

units. So I would like to emphasise that the Union Government should take it upon itself the pollution control, reprocessing and effluent treatment measures as an essential service in public interest. Either through the Central Leather Research Institute or through the new technology obtained from elsewhere, the Union Government should take measures to help these units in managing the effluents, thereby saving drinking water, the cultivable land and also the labourers from among the local population who would be hard hit by the stringent action of the Government that leaves these units in the lurch, facing closure.

15.00 hrs.

(v) Need to Ensure Early Construction of a Bridge over Lohit and Khabolu Rivers at Majuli, Assam

DR ARUN KUMAR SARMA (Lakhimpur) : Sir, Majuli is the largest river island of the world located within my Lakhimpur constituency of Assam. Till today, this island is not connected by road communication to other parts of Assam. There is a long standing demand of the public to establish a road link by connecting a bridge over Lohit and Khabolu rivers. The North East Council initiated a proposal to construct the bridge during the Seventh Plan period and got the Planning Commission's approval. The Indian Railway Construction Corporation was entrusted to execute the work and the necessary fund were allocated. Construction of this bridge will facilitate connecting Arunachal Pradesh and Nagaland through a shorter route of 290 K.M. via Majuli from the existing 580 K.M. via Tezpur.

Therefore, I would like to request the hon. Minister of Home Affairs, who is in charge of the North Eastern Council, and the hon. Minister for Planning and Programme Implementation to ensure early implementation of this sanctioned project without further loss of time.

(vi) Need to Expedite the work of Connecting National Highways Nos. 31 and 34 in Katihar District, Bihar

SHRI TARIQ ANWAR (Katihar) : Sir, there was a proposal for connecting National Highway no. 31 and National Highway no. 34 in Katihar District, Bihar. A link road connecting these two National Highways was sanctioned in 1982. All the preliminary work was done long ago. But this could not be taken up till now.

I urge upon the Central Government to expedite the work of connecting the two National Highways nos. 31 and 34.

15.03 hrs.

**STATUTORY RESOLUTION RE :
DISAPPROVAL OF THE
DEPOSITORYIES (THIRD) ORDINANCE, 1996.
AND
DEPOSITORYIES BILL, 1996**

[Translation]

SHRI GIRDHARI LAL BHARGAVA (Jaipur) : I beg to move :-

"That this House disapproves of the Depositories (Third) Ordinance, 1996 (No. 28 of 1996) promulgated by the President on 21 June, 1996."

Mr. Deputy Speaker, Sir, the subject of today's debate is the first ordinance got issued by this Government. I would like to say something to oppose the Depositories Bill brought here through an ordinance promulgated by the hon. President and to highlight a few points to increase the knowledge of this Government which was supposed to sit this side earlier. This Government has followed the practice of previous Government. The Government has not given the reasons for bringing the ordinance and by doing so the Government is following the practice of the previous Government in respect of misusing the provisions of the Constitution. I am a wellwisher of this Government because it has to sit in this side ultimately after sometime therefore I would like to say to leave the practice of promulgating ordinances without giving the reasons therefor. It is not enough to say that hon. President is satisfied. Hon. President would sign an ordinance brought by the Cabinet and he will be satisfied. But I would like to know the reasons for it. I would also like to say that the ordinance was earlier promulgated on 20 September, 1995. Since then what problems have been experienced by the Government, what type of lacunae have been found and what are the difficulties came in its implementation, these things should be mentioned. I would like to inform hon. Minister about the shortcomings in this Bill so that it should become clear in the reply to be given by hon. Minister. This Bill, which has been brought through an ordinance, is to provide protection to depositors and to check wrong practices prevailing earlier as has been mentioned in various recommendations of JPC. On behalf of my party and myself I welcome this but at the same time I oppose the practice of promulgating ordinance. I would like to say that earlier people belonging to middle class have to suffer losses as there was no provision of Bill receipt and securities. Share certificates were not being issued and bank deliveries were taking place on large scale and due to these reasons this Bill has been brought. The concept of this Depositories Bill is new for India.

and even then I welcome it. It is just an imagination. It is a good thing but I would like to know that how the arrangements for it would be made because small investors want protection and capital market should also function smoothly. So, my first point is that who will make arrangements for it, how investors will be given protection and capital market be controlled?

The second point is that who will be given privilege of introducing depositories. What will be constitution of a body or institution which would have sound economic capacity. A Committee should be constituted which would consist representatives of RBI and the officials of Government of India, who have sound economic background. It should be mentioned very clearly that who will be authorised to grant permission for it.

My third point is that it should have a capital base of atleast Rs. 100 crores. Who will audit these depositories. It is necessary because in the absence of audit irregularities and frauds are committed in Mutual Funds and nationalised banks.

Fourthly, I would also like to know that who will bear the loss incurred due to some fraud or scam during the transaction of depositories. This Bill does not clarify that whether the persons who have deposited the money or the Depository Company will bear the loss. What would be the charges of services rendered by it. The functioning of depositories should be transparent and computerised so that information could be given easily. Therefore, Mr. Deputy Speaker, Sir, I oppose the hon. Minister for the tendency of promulgating ordinance. Fortunately you was a Minister in the previous Government also. You have changed your party and have become a Minister in this Government. You never sat in the opposition, so you cannot feel our woes. If there would be some other Minister, he might be aware of it. Ramvilasji was in opposition previously. He experienced our woes and while presenting the Railway budget it was revealed and thus he presented a balanced Railway budget. He knows that suppose the Government falls after some time then he would have to oppose the policies of the Government on Railways. But, Sir, you was in ruling party previously and now you have changed your party and your party has given support to the United Front. Therefore, you should give up this tendency of issuing ordinances. You should explain the reasons for its promulgation. I would also like to know about the experiences gained by the Government after its promulgation on 20th September, 1995. Sir, I would like to say that former Speaker of Lok Sabha had constituted various Standing Committees. Committee on Finance is one of them. It would be better if this Bill is sent to that standing committee to scrutinise all the aspects and shortcomings and then the Bill is brought in a comprehensive shape instead of passing it in hurry. Once again I oppose this ordinance. But at the same time I on behalf of my party appreciate the step for bringing forward this ordinance in the form of a Bill. So, I would like to request the hon. Minister to

refer the Bill to the concerned Standing Committee without making it a prestige issue and to give up the tendency of promulgating the ordinances. With these words while thanking you I conclude.

[English]

THE MINISTER OF FINANCE AND MINISTER OF COMPANY AFFAIRS (SHRI P. CHIDAMBARAM) : Sir, I beg to move :

"That the Bill to provide for regulation of depositories in securities and for matters connected therewith or incidental thereto, be taken into consideration."

At present the settlement and transfer of securities in the capital market necessitates physical movement of certificates which causes considerable hardship to the investor in terms of delay in transfer and settlement, loss, forgery and mutilation of share certificates during the process of transfer. In order to eliminate these disadvantages of the present system, the Depositories Ordinance was promulgated on September 20, 1995. The Ordinance provides a legal framework for establishment of Depositories to enable record as well as transfer ownership of securities through a book-entry form. The Depositories Bill, 1995 in replacement of the Ordinance was passed by the 10th Lok Sabha in the winter session of 1995. The Bill, however, could not be taken up for consideration by Rajya Sabha. The Depositories Ordinance was, therefore, re-promulgated on June 21, 1996 as Depositories Ordinance, 1996 (No. 28 of 1996). The Ordinance is now proposed to be replaced by the Depositories Bill, 1996.

Securities transactions are efficiently managed when trading, settlement and delivery times for completing such transactions are minimised. This calls for elimination of, either wholly or substantially, a paper based system of recording ownership of securities. Establishment of Depositories will reduce the time taken to complete a transaction cycle and eliminate several aberrations which characterise a paper based trading system.

The salient features of the Bill are as follows :-

- (i) It provides a legal framework for establishment of one or more depositories. The depository would maintain ownership records of securities and effect changes in ownership through book entry.
- (ii) Investors opting to join the depository system will be required to be registered with a participant who will be an agent for the depository. The participants could be financial institutions, scheduled banks, State Financial Corporations, custodians, brokerage firms, etc.

- (iii) The depositories will be recorded as registered owners on the books of the company on behalf of investors opting for the depository mode. The depository would, in turn, in their records enter the names of investors as beneficial owners. All economic and voting rights will vest with the beneficial owner.
- (iv) Securities in the depositories mode will be dematerialised. However, the investor has the option to choose between holding securities as at present in physical form or hold in a dematerialised form within the depository. Issuers of securities will give investors the choice either to receive physical securities or to join the depository mode. At any time, the investors will have the option to enter or exit from the depository.
- (v) Securities in the depository mode will be fungible meaning thereby, that they will cease to have distinctive numbers. Even though the Bill provides for free transferability of securities, the company retains the right to appeal before the Company Law Board for transfers in violation of any provisions of SEBI Act or its regulations or the Sick Industrial Companies (Special Provisions) Act, 1985.
- (vi) Ownership changes in the depository system will be made automatically on the basis of delivery versus payment. There will be a regular mandatory flow of information about details of ownership by the depository to the company concerned.
- (vii) The Bill proposes to make consequential changes in the Companies Act, Income Tax Act, Securities Contracts (Regulation) Act, SEBI Act, Benami Transactions (Prohibition) Act, Indian Stamp Act etc. In respect of the Indian Stamp Act in particular, the changes are intended to exempt all transactions within a depository mode from payment of stamp duty.
- (viii) Detailed regulations have been notified by SEBI to operationalise depositories. Depositories will have to be registered with SEBI who would also issue a certificate of commencement.

It is proposed that the depository arrangement will be implemented in phases so that there is an orderly switch over from the existing system. It is felt that the new system will considerably enhance the efficiency of the capital market and benefit the investors by making the settlement and transfer of securities quicker, more accurate and safer. Depository will help and would greatly enhance the liquidity of capital market through short trading and settlement cycles. Depository was a

much needed reform in the capital market which the Bill seeks to facilitate.

Sir, I may add, after listening to hon. Member, that while his point that Bills of this nature should be referred to a Standing Committee is well taken, I think much water has flowed under the bridge since the Ordinance was originally made on 20th September, 1995. I would also urge the hon. Member to recall that this Bill was debated and passed in this House on 6th December, 1995. Since it could not be passed in the Rajya Sabha before this House was dissolved, we had to reintroduce the Bill. Sir, various Acts have already been amended. These amended provisions have already come into force. I would most humbly submit for hon. Member's kind consideration that it is perhaps too late in the day now to go through the process of a Standing Committee. We can debate it here.

It is a mechanism which is available in most advanced capital markets. We would like our capital market to become efficient, to be investor friendly and to protect the interest of investors. Depository is a mechanism which will facilitate quicker settlements and paperless trading. The investor has the option to either take his security in a physical form or become a member of the depository. Initially, I suspect that a number of investors will not be quite convinced about the efficiency of the depository system and will continue to insist that their securities be given to them in a physical form. But as the idea catches on, as more and more investors switch over to the depository mode, I believe that this will introduce a degree of efficiency in the capital market which will facilitate investors and protect investors to a much greater degree.

SEBI is an autonomous body and regulations have been made. If there is any deficiency or inadequacy that we discover in the working of the depositories, we can always come back and fill that gap. I think, it is time now to make a beginning. It would not be appropriate at this stage to interrupt the process which started on 20th September, 1995. Therefore, I most humbly urge upon the hon. Member to withdraw his Resolution of disapproving this Ordinance and to cooperate with me and the Government in passing this Bill.

A number of Members did make suggestions last time and each one of these suggestions has been carefully examined. These suggestions will be taken care of when we frame subordinate legislation. But I think the structure of the Bill is sound. It recognises the principle of free transferability of shares and retains to the company the right to appeal to the Company Law Board against a transfer which would be not in the interest of the company. It is investor friendly. It will enhance the efficiency of the capital market. It will usher in paperless trading which is a goal to which all capital markets must aspire and do aspire.

Sir, I would most humbly urge upon the hon. Member to withdraw his Motion of disapproval and cooperate with the Government in passing this Bill. It was passed, as I said, on 6th December, 1995 in the House.

MR. DEPUTY SPEAKER : Motion moved :

"That this House disapproves of the Depositories (Third) Ordinance, 1996 (No.28 of 1996) promulgated by the President on 21 June, 1996."

"That the Bill to provide for regulation of depositories in securities and for matters connected therewith or incidental thereto, be taken into consideration."

[Translation]

PROF. RASA SINGH RAWAT (Ajmer) : Mr. Deputy Speaker, Sir, just now the hon. Minister has presented the viewpoint of the Government on this Depository Bill. In this regard, as has also been mentioned by my predecessor speaker, I would like to say that this Ordinance has been promulgated in haste at a time when session of the Parliament was just to commence. This Government used to condemn the tendency of previous Government time and again and blamed it for not following the rules and conventions of democratic system and ignoring the Parliament for its practice of getting the ordinances promulgated by the hon'ble President just before commencement of the session. Now the Finance Minister, who was in that Government earlier has brought this Bill through an Ordinance. Is it proper?

Sir, through you, I would like to say that this is a new Government, Standing Committees are likely to be constituted. This Depository Bill should be referred to the Departmentally related Standing Committee on Finance so that new Members of the Standing Committee would be able to consider it after having discussion and express their views on it on its all aspects in detail. It would be better if the new Members of the Committee express their views on the financing situation and changes taken place in the Capital market of the country in respect of transactions of shares after the securities scam. These Standing Committees consist of the Members of all the political parties having different ideologies and as such they can give a common thought on this.

It would have been better if the bill had been brought after getting consent of each other. It is a Government of United Front and it claims to implement the Minimum Common Programme and therefore it would have been better if it would have brought it collectively in national interest.

Sir, now through you, I would like to know the reasons for bringing it in haste when Standing Committees are likely to be constituted. I would like to say that his practice of introducing Bills through ordinances is very wrong. If you are going to constitute the Standing Committees, would they be constituted only for discussing the budget? What will these do after session when the Bill and Budget will be passed. Then what is the justification to constitute these committees.

What would be the concept of these committees: Whether the Government propose to bring amendments in this Bill?

Sir, Hon. Finance Minister has mentioned that it is a comprehensive Bill and aims at protecting the interests of share holder and investors. If it is the real intention of the government then why the Members are being deprived of the right, the basic of democratic system, to discuss it in detail. Therefore through you, I would like to say to the hon. Minister that the way of introducing the Bill is not proper. You should have wait for some days and bring it during the gap period of the session. Though this Bill was to be brought in 1993 but you have brought it after 2 years in 1995. It could not be passed during that period and you have now brought it without any specific changes, and that after a delay of one year. It is almost same. In this way three years have been passed. It would be better if you wait for one or two months more and then bring it during the gap period of the Session so that new Members of committees would also have an opportunity to ponder over it.

Sir, the basis of democratic system is "Vada Vade jayate tatvabodha", which means that reality of a matter is known through a debate. It would be better if you bring it after having a comprehensive discussion on various clauses which provides punishment and other provisions and then it would be passed unanimously. Since the introduction of economic liberalisation and after the securities scam the conditions of share holders and investors have become like a burnt child dreads the fire. J.P.C. was constituted. Some Hon'ble members who are today in the Ruling Party, were the members of J.P.C. After an effort of 18 months that committee examined and scrutinized the bank scam involving Rs. 6 thousand crores. And it was also mentioned therein that the people belonging to middle class and low income group, who had invested their hard earned money in the banks, Mutual Funds, shares or elsewhere, were the victims of large scale fraud. There are several other scamsters like Harshad Mehta whom I do not want to name. They entered this field and without investing any money of their own, gave rise to such a big scam by defrauding the people of their hard earned money. Even the J.P.C. could not trace the beneficiaries of this scam. What has been done to compensate the investors?

The need of introduction of this Depositories Bill arose because the share holders did not know about the security. Everything was being done unwritten. All the securities continued to be transferred. Thereafter, the J.P.C. recommended to bring a Depositories Bill to plug all loopholes to remove various irregularities prevalent in the share market or the capital market, regarding shares, security scam, disposal of or payment of securities. After 2-3 years of this recommendation, you brought a Bill in 1995, which could not be passed then. Today, you have again introduced this Bill.

Sir, through you, I would certainly like to say one thing. A new Government has come to power. As regards the security scam investigated into by the J.P.C. the Government should at least try to find out those people in the then Government under whose patronage such a huge scandal had been flourishing continuously. Who were the actual beneficiaries in this scam involving crores of rupees. It may also be disclosed as to how much money has been realised from Harshad Mehta and others. You filed several cases against them. Arrests were also made, but they are out on bail. Has the money been recovered and deposited in Government's coffers? How have the affected people who had invested their money in the shares been compensated for the loss suffered by them. It would be better if you would throw some light on this.

Sir, on the whole, we support the Depositories Bill because, at least the investor would in a way be assured. A middle class investor would want to invest in the share market or the capital market only when he feels assured. Regarding bad delivery which was taking place on a large scale earlier, the J.P.C. had made recommendations and subsequently this Bill was introduced to bring about regularity in share business. I have two-three doubts in this regard. It would be better if the hon. Finance Minister is able to remove my doubts in his reply. Have you made an assessment of all share markets during the last three years after setting up of SEBI? Have the fluctuations been also analysed thoroughly? Have you found any suitable remedy? Although you have provided for punishment etc. in the Depositories Bill yet this is very mild and there are many loopholes in it. Due to bringing this Bill in haste, the new Government could not consider it in its entirety. It would have been better if a talented person like Shri Chidambaram had brought about some more changes and given it more teeth so as to make it more effective. Fluctuations in the shares are reported in the newspapers. When the change of the Government was taking place there were wide fluctuations in the shares. Sometimes there is uncertainty in share market. You were speaking about economic liberalisation ...*(Interruptions)*

SHRI KALPNATH RAI (Ghosi) : I want to make a submission. Can you tell us how many thousand crores of rupees were involved in the security scam and as per the Expert Committee report?

PROF. RASA SINGH RAWAT : This is what I want to know. As per my knowledge six thousand crores of rupees were involved in the security scam. It might have reached Rs. 12-13 thousand crores by adding further investment etc. to it. The Government should at least reveal the correct figure in this regard, so that the nation would know of the factual position. Tall claims are being made about the achievements of economic liberalisation. But brokers like Harshad Mehta flourished in this economic liberalisation. Is there any remedy?

As I have said the intention behind the Depositories Bill is somewhat good. The small investor wants security. And perhaps a provision in this regard has been made in this Bill. The country needs capital for development. Industry and trade in the country would get proper impetus when there is more capital investment. This will also help in making capital market more strong.

I have two-three reservations. Who will be the authority to give the right to open a depository. In this regard, I would like that a Committee comprising of the officials of the S.E.B.I. Reserve Bank of India, Finance Department of the Government of India or the persons engaged in the share business and brokerage who are genuine reliable and professionals, be set up and it would decide as to who should be given the power to open the depository. The Bill is silent on the count.

Secondly, who should be given the depository. Both the things are uncertain. It is also very essential to decide as to what should be the eligibility. Else, this business would go into wrong hands. We all know very well that what would happen if a razor is given in the hands of a monkey. *(Interruptions)*. Provisions should be made to assess the financial capacity of the person or the company to whom the depository would be given. It should be ensured if it is a Public Limited Company or not. If the depository is given to a Public Limited Company its capital base should be assessed which should at least be Rs. 100 crore. If the right to open a depository is given to a person who has attained success overnight, then such people will take the money of the depositors and vanish. As we frequently read in the newspapers of Mutual Fund Company vanishing after mobilising deposits worth lakhs, or of private banks vanishing overnight with the deposits of hundreds of depositors. I was saying, through you, that the capital base should at least be Rs. 100 crore. But, it would be better if it is a Public Limited Company. There should not be people like Chandraswamy. The people of high level integrity should be involved in it. In Urea Scandal what is the credibility of the Karson Company? We had signed a contract with a Turkish Company for the supply of Urea. But no one knows where the money vanished. Therefore such lapses should not recur and the company should have high level integrity. It should have transparency and sound capital base. Such Public Limited Company should only be given depository. I hope the honourable Finance Minister would keep this in mind.

My third doubt is that who would audit the depository? Has a provision for such an audit been made in this Bill? The reason for the fraud in Banks and vanishing of the Mutual Fund Companies is that in the internal audit both sides keep the shortcomings of the other under wrap. The fraud involving crores of rupees in the State Bank of India, Punjab National Bank and the United Commercial Bank, took place due to this reason. Audit should be done by a competent authority, such as Comptroller and Auditor General of India or

any branch of CAG enjoying full powers. The correct picture regarding their accounts shares, investments, transactions and the Payment of the deals should be revealed every year. This audit should be conducted regularly. It is observed that an audit is done once a year, and when the document come, the auditors sign it after writing 'checked and found correct' in the end. But this reveals nothing. There should be regularity in it, so that the Government is aware of the factual position.

The word 'concurrent' in English means regularity,

[English]

That should be concurrent. I understand that Shri P. Chidambaram has understood.

[Translation]

My fourth point in this regard is that if there is any irregularity or fraud in the Depository, as has been happening before, presentation of this Bill although this bill has been brought now, I am mentioning about the scams which used to take place in banks and capital market earlier. If there is any irregularity or fraud in Depository who will bear the losses?

[English]

Who will bear the burden?

[Translation]

The depositor or the depositing Company? It is very important point someone should be made responsible for it. The details about the investor, the depositing company and further investment etc. should be clearly mentioned in the rules, otherwise they will shift their responsibilities on each other on one excuse or the other. As a result of it, both the parties will blame each other and such a situation would arise where no one would be accountable for it. Therefore, it is essential to mention in the rules as to who will bear the responsibility in case of any embezzlement, scam, bungling, mismanagement or misappropriation of funds.

My another point is also on what rates these depositories would function. Have you fixed the criteria or services charges in this regard? Further, has any rate schedule or standardisation been decided upon? This Depositories Bill does not contain any such information. Either its language is ambiguous or some technical financial words have been used in it which are beyond our comprehension.

The middle class and other people engaged in small business would like to make investment in it. Therefore, it is essential to standardize the rate schedule and service charges. In the absence of it, the competition among various companies would start and thus they would try to attract more and more investor by indulging in irregularities. Therefore, standardization

of rate schedule and fixation of service charges must be decided upon.

The functioning of the Depository should be transparent. If any investor wants to know about his deposits, number of shares or the amount of investment made by him, the dealing clerks should not make him run to many persons. Computers should be used for bringing transparency in its functioning. This facility is already available in Stock Exchanges and the SEBI. It would be better if the investor could get complete information on one visit.

With these words, I welcome the Bill presented by the hon. Minister. I hope this Bill check recurrence of any further scam. This Bill would help bringing in more funds in the capital market in the wake of economic liberalisation and investment of securities in development works in the country. Mr. Deputy Speaker, Sir, through you, I request the hon. Minister to clarify the shortcomings raised above, in his reply.

[English]

SHRI NIRMAL KANTI CHATTERJEE (Dumdum) : Is there no other Speaker?...*(Interruptions)* You were not there. Let me speak for your convenience.

Mr. Deputy-Speaker, Sir, this is perhaps for the third time that I am speaking on this Bill. But, in the meantime, perhaps certain points may once again be noted and some new points may also be stated. He has made a reference to the authority. He put the question: who will be the authority to start this? But that is mentioned under Chapter-II: Certificate of Commencement of Business. It is the SEBI which will give the certificate. Clause 3(1) under Chapter-II says:

"No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board."

Here, "Board" means the SEBI. So, that has been mentioned.

Now, my feeling is that one must remember the idea behind this. The whole idea of this depository, which is an additional convenience in the share market, arose out of our desire to attract foreign capital. It is those foreign institutional investors who are feeling that the physical transfer of certificate is taking a good deal of time etc. and, therefore, they insist that in a dematerialised form the transfer should be effected.

Our inclination is that we want foreign capital into the country but less in share markets and more in direct investments. But then this is a convenience whose advantage even the Indians who deal in share markets may take advantage of. But I want to know about certain things. I do not know whether a part of them would be in the regulations and rules.

But a part of them could have been incorporated in the Bill itself. We suggested some amendments. I was trying to find out my earlier copy where I had suggested

about those amendments. But I could not discover them. Let me make a few suggestions here. We have this experience in India in the sense that the Reserve Bank of India has a system in the form of SGL, a book transfer for Government securities as between different banks. That experience, during the period of scam, was very unpleasant. We discovered that fake entries have been made and brokers took advantage of all kinds of ways in order to utilise that SGL. Some of the people working there perhaps have been removed from the Reserve Bank of India by now.

This is slightly irrelevant but since he made a mention of this, I am tempted to mention one thing about the share *ghotala* or share scam. According to the report that we made, Rs. 1400000 crore was transacted in the course of one year in the share market. You must try to appreciate the figure. And on the basis of income-tax calculation, with the seven per cent return on turn-over, the income would be around Rs. 1,00,000 crore. I am mentioning this to draw the attention of the Finance Minister so that when he presents the Budget proposal, he should try to find out how this Rs. 1,00,000 crore can be taxed so that the resources can be increased. This way, expenditure for the poor would also increase. I just mentioned this because you referred to it.

The real significance of this is not Rs. 6,000 crore or Rs. 7,000 crore which was lost in the banking scam. That is a loss. But the gain was Rs. 1,00,000 crore to some people. Who are they? Why have those people not been traced? And those people are the large players. Had those people been traced out, then a sum of Rs. 40,000 crore in terms of rates of taxation could have been garnered by the Budget which means, almost the entire fiscal deposit could have been wiped out. I draw your attention to this so that when you come to the Budget proposals, we shall see to what extent you have approached that problem.

Coming to the Bill proper, there is a question, very properly - I do not know whether they will provide it in the regulation - about the capital adequacy norm for the depositor. What is the capital adequacy norm for the depositors? It may be provided in the regulation.

SHRI P. CHIDAMBARAM : It is Rs. 100 crore.

SHRI NIRMAL KANTI CHATTERJEE : But that is not mentioned. That should be there. One thing is, the most dangerous people are the participants. They are the brokers. The name given here is a dignified one. But they are the brokers. It is a device in the sense that if any buyer of a share decides that he will have it in the form of a record in the register, then the issue of those who are coming, will be registered. The real player would be, in a certain sense, the participants. One should stipulate some qualifications for the participants also in the regulation.

As I mentioned it last time, I would like to say, when you talk of record, it includes record maintained

in the form of books or stored in a computer or such other form as may be determined by regulation. My humble suggestion is that it should be both in the computerised form and in the manual form because you can always play with the computers as we discovered while investigating into the affairs of bank scandal. The Citibank had played havoc with its computers. It can be very well done. Therefore, instead of 'or', I want 'and'. The record should be in the form of both manual and in computerised form.

Last time we discussed it. Are we not aware of this problem of switching of shares and duplicate shares? Whether or not adequate safeguards are included. Whether it is possible to include them in the Act, or Regulations will do - that the Finance Minister may kindly clarify.

This is such an area - I do not know, how these amendments can be accepted. He referred to the Standing Committee. In fact, one Standing Committee did consider it. I was also a Member of that Standing Committee. After that, it was stalled in the Rajya Sabha. I do not know, whether they are going to stall it once again, because the objection there, at that time was that 'this serves only the foreign institution investors. Therefore, we are not going to pass it'. Maybe, now the mood has changed to pass it.

Sir, I would draw his attention on page 3, clause 12(1) of 'The Depositories Bill, 1996.

Why with the previous approval of the depository, if somebody has to hypothecate? Why is this 'previous approval' required? Sir, I will read this clause. It says :

" 12. (1) Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository."

Here unnecessary it is giving the depository people some scope to pressurize on the person. That should be looked into, whether it can be modified or not.

Now, I come to clause 20 on page 4 of the Bill. I will simply turn it down as a lawyer because this is normally provided for. The penalty is 'five years, or with fine'.

I am totally against that, because these people who are very rich and sometimes very unscrupulous, for them the penalty should always be a combination of a jail term and fine or in any case there has to be a jail term, even if without fine. Such people should be treated with this kind of a stick and not in a soft manner to permit them to go with fine only.

I will substitute 'or' with 'and'. That is for him to respond to.

Also, I do not see any provision as is usually provided in other Bills. What is the procedure of winding up? Supposing, a depository has played unfair here and you want to wind it up, for this, some provision should be there. I do not see any provision mentioned here. Maybe in the Companies Act it is there. I do not know. That you have to clarify.

Now, I come to page 8, para 7 of the Part II of 'The Schedule' That is associated changes in other Acts. This is also quite unfair.

Para 7 says .

7. In section 108, after sub-section (2), the following sub-section shall be inserted, namely :

"(3) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository."

My question is, is anyone bound by one depository only? What is the relationship between two depositories? That question is wide open. That is the loophole which seems to be there, and we have to handle it.

Lastly, Sir, agreeing to Mr. Rawat's demand I would say this is an old demand of ours and because we are in the United Front, therefore, we have not given up that demand. We wanted even for the banks, in our joint reports, that there should be statutory audit by the CAG or people recommended by the CAG of the banking sector. Similarly that demand remains. He may turn it down. But that has been a demand which we are always having, we reiterate that demand.

I do not know how he would react to some of my suggestions. But as a convenience this should be there and therefore this Bill should get passed as quickly as possible. There is no objection to this provided these are taken care of by the hon. Finance Minister.

Before I conclude I would like to clarify that one of the reasons why we suggested CAG is that with regard to the inter-bank audit we know that unreconciled account runs into hundreds of thousands of crores of rupees. That was one of the arguments in favour of the centralised audit. This will happen in the case of depositories also. Therefore such a centralised audit arrangement should have been provided for. I agree with Shri Rawat in this respect.

SHRI SURESH PRABHU (Rajapur) : Mr. Deputy Speaker, one of the objectives which has not been stated but which has been demanded by many when introducing a Bill like this is to bring about the corporate democracy in some form. But we are sorry that the Bill itself has been introduced not in a democratic fashion, but it has come now to replace an ordinance which was issued earlier.

We really welcome the merit of the Bill because it is in the long term interest of development markets. In

fact the Patel Committee which went into the question of reforms of capital markets had also recommended that a measure like this should be initiated. In fact our hon. Finance Minister is lucky and fortunate that while he has been a forerunner of demanding that such a measure should be introduced in the capital market, he is the one who has been piloting this Bill. We certainly welcome a system like this. But we would have liked it to be a part of the overall investor protection mechanism. We would have liked this Bill to be introduced as a package and not in a piecemeal form as it has been introduced now.

15.57 hrs.

(Shri Chitta Basu in the Chair)

The small investors have been facing a real problem in that a share is transferred after six months and they do not know where to go in case they want to make a complaint against a company or the Share Registrars who are supposed to transfer the shares. The FIIL has been demanding that paperless trading and scripless trading should take place in the shortest possible time to facilitate transfer of funds which they bring into the country. Of course we need more FDI. But we do not and probably should not at this particular point of time discourage the portfolio investment either. This investment protection should have come in the form of Small Investor Protection Bill and I will request the hon. Finance Minister to introduce it in the shortest possible time.

The Bill proposes a dual system. It is not mandatory on the part of the investor to necessarily opt for it. It is a voluntary action that he can initiate and there is not going to be a compulsory depository system to be introduced in the country. I think if we were really to propose avoiding of the repetition of a scam like thing, then it is high time we had introduced it as a compulsory measure in the shortest possible time, so that duality of the system does not exist in the long time to come.

I think on 20th September 1995 this Bill was introduced and my learned friend had to speak three times on this. I hope he does not have to speak for the fourth time. I am sure Shri Chidambaram must have taken care to see that this Bill will now be passed in the Rajya Sabha once it is first passed in the Lok Sabha.

While reserving our right of criticism, as I said earlier that this should have been introduced in another form and not as a replacement of the ordinance, I would like to comment on some points which have been mentioned here. How are you going to ensure that a depository is going to act? You have already stipulated that there is an entry barrier for a depository to start a business. The entry barrier is Rs. 100 crore. But there is nothing like capital adequacy though there is a minimum capital

requirement. If the business of the company grows and it becomes Rs. 10,000 crore, is it going to be linked to the quantum of business and is he required to increase his capital correspondingly?

16.00 hrs.

For instance, in the case of banks, as per the Basu Committee norms, eight percent of the capital increase is required to be related to the increase in assets. It is going to be something like this? Is it going to be stipulated or is it only an entry barrier that is stipulated in the form of Rs. 100 crore?

The second point is this. We have a spate of investors throughout the width and breadth of the country. From the smallest villages of Gujarat, people really put in their hard earned money. Is a depository going to be operating as a national depository or is he going to operate from a place like Mumbai which is the financial centre of the country and thus debar many of the small investors from participating in that venture? Is it going to be only a metro-based depository or are we going to make it mandatory for all depositories to have some regional offices so that the small investors could also have access to the depositories in the event of need. What is going to be the in-built protection? That is very important. We can always have an audit, but audit is always 'post-facto'. It can only tell us what has gone wrong and why it has gone wrong. Prevention is better than cure. So, having an in-built system to prevent a fraud or any sort of hoodwinking of the system is important. What kind of protection is going to be provided? In the case of the banking sector, there was a Rangarajan Committee, which went into the question of computerisation of the banks even before the banks actually went in for computerisation.

Is it going to be available to the depositories as a form of advisory mechanism, which will ensure that the system is not hoodwinked or manipulated? What form of certificate is to be issued? There is no mention about that. If a person who opts to go to a depository says, 'My shares would only be with the depository', is he entitled to have a certificate? What is the periodicity and is it mandatory for the depository to issue such a certificate only to the shareholder? Or, is it that some other person could also obtain such a certificate? This is something which is not mentioned very clearly in the Bill.

In the case of the prevailing system now, would the companies who maintain the transfer of shares undertake the responsibility for...*(Interruptions)*

SHRI NIRMAL KANTI CHATTERJEE : Are you referring to the certificate of the information, perhaps, can be obtained by anybody...*(Interruptions)*

SHRI SURESH PRABHU : Is it really going to be available to anybody or somebody? It is a question of my share transfer...*(Interruptions)* Rather, let us not make a mention of it at all.

Right now, under the present system, the cost of transfer of shares, etc. is met by the company itself. Though there are share registrars, it is not really passed on to the shareholders. What is the disposal contemplated under the new system? It is not mentioned here. Would the depositories be entitled to charge the shareholders or not is something which needs to be properly mentioned.

SEBI is going to be the regulator of this one more body, which is going to be created. When SEBI was founded, we all thought that the problems of the investors were over. But SEBI, in its own report, has said that it was not possible to look after the investors' interests because there was no adequate provision in the law which allowed it to do that. It also does not have enough machinery. The same SEBI is also going to be burdened with the additional responsibility of looking after the function. Would the Finance Minister clarify whether SEBI would be really equipped to handle such additional responsibilities with the present staff, that is available at its disposal?

There is also a provision which should allow a shareholder to go to the depository and say 'I would not like to continue with you and I would like to opt out of it'. Some such provision is desirable because ultimately our idea is to move towards complete scripless trading in India and giving an opportunity like this to an investor also means that there is going to be a dual system which is going to exist for a long time to come.

I am glad that one provision has given exemption from the Stamp Duties Act so that these transactions would not attract stamp duties. This is a provision of the Central Government. If the State Governments like to impose stamp duty on such transactions, firstly, would it debar the State Governments from doing so? And if so, would the Central Government take the responsibility to make good the losses accruing to the State Governments? This is something, on which I would like to seek a clarification from the hon. Finance Minister.

Sir, would the information available to the notified depositories be treated as a public document as is defined under the Companies Act? This needs to be clarified. This Rs 100 crore minimum capital as is stipulated by the SEBI guidelines is not in the body of the Act itself. I would request that it should be made part of the statutory provision which requires that a depository, when he starts, would have minimum capital of Rs.100 crore.

Another question is in this Rs.100 crores. Are we going to allow any foreign participation? If so, to what extent? That may also be clarified by the hon. Finance Minister. In India, as of now, we really do not have a central depository system in existence. There is, of course, a SGL account which was managed by the Public Debt Office of the Reserve Bank of India. That was manually done. In fact that was one of the causes, one of the reasons for the security scam. I am sure, we cannot really go in for a situation like that and we need

to really define and find out who is going to bring in the technical know-how that is necessary. If foreign investment is going to come in, are we going to insist probably on some technical know-how in that? Another point that needs to be clarified is who could start this business of depository...*(Interruptions)* Is it going to be made mandatory as to who could start the business? could the companies themselves start because the companies are always required to have a separate Registrar or if they want to or wish to could have their own department or share transfer? Is it going to be made mandatory that those companies, to avoid conflict of interest, that depositories are going to be a separate body and what is going to be the pattern of share holding to ensure that this acts as a neutral body? This is something which also probably needs to be clarified.

Sir, the National Stock Exchange when it was started had the in-built system that they could also start their own depositories. Are we contemplating making NSE one of the depositories or a central depository sort of mechanism? Probably the Hon. Finance Minister could inform us by way of information. We have been always hearing and we have also been worried about various complaints we receive from various investors pertaining to a variety of offences that are committed against the small investors. Through your good offices, could I request the Finance Minister to introduce something like the investor protection courts in which all investors related complaints, including complaints against the depositories could be introduced and could be heard and probably these courts could act in various places and could facilitate easier disposal of the complaints.

Another point which I have not been able to comprehend is whether this is aimed at only equity or it is also aimed at market instruments and if so whether this is also going to be debt instruments because market instruments will be whole sale market instruments. Is it the debentures in case of some companies or is it only equity? Also, I hope, that the hon. Finance Minister would certainly clarify. Sir, as I said earlier, a measure like this will certainly help our country to bring more savings into capital markets but at the same time introduction of only piece-meal legislation of this nature will not ensure that investors would really have faith in the capital markets unless we introduce comprehensive capital market reforms as are contemplated by the various committees and this could be ideally the part of the legislation.

SHRI V.V. RAGHAVAN (Trichur) : Sir, there is an organised attempt by some NRIs and some dubious centres to capture well established and well managed banks who have very good network throughout India and to capture the management of the bank itself by dubious share transactions. I had an experience in my constituency recently. Currently, the well-managed Dhanalakshmi Bank of Trichur is running very profitably, they have created confidence in the population at large

and it is growing very fast. Seeing this growth, some dubious transactions of shares are taking place. The forces behind it are very much hidden. I myself have written to SEBI, requesting them to investigate and intervene immediately. The Bank itself directly has written to SEBI seeking their help. The Media at large have brought this to the notice of SEBI. It is unfortunate that SEBI is not quick to intervene in such cases, to safeguard the interests of the shareholders and the banks.

So, my request to our hon. Finance Minister would be to give some more powers to SEBI or to direct the Board to function quickly and effectively according to the urgency of the issue at hand time. When they get complaints and if they drag on for months together those who want to capture the banks will do that in their own way. So, to protect and to safeguard the interests of the shareholders and the interests of the well-knit and well-established private banks, the Finance Ministry and SEBI should act immediately when such wrong things come to their notice.

That is the only thing that I want to highlight. Thank you very much.

JUSTICE GUMAN MAL LODHA (Pali) : Hon. Chairman, Sir, first of all, let me express my deep sense of agony, displeasure and disapproval on the misuse of the power to promulgate Ordinances under the Constitution by the Treasury Benches.

In spite of various reprimands, various warnings and also censure by the Chair, the power of issuing an ordinance is being misused; and this is one of the typical examples of this. Heavens would not have fallen if this Ordinance had come in the normal course, as a legislation by means of a Bill. For several years, we have been dealing with securities and shares; and overnight, nothing had happened which warranted the issuance of this Ordinance.

Coming to the merits of this legislation, by and large, we stand to support it and there is nothing, on principle, which requires any opposition or any condemnation. However, a few words of caution and warning are necessary. We have seen a galore of scandals in our country, particularly in the security market and in the share market, the latest one is the issue of duplicate shares which has come out, which has attracted the attention of various investors to a large extent, by one of the very important companies in this country; and there is a failure of the Government either to check it or to stop it or to take any punitive or preventive action. Even recently, we have heard that the company itself is coming out with new disclosures regarding duplication. A big fraud and forgery, on the one hand, has resulted in the loss of crores and crores of rupees in the form of stamp duty by cheating the Government. There are various other maladies. That being so, where even share certificates and security certificates are being duplicated, now it is a big million

dollar question how in a country of ours, only paper entry of transfer would be without any such tainting or forgery or scandal.

Now that is a matter on which the hon. Finance Minister should clarify how it would be ensured that there are no frauds because this contemplates only paper entries. Even in the absence of the security certificate or share certificate, mere paper entries would be enough for making the transfers and keep the records. In the developed countries of the world, the experiment has succeeded. Probably we are trying to copy it from those countries without having an infrastructure, without having a sort of mechanism by which we can guarantee the clean administration of these Boards.

Therefore, I would only request the hon. Finance Minister to ensure that whatever experience we have got of the recent past, in which one after the other several frauds have been detected and several scandals have come to light and much more has not been detected, what is the guarantee and what steps is he going to take to prevent such frauds and scandals to save the investors because the poor investor is the worst sufferer. Those persons who deal with big companies are often above the law. They work above the law. They do not obey the law. They violate the laws in a flagrant disregard. They go on committing one offence after the other with immunity. The various boards and various corporations, various institutions provided to check them or punish them have, by and large, not been successful in stopping them from doing so. That is one aspect on which I want to record a caution. I hope the Finance Minister would take note of it.

Yet another aspect is regarding the stamp duty. It is a source of revenue to various Governments and how it would be compensated, in what manner, what is the other source of income and why the stamp duty is being sought to be saved. The investors, who deal in thousands and lakhs and crores of rupees can safely afford to pay the stamp duty. So, it would virtually be indirectly a tax on the consumer, on the common man, on the common citizen because the money, which goes to the Government Fund, is used for other purposes, would be saved to the detriment of the common people and to the benefit of the rich people. So, it cannot be said to be a poor man's or the people's legislation for benefiting the people. That is one aspect which the Finance Minister may clarify. He should ensure this compensation. With these words, I support this legislation.

SHRI P. CHIDAMBARAM : Sir, am deeply grateful to hon. Members for broadly supporting this legislation. This Bill was indeed passed in this House on the 6th of December after one of the hon. Members then, who moved the Statutory Resolution, was good enough to withdraw the Statutory Resolution of disapproval and they joined hands with the Government. I sincerely hope that hon. Members who moved the Resolution on this

occasion also would withdraw the Resolution and cooperate with the Government in passing the Bill.

Sir, a comment has been made about the need to resort to an Ordinance. It was explained on the last occasion as to why an Ordinance was necessary and the Ordinance was first promulgated on 20th September, 1995. I believe the explanation given by the then Minister to the Ordinance was accepted by the House and then the Bill was passed.

Today, Sir, to raise an objection to that Ordinance will create an enormous difficulty because the Ordinance has amended a large number of Acts. Those amendments are in place and in my opening remarks, I said that the Ordinance has already amended the Indian Stamp Act, the Companies Act, the Income Tax Act, the Securities Contract Regulation Act, the Benami Transactions Prohibition Act and the Securities and Exchange Board of India Act. All these Acts have already been amended. In order to ensure that there is no hiatus and that there is continuity in the operation of this law providing for depositories, this Ordinance had to be promulgated from time to time and that is how, we have an Ordinance today which was promulgated on the 21st June, 1996. I most humbly urge the hon. Members, having accepted the explanation as to why the Ordinance was first promulgated on the 20th September, 1995 and having cooperated in passing the Bill on the 6th December, 1995 they should accept that the same grounds were present on the 21st June, 1996 for making this Ordinance and therefore, I would request that this point may not be pressed and we move to consider the Bill on its merits.

Sir, a large number of questions have been raised and I understand why these questions are being raised. The Bill itself provides for a large number of matters to be regulated by regulations to be made by the Board, Board meaning the Securities and Exchange Board of India. I think I should have, at least to the hon. Members who spoke on the Bill, given copies of the regulations and if once the Bill is read with the regulations already made by SEBI, then matters will become clear.

Let me take a few minutes to explain the structure of the Bill read with the regulations. Firstly, the regulatory authority is the Board, and that Board is SEBI; SEBI has made regulations and those regulations are in force. Secondly, a depository is only a company. A depository is no more than a company. Members may kindly see Section 2(1)(e) which says:

"(e) 'depository' means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992."

This takes us directly to the SEBI Act of 1992 and Section 12 of that Act provides for a large number of

players registering themselves with SEBI and sub-section 1(a) provides that :

"No depository, participant, etc. shall buy or sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act."

Having defined what a depository is and having required a depository to obtain a certificate of registration of the Board. The regulations go on to make detailed provisions of who will be eligible to register as a depository and what are the conditions and criteria. I will not read all the regulations. But I only wish to draw the attention of this hon. House to the fact that there are regulations made for receiving an application. The application can be made by a sponsor. Anyone cannot be a sponsor. A sponsor shall belong to one of the categories.

They are (i) a public financial institution; (ii) a bank, for the time being in the second Schedule to the Reserve Bank; (iii) a foreign bank operating in India with the approval of Reserve Bank; (iv) a recognised stock exchange; (v) a body corporate engaged in providing financial services where not less than 75 per cent of the equity capital is held by one of the four institutions about which I mentioned earlier; (v) a body corporate constituted and recognised under the law for the time being in force in a foreign country for providing custodial clearing or settlement services in the security market and approved by the Central Government; (vi) and an institution engaged in providing financial services established outside India and approved by the Central Government. So, the categories of a sponsor are rather restricted. At every stage it has to have the approval of the Reserve Bank or the Central Government. Such a body can sponsor an application.

Then regulation 7 lays down very detailed conditions about the capital structure and other conditions which the sponsor would have to satisfy for grant of Registration. For example, regulation 7(c) says,

"a Depository shall not carry on any activity other than that of a Depository"

Then regulation 7(d) says,

"A sponsor shall at all times hold at least 51 per cent of the equity capital of the Depository and the balance of the equity shall be held by its participants".

Regulation 7(e) says,

"no participant shall at any time hold more than five per cent of the equity".

So, I think, detailed provisions have been made to ensure that all the sundry cannot become a sponsor of a company which will become a Depository and only certain categories of financial institutions with a good

track record can sponsor a company which will eventually seek registration as a Depository.

SHRI NIRMAL KANTI CHATTERJEE : Can a foreign bank as a sponsor hold 51 per cent equity in a Depository?

SHRI P. CHIDAMBARAM : A foreign bank operating in India with the approval of the Reserve Bank of India, if it is accepted as a sponsor, can hold 51 per cent equity in a Depository.

SHRI NIRMAL KANTI CHATTERJEE : This I did not know. This is a very serious matter.

SHRI P. CHIDAMBARAM : It is already approved. Foreign banks are operating...

SHRI NIRMAL KANTI CHATTERJEE : I know that foreign banks are operating in the stock market but a Depository which will be owned entirely by a foreign bank is a different question altogether.

SHRI P. CHIDAMBARAM : It is entirely for the investor to either hold a security in a dematerialised form or hold it in a physical form. It is also for the investor to say whether he would like to hold it in Depository A or in Depository B. It is not that there will be only one Depository in the country. There would be more than one Depository in the country. If a foreign bank becomes a sponsor of a Depository holding 51 per cent and satisfies all these conditions and takes a certain number of participants and if SEBI, after going through the procedure, finds it fit to give it a certificate for commencement of business, I think, there should be no bar for such a Depository to come into place. But please remember, after this Ordinance of 20th September 1995, we have only cleared one Depository and that is sponsored by the National Stock Exchange. It is not very easy to become a Depository. It is not as though there are hundreds of Depositories in this country. There would, perhaps, be a few players. It is good to have competition amongst Depositories in order to have transparency and increase efficiency. It would give the investor an option of being in a Depository or not, if he wishes to be in the Depository, then he could choose from amongst the Depositories A, B and so on.

Sir, I could go on referring to these regulations but the point I wish to make is, most of the questions raised by hon. Member, Shri Prabhu and hon. Member Shri Nirmal Kanti Chatterjee are provided for in the regulations. If the regulations turn out to be inadequate in any manner, if it is found that more regulations would have to be made, SEBI will always make these regulations. These regulations are only subordinate legislation and SEBI can always make these regulations. I think, we should allow this Depository Act to come into being and see how it works. After all everybody has agreed that it is a new mechanism that we are placing in the capital market today. We have virtually no experience of that in this country. There are

depositories in other parts of the world, and some of them, are doing extremely well. In fact, as Shri Chatterjee has mentioned, one of the reasons why foreign institution investors are reluctant to commit large sums of money in this country is, because of the enormous inconvenience of paper base trading. It is paperless trading which will give a fillip to our capital market. Every investor knows the enormous inconvenience of getting a share transferred. Tremendous inconvenience is involved even to transfer a unit of UTI. I think we should allow the depository to come into being. Let us see how the best depository works. If more Regulations have to be made, such regulations can be made at an appropriate time

The point which Shri Chatterjee has made about hypothecation of pledge, is also dealt with in Regulation 58. He was asking as to why the investor should obtain previous approval of the Depository. I thought the answer is self-evident. The reason why previous approval has to be obtained is, the investor is only the beneficial owner. In a depository he does not own a scrip as such. What he will be pledging is the beneficial ownership in a security and a corresponding entry has to be made both by the participant through whom the investor acts and the depository. Therefore, it is necessary that he applies to the participant informing the participant to move the depository for the right to pledge or hypothecate his security. Regulation 58, Sub-Regulation 3 provides that as soon as intimation is received from the investor about the intended pledge or hypothecation, after examining the matter, the depository shall amend its records and immediately intimate the beneficial owner. Your point about fixing the time limit is well taken. I shall advise SEBI on that point and ask them to amend the Regulation to provide a time limit for intimating the beneficial owner.

Most of these matters which have been raised, have been taken care of in the Regulations. In fact, when hon. Members were seeking, I was going through the regulations to see if they are reflected in one manner or other. I have noted these suggestions carefully. Wherever these regulations have to be strengthened by making more regulations or amending the Regulations, I shall advise SEBI to do so.

Sir, as I understand this Bill and the Regulations, it is not necessary that the transferor and the transferee shall be members of the same depository. In fact, that may not arise at all. The Transferor, may be a member in a depository. A transferee could be a person who has a pre-existing interest in some other security in the depository. He could also be somebody who is not in the depository at all. When the beneficial ownership is transferred, the transferor ceases to have any interest in the depository and the transferee steps into his shoes. Therefore, in that sense the transferee will become a player in the depository. It is also possible that the transferor is in the one depository and the transferee has interest in another security in another depository.

When the security of one company is transferred, the transferee will necessarily become a player in Depository-A unless he wishes to withdraw-which is provided for in the Act as well as in the Regulations and transfer his interest to Depository-B. There will be, of course, some timelag in reconciling.

SHRI NIRMAL KANTI CHATTERJEE: Is it provided that it is limited to one depository?

SHRI P. CHIDAMBARAM: No, it is not provided. That is why I am saying this. Assume, I am a transferor and my security is in Depository-A. Shri Chatterjee, say, does not own any security. He should not own a security, he is a good communist. If I transfer my interest to him, he will step into my shoes in that depository. It is quite possible that he may have another security in another depository and he may not like the depository in which my security is there. So, on transfer he will withdraw from Depository-A and register his interest in Depository-B. A very similar example is, if I issue a cheque on a bank and if Shri Chatterjee has an account in the same bank he will deposit that cheque in that bank, in which event my money will go from my account to his account. But if he does not have an account in that bank but in another bank, he will simply put his cheque in that bank and the interest will get transferred to that Bank. I think it works more or less, not exactly, on the same principle. I think I should not be taken literally. The comparison is to serve a point. The comparison is to serve a point. It works more or less like monies transferred by the drawer upon one Bank and the payee may have an account in another Bank. I think Mr. Prabhu understands it better than I do.

Sir, the securities can both be equity instruments and debt instruments. Therefore, we should not look upon depositories as only dealing with shares. They can also deal with debt instruments.

Regarding the question of Stamp Duties, I thought the purpose of the whole exercise was to get rid of all those Stamp Duties and that kind of thing. I do not think you can ask for paperless trading and scrip-less trading and yet plead for Stamp Duty. Yes, of course, there will be some loss of revenue to the State Governments but, I for one, believe that even the original document on which we had to transfer shares should not suffer Stamp Duty. Those are not duties which are functional those are dysfunctional duties. They create all kinds of problems, you know as well as I do. There are any number of cases where if the Stamp is not crossed the instrument itself becomes defective. So, I do not think Stamp Duty should be a reason why we should hold up something which would inject a great degree of efficiency into the capital market. I am sure the States will find other ways in which to raise revenues.

Sir, if the investor loses money, Clause 16 of the Depositories Bill requires the depository to indemnify the beneficial owner. There is also a provision for

insurance of the depository. I think, these provisions are adequate. If necessary, SEBI can also regulate to provide much stronger provisions.

Regarding capital adequacy, as I read the Bill, and the regulation the threshold limit is Rs.100 crores for the company which wishes to become a depository. But there are stiff requirements about the capital of each participant through whom the investor acts. Regulation 19(a), Clause (viii) reads thus :

"A stockbroker who has been granted the certificate of registration by the Board under sub-section 12 of section 12 of the Act provided that the stockbroker shall have a minimum net worth of Rs.50 lakh, and the aggregate value of the portfolio of securities of the beneficial owners held in dematerialised form in a depository through him shall not be more than 25 times the net worth of the stockbroker."

So, if he wishes to enlarge his portfolio, he would have to have a larger net worth, and the size of the portfolio is a multiple of 25 of the net worth. If he wants to enlarge his portfolio, he would have to provide more capital for his business.

Sir, I think most of these matters have been taken care of, but I take all the points in the spirit in which they have been made.

SHRI P.C. CHACKO (Mukundapuram) : Mr Minister, may I interrupt to make a point.

SHRI P. CHIDAMBARAM : Yes.

SHRI P.C. CHACKO : You have said that since the promulgation of this Ordinance, only one depository has been registered in the whole country and that too is sponsored by the National Stock Exchange. I think the problem is the threshold level of Rs 100 crore. As you have said, the national financial institutions and recognised Banks only are permitted now. So, will the Government consider lowering the threshold level? Achieving the capital adequacy in a stroke is something which cannot be done even by the national financial institutions. That is why the competition that you were expecting is not coming forth.

SHRI P. CHIDAMBARAM : I am not so sure if that is the reason. We have, I think, given a certificate of commencement of business to one and that is sponsored by the National Stock Exchange. I do not think Rs.100 crore is the problem. I think, it is possible for the sponsors and participants together to raise Rs.100 crore. I think there are some other applications are pending. I cannot readily tell you the details, but some other applications are pending. I do not think that Rs.100 crore is a problem. If it does become a problem we can take a second look at it because, after all, we are now trying to put in place some mechanism which eventually will become virtually the bourse, the concourse in which millions of rupees of worth of shares and other securities

are traded. On any given day, you can have several thousand crores worth of shares transferred in an active capital market. That is not something which is either undesirable or unexpected.

Sir, I think it is important that a depository should start with a high capital base. After discussion Rs.100 crore was found to be an appropriate figure. I think there are some applications which are pending, although I cannot vouchsafe for that now. Let us see how it goes. If this becomes a hindrance, then we can take a look at it. But at the moment, I think we should keep a threshold of Rs.100 crore. It is the interest of investors which has to be protected and depositories must have adequate capital in order to do this kind of volume of business.

SHRI NIRMAL KANTI CHATTERJEE : So the new private banks must start with Rs 100 crore.

SHRI P. CHIDAMBARAM : Yes, new private banks are to start with Rs.100 crore. Mr. Chatterjee is right that new private banks, if they want to start, they must start with Rs.100 crore. There is no reason why depositories should not start with Rs.100 crore. In fact Mr. Prabhu's point was whether Rs.100 crore is enough. He was saying that at a later point of time you may have to provide more capital. I think Rs.100 crore is a good starting point in this.

So, Sir, I would submit that having regard to the fact that these deposits' laws are already on the Statute Book, Acts have been amended, which are in force, we have given permission to one depository sponsored by the NSE and other depositories are likely to be established adequate regulations have been made. I would most sincerely urge the hon. Members to cooperate with me and the Government and pass this Bill today.

SHRI SURESH PRABHU : Sir, depositories are going to be regulated by SEBI whereas the banks in India are regulated by the Reserve Bank. There are no two separate agencies which are probably going to regulate the sponsor as well as the body which is going to do this business. Take an example of a new private bank which has just started its business. It has to start its business with Rs. 100 crore capital. It has put the entire money into the depositories' business. It could not be less. It is because there is no provision which prohibits the use of this. So, there is a need to have a very specific provision in this. You have amended so many Acts. You have amended Companies Act. Probably there is a need to amend the Banking (Regulation) Act to make sure that investments made by any bank into a depository would not be considered as part of the network.

SHRI P. CHIDAMBARAM : I think there is some error in understanding this. A depository is a separate company. The bank can sponsor a depository by providing not less than 51 per cent of the equity capital of a depository and if the bank has large amount of

accumulated profits, it can certainly sponsor a depository. But the depositories are separate companies. A depository company will be regulated by SEBI under this Act and the Regulations. The bank will continue to do banking functions. As I mentioned, the depository shall not carry on any other activity other than that of a depository. There is a similar provision in the Banking (Regulation) Act where a bank cannot carry on any other function other than banking function.

SHRI SURESH PRABHU : I am not talking on that point. Let me clarify. Suppose a bank has Rs.100 crore to start this business and puts this Rs.100 crore into depository.

SHRI P. CHIDAMBARAM : If it generates profit, I will also ask why not.

SHRI SURESH PRABHU : To calculate capital adequacy of the bank, you should not consider Rs.100 crore capital. It is because there is no provision in the Banking (Regulation) Act. There is no provision either in the SEBI Act. You go through it. So you must make specific provision. You must amend the Banking (Regulation) Act.

SHRI P. CHIDAMBARAM : We will see if necessary. What I understand is that the Banking (Regulation) Act and RBI's guidelines require certain capital adequacy in the bank. If the bank has retained a large amount of profits and those profits are put in the 51 per cent of equity in a depository, I am sure, the Reserve Bank guidelines will take care of the capital adequacy requirements of the bank. But if there is a problem, as my learned friend points out, I shall look into it. I do not think there will be any problem. I will keep this in mind. I am sure capital adequacy of the banks cannot be eroded by transferring retained profits into a depository an affecting that capital adequacy requirement.

SHRI SURESH PRABHU : There is no capital adequacy.

SHRI P. CHIDAMBARAM : Sir, I would request the hon. Member to withdraw his Statutory Resolution.

[Translation]

SHRI GIRDHARI LAL BHARGAVA : The hon. Minister has clarified several points but on some points, the new Members like me are not yet satisfied. I do not believe in tall talks. Moreover, I don't fear that the hon. Finance Minister would cut down our allowances. My submission is that the JPC detected a scam involving more than Rs.6 thousand crore after a hardwork of 18 months. I know that you have been a Minister in the previous Government and today also, you are occupying the same seat. You have never been to this side. Today, the United Front Government should inquire into this matter seriously and full responsibility. Mr. Chairman, Sir, you are also Member of this House. We should be told how this scam occurred, who were the beneficiaries and how much money has been recovered. The children

ask us about Harshad Mehta. Is he a dacoit or an angel or something else? The facts about Harshad Mehta. Is he a dacoit or an angel or something else? The facts about the Security Scam should be brought to the fore. Now you have taken charge of the Ministry and by now you would have get all related files. Fortunately, you have become the Finance Minister. Even if this matter is not inquired into now, then who would expose the facts? I don't know how long your Government would last. I apprehend if it will get one or two months time. Then you would say that this Government was sacked...*(Interruptions)* Please wait. This ordinance was promulgated on 20th September and the Bill was passed on 6th December. Please tell us on the basis of your experience as to what suggestions were received by you upto 20th September, 1995. Shri Chatterjee forgot to pointout this thing. He had said that the reports were available with him. These should be sent to the Standing Committee for consideration on the suggestions. This Depositories Act is being enacted for protecting the interests of small investors and for flawless functioning of the capital market. You have told that SEBI will have the power to issue certificate but it is not clear as to whether foreign companies would be given this certificate or not? The National Front Government is a combine of 13 political parties and it is also influence by the foreign companies. If this Government gets out of this influence, it can function smoothly for some more days. I am talking in its own interest. It will be good if this Government is voted out of power at the earliest. I have asked about the authority which would be given the power of opening the depositories. Whether the SEBI officials, RBI officials and the persons with economic expertise would be given powers? It has not been replied to. You have also not said anything about the agency which would conduct the audit of these depositories. Suggestions of two senior Members have been mentioned in the reply but the suggestions of new Members like me have been ignored. Mr. Chairman, Sir, a little attention should also be paid towards us. We are learning from the hon. Finance Minister. The rate schedule and the service charges of Depositories should also be clarified. Who will bear the loss in case of fraud in a depository? Its functioning should be transparent and based on computerised system. Some senior Members have given suggestions that manual records should also be maintained simultaneously. But the hon. Minister has said nothing about it. I have not heard. It is different if you have heard. You did not stat that.

You should have said that the public limited companies having a capital of Rs.100 crore would have the rights to start depositories but you did not say even a single word about it. You only said as to how the Sake shares are to be checked. A veteran Member had said that the provision should be made for imposing fine and imprisonment to check irregularities but you did not utter even a single word in this regard.

Lastly, it was said that the Board of Comptroller and Auditor General should audit the accounts of banks also but you did not answer to that too. Would you please answer to that question? Your answer is not satisfactory about introducing the Ordinance. It is the old convention that you approach the hon'ble President to get an Ordinance promulgated. This time also, you did not inform us about that and straightway approached the hon'ble President. He might have not asked about the reasons. Senior Minister went there and got the Ordinance signed and promulgated. You should have informed this House about the reasons for promulgating the Ordinance. A Committee, called Standing Committee, is to be constituted. It would be better if this Bill would have been referred to that Committee and it would have considered suggestions given by us. It was a month of December and you were in a hurry because the Government was going to fall. You think that this Government will last long but we do not think it will complete its tenure. You should refer it to the Standing Committee because the Committee consists of Members from all parties. Had all the suggestions been considered in the Committee and then introduced a comprehensive Bill, the loss would not have incurred in the transaction in regard to the Securities Scam. It would be better if you think over any suggestions deeply. I myself support this Bill but oppose to bringing Ordinance. I would like to request the hon'ble Minister to refer this bill to the Standing Committee. If he does not do so what can I do. He is in the majority but ours is a small party. In such a situation I will have to yield. I comply with the orders of the Chair. Therefore, I support his bill and withdraw my proposal. But if the hon'ble Minister accepts my request to refer it to the Standing Committee I will thank him, otherwise, I will feel sorry at home thinking that the hon'ble Minister did not accept my suggestions. With these words, thank you very much.

MR. CHAIRMAN : Hon'ble Ministers request is that you should withdraw your proposal.

SHRI GIRDHARI LAL BHARGAVA : I have already said that I withdraw it. What can I do more than that? I am helpless.

[English]

MR. CHAIRMAN : Has the hon. Member leave of the House to withdraw this Statutory Resolution?

SEVERAL HON MEMBERS : Yes.

The Resolution was, by leave, withdrawn.

SHRI SURESH PRABHU : I will request the hon. Finance Minister to just make a statement that he will also introduce a comprehensive Bill to protect the interests of the small investors.

MR. CHAIRMAN : I think, you have made this request earlier also.

The question is :

"That the Bill to provide for regulation of depositories in securities and for matters connected therewith or incidental thereto, be taken into consideration."

The motion was adopted.

SHRI NIRMAL KANTI CHATTERJEE : Mr. Chairman, Sir, at this stage I want to make one request to the hon. Finance Minister. Certain things are there in the regulations. It has to be considered whether some part of the regulations can be embodied in the Act itself or not. The Ordinance is a compulsion. The Ordinance has to be embodied in the Act, otherwise, it may fall through.

Therefore, what I am suggesting is that the Finance Minister may consider this that we pass the Bill today but when we re-assemble on 26th August, let him come with an amending Bill. The Act is there. So there is no difficulty with the Ordinance.

MR. CHAIRMAN : Shri Nirmal Kanti Chatterjee, your suggestion is there. It is for the Government to decide on your suggestion. Let us get the Bill passed first.

SHRI NIRMAL KANTI CHATTERJEE : At the third reading stage I could have said this but before that I am just making this request.

MR. CHAIRMAN : Anyway, let us get the Bill passed. Let us dispose of this Bill.

SHRI NIRMAL KANTI CHATTERJEE : An amending Bill may be brought forward and that may be sent to the Standing Committee.

MR. CHAIRMAN : The hon. Minister might have taken into consideration your suggestion and he will do it.

The House will now take up clause-by-clause consideration of the Bill.

MR. CHAIRMAN : The question is :

"That clauses 2 to 31 stand part of the Bill."

The motion was adopted.

Clauses 2 to 31 were added to the Bill.

MR. CHAIRMAN : The question is :

"That the schedule stand part of the Bill."

The motion was adopted.

The Schedule was added to the Bill.

MR. CHAIRMAN : The question is:

"That clause 1, the enacting formula and the Long Title stand part of the Bill."

The motion was adopted.

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

MR. CHAIRMAN : Now the Minister may move that the Bill be passed.

SHRI P. CHIDAMBARAM : Sir, I beg to move :
"That the Bill be passed".

MR. CHAIRMAN : Motion moved :
"That the Bill be passed"

SHRI NIRMAL KANTI CHATTERJEE : Sir, at this stage, my suggestion is relevant.

PROF. RASA SINGH RAWAT : The hon. Minister has not mentioned about the Standing Committee.

SHRI NIRMAL KANTI CHATTERJEE : What I am suggesting is, let this Bill be passed but let him bring an amending Bill along with the regulations. Let us discuss that when we resume our Session on 26th of August so that we can consider it indepth.

SHRI P. CHIDAMBARAM : Sir, clause 27 says that every rule and every regulation made under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in Session, etc. etc.

Now that the Bill is being passed, let SEBI take a look at the regulations. With or without modifications made by SEBI, these regulations will be placed on the Table of the House. Then, if some hon. Members wish that some part of the regulations should be included in the Bill, they may let me know. Surely, I will consider what part of the regulations must be made a part of the Bill. Let them first take a look at the regulations when they are placed on the Table of the House.

SHRI NIRMAL KANTI CHATTERJEE : You send it to the Standing Committee

SHRI P. CHIDAMBARAM : Only if it is necessary, will it be sent. If you are satisfied with the Regulations, then why should it be sent to the Standing Committee?

MR. CHAIRMAN : The question is :
"That the Bill be passed."

The motion was adopted

16.58 3/4 hrs.

STATUTORY RESOLUTION RE : DISAPPROVAL
OF THE SUPREME COURT AND HIGH
COURT JUDGES (CONDITIONS OF SERVICE)
AMENDMENT THIRD ORDINANCE, 1996

AND

SUPREME COURT AND HIGH COURT JUDGES
(CONDITIONS OF SERVICE)
AMENDMENT BILL

MR. CHAIRMAN : The House will take up Item Nos. 9 and 10 together. Time allotted is one hour.

16.59 hrs.

(Mr. Deputy Speaker in the Chair)

JUSTICE GUMAN MAL LODHA : Hon. Deputy Speaker, Sir, the Supreme Court and High Court Judges (Conditions of Service) Amendment Bill, 1996 is sought to be introduced as a consequence of a series of Ordinances.

17.00 hrs.

The Supreme Court and High Court Judges (Conditions of Service) Amendment Bill was first introduced as an Ordinance on 29th February, 1996 and later in the form of a Bill to replace the Ordinance. But on account of some serious lapses and mismanagement of the Government and the Party in Power at that time, this Bill could not be placed for the consideration of the House. Then, they came out with the second Ordinance. But to our great surprise - and it would be shocking to hear and note that - the second Ordinance again lapsed and then they came out with the third Ordinance. This is the result of prostitution of ordinance-making power under the Constitution.

Article 123 (1) of the Constitution specifically mentions that the Ordinance-making powers are to be used very sparingly in rarest of the rare cases. It says :

"If at any time, except when both Houses of Parliament are in Session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require."

Kindly note the words, 'the satisfaction of the President and existence of circumstances which make him necessary to take immediate action'

So far as the amenities and perks of the High Court and Supreme Court Judges are concerned, I am here to support them and I would support them when I come to the merits of the Bill and Ordinance. Therefore, I should not be misunderstood for having opposed them. But what I want to submit is that these conditions of service are there in the form of an Act, an Act which is basically of 1954. Since then various amendments had taken place from time to time and there was another amendment of the Act in 1958 and 1956. From 1958 we are now in 1996 and the question is regarding sumptuary allowance and travelling allowance or use of the car and for that purpose allowance in terms of money and petrol whatever it may be.

Now on one fine morning, the President finds that an emergency has existed or the emergency has arisen which requires his immediate action. The question is of increasing the money and that question can be taken up prospectively or retrospectively at any time when Parliament is in Session. The Parliament meets so often, at least three times in a year. Therefore, it is impossible to conceive of an emergency where His Excellency, the President, in his extraordinary emergency powers, can