presidency towns and the other to the rest of the country. Even these laws were made first for the Presidency towns. Sir, you know the history of the insolvency law in our country, and I would only tell that the framing of the first law was done to deal with matters arising in Presidency towns and, as regards the other areas, the law was made later. That is evident from the year that you find at the end of the title of each law. One is the law of 1909 and the other is the law of 1929. So, the Provisional Law is a later law and the earlier law is the law relating to the Presidency towns and when the Presidency towns were to have a law on insolvency, that was made on the lines of the Bankruptcy Law in England. Later, because of the change in the situation, the Provincial Law was made. But even the Provincial Law and Presidency towns Law have undergone changes from time to time according to necessity. At the moment, Sir, there is one such amendment that is sought to be made in both the laws Sir, according to the Report of the Law Commission which has gone into this matter of bankruptcy and insolvency, this law on bankruptcy or insolvency is based on the principles of the Roman Law and the term used in Latin is *"Cessio Bonorum"* and what was sought to be done was to make the debtor surrender all his goods for the benefit of his creditor in return for the immunity from court process. This is what is meant by that Latin phrase, by that provision in the Roman Law, on the basis of which first in England the bankruptcy law was made and we as the British subjects then had to have our insolvency laws. From this, Sir, you will see that the whole effort

was to see that the creditor was best benefited and what was demanded of the debtor was that he had to surrender all his property for the benefit of the creditor only to escape the process of law. So, that was the concept behind the framing of such a law. Now, Sir, I am very much pained to see that almost the same language has been used in the Statement of Objects and Reasons. Of course, what is said here is that the Law Commission has used it. But I shall just take you to the Law Commission Reports which are quite different. They mean something else. That was also the tenor of the speech of the Law Minister. My friend, Mr. Naik, who spoke just now, also feels that the experience has been very sad from the side of the debtors. What these people speak is that these debtors, who take money at the time of distress, make creditors run from court to court and make them suffer in this way. Therefore, it seems that only to safeguard the interests of the creditors something has been thought of and it was thought that something had to be done in the interest of the creditors and that was how the Law Commission did it. That was how the Law Commission thought about it on the basis of its experience and on the basis of the things that were placed before it and on the basis of the conditions obtaining then. Therefore, they have recommended such a thing only with a view to making the creditors benefits. That is not true. The Statement of Objects and Reasons also says that the whole thing is intended, in the most effect way, to instil a healthy fear in the mind of the dishonest judgment-debtor. The judgment-debtor is assumed to be dishonest ordinarily, generally. And to strike or instil fear, healthy fear, not ordinary fear, in his mind it is so intended to have the law amended. This is not what they said. I shall read out what the Law Commission said in their Third Report. On page 64, in paragraph 170, while speaking on the law of limitation, they have said:

> "Article 182 has been a very fruitful source of litigation and is a weapon in the hands of both the dishonest decree holders and the dishonest judgment-debtor . . .".

They have found that there are also dishonest decree-holders, and that it is not always the dishonest judgment-debtor. So how to tackle it? They wanted to do the best of service to the honest judgment-debtor and the honest creditor also. There are two sides. The dishonest fellow should not be allowed to have the gain in the way he has been doing so far; if they are honest, let us do the best of service to them. That was the intention of the Law Commission. The Law Commission suggested certain things in their Third Report. Unfortunately, it is only with a view to instilling healthy fear in the mind of the judgment-debtor that we are now amending the law. Somehow, the Law Commission's Report has been incorrectly read. There are people, a set of people, who have taken money and yet are not paying, though a decree has been made against them, but also persons who would not pay the money and who have been able to secure the decree. This also is our experience—not very uncommon—and they are interested in houding them for the realisation of that money which, they feel, they can realise through the process of law. Therefore, these things are daily experiences. I feel that the attention of the Expert Committee on Legal Aid must have been attracted to this matter. That is why I was anxious to know, in what context they were so serious about it, and they wanted this thing to be pushed through with the utmost haste, instead of waiting for a comprehensive law on insolvency to be placed before Parliament.

Then, let us go to the Twenty-Sixth Report which is referred to in the Statement of Objects and Reasons. Now, this is the Twenty-Sixth Report. The Law Commission has dealt with the law of insolvency in particular. That is why that have gone in detail to the historical background, the gene-

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sis of the earlier report and the consolidation of the two Insolvency Acts about the Presidency towns and the provincial areas. They have said in para 4:

> "The Hon'ble Sir H. Erle Richards while moving the Bill in the Council which led to the enactment of the Presidency-towns Insolvency Act, 1909, stated:
>
> 'The difference in the conditions between the Presidency-towns and the mofussil makes it inexpedient to have one uniform Act for the whole of India at the present time but there will be little difficulty in bringing the two Acts into complete agreement if it be thought wise to do so in the future.' "

This was what the Member introducing the Bill in the Council said. He also hoped that both the laws will be unified and a uniform law could be there for India at some point of time in the future. The time is, therefore, ripe. That is what the Law Commission has said in para 4 for consolidating the two Insolvency Acts and having one uniform law for insolvency for the whole of India including the Part 'B' States and the territories. This recommendation was made when Part 'B' States were there. Now, we do not have a uniform law. In order to make matters easy for the Government they have given a draft Bill. They suggested no doubt, providing for such a notice to be given and matter could be simplified in that way. They said about jurisdiction also. They have also stated that the most important point which cannot be missed whenever insolvency law is taken into consideration is what has been said in paragraph 16. It is about the time when it will take effect. This is a very important thing. They have also thought about the official assignees and the official receivers who will administer the estate of the insolvent. These are some of th things. They have said many more things. These things could have been taken up when this amendment was sought to be brought in. If there was any difficulty, the Law Ministry or the Government should have examined how far it was possible to adapt the draft Bill for the whole country. They have given it in Appendix I. They have said in the last para that in order to give concrete shape to their recommendations, they have given a draft Bill in Appendix I. Where is the difficulty? Therefore, I would definitely request the hon. Minister to tell me where the difficulty was in framing a comprehensive legislation. It was a recommendation of the Law Commission made not now but ten or twelve years back. Sir, when he has come now before the House with this particular piece of legislation in regard to one item of the recommendations, what was the difficulty in not considering and moving amendments in relation to the other items of the recommendations? This is something which he should enlighten us about.

Then, Sir, there is the Expert Committee on Legal Aid which was headed by Mr. Justice Krishna Iyer. As you know, Sir, this Expert Committee was constituted with a view to speaking on a very important provision in the Constitution, that is providing legal aid to the poor. While considering all the aspects of the matter, they have said and I quote from para 28 of their Report:

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

Report on the Limitation Act the Law Commission had recommended that such a provision be inserted in the Provincial Insolvency Act.... It is not necessary to hold up this amendment which is of a relatively simple nature, pending the enactment of a comprehensive law of Insolvency as suggested by the Law Commission in its twenty-sixth report on the Law of Insolvency."

This is para 28 of their Report. And this is what is referred to in the Statement of Objects and Reasons. Without waiting for the enactment of a comprehensive law of insolvency what they said could have been done. But, Sir, my point is that this particular Expert Committee's Report is dated 27th May, 1973. That means, five years have already since passed. Thereafter...

SHRI SHANTI BHUSHAN: You were supporting the wrong Government which was not doing all this.

SHRI LAKSHMANA MAHAPATRO: Whether I was supporting or opposing, it is something which can be seen from the deliberations and the proceedings of the House. It is easy to say so from the public platforms because I know that was necessary for you during parliamentary elections but don't do it any further because the documents speak otherwise. You can talk to the electorate in big platform meetings that they have behaved this way. But it was not actually that way. We have behaved as we thought proper. It may be that at some places we were wrong. But at most places we were correct. Possibly, when you were meak and mild against emergency, we were the first people who protested against emergency, who wanted emergency also to be lifted. And we were the people who opposed the MISA and many more things Therefore, it is not that easy to say. You may be feeling that by making some such attacks you may be able to make some mark. If you go there to the electorate for a vote, this type of speech is good. But let you not do it here because that will not be a very responsible statement. In any case, coming to this Report, when was this Report submitted? It was in the year 1973. Was a period of five years not sufficient for framing a comprehensive law? Do it, if you are really serious about it. I am talking to the Government, not to Mr. Shanti Bhushan, the Law Minister.

SHRI SHANTI BHUSHAN: The Congress Government?

SHRI LAKSHMANA MAHAPATRO: I do not know that. But I know that the Government is one. It may be that somebody is there as a Minister and somebody is not there as a Minister. But the Law Ministry is a continuing one and it cannot be a separate thing. At one time there was the Congress Law Ministry, now there is the Janata Law Ministry. I am not able to make any distinction. I feel that the Law Ministry is a one continuous office and it has to be vigilant. It cannot make use of that particular clause which was put in the Report in the year 1973 and bring forward an amendment in the year 1978. Therefore, my point is that in such matters, where such expert committees feel that something should be done or implemented speedily and then a period of five years elapses, it is something which is inexcusable.

SHRI SHANTI BHUSHAN: These are the acts of omission and commission of the previous Government.

SHRI LAKSHMANA MAHAPATRO: I am not interested to say that you are wrong. Nor am I interested to say that the other group was wrong. But my interest is to say that the Law Ministry was not wrong. The Law Ministry should not have delayed. The Law Ministry should have looked into this matter in 1973 when it was recommended and when such a body was constituted and when an expert committee made a recom-

[Shri Lakshmana Mahapatro]

mendation of this type with a view to giving some relief to some people who have been facing great difficulties, it should have been done immediately. It could not pend for five years. That by itself is no reason why one small recommendation has been taken out of the very many recommendations that the Law Commission has made. That is what I want to point out. I do not know how long the Law Ministry will take to bring forward a comprehensive Bill or whether they are at all interested to bring forward a comprehensive Bill on Insolvency law or not. I do not know. Nothing has been spoken. Not even a hint about such a comprehensive Bill ever being placed during the tenure of this Ministry or during some period is given by the Minister when he made his introductory speech. What I am interested in is the Insolvency law being put in proper shape as recommended by the Law Commission with a view to helping the deserving people. I am not speaking out of any imaginary fear. It is only on the basis of something that is printed in the Statement of Objects and Reasons that the creditors in the country should have the best of benefits so that they could chase poor people to run them down for this thing and that thing, taking advantage of their poverty and the particular opportunity that they get when the poor people go to them to snatch from them some bogus document which they could utilise later on and get a decree on the basis of that. Therefore, let not such people, of course, they do have enough money, be given such legal aid for such a fraudulent decree, obtained on such a fraudulent document. But, may I tell you legal aid is yet a matter of discussion and it is still a matter of some reports a far cry no form, no shape as yet has come about it for helping the poor. Therefore, they are not able to get proper legal aid and therefore they cannot throw away these decrees and ultimately a legislation of this type will do them greater harm. It will do them greater harm, that is what I fear. Therefore, I want that everybody, if he is honest, be he a creditor or a debtor, should have a uniform law throughout the country on the strength of which he can escape the harassment of the dishonest creditor or dishonest decree holder or, if he is dishonest judgment debtor, cannot escape the hands of law. That is what I intend and I expect that the Law Minister will not lose time to get a comprehensive law on insolvency for us, for all citizens of India, to be uniformly dealt with in such matters.

श्री नागेश्वर प्रसाद शाही (उत्तर प्रदेश): उपसभाध्यक्ष महोदय, प्रेजीडेन्सी टाउन्स इनसोल्वेंसी एक्ट, 1909 और प्रोवेंशियल इनसोल्वेंसी एक्ट, 1920 में संशोधन करने के लिए यह विधेयक जिस उद्देश्य और जिस लक्ष्य से लाया गया है उसका मैं समर्थन करता हूं और इस विधेयक का भी समर्थन करता हूं । लेकिन समर्थन करते समय मैं इस बात की ओर मंत्री महोदय का ध्यान अवश्य आकर्षित करना चाहता हूं कि नियमों को बनाते समय इस बात का ध्यान जरूर रखा जाय कि इसका दुरुपयोग न होने पाए । इसमें शक नहीं कि अनुभव हमें बताता है कि डिक्री के इंस्टीट्यूशन में बहुत देरी होती थी और इसमें कई साल लग जाते थे । लेकिन अनुभव हमें यही बताता है कि महाजन और कर्जदार के बीच में जब झगड़ा होता है तो महाजन अक्सर अपने वैभव और साधन का नाजायज उपयोग करते हैं । मैं मंत्री महोदय का ध्यान इस ओर भी ले जाना चाहता हूं कि उन्होंने इसमें इस बात का प्रयत्न किया है कि एक्स-पार्टी डिक्री जहां होगी वहां डिक्री के संबंध में स्टे आर्डर लेने और दरखास्त करने की व्यवस्था है । लेकिन वहां पर इस बात की गुंजाइश है कि महाजन अपने कर्जदार के ऊपर एक्स-पार्टी डिक्री हासिल कर ले और महाजन इस बात

की भी व्यवस्था कर सकता है कि एक्स-पार्टी के ऊपर इनसोलवेंसी का भी आर्डर प्राप्त कर ले। आप जानते हैं कि हमारे देश में नोटिस सर्व करने की जो पद्धति है उसमें जितने दुराचार की गुंजाइश है वह किसी से छिपी हुई नही है। अगर कर्जदार के ऊपर इस प्रकार का कोई नोटिस सर्व होगा तो महाजन अपने रुपये के बल पर शायद कर्जदार को नोटिस की जानकारी भी न होने दें। इसलिए मैं यह निवेदन करना चाहता हूं कि रूल्स बनाते समय इस बात की कोई व्यवस्था अवश्य कराई जाये कि एक्स-पार्टी डिक्री के बाद कोई एक्स-पार्टी आर्डर भी न हासिल हो जाये और इंसोलवेंसी की डिक्री भी एक्स पार्टी न होने पाये। ऐसा न होने पाये कि नोटिस तो सर्व हो जाये, लेकिन कर्जदार को मालूम भी न हो। कि क्या हो गया है या जजमेंट आफ लेटर के बारे में कुछ जानकारी ही न हो। इन शब्दों के साथ मैं इस बिधेयक का समर्थन करता हूं।

इसके साथ-साथ मैं मंत्री महोदय का ध्यान इस बात की तरफ भी आकर्षित करना चाहता हूं कि आज दिल्ली की अदालतों में क्या हो रहा है, इसकी उन्हें जानकारी होगी। मैं समझता हूं कि यह बहुत अहम मसला है जिसके बारे में सुप्रीम कोर्ट के चीफ जस्टिस श्री चन्द्रचूड़ ने भी ध्यान आकर्षित किया है।

6 P.M.

अगर यह दिल्ली की अदालतों में हो सकता है तो गांव, तहसील और जिलों के इन्टीरियर में क्या कुछ हो सकता है, इसकी आप कल्पना कर सकते हैं। दिल्ली मे जहां आप बैठे हुये हैं दिल्ली मे जहां भारत सरकार का होम मिनिस्टर बैठा हुआ है, दिल्ली में जहां हजारो पुलिस की पलटन बैठी हुई है, वहां की अदालतें अगर नहीं चलने दी जा रही हैं तो . . .

श्री भीष्म नारायण सिंह (बिहार) : क्या यह बात इस विषय से सरोकार रखती है ?

श्री नागेश्वर प्रसाद शाही : हां रखती है।

एक आदमी जो इमरजेंसी के दौरान दिल्ली का शहंशाह बना हुआ था, वह आज भी दिल्ली का शहंशाह बना हुआ है। अगर दिल्ली की अदालते नही चलने पा रही है तो मै कानून मंत्री का ध्यान इस बात की ओर आकृष्ट करना चाहता हूं कि अगर देश की अदालतों में यही होगा तो जनता का देश की अदालतों से विश्वास उठ जायेगा। मैं अपने लायक दोस्त श्री भीष्मनारायण सिंह जी से कहना चाहता हूं, उनसे दरख्वास्त करना चाहता हूं क्योंकि वह बड़े जिम्मेदार नेता हैं, बड़े विद्वान है और बड़ी रेस्पेक्ट उनकी है,—कि इन सब मामलों पर पार्टी के ख्याल से गौर न करें।

श्री भीष्म नारायण सिंह : इस समय इसका अवसर नही है।

श्री नागेश्वर प्रसाद शाही : इसका अवसर है। इस समय हमारे कानून मंत्री यहां बैठे हुये हैं। उन्हें विचार करना चाहिये कि दिल्ली में अगर ला-कोर्ट फंक्शन नहीं कर सकते है, दिल्ली में ला-कोर्ट अपनी मर्यादा की रक्षा नहीं कर सकते है, अगर दिल्ली में ला-कोर्ट अपनी अदालतों को चलाने मे असफल और असमर्थ रहते हैं तो फिर तहसीलों में जहां पर कि केवल दो या चार सिपाही पुलिस के रहते है, वहां अगर 20–50 ऐसे हुडलम्स ने यह फैसला कर लिया कि हम कोर्ट नहीं चलने देंगे तो फिर कोर्ट कैसे चलेंगे। इसीलिए सुप्रीम कोर्ट के चीफ जस्टिस ने कहा कि दिल्ली की पुलिस क्या कर रही है।

श्री नरसिंह प्रसाद नंद (उड़ीसा) : हम तो सोच रहे थे कि यह सिर्फ दिल्ली

[श्री नरसिंह प्रसाद नंद]

में ही है । ऐसे आदमी क्या गांवों में भी है ?

श्री नागेश्वर प्रसाद शाही : हां गांवों में भी ऐसे आदमी है और इन आदमियों का इनसे सम्पर्क है और उनकी सेना गांवो में भी है । इसलिए मैं कहता हूं कि जब दिल्ली में, जो कि भारत की राजधानी है वहां यह हो रहा है, तो इसे यहां की अदालत कैसे बर्दाश्त कर रही है ? मैं पूछना चाहता हूं कि क्या कन्टेप्ट आफ कोर्ट के सारे प्रावधान जो इमरजेन्सी मे समाप्त थे, आज भी समाप्त हैं । आज भी आपके जजेज उतने ही भयभीत है, जितने कि इमरजेन्सी में थे । मालूम होता है कि आज भी वह लीगल ऐक्शन लेने में उतने ही भयभीत है जितने कि इमरजेन्सी में भयभीत थे । अन्यथा कोई कारण नही कि इस तरह के हंगामें हों, और कोर्ट रूम के अन्दर वकीलों को गालियां दी जायें, कोर्ट रूम मे प्रिसाइडिंग आफिसर की डायस पर जाकर सारी स्टेशनरी, कलम, दवात उठाकर फेंक दी जायें तो फिर यह कोर्ट नही रह गया । अगर कोर्ट समर्थ नहीं रहेगा तो आम जनता के दिमाग पर उसका क्या असर पड़ेगा ? इन सब चीजों मे लोग क्या सोचेंगे ? कोर्ट में हजारों आदमी आते हैं और यह सब तमाशा देख रहे है । जनता पर इस तमाशे का क्या असर पड़ रहा है, जन-मानस के लिए अदालतें नौटंकी का एक तमाशा बनती चली जा रही है । लोग समझते हैं कि कोर्ट कुछ है ही नही । जो पहले स्ट्रीट में होता था, सड़कों में होता था और जगह होता था, आज वह कोर्ट रूम मे हो रहा है । अब कोई स्थान नहीं बचा है जहां कि लोग समझ सकें कि यह सब नही हो सकता । आज जहां हुडलम्स और उपद्रव न हो सके, हमारे ख्याल से ऐसा कोई स्थान नहीं बचा है। पार्लियामेंट मे भी आने वाले है । इसलिए मैं मंत्री महोदय का ध्यान आकर्षित करना चाहता हूं और आपके द्वारा मैं जजेज से दरख्वास्त करता हूं कि भगवान के नाम पर इस देश के न्यायालयों की मर्यादा की रक्षा करें और जस्टिस चन्द्रचूड़ ने जिस चीज की ओर इशारा किया है उसके अनुसार न्यायालयों की मर्यादा की रक्षा के लिए चाहे कोई बड़ा आदमी हो, शक्तिशाली आदमी हो, चाहे वह प्रधान मंत्री बनने वाला हो लेकिन उससे भयभीत हो कर न्यायालय की मर्यादा समाप्त न होने दें । इस भय से कोई निर्णय न करें कि शायद कल कोई और सरकार आ जाए । मैं जानता हूं क्यों एक्शन नहीं हो रहा है । आपके जजेज, मैजिस्ट्रेट्स इमानदारी से और विश्वास के साथ लीगल और जूडिशियल स्टेप्स नही ले रहे हैं वे भयभीत हैं कि कल पता नहीं क्या हो जाये । आप श्रीमन् कम से कम ऐसी व्यवस्था करें जिससे आपके जजेज और मैजिस्ट्रेट्स और जूडिशियल अधिकारियों के दिमाग मे इस प्रकार का भय समाप्त हो कि कल कुछ और हो सकता है । उनके अन्दर इतनी निर्भयता आवे कि ताकि लीगल और जूडिशियल तौर पर अपने कर्तव्यों का पालन कर सके । इन शब्दों के साथ मैं इस विधेयक का पुनः समर्थन करता हूं ।

SHRI SHANTI BHUSHAN: Sir, I am happy that all the provisions of the Bill have been welcomed by all sections of the House. I would just like to make a brief reference to the point raised by hon. Shri Lakshmana Mahapatro of the Communist Party of India. He has raised the question that in the Statement of Objects and Reasons a reference has been made to dishonest judgment debtors and he has tried to make a point that both the decree holders as well as the judgment debtors could be dishonest.

But, Sir, may I point out the context in which a reference has been made to the dishonest judgment debtor. Obviously the provisions of this Bill are applicable only after a decree has become final. After the decree has become final one has to proceed on the basis that the claim which had been advanced by the plaintiff, which had culminated in the decree of a court, was a true claim, was a justified claim and has been rightly decreed by the court and that there is no reason that after a final adjudication has been made by the court, the judgment debtor should not promptly honour that decree. He should arrange to make payment of the just claim to the decree holder. If, even after the decree has become final, the judgment debtor does not make payment of the amount of the decree to the decree holder, obviously there is no other way but to describe that judgment debtor as dishonest judgment debtor. Maybe, when he was contesting the claim, he was *bona fide* feeling that the pleas put forward before the court had some substance. There are sometimes some questions of law which are disputed questions on which the two parties honestly feel that their stand is correct. But after the court has finally pronounced upon all those issues and has come to the conclusion, then it is the duty of the judgment debtor to honour the judgment of the court and make payment of the decree amount. He has, therefore, no business to delay the payment of decree amount. If still he is not paying. Obviously such action cannot be regarded as honest. Of course, dictionaries may differ. What one person regards as honest, another person would be perfectly within his right to regard it as dishonest or *vice versa*. So, I am not raising any objection to that. All that I wish to call the attention of the House to is, that once a decree has become final there is no reason to say that there are some persons who come with frivolous claims merely to harass others. So far as the provisions of this Bill are concerned, they have absolutely no application to those unjustified claims which might be put forward by dishonest people in order to harass certain defendants. Because obviously one cannot proceed on the basis that such dishonest claims or wrong claims would culminate not merely in decrees but also in final decrees. Some apprehension was expressed about *ex-parte* decrees, namely without a person having come to know about the making of a claim or filing of a suit, some *ex-parte* decree might be obtained. But the fact is that the relevant clause of the Bill confines the application of the Bill to a decree—"obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed)"—so that these conditions have to be fulfilled. The decree must have become final and if it is *ex-parte*, so long as the period of limitation for the making of application for the setting aside of the decree has not expired, it cannot be said that the decree has become final. If there is some time limit for filing an appeal, the decree has not yet become final. But it is only after no other procedure is left to have the decree set aside and the decree has become final, the provisions of this Bill will become applicable.

Then a reference was made to the statement of objects and reasons and it was said that the Third Report of the Law Commission had not been properly quoted. If I could invite the hon. Member's attention to the Twenty-sixth Report of the Law Commission because that Report itself has quoted within inverted commas the relevant extracts from the Third Report of the Law Commission, saying those very words:

"In this connection reference may usefully be made to the recommendation made in an earlier report of

[Shri Shanti Bhushan].

the Law Commission in the following terms:

> ....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, by specifying a period within which it should be paid, on the lines of the Bombay amendment to the Presidency Towns Insolvency Act."

So there is no wrong quotation from any report of the Law Commission because obviously the Report of the Law Commission is an exhaustive document. If the hon. Member's attention was not drawn to the relevant part which dealt with this recommendation, then it is a different matter.

The hon. Member has said that the twenty-sixth Report of the Law Commission in regard to a comprehensive bill being brought to consolidate the Law of Insolvency and to put it on proper lines was made as early as 1964 and he has, therefore, voiced a complaint—a very justified complaint. The complaint is very justified but who could have been the target of that complaint is a different matter. The target of that complaint . . .

SHRI LAKSHMANA MAHAPATRO: . . is the Law Ministry.

SHRI SHANTI BHUSHAN: Law Ministry cannot be the target because if the hon. Member unfortunately thinks that some officers of the Law Ministry are responsible for a Bill being brought before the House or not being brought, I would say, with great respect to the hon. Member, that he is very much mistaken because so far as the officers are concerned, their function is to assist the Government of the day. They cannot over-rule the Minister. Finally, it is the responsibility of the Minister and the Government as to whether a certain thing is done or not. Now if the policy of the previous Government, which, as I said earlier, had the honour of getting the support of the Communist Party of India throughout that period . . .

SHRI LAKSHMANA MAHAPATRO: Let the Minister not feel that I am defending the other Government.

SHRI SHANTI BHUSHAN: Quite right. Therefore, I am saying that the complaint cannot be against officials—the permanent part of the Government—because they are not in a position to take a final decision. They are there only to assist the ruling rulers—namely, the political Government. It is the responsibility of the political Government and therefore, if any criticism can be raised against anybody, it is the Government, namely the Ministry and the Minister and not the officers—the Secretary and the Joint Secretary—and so on—because obviously if the Ministry is not interested, they are all the time interested only in enacting those laws which they need for their own purposes and not for the purpose of the people, they allow the dust to gather on all the extensive reports of the Law Commission even though the Law Commission goes through that exercise at considerable expense of the poor taxpayers money and even when one after another, all this pains-taking work of the Law Commission and all those reports are only allowed to gather dust all these years without any action being taken, in such a case, no complaint can be voiced against those poor officers who are not present in the House to defend themselves. The new Government, the Janata Government of the day and if, therefore, the new Government, the Janata Government, from whom the people have new expectations has decided to do away with that policy of allowing the Law Commission's valuable reports to

gather dust only for decades and decades and now to take them out and brush off the dust from them and start taking action, namely, to have them considered, final decisions taken and to convert them in the form of Bill to be introduced in the House, I think the hon'ble Member would welcome such an attitude rather than voice some criticism about it.

I am happy to inform the hon'ble Member that a Bill in regard to the comprehensive Insolvency Bill which the hon'ble Member has in mind has already been drafted, it has been prepared. But even after a Bill is drafted, it takes some time before the provisions can be finalised and the Bill can be introduced in the House. We have so many Reports so much backlog of the Law Commission Reports which has only gathered dust. So we have to take the view that the work must start. And the work can start only one by one because the Government cannot make an assault on all the possible Reports dealing with so many subjects all at once. The policy of the Government is that all the valuable work which is done by eminent people in the Law Commission should not be allowed to go waste. After all, the Law Commission has a certain purpose. It fulfills a certain purpose. When it gives a certain Report it must be considered. It must be taken into consideration. The Government may or may not entirely agree with all the recommendations made by the Law Commission. But it has certainly its duty to consider it and to decide what is to be done in regard to the recommendation.

Now, the justification for bringing this short Bill in order to implement only just one of the recommendations made in that Report is a justification which is furnished by the Report of the Legal Aid Committee itself. If the Legal Aid Committee which also consisted of eminent people had called attention to the fact and voiced the criticism of this action, and said that the Government need not wait for that comprehensive Bill in regard to insolvency and this is a simple recommendation which can be disassociated from the rest of the matter because it has impact on legal aid policy and on making justice available even to the poor people. Then in that case would the Government be right in saying that even though eminent people are saying such a thing, we must not disassociate and we must either only bring a comprehensive Bill and wait till we can bring that comprehensive Bill on insolvency, and till then not allow the benefit, which was described as a simple provision in the report in 1973, to be quickly and immediately taken advantage of by those people who are in need of that advantage. Now, we have decided to accept the recommendation made in 1973.

The hon'ble Member had again complained why did we wait till 1978. Well, if the hon'ble Member and his colleagues and friends had been kind enough on us to bring us into power earlier, we would have done this earlier much before, even in 1974. But the C.P.I. Members decided to support the earlier Government

SHRI LAKSHMANA MAHAPATRO: There was then no Janata Government in existence.

SHRI SHANTI BHUSHAN: It could be any party opposed to the policies of the then Congress. If the hon'ble Member knew that the Congress was not doing its duty, that they were neglecting these important matters to which he has chosen to call attention today, if he had convinced his colleagues and other friends that these were the deficiencies in the Congress, the Congress should be thrown out, perhaps the Congress would have been thrown out much earlier and this country would not have to undergo this period of emergency, this trauma of emergnecy.

SHRI K. K. MADHAVAN (Kerala): May I know, Sir, whether the House can proceed without the required

[Shri K. K. Madhavan].

quorum? He is using provocative language.

SHRI SHANTI BHUSHAN: I am replying to the point which has been made.

SHRI K. K. MADHAVAN: I will not allow the House to continue without the necessary quorum.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Mr. Minister, please carry on.

SHRI SHANTI BHUSHAN: Therefore, Sir, all that I was saying with great respect was that no blame can attach to the Government for action...

SHRI K. K. MADHAVAN: Sir, there is no quorum.

SHRI NAGESHWAR PRASAD SHAHI: Quorum is there.

SHRI K. K. MADHAVAN: How can you take it for granted?

SHRI SHANTI BHUSHAN: From that seat you cannot see everybody: that is the trouble.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Mr. Madhavan, quorum is there.

SHRI K. K. MADHAVAN: You see an invisible thing; that is the whole trouble.

DR. RAFIQ ZAKARIA (Maharashtra): Sir, a point of order has been raised whether there is quorum or not. Let the Chair decide whether there is quorum or not.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): I have decided that quorum is there.

DR. RAFIQ ZAKARIA: The Chair cannot rule....

SHRI SHANTI BHUSHAN: The Chair has ruled very carefully.

SHRI K. K. MADHAVAN: The Chair cannot rule arbitrarily.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): It is not arbitrary. You can count and if quorum is not there, you can bring it to my notice.

DR. RAFIQ ZAKARIA: The heads are less.

SHRI SHANTI BHUSHAN: Sir, if the hon. Member thinks that heads are not there even though some Members are present here, then there is a difference of opinion about head-counting I thought that counting of heads is such a simple exercise and that there was no room for difference of opinion. But one has to grow wiser.

Sir, all that I was saying was that if the hon. Member had acomplaint that a recommendation made by the Legal Aid Committee—this high-powered committee—should have been implemented soon after 1973, the complaint might have been voiced against those who were in power then in order to induce them to rectify this shortcoming then, and the hon. Member perhaps need not have waited so long for the formation of Janata Party Government in order to voice this grievance. But, anyhow, even when this grievance has been voiced, I still welcome it, against whomsover it might have been directed.

Then, Sir, Mr. Shahi has called attention to the fact that care should be taken that the rules make a provision so that some decree holder is not able to abuse these provisions. Sir, as I have already explained, his apprehension was in regard to an *ex-parte* decree, that some person obtains an *ex-parte* decree without the knowledge of the judgment-debtor and thereafter also takes *ex-parte* insolvency proceedings without the notice having been served. Sir, obviously care would be taken and, as I have said so far as *ex-parte* decrees which have not yet become final are concern-

ed the provisions of the Bill would not be applicable to them.

Sir, Mr. Shahi has also made a reference to some proceedings in some courts of Delhi today. But I do not think it would be necessary on this occasion. Mr. Shahi has also made a refernce to the observations made by the Chief Justice of India calling attention to a matter of importance—of course, it is important. So far as the courts are concerned, India can be proud of its traditios, namely, the courts' traditions. Even when the worst criminals were tried by a court of law in this country, the courts have always been given the utmost respect. No court in this country even when trying the worst of dacoits and murderers who have been guilty of the most heinous crimes, had needed any protection of the police. That is the proud record of the judiciary of this country and I hope and trust that the position will continue to be so and the courts will not need it. It is only the faith of the people in the courts which will be their real protection and therefor, they would not need it. But I have no hesitation in giving an assurance that the law and order machinery will be there in order to see that the courts can function in a proper atmosphere so that they can discharge their very important functions which the people of this country have entrusted to them. The courts have sufficient powers—the Law of Contempt gives them sufficient powers—to see to it that decorum is maintained inside the court by everybody and that nobody can play about with a court so that the courts can be expected to exercise those powers whenever the need arises. It is true that the courts maintain a certain restraint. They do not exercise those very important and extensive powers on the slightest provocation. They also maintain their patience. But there is a limit to patience and, if need be, the courts can be expected to exercise all the powers which the people of this country have entrusted to them in order to see that the functioning of the courts is not disrupted and is allowed to go on smoothly.

With these words, Sir, I again comment the provisions of this Bill to the entire House.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The question is:

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

The motion was adopted.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): we shall now take up clause-by-clause consideration of the Bill. First we take up Clause 2. There is one amendment to it by Shri Shiva Chandra Jha.

Clause 2—Amendment of Act 3 of 1909

SHRI SHIVA CHANDRA JHA: Sir, I move:

1. "That at page 2,—

(i) in line 23, for the words 'one month' the words 'three months' be substituted; and

(ii) in lines 25-26, for the words 'one month' the words 'six months' be substituted."

श्री शिव चन्द्र झा (बिहार) : उपसभाध्यक्ष महोदय, इससे पहले कि मैं संशोधन पर कुछ कहूं, मैं आपसे दो शब्द कहूंगा । मैं इस सदन में नया सदस्य हूं इसके पहले मैं चौथी लोक सभा का सदस्य था 1970 से 1971 तक । उस दिन जब हम लोगों ने शपथ ली थी, तो हम लोगों का स्वागत करते हुये अध्यक्ष महोदय ने कहा कि आप लोगों के साथ पूरा सहयोग किया जाएगा और किसी तरह की उपेक्षा नहीं होगी । लेकिन उपाध्यक्ष महोदय, मैंने दो बार कोशिश की कल से

[श्री शिव चन्द्र झा]

लेकर आज तक सवाल पूछने के लिए । लेकिन मेरी तरफ अध्यक्ष महोदय का ध्यान नही गया, बल्कि परिचित चेहरों की ओर ध्यान गया ।

इसीलिए मै आपसे कहूंगा कि अध्यक्ष महोदय के पास मेरी बात पहुंचा दें कि हम नये सदस्य जो आये है, हम लोगों को भी अवसर मिलना चाहिये । इन्हीं शब्दों के साथ मैं अब अपने संशोधन पर आता हूं ।

उपसभाध्यक्ष महोदय, यह विधेयक इन्सालवेन्सी बिल जो हमारे सामने है, यह स्पष्ट है कि मंत्री महोदय ने पुराना जो ऐक्ट रहा है 1909 से 1920, तक, उसमें जो खामिया रही हैं, उनको दूर करने के लिए यह बिल लाया गया है । यह ठीक है, देर आयद दुरुस्त आयद । लेकिन 1909 और 1920 से लेकर अब तक कितने परिवर्तन आये हैं, कितनी दुनियां बदल गई है, यह आप जानते है। कहने का मतलब यह है कि खामियां दूर की गई है, लेकिन जिस रूप में, आज की जो परिस्थिति है, उसके सन्दर्भ में यह विधेयक आना चाहिये, वह नही आ सका है । उपसभाध्यक्ष महोदय, इसीलिए मेरा संशोधन है । अब आप जानते हैं यह महाजन और सरकार के बीच जो एक दूसरे से कर्जा वसूलता है, महाजन किस तरह से मुकदमा चलाता है, यह बातें है । हिन्दुस्तान में तो कहा गया है कि बहुत से हिन्दुस्तानी जन्म लेते हैं डेट में, लिव्ज इन डेट और डाइज इन डेट । यह परिस्थिति अभी भी है हिन्दुस्तान की। बहुमत जनता दरिद्रता की रेखा के नीचे रहती है, 40 या 50 प्रतिशत और यह महाजन का कर्जा, लेना और देना यह बाते उन्ही लोगों के बीच होती ह ।

इसीलिए यह परिस्थिति अभी तक बदली नही है और महाजन जो कर्जा वसूलता है, कैसा व्यवहार करेगा, शाइलाक जैसा करेगा या हृदय मे कुछ रहम कर के करेगा, इन सब बातों का ख्याल रख कर विधेयक का प्रारूप दूसरा होना चाहिये ।

उपसभाध्यक्ष, इसीलिए अब मेरा संशोधन है कि जहां नोटिस का सवाल है, मैं तो एक साथ बोल जाना चाहता हूं, आपका ज्यादा समय नही लूगा पर यह जो कम्प्लायन्स के एक महीना शब्द यहां दिया गया है, मेरा संशोधन है कि दूसरी क्लाज में इसकी जगह पर तीन महीने का समय दिया जाए । तीन महीने का समय कोई ज्यादा समय नही है और ऐसे आदमी को नोटिस दिया जाता है जिसकी हालत खराब है, जो हर तरफ से पिसा जा रहा है और दिन-दिन उसकी हालत बदतर होती जा रही है । किस तरह से उन पर जुल्म होता है यह सब हम जानते है । इसलिए एक महीने का समय, जैसा कि माननीय सदस्य ने कहा, वह तो तरीके जानता है नोटिस की तामील करवाने के। महाजन एक महीने के नोटिस की तामील करा देगे एक दिन में । इसीलिए उसको कुछ राहत मिले । तो जहां एक महीना है उसकी जगह तीन महीने का समय जो कर्जदार है उसको मिलना चाहिये ताकि वह अपनी परिस्थिति के मुताबिक समझ सके कि नोटिस मैं ले लेता हूं और कैसे उसको अदा करूंगा उसके लिए उसको मौका मिलेगा । जो लोग हिन्दुस्तान से बाहर हैं और 7 समुद्र पार गये है और कर्जदार हैं उनके लिए तो कुछ और समय चाहिये । हिन्दुस्तान में रहने वाले के लिए तीन महीने ठीक है, हिन्दुस्तान के बाहर के लिए कम से कम 6 महीने का समय होना चाहिये । तो मेरा संशोधन यह है

कि 'एक महीने' की जगह 'तीन महीने' और बाहर वाले के लिए 'छह महीने' होना चाहिये । यह संशोधन आपके क्लाज 2 में है ।

मैं क्लाज 3 पर भी बोल देता हूं ताकि समय नष्ट न हो ।

The question was proposed.

THE VICE-CHAIRMAN (SHRI SYED NIZAM -UD-DIN): You speak at the proper time. When clause 3 is moved, you can speak on that. Let the Hon. Minister say now.

श्री शान्ति भूषण : मान्यवर, मुझे दुःख है, कि जो माननीय सदस्य ने संशोधन रखा है उसको मानने मे मैं अपने को असमर्थ पाता हूं । जो उन्होंने कहा कि आज कर्जदार पिसा हुआ है और कर्जदार को डिक्री-होल्डर या महाजन तंग करता है, वह बात भिन्न है, ऐसी नहीं है क्योंकि इस विधेयक में यह स्पष्ट किया हुआ है कि अगर कोई ऐसा कानून कि जिसमें कर्जदार को राहत देने का प्रावधान है, जिसके अन्दर अदालत से कोई डिक्री उनके खिलाफ हो गई, उसको कम कराने का या उसे हटाने का इसलिए कि उनको इन-डैटेडनेस से रिलीफ देने के लिए कानून बने हुये हैं तो उनके प्रावधान इसमें लागू नहीं होंगे । जहां तक अदालतों का ताल्लुक है, जिनको कोई रिलीफ अगेंस्ट इन-डैटेडनेस का लाभ नहीं पहुंचता हैं, उन कर्जदारों को जिनके पास जमीन है कि नहीं या किस स्थिति में हैं जिससे वह कर्जदार हैं, इस विधेयक का उनसे कोई ताल्लुक नहीं है । अगर ऐसी परिस्थिति उस कर्जदार की है कि उसे रिलीफ मिलना चाहिये तो यह कानून नहीं दूसरे कानून इस बात को देखेंगे । अगर उस कानून का उनको लाभ पहुंचता है तो यह कानून उनके खिलाफ लागू नहीं होगा ।

जो उन्होंने एक महीने को बढ़ा कर तीन महीने या बाहर वालों के लिए उसको बढ़ा कर 6 महीने कर दिया जाए कहा है तो मैं कहना चाहूंगा कि आज दुनियां बड़ी तेजी से चल रही है । आज समय का मूल्य ऐसा हो गया है कि 24 घंटे के अन्दर सारी दुनिया में लोग घूमकर आते हैं जब कि पहले कई महीने का समय लगा करता था दुनिया का चक्कर लगाने के लिए । आज 24 घंटे में सारी दुनियां का चक्कर काटा जाता है । आज तो चारों तरफ से यह मांग है कि अदालतों में मुकद्मे-बाजी में जो समय लगता है उसकी अवधि को कम कैसे किया जाये । आज उसको बढ़ाने की बात करना मैं समझता हूं अप्रासंगिक होगा । एक महीने के समय की अवधि काफी है । जिस दिन से वह दावा करता है उस दिन से वह चाहता है कि उसका रुपया मिल जाए, वह रुपया वसूल करना चाहता है । उसके बाद मुकद्मा चलता है, डिक्री होती है । उसके बाद पता चलता है कि डिक्री फाइनल हो गई । जब डिक्री फाइनल होती है तब नोटिस दिया जाता है इसमें एक महीने का समय दिया जाता है । यह एक महीने का समय इसलिए दिया जाता है कि अगर उसको चैक काटना है या मनीआर्डर भेजना है या स्वयं जाकर देना है तो वह कर सके । वह एक महीने में यह इंतजाम कर सकता है, अगर वह एक महीने मे इंतजाम नहीं कर सकता तो कभी नही कर सकता । इसलिए इसे लागू करना पड़ेगा । इसी कारण मैं इस संशोधन को मानने में असमर्थ हूं । मैं माननीय सदस्य से प्रार्थना करूंगा कि वह इस संशोधन को वापस ले लें ।

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Are you withdrawing your amendment.

श्री शिव चन्द्र झा : मैं अपना संशोधन वापस लेता हूं ।

The Amendment (No. 1) was by leave withdrawn.

†For text of the amendment, *vide* col. 270 supra.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The question is:

"That clasue 2 stand part of the Bill".

SHRI K. K. MADHAVAN: Sir, there is no quorum. The House should not proceed.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The Quorum bell s being rung. (*Quorum bell rings*).

Now there is quorum.

The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The question: is:

"The clause 3 stand part of the Bill."

There are two amendments in the name of Shri Shiva Chandra Jha.

श्री शिव चन्द्र झा : जो कर्जदार है और कर्ज अदा नहीं कर सकता उसके खिलाफ कोर्ट में डिक्री हो तो उसे सैट-असाइड कराया जाए । मेरा कहना यह है कि जो लैंडलेस या भूमिहीन लोग हैं जिनकी आमदनी 100 रुपए से, महीने में, कम है और जो गरीबी की रेखा से नीचे आता है अगर उसके खिलाफ डिक्री हो तो वह आटोमेटिकली सैट-असाइड हो जाए, इसमें ऐसी व्यवस्था होनी चाहिए । यह मेरा संशोधन है ।

SHRI LAKSHMANA MAHAPATRO: If he is moving his amendment, then I want to speak.

उपसभाध्यक्ष (श्री सैयद निजामुद्दीन) : आप यह मूव करते है या नहीं ।

श्री शिव चन्द्र झा : मैने अपनी बात कहनी थी वह कह दी है ।

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Mr. Mahapatro, you have already spoken. You have taken sufficient time.

SHRI LAKSHMANA MAHAPATRO: The amendment on clause 3.....

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): There is no amendment now.

SHRI LAKSHMANA MAHAPATRO: Just hear me. I have not completed my sentence. The amendment on clause 3 which had been circulated and which is not being pressed now had some sense. It conveyed a very important thing, that is, that a person had so many grounds open to him....

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): When it has not been moved, whether it had any sense or not.....

SHRI LAKSHMANA MAHAPATRO: Well, I can speak on that clause. That is why I am speaking. Therefore, if you refer to that particular clause, you will find:

"that he is entitled to have the decree or order set aside under any law providing for the relief of indebtedness and that—

(i) he has made an application before the competent authority under such law for the setting aside of the decree or order; or

(ii) the time allowed for the making of such application has not expired;

(c) that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application"

This is important because as he has earlier said, in our country many people are born indebted, they live under conditions of indebtedness and die also indebted. That is the state of affairs. So they should have a ground open to them to say that it is not executable against them, or rather it should be set aside, because he is a person. who has no lands. he has no property; he may have less than Rs. 100 as monthly income. That is the spirit with which that amendment was circulated. The amendment which was circulated had this spirit behind it. But we are very much anxious for one thing. If that amendment has not been moved, at least one thing should be assured. In this Statement of Objects and Reasons they have referred to the Expert Committee on Legal Aid—although I do not know what their attitude is towards this Legal Aid Committee and the Bhagwati Committee Report on legal aid. Till today that report has not been accepted. It is still under consideration. Many a time this matter was raised. Now, for the first time, because it suits their interests, it is quoted; the Expert Committee's report is quoted saying the Expert Committee also wanted this thing to be hastened instead of waiting for a comprehensive Bill to be framed and brought before Parliament. My question is: What are they going to do with the other provisions of the Expert Committee report? As I understand, they must have applied their mind, the Ministry must have applied its mind and already considered that Report; otherwise a particular section of it could not have been made use of. Therefore, if that report has already been considered, when are you going to take up the recommendations of the Bhagwati Committee? That will provide some relief. At the moment there is no legal aid open to the poor people. Only the reports are open to them and they are wailing over these reports. How long should they wail over them? That is my question to the Law Minister.

SHRI SHANTI BHUSHAN: So far as Bhagwati Committee report is concerned, all that I have to say is in regard to legal aid the Government has already constituted an empowered-committee of officers of different Ministries which would be concerned, for instance, the Finance Ministry, the Labour Ministry, the Social Welfare Ministry, the Law Ministry, and so on, so that the whole question could be considered, all these implications could be considered and various technical implications could be considered. Then a scheme has to be evolved. The scheme will have to be accepted by the Government. Action is being taken and that committee is already functioning. It is going into that matter, and I hope that without having to wait for the kind of periods for which we have waited so far in the implementation of these recommendations, the Government would come forward with its final decision.

SHRI K. K. MADHAVAN: By what time? You said the so-called Expert Committee report will be available and all that. By what time?

AN HON. MEMBER: It is already available.

SHRI K. K. MADHAVAN: No, the Minister said he has appointed a smaller committee of officials.....

SHRI SHANTI BHUSHAN: That is for purposes of implementation. It is an empowered-committee of officers to examine as to how the recommendations should be implemented.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The question is—

"That Clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

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

SHRI SHANTI BHUSHAN: I beg to move—

"That the Bill be passed."

The question was proposed.

SHRI LAKSHMANA MAHAPATRO: Sir, only one word. In spite of all that has been said by the Law Minister, I am not yet free from the apprehension that this particular piece of legislation will provide a very great encouragement to the dishonest creditor. I am interested in doing the best of service, as I said earlier, to the honest creditor and also the honest judgment-debtor. How can he secure it and ensure it? That is all that I want to know.

SHRI SHANTI BHUSHAN: Sir, I have nothing to add.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The question is—

"That the Bill be passed."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at fortyfive minutes past six of the clock till eleven of the clock on Thursday, the 27th April, 1978.

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