

three years. If you take the statistics of China, there are hardly ten thousand people who are missing. In Pakistan, the figure is three thousand. But, in India, it is eight times more compared to any country. It is a very serious matter. So, I want to bring this to the notice of the Government. What steps are they taking? The National Human Rights Commission says that we must put a DIG of Police in charge of this in every district of every State. Now, I would like to say one thing that because of this, the children and the parents are getting worried, and children are taken as beggars and for so many other reasons. So, their lives are totally spoiled. Therefore, I would like the Government to categorically concentrate on this as to how they are going to solve this problem in future.

SHRI K.N. BALAGOPAL (Kerala): Sir, I associate myself with the matter raised by Dr. T. Subbarami Reddy.

MR. DEPUTY CHAIRMAN: Thank you. Now we will take up the Securities Laws (Amendment) Bill, 2014. Hon. Finance Minister to move the motion ... (*Interruptions*) ..

डा. विजयलक्ष्मी साधौ (मध्य प्रदेश): सर, मैंने भी जीरो ऑवर के लिए नोटिस दिया हुआ है।

MR. DEPUTY CHAIRMAN: Please sit down. What is your problem?

डा. विजयलक्ष्मी साधौ: सर, जीरो ऑवर रेंज करने के लिए मेरा इम्पोर्टेंट इश्यू है।

MR. DEPUTY CHAIRMAN: Give notice.

डा. विजयलक्ष्मी साधौ: मैंने नोटिस दिया है, सर। I have given the notice.

MR. DEPUTY CHAIRMAN: It is not with me. You may renew it for tomorrow.

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## GOVERNMENT BILL

### The Securities Laws (Amendment) Bill, 2014

THE MINISTER OF FINANCE; THE MINISTER OF CORPORATE AFFAIRS AND THE MINISTER OF DEFENCE (SHRI ARUN JAITLEY): Mr. Deputy Chairman, Sir, I move:

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

I may mention that in this regard on the 18th July, 2013, the UPA Government had brought an Ordinance which has now lapsed on the 18th July, 2014. There is a little period of hiatus because the Lok Sabha has cleared it, and after this Bill is cleared by this House hopefully, it will be notified. Except this hiatus period, the Ordinance has been in operation. This Bill seeks to amend identically three pieces of legislation, the SEBI Act, the Securities Contracts (Regulation) Act and the Depositories Act. Now the amendments

which have been proposed, I will also indicate the minor alterations that I have made in the Bill, which my predecessor had proposed, in the Bill gives power to call for information and records from any person. The original Acts had only powers to call for information from banks and other related financial institutions.

There is also a power to call for information if it is across the borders from regulators and other countries, and this is to be done on a reciprocal basis. In cases on account of these improper market practices, some profits are earned by a concerned person; these profits would be disgorged and would be credited to the investor protection and educational fund established by the SEBI. So, profits earned out of the illegal activities will not belong to the person who has allegedly has earned them.

This law essentially deals with ponzi schemes, and various ponzi schemes are covered under it as per the definition under section 11AA. There are some categories which are left out of the definition. So, the general category is also being proposed in section 11AA whereas residuary ponzi schemes can also be covered under this Bill.

The original Bill gave to the SEBI and other organisations, the power to conduct searches anywhere in the country. The original Act had the power where the organisation had to go to the Magistrate concerned who has jurisdiction in those areas, and, therefore, asked for search permission. This used to leak out, and the suddenness and the surprise, essential in the case, making a search effective were lost out.

So, the Bill which was proposed by Mr. Chidambaram had a provision that the SEBI itself could do it. In view of the opinions expressed by various persons, including the hon. Members of this House, when this has been informally discussed, I have marginally altered that. We have created a Designated Court in Mumbai, and that Designated Court will have the jurisdiction, every time a search is to be conducted, the SEBI and concerned organisations will require prior consent of those courts. There is a provision to establish several Special Courts. There is also a provision for compounding of various offences, and the power to recover amounts which were not there originally with these bodies has also been brought in. There is some alteration in the nature of the penalties which are intended to be imposed by these Bodies. These are mostly procedural amendments except one or two substantive amendments which are there in this Bill.

I commend this Bill to the hon. House for its acceptance after a discussion.

*The question was proposed.*

MR. DEPUTY CHAIRMAN: Hon. Members, there is one amendment by Shri Naresh Agrawal for referring the Bill to the Select Committee. You can move it.

**श्री नरेश अग्रवाल** (उत्तर प्रदेश) : सर, मैं इसे वापस लेता हूँ, लेकिन माननीय वित्त मंत्री जी, मैं आपसे कुछ चीजें पूछना चाहता हूँ।

MR. DEPUTY CHAIRMAN: Are you moving it?

SHRI NARESH AGRAWAL: I am not moving it. लेकिन मैं वित्त मंत्री जी से कुछ चीजें पूछना चाहता हूँ।

MR. DEPUTY CHAIRMAN: You can raise at the time of your speech. You can do that. So, the amendment is not moved. Now, we will take up the discussion. Dr. T. Subbarami Reddy.

DR. T. SUBBARAMI REDDY (Andhra Pradesh): Mr. Deputy Chairman, Sir, I rise to speak on the Securities Laws (Amendment) Bill, 2014 as passed by Lok Sabha. This Bill presented by the hon. Finance Minister seeks to amend the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996. I welcome this Bill and support it wholeheartedly. Actually, the UPA Government had proposed three Ordinances. They brought them and they were very much eager to give more power, more strength and more teeth to SEBI so that they could control and take action against the people who were adopting fraudulent measures and trying to cheat the public. Here the most important thing is, the capital market is very much interlinked with the Indian economy. If the capital market is strong, sound and healthy, naturally the economic growth will also be very strong. But unfortunately, so many people became victims of the Saradha deposit scam. So many innocent people, middle-class people, old people, who had saved money for future, were cheated by the Saradha deposit scam. Due to this scam, it was realized that we have to have very stringent and strict rules to control all these things. In fact, as all of us know, many people committed suicide. They had suffered so much that they came to the streets. Such things always have a chain reaction. Because of such scams, people are afraid to invest in the capital market. If you don't invest, you can't think of economic growth and industrial growth. Therefore, it is very much important. Due to this reason, the UPA Government felt it and brought three Ordinances, but they could not replace with the Bill due to certain other circumstances. So, I welcome this Bill. If the country has to progress, we must attract capital. This Bill is going to attract the common man because they will feel that their money is safe. SEBI is not going to keep quiet, if anybody follows fraudulent measures. That is a very welcome measure. Sir, you will be surprised to know that previously out of 11 regional exchanges, 700 listed companies disappeared because of frauds committed by so many people. It created a panic in the country. As a result, the economic growth also has gone down phenomenally because money was not coming. In fact, if one scam takes place, at least, for three years people get completely stuck. They do not like to invest. Unfortunately, in the country, three-four scams have shattered and harmed to the greatest extent our economic growth and our capital market. Now, SEBI is being given full powers. As the hon. Minister said, they can draw any information; they can write and take action. They need not go to the Ministers. They have got full powers. SEBI is supposed to be a watchdog. Now, SEBI will become

much more strong and will have dynamic powers. welcome it. Here a safeguard has been provided that the Board would decide whether calling for information and records from any person, including any bank or any authority or any corporation shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities. I welcome this. We also, welcome that the SEBI Board would be more stringent to control the people who take undue advantage of capital market and cheat the investors' money. But sometimes, due to lack of communication, SEBI should not punish the innocent people. Here I would like to caution the hon. Finance Minister to take care that sometimes when you give abnormal powers to an institution, there is a possibility of the particular official or particular authority, who may be temperamentally too much emotional, punishing the innocent people. It will lead to complications. It is very unfair to punish the innocent people. Therefore, I would like to point out one thing. In spite of giving them full powers, how are you going to ensure that they will not, in over anxiety, over emotion and over excitement, take action against the innocent people, due to lack of communication or due to any misunderstanding? This is my pointed question and a very, very important one. Then, Sir, if an 'X' entrepreneur does not, like a 'Y' entrepreneur, then, he will go and report to the SEBI saying, "वह चोरी कर रहा है, वह बदमाशी कर रहा है, इसलिए उसके विरुद्ध action लेना है।" Suppose, in over- anxiety, in over-enthusiasm, the SEBI rushes to take action, then, what happens to the entrepreneur if he happens to be innocent, if he is not a bad man? This is a serious matter which has to be borne in mind.

As regards the power of the Board to enhance the quantum of penalty as awarded by the adjudicating officer, clause 16 of the Bill inserts sub-section (3) to section 15-1 of the SEBI Act as follows:

"The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify;

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter."

So, the principle of natural justice has been followed by giving an opportunity to the party concerned, the Board will decide, in case the quantum of penalty imposed by the adjudicating officer is erroneous and not in the interest of the securities market. At the same time, it has also put a time-limit of three months within which this can be initiated. Here, I would like to say that when they take action, there has to be a time-limit. Suppose they conduct a raid against some entrepreneur and they take action and call for documents, etc. This way, the entrepreneur's business is totally shattered. And, if, for another three to five

years, the investigation goes on, then, what happens to him? The charge may be true or untrue, that is a different issue. We must take all care to see to it that a scare is not created amongst the entrepreneurs. Sometimes, when you give powers to institutions, there is every possibility that they may create a sensational fear, and once the case goes on, it gets stuck for years together, and by the time the order comes, the business will get stuck. This will be a chain reaction which is going to affect the business men. I would like the hon. Minister to assure the House as to what safeguards he is going to take to protect the entrepreneurs who are really innocent and who have become victims, by incident or accident.

Now, one thing, Sir, is about Investor Protection Education Fund. Another salient feature of the Bill, I appreciate, is to create Investor Protection Education Fund, which would be formed from the amount collected under section 11B of the SEBI Act, or section 12 A of the Securities Contracts (Regulation) Act or section 19 of the Depositories Act. A lot of investment education and public awareness campaign is required for educating the public and to give them full, comprehensive information, pros and cons about any investment. Many times, common people are taken for a ride by giving misleading information about high rate of return, doubling the principal amount in two or three years, which I have told already and they are lured to making investments in some deposits, which has not got the approval of either the RBI or the SEBI. Here, my question is this. It is very good that you have given full powers. We are very much interested to safeguard the investors. Suppose the SEBI has taken action and put them behind bars, where is the guarantee that they are, actually, wrong people? If, by any chance, they are found to be innocent, then, what happens? Therefore, here again, it is a serious matter. In the normal cases, it is okay. But this concerns the Indian economy. The Indian industry, the GDP growth, it is all interlinked with it. If a message goes to the society that people are being harassed in the anxiety of having more powers, it is going to create a great harm to our industrial growth as well. Therefore, Sir, firstly, we must see to it that there is time-limit. Secondly, we also give warning to the Authority, which is in power, that is, the SEBI, that in their over-anxiety, if they punish an innocent man, an innocent entrepreneur, then, they are responsible for it. That fear should be there. Otherwise, it is likely to be dangerous for the Indian economy Sir, I am coming to the validation and confirmation of certain acts, even after expiry of the Ordinance. Finally, in Clauses 56 and 57 of the Bill, they have provided validation and confirmation of certain actions initiated under the earlier three Ordinances which will have continued effect. It has been reported that SEBI has initiated 1,358 attachment proceedings in 389 cases and recovered more than ₹ 1,600 crores. Therefore, this is required to remove the apprehension that once the Ordinance lapses, the regulator may face legal battles in cases where assets have been attached or action is initiated on the basis of powers conferred under the expired ordinance. Therefore, my suggestion is, they should be friendly also. Actually, SEBI is the heart of the Indian economic growth. SEBI has played a very important role. They should also encourage entrepreneurs to do it carefully. There are cases where the chief promoters

of entrepreneurship may be genuine. They may be misled by executives, by employees also. They may commit mistakes, commit crimes. They may cheat. Therefore, it is very necessary for SEBI to tutor the entrepreneurs to be cautious, conscious and judicious and see that you take all care. They should not allow even the executives also to commit crimes and cheat them. Therefore, in other words, there should be a friendly atmosphere between SEBI and the entrepreneurs. One more thing, Jaitleyji, I am drawing the attention of the Finance Minister to an important thing. In conclusion, what I would like to say is, this is the opportunity to bring to your notice that there is a feeling that if any entrepreneur in the country applies for permission from SEBI, they take their own time. There is a lot of red tapism. There is a lack of communication and a lack of total coordination. As a result, it takes months and years also. There is a major trouble for the market and industrial growth if it is not done timely. Already SEBI, without much power, delays the matter. They take their own time. It has come to my notice that if anybody wants permission, they simply send by courier or they send a notice and seek many clarifications. It takes months together. There are cases where for years together they won't permit. So this is the opportunity you must take to categorically instruct them about the time factor. With modern technology, you can send by e-mail. My point is, the function should be cautious, conscious and judicious. There is no compromise. You must follow the rules. But, at the same time, you can follow quick action and red tapism can be vanished by giving an opportunity to the entrepreneurs and tell them, 'Come on, this is the thing what you have failed. You give it immediately. Then we will give permission. So come and discuss. If necessary, you send by e-mail.' Therefore, in other words, SEBI is the watchdog of capital market. But at the same time, they must be friendly and also have a helping hand for the entrepreneurs, within the specific time period and as much as possible follow the rules, regulations, the principles and also the safety regulation. They must always do within the minimum time and give the permission and guidance as early as possible. Then only it will help the Indian capital market and also help in achieving the industrial growth. In conclusion, I congratulate Shri Jaitley. Jaitleyji is a fortunate man. We have promulgated three Ordinances. We wanted to pass the Bill. When they got the power, we came this side. So we did not get a chance. We got the opportunity to issue these three Ordinances and the Bill, and you take the credit in Indian history that 'Yes, Mr. Jaitley has made SEBI strong, with full peak, power, to control the cheaters and also the entrepreneurs who are going on the wrong track'. Once again I congratulate you. Thanks to all.

MR. DEPUTY CHAIRMAN: The next speaker is Shri V.P. Singh Badnore, but there is only one minute before we adjourn for lunch. Do you want to speak for a minute and then continue after lunch?

**2.00 P.M.**

SHRI V.P. SINGH BADNORE (Rajasthan): Sir, I rise to support the Securities Laws (Amendment) Bill, 2014. The SEBI Act of 1992 was enacted for the establishment of Securities and Exchange Board of India with an objective of protecting the interests of ...

MR. DEPUTY CHAIRMAN: Mr. Badnore, you can continue your speech at 2.00 p.m. when the House re-assembles.

The House is adjourned for lunch till 2.00 p.m.

*The House then adjourned for lunch at one of the clock.*

*The House re-assembled after lunch at two minutes past two of the clock,*

(MR. DEPUTY CHAIRMAN *in the Chair.*)

MR. DEPUTY CHAIRMAN: Yes, Mr. V.P. Singh Badnore to continue his speech.

SHRI V.P. SINGH BADNORE: Sir, I will start again. Sir, I stand to support the Securities Laws (Amendment) Bill, 2014. Sir, the SEBI Act of 1992 was enacted for the establishment of the Securities and Exchange Board of India with the object of protecting the interests of the investors in the stock market and promote and regulate the securities market and matters connected to it. The SEBI has proved itself to be one of the best capital market regulators in the world. It has a very important place in the IOSCO, which happens to be the International Organisation of Capital Market Regulators. I reiterate, the SEBI enjoys a very good reputation in the regulators of the world today.

Sir, the capital market throws up new challenges and they need to be met with confidence so that the belief of investors in the stock market is reinforced. This amendment Bill has been pending for some time, and I do commend the Finance Minister that he has taken the right decision and taken it up with the due importance it deserves. Sir, this Bill is, in away, a landmark securities law, which will empower the regulators to search premises and seize assets. Now, we have seen that earlier also this recommendation has come about, but never adhered to. There have been scams and there have been JPCs, but this is the first time that this is being done. The watchdog now gets more teeth to tackle the menace of ponzi schemes and regulate them by framing regulations. Sir, there is some scepticism regarding the CIS and the pooling of funds and the registration under 11 AA (2). People are a little worried about the ambiguities. They need to be defined so that scepticism is not there. I feel that those people who are in this business, there is 11 (b), which is to review. There should be something as a sunset clause also. I do not know if 11 (b) is actually a sunset clause because people who want to wind up, must be given a time to do it. Now, if they are not given that time, then there will a distressed sale. So, this registration, the 11(a), the 11(b) and the framing of the regulations and rules must be done. Sir, in the last decade, there have been a lot of ponzi schemes which have mushroomed all over the country.



Much has been said about ponzi schemes. I was really wondering what ponzi scheme is. I thought they were con schemes or other schemes where an investor or somebody gives them some sort of inducement, you know, so that he makes an investment which is not real in the sense that if he is given like what in 1899 Ponzi came about and he defrauded one million by a ponzi scheme, what he promised then and all these ponzi schemes have been named after him is 10 per cent every week. If somebody is given 10 per cent every week, it is not possible. He made a million dollars out of it but landed himself in jail. A lot of schemes have come about. But when they are talking about these schemes which are going to be regulated in the SEBI, they are of hundred crores. Now I do not know if I can really talk and ask the Finance Minister because he is Finance Minister and not the 'SEBI' Minister. Then what happens to the schemes which are smaller in nature, which do not pool to ₹100 crores? All this is happening in the rural areas and where I come from, many, many of them are floating around. It will be interesting to put to this House that somebody with a very innovative idea and imagination said, he bought a land of about 100 bighas. Now he has a land of worth about 100 bighas and he floated this scheme where he said, 'that you buy one goat. The goat multiplies very fast, every three month they give babies. So, he said that 'in one year, there will be ten babies, and I will be able to give you, if you invest ₹10,000 in two goats, hundred per cent back in three years.' He floated this saying that goats multiply so many times and they give two-three babies three months or four months in a year, so he will able to make this. Now, when he came about this, he made crores of rupees. Now, all these things are there. Who is going to govern this? How are they going to be governed? There are lots of gullible people everywhere who fall for such ponzi schemes. But there are schemes which have been so innovative that what they have done is they have put insurance along with them. They make a packet and they sell that packet. Then, it becomes a pyramid scheme with a lot of people where somebody gets more. This is multi-level marketing which is going on in the world. There are some countries that have given a legal stamp also to it. Who is going to regulate them? How are we really going to ascertain that they are legal or not? These are also to be looked into.

Having said all this, I would like to come back to the SEBI. And, when I come back to the SEBI, I have only two things to say. In the world, there is a great debate going on about regulators. There are a lot of regulators even in our country. In US also, you have the FEDEX, you have the SEC. And, there is always a feud as to who is superior, as to who is the super regulator. In India also, there is a debate on this. The Financial Stability Board has recommended an umbrella of regulators and the Unified Financial Agency (UFA). There was also the Financial Sector Legislative Reforms Commission, under Shri B.N. Srikrishna. Now, I would like to ask the hon. Minister what he had thought about it. If you have so many regulators, do you think there is a requirement of a super regulator? It should also be ensured that it does not affect their autonomy as well. Giving them the autonomy who is going to regulate the regulators is a question which is being raised the



world over. Our Finance Minister is not just a financial man, but he is also a legal luminary. Somebody, like him, only from outside can objectively look into how and what needs to be done. The other most important thing to which nobody, even the most advanced countries, has really found an answer in the stock market is the insider trading. It was an Indian, the banker Rajat Gupta, who went to the US - and it was only BECAUSE OF his 15 minutes' talk that he was caught, otherwise he was getting away - indulged in insider trading and had to go to jail. But what can we do? Is it (*Time-bell-rings*) that the insider trading can be contained? This is the biggest problem, not just in India, but the world over. If something could be done in this regard, it will be a good thing.

Thank you very much.

**श्री नरेन्द्र कुमार कश्यप** (उत्तर प्रदेश) : उपसभापति महोदय, आपने मुझे इस संशोधन विधेयक पर बोलने का अवसर दिया, इसके लिए मैं आपको धन्यवाद देता हूँ। सरकार कुछ जरूरी संशोधन लेकर आई है और हो सकता है कि उनके दूरगामी परिणाम अच्छे भी हों। इससे पहले यूपीए सरकार के समय भी इसमें दो-तीन बार अमेंडमेंट आए थे। लोक सभा में भी चर्चा हुई, वहां से भी पास हुआ और तमाम चीजें आज सदन के सामने हैं। महोदय, जो लोग निवेश के ज़रिए या दूसरे करोबारों के ज़रिए फर्जीवाड़ा करते हैं, उनके खिलाफ कार्रवाई करने का कोई सख्त सिस्टम बने, इससे सदन की सहमति है, लेकिन आज देखने की बात यह है कि इन तमाम कानूनों और संशोधनों के बावजूद भी क्या हमारे देश में उन अपराधों में, उन चीजों में कमी आई है, जिनके लिए यह कानून बना या जिनके लिए यह संशोधन लाया गया? मुझे बहुत सारे बड़े शहरों की घटनाएं याद हैं, बहुत सारे घपले और घोटालों के मसले याद हैं। आम तौर पर हम उत्तर प्रदेश में भी देखते हैं, अन्य प्रदेशों में भी देखते हैं, बहुत सारी ऐसी कम्पनीज़, जिनके बारे में मालूम नहीं होता कि वे रजिस्टर्ड हैं या अनरजिस्टर्ड हैं, बड़े-बड़े शहरों में आती हैं और बड़ा प्रचार करती हैं, लोगों को प्रभावित करने की कोशिश करती हैं, कुछ सस्ती चीज़ दिखाकर आकर्षित करने का प्रयास करती हैं और जब उनका वह धंधा बड़े पैमाने पर फैल जाता है, लोग उनके चंगुल में आ जाते हैं, तब उनका ऑफिस कहां हैं, वे कहां हैं, पता ही नहीं चलता। रातों-रात वे लोग अपने ऑफिस बंद कर देते हैं, अपना कारोबार बंद कर देते हैं और हजारों-लाखों लोग, जो इस उम्मीद से निवेश करते हैं कि उनके पैसे की बढ़ोतरी होगी, उनके धन में बढ़ोतरी होगी, वे बेचारे हाथ पर हाथ रखकर बैठे रहते हैं। इसका सबसे ज्यादा नुकसान, जो हमने देखा है, वह गरीब लोगों को होता है। कई बार गरीब आदमी, गलत तरीके से जो लोग उन्हें प्रभावित करते हैं, उनके चक्कर में आ जाते हैं और अपना मकान और जेवरात बेचकर भी उन तमाम कम्पनियों पर अपना पैसा लगा देते हैं, जिनके बारे में मालूम ही नहीं होता कि वे रजिस्टर्ड हैं या अनरजिस्टर्ड हैं, उनका स्टेटस क्या है। उसका बहुत बड़ा नुकसान हमारे देश के बहुत सारे लोगों को उठाना पड़ा है। महोदय, मैं माननीय मंत्री जी से एक दो चीजें जरूर जानने की इच्छा रखता हूँ। आपने इसके ऑफिस को मुम्बई में स्थापित करने का इरादा विधेयक में जाहिर किया है। मजिस्ट्रेट के बजाय आपने न्यायाधीश के ज़रिए ट्रायल करने की प्रक्रिया को इसमें बढ़ाया है और फाइन करने के procedure को भी आपने इसमें आगे बढ़ाया है, लेकिन क्या इस सिस्टम को, इन केसेज़ का ट्रायल करने के लिए ये ऑफिसिज़ देश के सभी प्रान्तों में बनाए जाएंगे? क्या इनका विस्तार जिला मुख्यालयों तक भी होगा? केवल एक जगह पर, एक स्टेट में इसके लिए ऑफिस बनाने या कोर्ट बनाने या सेबी की संस्था बनाने से पूरे देश के क्राइम को रोक पाना शायद

[श्री नरेन्द्र कुमार कश्यप]

संभव नहीं होगा। मैं जानना चाहता हूँ कि हमारी सरकार इसका सीमा विस्तार कहां तक करने का इरादा रखती है? इस पर भी थोड़ी सी बात हो जाए। दूसरी मेरी जिज्ञासा रहेगी कि क्या सेबी को पूर्ण रूप से स्वतंत्र निगरानी के तौर पर विकसित करने का इरादा हमारी सरकार का है? कई बार कानून बनते हैं, कई बार संस्थाएं बनती हैं, लेकिन प्रॉपरली जब उनकी समीक्षा नहीं होती, देखभाल नहीं होती तो कई बार मनमानी की गुंजाइश रहती है। क्या इस एजेंसी को, सेबी को आप स्वतंत्र रूप से एक निगरानी तंत्र के रूप में इस देश में स्थापित करने पर विचार करेंगे? इसके अलावा इस सारे सिस्टम को आगे बढ़ाने के लिए आपने बोर्ड का गठन किया। हालांकि बिल के अंदर हमने देखा, उसको पढ़ा, उसका क्या प्रारूप है, क्या सिस्टम है, कितने सदस्य होंगे, कौन क्या होगा, विस्तार से हमें वह देखने को नहीं मिला। उपसभापति महोदय, हम आपके माध्यम से यह जानना चाहेंगे कि जिस बोर्ड का गठन इस सारे सिस्टम को कंट्रोल करने के लिए किया गया है, माननीय मंत्री जी अपने उत्तर में कृपया जरूर इसे स्पष्ट करें कि इस बोर्ड का प्रारूप क्या है, इस बोर्ड का सिस्टम क्या है और क्या उस प्रारूप में उन तमाम चीजों का ध्यान रखा गया है जो देश के अन्य विभागों में रखा जाता है? मसलन मैं रिजर्वेशन की बात करूं, आरक्षण की बात करूं। बोर्ड के गठन में क्या भारतीय संविधान में प्रदत्त अधिकारों के अनुरूप आरक्षण की व्यवस्था पर विचार करने का कोई विषय अनुबंधित किया गया है? इस पर भी अगर कोई उत्तर मिलेगा, तो देश को इससे जानकारी मिलेगी। आज हमारे देश में फर्जी नोट छपकर मार्केट में आ रहे हैं और हमारे देश के मार्केट के संतुलन को बिगाड़ रहे हैं। अगर आज सबसे बड़ा काम कोई देश में हो रहा है, तो वह फर्जी नोटों के छपने से और उनके मार्केट में आने से हो रहा है। हमारी चिंता है, पूरे देश की चिंता है कि बहुत सारी ऐसी एजेंसीज हैं जो भारत के अलावा पड़ोसी देशों से भी फर्जी करेंसी, फर्जी नोट लाकर, हमारे देश के बाजार संतुलन को बिगाड़ने की कोशिश करती हैं।

उपसभापति जी, मैं आपके माध्यम से यह जानने की जिज्ञासा रखूंगा कि क्या माननीय मंत्री जी ऐसी एजेंसीज को, जिनका काम भारत वर्ष में या भारत से बाहर के देशों में फर्जी नोट छापकर भारत के बाजार के संतुलन को बिगाड़ने का है।...(समय की घंटी)... क्या उनके खिलाफ भी कोई सख्त कार्यवाही करने का सिस्टम अधिनियम में लाया जाएगा? इसके बारे में भी स्पष्टीकरण हो जाए, तो मैं समझता हूँ कि बहुत अच्छा हो सकता है।

**श्री उपसभापति:** ओ.के., धन्यवाद।

**श्री नरेन्द्र कुमार कश्यप:** उपसभापति महोदय, मुझे मालूम है कि समय की घंटी बज गई है और मेरे बोलने का समय समाप्त हो गया है। बहुत सारी कम्पनियां ऐसी हैं जो बड़े-बड़े मुद्दे लेकर आती हैं और जब वे अपने मकसद में कामयाब हो जाती हैं, तो देश को भी, समाज को भी बहुत बड़ा loss होता है। बहुत सारे घोटाले हमारे देश में हुए हैं, ऐसी बहुत सारी कम्पनियों के नाम मेरे पास हैं, जो मैं आपको दे सकता हूँ। उपसभापति महोदय, मैं आपके माध्यम से माननीय मंत्री जी से अनुरोध करूंगा कि आप इस अधिनियम को लाए हैं, यह अच्छी बात है, लेकिन इस अधिनियम का व्यापक प्रभाव हमारे देश में क्या होगा?...(समय की घंटी)... फेक करेंसी और फर्जीवाड़ा करने वाले जो कारोबारी लोग हैं, उन पर तमाम लगाम लगाने में आपकी कितनी रूचि रहेगी, इसका भी उत्तर देंगे, तो अच्छा रहेगा। धन्यवाद।

**SHRI D. BANDYOPADHYAY (West Bengal):** Sir, I rise to support the Bill. This is a three-in-one law. It simultaneously amends the Securities and Exchange Board of India Act, 1992, the Securities Contract (Regulation) Act, 1956 and the Depositories Act, 1996. This is a fairly complicated piece of legislation which requires a thorough

knowledge not only of the laws it seeks to amend but also the complex functioning of the financial market.

The Securities and Exchange Board of India Act, 1992 was enacted for the purpose of increasing the confidence of investors. But, unfortunately, the Act was not implemented in the true spirit. Inaction on the part of the authorities under the SEBI Act and the lackadaisical attitude of the authorities under the SEBI Act have resulted in the Act not being properly implemented. Steps were not taken against erring stock brokers, sub-stock brokers, share transfer agents and other intermediary and non - banking institutions who are actively associated with security market and to refund the money to the poor investors. In the interplay of sharks of the money market, they lost out totally.

Chit funds have grown in this country like mushrooms in the last three or four decades. They have a history, beginning in the Southern Indian States and then spreading all across the country. Three or four decades ago, scam involving a company called *Sanchaita* came to light in West Bengal. Thousands of families were ruined but culprits got away. This chit fund menace continued to grow, unchecked through the 80s and 90s in different names - cheating unwary investors. Most of these chit funds were not registered under the SEBI Act for three long decades. These unregistered chit funds functioned to maximize profits for themselves, caring nothing for the investors. Investors were left in the lurch. I would fervently appeal to the Finance Minister to prevent any further mischief and to protect the general investors who had been the unfortunate victims of the foul game of the financial operators in the market. We are happy that the Government has come forward to protect unwary investors from falling victims to the sharks who operate in the money market to maximize their own gain or their corporate gain at the cost of investors. Once the Bill becomes an Act, SEBI would have powers to call for information not only from the people or entities associated with the securities market, but also from persons who are apparently not directly associated with the securities market. Besides, the capital watchdog would get increased powers to crack the whip on illegal investment schemes. The Bill aims at protecting investors as well as to curb fraudulent investment schemes thriving at the expense of poor, innocent investors.

Sir, we are happy to note that to deal with the huge pendency, special courts would be established for the prosecution of offences under the Securities law to provide a speedy trial. This is a welcome feature. To keep the credibility of the SEBI intact, we would caution the Government not to use its powers to settle any political score. While appointing the Chairman, the Government must ensure that the candidate has the highest credibility to have investors' confidence.

Sir, in West Bengal, we have a bad and long history of activities of such chit funds for the last 40 years. This is not a new phenomenon. The case of *Sanchaita* is well known. SEBI

should proactively try to control such mushroom growth of chit funds in whichever name they operate. The Trinamool Congress would always support any pro-people legislation. But SEBI should not convert itself into another CBI. The Finance Minister may consider two observations. One, the opponents of this Bill say that giving such powers to one body may lead to misuse and make this legislation draconian. There is a clause to summon anyone not even directly connected with the matter. However, the pluses in this Bill far outweigh the few negatives. Secondly, consider an orderly exit to such schemes, so that small investors are not inconvenienced. We must do all that it takes to stand by the smallest investor who looks to us to look after his interest.

MR. DEPUTY CHAIRMAN: Thank you very much for keeping up the time.

SHRI DEREK O'BRIEN (West Bengal): Sir, he always sticks to the time. He is always ahead of the times.

MR. DEPUTY CHAIRMAN: Yes, yes. The Trinamool always adheres to the rules. That is very good! Now, Mr. K.C. Tyagi. Tyagiji, you may follow the example of Shri Bandyopadhyay.

**श्री के.सी. त्यागी** (बिहार): सर, मैं इस विषय में बहुत दक्ष नहीं हूँ, इसलिए आपको यह जानकर प्रसन्नता होगी कि मैं बहुत कम समय में ही इसको समाप्त करूँगा।

MR. DEPUTY CHAIRMAN: You are competent to speak on every subject. You are well-versed in every subject. That is what our understanding is .... (*Interruptions*) ...

**श्री के.सी. त्यागी**: सर, जो 2013 का पुराना विधेयक है, मुझे उसको पढ़ने का मौका मिला है और जो नया विधेयक आया है, मुझे उसको भी पढ़ने और देखने का मौका मिला है। जो छोटे निवेशक हैं, उनके इन्टरेस्ट वॉच होने चाहिए, यह ज्यादातर सदस्यों की चिंता है। बिजनेस को लेकर जो एनवायरमेंट खराब हुआ है, हो सकता है कि इस विधेयक के पास होने से उनके विश्वास की बहाली हो। मैंने इससे पहले कई बिल्डर्स और बैंकों का जो नेक्सस है, उसका जिक्र किया था कि किस तरह से अनियमितताएं हो रही हैं, इसलिए मैं इसको सपोर्ट करता हूँ। आपने इसमें जो अधिकार सेबी को दिए हैं, इस देश में दिक्कत यह है कि अच्छे काम के लिए भी किसी संस्था को यदि ज्यादा अधिकार दे दो, तो उसके भी दुरुपयोग की संभावनाएं बनी रहती हैं। इसलिए जिन अधिकारियों की नियुक्ति हो, मेरा मंत्री महोदय से निवेदन है कि उनकी क्वालिटी भी हो, उनकी रेस्पेक्टेबिलिटी भी हो। इसका भी ध्यान रखा जाए कि उन अधिकारियों के जरिये इसमें फिर से कोई प्रतिभूति घोटाला न हो जाए, इसलिए जो ऑफिसर्स एक्सिलेंस एट पार हैं, उनको इसमें लगाकर निवेशकों का ध्यान रखते हुए जो बाज़ार है, उसमें बिजनेस का एन्वायरन्मेंट बना रहे, इसका ध्यान रखना होगा। मैं इसी के साथ इसका समर्थन करता हूँ। आपने मुझे बोलने का अवसर दिया, इसके लिए आपका बहुत-बहुत धन्यवाद।

MR. DEPUTY CHAIRMAN: Tyagiji, I think, this is the best speech, ...(*Interruptions*)...

**श्री नरेश अग्रवाल**: उपसभापति जी, उनका टाइम हमें दे दिजिए।

**श्री उपसभापति**: त्यागी जी, यह सबसे अच्छा भाषण था।

**श्री के.सी. त्यागी**: और मेरे लिए सबसे खराब क्षण था।

SHRI PAUL MANOJ PANDIAN (Tamil Nadu): Sir, the Bill is brought forward with the object of empowering the Securities and Exchange Board for the purpose of protecting the interests of investors in the securities market. Sir, I wish to submit a few issues with regard to the Bill which may be taken into consideration by the hon. Minister.

At the outset, Sir, the Bill contains provisions with regard to search and seizure. Earlier the power was given to the SEBI itself. But now the power is given to a special court at Mumbai. Sir, I wish to state that the Bill provides for the establishment of special courts in all the places of their local jurisdiction where the offences are committed. However, the same Bill provides for the establishment of a special court only for the purpose of search and seizure. The search and seizure is being done by the special court at Mumbai. If an offence is committed, say, in Andhra Pradesh, the special court in Andhra Pradesh should be taken cognizance of the offence; the trial will be conducted on a day-to-day basis. But this Bill provides that a portion of the power with regard to search and seizure will be given to a special court at Mumbai. So, when search and seizure is questioned on the ground of jurisdiction, Mumbai court has no jurisdiction. When there is a special court to try the same offence under the same Act, I have my own doubt, it will affect the prosecution. That is my first point. Sir, you know about the RBI Act of 1934. It provides that the power of search and seizure is given by a Magistrate. Sir, now it provides that it can be given by a Magistrate or a special court at Mumbai. It must be within the local limits as provided in the RBI Act, 1934. Sir, my second point would be: In the Bill, it has been provided that the trial will be conducted by a Special Public Prosecutor, and the Bill itself provides that the Public Prosecutor must be appointed in terms of Section 2( u) of the Code of Criminal Procedure. Sir, Section 2(u) of the Code of Criminal Procedure itself provides that if a person is appointed as a Public Prosecutor, he should have a practice of not less than 10 years. Sir, I will read, Section 24 of the Cr.P.C. It provides the term 'Public Prosecutor' means any person appointed under Section 24, and includes any person acting under the directions of a Public Prosecutor.' Section 24(8) says, " .... who has been in practice as an advocate for not less than 10 years as a Special Public Prosecutor." Sir, this Bill provides that the person who has been in practice for not less than 7 years can be appointed. But in the same Bill they provide that the Public Prosecutor should have a practice of 10 years as provided under 2( u). This has to be considered. It further goes to say, "the person who has held the post for a period of not less than seven years under the Union or State." This means that a person who is not in practice but who has held the post under the State Government or the Central Government can be appointed. Sir, now, we have the process of disposal of a case before a special court by appointing a special public prosecutor. So, a person, who has been in active practice as a special public prosecutor, alone can conduct, but not the person who has held a post in the State or the Central Government. This is my second point.

Sir, my third point is with regard to similar Acts which are prevailing in various States. Sir, I wish to State that there are about three such Acts. One is in the State of Tamil Nadu itself. The other ones are in Maharashtra and Puducherry. We have special Acts to protect the innocent public. With regard to investment schemes, we have the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act. Sir, in the same way, it is also there in the State of Maharashtra and in Puducherry. Validity of all these Acts has been upheld by the Supreme Court. I wish to state to the hon. Minister that there might be a clash of jurisdiction between the Centre and State legislations, as it has occurred in the case of Puducherry Act, where an attachment of a property was made under the SARFAESI Act and, at the same time, an attachment was also made under the Depositors Act. Sir, the Supreme Court held that the attachment under the Depositors Act would prevail. Therefore, the Bill must make this point clear. Though there is an application under Section 32, it is also provided that the provisions of this Act shall be in addition to, and not in derogation of, any other law enforced. However, there is no clarity on the point that under what circumstances, the cases can be taken under the States' Act, and under what circumstances, cases can be taken under this Act.

Sir, I would like to make one suggestion. If a case is registered under the State Act, this Bill provides that the defaulter himself can come and can get a consent order. When a case is registered under the State Act, will this Bill prohibit such a person to come and get the consent order with regard to the amount that has been paid to the investor? There is a clash and we need clarity on this aspect also. Thereafter, I wish to state that in this Bill, a list of negative offences can also be mentioned which cannot be closed on the basis of consent order because the Statute should provide a negative list of serious offences. For serious offences, there should a negative list which cannot fall under the purview of the consent mechanism. Anybody, after committing a grave crime, should not take advantage of this provision by just taking a consent order.

Finally, I would like to mention about the sharing of information. Sir, I was just discussing this issue with my colleague, Shri Navaneethakrishnan, who is also the former Advocate General. When we seek information, there must be a valid order. Sir, they must be put on notice. There must be a speaking order. And also, when we share information with other regulators, it must be with the consent of the Central Government. So, all these issues may be taken into consideration. With these words, I support the Bill.

MR. DEPUTY CHAIRMAN: Thank you, Mr. Pandian. You have raised very valid legal points. Now, Shri Naresh Agrawal.

**श्री नरेश अग्रवाल:** माननीय उपसभापति जी, मैं माननीय वित्त राज्य मंत्री जी से पहले बड़ा साफ कह देना चाहता हूँ कि हम पॉन्जी स्कीम के पक्ष में नहीं हैं। हम चाहते हैं कि पॉन्जी स्कीम पर और भी कड़ाई हो। मैं यह नहीं समझ पा रहा हूँ कि चुनाव से पहले यूपीए और एनडीए में जो कड़वाहट थी, वह

मिटास में कैसे बदल गई? बजट भी आप लाए, तो चिदम्बरम जी का बजट लाए। आपने उसमें कोई परिवर्तन नहीं किया। आपने रेल का बढ़ा हुआ किराया भी यूपीए का ले लिया। यह सेबी बिल, जो बड़ा विवादित बिल था, आपको मालूम है कि यह बिल देश के एक घराने को बंद करने के लिए लाया गया था। उस समय के वित्त मंत्री जी जान-बूझ कर कुछ लोगों के इशारे पर यह बिल लाए थे। पूर्व प्रधान मंत्री जी यहाँ बैठे हैं। उस समय प्रधान मंत्री कार्यालय कमजोर था, जबकि वित्त मंत्री का कार्यालय मजबूत था। चलिए, आज ऐसा नहीं है। जब यह बिल स्टैंडिंग कमेटी में गया, यशवंत सिन्हा जी उस स्टैंडिंग कमेटी ऑन फाइनेंस के चेयरमैन थे, हम लोग उसके मेम्बर्स थे, आदरणीय विधि मंत्री भी उसके मेम्बर थे, राजीव भाई भी उसके मेम्बर थे, तो हम सबने इस बिल पर इसलिए आपत्ति की थी कि अगर आप एक रेगुलेटर को इतनी बड़ी ताकत दे देंगे, तो कहीं-न-कहीं उसका मिसयूज होगा और ऐसा न हो कि उद्योगपति इस देश को छोड़ कर जाने लगे। आप देख लीजिए, उस ज़माने में इस देश में इन्वेस्टमेंट कम हुआ और विदेशों में ज्यादा हुआ। मुझे खुशी है कि आप उसमें थोड़े अमेंडमेंट्स ले आई है, लेकिन इसमें कुछ शंकाएँ भी हैं। जैसे आपकी जो Collective Investment Scheme (CIS) है, इसमें आप किनको मानती हैं, मैं चाहूँगा कि इस बात को आप जरूर स्पष्ट कर दें। हम इस बात से सहमत हैं कि 'Ponzi Scheme', जो 100 करोड़ रुपये की हो और सेबी में रजिस्टर्ड न हो, आप उसको सेबी के तहत दे दीजिए। लेकिन आप यह बताइए कि अगर कोई कम्पनी नोएडा या गुड़गांव में घर बनाती है, उसने दो-दो करोड़ रुपये के 100 या 50 घर बनाए हैं, इस तरह उसके पास 100 करोड़ रुपये हो गए हैं, क्या उसको आप CIS मानेंगे और क्या वह सेबी के अंडर में चला जाएगा? कोई कोऑपरेटिव स्कीम, जो 100 करोड़ रुपये की होगी, क्या वह भी उसके अंडर चली जाएगी?

आप कम्पनी लॉ मिनिस्टर भी है और कम्पनी बचाने की जिम्मेदारी भी आपकी है। आपने 11AA के 2(a) में परिभाषा दी है, "यदि कोई स्कीम जो सेबी में पंजीकृत नहीं है, उसमें 100 करोड़ रुपये या उससे अधिक की समग्र धनराशि का प्राप्त किया जाना, Collective Investment Scheme समझा जाएगा।" मैं चाहता हूँ कि इसमें आप थोड़ा संशोधन करें। चूंकि 'Ponzi' शब्द लॉ वाला शब्द नहीं है, इसलिए इसके लिए आप कोई विधिक शब्द ढूँढ लीजिएगा। जो लोग 'Ponzi' का काम कर रहे हैं, जिनसे सबसे बड़ा खतरा है और जिनके कारण आज इसे सेबी को देने की बात हुई है, तो 'Ponzi' जैसी कोई स्कीम, जो सेबी में पंजीकृत नहीं है और जो 100 करोड़ रुपये का व्यापार कर रही है, उनको आप इसके अंतर्गत ले आइए। जैसे वैस्ट बंगाल में शारदा स्कैम जैसी प्रॉब्लम आई, बिहार की प्रॉब्लम आई या साउथ में तमाम प्रॉब्लम्स आती हैं, अगर इसके माध्यम से आप उन चीज़ों पर बंदिश लगाएं तो मैं तैयार हूँ।

सेबी को आपने एक पावर यह भी दे दी कि सेबी फोन भी टैप करवा सकता है। वैसे भी इस देश में इतने लोगों को फोन टैप करने की पावर पहले ही मिली हुई है, आईबी, सीबीआई, ईडी, इन्कम टैक्स, स्टेट गवर्नमेंट और अब यह पावर आप सेबी को भी दे रही हैं। इस देश में अगर सबका फोन टैप हो जाएगा, तो फिर प्राइवेटि एक्ट किस बात का रह जाएगा? अगर सेबी सबके फोन टैप करने लगेगा, तो फिर देश में प्राइवेटि क्या रह जाएगी? मैं चाहता हूँ कि इसको भी आप स्पष्ट कर दें कि सेबी को फोन टैप करने की पावर है या नहीं?

तीसरी बात, कानून जिस दिन से बनता है, उसी दिन से लागू होता है, लेकिन आप तो इसे retrospective effect से लागू कर रही हैं। जितने दिन ऑर्डिनेंस रहा, पिछली सरकार ने जिस दिन से ऑर्डिनेंस जारी किया, उस दिन से वह लागू होगा। लेकिन फाइनेंस कमेटी ने इसे रिक्मेंड नहीं किया है, उसने इस पर आपको कोई सुझाव भी नहीं दिए हैं। मैं कहना चाहता हूँ कि सरकार को इस बात को गंभीरता से लेना चाहिए। सरकार इतनी जल्दी में क्यों रही है? इसे आप संशोधन के साथ फिर से



[श्री नरेश अग्रवाल]

Standing Committee on Finance को भेज देती, यही प्रक्रिया भी है। अगर स्टैंडिंग कमेटी से आपके पास कोई रिकमेंडेशन आती और फिर आप इसको लातीं, तो मैं समझता हूँ कि ज्यादा अच्छा होता, लेकिन लगता है कि आप बहुत जल्दी में हैं। आप दोनों में क्या डील हुई है, मुझे नहीं मालूम है, लेकिन उनकी सारी स्कीम्स को जिस तरीके से आप जल्दी में ला रहे हैं, कहीं न कहीं यह बात शक पैदा करती है। मैं बहुत साफ बात कहता हूँ कि अमरीका जैसे प्रोग्रेसिव देश में भी रेगुलेटर को इतनी पावर नहीं है, जितनी आपने ली है। आप यह बताइए कि जो गोल्ड स्कीम्स चल रही है, क्या ये 'Ponzi Scheme' में नहीं हैं। आज साउथ की तमाम फाइनेंस और लोन कम्पनीज चल रही हैं, जैसे मुथुट फाइनेंस आदि, क्या आप उनको 'Ponzi Scheme' में मानते हैं या नहीं? आप यह बात भी स्पष्ट कर दें कि ये स्कीम्स सेबी के अंतर्गत आएंगी या नहीं आएंगी?

बड़े घर की महिलाएं किटी खेलती हैं, अगर वे 100 करोड़ की किटी खेल लें, तो क्या उसको सेबी के अंतर्गत कर देंगी? किटी तो दिल्ली का आम फैशन है, अगर बड़े घर की 100 महिलाएं मिलकर एक-एक करोड़ रुपये की किटी डाल दें, तो 100 करोड़ रुपये की किटी क्या सेबी स्कीम में आ जाएगी? इसलिए यह CIS एक ऐसी चीज है, अगर इसे आप इलैबोरेट नहीं करेंगे, स्पष्ट नहीं करेंगे, तो कहीं न कहीं इसका दुरुपयोग होने की आशंका होगी। यह एक सेंसिटिव इश्यू है। यह विश्व का पहला देश है, जहां आप रेगुलेटर को इतनी पावर देने जा रहे हैं और इसके लिए आपने यह भी डिक्लेयर कर दिया कि मुम्बई कोर्ट से परमिशन लेनी होगी। हमारे एक साथी ने अभी बहुत सही बात उठाई, Why only Mumbai Court? अगर उत्तर प्रदेश का केस है, तो लखनऊ में उसकी सुनवाई क्यों नहीं होगी? पश्चिमी बंगाल का केस है, तो कोलकाता कोर्ट में उसकी सुनवाई क्यों नहीं होगी या मद्रास का केस है, तो उसके लिए चेन्नई कोर्ट क्यों नहीं होगा? इसका मतलब यह है कि अगर कोई आदमी कोलकाता का है, तो वह मुम्बई जा करके मुकदमा लड़ेगा। इसलिए इसे आप एक बार फिर से देखिए। देश में ऐसा कोई लॉ नहीं है, जिसको पूरे देश में सिर्फ एक ही कोर्ट चला सके, हर कोर्ट का अपना एक jurisdiction होता है। अगर आप पूरे इंडिया का jurisdiction सिर्फ एक कोर्ट को ही दे देंगे, तो फिर सुप्रीम कोर्ट किसलिए है? हाई कोर्ट को भी यह पावर नहीं है कि वह पूरी कंट्री को देख सके। हाई कोर्ट अपनी स्टेट को देखता है, अपनी ज्यूरिस्डिक्शन को देखता है, लेकिन अगर आप इसमें मुम्बई कोर्ट को पूरे देश की पॉन्जी स्कीम को, पूरे देश की 100 करोड़ की सीआईएस स्कीम को देखने की पावर दे देंगे, तब तो यह कानून का उल्लंघन है। It is a violation of the law. अगर किसी ने चैलेंज कर दिया, तो यह किसी न किसी दिन null and void कर दिया जाएगा। तो मैं चाहूँगा कि इसको भी आप बड़ी गम्भीरता से देखें।

आप इसका 28ए देखिए। इसके 28ए में आप सेबी को धनराशि वसूली की पावर दे रहे हैं। आप उसे पढ़ लीजिए कि आप उसे क्या-क्या पावर्स दे रही हैं? घुस जाएगा, सील कर लेगा, बंद कर देगा, खुद कोर्ट बन जाएगा, ये पावर्स इसको कैसे हो जाएँगी? ये पावर्स तो सीबीआई या आईबी को भी नहीं हैं। सीबीआई भी अगर किसी को पकड़ती है, तो कोर्ट से उसका वारंट लेती है, लेकिन आपने 28ए में उसे इतनी पावर्स देने की बात कर दी है कि लग रहा है कि हिन्दुस्तान में आप एक तानाशाह पैदा कर रहे हैं। पता नहीं आपको उस जमाने के ऑफिसर्स क्यों अच्छे लग रहे हैं? अगर वे ऑफिसर्स उस जमाने में किसी घराने को बरबाद करने के लिए लगे थे, तो आपको तो उन ऑफिसर्स से छुट्टी पानी चाहिए। नये ऑफिसर्स की कमी तो है नहीं। आपको उनमें क्या अच्छा लगा? मैं कहना चाहूँगा कि यह एक

सेंसिटिव मामला है। यह एक ऐसा कानून बनने जा रहा है, जो इस देश में बहुत दूर तक का परिणाम देगा। मैं चाहता हूँ कि जो कानून बने, वह अच्छा बने। मैं सवेरे भी कह रहा था, बहुत से कानून देश के लिए अच्छे नहीं होते हैं। कम कानून...

**श्री राजीव शुक्ल (महाराष्ट्र):** डिप्टी चेयरमैन सर, ये बार-बार पिछली सरकार पर आक्षेप लगा रहे हैं। ये किस घराने की बात कर रहे हैं, बताएँ? ...**(व्यवधान)**...

**श्री नरेश अग्रवाल:** आप तो हट गए। ...**(व्यवधान)**...

**श्री राजीव शुक्ल:** किस घराने की बात है, बताइए? ...**(व्यवधान)**...

**श्री नरेश अग्रवाल:** वही आप वाला। ...**(समय की घंटी)**... राजीव शुक्ल जी का घराना। ...**(व्यवधान)**...

**श्री उपसभापति:** नरेश जी, टाइम का ध्यान रखिए।

**श्री नरेश अग्रवाल:** सर, मैं खत्म कर रहा हूँ। मैं माननीय वित्त राज्य मंत्री जी से ...**(व्यवधान)**...

**श्री राजीव शुक्ल:** ...**(व्यवधान)**... उसको सदन के सामने स्पष्ट कर दें। ...**(व्यवधान)**...

**श्री नरेश अग्रवाल:** \* ...**(व्यवधान)**... अब आप बैठ जाइए, आगे न चलाइए।

**श्री उपसभापति:** नरेश जी, खत्म कीजिए।

**श्री नरेश अग्रवाल:** माननीय उपसभापति जी, मैं माननीय निर्मला सीतारमण जी से कहूँगा कि ...**(व्यवधान)**...

THE LEADER OF THE OPPOSITION (SHRI GHULAM NABI AZAD): Sir, this should be taken out. .. *(Interruptions)* ..

SHRI BHUBANESWAR KALITA (Assam): Sir, this should be expunged. The hon. Member has taken the name of another Member of this House .. *(Interruptions)* .. Either he has a right to reply .. *(Interruptions)* .. or it should be expunged.

MR. DEPUTY CHAIRMAN: He will take care of that. Why do you worry? He is a very Seasoned Member.

**श्री नरेश अग्रवाल:** सर मैं आपसे कहूँगा कि हरदम कम कानून इफेक्टिव होते हैं। ...**(व्यवधान)**...

SHRI RAJEEV SHUKLA: This should be expunged, Sir.

MR. DEPUTY CHAIRMAN: I will look into it.

**श्री नरेश अग्रवाल:** सर, अगर कानून इतने बना दिए जाएँ कि हरेक को अधिकार होगा कि वे एक-दूसरे को इंटरप्ट करेंगे, तब शायद वे कानून प्रभावी नहीं होंगे। तो इसको बनाने से पहले फिर सोच लीजिए। मैं तो कहूँगा कि अगर आप सेलेक्ट कमेटी में इसे दे देतीं, तो ज्यादा अच्छा था, चूँकि यह उस हाउस से पास हो गया, नहीं तो यह स्टैंडिंग कमेटी में जाता और वहाँ सारे सदस्य अपने विचार रख कर आपके सामने उस बिल को ...**(समय की घंटी)**... एक पानी के पानी सा रख देते, तो ज्यादा अच्छा होता।

[श्री नरेश अग्रवाल]

मुझे उम्मीद है कि मैंने जो प्रश्न उठाए हैं, उनके उत्तर देने के साथ-साथ आप इस बात को सदन में सुनिश्चित करेंगी कि सेबी देश का डिक्टेटर नहीं बनेगा, सेबी इस देश में लोगों को बचाने का काम करेगा, लोगों को फँसाने का काम नहीं करेगा। धन्यवाद।

SHRI K.N. BALAGOPAL (Kerala): Sir, I rise to support this Bill. The amendment in three Acts is for helping the common investors of this country. Through this amendment, I hope that the regulator, SEBI, will go into the details of many of the frauds that are happening in the country in the name of share market. But, Sir, I also fear that some of the provisions, like other hon. Members have said, may lead to some arbitrariness. But, in the name of arbitrariness, we cannot say that such strengthening of provisions is not necessary. We have been hearing a lot of cases from Harshad Mehta onwards. Now, in the yesterday's newspaper, I read a story about a video conferencing facility in Tihar Jail to discuss sale of property with people from other countries. The owner of one of the biggest investment banks in the country is in Tihar Jail and he is trying to sell property worth twenty thousand crores of rupees to give back the debt to the people. For that, the hon. Supreme Court or High Court arranged video conferencing facility in the Jail. So, this is a rare occasion, Sir. Such a person was booked because of some continuous struggle by some of the SEBI officers and others, but generally these people are not coming under the law and they do not have to face these kinds of difficulties. Sir, now, we are reading some stories about the huge loan take by the Bhushan Steel. Around forty thousand crore rupees were taken by a company in the country. Even the State Bank of India and other banks gave them loan and it is much more than their network. So, this much money is going. Sir, another case of IDBI which is about Kingfisher has come. After Kingfisher went into trouble, one thousand crore rupees were given. These kinds of stories are coming. So, SEBI and other regulators should be strengthened. I also accept that point.

Sir, when I look at the provisions, I find that clause 2 (i) (a) says, "(ia) calling for information and records from any persons including, any bank .." "The investigation can be a fishing expedition. When it comes to investigation of a company, the company suffers. In the famous case of Minerva Mills, the Supreme Court said that investigation should not be a fishing expedition. A proper case should be there. The arbitrary attitude of the officers may create problem.

Clause 2(i)(b) mentions its retrospective effect from 1998 onwards. This particular amendment provision will come into effect from 1998 onwards. I do not know the basic need for this. It will be very good if the Minister while replying clarifies it. We already passed GAAR. That is a tax matter. I know the difference. But why is it coming with retrospective effect? I am not against that. But proper clarification should be given about its retrospective effect.

Sir, clause 3(i)(b) says, “ ... involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.” For a collective investment scheme, one hundred crore rupees are needed. So, those who are collecting for a collective investment scheme, which involves less than one hundred crore rupees, will not come under the purview of this Bill. I think it should be less than that.

Saradha Chit Fund is not directly coming here. But many such funds may be there. The funds which are collecting more than one hundred crore rupees will only come under the purview of this Bill is not a good thing. It should be reduced. It should be made effective for other companies.

Sir, now I come to the issue of designated court. Nareshji already spoke about it. You can have a designated court in every State. That is a good suggestion. Why is it given only in Mumbai? I know that the headquarters of SEBI is in Mumbai. Its registered office is in Mumbai. That logic is there. I know that a special court is there. Provision is there under every High Court. High Court is an appellate body in that. That is separately coming. I am talking about notice for search. The designated court is only in Mumbai for search orders. I am also supporting the argument made by Nareshji. It can be put in other States also.

Another important provision is this. This Bill is very strong in general reading. But the weakness of the amendment can be seen when we look into the matter related to penalties. Earlier all the Acts had very strong provisions for penalties. I don't know if penalties were properly imposed or not. I don't know about all the cases. But penalty provision was there. Here, at least, at some twenty places amendment is there and a very strong amendment provision is also given. The amendment is also separately given by Mr. Rajeev Chandrasekhar. He is also concerned about this.

Sir, clause 6, which is relating to fine, says, “ ... which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees...” Earlier this provision of one lakh rupees for each day was not there. Now it is like electricity bill. If I fail to pay electricity bill on time, I can pay it with fine. He can pay one lakh rupees per day means up to 100 days he can remain a failure.

Not only that, in clause 12, there is a provision for fine for insider trading.

MR. DEPUTY CHAIRMAN: Please conclude.

SHRI K.N. BALAGOPAL: Sir, please give me one minute. Insider trading is in the US. We are following them. We say that many of the Companies Act in the corporate areas in the US are very good. But in the corporate law, if it is in the US, insider trading is a very good reason for banning the company from the listing, seizure of documents, etc. Earlier, for insider trading, there was a huge fine. Now, it is reduced.

MR. DEPUTY CHAIRMAN: Please conclude now.

SHRI K.N. BALAGOPAL: Regarding the fine or penalty part, this amendment is not strict. It has a liberal aspect which has to be looked into. Strong punishment should be there for violators. Thank you.

SHRI BHUPINDER SINGH (Odisha): Mr. Deputy Chairman, Sir, I rise to support this Bill. My Party also supports it. सर, कुछ सवाल हमारे दिमाग में आते हैं कि ऐसा क्या हो गया कि इसके लिए ऑर्डिनेंस लाना पड़ा? बेसिकली सेबी का काम इन्वेस्टर्स के इंटरेस्ट्स को प्रोटेक्ट करना है। सेबी की पावर में ऐसी क्या कमी थी जो वह इन्वेस्टर्स के इंटरेस्ट्स को प्रोटेक्ट नहीं कर पाई और जिसके लिए ऑर्डिनेंस लाना पड़ा just on the eve of election? उसके बाद, ऑर्डिनेंस को हाउस में तो लाना ही पड़ेगा। लेकिन, यहाँ छोटे इन्वेस्टर्स की बात उठ रही है, जिन्होंने आरबीआई की गाइडलाइंस से बाहर जाकर पैसे इकट्ठे किए, जिससे आज छोटे व्यापारी से लेकर छोटे किसान तक, सारा देश सफर कर रहा है, क्या उनके लिए आप यह लाए? लैंड एक्विजिशन में रिहैबिलिटेशन के लिए करोड़ों रुपये जिन गरीबों और आदिवासियों को मिले, उसके बाद उनके डिपॉजिटर्स उनके पास गये और जिस पैसे से आज देश के सारे शहरों में चिट फंड के रूप में सफरिंग हो रही है, क्या उसका अंदाजा लगाते हुए यह सोचा गया कि सेबी को थोड़ी अधिक पावर दी जाए ताकि सेबी वहाँ तक पहुँच पाए? अगर सेबी को वहाँ तक पहुँचाना है तो देश में जहाँ-जहाँ भी स्टॉक एक्सचेंज हैं, वहाँ-वहाँ तक इसकी पावर को पहुँचाने का हमें प्रबंध करना होगा।

सर, RBI had also suggested that जो विलफुल डिफॉल्टर्स हैं, इनसे निपटने के लिए सेबी को पावर दी जानी चाहिए। आरबीआई के जो विलफुल डिफॉल्टर्स हैं, वे कैसे एक बैंक से 40 हजार करोड़ रुपये तो दूसरे बैंक से 6 हजार करोड़ रुपये ले लेते हैं तथा एक-एक बैंक से एक-एक कॉरपोरेट हाउस इतने पैसे ले लेते हैं? डिप्टी चेयरमैन सर, मैं माननीय मंत्री महोदय से तथा संसद के सभी सदस्यों से भी यह कहना चाहूँगा कि हम घर या कार खरीदने के लिए किसी बैंक में लोन लेने जाते हैं तो हमें बैंक को सारे क्लियरेंस सर्टिफिकेट्स देने पड़ते हैं, तभी वह बैंक हमें लोन देता है, नहीं तो हमें लोन नहीं मिल पाता है। मैं यह पूछना चाहूँगा कि आरबीआई की नज़र में ऐसे विलफुल डिफॉल्टर्स कब आए? क्या यह बात उसी वक्त दिमाग में आई, जब पिछला आर्डिनेंस लाया गया था? सर, यह मेरी जानकारी में है और यह आप भी जानते हैं कि ऐसे बहुत सारे डिफॉल्टर्स पिछले कई सालों से सामने आते रहे हैं। सर, हम कहते हैं कि जिसके सिर में तेल गिरता है, उसके सिर में ही तेल डाला जाता है और जिसका उत्तर-दक्षिण-पूरब-पश्चिम या आगे-पीछे कोई नहीं होता है, उसकी सुनवाई भी नहीं होती है। अगर कोई किसान बैंक में जाकर लोन लेना चाहता है तो वह क्लीअर नहीं हो पाता है और उसको टाइमली पैसे नहीं मिल पाते हैं। जो रेगुलर रिपेमेंट करता है, जो विलफुल डिफॉल्टर नहीं है, जो सिंसियरली और रिलिजियसली पेमेंट करता है, उसे ही लोन नहीं मिल पाता है। इसलिए मेरा यह कहना है कि सेबी, जो कि एक रेगुलेटरी बॉडी है, उसमें चेयरमैन को, एक अथॉरिटी को पावर न दी जाए, जैसी कि अभी बातें उठ रही हैं। जिस प्रकार, ज्यूडिशियरी में जब full bench of the Supreme Court डिसीजन लेती है, तो वह केस की वैल्यू को, उसके ऐसेट को सामने रखते हुए डिसीजन लेती है, उसी प्रकार इसमें भी केवल एक चेयरमैन की अथॉरिटी न रहे, बल्कि इसमें एक फुल बैंच, एक मेम्बर की भी अथॉरिटी होनी चाहिए। जैसे इलेक्शन कमीशन पहले एक मेम्बर का था, जिसे अब तीन मेम्बर्स का बना दिया गया है। उसमें जो मेजॉरिटी होती है उसी की बात की सुनवाई होती है। तो उसी

**3.00 P.M.**

तरीके से सेबी में भी या लोकतंत्र के अंदर कोई भी संस्था हो, किसी के दिमाग में यह न आए कि वह जो चाहे कर ले और उसको ऐसी पॉवर न दी जाए कि वह वन मैन के हिसाब से जो अथॉरिटी है, वही कर ले। तो उसको ध्यान में रखते हुए मैं उम्मीद करूंगा कि मंत्री महोदय के सामने मैंने जो सवाल किया है, उसका उत्तर मुझे मिल जाएगा। बहुत-बहुत धन्यवाद।

MR. DEPUTY CHAIRMAN: Mr. Y.W. Chowdary, not present. Mr. Ishwarlal Shankarlal Jain.

SHRI ISHWARLAL SHANKARLAL JAIN (Maharashtra): Mr. Deputy Chairman, Sir, I rise here to support the Securities Laws (Amendment) Bill, 2014.

As you know, in the earlier days, the investment into Stock Exchange was coming in a very small and paltry way. But former Prime Minister of India, Mr. Rajiv Gandhi had given a thought to the entire country that we should invest money into Stock Exchange so that it could be properly utilised for the betterment of the country. Later on the people started investing into Stock Exchanges. But many frauds occurred. So, it has been felt that the SEBI should be given more powers, more teeth to control these things so that frauds do not occur again and again. So, I congratulate the Government that they have come forward with the Bill. Actually it was the UPA Government who had moved it. But now the NDA Government has brought it with minor alterations according to their own tune.

But one thing is contradictory in their saying. During the discussion on the Finance Bill, the Finance Minister said that they do not believe in retrospective enforcement of the base tax and Acts also. But here you are enforcing this Bill retrospectively. There is a contradiction in the statement. What is the necessity to give effect to this Bill from 18th July, 2013?

Sir, an Ordinance was there. As per the Ordinance the work was carried out. Now, a new Bill has come. It has replaced the old Bill. It should have come into force and that could have served the purpose. But here the Government has contradicted itself. I am really surprised to listen to this statement.

Sir, a Special Court has been designated and it will be in Mumbai. The reason may be that the SEBI office is situated in Mumbai itself. If search and warrant is to be issued from Mumbai, it could be carried out anywhere in the country. So, I do not think it is contravention of jurisdiction. Because when we are empowering that Special Court with powers to search and issue a warrant, where is the question of jurisdiction? I think the entire country becomes under the jurisdiction of this Special Court. I do not think there is any ambiguity.

Regarding the investment of ₹ 100 crores, it is really surprising. Less than ₹ 100 crores means how much? Again it is a question of limitation. Even ₹ 10 crores may be more for somebody, and even ₹ 10 crores is less for some. So, less than ₹ 100 crores doesn't fall

under that, and above ₹ 100 crores fall under that is something which doesn't appeal to my mind. That should be given a rethought. As my hon. friend, Mr. Naresh Agrawal has said, it could have been sent to the Select Committee. Actually that would have been really better. But the SEBI has posted a consultation paper on their website in January, 2014. So, most of the suggestions had come from professionals, from persons dealing in particular fields, those who are dealing in securities. The expert opinion had already been gathered by SEBI and it was submitted to the concerned Departments. Sir, though we are the law-makers and we have the right to give our opinion, we are not experts in all the fields. Ultimately, the persons who are experts and who are dealing in this field, their opinion should be sought. Lastly, the Companies Act was passed hurriedly last year itself. Now the new Government is saying that as there are a lot of anomalies and practical difficulties in the Companies Act, we have to bring a new law again. Sir, to avoid this, there was a need to take an expert opinion. I think that has already been taken. So, the Bill seems to be very perfect one as it is strengthening the SEBI Board. I congratulate the Government for bringing it at the right time. With these words, I support the Bill. Thank you.

[THE VICE-CHAIRMAN, (DR. SATYANARAYAN JATIYA,) *in the Chair.*]

DR. ASHOK S. GANGULY (Nominated): Sir, I rise to support the Bill. However, my request is that we should not throw out the baby with the bath water because there were some very good features in the Securities Laws (Amendment) Bill, 2013 which has, unfortunately, lapsed. For example, there was a clause, "SEBI can attach bank accounts, property and arrest a person for his failure to comply with disgorgement orders." Fortunately, you have introduced a clause saying 'permission from the Magistrate or a judge'. The reason why SEBI was given this authority, which I thought was draconian, was that news should not leak out. How we are going to protect the news from leaking out from the network of those who violate the law, is something that we need to think about a little more deeply. Sir, another retrospective clause of 2013 Bill that would allow SEBI to settle non-criminal proceedings by issuing consent orders was added, and I hope that will survive. There is no question that the revised Amendment Bill has certain positive features and we should compliment the Government for that. One of the features in the 2014 Bill, which has been brought to this House, is to authorize SEBI to enhance penalties imposed by an adjudicating officer while also prescribing minimum levels of penalties for these offences. I think that is a flexibility, which is well defined. However, one of the questions that came to my mind, while going through the Bill, was that given the organization of SEBI, does it have enough resources to carry out the enormous task that you are handing over to them? This is something that you might wish to look into because we have a lot of good laws, but the problem is that we fail to implement them. For example, the banks' campaign against habitual defaulters has really not made any progress. Recently, a bank Chairman or a



CEO was detained already for taking bribe which might be more widespread than we may be aware of. Why aren't wilful defaulters being dealt with far more stringently, heavily and with a sense of urgency? It reminds me and a lot of people have spoken about the Ponzi schemes. It is an American word from Mr. Ponzi. But the fact is, it is the anti-ponzi scheme. We call this पूंजी; savings. तो पूंजी के विरोध में जो होता है, वही हमारे देश में widespread है, that is completely under the radar screen और गरीबों के गरीब, सब ले जाते हैं। On the other hand, the Ponzi schemes are being used to launder black money. That is the major use of the Ponzi schemes.

You will recall that truckloads of depositors' receipts were sent to the SEBI to investigate who are the depositors to whom their money was returned by a certain company, which I do not wish to mention the name of. Therefore, the worry that I have is that the SEBI's public pronouncement, sometimes, border upon an overreach. And I would say that there must be some safeguards also that this 'holier-than-thou and holier-than-all' attitude may not start, and one end of the pendulum swinging to the other end. This is a worry that I share with the House. I hope that the hon. Minister will take a note of it because all the pronouncements of the SEBI are more worrying than the reality of what it has done. ...*(Time-bell-rings)*... The Vice-Chairman, Sir, having rung the bell, I, having never exceeded the time, as a disciplined Member, as always, will leave my speech incomplete.

THE VICE-CHAIRMAN (DR. SATYANARAYAN JATIYA): You were allotted only four minutes. We are running short of time.

DR. ASHOK S. GANGULY: I think, the hon. Minister would know, उन्हें पता है कि मैंने क्या बोलना था, क्या छोड़ दिया। Thank you.

PROF. M.V. RAJEEV GOWDA (Karnataka): Mr. Vice-Chairman Sir, I am happy to get this opportunity to talk about the Securities Laws (Amendment) Bill, 2014. I am also very happy to learn that over the last few years, the SEBI has been able to crack down on a number of chit fund and ponzi scheme scams. Around 20 lakh investors were being cheated of nearly ₹ 20,000 crores. Sir, it was possible for the SEBI to investigate these frauds and bring the culprits to book because of the Securities Laws (Amendments) Ordinances that the UPA Government brought in over the last two years. It is, finally, a very great relief to see that after years of these Ordinances being extended because of Parliamentary disruptions, the Securities Amendment Bill is set to become an Act.

India has a large number of very talented entrepreneurs. But if we create a regulatory ambience and an infrastructure that has gaps in it, then, there are some who go astray, who are tempted to milch the poor investors of their hard-earned savings. This, often, takes place through fraudulent savings, chit funds and ponzi schemes. Every such scam gives a bad name to legitimate chit funds and spoils the investment landscape for the poorest of

the poor. The SEBI has long been requesting sweeping powers, and the UPA's Ordinances and this Bill are the first major steps for plugging these regulatory gaps and for turning the situation around.

In order to protect the *Aam Aadmi* and *Aurat*, the UPA Government had promulgated these Ordinances. Finally, these Ordinances are seeing the light of the day in the form of an Act and this will really help change the whole regulatory environment. Already, in response to a Parliamentary Question in March, 2013, we saw that the SEBI had been quite effective. Six hundred and sixty nine companies were probed by the SEBI for violating the Collective Investment Scheme and collecting about ₹ 7,435 crores. These Collective Investment Schemes are often illegal, unregulated and are ponzi schemes. Five hundred and fifty two of such companies were prosecuted and convictions were secured in 124 cases. Another 75 wound up their businesses and refunded money to their investors. The SEBI has initiated action against many such cases and companies that raised close to ₹ 4,000 crores and asked them to wind down their schemes. In this fiscal year itself, 28 firms have faced the SEBI's wrath and are now turning around their operations and refunding the resources. On this note, I would like to congratulate and thank the NDA Government for adopting yet another vital and crucial policy initiative of the predecessor, the UPA Government.

Sir, one may ask: How does this Bill strengthen SEBI? This Bill gives tremendous scope to SEBI to determine what constitutes a Collective Investment Scheme. It allows potentially fraudulent schemes to be regulated carefully irrespective of the capital amounts involved or whether they were started by formal corporate entities or even by individuals. These were gaps in the previous regulatory architecture. This flexibility is vital for SEBI to do its job effectively.

Sir, another aspect of this Bill is Section 11 (c) which allows SEBI additional powers, including for search and seizure, for recording statements under oath etc. SEBI has been empowered to enforce court orders through attaching the violator's property, bank accounts, through the arrest and detention of the violator. Such kind of powers are absolutely necessary, Sir, under certain amount of judicial oversight. This will ensure that potential violators think twice before indulging in their criminal activities.

The NDA Government has also realized the importance of speedy and certain justice. It has retained the provisions in the Bill creating a special court to ensure speedy trials. Sir, at this moment, under the proposed law, this special court consists of a single judge. Basically, if you think about the scope and the magnitude of the challenge before us, this may be a limitation of this Bill. We take pride in our democracy, we take pride in our rule of law, but our reputation suffers because of an overloaded judicial system. Justice delayed is not just justice denied, Sir, it is also a signal to crooks and criminals that they can get away by gaming the judicial system. Our Finance Minister in his previous avatar as a

Law Minister had also paid attention to this particular issue and it introduced a number of measures to unclog the judicial system. He would be quite cognizant of what I am talking about, and, therefore, I would urge him to ensure that such special courts are not just set up in Mumbai, but across the country so that in every region we have the judicial architecture strengthened to ensure that white collar criminals do not get away with their scams.

Sir, over the years, SEBI has really needed a lot of regulatory support to do its job. This can be seen from a Report, a survey conducted in SEBI and NCAER in 2011. It showed that the investor population in India has actually dwindled from 20 million to 10 million in the last 25 years. This has happened despite automation, despite trade guarantees, tax concessions and a sharp decline in brokerage charges. Investors have left the market because they have seen people's investment get decimated because of shady practices without any redress available. Barring occasional blips, the primary market remains lifeless, Sir, and mutual funds are not able to attract the retail money that it needs to attract.

Sir, in economics, we teach a concept called 'Revealed Preference'. To understand how well the regulatory environment functions, we need to see what people actually do. Through their actions we are able to understand the true impact of our regulatory architecture. In India, when we look at the true impact, you see where people are parking their savings. They are parking their savings in fixed deposits in banks, knowing fully well that inflation will reduce the value of their savings. They are focussing their money on the temptations offered by Ponzi schemes, by other elements like chit funds, which really should not necessarily be part of a modern financial architecture. Sir, SEBI has a huge role to play in fixing this kind of a problem. It needs to reassure every Indian that equity markets and mutual funds are viable, secure avenues for investment, that their risks are transparent and visible to everyone.

SEBI has both the roles of a nurturer of markets and of a policeman, and it is not as if these roles are in conflict. The more effective SEBI is, as a policeman, the more trust it engenders in the people of India and the more resources will flow into the stock markets. If SEBI can end scams, then India has a treasure trove of savings below people's pillows, underneath their beds, wherever they park their savings, and that will start coming back into the market and it will ensure that Indian entrepreneurs can draw on huge resources that are currently lying dormant or being invested in gold. Sir, SEBI can do much more on the enforcement front. Already, some of my colleagues have spoken about insider trading.

Sir, let me also draw your attention to the Non-Performing Assets of various public sector banks. Numerous promoters have ended up defrauding these banks and, somehow, have escaped even prosecution and arrest. Sir, SEBI needs to go after such sorts of criminals and ensure that our banking system is also strengthened in alongside our equity market.

Similarly, many foreign private equity firms have come into the Indian market and invested in various private sector companies here. Again, various promoters have run away with those resources, siphoned them off and the private equity investors have had no option but to sell their stake at a deep discount just to ensure that their overall portfolio does not get tainted by this particular experience. We need to go after those kinds of crooks and criminals as well. Only then we will be able to attract one more avenue of investment which is crucial to India's growth.

Sir, SEBI also has some other challenges. I would like to point out that public accountability over SEBI needs to be strengthened. There is also concern about investor voices being paid attention to by this organisation. And, finally, there is also concern about overlapping jurisdictions and what impact that would have on the actual regulatory outcome.

Sir, on accountability, I would like to point out that we must institute a mechanism by which SEBI tells some pillar of the Government about how well it is doing in terms of its enforcement mandate every year. Asking the Government to pay attention to this would essentially become executive interference into the affairs of an independent regulator. But, nothing comes in the way of Parliament asking SEBI for an Annual Report on how well it is doing the job that we have entrusted it with. I would urge, through you, the hon. Finance Minister to work out an arrangement whereby SEBI provides us this kind of accountability every year. Today, any time Parliament interacts with regulators, it is in the context of some crisis or some scam. Those settings are not conducive for constructive engagement. We end up in a confrontational setting. At least, one of the parties may be on the defensive. We need to change that in the interest of strengthening our financial regulatory architecture.

Sir, India's regulatory mechanisms – whether RBI, SEBI, IRDA and FMC – have not been part of a concrete design; they have evolved over the years through various decisions taken in different contexts.

Through these gaps, we find Ponzi Schemes emerging. We find various regulatory overlaps, and gaps. These allow various entrepreneurial firms, not in the healthy sense but in the sense of looking for holes in the system, to innovatively shop between various regulatory forums, to come up with mechanisms that evade regulation. We cannot allow that to happen. And, we must strengthen the regulatory enforcement architecture to ensure that no such gaps remain.

Sir, I do have a concern with another aspect of this Bill. This has to do with disgorgement of funds that have been collected from scamsters. Right now, the hon. Finance Minister proposes to park this money in SEBI's Investor Protection and Education Fund. Sir, this money belongs to investors who have lost their precious life-savings. How can

you take it and put it aside in one of the funds? Why doesn't the Finance Minister earmark one of his trade mark '₹ 100 crores' for the education purpose and ensure that this hard earned savings of the poorest of the poor goes back to those who have invested in chit funds and Ponzi Schemes?

Finally, SEBI looks at its mandate in a somewhat limited manner. Just like the RBI adopted a mandate of financial inclusion which ensures that banking services reach the poorest of the poor in every village similarly, I urge, through you, the hon. Finance Minister to ensure that SEBI also takes up financial inclusion as part of its mandate. There is no reason why equity markets and mutual funds should be the preserve of urban well-heeled individuals. These sorts of markets, these sorts of investment avenues must be accessible to the poorest of the poor, must be accessible to everyone in every village.

Sir, I believe, SEBI can make financial inclusion part of its mandate and give a new meaning to the word 'equity'. It is not just about stocks, it is also about justice and inclusion. Only when SEBI actively pays attention to financial inclusion, will we be able to ensure that these modern elements of financial architecture—the mutual funds, the stock market schemes, each one of them—would be accessible to every individual; they will not need to be tempted by prospects from various fly-by-night operators.

Sir, with these suggestions and taking all these other issues into consideration, I commend this Bill as a key step to improve India's financial architecture. It is still a small step in a long journey and there is much more to do in the days ahead. Thank you, Sir.

SHRI RAJEEV CHANDRASEKHAR (Karnataka): Sir, our economy is only beginning to recover from several years' of decline and drift. As the Finance Minister is aware, Sir, I have repeatedly argued in Parliament and outside that our economy and Government need significant reforms and changes for a transformation and for it to recover and grow sustainably. Having well-regulated, free and competitive financial markets is one important part of that.

Sir, I had last spoken about this subject in 2010 when the House was debating the Securities and Insurance Laws (Amendment and Validation) Bill, where I had raised the issue of decline of independent regulation in the financial sector. Over the last few years, as many of my colleagues have pointed out, we have witnessed a spate of scams and crises that have their roots in regulatory failure or incapacity. These have, in turn, caused serious setbacks to investor and consumer confidence in many areas that still need investment and growth. So, Sir, this Bill that strengthens the securities regulator, SEBI, is very welcome.

I only hope, Sir, that the Finance Minister makes this the first step of a review and strengthening of the complete spectrum of independent economic regulators because, I believe, these institutions, more than any other single governance action, will impact

the ability of our country to attract long -term investments. As my colleague said, the Parliament has not spent enough time reviewing the Acts and performance of most of these regulators.

Sir, the issue of accountability is an important one before we discuss powers that are to be granted to regulators. I strongly believe, Sir, and many hon. Members have echoed this today that the banking regulator, for example, needs to explain why it blindly oversaw the unprecedented concentration of risk, where nine-ten industrial groups have accounted for 95 per cent of the banking system's net worth, creating a too-large-to-fail situation and putting tax-payers and owners of the public sector banks at risk for the performance of these groups.

The stock market also, Sir, similarly is increasingly becoming a playground for laundering money and is reportedly seeing many insider trading linked transactions linked to either takeovers or M and As. It is in this background and context that we are discussing the strengthening of the stock market and securities regulator, SEBI.

Sir, coming to this Bill, the SEBI has, in recent times, redeemed itself partially with assertive action on insider trading and Collective Investment Schemes. This amendment is primarily to cover the regulatory gap or vacuum that exists *vis-a-vis* the CISs. There have been many instances where investment schemes have managed investment funds or depositors' funds without supervision of SEBI or any other regulator and that has been the call from investors to strengthen SEBI.

Sir, let me just quickly raise a few issues relating to this Bill. Under Clause 3, SEBI would regulate all schemes with a corpus of ₹ 100 crores or more. I strongly believe, this should be caveated by the corpus or number of investors. It should be ₹ 100 crores or 500 investors, or any appropriate number that you consider. Sir, there is also an issue of the new definition of 'CIS'. Is this definition too large? Will it cover normal FMCG companies that raise deposits from the dealers, for example? Therefore, is there a need to make sure that the definition is not something that is so large and creates harassment and problems for legitimate businesses? Specially, Sir, this is on Clause 11AA(2). This provision should be considered in light of the fact that only one CIS has been registered with SEBI since 1999, and that CIS also is yet to launch a scheme. I would, therefore, like the Government to clarify this issue, even though I do believe that it is better to over regulate on behalf of investors rather than not having any protection for them, as has been the case for the last few years. (*Time-bell rings*)

Sir, on the issue of powers, I would like to say that in the process of giving powers to regulators to prosecute criminal elements ... (*Time-bell rings*) Sir, I am going to conclude quickly. Please give me one more minute. Sir, I will quickly run through three issues.

Sir, the Bill correctly provides a safeguard in terms of search and seizure by making a magistrate's approval required. Sir, I think, that principle should also apply for attachment because attachments create a very disorderly exit for investments and disruption of jobs. I think, since there is a special court, it may be a good idea to amend that clause to ensure that attachment is also sought after a magistrate's approval.

Sir, Clause 15 in the original Act and sub-Clauses 6 to 15 in the Bill are about penalties. I think, the penalties are not punitive enough, and I propose that it should be raised from ₹ 1 lakh and one crore to ₹ 5 lakh and five crore.

Sir, finally, to the issue of transparency in the functioning of SEBI, regulators like SEBI are being granted increasing powers by Parliament assuming that these powers would be exercised in the interest of investors and the economy. (*Time-bell rings*) Sir, please give me one-and-a-half minute more. But there will always 'be a temptation to misuse this power. Therefore, I am suggesting amendment in Clause 17 or indeed have a new clause that ensures all consent agreements and cases are transparently disclosed, along with SCORES, on the SEBI website, instead of it being kept secret. This must be made legal and binding on SEBI as a part of its obligation to be transparent.

Sir, I hope these amendments would be considered by the Government to make the Bill and SEBI more effective and more accountable. Thank you, Sir. Jai Hind.

**श्री भुपेन्द्र यादव** (राजस्थान): उपसभाध्यक्ष महोदय, अभी सेबी बिल पर चर्चा करते हुए काफी वक्ताओं ने मार्किट एब्यूज को लेकर और मार्किट में जो चिटफंड की छोटी-छोटी कंपनियां हैं, पूरे देश में पिछले दस सालों में मार्किट का एब्यूज करते हुए जो कम्पनियां आई हैं, उनके संबंध में अपने विचार रखे हैं। अभी कुछ दिनों पहले सुप्रीम कोर्ट ने सेबी के सेक्शन 11AA के ऐक्ट को जो चैलेंज किया गया था, उस पर डिजीजन देते हुए महात्मा गांधी जी की पंक्तियों का प्रयोग किया था। उस जजमेंट में जो पंक्तियां प्रयोग की गई थीं, मैं उनको कोट करना चाहता हूँ, "Earth provides enough to satisfy everyman's need, but not everyman's greed." यह धरती सब लोगों की आवश्यकताओं की पूर्ति कर सकती है, लेकिन सभी लोगों के लालच की पूर्ति नहीं कर सकती। सुप्रीम कोर्ट ने अपना दूसरा जजमेंट एन. नारायण वर्सेज सेबी दिया है, उसमें भी कोर्ट ने एम्फेसाइज किया कि वर्तमान में जो सेबी ऐक्ट है, उसको ज्यादा मजबूत बनाने की आवश्यकता है। मैं सुप्रीम कोर्ट का जजमेंट एन. नारायण वर्सेज सेबी को कोट करना चाह रहा हूँ, "India's capital market in the recent times has witnessed tremendous growth, characterized particularly by increasing participation of public. Investors' confidence in the capital market can be sustained largely by ensuring investors' protection. Disclosure and transparency are the two pillars on which market integrity rests. We would like to demonstrate on the fact of this case as well as the law on the point that market abuse has now become a common practice in India's securities market, and if it is not properly curbed, the same would result in defeating the very object and purpose of the SEBI Act which is intended to protect the interest of investors and securities and to promote the development of securities market". इसलिए यह जो बिल



[श्री भुपेन्द्र यादव]

आया है, पहले भी तीन बार ऑर्डिनेंस के माध्यम से आया है। यह इसकी आवश्यकता को इसलिए बताता है कि क्लेक्टिव इन्वेस्टमेंट स्कीम जो सेक्शन 11AA है, यह 1999 में इस ऐक्ट में इन्सर्ट किया गया था, लेकिन एक तथ्यात्मक जानकारी यह है कि यह जो क्लेक्टिव इन्वेस्टमेंट स्कीम है, इसमें 1999 के बाद अभी तक केवल एक कम्पनी ने अपना रजिस्ट्रेशन कराया है। इसलिए जो सौ करोड़ रुपये से ऊपर की स्कीम है, इसमें कम से कम छोटे इन्वेस्टर का जो दायरा आता है, छोटी इन्वेस्टमेंट करने वाला जो व्यक्ति होता है, उसकी किसी प्रकार से सुरक्षा हो, उसका रेग्युलेशन हो, इस बात को इस बिल में लाकर एक अच्छा प्रयोग किया गया है।

दूसरा, मैं इस अमेंडमेंट बिल के सैक्शन 51(i), सब-सैक्शन 3 पर भी बोलना चाहता हूँ। अभी तक सैट के जो ऑर्डर होते थे, उनको रिव्यू करने की जो पावर है, वह सेबी को दी गई है। सैट के ऑर्डर को तीन महीने के अंदर रिव्यू करने की पावर है। एडजुकेटिंग ऑफिसर्स के जो ऑर्डर्स हैं, उनको रिव्यू करने की जो पावर उसको दी गई है, उस संदर्भ में मुझे लगता है कि यह मार्किट में ट्रांसपेरेंसी लाने, जल्दी निर्णय लेने और लोगों की जो ग्रीवांस हैं, उनके लिए एक अच्छे मैकेनिज्म का कार्य करेगा। इस प्रकार की कंपनियों का जो फंड है, जिसको सेबी के द्वारा डिस्बर्स किया जा रहा है, उस फंड का प्रयोग भी इस बिल के माध्यम से करने का प्रयास किया गया है। वह फंड एजुकेशन के लिए, जो छोटे इन्वेस्टर हैं, उनको ज्यादा जानकारी देने के लिए, उनको एजुकेट करने के लिए प्रयोग किया जाएगा। इसके द्वारा इस बिल में एक अच्छा प्रावधान लाने का प्रयास किया गया है।

काफी सारे वक्ताओं ने सर्च एंड सीज़र के पावर की बात कही है। इससे पहले जो ऑर्डिनेंस इश्यू हुए थे, उसमें यह पावर सेबी चेयरमैन के पास थी। अभी जो बिल के माध्यम से आया है - क्योंकि सर्च एंड सीज़र करने के लिए सेबी चेयरमैन को पावर थी, उससे पहले यह व्यवस्था थी कि कंसर्न्ड मजिस्ट्रेट के पास जाकर सर्च एंड सीज़र की परमिशन मांगी जाएगी, लेकिन अगर कोई सेबी के सर्च एंड सीज़र की परमिशन किसी दूसरी कोर्ट में जाकर मांगेगा, तो मुझे लगता है कि सर्च एंड सीज़र का जो विषय है, वह पहले ही पब्लिक हो जाने का खतरा है। इस बिल में यह काफी अच्छा प्रावधान किया गया है कि सर्च एंड सीज़र की पावर, जो सेबी की डेजिगनेटिड कोर्ट है, उसके मजिस्ट्रेट को दी गई है। इसमें एक अच्छा प्रावधान यह किया गया है कि सेबी चेयरमैन की पावर के लिए मजिस्ट्रेट को यह पावर दी गई है, ताकि सर्च एंड सीज़र करने से पहले, उसमें ज्यूडिशियल माइंड की जो एप्लीकेशन है, उसका प्रभावी रूप से प्रयोग किया जा सके।

इसको ज्यादा न्यायिक बनाने की बात कही गई है। एक महत्वपूर्ण प्रावधान, जो इस बिल के माध्यम से आ रहा है, जिसकी एक बहुत बड़ी आवश्यकता भी है, वह इन्फॉर्मेशन और रिकॉर्ड लेने का प्रावधान है। क्योंकि इन्फॉर्मेशन और रिकॉर्ड के बारे में जो दीपक पटेल का केस है, इस पर सैट का एक ऑर्डर है। दीपक पटेल के केस में इनसाइडर इन्फॉर्मेशन की बात है। उस ऑर्डर में इनसाइडर इन्फॉर्मेशन में जो प्रॉफिट वाली बात है, उस पर तो सेबी ने उस समय निर्णय दिया है, लेकिन इनसाइडर इन्फॉर्मेशन के बाद के प्रॉफिट के बाद, जो दूसरी बात थी, जिसमें टेलीफोन केस का मैनुयुपुलेशन था, उस पर उन्होंने कहा कि उसकी जो पावर है, वह सेबी के पास नहीं है। पूरी दुनिया में इस समय जिस प्रकार से एक तरह की इन्फॉर्मेशन्स लेने का जो विषय है, उसमें सेबी को इंस्टीट्यूशनल इन्फॉर्मेशन प्राप्त करने के लिए और इन्फॉर्मेशन को शेयर करने के लिए इस ऐक्ट के अंतर्गत जो पावर दी गई है, वह एक तरीके से आने वाले समय में इस ऐक्ट को मजबूत बनाएगा यह सैट के जो सारे ऑर्डर्स आए हैं, उन सभी ऑर्डर्स को भविष्य में उचित प्रकार से लागू भी करेगा।

अभी पैनल्टीज़ और एब्जुडिकेशन की बात चल रही थी। पैनल्टीज़ और एब्जुडिकेशन में जो विषय था, वह मैक्सिमम 1 करोड़ का विषय था। लेकिन इसको मिनिमम करके एक बहुत बड़ा परिवर्तन किया गया है। मैक्सिमम में यह विषय ऊपर तक जाता, लेकिन छोटे स्तर पर, छोटे इन्वेस्टर्स के जो पैसे हैं, उन छोटे इन्वेस्टर्स के पैसे का किसी भी प्रकार से न्याय नहीं हो पाता है, इसलिए इन्होंने उसकी सीमा न्यूनतम 1 लाख रुपये कर दी है। इस प्रावधान को परिवर्तित करके छोटे इन्वेस्टर के प्रोटेक्शन की बात की गई है। हमारे देश में सेबी की मार्किट की संभावनाएं बढ़ रही हैं, इसलिए मार्किट की संभावनाएं बढ़ने के साथ-साथ उस मार्किट में जो ज्यादा से ज्यादा छोटे इन्वेस्टर्स हैं, उनका ख्याल भी रखा गया है। जब हम देश में बचत को बढ़ाना चाहते हैं, तो बचत का पैसा बाकी विषयों पर न लगकर मार्किट में आए, उसको एक प्रकार की सुरक्षा मिले, इसकी व्यवस्था की गई है। हम उस पैसे को सुरक्षित करके देश में एक अच्छा इन्वेस्टमेंट फ्रेंडली माहौल बनाएं, सेबी को अपनी इन्फॉर्मेशन लेने के लिए, सर्च करने के लिए ज्यादा से ज्यादा ट्रांसपेरेंट मैनर में काम करने का अवसर मिले, सैट का जो ऑर्डर है उसको सही समय पर रिव्यू किया जाए, इन सभी विषयों को इस बिल में लाने का प्रयास किया गया है। मेरा यह मानना है कि इसमें जो वर्तमान में परिवर्तन आए हैं, इन परिवर्तनों के माध्यम से मार्किट की जो रेग्युलेटरी बाँडी है, उस रेग्युलेटरी बाँडी को हम ज्यादा प्रभावी और सक्षम बनाएंगे। यह सेबी द्वारा कोई पनिशमेंट देने का विषय नहीं है। मार्केट में सही तरीके से रेगुलेटरी मेकेनिज्म चले, सही तरीके से इन्वेस्टर का हित ध्यान में रहे, मार्केट में ट्रांसपेरेंसी रहे और मार्केट में अकाउंटेबिलिटी रहे, उसको लेकर सेबी की रेगुलेटरी बाँडी का प्रावधान किया गया है। यह किसी निवेश को रोकने के लिए नहीं है, बल्कि निवेशकों का जो हित है, विशेष रूप से छोटे निवेशकों का जो हित है, उन छोटे निवेशकों के हित के लिए सेबी इसके माध्यम से ज्यादा पारदर्शी तरीके से कार्य कर सके। इसलिए पैनल्टी को लेकर, सर्च और सीज़र को लेकर, कलेक्टिव इन्वेस्टमेंट स्कीम को लेकर प्रोविजंस में सेबी को जिस प्रकार की बाध्यता अभी आ रही थी, जिसके लिए समय-समय पर सुप्रीम कोर्ट के निर्णय के द्वारा कहा जा रहा था और जिस प्रकार के विषय इस समय कोर्ट के सामने आ रहे हैं, उनको देखते हुए, उन बाध्यताओं को खत्म करने का प्रयास किया गया है। पहले भी इसके दो ऑर्डिनेंसेज़ आए हैं, फिर तीसरा ऑर्डिनेंस आया है, लेकिन तीसरे ऑर्डिनेंस में भी सुधार करके सरकार नए प्रावधानों के साथ यह बिल लेकर आई है, जो स्वागत योग्य कदम है। इसलिए मैं इस बिल का समर्थन करता हूँ और आशा करता हूँ कि इस बिल के माध्यम से निवेशकों को और मार्केट को एक नई मजबूती मिलेगी और ट्रांसपेरेंट मैनर में हम अपने निवेशकों के साथ न्याय कर सकेंगे। धन्यवाद।

SHRI NARESH GUJRAL (Punjab): Sir, I rise to support the Bill. The securities markets play a crucial role in the economic and the financial stability of a nation. They transform domestic savings into a real sector. The more efficient the market, the more healthy and prosperous is the economy. To ensure that markets take robust and clean shape, the hon. Finance Minister is ushering in some key reforms. I congratulate him for this Bill, which can be summarized as follows : (a) To protect the interests of the investors, especially against the ponzi schemes; (b) to punish the fraudsters expeditiously by constituting special courts; (c) to strengthen the investigative and prosecutorial powers of the SEBI by giving it more teeth; and (d) to provide protection and safeguard against the misuse of search and seizure powers of the SEBI, which were not there in the original Ordinance. I hope that the same safeguards would also apply if SEBI decides to intrude into somebody's privacy by tapping phones, etc. The

hon. Finance Minister, while your intentions are noble, the problem is that the investigative and the prosecution process takes too much time in our country. Don't we all remember Harshad Mehta, Ketan Parikh, and, now, Jignesh Shah? While they were all arrested, their properties were seized, but those who suffered the losses are still waiting to be reimbursed. I would urge upon you to provide rules that explicitly provide the first right to disburse funds to those who suffer wrongful losses due to the unfair actions of the cheats.

Similarly, day in and day out, small investors, especially those living in remote areas where the banking services are not there, are cheated by Mr. Ponzis and Mr. Natwarlals day after day; and, their numbers are increasing because the punishment is not meted out expeditiously.

Sir, I have four suggestions for the hon. Finance Minister. One, create a new investor-protection service on the lines of the IPS or the Customs Service or the IRS where officers are trained to process domain knowledge to crack such cases of economic fraud expeditiously. Second, as my colleagues have mentioned before, invest heavily in the judicial infrastructure, including enacting fresh laws which will not allow smart and expensive lawyers to prolong cases infinitely and allow the rich to get away. In the USA, the entire process takes 15 to 18 months. In Japan, it is even less. But in India, cases go on for decades and nobody is punished for a long, long time.

Thirdly, like in the USA, the security meetings are held in open public and the Senate exercises control over their Securities and Exchange Committee, we should also have an effective Parliamentary control over the SEBI. I hope, again, the rules will provide for some such institution.

Lastly, Sir, irrespective of the name, reputation, position or stature of a crook, every fraudster should be treated equally before the law. Hon. Minister, go after the crooks who looted our nationalized banks, especially in the last ten years. They looted the country in the name of infrastructure and PPP. Go after those who cornered scarce national resources including spectrum. Go after those who created companies in the Stock Exchange which vanished with the promoters, and go after those who have cheated the small investors through *ponzi* schemes. Sir, if you bring even 50 per cent of them to book expeditiously, I am sure going ahead, economic crimes would decrease in the country. Mr. Finance Minister, you are one of the ablest lawyers in the country and I am sure that you will find a way to provide sufficient protection against the sharks to the small investors so that the Indian market prospers. Thank you.

SHRI ANIL DESAI (Maharashtra): Mr. Vice-Chairman, Sir, I rise to support the Securities Laws (Amendment) Bill, 2014, as it takes certain steps to ensure not only the support but it also takes into account the interest of the middle class, especially the lower

middle class. The definition of 'domestic savings', in real parlance, if you happen to see, is that it comes from the middle class and the lower middle class of the country. To protect investors' interest and ensure orderly development of security markets, it is necessary to enhance the powers of SEBI which is the capital market regulator.

The Bill seeks to amend the Securities and Exchange Board of India Act, 1992, with the consequential changes in the Securities Contracts (Regulations) Act, 1956 and the Depositories Act, 1996.

Sir, Collective Investment Schemes are a class of investment products regulated by the SEBI. The Bill considers widening the scope to include all pooling of funds of ₹ 100 crore or above. Till now, they were not regulated by any law. This amendment is essential as it could catch ponzi schemes and will also protect the interest of small investors who contribute almost 45 per cent to the GDP. The Bill also empowers the Chairman of the SEBI to authorize search and seizure of documents relevant to an investigation. The Bill provides SEBI with explicit powers to order disgorgement of unfair gains. It also permits SEBI to attach bank accounts, property and arrest and detain a person for his failure to comply with disgorgement orders or pay any monetary penalty. The Bill establishes special courts to try offences under the Act. Two provisions are enacted with retrospective effect. One, the SEBI is giving powers to settle non-criminal proceedings, issuing consent orders. Two, it may sign agreements for exchange of information with foreign financial regulators.

Sir, in our country, a series of frauds are committed by chit funds, cheating millions of poor people. These chit fund operators would continue with their unfair games because they will not come under the net since they are operating well below the level this legislation is taking place. They will smartly keep their turnover within ₹ 100 crores. It is a significant amount and millions of poor people may be cheated. There should be some regulatory body to take care of this. Sir, another thing which I would like to mention is algorithmic trading done by foreign institutions, making huge money by using hitech gadgets. They use these gadgets in the form of hitech computers. They take milliseconds. Transactions take place at a very high speed and huge profits are garnered which do not come under the domain of the people, or, people, at large, are not aware of it. This should be determined very seriously. This should be taken care and they should not go unchecked where this kind of ungainful things, which happen in the markets, take place.

(MR. DEPUTY CHAIRMAN *in the Chair*)

Especially, these kinds of transactions do take place when the market is very volatile, particularly, when the Budget Session is on. Somehow, some newspapers had covered these stories but nothing has happened as far as any action is concerned.

The last point which I would like to make is, the effectiveness of any legislation would depend on how implementation of the same would be there. As far as this new law is concerned - the new Bill, the amendment Bill, which would come into practice its effectiveness would depend on the powers which are given to the SEBI Chairman – the SEBI which will operate it - like the attachment of property. There is a possibility that the honest employees - like whistleblowers – of an organization may bring to light any frauds which take place in an organization. How would you protect the honest employees? The firm that would be taken to task for such frauds will be coming under the scanners of SEBI. But what would happen to employees and their families who have done it because they are the bread-winners for the family? So, that has to be taken into account.

Another thing which I would like to mention is similar law is prevailing in the State of Maharashtra. So, in the case of multiplicity of laws, if any conflicting things come, which law would prevail? That also needs to be made clear.

With these words, I support the Bill. Thank you.

SHRI M.P. ACHUTHAN (Kerala): Thank you, Sir, I support this Bill. The aim of the Bill, it is stated, is providing more powers to the capital market regulator for enforcement of laws against illegal collective investment schemes and to curb insider trading. These amendments would give the market regulator legal backing to clamp down on unscrupulous entities that are using new methods to take investors for a ride.

[THE VICE-CHAIRMAN, (DR. E.M. SUDARSANA NATCHIAPPAN), *in the Chair.*]

But the real issue is the implementation of the Act and avoiding delay in pronouncing the verdict in cases. I don't know whether SEBI will be able to do much with its new powers which include the power to search and seize the assets of defaulting firms and give an access to call the data records in case of insider trading activities with the present staff strength. For this, SEBI's staff pattern needs to be drastically changed. It is to be staffed with people with appropriate level of expertise in different aspects of law and accounting. Simply enhancing the number of staff will not do. The recruitment drive will have to be accompanied by large-scale training of understanding of securities laws and new powers and dynamics of market. It will have to open more offices across the country to make the new powers operational. Then only can this Act be implemented effectively.

Recently, the SEBI has given an instruction that all the listed companies, including public and private sector companies, must give 25 per cent of their shares to public. This is a policy matter. Sir, we have discussed many times the issue of disinvestment of the public sector companies in this House itself. Disinvestment is a policy matter. How can SEBI insist on giving 25 per cent of the shares of the public sector companies, including navaratna companies such as ONGC, for disinvestment? This is a back-door way of disinvestment

and privatization. I think, SEBI has no power to insist on giving out 25 per cent of the company's shares for disinvestment. The hon. Finance Minister must clarify this and ask SEBI not to give instructions that are contrary to the policy of the nation. Even when the Government came forward with the disinvestment of 5 per cent or 10 per cent shares of a public sector undertaking, there was strong resistance from workers and political parties. How can SEBI, the regulator, insist on such a method and act in contrast on policy matters? This needs to be looked into. I support this Bill. Thank you.

DR. K. P. RAMALINGAM (Tamil Nadu): Thank you, Mr. Vice-Chairman, Sir.

I rise to support the Bill. I support the Bill because the hon. Finance Minister would certainly have given it a considerable thought and applied his wisdom before finalizing the draft of the Bill. I also hope and believe that our Finance Minister would have given a deep thought to the effect and implications it would have if a statutory authority like SEBI is vested with judicial powers. Certainly, the hon. Minister's experience and wisdom would have prevailed upon him. It is under this assumption that I support the Bill.

Sir, the Statement of Objects and Reasons of the Bill has validated the cause and the background under which the Bill has been moved. I am convinced with all the reasons enumerated. Also, after hearing the Finance Minister's detailed introduction, I am fully satisfied.

Sir, the amendment to Section 11 of the principal Act empowers SEBI to call for information and records from any person, including any bank, authority, board or corporation established or constituted under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities. While functioning so, it should be ensured that SEBI does not transgress its powers. I would expect an affirmative reply from the Minister in this regard during his reply.

Sir, the amendment proposed in Sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H and Sections 15HA and 15 HB pertain to the quantum of penalty. I welcome all those provisions.

Sir, I now come to the introduction of new Sections — 26A, 26B, 26C, 26D and 26E. These Sections deal with the establishment of Special Courts. Establishment of these Special Courts with the sole purpose of providing a speedy relief to the affected investors is a good initiative. But, he must take care that the investors do not get into any legal tangle while trying to get back their hard-earned money. What is the point in securing the shed after the horses have run away?

Sir, various schemes with tall and high claims and scams cheated the common man all over the nation. Starting from the Kalaimagal Sabha scam 15 years ago in Tamil Nadu, the Teakwood Scheme, that is, *Thekku maram*-growing scheme, Ramesh Cars Scheme in

**4.00 P.M.**

Tamil Nadu, Chit funds fraud in Tamil Nadu, Sahara case, Ponzi scheme, Emu farming scheme and then, last but not the least, the Sharada Chit Fund Scheme in Odisha and West Bengal, they all cheated the poor man out of his money. There are many instances of the common man being cheated regularly, in a systematic manner. There is no end to this. The hard-earned money of the common man is cheated by a few and the law has been blind in this regard so far. At least now we woke up with this Bill. We have made a new beginning. I hope this initiative will go a long way in preventing the common man from being cheated.

Sir, I would also request the hon. Minister to provide for a special provision in this Bill stating that when a public sector undertaking is being sold, the Central Trade Union must also be consulted. This is my request.

With these words, I whole-heartedly welcome this Bill.

SHRI ARUN JAITLEY: Mr. Vice-Chairman, Sir, a very large number of hon. Members, almost 20 of them, have participated in this debate on this Bill which has been pending between the two Houses for a reasonable period of time. Sir, as I had mentioned in the opening, this Bill was first brought in by an Ordinance on the 18th of July, 2013, and in order to maintain the continuity some of the provisions relate back to the date on which the Ordinance came in. Similarly, an hon. Member wanted to know as to why one of the provisions with regard to sharing of information relates back to 6th of March, 1998. Now this is in order to validate the sharing of information between the SEBI and the equivalent authority in the United States. The MoU between the two was entered into on the 6th of March, 1998 and, therefore, we have been exchanging information with them since that day. So, in order to validate the information which SEBI has got from the United States in relation to any market violations or its investigations, this particular provision has been related back to that date so that no person who is otherwise guilty can get advantage of the fact that the information was unlawfully obtained from the United States — it has been given the sanction of law itself. Sir, before I reply to some of the other questions which have been raised, let me clarify the principal issue, which a large number of Members have raised, with regard to this ₹ 100 crore requirement. The scheme of the Act, as it originally has been, has been marginally altered by one of the amendments which have been introduced. The provision that deals with these collective investment schemes is Section 11AA. Now this mentions that any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme. Now in sub-section (2), there are four sub-parts which originally existed. Each of the four sub-parts relates to some element of contribution which has been made, pooling in of those investments and being utilized for a scheme or for an investment. Now, hon. Members raised an issue that even though there are a large number of such ponzi schemes or even genuine schemes, which are not



ponzi schemes, only one of them got registered under the Act. The reason was that the person who framed the schemes would frame it in a manner that by definition it would not fall into one of the conditions of sub-section (2). So, they would frame a scheme in a manner which would bypass each of the four conditions and then say, no law is applicable to us. The State legislations would apply to the chit funds. These schemes would not be a chit fund. These schemes would not collectively or separately come under any of the four circumstances mentioned or conditions mentioned in sub-section (2). Now these conditions which are mentioned in sub-section (2), for those existing conditions; there is no requirement of ₹100 crore. So, even if it was ₹5 crore scheme or ₹10 crore scheme, it would come under Section 11AA (2). Now what do we do with those large schemes which don't fit into this but are otherwise schemes which would require a registration? It is only for these schemes that this non-obstante clause proviso has been added below Section 11AA(2). Now, this would be an exception to the above four, and this reads, "Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme." The word is 'deemed to be'. Now, 'deemed to be' is a legal fiction. It is not, but we are deeming it to be. So, by a fiction, we are assuming it to be so.

So, the new scheme of the Act is that any collective investment scheme, which falls under first four categories of 11AA(2), will be a collective investment scheme, but if somebody frames a scheme, which is outside the language of those four exceptions, and he is pooling in more than hundred crores or collecting more than hundred crores, whichever way he frames the scheme, that scheme would be covered under this proviso by this deeming fiction. So, it is a very wide definition which would almost include everything which is not covered under the first four.

(MR. DEPUTY CHAIRMAN *in the Chair*)

Now, Mr. Naresh Agrawal very rightly raised an objection - what if some people pool their resources, let us say, Rs .200 crores and start building a co-operative building society in NOIDA, or, a similar investment, if not housing, of any other kind of a co-operative exception. The Act takes care of this situation. Just as sub-section (2) deals with what is a collective investment scheme, sub-section (3) deals with what is not a collective investment scheme. So, what will not come under the definition of 'collective investment scheme' is also clarified under sub-section (3), and the very first exception made is, "notwithstanding anything contained in sub-section (2), any scheme or arrangement made or offered to a co-operative society, registered under Cooperative Societies Act or a society being a society or deemed to be a society under any law relating to co-operative societies for any such purpose, shall not be a collective investment scheme." So, any form of co-operative exercise is not a CIS. Any non-banking financial institution is not a collective investment scheme.

We could all get together and collectively form a non-banking financial institution for our own members. It is not a collective investment scheme. A collective insurance scheme is not a collective investment scheme. A collective pension scheme or an employees' provident fund scheme is not a scheme under this Act. Similarly, some of these schemes, which are provided for under the Companies Act, will be dealt with under the Companies Act. Therefore, it will not be deemed to be schemes as collective investment schemes under this Act. So, the Act now has been fine tuned and the new architecture of this Act is that if you have a collective investment scheme and were not covered under the original language, a wider language has now been introduced. If you are having a big scheme, you will be included in it, but the exception as to what is not a collective investment scheme will also continue to operate.

There was a second main question raised by a number of Members.

**श्री नरेश अग्रवाल:** दो चीजें हैं माननीय वित्त मंत्री जी, हमने अपने भाषण में कहा भी था, आपने कोआपरेटिव तो बता दिया कि कोआपरेटिव अगर कोई है तो उसे इस योजना में नहीं लिया जाएगा। अगर कोई कम्पनी है और वह कम्पनी व्यापार कर रही है और वह व्यापार चिट फंड का नहीं है, सौ करोड़ रुपए का जैसा हमने कहा कि गुड़गांव में अगर कोई आज एक मकान बनाए, कोई फ्लैट पांच करोड़ से कम का नहीं है, 25 फ्लैट बनाए तो सौ करोड़ रुपए से ऊपर के हो गए और कम्पनी में है। तो क्या उसको सी.आई.एस. माना जाएगा और क्या वह सेबी के अन्तर्गत आएगा? नम्बर-2, चिट फंड कम्पनी, स्टेट लॉ के अंतर्गत जो भी कम्पनी आती है, जहां पर पैसा निवेश भी होता है, जमा भी होता है, तो क्या वह जो स्टेट लॉ है, उसको सेबी सुपरवाइज कर सकेगा? मैं इन दो चीजों को स्पष्टीकरण चाहता हूँ।

**श्री अरुण जेटली:** उपसभापति महोदय, माननीय सदस्य श्री नरेश अग्रवाल जी द्वारा पूछे गए सवाल के उत्तर में मैं उन्हें बताना चाहूंगा कि चिट फंड कंपनीज को डील करने के लिए राज्यों के कानून हैं और राज्यों में चिट फंड के सम्बन्ध में जो special legislations चल रहे हैं, वे ऑपरेट करेंगे, लेकिन वे इस में नहीं आएंगे। इस में जो अपवाद दिया गया है, it is, 'falling within the meaning of chit fund as defined under the Chit Funds Act will not be a Collective Investment Scheme'. यह चिट फंड की बात है।

महोदय, कंपनीज दो प्रकार से डिपॉजिट्स इकट्ठे करती हैं। एक कंपनी ने विज्ञापन दिया कि मेरे यहां डिपॉजिट करो, आपको 9-10 परसेंट ब्याज मिलेगा। ये सेक्शन 58A कंपनीज एक्ट के तहत इकट्ठा करती हैं। दूसरा कंपनीज एक्ट में एक प्रावधान निजी कंपनी का है, उन सब के नियंत्रण के लिए कंपनीज एक्ट की मशीनरी ऑपरेट करेगी। उसके लिए सेबी की Collective Investment Scheme लागू नहीं होगी।

You cannot have an anarchic situation where more than one regulator deals with the same space. There cannot be grey areas. Space 'x' must belong to Companies Act and space 'y' must belong to the SEBI Act, and, therefore, what comes under the Companies Act will be excluded from the SEBI Act altogether.

Another question, which was raised by hon. Members, was that a large number of people may get cheated and the company will make profits out of it, the Collective

Investment Scheme company may make profit out of it. Now, this disgorgement amount, which is earned, is deposited with the Investor Protection and Education Fund. Should it also not go to the persons who have been cheated? Why should it be entirely kept for a generic purpose like education? It must also go to these people. Sir, this is based on a principle that no person can benefit out of a crime. He cannot enrich himself unjustly out of a crime. No person can keep the profits of a crime. In this case, if it is a fraud in the name of a Collective Investment Scheme, the person, earning out of that fraud, cannot be allowed to retain the profits of fraud.

Now, what happens to the profits of fraud and how it is to be dealt with is elaborately provided for in a generic section, and, that is, section 118, and that section also is now sought to be amended with an explanation. Section 118 has the power to issue directions. Now, the power to impose penalties on such person, the power of disgorgement comes under the power of direction itself, and, with that power of direction, the money is collected and goes into the fund, which is known as the Investor Protection and Education Fund. It is also protection. Therefore, there are rules which are framed for the purposes of the Investor Protection and Education Fund.

Section 11 (5) which is being added reads, ‘The amount disgorged pursuant to a direction issued under section 11B of this Act or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.’

Now, under this Act, regulations have been made and regulation 5 deals with utilization of the fund. Under that regulation 5, there is a sub-provision, which I will read for the benefit of Members. It will be used for education. Sub-regulation 3 says, “Notwithstanding the provisions of sub-regulations (1) and (2), amounts disgorged and credited to the Fund in accordance with clause (h) of regulation 4 of these regulations and the interest accrued thereon shall, in cases where the Board deems fit to make restitution to eligible and identifiable investors who have suffered losses resulting from violation of securities laws, be utilised only for the purposes of such restitution.”

So, there is already a scheme that when monies come into this particular fund, monies will be used for restitution to the investors who have been cheated by the Collective Investment Scheme. And, therefore, the disgorged fund itself will be used for that purpose. The balance can also be used for purposes of investor education and so on.

The third question is, and a large number of Members were concerned, with regard to alleged misuse of power or do they have the power to tap telephones. Sir, interception of electronic communications is not a subject matter of this law itself. Under this law, there

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is absolutely no power to tap telephones. In power to call for information, you can call for information or a document. You can't extend that power to tap somebody's telephone. So, in the process to call for information, it may extend to calling for the CDR records, that is, the Call Data Records. You can call for the Call Data Records whether as a part of insider trading, 'A' has been in communication with 'B' or not so that he has been parting with information. But as it happened in the United States in the famous case which has been repeatedly mentioned by the Members, the power to bug telephones or intercept electronic communications is not given under this Act. It can't be given under this Act because we have a special legislation, the Telegraph Act, which deals with it. And that power is independent; it is with the authorities mentioned in the Telegraph Act. I may just reiterate that that power can be exercised under that Act coupled with its interpretation by the Supreme Court in certain set of cases. It can be done in cases of national security; it can be done for the prevention of a crime. These are the circumstances mentioned under that Act when it can be done after taking permission of the Home Secretary. SEBI is not being empowered as far as that purpose is concerned.

Sir, having mentioned these basic facts, questions have been raised with regard to overlapping jurisdiction of SARFAESI Act and various deposit Acts, as far as the States are concerned, there is no overlapping jurisdiction. SARFAESI Act operates in an entirely different area. It is an Act which enables the financial institutions and banks in order to issue a notice and take over whatever are the assets which have been mortgaged with those institutions in order to realize the amounts which are owed to banks and institutions. That has nothing to do with the deposits. It is quite likely that there may be depositors of that company who would be asking for their share of money, but then the process of distribution of assets of a company which goes into liquidation or a company which is unable to pay its debts to various categories of creditors will depend on the law as to who is the priority debtor. Therefore, banks, financial institutions, workmen, etc., are all priority debtors and it is only then that others could likely to get it.

Sir, an issue has been raised whether it is mandatory for all PSUs to divest 25 per cent. That has nothing to do with this amendment. But if a PSU is not a listed company, it is not necessary. If it is a listed company, then whatever are the guidelines issued from time to time by the listing authorities, which is the SEBI, they will have to follow. So far the provision has been that 25 per cent shareholding of a listed company must be divested refers to normal companies. For public sector companies, it is 10 per cent. Tomorrow, if they come up and say it is 15 per cent or 25 per cent, then that will be the different set of guidelines. If any PSU wants to avoid that, it has to get itself delisted or go into the provisions where it is not bound by law. But if a company is listed, then you will be bound by the listing guidelines itself.

SHRI K.N. BALAGOPAL: Sir, the Government is taking the policy decisions. Disinvestment is a policy of this Government. That is a right of the Government to take that, but how is SEBI saying that this should be done?

SHRI ARUN JAITLEY: Government does not decide the listing guidelines. SEBI decides the listing guidelines. So, if a company .. (*Interruptions*) .. if a PSU decides to get itself listed, then it is bound by the listing guidelines. If it doesn't get listed, it is not bound by the listing guidelines. So, PSUs won't have another set of laws itself.

Sir, several other suggestions have been made. I have noted most of those suggestions. When the rules under these amendments are worked out, including some amendments, which my learned friend Mr. Gujral and Mr. Chandrasekhar have made, we will certainly go into those questions. But these were three-four basic issues which were issues of doubt in the minds of Members and I thought I must clarify those so that there is no scope left for any misuse.

SHRI JAIRAM RAMESH (Andhra Pradesh) : A concern has been raised by many Members as to why the designated court is given only in Mumbai. I would like the hon. Finance Minister to respond to that question.

SHRI ARUN JAITLEY: Sir, the original position under the pre-existing SEBI Act was that it gave a scope for interpretation which could actually lead to a mischief. That interpretation was that if SEBI, in order to bust a collective investment scheme, which is a ponzi scheme, wants to raid thirty places in the country, it would have to go to thirty different courts under whose jurisdiction those places are restricted. If you have to go to thirty different courts, a lot of time and energy are spent. The offender gets to know what is happening, he removes the evidence and the search itself is frustrated. Therefore, what my learned predecessor had proposed was that SEBI need not go to court; SEBI must go and directly search the premises itself.

Both in the other House and in this House, Members have expressed dissatisfaction against this provision. They say that this is too arbitrary a power and that you are empowering an officer who is not even a police officer to start searching places all over the country. They say that while sitting in Mumbai, he can decide that he can search many premises in the country and that this power has to be tapered down. I, therefore, discussed the issue with various stakeholders, including SEBI, so that SEBI's functioning does not become difficult or impossible. The headquarters of SEBI is in Mumbai. Therefore, SEBI under this amendment will have a designated court in Mumbai. If it wants to search any premises, it will have to show to some judge that it has *prima facie* material to suspect that there is a violation. If the magistrate concerned is satisfied, it can permit SEBI to search it. It was a *via media* we worked out between giving an arbitrary power to SEBI and a provision under which SEBI has to go to thirty different courts. We thought that this perhaps would be a fair *via media* and I personally do believe that it is a fair *via media*. ... (*Interruptions*)...

SHRI MADHUSUDAN MISTRY (Gujarat) Sir, I am happy that he is giving more power to SEBI. There is no doubt about it. I would have been happier had the Finance Minister looked at the functioning of SEBI itself. Very serious frauds just happen within

a radius of two kilometres of Ahmedabad which is the largest share market and capital market. If any company has to list its IPO, it has to come to Ahmedabad, Gujarat. SEBI is not very effective to stop Dabba trading, illegal trading and insider trading. The entire functioning of SEBI itself requires overhauling. Not only that ...*(Time-bell rings)*... under the control of Finance Ministry and so on.

MR. DEPUTY CHAIRMAN: Okay. Please conclude.

SHRI MADHUSUDAN MISTRY: Sir, not only that, what about innocent investors? The companies are floated. After two years, they do not exist. And the same Director floats another company and SEBI, in fact, recognises those IPOs and initiates those IPOs. That is my suggestion to the Finance Minister. Please look into this issue.

MR. DEPUTY CHAIRMAN: Clarifications only.

DR. T. SUBBARAMI REDDY: I raised several important points. If SEBI, by mistake or with wrong information, troubles or harasses anybody, what will be the action?

MR. DEPUTY CHAIRMAN: Put question only.

SHRI RAJEEV CHANDRASEKHAR : Sir, I just want to seek a clarification from the Finance Minister. ... *(Interruptions)*... I had raised a point under section 11AA(2). ...*(Interruptions)*... What is the position of manufacturing companies that seek deposits from the retailers? ... *(Interruptions)*... There are many manufacturing companies that seek deposits for trade. ... *(Interruptions)*... These are trade deposits.

SHRI NARESH GUJRAL: Sir, I have one small clarification. Section 11AA (3) is silent on AoP which is Association of Persons. They collect more than one hundred crore rupees to invest in some business. Would they be part of the CIS?

SHRI PAUL MANOJ PANDIAN: Sir, my query is that the special courts are for all purposes to take up all issues including search and seizure in the entire country. When such is the case, segregating the power of search and seizure to the special court at Mumbai is beyond the territorial jurisdiction as per the RBI Act. Is it legally tenable?

SHRI BHUPINDER SINGH: Sir, RBI suggests SEBI to take action against wilful defaulters. Whether the RBI and other banks have no teeth and you need to have more strong teeth for SEBI to take action against the wilful defaulters?

**श्री नरेश अग्रवाल:** सर, सेबी ने एक circular निकाला है जिसमें कानपुर का स्टॉक एक्सचेंज, बंगलुरु का स्टॉक एक्सचेंज तथा अन्य छोटे-छोटे जो स्टॉक एक्सचेंज हैं, उनको बंद करने की बात कहीं है। अगर ये सब बंद हो जाएंगे तो क्या इससे कुछ स्टॉक एक्सचेंज की monopoly नहीं हो जाएगी?

MR. DEPUTY CHAIRMAN: Okay. That's all .... (*Interruptions*) ... You had raised it. ... (*Interruptions*) ... That's all .... (*Interruptions*) ... You had asked. You had a clarification .... (*Interruptions*) ... No, no. You cannot have two clarifications .... (*Interruptions*) ... Okay.

SHRI K.N. BALAGOPAL: Sir, this is about the penalty provision. Earlier, it was from ₹ 1 lakh to ₹ 1 crore. For insider trading, it was ₹ 25 crore. Now, it has been reduced to ₹ 1 lakh; then, per day, ₹ 1 lakh and the maximum is ₹ 1 crore. Earlier, it was from ₹ 1 lakh to ₹ 1 crore. Why has the penalty provision been liberalised in such away?

SHRI VIVEK GUPTA (West Bengal): Sir, through you, I want the hon. Finance Minister to reply to my query. On 22nd May, SEBI has issued a circular. The Calcutta Stock Exchange, the oldest stock exchange, will be shut down and all entrepreneurs from Kolkata will be forced to go to Mumbai or to NSE to get themselves registered and listed, which has three times more fees.

MR. DEPUTY CHAIRMAN: Now, hon. Finance Minister. ... (*Interruptions*)... That's okay. ...(*Interruptions*)... I allowed you. What is this? ...(*Interruptions*)...

DR. T. SUBBARAMI REDDY: One is harassment. Second is time limit. ...(*Interruptions*)... Sir, this is a debate. I said so many things. ...(*Interruptions*)... He did not touch upon my points. ...(*Interruptions*)... I have every right to seek clarifications.

MR. DEPUTY CHAIRMAN: You already have sought. ...(*Interruptions*)...

DR. T. SUBBARAMI REDDY : Sir, my clarification is this. I want to know categorically the time-limit. It cannot go on for years together. Second point is about harassment. How to actually control it if anybody takes undue advantage?

SHRI ARUN JAITLEY: Sir, a large number of queries has been raised. Now, the first one raised by Dr. T. Subbarami Reddy has some relation with the question which some hon. Members also have raised as to who regulates SEBI if there is something improper done by SEBI itself. Who regulates the regulator? That was one of the questions which were raised. What if there was misuse of power by SEBI? Now, under the present scheme of law, in various areas, where we allow market forces to operate, regulators have come up over the last 15 odd years. There are several reasons for it. As Government exits its own control over these areas, for a variety of reasons, you need the regulators, and you need to strengthen the regulators. Let us take the case of insurance. The Government, through the public sector insurance companies, is an insurance player. There are private sector insurance players also. Now, Government is a competitor and also a Government. It can't be a rule-setting agency; it can't be a tariff-determining agency. So, you need an independent tariff-determining agency. In telecom, the Government is a player through the BSNL and the MTNL. There are private players also. The Government can't be a competitor and a rule-setting agency itself. So, there is a regulator. In order to ensure



that there is a fair play in the market, you have the regulators. The Reserve Bank itself is a banking regulator. So, SEBI is a regulator as far as the securities market is concerned. Appeal against SEBI, in case there is an unfair order or misuse of power, used to earlier lie with the Central Government. Then, it was considered that, that meant SEBI becomes inferior to the Central Government. Therefore, to withdraw the Government or keep it at an arm's length distance, now, the Securities Appellate Tribunal has been created headed by a retired Judge. So, if anybody has a grievance, he can go there. You can challenge that. Further petitions against SAT may go to the Government itself. Now, trade deposits that you have indicated, both hon. Members, Mr. Rajeev Chandrasekhar and Mr. Naresh Gujral have asked, the nature of these deposits and these practices will have to be sealed. If they come within the definition, that is, positive definition under sub-clause 2, and exclusive power under sub-clause 3, then, it will be a CIS. But if it is an ordinary case, let us say, I have an auto or motorcycle dealership, and I have made a deposit to the company which gives me a dealership, it is not a collective investment scheme. But there are certain schemes which are multi-level marketing schemes which are actually shaped as marketing schemes, but effectively become collective schemes. Some of those schemes could be covered. Therefore, each case will depend on the facts of each case itself. Why have we created a Designated Court, and not a Special Court? I have already explained why a Designated Court in Mumbai itself was necessary.

Now, as regards this whole question of Stock Exchanges, it is not a question of any region. Now, the nature of Stock Exchange market itself has changed. Today, you have a National Stock Exchange and the Mumbai Stock Exchange. Now these are the Stock Exchanges where the old concept of a Stock Exchange where physically there was a building, share brokers who entered the building, and if you recollect, a few years ago every morning there would be trading, everybody would be shouting, buying and selling of shares. There would be a chaotic scene there. Today, that age of Stock Exchange is gone. Now, if you have a computer at your house, if you are a member of the Stock Exchange, you can work from there. As a result of which a large number of old style Stock Exchanges have become obsolete. Physically those buildings are there. Some of the Stock Exchanges have become non-functional. As far as Stock Exchanges are concerned, there is an exit policy. This is not confined to a particular city. Now, some of the old practices remain, whether it is the Mumbai Stock Exchange or, Stock Exchanges in any other part of the world, that you go in the morning, if it is a new issue, you strike the bell. Those old conventions remain. But effectively the nature of Stock Exchanges functioning is today entirely on the computer. You don't need a building. All you need is a membership. The membership is a costly affair which is in crores. Today, their values have crashed because of the advent of the technology. The idea of the old Stock Exchange building itself is not so relevant.

Lastly, Sir, penalties under all these Acts are fixed keeping the extent of the offence in mind. There always has to be a nexus or relationship between the punishment and the nature of the crime itself. Now, if there is a small offence which is made out, you need not impose crores of rupees of penalty. You don't use a hammer to kill a fly. That is the principle of proportionality. But if there is a serious offence, then, the penalty itself goes up. If it is even more serious, then, the penalty is in addition to the prosecution which is to be taken. These have been scanned by various expert bodies, and depending on the extent of violation, each one of these penalties has been today fixed. That is all I have to say. I commend the Bill to the House.

MR. DEPUTY CHAIRMAN: Okay, thank you. The question is:

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

*The motion was adopted.*

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

*Clause 2 was added to the Bill.*

MR. DEPUTY CHAIRMAN: In clause 3 there are two amendments. One by Shri Rajeev Chandrasekhar and the other is by Shri Naresh Gujral. Are you moving them?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 3 was added to the Bill.*

*Clauses 4 and 5 were added to the Bill.*

MR. DEPUTY CHAIRMAN: In clause 6, there are two amendments by Shri Rajeev Chandrasekhar and by Shri Naresh Gujral. Are you moving them?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 6 was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 7, there are two Amendments (Nos. 5 and 6) by Shri Rajeev Chandrasekhar and Shri Naresh Gujral. Shri Rajeev and Shri Naresh, are you moving your Amendments?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 7 was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 8, there are two Amendments (Nos. 7 and 8) by Shri Rajeev Chandrasekhar and Shri Naresh Gujral. Shri Rajeev and Shri Naresh, are you moving your Amendments?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 8 was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 9, there are four Amendments (Nos. 9 to 12) by Shri Rajeev Chandrasekhar and Shri Naresh Gujral. Shri Rajeev and Shri Naresh, are you moving your Amendments?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 9 was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 10, there are two Amendments (Nos. 13 and 14) by Shri Rajeev Chandrasekhar and Shri Naresh Gujral. Shri Rajeev and Shri Naresh, are you moving your Amendments?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 10 was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 11, there are four Amendments (Nos. 15 to 18) by Shri Rajeev Chandrasekhar and Shri Naresh Gujral. Shri Rajeev and Shri Naresh, are you moving your Amendments?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 11 was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 12, there is one Amendment (No. 19) by Shri Rajeev Chandrasekhar and Shri Naresh Gujral. Shri Rajeev and Shri Naresh, are you moving your Amendment?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 12 was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 13, there is one Amendment (No. 20) by Shri Rajeev Chandrasekhar and Shri Naresh Gujral. Shri Rajeev and Shri Naresh, are you moving your Amendment?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 13 was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 14, there is one Amendment (No. 21) by Shri Rajeev Chandrasekhar and Shri Naresh Gujral. Shri Rajeev and Shri Naresh, are you moving your Amendment?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 14 was added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 15, there is one Amendment (No. 22) by Shri Rajeev Chandrasekhar and Shri Naresh Gujral. Shri Rajeev and Shri Naresh, are you moving your Amendment?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 15 was added to the Bill.*

*Clause 16 was added to the Bill.*

MR. DEPUTY CHAIRMAN: I think you did not read Clause 16! In Clause 17, there is one Amendment (No. 23) by Shri Rajeev Chandrasekhar and Shri Naresh Gujral. Shri Rajeev and Shri Naresh, are you moving your Amendment?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 17 was added to the Bill.*

*Clauses 18 to 20 were added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 21, there is one Amendment (No. 24) by Shri Rajeev Chandrasekhar and Shri Naresh Gujral. Shri Rajeev and Shri Naresh, are you moving your Amendment?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 21 was added to the Bill.*

*Clauses 22 to 34 were added to the Bill.*

MR. DEPUTY CHAIRMAN: In Clause 35, there is one Amendment (No. 25) by Shri Rajeev Chandrasekhar and Shri Naresh Gujral. Shri Rajeev and Shri Naresh, are you moving your Amendment?

SHRI RAJEEV CHANDRASEKHAR: Sir, I am not moving.

SHRI NARESH GUJRAL: Sir, I am not moving.

*Clause 35 was added to the Bill.*

*Clauses 36 to 57 were added to the Bill.*

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

SHRI ARUN JAITLEY: Sir, I move:

That the Bill be passed.

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

MR. DEPUTY CHAIRMAN: Now let us start the Discussion on the Ministry of Women and Child Development. The Bill will be taken up tomorrow. ...*(Interruptions)*...

**श्री नरेश अग्रवाल** : उपसभापति जी, 5 बजने जा रहे हैं, 6 बजे बेस्ट पार्लियामेन्टेरियन वाला फंक्शन है, आप इसको कल ले लीजिए।

SHRI DEREK OBRIEN: We are honouring Parliamentarians today. This can wait.

MR. DEPUTY CHAIRMAN: Let Shri Satish Chandra Misra initiate the discussion. After his speech, we will adjourn, if you all agree.

SHRI D. RAJA: He will take another 45 minutes.

MR. DEPUTY CHAIRMAN: What is the harm? It is only 4.45 p.m. Now, Shri Satish Chandra Misra.

[THE VICE-CHAIRMAN, (DR. E.M. SUDARSANA NATCHIAPPAN,) *in the Chair.*]

### DISCUSSION ON THE WORKING OF THE MINISTRY OF WOMEN AND CHILD DEVELOPMENT

**श्री सतीश चन्द्र मिश्रा** (उत्तर प्रदेश): उपसभापति जी, इस महत्वपूर्ण विषय, जो विमेन एंड चाइल्ड वेलफेयर के संबंध में है, उसके लिए मैं कहना चाहता हूँ कि यह एक बहुत ही महत्वपूर्ण विषय है। इसको इनिशिएट करने का मौका हमें हमारी पार्टी की नेत्री सुश्री मायावती जी ने दिया है, इसलिए मैं उनको धन्यवाद देते हुए, इस विषय पर अपनी बात शुरू करता हूँ।

मान्यवर, हम उस देश में रहते हैं, जहाँ महिलाओं को देवी के रूप में पूजते हैं। जब उनको उस तरह का सम्मान देने की बात होती है, पूजा करने की बात होती है, तो वह चाहे दुर्गा हो, काली हो, हम उसको अलग-अलग तरह से पूजने का काम करते हैं। हम लोग बच्चों को भी भगवान का स्वरूप मानकर चलते हैं और कहते हैं कि बच्चे भगवान का रूप, स्वरूप होते हैं। हमको ऐसा बचपन से ही पढ़ाया, लिखाया और सिखाया गया है कि हमें उनके लिए भी ऐसी ही मानसिकता रखनी चाहिए। लेकिन अफसोस है कि आज, जबकि हम लोग 21वीं सदी में रह रहे हैं, तो इस देश में, जिसकी 125