private sector. I do not know what sort of logic and economic consideration can justify it.

13.02 hrs.

CENTRAL AND OTHER SOCIETIES (REGULATION) BILL

(i) Report of Joint Committee

SHRI NITIRAJ SINGH CHAUDHARY (Hoshangabad): I beg to lay on the Table a copy of the Report of the Joint Committee on the Bill to provide for the incorporation, regulation and winding up of Central societies and declared Central Societies and regulation of aided Union territory societies and amalgamation of Central societies or added Union territory societies with similar societies and for matters connected therewith or incidental thereto

(ii) Evidence

SHRI NITIRAJ SINGH SHAUDHARY: I beg to lay on the Table the record of Evidence tendered before the Joint Committee on the Bill to provide for the incorporation, regulation and winding up of Central societies and declared Central societies and regulation of aided Union territory societies and amalgamation of Central societies or aided Union territory societies with similar societies and for matters connected therewith or incidental thereto.

13.04½ hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS Sixty-fifth Report

SHRI G. G. SWALL (Autonomous Districts): I beg to present the Sixty-fifth Report of the Committee on Private Members' Bills and Resolutions.

MR. SPEAKER: The House stands adjourned for Lunch to meet at five minutes past 2 O'clock.

13.05 hrs.

The Lok Sabha adjourned for Lunch till five minutes past Fourteen of the Clock.

The Lok Sabha reassembled after Lunch at eight minutes past fourteen of the Clock.

[Mr. Deputy-Speaker *in the Chair*]

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL—*Contd.*

MR. DEPUTY-SPEAKER: We take up further consideration of the following motion moved by Dr. V. A. Seyid Muhammad on the 11th August 1976,

namely:—

"That the Bill further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963, as reported by the Joint Committee, be taken into consideration".

SHRI R. R. SHARMA will continue his speech.

श्री राम रतन शर्मा (बांदा) : उपाध्यक्ष महोदय, क्लाज 27 जिस में सेक्शन 80 को अमेंड किया गया है उस के बारे में मैंने एक अमेंडमेंट दिया है। दफा 80 को अमेंड करते समय जैसी कि सेलेक्ट कमेटी की राय थी और ला कमीशन की भी राय थी उस का ध्यान न रखते हुए पता नहीं किन कारणों से दफा 80 के नीचे एक सब-क्लाज जोड़ दिया गया जिस के कारण दफा 80 के द्वारा जो राहत आप देना चाहते हैं वह राहत मिल नहीं पायी।

आप देखिये क्लाज 2 में है :

"But the Court shall not grant relief in the suit, whether interim or

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otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit."

आप को पता है कि अदालतों में खास तौर से मुफस्सिल अदालतों में, जिला कचहरियों में बहुत कम बड़े आदमी लिटिगेशन को आते हैं। सब से छोटे और सताए हुए लोग मुकदमा दायर करते हैं। परमानेंट इंजंक्शन के लिए। एक उदाहरण देखिये। नगरपालिका की जमीन पर या और कहीं मैं रह रहा हूं, वर्षों का बना हुआ मेरा मकान है मुझको जबरदस्ती वहां के आफिसर निकाल दे रहे हैं और मकान गिराना चाहते हैं। मैंने मुकदमा दायर किया। मुकदमा दायर करने की अदालत ने स्वीकृति भी दे दी परन्तु टेम्प्रेरी इंजंक्शन नहीं दिया क्योंकि उसके लिए नोटिस देना आवश्यक है और अदालत से लौटने के बाद मैं देखता हूं कि नगरपालिका अधिकारियों ने मेरा मकान गिरा दिया। मुझे राहत कहां मिली। दफा 80 की नोटिस आप ने कुछ प्रतिबन्धों के साथ खत्म कर दी। इसके पहले दो महीने पहले तो हम दायर ही नहीं कर सकते थे स्टेट आफिसर या गवर्नमेंट के खिलाफ, यह आप ने एक बड़ी राहत दी थी दफा 80 में नोटिस को खत्म कर के क्योंकि आप ने उस में कहा—

"A suit to obtain urgent or immediate relief against government including the government of the state of Jammu and Kashmir."

आप ने यह कहा कि अगर अरजेंट और इम्मीडेएट रिलीफ का प्रश्न है तो मामला दायर किया जा सकता है। उस में दो महीने के समय की आवश्यकता नहीं है लेकिन इस के बाद जो आप ने दिया वह आप ने ले लिया क्योंकि आप टेम्पोरेरी इंजंक्शन नहीं दे रहे हैं। हम को कोई रिलीफ मिली नहीं हम ने कोर्ट फीस लगाई वकील का मेहनताना दिया और फिर कोई रिलीफ भी नहीं मिली। तो इन को आप जरा ध्यान से देखें और मंत्री महोदय नीचे लिखे वाक्य को निकालने का आश्वासन दें :

"The court shall not grant relief in the suit."

यहां से अलग तक। इस सम्बन्ध में मैंने अमेंडमेंट दिया। जब वह अमेंडमेंट आएगा तो मैं इस के बारे में और ज्यादा कहूंगा।

क्लाज 43 सेक्शन 115 के बारे में मुझे कुछ निवेदन करना है। इस में रिवीजन का जुरिस्डिक्शन है। अभी तक रिवीजन का जुरिस्डिक्शन हाईकोर्ट को था प्रस्तुत सी पी सी में जिस का कि अमेंडमेंट हम लोग यहां पर देख रहे हैं। रिवीजन के जरिस्डिक्शन के संबंध में तमाम हाई कोर्टस ने अपने अलग अलग अमेंडमेंट दिए थे। इलाहाबाद हाई कोर्ट ने अपने अमेंडमेंट में डिस्ट्रिक्ट जज को भी रिवीजन पावर दी थी।

जब इस में बहुत दिक्कतें आयेंगी। मैं बहुत संक्षेप में कहूंगा। नये नये मुंसिफ मैजिस्ट्रेट आते हैं। उन को वर्षों सी पी सी समझने में लगते हैं। अब उत्तर प्रदेश में मुंसिफ-कम-मुंसिफ मैजिस्ट्रेट कर दिये गये हैं। अब और ज्यादा परेशानी हो गई, वर्षों न उन को क्रिमिनल ला समझ में आता है न सिविल प्रोसीजर कोड को वे समझते हैं। बहुतों को एक्स-पार्टी डिक्री और एक्स-पार्टी प्रोसीडिंग में अंतर समझ में नहीं आता। ऐसे मुंसिफों और ऐसे मैजिस्ट्रेटों के खिलाफ

आप अपर रिवीजन की पावर वापस लेते हैं कि जब उन को नहीं देख सकता तो यह अन्याय होगा। इसलिए मेरा निवेदन है कि आप रिवीजन की पावर्स रखें। हाई कोर्ट के साथ साथ डिस्ट्रिक्ट जज को भी यह पावर दें। लेकिन इंटरलोक्यूटरी आर्डर के रिवीजन के हम खिलाफ हैं। जैसे कि हम लोगों ने सी आर पी सी में किया है आप का बिल था सी आर पी सी का, उस को पास किया, कान्करेंट जुरिस्डिक्शन आप ने उस में दिया है। रिवीजन की पावर हाई कोर्ट को और डिस्ट्रिक्ट जज को स्टाइमलटेनियसली है, लेकिन इंटर लोक्यूटरी आर्डर में नहीं है। यह इंटर लोक्यूटरी आर्डर जावता फौजदारी में डिफाइन नहीं किया गया। उस में वेरियस हाई कोर्टस की अलग अलग रूलिंग इन्टरलोक्यूटरी आर्डर के सम्बन्ध में हुई है। अब इस बिल में इस को डिफाइन करने के साथ साथ इंटर लोक्यूटरी आर्डर में रिवीजन को खत्म कर दिया जाय और फाइनल आर्डर का रिवीजन रखा जाय और उस में दोनों कोर्टस जिला जज एवं उच्च न्यायालय को पावर दी जाय।

अब एक बात यहीं पर मैं और कहना चाहूंगा जिस से मेरे इस कथन को और समर्थन मिलता है, वह यह कि अलग अलग हाई कोर्टस ने मुंसिफ मैजिस्ट्रेटों और अधीनस्थ न्यायालयों के लिए कोटा फिक्स कर दिया है अभी हाल में।

मैं बाकी हाई कोर्टस के बारे में तो नहीं जानता लेकिन इलाहाबाद हाई कोर्ट ने जैसा कोटा फिक्स किया है उनको मैं बतलाना चाहता हूं : दो हजार वैलयुएशन तक के जो मुकदमे हैं वह मुंसिफ करेंगे, जब वे 5 मुकदमे करेंगे तो वह उनका 4 दिन का काम माना जायेगा। इसी तरह से फौजदारी में एक दिन का काम 5 कंटेस्टेड केसेज अदर दैन आई पी सी के। आई पी सी के समान केसेज के तीन फैसले दो दिन का काम माना जायेगा और वारन्ट केस का एक फैसला एक दिन का काम माना जायेगा। इस तरह से यह रखा गया है जिसमें मेरा एप्रीहेंसन है कि हाई कोर्ट केवल केसेज का डिस्पोजल चाहता है, जस्टिस नहीं। हमने बहुत सुना है—जस्टिस डिलेड इज जस्टिस डिनाइड—यह बहुत अच्छा प्रिंसिपल है लेकिन क्या यह बात नहीं है— जस्टिस हरीड इज जस्टिस बरीड? न्याय में शीघ्रता कर दीजिए तो फिर जस्टिस नहीं मिलेगी, फिर न्याय नहीं मिल पायेगा जबकि न्याय के लिए ही आपने उनको वहां पर बिठाया है। मैं आपसे खास तौर पर बार बार कहूंगा कि चूंकि मुझ को अधीनस्थ न्यायालयों का अच्छा अनुभव है इसलिए जानता हूं कि वहां पर लोग पैसे के बल पर न्याय खरीद सकते हैं। इसके बाद अगर कार्टस को इनेब्लिंग प्रोविजन्स नहीं रहेंगे कि वह फैसले को देख सकें तो आप उन गरीबों के साथ कोई न्याय नहीं करेंगे। इसलिए मेरा निवेदन है कि इसको आप कृपा करके देखें और इसकी पावर्स, खास तौर से 115 में जिस तरह से मैंने अमेंडमेन्ट दिया है उसको स्वीकार करने का कष्ट करें।

क्लाज 48 के बारे में मैंने टेकनिकल सा अमेंडमेन्ट दिया है। इसको मन्त्री महोदय देखेंगे और अगर सम्भव समझेंगे तो स्वीकार करेंगे करना यह लाइक्स पैराडाइज बन जायेगा और तरह तरह से इसका इन्टर-प्रिटेशन किया जायेगा जिससे दिक्कत बढ़ेगी। इसको भी मन्त्री महोदय साफ करने का प्रयत्न करें।

Clause 48 says:

"In section 144 of the principal Act,—(i) in sub-section (1) for the words 'varied or reversed, the Court of first instance,' the words 'varied or reversed in any appeal, revision or other proceeding or is set aside

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or modified in any suit instituted for the purpose, the Court which passed the decree or order" shall be substituted;"

इस में चार-पांच तरह की परिस्थितियां आती हैं। पहली यह कि अपीलेट कोर्ट ने जजमेंट को सेट असाइड कर दिया ! दूसरी परिस्थिति यह आई कि रिवीजनल कोर्ट ने जजमेंन्ट को सेट असाइड कर दिया तीसरी परिस्थिति यह आई डिवीजन और अपील को छोड़ कर किसी दूसरी प्रोसीडिंग में उस जजमेन्ट को सेट असाइड कर दिया हो। चौथी परिस्थिति आई–

"set aside or modified on any suit instituted".

को मुकदमा हमने डिक्री के खिलाफ दायर कर दिया, वह सूट इन्स्टीट्यट हुआ और उसमें किसी ओरिजनल कोर्ट ने उस डिग्री को सेट असाइड कर दिया हो। लेकिन एक बात आप भूल गए। आपने रिव्यू के प्राविजन्स रखे हैं। क्लाज, 72, आर्डर 47 में रिव्यू के प्राविजन्स पहले भी थे और आज भी हैं। लेकिन अगर वही कोर्ट रिव्यू करती है तो केस क्लाज 48 में कवर नहीं होगा। इसलिए मैंने कहा है इसके बाद आप इस तरह से सुधार दें :

"appeal revision or other proceedings are set aside or modified in any suit instituted or review application made for the purpose".

यह मेरा निवेदन है। यह बहुत टेक्निकल सा है और इससे बात साफ हो जायेगी और सभी परिस्थितियों का समावेश हो जायेगा।

क्लाज 86, पेज 77 में जो टेम्परेरी इंजक्शन के प्राविजन थे, उस में बहुत अच्छी बातें कही गई हैं। उन प्राविजन्ज को अपनी जगह पर जिस तरह से कठोर किया गया है, मैं उन का समर्थन करता हूं। लेकिन एक बात और कहना चाहता हूं—सब-क्लाज 3 में है—

copies of documents on which the applicant relies.

इसकी कापीज भी देनी पड़ेंगी। आप ने कहा है–कई पत्रों की कापीज देनी पड़ेंगी। एप्लिकेशन के साथ वे कापीज दी जायेंगी। मैं प्राविजों (ए) पढ़ रहा हूं—

"(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with——

(i) a copy of the affidavit filled in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies."

(iii) copies of documents on which the applicant relies."

मैं फिर उसी गरीब आदमी का केस ले रहा हूं—मैंने एक मुकदमा दायर किया कि यह मकान मेरा है, मैंने इस को किसी से खरीदा था। आज सवेरे कुछ लोग आये और मुझ से कहा कि निकल जाओ, वरना तुम्हारे हाथ पैर तोड देंगे। मैं यह मुकदमा परमानेन्ट इंजक्शन का लेकर आया। परन्तु मेल-हैंड की काफी बदकिस्मती से खो गई है और उस को लेने में मुझे 15–20 दिन लगेंगे। अगर मैं उस टाइम का इन्तजार करूंगा तो परमानेन्ट इंजक्शन का मुकदमा टेम्परेरी इंजक्शन दायर करने के बाद जब तक डाकुमेन्ट की प्रतिलिपियां नहीं दी जाती नहीं मिलेगा। मुझे तो वे बाहरी मकान से बाहर फेंक देंगे। मैं इस जिले से आता हूं जो बहुत दिनों से क्राइम्ज के लिये मशहूर रहा है। जहां पर इस तरह के केसेज होते

रहे हैं। गरीबों, मजदूरों को तरह तरह से परेशान किया जाता रहा है। ठीक है जब से एमरजेन्सी आई है, हालत सुधर गई है और वे लोग अपने-अपने बिल में घुस गये हैं, लेकिन इस से पहले जिस जिले में रहना मुश्किल था। मेरा निवेदन है इसको आप मेनडेटरी न करें क्योंकि बगैर इसके जस्टिस नहीं मिलेगी। मेरा निवेदन है आप इसको पुनः देखने की कृपा करें।

मुझे प्रसन्नता है, आज मुझे आपका वह अमेन्डमेंन्ट मिला जिसमें आप राज्य सरकारों को कहेंगे कि गरीबों के लिये पैसे का इन्तजाम किया जाये। जिस तरह से मैं ने आर० पी० सी० में आपने गरीबों को न्याय दिलाने के लिए कहा है कि सरकारी खर्च पर सब-मेशनट्रायल में वकील मिलेंगे उसी तरह से इसमें कहा है जिसके लिए मैं बधाई देता हूं।

इसके साथ साथ मैं संक्षेप में दो तीन बात और कहना चाहता हूं। मुन्सिफ और जज बहुत ही लो-पेड हैं। इस तरह से उनका कोटा बांध दिया गया है लेकिन फैसिलिटीज नहीं है। मुन्सिफों को टाइपिस्ट नहीं मिलते कि जजमेंट लिखा दें। वे दिन भर बहस सुने, नोटस बनाये और रात को जजमेंन्ट लिखें --यह ह्यूमनली पासीबिल नहीं है। आप उनकी सुविधाओं की तरफ भी ध्यान दें। उनकी तनख्वाहें भी बढ़ाई जायें। आज एक मुन्सिफ को शुरू में 500 या 600 मिलते हैं जो कि एक क्लर्क को भी मिल जाते हैं। उनको रहने के लिए क्वार्टर्स भी नहीं मिलते हैं। मकानों के एलाटमेंट की एथोरिटी डिस्ट्रिक्ट मैजिस्ट्रेट को होती है, वह पहले अपने अधीनस्थ अधिकारियों को एलाट करता है। बाद में कहीं जगह बचती है तो जूडीशियल की तरफ ध्यान देता है। उसमें भी पहले सीनियर जज को देगा और बाद में मुन्सिफ को। अच्छा हो कि राज्य सरकार डिस्ट्रिक्ट जज के अन्डर में मकानों का कोटा अलग कर दे कि और जिला जज अपने अधीनस्थ अधिकारियों को एलाटमेंन्ट करे। इसी तरह से वहां पर रिकार्ड रूम की स्थिति बहुत ही खराब है। बरसात में वह टपकते हैं और रिकार्ड ठीक मिलते नहीं हैं। यह सारी बातें हैं जनको भी आप ध्यान में रखें।

इसके साथ मेरा निवेदन यह है कि जैसे ही किसी मुकदमे का फैसला हो हारे हुए आदमी को उस फैसले की कापी बिना किसी चार्ज के दी जाय। सरकार को कोर्ट फीस से जूडीशियरी में काफी आमदनी है, अगर हारे हुए आदमी को यह कापी फ्री दे दी जाय तो इस में कोई नुकसान नहीं होगा। बहुत से ट्रिब्नल्ज में ऐसी कापी फ्री मिलती है, क्रिमनल प्रोसिजर कोड के अन्तर्गत भी जिस आदमी को सजा हो जाती है उस को भी बिना किसी पैसे के फैसले की कापी दी जाती है, उसी तरह से इस में भी हारे हुए आदमी को बिना किसी पैसे के फैसले और डिग्री की नकल दिलाने का प्रावधान कर दीजिये।

फाइलों के मुआयने का काम दिन-प्रति-दिन होता है, मैं चाहता हूं कि इस में भी कोई कोर्ट फीस न ली जाय। इस समय अगर कोई आदमी किसी फाइल का मुआयना करने जाता है तो उसे फीस देनी पड़ती है गरीब और अमीर को बराबर पैसा देना पड़ता है, मैं चाहता हूं कि इस में पैसा न लिया जाय और कोर्ट का रिकार्ड उस को देखने दिया जाय।

कोर्ट फीस की कमी के लिये सीलेक्ट कमेटी ने भी कहा है और मेरे कई दोस्तों ने यहां भी जिक्र किया है। कम से कम यूनि-

[श्री रामरतन शर्मा]

यन टेरिटरीज में, जो आप के अधिकार क्षेत्र में आती है, आप कोर्ट फीस कम कर दें, इस से दिल्ली में भी सम्बल मिलेगा, वे कह सकेंगे कि यूनियन टैरिटरीज में सैन्ट्रल गवर्नमेंट ने कोर्ट फीस कम कर दिया है, इसलिये उन्हें भी कम करना चाहिये ।

इन शब्दों के साथ में इस बिल का समर्थन करता हूं ।

MR DEPUTY-SPEAKER. We had a balance of one hour and ten minutes when we started, and out of that, Mr. Sharma has taken about 18 minutes. There are still a number of Members who want to speak. I would like to know what you want to do about it

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K RAGHU RAMAIAH): I suggest that the general discussion may close around 3 30; the Minister may be called at 3.30 and after that, we take up clause-by-clause consideration.

MR. DEPUTY-SPEAKER Mr. Jagannath Rao.

SHRI JAGANNATH RAO (Chatrapur): I rise to support the Bill as it has emerged from the Joint Committee, but while doing so, I wish to make some observations generally and also in respect of certain Clauses

The objects of the Bill as originally introduced have been enumerated as

"(i) that a litigant should get a fair trial in accordance with the accepted principles of natural justice;

(ii) that every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;

(iii) that the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases."

I wonder whether any of these three objectives will be achieved by this Bill. Let us not flatter ourselves that this amending Bill, as it has emerged from the Joint Committee, will be able to achieve any of these objects. The Code of Civil Procedure is a complicated thing. It was framed in 1908. We have streamlined it here and there, we have removed some hardship here and there and codified some of the legal decisions and we have removed certain conflicts in decisions. But that does not mean that the litigant is able to get speedy justice or justice at less expense. Let us be clear about it I do not blame anybody, but by the civil Procedure, as it stands, none of these objects can be achieved.

I am glad that some of the provisions which have been introduced are really good. They have removed the doubts and conflicts in respect of judicial decisions which had prevailed, each High Court giving a different decision about a particular matter. That has now been set at rest For instance, in section 11, *res judicata*, there was a conflict of judicial decision, whether the decision of a court with limited jurisdiction can operate as *res judicata* in a subsequent proceeding between the same parties in a higher court. There was a conflict of decisions and now it is set at rest by saying that the decision of the lower court with limited jurisdiction will operate as a *res judicata* in a subsequent suit between the same parties in a court with higher jurisdiction.

14 hrs.

Secondly, it is also made clear that the principle of *res judicate* applies to execution proceedings. It is a good improvement.

So also Section 60 of the original Act has been amended which has given greater concessions to the judgment-debtor from arrest and also from attachment of his salary. That will relieve some hardships.

Then, I come to Section 80—notice to Government and officers of the Government. The Law Commission in its two reports have recommended the deletion of this Section. The Bill as originally introduced also deleted that Section but the Committee, in its wisdom, found that the notice should be there so that cases which are genuine might be settled out of court by the Government so that unnecessary expenditure need not be incurred by the litigant and also the litigant need not undergo unnecessary expense and worry. But this Section which is being restored should not be understood in favour of the Government but the Government should deem it a duty to see that whenever a notice under Section 80 is received, it should examine the claim of the aggrieved citizen and see that it is settled if it is genuine so that litigation could be avoided. Otherwise, the Government or the Government officers never bothered to look into the notice. The litigant is at a loss and he has to go to the court. The purpose was not being served. Now, I hope with this amendment, the litigant will not be driven to the court to file a suit. In cases, of course, where the Government feel that the claim is genuine, it could be settled and avoid the litigant from going to the court.

About Section 100 which speaks of Second Appeals, they have introduced the words 'substantial question of law'. The wording earlier was 'on a question of law a second appeal shall lie'. That is the wording under the existing Section 100 of CPC. But they have now put the words 'on a substantial question of law'. A substantial question of law should be involved for a second appeal. What does it mean? Suppose the decision of a suit depends on a question of limitation where the plaintiff files a suit and the defendant contests the suit as barred by time, is it a substantial question of law or is it only a technical question of law? If the latter is upheld, the appeal fails. Therefore, I cannot understand why 'on a substantial question of law' have been introduced in Section 100. I think really it is taken out of the Constitution where it is said 'substantial question of law involving the interpretation of the Constitution'. There is an Article in the Constitution. That has been copied here. But I believe the Minister will agree with me that any question of law which has the effect of deciding the result of the case should be considered as a substantial question of law

Then, Section 115 has been amended so as to take away the powers of revision of the High Courts against interlocutory orders. This Revision was causing a lot of inconvenience to the litigants against interlocutory orders filed in courts which are pending for years and the suits are being stayed This has been taken out. Of course, the power of revision of the High Courts is there where no appeal lies. It is there. I fully endorse this amended clause.

Then, I come to Order XX. About judgments a new clause has been introduced. The judgments should be delivered within a fortnight of the closing of the hearing of the case. If that is not possible, with notice to the parties, it should be done within 30 days. This is very salutary. If the court finds that it is not possible to deliver the judgment within 30 days, for reasons to be recorded in writing, it can postpone the delivery of the

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judgment to a subsequent date giving notice to the parties. Therefore, the purpose of the amendment would not be served ordinarily in cases where the Judge has to give notice to parties of judgment at a later date and I do not think the litigant will be benefited.

I am glad that another new Order—Order XXA has been added which gives the party, the litigant the costs incurred by him prior to the filing of the suit. It is a good thing. Previously the plaintiff who obtained a decree could not get the costs incurred by him prior to the filing of the suit. Now, this has been included. It is a good improvement.

There is a new Order, Order XXXIIA which relates to suits relating to family matters. Now, under this provision, in such family suits the courts shall try to settle them before the trial begins. It is a good thing in family matters like a husband filing a suit for judicial separation or the wife filing a suit for maintenance. There the courts will come to the aid of the parties and *in camera* they could try to settle and see that they could come together. Family members are defined. It is a good provision. In most cases the courts will succeed in seeing that parties come to an understanding without undergoing the trouble of leading evidence on either side Similar provision should be made for suits also where the subject matter of the suit does not exceed Rs. 3,000. We have limited the right of appeal to suits where the subject matter is more than Rs. 3,000.

So, Sir, similar provision should be thought of here also so that the court would come to the rescue of the persons and see that the matter is settled.

We come to order No. 33 which was called *informa pauperis* and now it is called suit by indigent. Now the position is that assistance of lawyer would be given to the plaintiff. The High Court is authorised to frame rules as it deems fit but God alone knows when the high corut will frame such rules. Legal aid should not be taken as meaning only assistance of a lawyer. Now you are giving assistance of lawyer only to plaintiff who is indigent. But what about defendent who is also equally indigent? I am not talking about rich defendants but I am talking about indigent defendants. He is equally indigent and he should be entitled to legal assistance. This of course come within the purview of legal aid. So it should be considered.

There is also another proposal in the amending bill has been brought should be disposed of within 60 days. Under the election law, election petitions are required to be disposed of within 6 months but they are never disposed of within 6 months. They take years. So, it is only a pious wish. Much time is taken up in serving notice of the appeal on the respondents So, though it is a good thing, I doubt whether this will be achieved.

Sir, none of the objects for which the amending bill has been brought forward can be achieved by this amending bill. But the Bill is helpful in this respect. It has streamlined the procedure. It has removed doubts. It has removed conflict of judicial decisions by codifying the law.

On legal aid, the question is how the litigent can have in expensive justice and also speedy justice. Court fees have become major source of revenue for each State Government and every year they raise court fees. It is impossible for the litigent to pay such high court fees. The Law Minister told us that last year he had written to Chief Ministers about it. But there has been no effect so far. When I spoke on Law Ministry's Demands this year I said that court fees should be kept within reasonable a limits, and that they should not be raised. Administration of justice is also a function of a State which is a welfare State.

Then, Sir, another way of imparting inexpensive and speedy justice is to decentralise the courts. I said so on an earlier occasion also that the munsif/magistrate courts should be established at each block headquarters so that the litigant will not be compelled to take the witnesses to the nearby cities. The witness is the major source of expenditure for the litigants because witness is to be treated as an honoured guest get his evidence in his favour and so the expenditure on this account will be curtailed if the munsif courts are established in block headquarters.

Of course the Minister may say that this is a state subject. As regards Nyaya Panchayats, cases with a value of Rs. 500 or 1,000 should be given to them. Gram panchayats are throughout the country and we should try this experiment. Then only we can think of giving some inexpensive justice to the poor litigants.

This legal aid, as I said, should not be understood only as legal assistance. It really means assistance to establish legal rights or to defend one's right. Therefore we should also think of giving assistance to him during pre-litigation period for settlement of his claims.

Sir, this longwaited legal aid scheme should be introduced in one form or the other. We are appointing committees after committees. Mr. Justice Krishna Iyar's Committee report is a very good report. I have gone through it. Now, I understand that Mr. Justice Bhagwati Committee has been appointed to go into this question again. Why have Committees after Committees—I do not know.—without Government's coming to a decision? Let some decision be arrived at and then we shall later see whether we can improve upon it or review it or modify it, if necessary.

Administration of justice is part of the function of a welfare State. The litigant should not be penalised for going to courts to establish his right. The expense to be incurred by him should be as less as possible. You may increase the number of courts, decentralise them and have them at the block headquarters. There are so many ways of dispensing justice to the litigants at less cost.

SHRI B. R. SHUKLA (Bahraich): Mr. Deputy-Speaker, Sir, there are three codes operating in this country—Criminal Procedure Code, Indian Penal Code and the Code of Civil Procedure. Government has done well by bringing in amending Bills relating to these three Codes. Civil Procedure Code affects the lives and the affairs of the millions of this country Its application is not confined only to suits and proceedings in civil courts but these provisions are also made applicable even to the proceedings before a commission of inquiry and to various other Acts where the rights of parties come for determination. The provisions of this Bill aim at shortening the litigation and reducing its cost and streamlining the administration of justice and, to the extent, these things have been achieved through this Bill, they are welcome and they deserve the support of the whole House.

Many deficiencies have been pointed out. My respectful submission to the critics of this Bill is that they should not deem it as a panacea or a palliative for all the judicial ills prevailing in the judicial system Let us approach the provisions of this Code on their own merits. Sec. 80 and 115, have been the most controversial provisions in this House. Section 80 was enacted in the C.P.C. in order to give Government or its officer an opportunity to settle the claim of an honest litigant outside the court. The State is not supposed to indulge in the luxury of litigation for litigation sake. But, this salutary principle underlying this Section (80) was believed by the performances of the Government. Therefore, the Law

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Commission recommended for the deletion of the provision of two months' notice to Government before the institution of the suit. But, Government has rightly not accepted *in toto* the recommendation of the Law Commission. After all the functioning of the Government is not to be crippled by unscrupulous litigation. On the one hand the rights of the citizens are to be protected and at the same time the functioning of the Government is not to be paralysed. Therefore, a balance was expected to be struck in between the two extreme views and I am sorry that the Government has—by making some concession for the deletion of the necessity of notice prior to the institution of a suit—only indulged in self-defeating exercise in legislation. I give the following reasons in support of my contention.

It has been provided that with the leave of the court a suit may be instituted by a plaintiff when relief of urgent and immediate nature is sought in the plaint. Now, if the matter is urgent and immediate and if interim injunction or interim stay is not granted before hearing the other party then what is the use of allowing such suit to be instituted. Therefore, my submission is that Section 80 which is being newly inserted needs thorough change as suggested by the Members from the ruling party as well as the opposition parties.

We know that the actions of bureaucracy are increasingly impinging on the life and affairs of a citizen. Article 226 is sought to be curtailed. 32 is already suspended. Where the poor citizen is to go? The municipal authorities are abusing their powers and ordering the demolition of houses without the authority of law. If the citizen goes to the court and institutes a suit for permanent injunction seeking restraint on the action of the authority and he is allowed to file the suit without prior notice but if interim injunction is not granted then by the time notice is served on the public functionary and by the time injunction application is disposed of the house will be demolished. What will be the use of instituting such a suit? Therefore, my suggestion is that when there is necessity of granting urgent and immediate relief because substantial demage is likely to happen interim stay order or interim injunction should be given and that should be quickly and expeditiously disposed of within two to three weeks according to the time Government may think proper. That is as far as Section 80 is concerned.

Now, the whole procedure is directed towards shortening the length of litigation. We know that Section 115 CPC has been passed in such a way as to terminate the litigation in an expeditious way.

Government have come with certain amendments to section 115, but the second part of section 115 still leaves a big loophole which can be utilised by unscrupulous litigants, the rich with their purse to block the early disposal of the case. Therefore, my submission is that it should, as Shri R. R. Sharma has pointed out, be specifically provided in this amending Code that no revision shall lie against interlocutory order, and the district judge should also have concurrent jurisdiction, as provided in Cr. P. C. to hear revision against interlocutory order against the order passed by courts subordinate to the district judge.

The third thing relates to adjournments. Lawyers, law and the law courts are prominently coming in for contempt from those quarters which are ill-informed, uninformed and those who are ignorant of law. It is sought to be provided in this Code that if a lawyer is engaged in some other court that should not be the ground for adjournment. Lawyers work not always for fee only. A lawyer with a name and fame at the Bar is a most sought after lawyer and a litigant should not be deprived of the services of an eminent lawyer merely on the

technical ground that he is engaged in some other court. Dr. Katju used to have five or six cases daily in High Court. He opened one case of first appeal in one court, passed on to the other court to reply on behalf of the respondent. His junior was working in a third court. For God's sake, do indulge in the practice of putting a ceiling on everything on earth, but do not put a ceiling on merit and excellence in this country. This should not be done, particularly through the hands of two eminent lawyers like Shri Gokhale and Dr. Seyid Muhammad.

So far as the question of providing legal aid to the indigent litigant is concerned, I welcome it as a very salutary and commendable move on the part of Government. Up till now, concession was made only with respect to the payment of court fee. Now a pleader can also be appointed on behalf of a plaintiff. In the case of a defendant, if he has got a counter claim as a setoff, he can be treated in the same manner as the plantiff. But what about those millions of persons who have no home, no hearth, whose huts are being demolished, who need protection against the repacious acts of moneylenders? They also need protection An accused who has committed an act of pickpocketing, who has committed a murder, is given a lawyer in a criminal court under the Cr. P.C., but if a citizen who is not possessed of sufficient means is being sued by an unscrupulous plantiff, does he not need the protection of the State to defend his claim, to defend his right?

Therefore, my submission is that particularly when there is a dialogue going on for changes in the Constitution, when legal aid is sought to be incorporated as one of the directive principles in the Constitution, it is all the more in the fitness of things that aid to defendants who are indigent should be accepted in the same way as aid is sought to be extended to the plaintiff. So far as the delivery of judgment is concerned, there is a very good move that it can be dictated through shorthand and the judge need not wait for writing the judgement in a leisurely way.

One thing that is lacking is that there is no provision for filing written arguments. We know that judges and presiding officers sometimes do not touch those points which are raised at the bar and for which they have got no effective reply and therefore they conveniently ignore those points. In Cr. PC it has been provided that the parties can file written arguments. I want the incorporation of the same provision in CPC also.

I do not know how Mr. Chatterjee has a grouse about the provision for filing caveat; a very important and unprecedented measure is sought to be incorporated by this. Of course it shall be made workable. Mr. Chatterjee is an eminent advocate and has been objectively critical but after a certain stage he has fallen into his usual rut of party politics

SHRI SOMNATH CHATTERJEE (Burdwan): I have no views about caveat, I only say that it should be workable Have you got any whip on caveat? Then why talk about party politics?

SHRI B. R. SHUKLA. I am under the pressure of nobody and no whip has been issued. Previously caveat was confined only to Supreme Court, now it has been extended to lower courts. To that extent it is a welcome and important development. We know that the workload in law courts has increased beyond proportion and the number of judges should be increased Laws are passed very rapidly and they are multiplying day by day. There should be provision for good libraries, there should be good selection of judges. Unemployment among the lawyers is causing grave concern. If legal aid is provided to the poor clients, whether they are defendants or plaintiffs, the measure would be doubly blessed because it will help to relieve unemployment and it will help the poor litigants

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also. This surplus material is lying in a state of waste.

So far as the Bill is concerned it is welcome as far as it goes. Deficiencies are there but they can be rectified during the course of the working of the code. With this limited observation, I support wholeheartedly the provisions of the Bill with the request that the Minister should not listen to our views only by way of courtesy, he should ponder over the amendments which we have moved and he should consider them impartially and objectively and should be gracious enough to concede them.

15 hrs.

SHRI S. M. BANERJEE (Kanpur) I fully endorse the views expressed by my hon. friend Shri Somnath Chatterjee. Some of his points were supported by Shri Rao also There is a saying: justice delayed is justice denied We have our experience in courts of law. When the workers are denied justice either by the State Government or Central Government or by private mill-owners, they have to approach the courts of law and we have seen the plight of such workers. At every step they have to pay money. The intention was that litigation should be made least expensive But after reading the report of the Joint Committee can we say that they have achieved this? I admire some of the members who have given very thoughtful consideration to the entire matter and in their minutes of dissent, they have suggested—including Mr Daga of the ruling party—certain things which should have been included in the Bill But unfortunately many of their suggestions were not accepted The Minister himself admitted in his opening remarks that in the original Bill as introduced in the House, sections 80, 115 and 132 were proposed to be omitted I do not mind sections 115 and 132, but section 80 should have been omitted long ago. Section 80 says that 60 days' notice should be given by anyone who notice to move the court of law. After dismissal or termination of service or premature retirement etc., an employee has to give notice of 60 days to the employer before going to the court. The intention was that this period will be utilised by the government or the employers to find out whether any injustice has been done to that employee. But it is never done. In the defence industry itself, there are hundreds of notices under section 80. My hon. friend, Mr. Chatterjee gave notices in almost all the cases of illegal dismissal and termination of service of defence employees. But even after two or three months passed nothing happened and he had to approach the High Court in the form of a writ petition under article 226. This is the main worry of the Central Government employees so far as artice 226 is concerned, because section 80 is not taken seriously. Nobody takes seriously the unstarred question put in this House. The replies given are generally wrong. Unless we put a starred question and also many supplementaries, the actual answer will never come. That is my experience and may be that was your experience also, Sir, as an ordinary member So I fully support amendment No 17 given notice of by Shri Chatterjee that section 80 should be omitted Nothing is going to be lost if this section is omitted It has no utility As I said in the Bill as introduced, it was omitted I do not doubt the wisdom of the Joint Committee Generally I rely on them, but in this case I do not know what forced them to accept the continuance of section 80, with certain modifications

Section 115 may or may not be there But its omission would have been better. Because in some cases, what happens is, some orders have been passed in a court of law In my case, when I was fighting the election petition in 1957 some amendment was going to be accepted by the High Court rightly or wrongly. I do not want to say because I do not want to question the wisdom of the judiciary I, in my wisdom engaged the late lamented Shri N. C. Chatterjee and I came to the Supreme Court against that order. I won my case. The judgment in my case is still shining, and that was the

wisdom of the late lamented Shri N. C. Chatterjee, who advised me to come to the Supreme Court. I came to the Supreme Court, knowing fully well that justice might be denied in the High Court. Such things do happen. I know if this provision remains, sometimes it is misused, I agree. But merely because something is misused, if you take it away, it is wrong. Take the case of MISA, which was meant to be used against right reactionaries. Now they use it against left forces also. Could we ask that it should be taken away on that score? Merely because a power has been misused by somebody, that should not be the ground for taking it away.

To clause 68 Shri Somnath Chatterjee has moved an amendment which says that nothing hereinbefore contained shall prevent a court from granting an adjournment. Shri Shukla, who spoke before me, definitely said something about good lawyers Whether it is the Supreme Court or the High Court, all the important cases are dealt with only by a few selected lawers It is the misfortune of the country that they get all the brief not because they want it but because the clients want it. Our Judges are also pleased if there are good lawyers. Ordinary lawyers will not be regarded as lawyers and nobody will listen to them. But if you are represented by men like my hon. friend here, or Shri Daftari everyone will hear you. For instance, when Shri Setalvad appears for any side, the Judge nods his head very well If a particular lawyer is engaged, honestly engaged in a particular court, why should it not be given adjournment? There are so many MPs here. Some of the MPs are full of work throughout the day and want adjournment every day. But there are other MPs who have nothing to do. Yet, they are paid equally. That is another misfortune of the country. Those affluent lawyers who have earned name and fame because of their exceptional merit, they should not be penalised. Because, ultimately it is not they that are going to be penalised but it is the clients. I know how they run from court to court to find good lawyers.

Here I must congratulate both Shri Gokhale and Dr. Seyid Muhammad for bringing in this minimum concession to indigent persons. It says here:

> "Subject to the provisions of the Order, the Central or State Government may make such supplementary provision as it thinks fit for providing free legal service to those who have been permitted....."

What happens to the free legal aid to the poor? I think Krishna Ayyar Commission and the Bhagavati Commission have recommended it. I do not know how many more Commissions have to recommend it before it is accepted by Government. Unless the poor become poorer, they are not going to get free legal aid. This is the fate of the poor people who cannot afford the luxury of going to courts. I have seen condemned prisoners asking for legal aid and just ordinary lawyers are placed at their disposal. I am saying this with all regard to the lawyers. I know the fate of such persons. There is a joke in Calcutta that a condemned man's case finally came up before the court, and the Judge pronounced the sentence of death. Then the prisoner asked the lawyers what he should do. The lawyer said:

> उच्चारण करिये दुर्गा का नाम, अभी तो लटक जाइये, बाद में देखा जायगा ।

This is exactly what happens. A condemned man who wants a lawyer to represent his case in the Supreme Court or the High Court should be given a good lawyer.

So, I want to know what has happened to the report of the committee of Justice Bhagwati or Justice Krishna Ayyar. When are the poor people going to be given legal aid? After the completion of the Fifth Plan, nobody may be poor at all. So, let it be done before that happens.

[Shri S. M. Banerjee]

In U.P., especially in the Allahabad High Court, there is so much of arrears. I want to know from the hon. Minister how many cases are pending.

SHRI SOMNATH CHATTERJEE: How many vacancies of Judges exist.

SHRI S. M. BANERJEE: It is said there are 65 vacancies. I think the majority of them belong to U.P., because, after all, it is the biggest State, and it should have that credit. I am told that the names of persons both from the bar and from the judiciary, have come and are here in Delhi, I do not know in whose shelf. It is not that they have been approach by these people. I am only saying that the names have been recommended, but the persons are not being appointed. Let the Judges be appointed, and let the courts function. In the Labour Bench, for instance, after the death of Justice Dwivedi, I do not know whether the vacancy has been filled up or not. Either you run the courts efficiently or abolish all the courts and have people's courts. At least the cases will be decided, and will not be hanging for years. Litigation goes on for 15 years and meanwhile the house gets dilapidated. So, the vacancies should be filled up. There is no dearth of intelligent people in India who can be appointed as Judges. They are available in the country. Take them from the bar or outside, pay them well. Otherwise, they will be the same as Members of Parliament. I am talking about intellect, because I have very poor intellect.

MR. DEPUTY-SPEAKER: You are too apologetic.

SHRI S. M. BANERJEE: Do you think now it is as it was in the days of Jawaharlal Nehru? It is good actually that people are coming from the soil and the factories, but I think there is some deterioration in intellect both on this side and the other side. So, these vacancies should be filled up.

I once again request the hon. Minister to reconsider the amendments and not reject them only because Shri Chatterjee has moved them. Mr. Shukla, who has gone out, attributed some political motives to them, but I support all his amendments because they are well thought out. I hope the hon. Minister will agree and accept them. If he is allergic to Chatterjee—I am sure he is not—let them be in the name of Banerjee and be accepted.

SHRI LILADHAR KOTOKI (Nowgong): This amending Bill to the Code of Civil Procedure was long overdue. Successive reports of the Law Commission wanted this Code to be amended, and the Bill is before us. The objects and reasons of the Bill are to reduce the delay, minimise the costs and give relief to the poorer litigant and enable him to have a fair trial. All these objects, admittedly, cannot be achieved by amending the Procedure, to whatever extent we may desire. Therefore, as several hon. Members have said, which I would also endorse, for the avoidance of delay or minimising the delay the quality of the judiciary and also the strength have to be looked into; this cannot be provided for in the Procedure, Government has to do it.

Secondly, I come to reduction of the cost of litigation. It is admitted, it is true, that, of the various items that contribute to the cost of litigation, court fee is a very heavy item. But here also the Code cannot do anything; under the existing provisions of the Constitution, the Central Government cannot do it. Therefore, Government has to look into that also.

What I want to say is this. With these limitations, the Bill has attempted to remove these difficulties of the litigant to the utmost extent possible.

Here section 80 is a bone of contention, whether this section should be omitted or retained. The Joint Committee has suggested a modification to section 80 if it is to be retained. The

genesis of the argument why section 80 should be omitted is non-compliance by the Government—if the intention or purport of this section is not respected why not delete it?. The Law Commission has also held that view. Shri S. M. Banerjee, in another context, argued that if a law is disobeyed or is not operated, that will not be a good reason to say that the good law should be done away with. I put it to Mr. Banerjee to consider this. It is not to favour the Government that section 80 was put or is intended to be retained. The question is whether a citizen, having a rightful claim against Government, should be saved from going in for unnecessary litigation. That is the point. I do concede that Government might not have respected this intention. Therefore, I would urge that the Government has to ensure that the rightful claim of a citizen against Government is settled without compelling the citizen to go to the court. Therefore the question is whether this section should be done away with or pressure should be brought on the Government that they should respect this intention. The section should be retained because that will help the ordinary citizens, particularly the poorer and weaker sections of the community, to get relief from the Government. A notice costing 25 paise or so, in his own hand-writing, is given to the Government, 'Here is a claim; if you do not settle it, I will be forced to go to the court'. That is a simple thing. We expect, the citizens expect, the House expects, that the Government, on getting that, will examine it forthwith whether that is a legitimate and rightful claim of the citizen against the Government and if it is so, they should settle it. Even in courts, there is the suggestion for pre-trial conference and so on. After all, what is the intention? When a suit is instituted, an attempt should be made with the parties concerned in the suit to settle it without going further, so that further litigation is avoided. If that good intention is there, if section 80 gives that opportunity to enable the Government to consider it, that might be considered.

SHRI S. M. BANERJEE: I know he was the Chairman of this Committee but the question was this. It is a very simple question. Section 80 was not in the original Bill which was introduced. It was brought as an amendment by the Government. Whether the Member wanted it or not, I am not concerned. I hope the Member never wanted it. My submission to Mr. Kotoki is this. Supposing Section 80 is done away with, what will be the result? The aggrieved person, the aggrieved employee has given a notice. I write a letter to the Government and the Government might reply in 60 days. Otherwise what is happening? I send a representation, I give notice and when I approach the High Court, they say, 'You must approach the highest appellate authority and get a no-objection from them and then only it will be admitted.'. That is my misfortune.

SHRI LILADHAR KOTOKI: It is there. That is why this provision has been made that in such cases the parties can file the suit and ask for injunction. Anyway I am not going into that.

Another point I would like the House to consider is this. Is it practicable to equate a citizen with a government and in a dispute of a civil nature? If an individual is given notice of, he can at once know the case and dispose it of. But the Government is a complex institution composed of so many persons and a notice of a duration that is required of an individual to come to a decision is not sufficient for a Government because so many persons are involved.. (*Interruptions*) and because so many persons deal with the matter and the cause of action might have arisen long ago. And those persons might not have been there. Therefore, the person-in-charge should be given a chance to understand the case. These are certain considerations which the

[Shri Liladhar Kotoki]

House would consider before they finally decide whether Section 80 is a healthy and good provision or that it was not respected and, therefore, it was not respected and, therefore, it should be done away with. So, within these safeguards, in emergent cases the relief is provided in the Section itself.

One more point....

SHRI SOMNATH CHATTERJEE: With respect to the hon. Member, you have provided that in cases of urgent and immediate relief suits can be filed without notice, but mere filing of a suit does not give immediate relief unless an application is made which you cannot make without giving a reasonable opportunity to the Government. Then how can immediate relief be given?. If your intention is that, how is that translated into action by the proposal you have made?

SHRI S. M. BANERJEE: Why did you not consult Mrs. Ray? She is there.

SHRI LILADHAR KOTOKI: That is not for me to reply. I cannot argue in that way. I have raised certain points for the consideration of the House. Ultimately it is for the Government and the Minister to consider them and reply to them.

So far as legal aid to the poor is concerned, it is in the procedure as in other cases also, but the whole thing cannot be taken care of. I would urge that in the course of our investigation also it came to light that the poorer sections, the weaker sections must be enabled by the State or whatever agency that is created by the State so that the poor can have justice against their affluent counterparts. Therefore, I would urge upon the Government to take early steps to see that this legal aid to the poor legislation is brought before the Parliament at the earliest possible.

The last point I would make is that in order to reduce the pressure on our courts, all cases which are of a civil nature or money suits or small civil disputes might be relegated to the lower courts and further lower down to the Panchayats which can be entrusted with disposing of these things and most of them can be settled without much cost and delay. Government might consider this.

My last point is regarding adjournments. There are both sides to the coin. It will not serve our purpose to try to blame this side or that side. Delay has taken place for various reasons. Without making any reflection either on the judges or the lawyers or even the litigants, we have to see how far the procedure can be simplified so that unnecessary adjournment does not take place. Let us be practical. If the procedure can be improved in order to avoid delay, it is a good thing and the Bill seeks to do that. With these words I support the Bill.

सरदार स्वर्ण सिंह सोखी (जमशेदपुर): डिप्टी स्पीकर साहब, यह जो सी० पी० सी० अमेंडमेंट बिल लाया गया है जो कि 8 अप्रैल 1974 को लोक सभा में पेश हुआ था और इसमें जो दो साल लग गये इसका मुझे बड़ा अफसोस है कि इतने साल तो यहीं लग गये हैं। अभी जितने लोग बोले हैं करीब करीब सभी वकील लोग हैं, लेकिन मैं क्लाइन्ट्स की तरफ से कुछ बातें आपके सामने रखना चाहता हूं कि उनको क्या क्या तकलीफें होती हैं। क्लाइन्ट्स अगर न हों तो आपके वकील और कानून किसी काम के नहीं हैं। वकील मक्खियां मारेंगे। क्लाइन्ट्स के फ़ायदे के लिये यह एक अच्छा कानून आया है, मैं इसका स्वागत करता हूं। प्रोसीजरल डिले के बारे में कहा गया, एक तो डिले होती है ही क्योंकि कभी कोई नोटिस नहीं मिलता है, कभी कुछ होता है, उसके बाद क्या होता है कि आपके जो वकील लोग हैं वह क्लाइन्ट्स को इतना तंग करते हैं कि

उन बेचारों के कपड़े तक बिक जाते हैं और बुरा हाल हो जाता है कचहरियों में दौड़ मारते मारते । मैं पूछना चाहता हूं कि यहां कितने वकील लोग हैं जिन्होंने यह कहा हो कि हम 20 सूत्री कार्यक्रम के मातहत काम करेंगे ? एक ने भी नहीं । वकील लोग तो अपनी फीस भाई, बहन तक से नहीं छोड़ते है, और अच्छी फीस न दें तो केस ही खराब कर देते है । आप जो डिले को कम करना चाहते हैं उसके बारे में आपको कोर्ट्स को हिदायतें देनी चाहिये ।अभी हाल यह है कि आपके मुंसिफ, मैजिस्ट्रेट और जजेज करप्ट हैं, वह देखते हैं कि जितनी देर करो कुछ पैसा बनेगा । बिहार में ऐसे करप्ट लोग कितने ही पकड़े गये हैं और निकाले गये है । और यह जजेज जब कोई सरकार का मुकदमा आ जाता है तो कभी इन्साफ नहीं करते है क्लिक के साथ । मुझे पता है कि आपका एडमिनिस्ट्रेटर जनरल ऐक्ट बना हुआ है और वह इसलिये हैं कि कोई गरीब मर जाय फकीर मर जाय तो उसके कपड़े सम्हालें और जो भी कुछ करना है वह कर कराकर उसका दाह संस्कार करा दे । लेकिन मैं आपको बताऊ कि बिहार में ऐडमिनिस्ट्रेटर जनरल ऐक्ट का मिसयूज होता है । मुझे एक केस बिहार का मालूम है । हिन्दू कभी कोई वारिश के बैगर नहीं मरता है । 1955 में क्या हुआ कि एक इलाहाबाद का आदमी था जिसका जमशेदपुर में मर्डर हो गया, उस की प्रौपर्टी बहुत थी । उसके लीगल वारिश आये, ऐडमिनिस्ट्रेटर जनरल ने उनको पकड़ लिया और हाई कोर्ट में रिट पेटीशन देकर उस की प्रौपर्टी पर झट से कब्जा कर लिया । जब कि उनका काम यह होता है कि जो लीगल वारिश आये, सक्सेशन सर्टिफिकेट देख कर, उसको प्रौपर्टी दे दें ।

15.39 hrs.

(SHRI C. M. STEPHEN in the Chair)

डिस्ट्रिक्ट जज, पुरुलिया ने सर्टिफिकेट दिया । उसके बाद भी अपील करते करते प्रापर्टी को बेच दिया । उनको प्रापर्टी बेचने का कोई हक नहीं है । मैं मिनिस्टर साहब से यह केस भेजने के लिए तैयार हू ।

सरकार को अपने अफसरों को यह हिदायत देनी चाहिए कि वे इस तरह के काम न करे । जहा तक जजों का सवाल है, वे कम्पलसरी रिटायरमेंट के डर से उल्टे फैसले दे देते है । जब फैसला ठीक नहीं होना है, तो फिर इन कानूनों की क्या जरूरत है ? कानून की कचहरियां इन्साफ के लिए बनी हुई हैं । लेकिन हालत यह है कि झूठे केसिज 99 परसेंट कामयाब हो जाते हैं और सच्चे केसिज नाकामयाब होते हैं । सरकार को इस तरफ ध्यान देना चाहिए, वर्ना इस अमेंडमेंट्स से कोई फायदा नहीं होगा ।

मुझे पता है कि कई हाई कोर्ट के रिटायर्ड जज सुप्रीम कोर्ट में प्रैक्टिस करते हैं और मुवक्किलों से ढाई तीन हजार रुपये रोज की फीस लेते हैं । इसके बावजूद हालत यह है कि वकील यह नहीं बताते कि उनके केस का क्या हुआ । अगर कोई बड़ी पार्टी आई, तो मुवक्किल से पूछे बिना कम्प्रोमाइज कर लेते हैं । अगर लाइयर्ज इस तरह के काम करते रहेंगे, तो फिर इन्साफ नहीं होने वाला है । मैं बड़ा हैरान हू कि डी०आई० आर० और मीसा बड़े बड़े लाइयर्ज पर क्यों नहीं लगाया जाता है । इन लोगों की रोज की आमदनी 5, 7 और 10 हजार रुपये तक होती है । कलकत्ता में कई सालिसिटर टेलीफोन काल रिसीव करने का 7 सात रुपये चार्ज करते हैं । वकील लोग अपनी फीस की रसीद भी नहीं देते हैं । गवर्नमेंट को अलग अलग वकीलों की फीस फिक्स कर

[सरदार स्वर्ण सिंह सोखी]

देनी चाहिए, ताकि लोगों को यह पता लगे कि कोई उनको चीट तो नहीं कर रहा है। यह देखा जाता है कि एक लाइयर कल 32 रुपये ले रहा था और आज वह 250 रुपये ले रहा है।

मैं मिनिस्टर साहब को बताना चाहता हूं कि कम से कम बिहार में तो इन्साफ़ बिकता है और वहां की पब्लिक रोती है। हम वकील नहीं हैं, लेकिन हम मिनिस्टर साहब को पब्लिक की तकलीफ़ बता रहे हैं, क्योंकि हम पब्लिक के रिप्रेज़ेन्टेटिव हैं। पब्लिक के लिए ये सब कानून बनाये जाते हैं, लेकिन पब्लिक को उनसे फ़ायदा नहीं हो पाता है। हम को हक है आपको बताने का और आपका फर्ज है उसको देखने का। अमेंडमेंट जो मर्जी कीजिए पर डायरेक्शन तो दे सकते हैं कि ऐसा नहीं ऐसा करो। कुछ भलाई करो। तो मेहरबानी करके इन सब चीजों को देखिये और मैं तो कहूंगा, ब्रह्मानन्द रेड्डी साहब बैठे हुए हैं, इन को चाहिए कि बड़े बड़े वकीलों की तरफ़ ध्यान करें। उन के ऊपर कोई इनकम टैक्स की रेड नहीं, कुछ नहीं। क्या सारे वकील भगत हैं जो हम लोगों को सिखाते हैं कि ऐसा करो तो जीतोगे। लाइयर्स सिखाते हैं, कुछ तो मुवक्किल को पढ़ाते हैं कि ऐसा बोलना है, झूठ बोलवाते हैं। इन सब बातों की तरफ़ आपका ध्यान जाना चाहिए। इन शब्दों के साथ मैं इसका समर्थन करता हूं।

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DR. V. A. SEYID MUHAMMAD): Mr. Chairman, Sir, I am thankful to all the members who participated in this discussion yesterday and today without any distinction for those who have supported the different provisions of the Bill and those who have criticised the Bill.

In introducing these amendments, as I said in my opening remarks, the main objective was to eliminate delays, to cut down cost of litigation and to help the indigent litigant. For achieving these three main objectives it has been found necessary to balance between the various conflicting opinions and points of view put forward.

You are aware, Sir, the Civil Procedure Code is almost 68 years old. In the course of these 68 years,—what is commonly known as—civil procedure code mentality has developed in this country—both among the lawyers and the litigants. The exhaustive and detailed provisions have assumed in certain quarters almost a status of some religious commands and it has been thought by some so sacrosanct that nothing of those can be changed and should be changed. But there is some other trend of opinion which says that civil procedure code was promulgated about 70 years ago under different circumstances and conditions. Time has passed. Conditions have changed. It has practically become a dead weight and should go, if not altogether, it should be substantially altered. While introducing the amendments both these aspects have been taken into consideration and what has been attempted now is to make a balanced presentation in a way that will help the main objectives that I have already mentioned.

You are aware, Sir, Section 80 which has been a subject of much criticism, there are different poiints of view. One point of view is that it must altogather be deleted from the code because in the democratic State it is inconceivable that a distinction is made between Government and ordinary litigant public. On the other hand, in spite of the various drawbacks which have been found in the course of the working of section 80, it has served certain purposes. Considrable litigation has been avoided. The service of notice under Section 80 has

often led to proper settlement of the disputes or claims before going to the court. Maybe some people are not satisfied with the quantum or number of such settlement that have taken place. What has been attempted is while the usefulness of this Section is being accepted, some of the harshness produced by the operation of that section is attempted to be removed.

Another thing which has been attempted is that in view of the state of uncertainly and confusion created due the large number of conflicting decisions given by various courts in the last 70 years, certain amendments are proposed to settle those conflicting decisions and to remove the confusion as far as possible. It is in this background that I would like you and the House to examine the various provisions which have been proposed to be introduced by way of this Bill.

I am fully aware that no human remedy can be found, no provisions of law could be made which are beyond the ingenuity of man to avoid or circumvent. By way of trial and error, as new methods of evasion of law and abuse of the process of law are found, the legislature goes on plugging the loopholes. That is how the history of legislation proceeds all over the world. So that while I admit the ingenuity of various eminent members, some of them very eminent lawyers, in putting forward plausible loopholes and insufficiencies, I assure the House that given time to allow the operation of the proposed amendments, as and when the apprehensions expressed by some of the hon members come true, we will not have any hesitation in bringing forward appropriate changes in the law.

Shri Somnath Chatterjee spoke very ably with all earnestness as a lawyer who is practising in the highest courts of the land—I do not attribute any political motive or political colour to his speech, as one of the hon. members did— and I attach the greatest weight to his criticism. But if I may say so, he strayed from the main object of the proceedings before this hon. House when he talked about the deficiency of the number of judges in the High Courts, the way of recruiting them and the deficiency of the planning which the Central Government is having today. While assuming, without admitting, that there are some substantial reasons and good reasons to support his arguments, I wish to say that the Civil Procedure Code is not the Code to remedy all the evils existing in the world.

SHRI SOMNATH CHATTERJEE: You were good enough to express the hope that this will bring about such a change in the law of procedure that justice will now be easily available. I was saying that we cannot have that hope by merely changing the law.

DR. V. A. SEYID MUHAMMAD: hon. members, was sec. 80. About if the hope is not fulfilled, if adoption of some of the suggestions which are made is found to be necessary, we will certainly adopt them.

The main culprit, according to many hon. Members, was sec. 80. About this section, I have already made my submission that in spite of some of the drawbacks which have been pointed out, it is thought necessary that there must be such a provision wherein the Government is given notice of 60 days so that the Government applies its mind to the problem and without the necessity of going to the court of law the matter can be settled. It may be, according to some members, that that has not been working successfully.

SHRI S. M. BANERJEE: The Government do not reply.

DR. V. A. SEYID MUHAMMAD: That does not mean that the very existence of the provision is unjustified. I hope, taking the criticism which has been made in this House and elsewhere about the refusal of Government, the concerned authorities would act according to the spirit of sec. 80.

[Shri V. A. Seyid Muhammad]

Hereafter they will pay more attention to this provision and act according to the spirit and object of the section.

There was one criticism, not of a legal nature; and that was about adjournments. Shri Banerjee, Shri Somnath Chatterjee and Shri Shukla said that some of the eminent lawyers would not be available for the litigants and so this provision for not giving adjournments on the ground of the absence of the lawyer is a bad provision. Shri Banerjee cited the example of his own case. The name of the late Mr. Chatterjee with whom I had occasion to be close and whom I respect and other names were mentioned. But I must say that they are thinking of litigation only in the Supreme Court. A great volume of litigation in this country is not in the Supreme Court but in the lower courts. Occasionally persons like Chatterjee, Daphtary or Setalved may have gone to lower courts. Assuming that is so or for the reason that the service of eminent lawyer should be available, that is no reason for adjournment. Somebody was saying that a lawyer may be having a number of cases in different courts. That is the reason why adjournment should not be given. Simply because an eminent lawyer is not there when a case is called, should the whole judicial process stop until that lawyer is available to that court and so adjournment should be given?

SHRI SOMNATH CHATTERJEE: It is always left to the judges. In so many cases adjournment is refused on the ground a lawyer has to go elsewhere. Why make it mandatory on the judge?

DR. V. A. SEYID MUHAMMAD: I am really amazed at this sort of argument which has been putforward here, by some of the hon. Members of the Opposition. How many poor persons in this country can engage a big lawyer? It is only rich people who can engage such big lawyers. I am surprised at people saying that such lawyers will not be available for the litigants and so adjournment should be given indiscriminately. When we talk of adjournments we are not thinking of those big lawyers whom rich men can engage. We are thinking of the large number of litigants and the large volume of litigation that is going on in the subordinate courts where adjournment after adjournment is given because one lawyer who has managed to corner the bulk of litigation wants to stop the entire process of judicial proceedings. We want to do away with pricisely that practice. In my younger days when I started practice under a senior, I had to run around various mofussil courts seeking adjournments For almost one and half years, I did nothing else: I had a car and from Calicut to Badagara and other places I used to go and take adjournments and the cases went on until the senior was available. So many criminal prosecutions, private complaints and various things, civil and criminal, all sorts of cases were there and the full time of the junior was engaged in procuring adjournments only This is precisely the sort of thing we want to prevent.

One other thing which has been criticised strongly is the caveat provision and the provision regarding giving notice in the case of urgent matter. Mr Chatterjee's objection was that in urgent matters if notice is given, it will defeat the very object of the action which has been initiated One example which was universally quoted was the pulling down of a house In the first place, you make law for generalities, not for exceptional cases. But the remedy will be there even for exceptional cases. If it is so urgent, the notice given will be very short, not 20 days or something like that. The authority knows that litigation has been started and there is the possibility of the action being declared illegal. So, he will hesitate. Ultimately if in a million cases, one house is pulled down and ultimately if his cause of action can be sustained,

damages will be paid by the government through the nose. That is the only remedy left.

Many hon. members have tabled amendments. I will deal with them at the stage when the clauses are taken up I once again thank the hon. members who participated in the discussion and I commend the Bill to the House for its acceptance.

MR CHAIRMAN: The question is:

"That the Bill further to amend the Code of Civil Procedure, 1908 and the Limitation Act, 1963, as reported by the Joint Committee, be taken into consideration."

The motion was adopted

MR. CHAIRMAN: We take up clause by clause consideration

There are no amendments to clauses 2 to 12.

The question is:

"That clauses 2 to 12 stand part of the Bill"

The motion was adopted

Clauses 2 to 12 were added to the Bill.

Clause 13— (*Amendment of section 34*).

MR. CHAIRMAN: Mr. Shukla, are you moving your amendments?

SHRI B R. Shukla: It depends on the response of the Minister If he is not in a mood to accept them, I will withdraw them.

MR. CHAIRMAN: There is no question of withdrawing because you have not moved them at all.

The question is:

"That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

Clauses 14 to 19 were added to the Bill.

Clause 20- (*Amendment of section 47*).

MR. CHAIRMAN: There is a Government amendment No. 1 in the name of Shri Gokhale. The same amendment is given as No. 35 in the name of Dr. Seyid Muhammad.

Amendment made:

Page 7.—*for* lines 13 and 14, *substitute*—

"Amendment of 20 In section 47 of the pricipal Act,—section 47.

(i) sub-section (2) shall be omitted;

(ii) for the Explanation, the following Explanations shall be substituted, namely:—". (35).

(*Dr. V. A Seyid Muhammad*)

MR. CHAIRMAN: The question is:

"That clause 20, as amended, stand part of the Bill."

The motion was adopted.

Clause 20, as amended, was added to the Bill.

Clauses 21 to 26 were added to the Bill.

Clause 27— (*Amendment of section 80*).

SHRI R. R. SHARMA: I beg to move:

Page 10, lines 15 to 19,—

omit "; but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in tha suit" (24)

SHRI B. R. SHUKLA (Bahraich): I beg to move:

Page 10, line 12,—

after "Kashmir)" *insert*—

", a local authority or a Corporation owned or controlled by Government or local authority," (5)

Page 10,—

after line 23, *insert*—

"Provided further that the Court may pass an order of interim injunction or stay *ex parte* if it has reason to believe that substantial damage will be done to plaintiff and that such interim order must be reviewed within two weeks from the date of its passing." (6)

In section 80 a sort of concession is sought to be made on behalf of the Government that when an urgent and immediate relief is sought by the plaintiff, the institution of the suit may be allowed with the leave of the court, without complying with the provisions of a prior notice of two months. But, at the same time, a rider is added to this provision that no interim relief shall be granted in such a suit unless an opportunity has been given to the State or a public officer. My submission is that it is a self-defeating provision; because once the court grants leave and dispenses with the giving of two months prior notice on the ground that the matter involved is urgent and immediate, if it is conceded at the very outset that immediate or urgent relief is involved in the matter, then he should be given immediate and urgent relief by way of passing an order of interim injunction, or interim stay. Because, if this is not done and a date is given to hear the party, in the mean while the mischief that is sought to be curbed will be done. Therefore, the ultimate object in the majority of the cases will be frustrated. So my submission is, either you retain the old section and say that it will be very necessary to keep it in tact, or make the necessary modifications. But to incorporate a provision like this is self-contradictory and self-defeating and will serve no useful purpose. It will amount to nothing short of a self-defeating exercise in legislation.

SHRI SOMNATH CHATTERJEE: I beg to move:

Page 10,—

for clause 27 *substitute*—

"27. Section 80 of the principal Act shall be omitted." (17)

I am pressing this amendment because, I am sorry, the reply of the hon. Minister to the general discussion did not satisfy us.

When the Bill was introduced, it provided for the complete abolition of section 80 from the CPC Not only that, the Law Commission in their 27th Report, as well as on the 14th Report, had very strongly recommended for the complete abolition of section 80. If I am quote a passage from the 27th Report of the Law Commission, it says:

"When section 80 was originally enacted, India was a dependency under foreign rule and the main function of the Government was the maintenance of law and order.

"India is now a free country and a Welfare State. It engages in trade and business like any other individual. A Welfare State should have no such privileges in the matter of litigation as against the citizens and should have no higher status than ordinary citizens in that respect. Experience has also shown that the provision of this section has caused great hardship, particularly in suits relating to injunction. For these reasons we have recommended the omission of the section. While recommending the omission of the section, the Fourteenth Report suggested the insertion of a provision in the Code to the effect that if a suit against

the Government or a public officer is filed without reasonable notice, the plaintiff will be deprived of his costs in the event of a settlement of the claim by the Government or the public officer before the date fixed for the settlement of the issue. We do not think that such a statutory provision is necessary."

I tried to summarise these views in an imperfect manner yesterday while I was speaking. It is put in much better form and manner here.

16 hrs.

What is the answer to this? Why do you want the Government to be placed in a special position so far as the ordinary litigant is concerned? So far as proceedings under article 226 are concerned, you have to face the litigant in a court of law without prior notice. So, although justice demands it, it is not a "must". In respect of cases under article 226 you can face the litigants, but in respect of suits for an injunction you want a special procedure.

Kindly see what amendment you have provided. You contemplate that there may be situations when urgent and immediate relief is necessary. I don't think you hold the view that any suit for an injunction against the Government is necessarily bad. I do not think any reasonable person can hold that view. Therefore, if you think that a suit for an injunction is called for and there may be genuine cases when a plaintiff wants an injunction from the court, why do you make it mandatorily impossible for the Judge to give an injunction even if he is satisfied? What is the fun of allowing a Judge to apply his mind and allow a suit to be filed without notice, if his hands are then tied?

Supposing I have to file a suit against the Union of India in the Calcutta or the Trivandrum High Court, and the Union of India is in Delhi. What is the reasonable opportunity that the Judge will have to grant to the Government? He will send a letter by registered post to the Government of India at Delhi. And in the meantime, how is the urgency or the immediacy of the situation being tackled? Therefore, I do not think that either law or logic or reason can be brought forward to support this illogical amendment.

I can understand Mr. Shukla's attitude, namely that you reject the Law Commission's recommendation *in toto* but if you keep it, do not make a fuss of it by bringing an amendment like this which will not serve the purpose I am speaking from experience, although experience is being decried and all sorts of things are being said against lawyers. I have never said that all lawyers are good, or that I am a good lawyer But, after all, you have to look at the point of view not only of the lawyers, but of the litigants After all, the administration of justice is for the litigants and not for the lawyers.

The Law Commission recommended the omission of this section in their 14th and 27th reports, and the very fact that the original Bill as presented to this House contained a provision for its total ommission shows that the Government had accepted that recommendation. Then, why this change of view on the part of the Government? During the Joint Committee's proceedings it has been brought by way of an amendment, and this does not solve the problem at all. Therefore, unless you think that the Government is right in all cases and cannot be brought up before the courts without the formality of a formal notice, which nobody takes note of, this procedure is not going to work, and that is why I can tell you that people are taking recourse to article 226. You cannot help it. If he had got relief in a subordinate court, for a suit for injunction, he would not have gone to a higher court and there would not have been these arrears of cases under article 226. It is there-

[Shri Somnath Chatterjee]

because otherwise no urgent relief is possible against Government. If there is no realisation, if you think that, on whatever you have done in this Bill, there cannot be re-thinking, that is a different thing. But I want to press this with the utmost humility and strength.

श्री राम रतन शर्मा : सभापति महोदय, मैंने अपने संशोधन में सेक्शन 80 को पूरा समाप्त करने के लिए नहीं कहा है। मैं ने यह कहा है :

"..but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be a reasonable opportunity of showing cause in respect of the relief prayed for in the suit."

इस को हटा दिया जाय। इस के दो कारण हैं। जैसा अभी सोमनाथ जी कह रहे थे। ला कमीशन की रिपोर्ट को मान कर आप ने यह अमेंडमेंट स्वीकार किया था और ओरिजिनल बिल जो इंट्रोड्यूस हुआ था उस में यह सेक्शन नहीं था लेकिन जब यह सेक्शन ड्राफ्ट हुआ तो आप ने इस में दो सेफगार्डस पहले ही रखे गवर्नमेंट के पक्ष में, वह है

"A suit to obtain an urgent or immediate relief against the Government"

सब से पहले अब सूट फाइल होगा तो अर्जेंट ऐंड इम्मीडिएट रिलीफ प्रिसाइडिंग आफिसर तय करेंगे और फिर दूसरी बात इस में है कि विथ दि लीव आफ दि कोर्ट, अगर कोर्ट लीव नहीं दे तो सूट फाइल नहीं होगा। दो दो बातें आप ने रख ली हैं। कोर्ट को लीव मिल गई और कोर्ट ने देखा कि अर्जेंट ऐंड इम्मीडियेट मैटर है तब सूट फाइल होगा। तब आप इस क्लाज को क्यों रखना चाहते हैं कि फिर सरकार को नोटिस दिया जाय क्यों कि उस नोटिस को तो हटाने के लिये ही, लिटिगेशन कम करने के लिये, जल्दी रिलीफ देने के लिये ही तो इस सेक्शन को हटाने का आप का इरादा था।

इसी बात पर कल मैं ने एक उदाहरण दिया था, मैं उस को दोहराना चाहता हूं। मान लीजिये नगर पालिका के अधिकारी हैं, छोटे छोटे आदमियों से उन की रंजिश है, उन का छोटा सा मकान बना हुआ है, वे तुरन्त उस को गिरा देना चाहते हैं। मेरे जमादार ने कर आ गये। वह दौड़ा कोर्ट में, अर्जेंट ऐंड इम्मीडियेट उन का काम है। कोर्ट लीव भी दे रही है लेकिन उस को एक दो दिन का टाइम कम से कम देना पड़ेगा। आप ने कहा कि बहुत लोग नोटिस नहीं दिया जायगा, एक दो दिन का नोटिस दिया जायगा। अगर एक दिन का भी नोटिस दिया जायगा तो भी शाम को नगर पालिका अधिकारी उन का मकान गिरा देंगे। कोई रिलीफ उन को नहीं मिलेगी। इस लिये इस को आप और सोचें, मनझे और ये तीन चार लाइनें जो हैं इन को आप ओमिट कर दें, यही मेरा कहना है।

DR V. A. SEYID MUHAMMAD: In reply to the arguments to delete section 80 and the various amendments which have been brought forward, I will submit four reasons why the section is to be retained in the form in which it appears in the proposed Amendment.

The first criticism was, why should we make a difference in this socialist, democratic—various adjectives were used—country between the Government and an individual....

SHRI SOMNATH CHATTERJEE: I was quoting from the Law Commission report.

DR. V. A. SEYID MUHAMMAD: I did not mean any disrespect. I did not want to quote all the adjectives which were used. That is all.

The main difference arises by the very nature of the government machinery and the governmental structure. In a civil suit, a cause of action may arise in any part of India.

The private litigant has only to rush to his own house, open the almirah, get hold of the documents, consult a lawyer and file a suit. The matter here is a question of injunction. The proceedings may take place in Kanyakumari and the authorities may be in Delhi or in Assam. Then the machinery of the Government moves quite slow and not only the officers of the department but various other officers are connected with the matter. So the very structure of the Government is different from the individual in the matter of litigation.

Secondly, an injunction brought against a private party or an individual is quite different from an injunction brought against the Government or a public authority. Suppose an injunction is brought against an electricity undertaking or a water supply undertaking, is it a question of one man getting into the house or coming out of his house or cutting a bunch of bananas? The entire society will be paralysed. In this situation, definitely there is a justification to treat a government on an entirely different footing from an individual.

The second criticism was that on mere technicalities or on some word not being put in the notice, formerly the position was that the just claims of individuals are defeated. We have removed it and seen to it that as far as possible, such mere technicalities will not prevent or delay the procurement of justice for the private citizen.

The third criticism is replied to in my first submission about injunction and giving notice to the authorities. Precisely for the same reasons, I would submit that unlike an individual getting an injunction and stopping another individual from opening or closing a shop or cutting one bunch of bananas or two bunches of bananas, it is quite different with an electricity undertaking or a water supply organization being stopped from performing its activities. That is why it is proposed that prior notice should be given to the Government. I think that is a substantial reason for treating the Government in a different way and providing that even in the matter of injunctions government should be given prior notice. One can imagine that such notice will involve long delays, and nothing happening and the poor man getting no remedy. That is not what is contemplated. The courts are there and it is not before an administrative officer, and if the courts are convinced that it is an urgent matter, then the matter is expedited. The public officers also will realise the urgency and must react to the notices with the utmost responsibility. Mr. Somnath Chatterjee is well-versed in this matter and the whole Government and the governmental machinery should work in such a way that the powers are properly exercised and not abused. That is the only assumption on which laws can be passed and it is in that sense this provision has been made.

श्री विभूति मिश्र (मोतीहारी). मंत्री जी ने कहा कि डिमोक्रैटिक सोशलिज्म हो गया। मैं जानना चाहता हूं लोअर कोर्ट्स से लेकर हाई कोर्ट तक जो मुन्सिफ हैं, सब जज, एडीशनल जज, हाई कोर्ट के जज और हाई कोर्ट के चीफ जस्टिस क्या इन सभी ने डिमोक्रैटिक सोशलिज्म अख्तियार कर लिया है? शुक्ला जी ने कहा कि उनका अंदाजा है कि उन्होंने डिमोक्रैटिक सोशलिज्म अख्तियार नहीं किया है।

[श्री विभूति मिश्र]

इसलिये आप कोई ऐसा प्राविजन रखें जिससे गरीबों के लिये गुंजायश हो। सिर्फ कहने से ही काम नहीं होगा कि डिमोक्रैटिक सोशलिज्म हो गया। क्या लोगों में इसकी भावना भी पाई है या नहीं—इसका जवाब मंत्री जी से आप दिलवाइये।

MR. CHAIRMAN: Has the Minister got to say anything?

DR. V. A. SEYID MUHAMMAD: No, Sir.

SHRI B. R. SHUKLA: Sir, in response to the wishes of the party, I do not press my amendments. I seek leave of the House to withdraw my amendments Nos. 5 and 6.

MR. CHAIRMAN: Is it the pleasure of the House that the amendments Nos. 5 and 6 moved by Shri Shukla may be withdrawn?

SOME HON MEMBERS: Yes.

Amendments Nos. 5 and 6 were, by leave, withdrawn.

MR. CHAIRMAN: Are you withdrawing, Mr. Chatterjee?

SHRI SOMNATH CHATTERJEE: I have no such constraints.

MR. CHAIRMAN: All right. I will put Shri Somnath Chatterjee's amendment, Amendment No. 17, to the vote of the House. The question is

Page 10,—

for clause 27 *substitute*—

"27: Section 80 of the principal Act shall be omitted." (17).

The Lok Sabha divided:

Division No. 2)

16.19 hrs.

AYES

Bhattacharyya, Shri S. P.
Chandrappan, Shri C. K.
Chatterjee, Shri Somnath
Haldar, Shri Madhuryya
Haldar, Shri Krishna Chandra
Joarder, Shri Dinesh
Mukherjee, Shri Samar
Mukherjee, Shri Saroj
Reddy, Shri B. N.
Roy, Dr. Saradish
Saha, Shri Ajit Kumar
Saha, Shri Gadsdhar
Sharma, Shri R. R.
Shastri, Shri Ramavatar
Vijay Pal Singh, Shri

NOES

Ahirwar, Shri Nathu Ram
Alagesan, Shri O. V.
Arvind Netam, Shri
Austin, Dr. Henry
Babunath Singh, Shri
Bajpai, Shri Vidya Dhar
Banamali Babu, Shri
Banerjee, Shrimati Mukul
Barman, Shri R. N.
Barupal, Shri Panna Lal
Basumatari, Shri D.
Besra, Shri S. C.
Bhargava, Shri Basheshwar Nath
Bhatia, Shri Raghunandan Lal
Bist, Shri Narendra Singh
Chakleshwar Singh, Shri

Chandrashekharappa Veerabasappa, Shri T. V.
Chandrika Prasad, Shri
Chaudhary, Shri Nitiraj Singh
Chavan, Shrimati Premalabai
Chikkalingaiah, Shri K.
Daga, Shri M. C.
Damani, Shri S. R.
Darbara Singh, Shri
Das, Shri Anadi Charan
Das, Shri Dharnidhar
Daschowdhury, Shri B. K.
Deo, Shri S. N. Singh
Deshmukh, Shri K. G.
Dhillon,, Dr. G. S.
Doda, Shri Hiralal
Dube, Shri J. P.
Dwivedi, Shri Nageshwar
Ganga Devi, Shrimati
Gangadeb, Shri P.
Gill, Shri Mohinder Singh
Godara, Shri Mani Ram
Godfrey, Shrimati M.
Gogoi, Shri Tarun
Gokhale, Shri H. R.
Gomango, Shri Giridhar
Gotkhinde, Shri Annasaheb
Hansda, Shri Subodh
Hari Singh, Shri
Jamilurrahman, Shri Md.
Jha, Shri Chiranjib
Kadam, Shri J. G.
Kadannappalli, Shri Ramachandran
Kailas, Dr.
Kamakshaiah, Shri D.
Kamble, Shri T. D.
Kamla Kumari, Kumari
Kapur, Shri Sat Pal
Karni Singh, Dr.
Kaul, Shrimati Sheila
Kinder Lal, Shri
Kotoki, Shri Liladhar
Kotrashetti, Shri A. K.
Kureel, Shri B. N.
Lakkappa, Shri K.
Mahajan, Shri Vikram
Majhi, Shri Gajadhar
Majhi, Shri Kumar
Mallanna, Shri K.
Manhar, Shri Bhagatram
Maurya, Shri B. P.
Mirdha, Shri Nathu Ram
Mishra, Shri Bibhuti
Mishra, Shri G. S.
Modi, Shri Shrikishan
Mohapatra, Shri Shyam Sunder
Mohsin, Shri F. H.
Munsi, Shri Priya Ranjan Das
Murmu, Shri Yogesh Chandra
Nahata, Shri Amrit
Negi, Shri Pratap Singh
Oraon, Shri Tuna
Painuli, Shri Paripoornanand
Pandey, Shri Krishna Chandra
Pandey, Shri Narsingh Narain
Pandey, Shri R. S.
Pandey, Shri Tarkeshwar
Pandit, Shri S. T.
Pant, Shri K. C.
Paokai Haokip, Shri
Paswan, Shri Ram Bhagat
Patel, Shri Natwarlal
Patil, Shri C. A.
Patil, Shri E. V. Vikhe
Patil, Shri Krishnarao
Patil Shri S. B.
Patil, Shri T. A.
Patnaik, Shri J. B.
Peje, Shri S. L.
Pradhani, Shri K.
Raghu Ramaiah, Shri K.
Rai, Shri S. K.
Rai, Shrimati Sohodrabai
Raj Bahadur, Shri
Rajdeo Singh, Shri

Ram Dayal, Shri
Ram Singh Bhai, Shri
Ram Surat Prasad, Shri
Ram Swarup, Shri
Ramji Ram, Shri
Rao, Shri Jagannath
Rao, Shri K. Narayana
Rao, Shri M S. Sanjeevi
Rao, Shri Nageswara
Ray, Shrimati Maya
Reddy, Shri K. Kodanda Rami
Reddy, Shri P. Ganga
Reddy, Shri P. Narasimha
Roy, Shri Bishwanath
Sangliana, Shri
Satish Chandra, Shri
Satpathy, Shri Devendra
Savant, Shri Shankerrao
Shailani, Shri Chandra
Shankaranand, Shri B.
Sharma, Shri Nawal Kishore
Shastri, Shri Sheopujan
Shivappa, Shri N
Shivnath Singh, Shri
Shukla, Shri B. R
Shukla, Shri Vidya Charan
Sinha, Shri Nawal Kishore
Sohan Lal, Shri T.
Sokhi, Sardar Swaran Singh
Subramaniam, Shri C.
Suryanarayana, Shri K
Tayyab Hussain, Shri
Tiwary, Shri D. N.
Tula Ram, Shri
Tulsiram, Shri V
Uikey, Shri M G.
Unnikrishnan, Shri K P
Vikal, Shri Ram Chandra
Yadav, Shri Karan Singh

MR. CHAIRMAN: The result* of the division is:

Ayes: 15; Noes: 139.

The motion was negatived.

MR. CHAIRMAN: I shall now put amendment No. 24 moved by Shri R. R Sharma to the vote of the House.

Amendment No. 24 was put and negatived.

MR. CHAIRMAN: The question is:

"That Clause 27 stand part of the Bill".

The motion was adopted.

Clause 27 was added to the Bill.

MR. CHAIRMAN: There are no amendments to clause 28. I shall put it to the vote of the House.

The question is:

"That clause 28 stand part of the Bill"

The motion was adopted

Clause 28 was added to the Bill.

Clause 29—(*Amendment of section 86*).

MR CHAIRMAN: There are two amendments to this clause by Shri Somnath Chatterjee.

SHRI SOMNATH CHATTERJEE: I move:

Page 11,—

after line 6, *insert*—

'(aa) the following proviso shall be inserted, namely:—

* Shri Genda Singh also voted for NOES.

"Provided that the Central Government shall not withhold consent without assigning reasons therefor, in writing and without giving an opportunity of being heard to the person who applies for consent."' (18)

Page 11, line 7,—

after 'in the proviso' *insert*—

"(i) after the word "Provided" the word "further" shall be inserted, and (ii)'. (19)

Sir, this is a procedural matter dealing with the law of procedure. What happens if a suit against one State cannot be filed without the consent of the Central Government? I do not want that that provision should be deleted. That provision should be there for maintenance of internal diplomatic relationship. That should be kept. But, I have found in my experience that in many cases consent is withheld. And the party thereto remains only without that remedy. I know personally of a case where—I won't name the foreign country—the foreign country was in occupation of a property under the leasehold. They left the property and gave it to one of the marwaris in Calcutta. Now they are occupying it. To get rid of that, one has to file a suit for the termination of the lease.

Now, Government has to give permission for filing a suit for cancellation of the lease. No suit could be filed even for getting possession of the property and the owner had to come to a settlement with the person who had been in wrongful occupation. Because the Central Government did not give any permission and he had been in occupation of it. I only wanted to provide that in matters like that—as far as internal relations etc. are concerned—give an opportunity for hearing him so that he might be convinced that at least on a proper representation made to you, he has been given the hearing and he cannot have the feeling that his case has not been considered. That is why I have moved the amendments.

DR. V. A. SEYID MUHAMMAD: Sir, as you know, the very necessity for such a provision is that in certain cases where foreign states are involved, it may not be possible for the Central Government to give reasons why the consent is given or not given. To make it compulsory that in every case that reason should be given defeats the very purpose of the provision.

MR. CHAIRMAN: Now, I shall put amendment Nos. 18 and 19 moved by Shri Chatterjee to the vote.

Amendment Nos. 18 and 19 were put and negatived.

MR. CHAIRMAN: The question is:

"That Clause 29 stand part of the Bill".

The motion was adopted.

Clause 29 was added to the Bill.

MR. CHAIRMAN: On clause 30, there is one amendment by Shri Shukla. Are you moving?

SHRI B. R. SHUKLA: No, Sir.

MR. CHAIRMAN: I shall put clause 30 to the vote of the House.

The question is:

"That clause 30 stand part of the Bill."

The motion was adopted.

Clause 30 was added to the Bill.

Clauses 31 to 36 were added to the Bill.

Clause 37.—*Substitution of new section for section 100)*

MR. CHAIRMAN: There are two amendments—Nos. 14 and 15—by Shri R. R. Sharma. Are you moving?

SHRI R. R. SHARMA: I move:

Page 14, lines 13 and 14, —

for "if the High Court is satisfied that the case involves a substantial question of law"

substitute—

"on any question of law and facts". (14)

Page 14, —

omit lines 20 to 29. (15)

SHRI SOMNATH CHATTERJEE: beg to move:

Page 14, —

for Clause 37, *substitute* —

'37. In section 100 of the principal Act, in sub-section(1), after Clause (c), the following clause shall be inserted, namely:—

(d) the case involves a substantial question of law."' (20)

श्री राम रतन शर्मा : श्रीमान्-इस अमेंडमेंट के द्वारा मैं ने यह कहना चाहा है कि अगर फाईंडिंग आफ फैक्ट कानकरेंट नहीं हुई, लोअर कोर्ट और फस्ट अपीलेट कोर्ट की फैक्ट पर फाईंडिंग कानकरेंट नही हुई, तो उस को फैक्ट के ऊपर हाई कोर्ट में सैकेंड अपील में जाने की अनुमति होनी चाहिये। और अगर ऐसा नही होगा तो इनजस्टिस होगा क्योंकि फैक्ट पर फिर सुनने को नही मिलेगा। वह ला का क्वेश्चन फारमुलेट करेंगे और उस पर अपील करेंगे। मैंने कल भी कहा था, मैं मंत्री महोदय से जानना चाहता हूं कि उन्होंने इस बारे में कुछ सोचा है कि नहीं।

MR. CHAIRMAN: There is no reply by the Minister. I will now put amendments Nos. 14 and 15 to the vote of the House.

Amendments Nos. 14 and 15 were put and negatived.

MR. CHAIRMAN: I will now put amendment No. 20 moved by Shri Somnath Chatterjee to the vote of the House.

Amendment No. 20 was put and negatived.

MR. CHAIRMAN: The question is:

"That clause 37 stand part of the Bill."

The motion was adopted.

Clause 37 was added to the Bill.

Clause 38—(*Insertion of new section 100/A*)

SHRI SOMNATH CHATTERJEE: beg to move:

"Page 15, line 7,—

add at the end —

"unless the case involves some substantial question of law" (25)

MR. CHAIRMAN: I will now put amendment No. 25 moved by Shri Somnath Chatterjee to the vote of the House.

Amendment No. 25 was put and negatived.

MR. CHAIRMAN: The question is:

"That clause 38 stand part of the Bill."

The motion was adopted.

Clause 38 was added to the Bill.

Clauses 39 to 42 were added to the Bill.

Clause 43—(*Amendment of Section 15*)

SHRI R. R. SHARMA. I beg to move:

Page 15,—

for Clause 43, substitute—

'43 For section 115 of the principal Act, the following section shall be substituted, namely -

"115 The High Court and the court of the District Judge may call for the records of any case which has been decided by any court subordinate to such High Court or District Judge and in which no appeal lies thereto, and if such subordinate court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court or the District Judge may make such order in the case as it thinks fit" ' (16)

MR. CHAIRMAN. I will now put amendment No. 16 moved by Shri R. R. Sharma to the vote of the House

Amendment No. 16 was put and negatived.

MR. CHAIRMAN The question is

"That clause 43 stand part of the Bill"

The motion was adopted.

Clause 43 was added to the Bill

Clauses 44 to 46 were added to the Bill.

Clause 47—(*Amendment of section 141*).

SHRI SOMNATH CHATTERJEE: I beg to move·

"Page 17, lines 7 and 8,—

omit ", but does not include any proceeding under article 226 of the Constitution." (26)

MR CHAIRMAN· I will now put amendment No 26 moved by Shri Somnath Chatterjee to the vote of the House

Amendment No. 26 was put and negatived.

MR. CHAIRMAN The question is:

"That clause 47 stand part of the Bill"

The motion was adopted.

Clause 47 was added to the Bill.

Cclause 48—(*Amendment of section 144*)

SHRI R R SHARMA I beg to move:

"Page 17, line 14,—

after "instituted' *insert*—

"or review application made" (27)

MR. CHAIRMAN. I will now put amendment No 27 moved by Shri R. R Sharma to the vote of the House.

Amendment No. 27 was put and negatived.

MR. CHAIRMAN. The question is:

"That clause 48 stand part of the Bill."

The motion was adopted.

Clause 48 was added to the Bill.

Clause 49 was added to the Bill.

Clause 50—(*Insertion of new section 148A*)

SHRI SOMNATH CHATTERJEE: I move:

[Shri Somnath Chatterjee]

Page 18,—

after line 36, *insert*—

"(6) Nothing in this section shall prevent the court from making any order on such application, even before service of a notice on the caveator, if the court so decides for reasons to be recorded in the order." (28).

MR. CHAIRMAN: I shall now put this amendment to vote.

Amendment No. 28 was put and negatived.

MR. CHAIRMAN: The question is:

"That clause 50 stand part of the Bill".

The motion was adopted.

Clause 50 was added to the Bill

Clauses 51 to 54 were added to the Bill.

MR. CHAIRMAN Clause 55. Amendment No 10 by Shri B. R. Shukla—he is absent. The question is:

"That clause 55 stand part of the Bill".

The motion was adopted.

Clause 55 was added to the Bill.

Clauses 56 to 59 were added to the Bill.

MR. CHAIRMAN: Clause 60. Amendment No. 11 by Shri M. C. Daga—not moved. The question is:

"That clause 60 stand part of the Bill."

The motion was adopted.

Clause 60 was added to the Bill.

Clauses 61 to 67 were added to the Bill.

Clause 68— (*Amendment of order XVII*)

SHRI SOMNATH CHATTERJEE: I move:

Page 39,—

after line 28, *insert*—

"(f) Nothing hereinbefore contained shall prevent the court from granting an adjournment for ends of justice." (29).

MR. CHAIRMAN: I shall now put this amendment to vote.

Amendment No. 29 was put and negatived.

MR. CHAIRMAN: The question is·

"That clause 68 stand part of the Bill".

The motion was adopted

Clause 68 was added to the Bill

MR. CHAIRMAN: Clause 69. Amendment No. 12 by Shri B R. Shukla—not moved. The question is:

"That clause 69 stand part of the Bill"

The motion was adopted.

Clause 69 was added to the Bill

Clauses 70 to 80 were added to the Bill.

Clause 81— (*Amendment of Order XXXIII*)

Amendment made:

Page 71,—

after line 45, *insert*—

"Power of Government to provide for free legal services to indigent persons.

18. (1) Subject to the provisions of this Order, the Central or State Government may make such supplementary provisions as it thinks fit for providing free legal services to those who have been permitted to sue as indigent persons.

(2) The High Court may, with the previous approval of the State Government, make rules for carrying out the supplem entary provisions made by the Central or State Government for providing free legal services to indigent persons referred to in sub-rule (1), and such rules may include the nature and extent of such legal services, the conditions under which they may be made available, the matters in respect of which, and the agencies through which such services may be rendered." (31)

(Dr. V. A. Seyid Muhammad)

MR. CHAIRMAN: Amendment No. 13 is barred. The question is;

"That clause 81, as amended, stand part of the Bill."

The motion was adopted.

Clause 81, as amended, was added to the Bill.

Clauses 82 to 85 were added to the Bill.

MR. CHAIRMAN: Clause 86. Amendment No. 30 by Shri R. R. Sharma —not moved. The question is:

"That clause 86 stand part of the Bill."

The motion was adopted.

Clause 86 was added to the Bill.

Clauses 87 to 96 were added to the Bill.

Clause 97 (*Repeal and Savings*)

Amendment made:—

Page 91,—

after line 27, *insert*,—

"(3) Save as otherwise provided in sub-section (2) the provisions of the principal Act, as amended by this Act, shall apply to every suit, proceeding, appeal or application, pending at the commencement of this Act or instituted or filed after such commencement, notwithstanding the fact that the right, or cause or action, in pursuance of which such suit, proceeding, appeal or application is instituted or filed, had been acquired or had accrued before such commencement." (32).

(Dr. V. A. Seyid Muhammad)

MR. CHAIRMAN: The question is:

"That clause 97, as amended, stand part of the Bill."

The motion was adopted.

Clause 97, as amended, was added to the Bill.

Clause 98——(*Amendment of Schedule of Act 36 of 1963*)

Amendments made:

Page 91, line 30,—

for "98" *substitute* "98(1)", (33).

Page 91,—

after line 32, *insert*—

"(2) Where the period specified in article 127 of the Schedule to the Limitation Act, 1963; (36 of 1963) had expired on or before the commencement of this Act, nothing contained in sub-section (1) shall be construed as enabling such application as is referred to in the said article, to be filed after the commencement of this Act by reason only of the fact that a longer period therefor is specified in the Act aforesaid by reason of the provisions of sub-section (1)." (34)

(Dr. V. A. Seyid Muhammad)

MR. CHAIRMAN. The question is:

"That clause 98 as amended, stand part of the Bill."

The motion was adopted.

Clause 98, as amended, was added to the Bill.

MR. CHAIRMAN. The question is:

"That clause 1, Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

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

DR V. A. SEYID MUHAMMAD: I move:

"That the Bill, as amended, be passed"

MR. CHAIRMAN. Motion moved:

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

श्री रामावतार शास्त्री (पटना) : सभापति महोदय, यह कानून तो अब पास हो रहा है। मेरा एक निवेदन यह है सरकार से कि जो कानून आप पास करें उस को ईमानदारी के साथ और चुस्ती के साथ लागू करें। इस तरह से अगर हम इस को लागू करेंगे तो जो मंशा है इस कानून का वह पूरा हो सकेगा। हम लोग बहुत से कानून बनाते हैं पार्लियामेंट में लेकिन जनता में जाते हैं तो देखते हैं उस की छीछालेदर होती है दुर्गति होती है। तो मेहरबानी कर के इस से इस कानून को बचा लीजिये।

दूसरी बात—हम लोग जनता में जाते हैं और देखते हैं कि जिन पर सिविल प्रोसीजर कोड के मातहत मुकदमे चलते हैं सम्पत्ति वगैरह को लेकर वे बेचारे वर्षों बरबाद तबाह कचहरियों की खाक छानते रहते हैं और वकील बजे में माल मारते रहते हैं। यह व्यवस्था आप इस में कर रहे हैं कि उस पर रोक लगाई जाये। सभापति जी अगर यहां कोई वकील हैं तो वह माफ करेंगे, मैं सब वकीलों के लिये नहीं कह रहा हूं। आप ऐसी व्यवस्था कर रहे हैं तो कम से यही कहना है कि यह दाल गले न पाये, यानी जल्दी जल्दी उन के मुकदमों के फैसले हों ताकि इस में गरीब जो सब से ज्यादा पीसे जाते हैं उन की रक्षा हो। पटना के एक मोहल्ले पीर मोहानी में कुछ गरीब लोग दूकान किये हुये हैं। अब दो नये अफसर वहां आये हैं एक पुलिस डिपार्टमेंट के और एक एलेक्ट्रिसिटी डिपार्टमेंट के, वे कहते हैं कि यह सम्पत्ति हमारी है, तुम यहां से निकलो और तरह तरह के मुकदमे में उन को फंसाकर तंग कर रहे हैं। डकैती का मुकदमा उन के ऊपर कर दिया। पटना में उन की छोटी सी दुकान है और बेतूसराय में उन के ऊपर मुकदमा किया कि वहां डकैती की। इस तरह की कार्यवाहिया जब सरकारी अधिकारी करें जो कानून व्यवस्था को रक्षा करने वाले हैं, जो रक्षक हैं वहीं भक्षक बन जायें तो काम कैसे चलेगा? मैंने जब इसका विरोध किया कि यह गलत है, यह गैर मजरुआ जमीन है, सरकारी जमीन है, कैसे इन को भगा रहे हैं और मुकदमा चला रहे हैं तो मेरे ऊपर मानहानि का मुकदमा चल गया। यह स्थिति है। अभी तक मेरे पास समन नहीं आया है लेकिन सुना है कि इस तरह की चोट वहां हुई है। तो इस तरह की बात न हो। गरीबों की रक्षा की जाय। पैसे वाले और निहित स्वार्थ वाले गरीबों को तंग न करें, यह जवाब देही आप की है। अब तो आप समाजवाद की बात संविधान में जोड़ने वाले हैं। तब तो और आप की जिम्मेदारी है कि जिस के लिये समाजवाद है उस गरीब की रक्षा करें। यह सिविल प्रोसीजर कोड की बहस हो रही है। कानून वही है। क्रिमिनल प्रोसीजर कोड में क्या होता है? मैं तो जेल जाता रहता हूं और

देखना है कि क्या होता है? सैकड़ों लोग बिना मुकदमा चलाये हुए सात सात साल से, नौ नौ साल से जेल में पड़े हुए हैं और उन को जब सजा होती है तो एक हफ्ते की। यह क्या मजाक है इस कानून का? इस तरह का मजाक नहीं होना चाहिये। यह हमारा सार्वभौमिक सत्ता प्राप्त जो सदन है इस के बनाये हुए कानून की खिल्ली न उड़े, मेरा इतना ही निवेदन है। मेरा विश्वास है कि सरकार इस कानून को सख्ती से लागू करेगी और इस में जो प्रावधान किये गये है उन का पालन होगा।

गरीबों की मदद करने के लिये तरह तरह की स्कीमें बनाने की बात आप बोलते हैं, वे केवल किताबों में न रहें अमल में भी आवे। इसको भी बीस सूत्री कार्यक्रम की तरह "माला जपो, कुछ करो नहीं" ऐसा न हो बल्कि कुछ करो, ऐसा होना चाहिये। इन शब्दों के साथ मैं अपना निवेदन समाप्त करता हूं।

MR. CHAIRMAN: Does the Minister want to say anything in reply?

DR. V. A. SEYID MUHAMMAD: No, Sir

MR. CHAIRMAN: The question is:

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

The motion was adopted.

16.41 hrs.

STATUTORY RESOLUTION RE: DISAPPROVAL OF MAINTENANCE OF INTERNAL SECURITY (AMENDMENT) ORDINANCE AND MAINTENANCE OF INTERNAL SECURITY (SECOND AMENDMENT) BILL.

SHRI SOMNATH CHATTERJEE (Burdwan): Sir, I beg to move:

"This House disapproves of the Maintenance of Internal Security (Amendment) Ordinance, 1976 (Ordinance No. 5 of 1976) promulgated by the President on the 16th June, 1976."

Since the proclamation of emergency on 25th June 1975 the second emergency a parallel proclamation of emergency —in every session of this House, a Bill is brought to replace an ordinance issued during the inter-session period for further amendments to MISA, making it more draconian, oppressive and uncivilised. Today MISA has become the all-pervading law in this country, although protestations are made to the contrary. I would like to know from the Government whether like poverty MISA has become our permanent fate, that the citizens of this country ought to realise that it has come to stay with them to be used by the authorities against people in all walks of life. We have known of a different law for the blackmarketers, foreign exchange racketeers, hoarders, etc. although I am against preventive detention on principle, that is a separate law. But so far as MISA is concerned, it is really meant for application, and it is being applied today, quite liberally still even after the expiry of more than a year after the proclamation of emergency, against political opponents, trade unionists, workers, peasants, students, etc. Members of Parliament have not been immune from it.

I am sure no genuine believer of civil liberaties can be happy with a law like preventive detention law. When it was incorporated in our Constitution, which is the organic law of the country, the founding fathers were at pains at least to make it clear that the preventive detention law should be made in cases of extreme urgency when the very fabric of the country will be at stake. That hope was belied and from 1950 onwards we have had a preventive detention law. But at least on appearance, these were temporary laws, extended from time to time, until they lapsed in 1969 for reasons which are known to the people