

Title: Discussion on the Notaries (Amendment) Bill, 1999. (Bill Passed).

1450 hours

MR. CHAIRMAN : Now, the House will take up item No. 16.

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

"That the Bill further to amend the Notaries Act, 1952, as passed by Rajya Sabha, be taken into consideration."

This is a Bill further to amend the Notaries Act, 1952. This has also been fully examined by the Standing Committee. There is only one change that I have made. The original Amending Bill proposed that the Notaries can be conferred certain judicial powers. Now, this will be totally inconsistent with the modern view which has been taken in the Supreme Court. They do not allow courts to be created other than by a procedure which the High Courts and the Supreme Court approve of. So, we cannot possibly create a court by a Notification. So, except that judicial function not being given to the Notaries.... .. (Interruptions)

MR. CHAIRMAN: Shri Varkala Radhakrishnan, you will get a chance.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RAM JETHMALANI): Let me complete the sentence. Notaries Public will be used not only for their notarial functions but it is open to the courts to use them as arbitrators, conciliators, mediators and commissioners for recording evidence.

Originally, we used to give them a period of three years. They also make some investment in their offices, seals and things like that. We have said that at one time, we should appoint them for five years instead of three years. The renewal will also be for a period of five years.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): I am on a point of clarification.

MR. CHAIRMAN: No, no; you will get it later on. Please sit down.

SHRI E.M. SUDARSANA NATCHIAPPAN (SIVAGANGA): Respected Chairperson, it is really a very important Bill and we may support it fully.

">Regarding clause 4, as the hon. Minister of Law has observed, the powers of the Notary Public are somewhat widened. It is a very very important legislation, it will give more opportunities for the common man to reach the arbitrator. At the same time, they can also save the time of the court. There is already a Bill to be presented regarding the amendment of the Code of Civil Procedure. We could find there also that this type of reducing the time of the court and the method of filing the affidavit before the court regarding the chief examination are also contemplated. But here this Amendment gives much more power. I am just reading it:

">(hb) act as a Commissioner to record evidence in any civil or criminal trial if so directed by any court or authority;"

">Therefore, this has much more widened the recording of evidence in both the civil and the criminal trials. There may also be an opportunity for cross-examination. If that is so, the minimum experience for these Notaries is 10 years. Therefore, they are very experienced. Ten years is the qualification for a Sub-Judge to occupy that post. Therefore, this type of widening is somewhat good for speedy trial. But the person should be very much properly watched and the Notaries' registers should be properly maintained and the record should be sent to the Government. That type of procedural things have to be taken into consideration.

">If necessary, they can also have better training so that they can record the evidence. When we are discussing about combining the timing with the civil proceedings and criminal proceedings, we should take into consideration the grassroot level. Only the Judiciary is giving the last resort for the common man. Therefore, the quality should not be compromised there. Nowadays, every Amendment is coming that there need not be any second

">appeal for certain classes of cases and other things. But when first and second appeals are there, the trial courts are in a great hurry to finish off the cases.

">It is just to report the statistics to the High Court. Therefore, ordinary litigants are suffering very much in the trial court. They could not get justice because no other forum for proper policing has been created. Finally they only go to the court. The court should have a compassionate approach so that they can appreciate the feelings of the litigants and give a proper appreciation of the evidence. Only the trial court and the first appellate court are having the right to appreciate the evidence. Therefore, this sort of forum should be very carefully considered. The common man is having a hope only on the trial court. In the first appellate court, their part is very minimised. The part of the advocate is much more larger than the client's part. Therefore, this should be very much considered and really this objective of widening the powers to the notaries is necessary.

">MR. CHAIRMAN : Please conclude.

">THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION TECHNOLOGY (SHRI PRAMOD MAHAJAN): Sir, before 3 o'clock, we have to pass this Bill because we have to take up the Private Member's Business at 3 o'clock.

">MR. CHAIRMAN: Shri Nachiappan, please conclude. At 3 o'clock we have to take up the Private Member's Business.

">SHRI E.M. SUDARSANA NATCHIAPPAN : Okay.

">They act as an arbitrator, mediator and conciliator. This is also a very important provision, which has been given. We feel very happy about the widening of the powers of the notaries. When the economic reforms are coming up, these arbitrators can also play a very important role to settle the matters at the appropriate level. That type of amendment has to be brought in in the Arbitration Act so that they can also come within the definitions of `arbitrator`, `mediator` and `conciliator`."

">Finally, I would like to just submit another point in regard to clause (c), enlargement of the area of the practice. This has not been properly done by the State Governments and the Central Government because they are very strict in enlarging it. In the economic reforms, this should be appreciated by the Government so that the notaries can have more areas to be covered instead of having a restricted area of a particular town or a particular district. Every court, at the lower level, should have a panel of notaries, numbering about five or so.

">With these words, I support this Bill.

">MR. CHAIRMAN: Shri Varkala Radhakrishnan, there is no time.

">श्री नामदेव हरबानी दिवाथे (घिमूर) : सभापति महोदय, अगर नोटरी की संख्या में बढ़ोतरी न की जाए, अगर नोटरी को ज्यादा अधिकार नहीं दिए जाएं तो उसका जो नतीजा होता है, उसका मैं खुद शिकार हूँ। बहुत साल पहले मुझ पर चालीस कैसेस हुए नोटरी कम रहने के कारण। मैं इंग्लिश टीचर था। मैंने २७ साल के बाद तनख्वाह ली। एक-एक कैसेस १० साल, १५ साल, २५ साल तक चला। इसलिए मेरा सुझाव है कि नोटरी को ज्यादा अधिकार दिए जाएं और नोटरी की संख्या बढ़ाई जाए। मैं इस बिल का समर्थन करता हूँ।

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">SHRI PAWAN KUMAR BANSAL (CHANDIGARH): Sir, I would support the hon. Member on this. This is very important. With the enhanced work load of the notaries, the number of notaries requires to be increased.

">श्री. रासा सिंह रावत (अजमेर) : सभापति महोदय, कई नई तहसीलें खुल गई हैं इसलिए नोटरी की संख्या बढ़ानी अत्यन्त आवश्यक है। केन्द्रीय सरकार द्वारा इसका चयन करने का जो प्रोसीजर है, उसकी कोई निर्धारित प्रक्रिया हो। फार्म बनकर हो जाए तो सुविधा रहेगी नहीं तो लम्बा प्रोसीजर हो जाएगा। समय कम लिया जाए। धन्यवाद।

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THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RAM JETHMALANI): Mr. Chairman, Sir, this is a matter of pure administrative policy decision. I assure the House that we will have an adequate number of notaries on our list. I am taking good care to see that persons of integrity and competence are appointed. I insist on examining their previous tax returns. I insist on certificates from the Senior Counsel. I also make my own personal enquiries before appointing them. So, the best persons will be appointed. This is not such an important measure as the hon. Members think. After all, a court could, by the consent of the parties, appoint anybody as an arbitrator.

">The court could, without the the consent of parties where parties cannot consent, appoint a person of its own choice. This only indicates to the court the recruiting ground from where they can get arbitrators and conciliators. This also adds to the stature of the Notaries Public that the Legislature thinks that they are qualified to act as Arbitrators. Sir, it is a very innocuous measure. It is really one form of alternative dispute resolution that we are allowing them to record evidence. There also Commissioners could be appointed.

">MR. CHAIRMAN : The question is:

">"That the Bill further to amend the Notaries Act, 1952, as passed by Rajya Sabha, be taken into consideration."

">The motion was adopted.

">MR. CHAIRMAN: The House will now take up clause by clause consideration of the Bill.

">The question is:

">"That Clauses 2 to 7 stand part of the Bill."

">The motion was adopted.

">Clauses 2 to 7 were added to the Bill.

">MR. CHAIRMAN: The question is

">"That clause 1, the Enacting

">formula and long stand

">part of the Bill"

">The motion was adopted.

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

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">SHRI RAM JETHMALANI: I beg to move:

">"That the Bill be passed".

">MR. CHAIRMAN: The question is:

">"That the Bill be passed."

">The motion was adopted.

">SHRI RAM JETHMALANI: My thanks and gratitudes to the House.