**14.29 hrs.**

**Title:** Consideration and passing of the Code of Civil Procedure (Amendment) Bill, 2002 as passed by Rajya Sabha.

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

> "That the Bill further to amend the Code of Civil Procedure, 1908 and to provide for matters connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration."

The Civil Procedure Code Bill was legislated in the year 1908. Extensive amendments were carried out in the year 1976. Thereafter, a comprehensive amendment Bill was introduced in the year 1997, which was approved by the hon. House in the year 1999. After it has been approved by both Houses of Parliament and Presidential Assent obtained, certain provisions of the Bill were objected to by members of the Bar, and my predecessor, the hon. Shri Ram Jethmalani, made a statement in the other House that the Bill would not be notified till consultations are held with the Bar Association and Bar Council and thereafter if some provisions required reconsideration, the same would be brought back before this hon. House.

I had the opportunity of having extensive discussions with the representatives of the Bar, the Law Commission and also with the representatives of political parties with regard to the amendments that were brought about in the year 1999. Thereafter, the present Bill was introduced. The Standing Committee had considered each one of these amendments and had approved most of them. It has given some suggestions and we have tried to accommodate some amendments, which the Standing Committee had suggested, in the official amendments that we have brought about.

I would just indicate in a nutshell what the present amendments really deal with. There are some significant changes, or, if I may, 'improvements' on the Bill of 1999, which we had brought about in consultation with the Bar. Under our system of jurisprudence, cases go on indefinitely and take a very long time. They have no restriction on the extent to which even arguments could be addressed. A special provision has been introduced, as exists in jurisdictions all over the world, that Judges would be entitled to allocate time at the commencement of the hearing and if there is anything left, with the permission of the Judge, it could also be supplemented in writing. This is one change that we have brought about.

The second significant change is that a specific time limit of 30 days ordinarily, which might be extended only for reasons given in writing, has been introduced. The third change is not part of the original Bill. Acting on the recommendations of the Law Commission, in relation to execution of decrees, two changes have been brought about. The courts are not empowered to direct attachment of properties outside their jurisdiction. There was some ambiguity and there were some conflicting judgements. The Law Commission wanted those ambiguities to be removed. It also relates to transfers that had taken place prior to attachment. A clarificatory amendment has been brought about now.

There is one significant provision, which had been objected to and on which the Law Commission had also supported the suggestion of the Bar. In writ jurisdictions, when there is decision by a single Judge, at least one statutory right of appeal should be granted. Under our system of jurisprudence, if there is an error a judgement that falls into error, there should be at least one right of appeal. That right of appeal had been taken away by the 1999 amendment. So, for purposes of jurisdiction under article 226 and article 227, one statutory right of appeal has been given.

One area in which we have tried to improve upon the 1999 Bill relates to serving of summons. Serving of summons from courts takes unduly long time. So, various methodologies of services have been added including fax, e-mail, etc. A very large part of India still does not have access to these electronic equipment but now there is another parallel postal service in the share of courier service. There is another clause that we have amended to provide for parallel approved courier agents who would be allowed to serve court summons through courier agencies. That has also been permitted.

There was considerable objection from the Bar over the rigid time limit of 30 days given for filing of replies, which under no circumstances could be extended. They said that there could be exceptional cases where a person would be unwell or would be in a village unable to send his reply on time or unable to collect financial resources or documents. In those cases, even the Judge would be powerless in granting him even one day's extension after 30 days. After extensive discussions, we accepted that ordinarily the time for filing of replies in cases would be 30 days but it could be extended by another 60 days if there were special reasons to the Judge's satisfaction, which he would record himself.

Another important change that has been brought about is a very radical departure from our past jurisprudence on recording of evidence. In civil cases, recording of evidence takes years and years. In High Courts, sometimes, the next date of hearing granted for recording of evidence is after a few years. Normally, before a High Court, the recording of evidence would take anywhere between five and ten years. In the case of trial courts and subordinate courts, it still takes a few years before this is done. It is the longest stage of a case. We have now decided, by virtue of these amendments, that recording of evidence would be a delegatable function and discretion would be given to a Judge, where he could delegate it to a commissioner, normally a member of the Bar if he thinks that the subject matter is such where the function itself could be delegated. If he feels that the evidence is to be recorded by himself, it is a matter of judicial disposal and he could record it himself. We have also said that once he delegates this function, the Lawyer-Commissioners could actually record evidence on a day to day basis. Judges have a lot of pressure on their calendars and they give dates after months and years in some cases but lawyers can do it almost on a day to day basis or on a week to week basis.

So, if five hearings are required for recording of evidence, before a court it may take years; before a Commissioner, it may actually take two to three weeks. We have said that ordinarily the Commissioner will return the record of evidence in a period of 60 days, unless the subject matter is such that the judge decides to extend the time.

Sir, these are some of the broad amendments, which we have brought out. There were some objections in which the Bar had the power to amend the pleading, which was completely taken away. The lawyers that represented in the Law Commission also supported that view-point in the meetings that there may be exceptional situations where new facts coming to existence, subsequent facts coming to existence, which in the interest of justice are required to be brought on record by way of an amendment.

Now, to eliminate the power of amendment altogether may actually cause hardship because people will have to withdraw their cases and file new cases altogether. So, some power of amendment also has been restored back.

Sir, if I look at the larger picture about the CPC, we have had extensive discussions with the Bar, with the Law Commission and other concerned persons. We have tried to compress in a time frame every stage of the case. We have tried to explore the service of summons. We have tried to make even powers to record evidence delegatable. We have tried even to fix a time-limit, as happens in almost every other democratic country, which the judges can allot to the extent, to which arguments are to be addressed. This has really been done so that the pressure on the courts' calendar actually comes down and we are able, through these procedural changes, to expedite the whole process of disposal of cases.

Sir, with these few comments, I commend to the hon. House to take up this Bill for consideration and passing.

MR. CHAIRMAN : Motion moved:

> "That the Bill further to amend the Code of Civil Procedure, 1908 and to provide for matters connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration. "

MR. CHAIRMAN: Shri Pawan Kumar Bansal.

SHRI PAWAN KUMAR BANSAL (CHANDIGARH): Sir, my name is not there. ...(*Interruptions*)

MR. CHAIRMAN: Shri Varkala Radhakrishnan.

SHRI ARUN JAITLEY: Shri Pawan Kumar Bansal was with me in every consultation that I had with the Bar and with the Law Commission. So, he is almost a part.

MR. CHAIRMAN: Shri Pawan Kumar Bansal, the Chief Whip of your Party has given your name.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Mr. Chairman, Sir, I support the Bill.

Sir, the primary aim of amending the Civil Procedure Code is to take care of the difficulties that we experienced for the last so many years. We know that there are cases in the civil courts which are pending for decades. They have not been decided so far. Any civil case can be delayed somehow or other. And by filing a petition, a case can be delayed for a number of years. I know that there are cases, which are as old as 50 years. So far the final decision

has not been taken. This is the situation in the country. There were several attempts in the past to modify the situation. Amendments were brought to the CPC of the 1998, but the amendments subsequently made did not serve any useful purpose. The delay is continued without any hesitation.

Now, we have come to a stage that delays must be prevented. But I have my own doubts with regard to the number of days given in this case.

> Sir, I am referring to Section 4- No further appeal in certain cases. I quote:
>
> "â€¦no further appeal shall lie from the judgment and decree of such single Judge. "

I think, there would be much criticism and controversy regarding this provision.

A single Judge may commit error at any time. Giving his verdict a finality is always dangerous. So, I am of the view that there must be a provision for an appeal in certain cases, not in all cases. Clause 4 says:

> "Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force where any appeal from an original or appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgement and decree of such single Judge."

I cannot subscribe to this view because we know that in a number of cases there were single Judge judgements which have been revised in the Division Benches. We cannot take a position that the judgement of a single judge will always be correct. So, I strongly plead for amending this provision and giving the powers of appeal, not in all cases but in cases where an important question of law is involved. Otherwise, we will be denying justice. So, that is my first suggestion regarding Clause 4. "No amendment shall lie" will have to be modified in such a way that when a question of law is involved, an appeal shall be provided.

There are a good number of cases where a single Judge judgement is revised by a Division Bench. Almost all interlocutory orders of a single Judge are being stayed or withdrawn or rejected by a Division bench. We have a bitter experience in everyday life. So, considering all these aspects, my submission is that this provision will have to be amended in such a way that an appeal shall be allowed in matters where the question of law is involved. Suppose a decree is passed against a person who is residing beyond the jurisdiction of a court. Of course, I can understand that a decree has been given with regard to property. If the property is beyond the jurisdiction of a court, that is all right. But there are decrees against persons for recovery of money or recovery of some other movables in the possession of a person who is residing beyond the jurisdiction of a court. How could it be enforced? If the property is within the jurisdiction of the court, definitely there should not be any objection to imposing a decree. But when there are cases where movables will have to be attached or a decree will have to be enforced against the movables owned by a person who is a debtor, in such cases I think the hon. Minister will clarify my position and he will definitely remove my doubt with regard to that position.

The other thing is with regard to the period of 90 days provided in Clause 6. It says: "It shall not be later than 90 days from the date of service of the summons". Why should it not be 60 days? Why should the period be extended? 30 days for summons is agreed. Suppose, on any ground the summons could not be served within a period of 30 days, an extended period of 30 days will do. But why should the aggregate period be 90 days? I am making this point in order to avoid delay in deciding the cases. My view is that 90 days is too much; it has to be reduced to 60 days. That is amendment of Order V as enunciated in Clause 6 of the Amendment Bill.

With regard to serving of summons, I fully agree. I have no dispute with regard to that position. It is quite essential and we will have to use all the modern facilities available for serving the summons. Even the FAX service also can be accepted because so much delay is caused because of the service of summons.

Almost all disputes arise because of the delay in serving the summons and there are concerted efforts by the defendants to avoid the summons.

DR. NITISH SENGUPTA (CONTAI): Also, some corruption is associated in it.

...(*Interruptions*)

SHRI VARKALA RADHAKRISHNAN : Yes, corruption is also there. ...(*Interruptions*) The official server of the court, even without serving the summons, puts in a 'summon acceptance' report before the court. So many such cases are taking place. So, in order to avoid such a situation, it is well and good that the modern facilities should be used in the matter of serving the summons. Also, it is much more important and good that the court will decide or the court

will have to publish a list of persons who are competent to serve the summons. The courier services and other modes of service are also quite welcome.

I now refer to Section 9. Here also the period of 90 days which is given is too much. A written statement can be filed within 30 days. A period of 30 days is sufficient. But, if on any ground this period of 30 days is not sufficient and in exceptional cases where the court decides that there are reasonable grounds believing that the written statement could not be filed within the prescribed time of 30 days, then another period of 30 days can be given from that date. Why should it be 90 days from the date of summons? It can be 60 days from the date of summons. The period of 90 days is too much. I am always for preventing delays. It must be within 60 days. I request the hon. Minister to kindly explain as to why such a situation has arisen where they have not accepted the period of 60 days. I am subject to correction.

SHRI PAWAN KUMAR BANSAL : Let the outer limit be 90 days.

SHRI VARKALA RADHAKRISHNAN : I also agree with the provision with regard to filing of written arguments which is very good. Some lawyers are in the habit of taking number of days for arguing civil matters. I have seen that even in simple cases there would be lengthy arguments, reading depositions and then reading of law books etc. and sometimes the cases will be heard for months together by a *Munsif* or a judge. So, in such a situation, it is well and good that a written statement can be filed by way of arguments. Both the oral arguments as well as the written arguments are allowed by the courts as per this new amendment. The filing of written argument is quite well and good and it can form part and parcel of the case records also.

Now, regarding taking up of evidence by affidavit, instead of having the examination-in-chief before the presiding officer, along with the plaint they can file an affidavit by the concerned witness. An affidavit can be filed along with it. Now after filing of that affidavit, it forms part of the examination-in-chief as I understand it. Now, the process of cross-examination can be in two ways. The presiding officer himself can take the evidence in his presence using typewriter or his computer. Computers can be used in taking evidence. But it must be in the presence of the Judge or the *Munsif*.

Regarding the commissioners, there are so many difficulties in this. I fully agree with the view that it must be referred to commissioners. But the commissioners cannot be believed as it is. There may be difficulties. The commissioners are lawyers. ...(*Interruptions*)

SHRI P.C. THOMAS (MUVATTUPUZHA): Can the lawyers not be believed? ...(*Interruptions*)

SHRI VARKALA RADHAKRISHNAN : In taking evidence, the court can appoint a lawyer to be a commissioner. If I am wrong, you may please correct me. There is no bar for a lawyer to become a commissioner. The only bar is he should not be connected with the case. He should not be a lawyer appearing for either side. Anybody in the court, any lawyer practising in the court can be appointed as a commissioner. It is a paying business also for the lawyer. He will get something as commission fees. Those young people who are new lawyers may get a chance of becoming a commissioner. They will have to take evidence in their office or at some other place which is convenient to them.

Sir, after completion of the process it would be returned to the courts and if on any ground a further re-examination is required, then that would be decided by the courts. But what I fear is that if no safeguards are put, then the lawyers might misuse the provisions of the Act. I belong to the lawyers' community and I have a bitter experience with lawyers. They are good people. But they have a tendency to misuse the provisions of Acts as well...(*Interruptions*) I did not practice law after some time because I got elected as an MLA. But before that I always used to practice law...(*Interruptions*)

Sir, the appointment of Commissioners would have to be done as per guidelines. The courts would have to evolve guidelines under which Commissioners could be appointed and evidence could be taken by the Commissioners.

Sir, the other point is about pronouncement of judgements. I know about *Munsifs* and Judges who have not pronounced their judgement after hearing of the case was complete. There have been cases where years after hearing of a case was complete and when the gentleman, who filed the case, was about to retire, judgement on his case was not pronounced by *Munsifs* or Judges till the person concerned superannuated from his service.

DR. NITISH SENGUPTA (CONTAI): It was only said `order reserved'.

SHRI VARKALA RADHAKRISHNAN : Yes. That is the situation that is prevailing in most of the courts in the country. I fully agree with the provisions of this section but I would still like to get enlightened on certain points. At the first instance the court has been given a 30 days time for pronouncement of judgement on a case. But then, why should they be given 60 days afterwards? Why should a *Munsif* or a Judge be given 60 days time when only 30 days time

has been given at the first instance?

MR. CHAIRMAN: Shri Radhakrishnan, please conclude now.

SHRI VARKALA RADHAKRISHNAN : I would like to quote the relevant section in this regard. It says:

> "the judgments are to be pronounced within definite time-frame after a case has been heard. The general rule proposed is that a judgement is to be pronounced at once and where it is not practicable to do so, the Court shall make an endeavour to pronounce judgment within thirty days from the date on which hearing of the case was concluded."

Sir, thirty days is enough time for this. If on account of any extraordinary situation the Judge is not in a position to deliver the judgement, why should he be given a further extension up to 60 days? That is not necessary. It must be reduced to 30 days only. We are fighting for early disposal of cases.

MR. CHAIRMAN: Shri Radhakrishnan, please conclude now.

SHRI VARKALA RADHAKRISHNAN : Sir, I would abide by your ruling. But these are some of the issues on which I would like a further clarification from the hon. Minister. On the whole, I fully support this amending Bill. It is a very important amendment. When the Bill on Civil Procedure Code and Criminal Procedure Code was introduced in this august House by the then Law Minister, Shri Ram Jethmalani, I strongly opposed it. He found fault with me and he did not agree with me. I told him then that he was really doing injustice to the criminal law administration in the country and that if he proceeded with this amendment to the Criminal Procedure Code, then the entire lawyer community would turn against him. These were the words that I used when he introduced that Bill in the House. What was the outcome? The Bill was passed but the provisions of the Act has not been implemented till date. It has not been notified. The entire lawyer community came out on the streets protesting against it.

They were on a war path. The ultimate result was that the Government was forced not to implement or not to notify the Criminal Procedure Code (Amendment) Bill.

Whereas there is a consensus of opinion between the lawyers community, the thinking of the Law Commission is not always good. They are not living with the times. They may recommend many things which are quite impractical. At the same time, maybe, we have to turn them out. I do not agree with the recommendations of the Law Commission.

But the lawyers community has the practical experience. There is consensus. I fully support the Bill. It has to be passed. It will bring in a very important change in the Civil law administration, and the civil controversies that are pending for a long time will be decided without any further delay.

With these few words, I support the Bill.

SHRI VIJAYENDRA PAL SINGH BADNORE (BHILWARA): Mr. Chairman, Sir, I rise here to support this very important piece of legislation to amend the Code of Civil Procedure, 1908.

Let me start with the remark that 'justice delayed is justice denied.' And, this Bill definitely looked into it. The intention of the hon. Law Minister is very clear. He wants to expedite the entire legal system and process so that justice is not delayed. Having said that, let me also say that there are a lot of provisions which have been introduced in this Bill which will hasten the process of justice. But why I want to really congratulate the hon. Minister is the consensus that he has got. He has got consensus not only from this House but also from the Bar and from the general public.

Sir, this Bill was introduced before also but there were stalemates. Here, the hon. Law Minister has really tried to go and talk to the people. Now there can be two views on that as to why to go to them when we are doing something for them, for the people, in general. But the general feeling among the public is that this Bill should have come much earlier. I think, we must hasten to pass this Bill.

Sir, there are some provisions which I would like to mention. There was a provision to injunction. This injunction was being used by the party rather to misuse it. I think, something has been done about it so that it is not misused. I hope, the hon. Minister will explain exactly as to how he has tried to do it so that this injunction is not misused.

There used to be an Arbitration Act till 1940. Most of the countries in the world today have gone ahead of this arbitration.

**14.58 hrs (Shri Devendra Prasad Yadav *in the Chair*)**

We had this Arbitration Act here. We had heard stories regarding the Arbitration Act because it was not in the interest of the people. Arbitration Act means that something is done outside the court and there is no delay in getting justice. But when this Arbitration Act was introduced, I think, it was all right. But it went astray and there were problems in it.

Sir, in this Bill, there is the question of court summons. The court summons should be there. Now, with the change of times, we have got the electronic media; we have got other services which are better then postal services which were in effect; and we have the courier system which can also be used for the court summons.

**15.00 hrs.**

There is another provision in this Bill that there is no second appeal in case of recovery up to Rs.25,000. There used to be a time when valuation up to Rs.20,000 could go all the way up to the Supreme Court. But now, the value for that amount is nothing, and hence, this provision. So, this Bill addresses that problem also.

I also want to know from the Minister something about Commissioners. There is a lot of scepticism about Commissioners − who are going to be the Commissioners, how are they going to appoint Commissioners, will they misuse the system of oral arguments, etc. This must be explained to us because Commissioners can also misuse; and we may not have or the people or party might not really have any reliability or even people may be sceptical about who are being appointed as Commissioners.

I will also like to say that something should be done about Criminal Procedure Code also. This Bill deals only with the Civil Procedure Code and Criminal Procedure Code is out of purview of this Bill. So, I would like to request the hon. Minister to do something about Criminal Procedure Code also, as he has done in the case of Civil Procedure Code. We have had horrid stories and people were getting away with murders, etc. So, I would request him to please see that Criminal Procedure Code also given the same effect.

With these words, I support the Bill and I thank you very much.

SHRI A.C. JOS (TRICHUR): Mr. Chairman, Sir, I generally welcome the very important amendment that is brought forward by the hon. Minister of Law.

At the time of passing the Bill in 1999, we had some apprehension that that Bill would be in trouble, when enacted. That Bill sought to circumvent delay in legal proceedings and put a lot of restrictions with which even lawyers did not agree. Lawyers are the pillars in the delivery of the system and so, they should have some facilities in doing it.

Anyway, I am happy that − considering all those things − the hon. Law Minister has brought forward a much more comprehensive and a flexible Bill. As I mentioned earlier, I am in agreement with the Bill generally. But I have very serious objections to Section 100A wherein he has debarred appeal of the decision of a single Judge. That will be a dangerous provision. Of course, the intention is good. It is in order not to cause any delay and we understand it. But in many cases, the decisions of the single Judge were revoked in appeals or re-examined in appeals, and justice was done in such cases. So, irrespective of whether there is delay or not, we shall not restrict the 'appellate right' of a citizen, especially under articles 226 and 227 of the Indian Constitution, which he has stated in that provision.

Section 100A says:

> "Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, --
>
> â€¦
>
> (b) where any writ, direction or order is issued or made on an application under article 226 or article 227 of the Constitution,
>
> by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such single Judge."

Articles 226 and 227 of the Indian Constitution are supposed to be the real test for fundamental rights and powers of the courts. Article 226 only expanded the very vistas of the Constitution. During the days of Constituent Assembly, it was Heavens for lawyers; that apart, article 226 used to be there. In all High Courts, decision of the single Judge matters much. So, unless we have some safeguards whereby an appeal can be made on the orders of the single Judge, it will be difficult.

I would now like to suggest about Section 102. At present, an appeal cannot be made up to Rs.25,000. I would

plead that that amount may be raised, if possible, to Rs.50,000 because Rs.25,000, nowadays, have no value. I am not very strongly pleading for that but the hon. Law Minister has to look into it.

Regarding the issue of summons, I think we have to adopt a new method. I am totally in agreement with the hon. Law Minister but pleading also is absolutely necessary. It is a common practice in legal parlance. During the pleading stage, new facts are coming up. Even now it is being done but it should be amended. I think, permission should be given to amend it.

With regard to having evidence by the Commission, I am very glad that my learned friend has suggested it. I am not very clear but at the same time we are having the Commissions to inspect the property by the junior lawyers. The witness is allowed to sit back. They are permitting the Commission to go there. There is nothing wrong in it. Could you not have a condition that the lawyer who has put in ten years of practice, or something like that, could be appointed in the Commission? The Law Minister is aware of the lacunae in the appointment of Commissions. When a judge listens to the witness, he comes to some conclusion based on the way he deposes or uses the words, especially in criminal law. It is very important to arrive at inference by the presiding officer or by the judge. The Commission cannot do that. The Commission cannot write that his body language is such. That is also a fact. He cannot do that. It is an intangible thing.

Quite junior people are there in the Commission of Inspection. In this case, the Commissioner or a lawyer of a particular seniority shall alone be chosen. I think he should be involved in it. I think you have to give a serious thinking to it. No doubt, I am totally in agreement that the judgements are pronounced in two years and they go on like this. The Apex Court is also not away from that. In High Courts, there are cases, where in their own fancy they will say 're-hear' or 'witness may again be called'. This disease is more in the High Courts. So, that should be strongly enforced. As hon. Radhakrishnan has suggested, why should we have 60 days. We need only 30 days because delivery of justice could be done immediately after the examination of witnesses and documents. This is one of the very important Sections. Judgement has to be delivered in time so that the calendar could be set accordingly.

Sir, as my learned colleague has mentioned, the Civil Procedure Code and the civil procedure in our judicial system are tolerably good. But we have to have some very serious thinking about Criminal Procedure where we need a lot of changes. Even now, many criminal cases are pending in each court.

So, I think that a lawyer like our Law Minister would give a serious consideration for revamping and re-looking into the Criminal Procedure Code and criminal legal system and would bring a comprehensive Bill.

With these words, I generally welcome this Bill.

SHRI A. KRISHNASWAMY (SRIPERUMBUDUR): Sir, I thank you for giving me this opportunity to speak on this Bill. Sir, on behalf of my Party, DMK, and on my own behalf, I welcome this Bill.

Sir, this Bill has been brought to avoid delays. I appreciate the Minister as he has brought the Bill at the right time. Sir, when this Bill was introduced by the then Minister, there was a hue and cry outside Parliament. The advocates were agitated against this Bill. Now, the hon. Minister has brought this Bill after a great effort and after consultations with all the advocates and Bar Association.

Sir, the Bill seeks to amend the procedure of serving the summons. It says that the job of serving the summons would be handed over to the courier service. Sir, I am against this view because when a process server or a postman serves the summon, it will reach the litigant properly. If the summons do not reach properly, we can take action against these persons as they are Government employees. We know about our advocates and litigants. They could pay something to the process server and employ delay tactics. Therefore, the hon. Minister have to re-think about amending the procedure of serving the summons.

Sir, the Bill also says that after obtaining the injunction, the litigant should give surety for this. This type of procedure is there in the Criminal Procedure Code because the person who is accused rushes for taking the bail. That is why, he is required to give surety. I do not understand why the litigant should give surety in civil cases also. I think the hon. Minister would enlighten us about it. The poor man cannot get injunction in the court as he would have to spend more for giving surety. I think the hon. Minister would re-think about it.

Sir, the hon. Minister has also said that to avoid delays, the Commissioners would conduct the examination. I think the Commissioners will be able to do their job. But in the criminal courts, the special *Tehsildar* will record whatever is said by the witnesses. Whatever is said by the advocate, that would be recorded. But we can easily induce them. Even the litigants do not have any fear while appearing before them. They will not depose properly. So, I think this provision should not be introduced.

So, only *Munsif* Court should record the examination of the subject. Then only we can get justice.

In Chief Examinations, affidavit system has been introduced. I do not know how it is possible. Advocates are going to file the affidavits with or without the knowledge of their clients. He can record therein anything he wants. When Examination-in-Chief is taken, on the same day Cross Examination also should be taken. That will help the court. Secondly, for filing an affidavit, no time limit is stipulated. I feel that the affidavit should be filed along with the plaintiff. But there is no such thing in this amendment.

I appreciate this Bill in general because to avoid the delay you have brought this Bill at right time. There is no second appeal for amounts not exceeding Rs.25,000. This is a very good amendment because today in many suites they do not approach the Court. Probably at the *Panchayat* level they are deciding the matter because they do not have faith in the court. Therefore, this is a very good move.

On behalf of the DMK Party, I welcome and support this Bill.

SHRI P.H. PANDIAN (TIRUNELVELI): Mr. Chairman Sir, I would like to present my views on the Code of Civil Procedure (Amendment) Bill, 2002. I read the speech of the Law Minister made in the other House wherein he stated that he had addressed a letter to all the Chief Justices of High Courts to intimate to him about the number of cases in arrears. Some High Courts have given a positive response; some High Courts said under the principle of independence of judiciary they are not in a position to disclose the information to him.

I would like to initiate my speech on these lines. Under the 44$^{th}$ amendment to the Constitution, the Supreme Court declared that the Constitution is supreme. They do not say Parliament is supreme. For what purpose they have said it, I do not know. The Law Minister may know this and he should tell us because he is accountable to this House.

As per the Austin's theory of sovereignty, Supreme Court and High Courts must be reminded that they have to disclose all the details about the arrears of cases pending before them. If they determine human as superior, they should not be in the habit of placing their obedience in a book. There should be habitual obedience for the bulk of the society as people are sovereign. In turn, this House is sovereign as it represents the will of the people. This is the letter and spirit of the Constitution. They say the book is supreme; but I say the House is supreme. So, it is high time the Government had moved the Supreme Court to uphold the sovereignty of the Parliament over this Constitution.

The Law Minister claims that the position of arrears is better because the number of cases pending before the Supreme Court has been reduced from 1.2 lakhs to just over 20,000. How has it become possible? I would demonstrate it through a simple example. Three persons were sentenced to life by Madras High Court and it was confirmed. They filed an appeal before the Supreme Court under SLP. But, that was dismissed *in liminie*. This is the way arrears have been reduced. Even at the door-step of the Supreme Court they are dismissing it, asking the petitioner to get out. When the Supreme Court is not in a position to hear a life appeal, how can one say that justice is available equally to all? You admit it, hear it for a day and then take a decision. But, they are not in a position to do so. That is why the Law Minister received a response saying that they are not in a position to give him the statistics. The existence of the Higher Judiciary, the existence of the Constitutional Courts should be felt by the common man. When three persons have been denied a right to enter the Supreme Court through their appeal papers, it is not going to be useful to the nation.

Article 145 of the Constitution says:

> "Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court includingâ€¦ "

Then there are Clauses on how to grant bail and how to grant stay. We debated this point in the Committee. Shri Anadi Sahu is here. We debated on whether the rules framed made by the Supreme Court have been laid on the Table of the House right from the inception of the Constitution. And Shri Anadi Sahu also made a point there.

The Executive is independent and the Parliament is independent. But in certain cases, we have a flexible Constitution. We flow into each other's sphere. The Parliament enters into the arena of the Judiciary under article 124. You make appointments to go on with the impeachment proceedings, and under article 124 of the Constitution, the Executive also is taken into account while appointing judges in the matter of verification. So, we have a flexible inflow into each other's sphere and we are mutually co-existing. I would say that this is high time that the Law Minister should confer the Chief Justice of all the High Courts and the Supreme Court to evolve a process as to how we can deliver justice to common man.

*Lok adalat* was started but it got the approval of Parliament only in 1987. Prior to that, without any Parliament approval, it was functioning. There was no parliamentary approval prior to 1987.

Coming to the provision of Commissioner, while examining a witness - a plaintiff or a defendant - if a judge wants to impeach the credit, he has to see eye-to-eye. While writing the judgement, he must have the knowledge of the trial. He must have the proceedings before hand as to what happened between the plaintiff and the defendant in the box. Here, the Commissioners are there to take evidence. There cannot be a proper application of mind by the presiding judge while writing a judgement. You want to cut it short. It is a welcome procedure. But by cutting it short, do not cut short justice. You should not cut short justice.

As regards articles 226 and 227, I would like to ask the hon. Law Minister on one point. I think this was excluded. There is a provision for appeal. Writ appeal is thereâ€¦...(*Interruptions*) It is under the guise of PILâ€¦...(*Interruptions*)

SHRI ARUN JAITLEY: Now, Shri Jos has also raised this question. The copy which has been circulated has the present amendment as also the 1999 amendment. So, what he was referring to and what you are referring to is Clause 100A of 1999. If you see Clause 4 of 2000, the position becomes clearâ€¦...(*Interruptions*) The present provision reads like this:

> "Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appeal decree or order is heard and decided by a single judge of a High Court, no further appeal shall lie from the judgement and decree of such single judge."

So, if a single judge decides, under his appellate jurisdiction, no second appeal lies to the Division Bench. You go straight to the Supreme Court. Currently what is happening is, a civil judge decides, then you go to the District judge and appeal, and then you go to the High Court and appeal. Now, we are not going to provide the fourth appeal to a Division Bench and fifth to the Supreme Court.

In any system, which has four and five appeals, the litigant will be crushed under the burden and it will not be to his benefit. So, we have said that if the single Judge is deciding the matter in his original jurisdiction, that is, under articles 226 and 227 of the Constitution, then, of course, one appeal has to be provided. The appeal goes to the Division Bench. But if the single Judge is deciding the appellate jurisdiction matters, no further appeal to the Division Bench is possible....(*Interruptions*)

SHRI P.H. PANDIAN : So, from the judgement on Writ Jurisdiction, you have a writ appeal.

KUMARI MAMATA BANERJEE (CALCUTTA SOUTH): After a single Judge Bench's verdict, he can go to the Supreme Court....(*Interruptions*)

SHRI ARUN JAITLEY: That is about writ appeal. We have taken away an appeal to a Division Bench from a single Judge only where the single Judge exercises the appellate jurisdiction. The writ jurisdiction remains....(*Interruptions*) The reason is that writ is not an appeal.

SHRI P.H. PANDIAN : I think the provision of writ appeal is there.

SHRI VARKALA RADHAKRISHNAN : Writ is not an appeal.

SHRI ARUN JAITLEY: Writ is not an appeal. If a single Judge hears a writ petition, we have to provide, at least, one right of appeal because if it is a wrong judgement, then, litigants from all over the country cannot come only to the Supreme Court. Under the present scheme, a Division Bench appeal will lie. But if the single Judge is hearing a case under his appeal jurisdiction - that is, a subordinate Judge has heard it, a single Judge has heard an appeal, and in some cases, a single Judge may hear it as a second appeal − then, we are not providing scope for a Division Bench appeal as a second appeal or a third appeal. You may have remedy under article 136 of the Constitution. But that ends the matter.â€¦ (*Interruptions*)

SHRI P.H. PANDIAN : I thank the hon. Law Minister for providing for a writ appeal, for not taking away the writ appeal....(*Interruptions*)

SHRI VARKALA RADHAKRISHNAN : How can he take it away?

SHRI P.H. PANDIAN : He has not taken away the writ jurisdiction.â€¦ (*Interruptions*)

SHRI ARUN JAITLEY: You cannot have an appeal in pursuance to the appellate power which a single Judge exercises. You cannot have a second appeal against that.

SHRI VARKALA RADHAKRISHNAN : I think there is no bar going to the Supreme Court.

SHRI P.H. PANDIAN : You can choose your jurisdiction.

Without meaning disrespect to any of the members of the Judiciary, I would like to mention that the Chief Justice, before his retirement last month, had said that 20 per cent of the Judges were corrupt. I did not say it. It came in all the newspapers. What is the Government going to do about it? Mr. Minister, did you talk to the Chief Justice? He has said it.

Now, I come to the PIL. The PIL is a parallel to the Executive action. The PIL is a parallel administration. We debated the BALCO issue for one day under Rule 184. That motion was defeated. Then, somebody took it up to the Supreme Court under PIL. The Supreme Court said: "It is a policy decision. We cannot entertain it. We cannot go into the PIL." What I mean is that the court should be consistent. If there is consistency, if there is certainty under article 141 of the Constitution, that should be ensured. To cite an example, regarding the CNG matter, it has reversed its own policy decision. About the PIL cases, I would submit that there must be some guidelines to be evolved under article 145 of the Constitution. Subject to the provisions of the Constitution, the Parliament is functioning. Subject to the provisions of the Constitution, the Executive is accountable to this Parliament. So, I would request the hon. Law Minister to have a dialogue with the Judiciary. If we have a dialogue, it is not going to be termed as an interference with the Judiciary. One should have a dialogue. In a democracy, all the three wings should be functioning. All the three bodies should be functioning in a harmonious matter. So, would I request the hon. Law Minister to do that.

Finally, I would like to say that I welcome this Bill. The lawyers were agitating as far as the previous Bill was concerned. Now, I think, that section of the society, the legal fraternity, will accept this. So, I welcome this Bill.

With this, I conclude.

**श्री सुरेश रामराव जाधव (परभनी) :** सभापति महोदय, कानून मंत्री जी जो सिविल प्रक्रिया संहिता, (संशोधन) विधेयक, 2002 लाए हैं, उसका मैं और मेरी पार्टी पुरजोर समर्थन करती है। यह बिल बहुत दिनों से पैंडिंग था। उचित समय पर यह संशोधन विधेयक लाया गया है। अगर न्याय करना है, न्याय सहज और सुलभ बनाना है तो वह न्यायिक सुधारों से होगा।

इस साल स्वतंत्रता दिवस के अवसर पर ऐतिहासिक लाल किले की प्राचीर से प्रधान मंत्री जी ने भााण करते हुए वादा किया था कि कानूनी प्रक्रियाओं में संशोधन शीघ्र किया जाएगा। प्रधान मंत्री जी ने यह भी वादा किया था कि जो गरीब लोग हैं, उपेक्षित हैं, निरक्षर हैं, उनको सहज और सुलभ न्याय मिलेगा।

सभापति महोदय, हमारा मुल्क बहुत बड़ा गणतंत्र है। हमारे देश की आबादी 103 करोड़ के करीब है और हमारे देश की सीमाएं भी काफी लम्बी हैं। हमारे देश में ज्यादातर गरीब और निरक्षर लोग रहते हैं। आज की न्याय प्रक्रिया काफी जटिल और महंगी है। इसके लिए जो संशोधन विधेयक कानून मंत्री जी लाए हैं, वह समय पर लाया गया संशोधन है। प्रधान मंत्री जी ने अपने भााण में कहा था कि एन.डी.ए. की सरकार गरीबों, निरक्षरों और आम जनता को शीघ्र और समय पर न्याय देने के लिए कटिबद्ध और वचनबद्ध है। इसके साथ-साथ उन्होंने यह भी घोाणा की थी कि देश में 1700 फास्ट ट्रैक अदालतों की स्थापना की जाएगी। लेकिन अभी तक कुल 1703 करोड़ रुपए ही इस काम के लिए आबंटित किए हैं। इस पैसे से 1433 फास्ट ट्रैक अदालतों का ही गठन हो सका है। लोगों को शीघ्र न्याय देने के लिए जो वचनबद्धता प्रधान मंत्री जी ने की थी, बाकी की अदालतों का शीघ्र गठन हो उसके लिए जल्दी से जल्दी पैसे का आबंटन किया जाए। न्याय सभी की पहुंच में हो, इस बारे में भारतीय संविधान की अनुच्छेद 39 'ए' में दर्ज किया गया है।

कोई भी अपनी आर्थिक गरीबी के कारण न्याय प्राप्त करने के अवसर से वंचित न रहे लेकिन हमारे देश की आबादी का एक भारी प्रतिशत गरीबी की रेखा के नीचे है। जो लोग गरीबी की रेखा से नीचे रहते हैं, उनके लिए न्याय प्रक्रिया कठिन और जटिल है। उसमें वादी, प्रतिवादी, प्रतिवादी का जवाब, विटनैस, अमेंडमेंट, न्यायालय का एडजर्नमेंट, वकीलों का हाजिर न रहना, कभी जस्टिस का हाजिर न रहना, आदि जैसी इस लम्बी प्रक्रिया के बाद पांच साल मुकदमा ओरिजनल कोर्ट में चलता है। उसके बाद जब न्याय होता है, तब अपील पर प्रति अपील, हाइकोर्ट, सुप्रीम कोर्ट में अपील, कभी-कभी केस को रिवाइव भी किया जाता है। हमारे यहां एक कहावत है कि अगर बाप ने न्याय मांगा तो बेटे को भी न्याय नहीं मिलता है। न्यायालय की इतनी जटिल प्रक्रिया है। मैं कानून मंत्री जी का बहुत-बहुत आभारी हूं कि वे उचित समय पर यह अमेंडमेंट बिल लाये हैं। लोक अदालतें भी कारगर ढंग से काम कर रही हैं। सुप्रीम कोर्ट में इस समय 22047 मुकदमे न्याय की राह देख रहे हैं। उच्च न्यायालय में 35.16 लाख केसेज पेंडिंग हैं। हमारे सत्र न्यायालयों में दो करोड़ से भी अधिक केसेज पेंडिंग हैं। लोगों को न्याय कैसे मिल पाएगा? न्यायिक अधिकारी, जस्टिस 13000 हैं। सत्र न्यायालय में दो करोड़ से ज्यादा मुकदमे पेंडिंग चल रहे हैं, उच्च न्यायालय और उच्चतम न्यायालय में भी मुकदमे पेंडिंग हैं। अगर इनमें न्याय देना है तो जस्टिस की पोस्ट्स को बढ़ाना बहुत जरूरी है। अभी पटना में जस्टिस की भारी कमी के कारण कितने दिन वकीलों का आंदोलन हुआ। एक कहावत है: "Justice delayed is justice denied." अगर वक्त पर न्याय नहीं दिया तो न्याय नहीं हो सकता। इसके लिए मैं कानून मंत्री जी से गरीब जनता के लिए सरल और सुलभ न्याय देने के लिए अपील करूंगा और इसके लिए जो भी संशोधन की जरूरत है और सिविल प्रोसीजर कोड में जो संशोधन लाए हैं, धारा 39 और 64 में संशोधन हो रहा है, उसी तरह से क्रिमिनल कोड में भी संशोधन की जरूरत है। हमारे प्रधान मंत्री जी की वचन-बद्धता, एनडीए सरकार की वचन-बद्धता है कि समय पर सरल और सुलभ न्याय के लिए कदम उठाए क्योंकि अगर समय पर न्याय नहीं मिलता है तो इससे लोगों में असंतोा फैलता है। मैं इस बिल का समर्थन करता हूं।

**डॉ. रघुवंश प्रसाद सिंह (वैशाली) :** सभापति महोदय, वर्तमान विधेयक में माननीय मंत्री जी ने दावा किया है कि न्याय में बड़ा विलम्ब होता है और इस विधेयक के लाने से जल्दी-जल्दी न्याय मिलेगा, मुख्य बात यही है। कुछ और संशोधन लाए हैं। 1999 में भी एक विधेयक आया था, उस पर बहस हुई थी और वह पारित भी हुआ था।

जब पहले बिल पारित हुआ, तो बड़ा भारी आन्दोलन हुआ और पारित बिल पारित ही रह गया। अब यह विधेयक वकील, बार एसोसिएशन, कमीशन आदि से विचार करके और सुधार करके लाए हैं। मैं समझ नही पाता हूं, पहले वाला विधेयक जल्दी न्याय देने वाला था या यह विधेयक, जो सुधार करके लाए हैं, जल्दी न्याय देने

वाला है। ला-कमीशन के चेयरमैन, श्री जीवन रेड्डी ने धमकी दी थी कि अगर इस विधेयक में सुधार करेंगे, तो वे त्याग पत्र दे देंगे। इस बात को भी सरकार को समझना चाहिए। कानून प्रक्रिया में न्याय के चार पक्ष हैं - एक कानून है, दूसरे जज साहब हैं, तीसरे वकील साहब हैं और चौथे मुवक्किल साहब हैं। इसके अलावा पांचवें कानून मंत्री हैं। जाधव साहब आंकड़े दे रहे थे, लेकिन हाई कोर्ट में जजेज के 647 पद मन्जूर हैं, लेकिन 180 पद खाली हैं। यह जानकारी मेरे पास पहले की है। कानून जितना भी जल्दी-जल्दी न्याय मिलेगा से संबंधित बना दिया जाए, लेकिन जब जज साहब ही नहीं रहेंगे, तो न्याय कैसे जल्दी होगा। इसके अलावा दो करोड़ केसेज लोअर कोर्ट में है, 34-35 लाख हाई कोर्ट में हैं और 25-26 हजार सुप्रीम कोर्ट में है। अब तो इन्फार्मेशन टैक्नोलाजी का जमाना है, तुरन्त जानकारी मिलनी चाहिए कि कितने केसेज कहां लम्बित हैं। बिहार में तो पहले ही शुरु हो गया कि कहां कितने केसेज लम्बित हैं । हम रिपोर्ट देख रहे थे, तो पता लगा कि हाजीपुर कोर्ट, सीतामढ़ी कोर्ट और मुजफ्फरपुर कोर्ट में कितने केसेज लम्बित हैं। स्थिति में सुधार तब होगा, जब जजेज की बहाली हो जाए। इसके बाद प्रश्न वकील का आता है । यह विधेयक वकीलों से बात करके बनाया गया है, उन्होंने इस सवाल पर तीस हजारी कोर्ट से पटियाला कोर्ट तक बड़ा भारी जुलूस निकाला । वे कहते हैं कि इससे उन्हें खतरा है। उनकी संख्या छः लाख है, लेकिन उनकी स्थिति क्या है? कुछ वकील तो मंत्री जी के बराबर में हैं, जिनको पांच-सात लाख रुपए फीस मिल जाती है और केस भी पूरे नहीं कर पाते हैं। कुछ वकील खाने-कमाने लायक हैं, लेकिन कुछ वकीलों के पास तो बैठने तक के लिए साधन नहीं है। कोर्ट में जायेंगे, तो आपको पता लगेगा, वे कुर्सी और टेबल में सैंगड़ी लगाकर ताला लगाए हुए हैं। ऐसे वकील तो खौमचे वालों से खरीद कर खाते-पीते रहते हैं।

This is what Prof. N.L. Mitra, Director, National Law School of India says:

> "When I asked one agitated young lawyer in Delhi during the recent agitation about his views, his angry retort was like this: 'हमारे पेट पर लात मार रहे हैं। बाल-बच्चों को भूखा मारेंगे।' It implies that the grassroots lawyer community will starve if the amendments were put into practice in letter and spirit."

यह उनकी फीलिंग है, लेकिन मंत्री जी कानून लाए हैं कि जल्दी से जल्दी न्याय मिलेगा। यह ब्यान नेशनल ला स्कूल आफ इंडिया के डायरैक्टर का है।

"â€¦The major changes introduced in the civil court are the following:" इन्होंने चेंज क्या किया? पहला नम्बर यह है कि नोटिस जारी करने में विलम्ब होता है। परम्परागत नोटिस जारी का है कि रजिस्ट्री कर दी जाए। उनके यहां जो रजिस्ट्री लेकर जाता है तो उसकी उनसे भेंट नहीं हुई। उसने लिख दिया कि भेंट नहीं हुई और वापस लौटा दिया। उसके बाद में फिर दोबारा कोर्ट का चपरासी वहां उसे खोजने के लिए जाता है। वह बेचारा इधर-उधर घूम कर उनके बारे में पूछता हैं, जब उनका कहीं से पता नहीं चलता है तो वह दोबारा वापस आ जाता है। उसके बाद फिर दोबारा जाता है, तब भी उनके न मिलने पर उनके घर पर नोटिस बोर्ड पर टांग कर आ जाता है कि हम आए थे, आप नहीं थे, इसलिए हमने नोटिस टांग दिया। अब इसकी भी कोर्ट में गवाही होगी कि नोटिस तामील हुआ या नहीं, यानी नोटिस तामील में छः महीने या सालभर होता है। अब फेक्स और कुरियर भी हैं। कानून बनाने में ऐसी व्यवस्था होनी चाहिए, नीयत ठीक एवं शुद्ध रहे और जल्दी न्याय मिल जाए तब तो फायदा है। नोटिस के लिए एक ही समय में पार्टी मुस्तैद हो। अखबारों में भी नोटिस आता है। अखबारों में गजट हो जाए, छप जाए और सब जान जाएं। फिर फेक्स और विभिन्न जरिए हैं, जिससे हो सकता है, लेकिन इसमें हमने देखा है कि इतना लिटिगेशन है। कानून सुधार में लिटिगेशन पर लिटिगेशन और बढ़ेगा, साबित ही नहीं हो सकेगा। सरसरी निगाह से शुरू में नोटिस बना दिया कि मामले होने के 30 दिन के अंदर, उसमें आपत्ति हुई कि यदि 28 दिन में पहुंचेगा तो दो दिन में कैसे कोई जवाब देगा। जो जवाब देना है, जो बयान तहरीर और जवाब देने वाले लोग होंगे, वे कैसे बयान दे सकेंगे। इसमें कुछ सुधार किया है, लेकिन इसमें साफ कानून संक्षेप में होना चाहिए। असली प्वाइंट हमारा यह नहीं है, लिटिगेशन डिले होता है तो उसमें सबसे ज्यादा खर्चे का खतरा है। डिले होने के कारण हिन्दुस्तान में खर्चीला न्याय है। डिले होता है, इसलिए खर्चीला न्याय भी है। कास्ट ज्यादा लगती है, इसलिए गरीब आदमी न्याय नहीं पा सकता। इसके लिए मंत्री जी ने कोई उपाय नहीं किया।

महोदय, मंत्री जी ने दावा किया कि कमीशन की हमने रिपोर्ट ली है। हमने बार एसोसिएशन से विचार किया है और इन्होंने सब जगह से सब की राय लेकर, Justice delayed is justice denied को स्वीकार किया है। इसलिए यह जल्दी-जल्दी लागू हो और लोगों को न्याय मिले, लेकिन जो खर्चीला न्याय मिल रहा है, इसका आपके पास क्या उपाय है। असली प्वाइंट यह है कि जस्टिस डिले होने से डिनायल तो है ही, लेकिन खर्चीला भी ज्यादा है। सब वकील कह रहे हैं कि हम मर रहे हैं, क्योंकि वकीलों को ही पैरवी एवं बहस करनी है। वे कहते हैं कि हम मर जाएंगे, अगर जल्दी-जल्दी से न्याय होगा तो कैसे जल्दी न्याय हो सकता है। इसलिए जो बिल लाए हैं, उसमें सवाल नम्बर एक नोटिस का है। नम्बर दो में कहा गया है, इन्होंने दावा किया है कि कोर्ट को, न्यायमूर्ति को गवाही लेने में या नोट करने में बड़ा समय लगता है, इसलिए कमिश्नर बहाल किया जाए। हम समझते हैं कि ऐसे वकील कमिश्नर बहाल कर देंगे। उनकी क्या योग्यता है, वे क्या लिखेंगे। वे जो कहेंगे वही कोर्ट में दाखिल कर देंगे। मैं मंत्री जी से एक बात कहना चाहता हूं कि न्याय का मतलब क्या है? गवाह कोर्ट में आकर बयान करे तो जज साहब और वकील साहब भी पूछते हैं, जिरह होती है। जो फिलिंग होगी, वे जो नोट करेंगे और जज साहब के दिमाग पर गवाह का असर होगा। कोई दूसरा आदमी या कमिश्नर लिखित बयान ले लेगा और जज साहब उसे पढ़ कर न्याय करेगा, क्या वह इस तरह न्याय कर पाएंगे। यह सवाल है कि जल्दी-जल्दी न्याय करने के दौर में कहीं न्याय की अवहेलना न हो जाए। जज साहब को कैसे यह फिलिंग होगी, जो कमिश्नर और वकील एपाइंटेड हैं, वे लिखित गवाह का बयान लेकर आ जाएंगे और जज साहब को दे देंगे। जज उसे पढ़ कर कहेगा, कि गवाह का क्या कहना है, वह सच कह रहा है,â€¦ (व्यवधान)

**समापति महोदय :** रघुवंश जी, आप समाधान की दिशा में कोई कंक्रीट सुझाव दीजिए।

**डॉ. रघुवंश प्रसाद सिंह** : वही सुझाव दे रहा हूं।

इन्होंने दावा किया है कि न्याय जल्दी करने के लिए हम कमिश्नर बहाल कर रहे हैं। लेकिन क्या वह कमिश्नर जो लिखकर बयान लेगा उसमें वह भावना आयेगी जो जज साहब के सामने गवाही देने से आती है। मैं समझता हूं कि गवाह का जज साहब के सामने वह सैकिंड हैंड बयान वह भावना नहीं ला सकेगा क्योंकि साक्षी सच कह रहा है या झूठ कह रहा है वह तो जज साहब के सामने सुनने से ही पता चल सकता है। मेरी मानयता है कि लिखकर या नोट करके बताने से वह भावना नहीं आ सकती, उसमें अंतर हो जाएगा। इसलिए न्याय कहीं अन्याय में ही न बदल जाए, इस बात की मुझे शंका है। दूसरे, देखा गया है कि एक केस 24-25 वर्ा तक चलता रहता है। जज साहब ने बहस सुन ली लेकिन साल भर तक वह फैसला नहीं लिखते और फिर रिटायर हो जाते हैं। फिर दूसरे जज साहब आते हैं वह मामला सुनते हैं तो इस तरह से भी केस डिले होता है। यह भी मेरी शिकायत है। कानून मंत्री जी लिखेंगे इसमें कि इतने दिनों में फैसला दे दें तो यह कैसे होगा? मैं एक उदाहरण इलैक्शन-पैटीशन का देना चाहता हूं। पीपल रिप्रैजेंटेशन एक्ट में लिखा हुआ है कि इलैक्शन पैटीशन केस का निपादन 6 महीने में हो जाना चाहिए। लेकिन क्या हिंदुस्तान भर में कभी किसी केस का निपादन 6 महीने में हुआ है या साल भर में हुआ है या दो-तीन सालों में हुआ है। कभी नहीं हुआ है। केस में 5-6 साल लग जाते हैं और केस इंफ्लक्चुअस हो जाता है। कमिश्नर द्वारा लिखा-पढ़ी करने से क्या न्याय मिलने की आशा है। इसलिए हमारा कहना है कि केस कोस्ट-अफैक्टिव न हो, गरीबों को न्याय मिले, खर्चा उनका कैसे कम लगे, इन बातों को आपको ध्यान में रखना होगा।

बड़े-बड़े वकील जो बड़ी-बड़ी फीस लेते हैं वह किस कानून के अधीन लेते हैं, उसका भी कोई कानून बनना चाहिए। एक लाख, दो लाख, पांच लाख तक मनमानी फीस लेते हैं, उनके लिए कोई कानून नहीं है। जो नरम वकील हैं उन्हीं के प्राण खींचने का प्रयास यहां चल रहा है, इस पर भी सम्यक विचार करना चाहिए।

अंत में मैं पीआईएल का जो रुटीन मामला पड़ा रहता है उस पर कहना चाहता हूं। एग्जीक्युटिव को पावर में बहुत रुचि है। पीआईएल में भी बहुत मामले आये हैं

लेकिन यह जो छपास की बीमारी है कि हमारी बात भी छपे, यह खराब है। साथ ही अफसरों को कोर्ट में बुलाकर दिन भर खड़ा रखने की बीमारी से भी केस में डिले होता है। माननीय मंत्री जी होशियार आदमी हैं। हम यहां जितना बहस कर रहे हैं अगर मंत्री जी कोर्ट में करते तो एक दिन में बड़ी फीस ले लेते हैं। हमारा कहना इतना ही है कि गरीब आदमी को जल्दी से जल्दी और सस्ता न्याय मिले और हमने जो कुछ कहा है मंत्री जी उन सभी बातों पर ध्यान दें।

SHRIMATI MARGARET ALVA (CANARA): Kumari Mamata Banerjee, if you allow me, I just want to ask a question. I am not making a speech. Hon. Minister, I just want to point out what has just been said about the election petition. In my own constituency, our MLA was shot dead two months after the election. An election petition is pending for the last two-and-a-half years. It is continuing. There is no elected representative. The people have no MLA.

Day to day hearing, which is required, is never done. Even after the hearing, the judgement is reserved. I do not understand how the people's representatives are going to be elected. The Election Commission says that it cannot interfere till the judgement is given. I would like to know whether anything could be done or not with all these amendments. You will have to do something about this.

SHRI ARUN JAITLEY: I will give an answer to this when I reply to the debate.

KUMARI MAMATA BANERJEE (CALCUTTA SOUTH): Thank you very much for giving me this opportunity.

I rise to support the Code of Civil Procedure (Amendment) Bill, 2000. Earlier, in its 163rd report, the Law Commission dealt with these amendments; and in 1999, the Government had introduced this Bill. Now, Shri Arun Jaitley, as Law Minister, has come before this House for the amendment of this Act. I appreciate the Law Minister. He is from the legal field and knows better than all of us because of his practical experience of what is going on nowadays in the name of law.

As common citizens, we cannot criticise the Judiciary outside the House because it would amount to contempt of court but if we do not criticise even inside the House, where would the people get justice? This is the real forum where, at least, we can express our views in the interest of the people. This is a fact. ...(*Interruptions*)

SHRI P.H. PANDIAN : You can criticise any judgement but you cannot impute motive. You can criticise any judgement anywhere and publicly issue statements. That is not contempt. ...(*Interruptions*)

KUMARI MAMATA BANERJEE : That is not my question. My question is very clear. We cannot criticise the Judiciary, according to the constitutional norms. This is the system. Otherwise, we would be attracting contempt of court. We can criticise the politicians, the journalists or the bureaucrats but we cannot criticise the Judiciary. That is why, on one side, in the name of law, a supremo is working in this country.

I am sorry to say this. Shri Arun Jaitley is trying to bring about social justice but how would justice work in the country? When you start from the appointment of judges, who are appointing the judges? It is the Chief Minister and the Chief Justice of the High Court who recommend the names of the judges. After that, through the Law Ministry, the Chief Justice of the Supreme Court finalises the list. I come from West Bengal where the High Court is Calcutta High Court. We have seen there that all the appointments are political appointments. So, how would the people get justice? Everywhere in the country, because of this reason, the common people are not getting justice.

**15.57 hrs. (Dr. Raghuvansh Prasad Singh *in the Chair*)**

You are trying for *lok adalats*. You are trying for common people to get justice but how would they get justice when corruption starts from the level of appointments, at the level of the appointing authority? We have to review the situation.

The population is increasing and so our attitude has to change. The problem is that our outlook, our action and our vision are so poor that we have to change the judicial system, we have to change the political system and we have to change the electoral system. Otherwise, this country cannot develop. You are a young person; you are a brilliant person. If you want to do one good deed in the best interests of the country, you should first bring the Judicial Reforms Bill, where you could categorically say that if politicians were not above the law, the Judiciary would also not be above the law. Until and unless this is done, they would not care for the people.

There is a proverb, which says: "Good money will keep the good law; good money will give good justice; and good money will give good barristers." This proverb is not heard nowadays. This is why my request to the hon. Minister is to bring in judicial reforms first. It is all right to have the Code of Civil Procedure (Amendment) Bill passed but it hardly matters because we want cases to be simplified.

I want to quote some figures that I have got from you. I have seen that in every High Court and subordinate court they do not maintain figures of cases. The Government has no figures. We do not know how many lakhs of cases

are pending.

**16.00 hrs.**

But I have seen it up to 1999. Whatever may be the figures that are available with the Government, more than five lakh cases are pending only in the High Court. What will be the result? I am telling you one thing. In the year 1990â€¦...(*Interruptions*)

SHRI ARUN JAITLEY: As of today, in the High Courts 35 lakh cases are pending taken together in the country.

KUMARI MAMATA BANERJEE : That is why I am telling you. I am quoting only 1999, whatever we have got from your reply. That is the authentic reply. Now, you are saying that 35 lakh cases are pending. What is the need for this judiciary? I would plead the Government to start new judiciary and give justice to the people.

Sir, the main problem with this judiciary is that some judges take advantage from the State Governments when they go to different States. They take all sorts of advantages from the State Government including their sons' and daughters' medical admission, accommodation, their promotion, etc. After that, when they retire, then they will get one Commission of Inquiry or something. So, this is their promotion. After retirement also, five or six years later, their livelihood will be very good. This system should be stopped. After the retirement, no judge should be appointed anywhere. At least, from the Government level, stop this corruption, otherwise I do not know what will be the future of the country.

Sir, court cases have become very expensive. Even sometimes when the court sends the summon, the poor people do not know how to go to the court. Earlier, there was a provision that the Government has set up their own Legal aid Cell, Women Grievances Cell and so many other cells, which were set up. But if you just give a surprise visit to any private grievance cell, the Government Grievances cell, the Women Grievances Cell or the Legal-aid Cell, you will see that nobody is working. They are just taking the Government money, but they are not helping the poor people.

Sir, I appreciate that some lawyers are there in this country, who are brave and who try to give justice to the people. They do not take money even from the common people. But they do help in getting justice. I know so many lawyers.

Sir, I am telling you that even in my office, every Sunday, I have a legal cell. That legal cell gives help in getting justice to the people. Where else will the common people go? Every Sunday from 12 to 1 o' clock, I have a legal cell where the common people are coming and they give the information to them. But I am telling you that there is no justice in this country.

Sir, in my case I am telling you − it is my personal experience and I am not asking you justice because I am asking justice for the people. In the year 1990 on 16th August, I have been beaten in broad daylight and I was about to die. I was hospitalised for about three months. ...(*Interruptions*) Even Rajya Sabha was adjourned because I was about to die. ...(*Interruptions*) Now, I am telling you that I do not know what is the fate of the case. If it can happen to me, what will happen to the common people? Even after that also, they attacked me three or four times, but nobody was arrested. There was no case and there was nothing. I do not know what is going on in the name of justice.

Sir, now I come to the transfer policy. You have a transfer policy. But have you found out from all the High Courts as to how many persons are working for more than 15 to 20 years? बंगाली में हम लोग कहते हैं कि घुघु का बादशाह है। It is a heaven of corruption. They are working there for the last ten to twenty years. There is a Government policy that after five years these judges will be transferred, but nothing is there. The same thing is going on and the same tradition is going on. I think, this transfer policy has to be strictly followed so that nobody can set up a heaven of corruption anywhere.

Sir, my other point is that even regarding the Supreme Court what it said about PIL is all right. But, at the same time, the PIL also has to come through the High Court. So, SLP has to be filed. Shall I tell you one example?

There was one employee by name Bhikhari Paswan. He was missing and he had been murdered. After that, we went to the High Court. The High Court passed an order for CBI. Then the State Government went to the Supreme Court. We even filed the writ of Habeas Corpus and SLP. Now the CBI is handling this case. They are the poor people. They do not know about the law. Now, after four years of hearing, this case has been transferred from High Court to the local court. So, this is the situation. He was saying, from grass-root you go to the sky, but they are saying, from sky you go to the grass-root. Where is the balance? There is no balance, nothing. I do not know whether any monitoring system is working in this way, whether any vigilance is working in this way. I cannot understand this. When I see these poor people suffering, I feel bad about it because they cannot remember the date, they cannot remember what happened actually. If you ask me what happened in 1990, I may not remember.

Of course, since I have written a book, that is why I can remember. But even after 12 years, I do not know when this case will be decided. Nobody knows anything about it. So, these things have been going on. Total corruption is going on. I feel that more and more Supreme Court Benches should be set up because the poor people from different parts of the country cannot come to the Supreme Court because it is very expensive. You try to set up some Supreme Court Benches also somewhere in the country, say, South, North, East and West. Similarly, High Court Benches also should be set up. The headquarters always belong to the High Court. So, let the main High Court be there but you can set up High Court Benches for 4-5 districts because it is very difficult for the people to come to far off places like the High Courts and the Supreme Court. For that, there should be more Circuit benches so that people can come to the High Court and the Supreme Court for justice.

Dr. Raghuvansh Prasad Singh also said that poor people do not get justice. I think, just like the *Lok Adalats,* the Government have to strengthen their local machinery also. Suppose, now you say that at the *Panchayat* level, they will settle the case if there is no party *Panchayat.* If there is a political *Panchayat,* they will victimise the Opposition. They would not give justice to the Opposition. If there is a *Panchayat* where there is no party affiliation, then, of course, the local matters can be sorted out through *Panchayats,* through *Lok Adalats. Lok Adalats* we do appreciate, but, at the same time, I feel that the Government has to review the situation and the Government has to think that more stringent action is taken against the culprits and others. There is a rule that within three months you have to file the charge-sheet. But in Calcutta, I have seen the Khadim case, the kidnapping case. They arrested the persons also. But if they are the party people, there will be no charge-sheet against them within three months. But if a person belong to us, then first they arrest him in Midnapore district court. When he is released from the Midnapore court, then the warrant comes from the Bankura district because it is the adjacent district. Then he is sent to Bankura court. When he is released from the Bankura court, then the warrant comes from the Hooghly court. But there is a Minister in West Bengal. I do not want to mention his name, I am just giving his code name. Several murder cases, rape cases and other cases are there against him. Our party has already given a written petition to the hon. Governor. When a warrant is issued against a person, the law says that his property has to be booked. Police says he is absconding. I do not know how he is absconding? Every time he is going to the Cabinet meetings. He is attending all the functions also. But nothing is being done against him. So, this type of things are going on. Those who have the influence, they will get the relief and those who do not have any influence, they would not get any relief or anything.

In the case of appointment of a Commission, you know about the retainership. I am also a lawyer, Sir. Some time I fought human rights case also.

There are some judges who have very good relations and very good rapport with some lawyers. They appoint them as commissioners. You have to see that in the name of getting appointed as commissioners, they should not get away with the commission, they should not behave like middlemen. They should behave as a common man's representative so that the problems can be sorted out. Otherwise, they will get more and more commissions and nothing else.

Last but not least, I would request you to please bring out a comprehensive Bill on judicial reforms which can restore the morale of the country and which can combat with these forces of corruption and which can combat with the present dirty situation of the country. If judiciary is a saleable commodity, then what would be the remedy? It will destroy the pillars of the country and it will destroy the systems, the ethics and everything else of the country. Therefore, I would request the hon. Minister to first bring forward a comprehensive Bill on judicial reforms. Before doing that you can take the Bar Councils and the Bar Associations into confidence so that they can also give good examples to you.

With these words I conclude and I thank you very much for giving me this opportunity. I hope that the hon. Minister will bring out a Bill on judicial reforms as early as possible.

**श्री रवि प्रकाश वर्मा (खीरी) :** उपाध्यक्ष महोदय, आपने मुझे सिविल प्रक्रिया संहिता (संशोधन) विधेयक, 2002 पर बोलने का अवसर दिया, इसके लिए आपका बहुत-बहुत धन्यवाद। जैसा हमारे कई पूर्ववक्ताओं ने बार-बार कहा है कि जब पूरा मुल्क आर्थिक सुधारों की ओर जा रहा है तो न्यायिक और प्रशासनिक सुधारों के बिना हम कोई मंजिल प्राप्त नहीं कर सकते। न्यायिक सुधारों की दिशा में एक कदम सरकार ने बढ़ाया है लेकिन यह बात समझ में नहीं आती कि समस्या क्या है, मकसद क्या है ? हम जिन रिफार्म्स की ओर जा रहे हैं, क्या हमारे दिमाग में इंसाफ है या उन मुकदमों का बोझा है जैसा अभी मंत्री जी बता रहे थे कि 35 लाख मुकदमे हाई कोर्ट के स्तर पर लंबित हैं। आज वे हमारे पूरे सिस्टम को परेशान कर रहे हैं और एक बहुत बड़ा चैलेंज बने हुए हैं। आखिर इन रिफार्म्स का मकसद क्या है ?

यह बात बार-बार कही गयी है कि जिस तरीके से रिफार्म्स लाये जा रहे हैं, हो सकता है कि इन मुकदमों का बोझा कम कर पाने में हमें कुछ मदद मिल जाये और जल्दी जल्दी समरी ट्रायल हो। अपील का अवसर कम किया जा रहा है, लेकिन यह भी सच्चाई है कि हिन्दुस्तान के अंदर जो दीवानी मामले हैं खासतौर से वे इतनी बड़ी तादाद में पैदा हो रहे हैं कि क्या उनके सोर्स पर हमें ध्यान देने की जरूरत नहीं है ?

सभापति महोदय, आप जानते हैं कि जब थाने बिकते हैं, तहसीलें बिकती हैं, जिले बिकते हैं, जिले के स्तर पर अधिकारी बिकते हैं, जैसा हमारी पूर्ववक्ता महोदया बता

रही थीं कि वे पैसा देकर पोस्टिंग लेते हैं, समस्या वहीं पैदा होती है। खाली प्रक्रिया के अंदर परिवर्तन लाने से और कुछ मुकदमों की संख्या कम कर देने से क्या इंसाफ की भावना हमारे अंदर रह जायेगी, क्या उससे इंसाफ मिल जायेगा ?

सबसे बड़ी बात मैं कहना चाहता हूं कि हमारा समाज इंसाफ के बिना जी नहीं सकता। मैं कोई लंबी बात नहीं कहना चाहता। मैं केवल एक उदाहरण देना चाहता हूं जिसे मैंने स्वयं अपनी आंखों से देखा है। दो साल पहले जिले की अदालत में मैंने एक 21 साल की लड़की को रोते हुए देखा। उस समय शाम हो चुकी थी। वह लड़की बहुत परेशान थी। उसकी गोद में एक छोटा सा बच्चा था। मुझे थोड़ी सी जिज्ञासा हुई। मैं उसके पास गया। एक दो और लोग वहां आ गये। एक बुजुर्ग वकील भी वहां आ गये। जब हमने उस लड़की से रोने का कारण पूछा तो उसने जो बताया, वह बड़ी दर्दनाक कहानी थी। उसने बताया कि उसके पड़ोस के एक बड़े काश्तकार की निगाह उसकी जमीन पर आ गयी। उस लड़की के परिवार में सात-आठ एकड़ जमीन थी। वह लड़की अनपढ़ थी। उसके आदमी को अफीम के केस में बंद करा दिया गया और तहसील में धारा 129 बी के तहत मुकदमा कायम किया गया। उस मुकदमे पर तीन-चार पेशी पड़ी और वह जमीन दूसरे किसान के नाम लिख दी गई। वह लड़की इस बाबत बहुत परेशान थी। उसे लगा कि उसके पास आत्महत्या का ही एक सरल रास्ता बचा है। यह सुनकर वह वकील और सब लोग मजिस्ट्रेट के पास पहुंचे और वहां जाकर देखा गया तो वहां जश्न हो रहा था।

पार्टी मुकदमा जीती थी, वह शराब, मुर्गे लेकर आई थी और सैकिंड क्लास मैजिस्ट्रेट वहां बैठा हुआ जश्न मना रहा था। उस लड़की को गुस्सा आ गया। उसने चप्पल निकाली और मारना शुरू कर दिया। पूरी तहसील में शोर हो गया कि मैजिस्ट्रेट साहब मारे गए। मामला उठ गया। तब पता लगा कि किस तरह साजिश के तहत उसकी जमीन पर कब्जा कर लिया गया, उसके अंदर मशीनरी मिली हुई थी।

हम बार-बार कहना चाहते हैं कि अगर हम मुकदमों की संख्या कम करना चाहते हैं तो यह भी देखना होगा कि किन कारणों से दीवानी मुकदमे बढ़ रहे हैं। मैं इस बात को बार-बार कहना चाहता हूं कि हमारे प्रैजैंट अमैंडमैंट की दिशा इंसाफ की ओर न जाकर वहां पहुंच रही है जहां सरकार समझती है कि हम सिर्फ मुकदमों की संख्या कम कर सकें, मुकदमों का निपटारा जल्दी से जल्दी कर सकें।

कई बातें हमारे पूर्व वक्ता कह चुके हैं लेकिन मैं केवल इतना कहना चाहता हूं कि जहां तक पी.आई.एल. की बात है, सच्चाई है, अभी एक फैशन हो गया है, बहुत से लोग मुद्दों को उठाने के लिए पब्लिक इंटरस्ट लिटिगेशन करने में यकीन रखते हैं। क्या ऐसा नहीं लगता कि जहां पी.आई.एल. के मामले आ रहे हैं, वहां हमारी प्रशासनिक विफलताएं सामने आ रही हैं? क्या सरकार व्यापक तौर पर प्रशासनिक सुधार करने का इरादा रखती है? मुझे नहीं लगता कि समस्या को सही तरीके से देखा जा रहा है। आज हालत यह है कि हमारी स्टेट असैम्बलीज़ सिर्फ 20-25 दिन चल रही हैं। संसद साल में लगभग 240 दिन काम करती है। जब विधान सभाएं एक साल में सिर्फ 20 दिन चलेंगी तो प्रशासनिक अधिकारियों पर निगाह कौन रखेगा, उनसे ऐकाउंटेबिलिटी की गारंटी कौन करेगा। उसके बाद जो कुछ हो रहा है, वह आपसे छिपा हुआ नहीं है। हमारी प्रशासनिक विफलता को उजागर करने के लिए पी.आई.एल. का सहारा लिया जा रहा है, मैं आपके माध्यम से मंत्री जी से कहना चाहता हूं कि जो समस्याएं पैदा हो रही हैं, उनके सोर्स पर भी देखें कि आखिर दीवानी मामले इतने क्यों बढ़ रहे हैं।

अभी हमारी पूर्व वक्ता बहन ममता जी बता रही थीं कि दीवानी ही नहीं क्रिमिनल प्रोसीजर की प्रक्रिया में इतने दलाल लग चुके हैं जो पूरी व्यवस्था को लम्बा करने में यकीन रखते हैं। आज एक दुखद सच्चाई है कि दीवानी मामलों के अंदर दो-चार नहीं सौ-सौ साल लगे हैं। ऐसे कई मामले आज भी आपकी जानकारी में होंगे जो सौ-सौ साल से लंबित हैं। क्या पूर्व प्रक्रिया में परिवर्तन लाकर हम इंसाफ दिला पाएंगे?

एक बात स्पट है कि आज जूडीशियरी भी बड़े पैमाने पर भ्रट हो रही है। मैं सबके लिए नहीं कहता लेकिन बड़े पैमाने पर जूडीशियरी में भ्रटाचार ऐंटर कर रहा है। स्थिति यहां तक पहुंच गई है कि जजों के अपने पोलीटिकल बॉयस बन चुके हैं। एक बहुत बड़ा मुकदमा जो उत्तर प्रदेश की हाई कोर्ट में चल रहा है, आज उसका दुपरिणाम पूरा हिन्दुस्तान झेल रहा है और हमारी संसद ने भी उसे झेला है। कई बार सरकारें गिरी हैं, कई बार खून-खराबे हुए हैं और आज भी कहीं न कहीं हम उसके फॉल आउट के शिकार हो रहे हैं। हमें यह देखना चाहिए कि आज की तारीख में जब जूडीशियरी बायस्ड हो रही है, निपक्ष नहीं है तो प्रशासनिक सुधारों के माध्यम से किस तरह हम जस्टिस डिलीवर करने की मशीनरी की निपक्षता कायम रख पाएं। क्या यह सच्चाई नहीं है कि जो जज सरकार का फेवर चाहते हैं, वे सरकार की मर्जी से जजमैंट देते हैं, आधी-आधी रात को जजमैंट हुए हैं। लेकिन जहां इंसाफ की जरूरत है, आज मानवता तड़प रही है। वहां बरसों तक जजमैंट सामने नहीं आता है। हम क्या मानें। क्या आपके वर्तमान जूडीशियल रिफार्म्स इन परिस्थितिं को बदल पाएंगे - कभी नहीं बदल पाएंगे। अगर हमारी मंशा, हमारी नीयत इंसाफ दिलाने की है, हमारे समाज की पूरी व्यवस्था के केन्द्र में इंसाफ की प्रक्रिया रखने की है तब निश्चित ही हम कई रिफार्म्स ला सकते हैं। लेकिन यदि सिर्फ जूडीशियल सुधारों के माध्यम से अपना सिरदर्द कम करने की भावना है तो मुझे समझ में नहीं आता कि हम किसी मंजिल पर पहुंचने वाले हैं। जो जज रिटायरमैंट के बाद सरकार का मुंह देखते हैं कि हमें किसी कमीशन में डिप्यूट कर दिया जाएगा, चार साल का एक्सटैंशन मिल जाएगा,

उन जजेज से और उस ज्यूडीशियरी से हम बहुत अधिक आशा नहीं कर सकते। मैं केवल इतना ही कहना चाहता हूं कि आज की तारीख में आर्थिक सुधारों के साथ न्यायिक सुधार और प्रशासनिक सुधार भी हमारे मुल्क की मूलभूत आवश्यकता है। इनकी आत्मा में देखते हुए और हमारे मकसद को देखते हुए अगर हम रिफार्म्स लाएंगे तो इस मुल्क का कल्याण होगा, नहीं तो दलदल में तो हम फंस ही चुके हैं।

SHRI P.S. GADHAVI (KUTCH): Sir, I rise to support the Code of Civil Procedure (Amendment) Bill, 2002. The Code of Civil Procedure is a very important law in the procedural matters concerning the civil litigation throughout the country. Before making any amendment in this law, it was very much necessary to consult the Bar Council of India, various Bar Associations. I congratulate the hon. Minister for having thorough consultations with these Associations before bringing this amendment.

Sir, these matters were thoroughly examined and discussed in the Standing Committee also. The main criticism against our judiciary is that our procedures are awfully slow. It is so sad because 'Justice delayed is justice denied'. At present, there is no time limit on the delivery of judgments by the court. Through the amendment of Order XX, in rule 1, time limit for giving the judgement has been fixed, that is, 30 days from the date on which the hearing of the case was concluded, and it cannot be extended beyond a period of 60 days. This is a very good amendment, and I welcome it.

Secondly, there were conflicting judgements of various High Courts as to whether a court can execute a decree outside its jurisdiction. On the basis of 144$^{th}$ Report of the Law Commission, it has been clarified by proposing the amendment of section 39 of the Code of Civil Procedure that a court cannot execute a decree outside its jurisdiction.

Sir, this Amendment Bill is intended to remove a possible confusion on account of the Report of the Law Commission that if any attachment order is passed by a court and transfer of property takes place subsequent to the attachment, then this transfer of property itself will become void, but it will not affect the transfer, which has already taken place before the attachment.

Sir, against the Code of Civil Procedure (Amendment) Act, 1999, there was general criticism that by that amendment, the right to appeal was taken away against the order passed by a single Judge of the High Court, particularly orders passed under articles 226 and 227. That right of appeal has been restored, but that right of appeal would be there to correct an error which a single Judge could have committed by mistake, but where any appeal from an original or appellate decree or order is heard and decided by a single Judge of a High Court, the second right of appeal before a Division Bench is not provided.

It is the general experience of litigants that there is an unbearable and considerable delay in the procedure followed in civil litigations, and the main delay takes place in the service of summons. For that, some progressive amendments were made in 1999, which allowed various methods of services other than the traditional methods, like serving the summons through process servers of the court, by registered post acknowledgement due, including fax message or electronic mail service. Now, it has been envisaged to take the advantage of the courier services, which are being run across the country. Therefore, this amendment proposing to serve the summons through a courier service, of course, there would be a panel of approved courier service companies, is really a welcome amendment.

Sir, there is a delay in disposal of civil suits because many a time written statements are not filed even after a lapse of many years.

They are even consuming a long time. Therefore, it was felt necessary to have the time limit fixed for filing of the written statement. In this amendment, a time limit of 30 days for filing of writing statement has been provided.

For consultation with the Bar Council and Bar Association and other representatives, a further time limit has been given, but in any case, not beyond 90 days.

All these amendments are very welcome. They will shorten the time that is being consumed by the procedural matters. So, all these will certainly curtail the time.

I congratulate the hon. Minister for bringing forward this amendment and I support this Bill. s

SHRI AJOY CHAKRABORTY (BASIRHAT): Mr. Chairman, Sir, I am not opposing this Bill, but rather I am supporting it. I also share the views of the hon. Minister.

He has told the House that he has brought forward this Bill after due consultations, and an elaborate and comprehensive discussion with various sections of the society, including the lawyers' community.

Delay defeats law. Civil Procedure Code, till now, follows a very hazardous process. Civil cases are very long pending, which you know and everybody knows. If a person 'A' has any grouse against another person 'B', he can go to the Munsif Court, can purchase a court fee for Rs.2 and can file a suit. Nobody knows when the case will be disposed of and when the final judgement will be passed. It will continue for decades and decades, and from generation to generation. Some cases go from the Munsif Court to the High Court, Single Bench to Division Bench, and some cases may even go to the hon. Supreme Court. This is the position of the civil cases in our country. So, there should be some process by which we get quick disposal of civil cases pending in different courts.

While I support this Bill, I have some reservations also. I draw the attention of the hon. Minister to them, and I have some suggestions or modifications in some clauses. One of them is in Clause 4, substitution of New Section for Section 100A. It says:

> "Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment and decree of such single Judge."

I have a reservation on this point. Suppose a judge has passed a wrong judgement, there is no scope for such appeals. So, there should be a provision for that. If a

person or party is aggrieved of the judgement of a single Judge, he has to go before the Division Bench also. This is my view.

I also would like to draw the attention of the hon. Minister and also of the House to the amendment of Order V, Clause 6. It says:

> "Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other days as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

Why should it be 90 days? My suggestion is that there should be a maximum of 60 days only.

Another point is this. The Minister also told about this point and many hon. Members also said about this in this House. It is regarding service of summons. The process of service of summons in our country is very much corrupt; malpractice takes place and manipulation is also being done. It is not a recent happening, but it started from the very inception of the courts in our country. It is a very old system and this practice is going on from the very inception of courts. Suppose a person or an employee of the court goes for service of summons; when he returns, he writes that such and such person is not available.

There is also a provision to hang the summons, in the presence of some witness, on the main gate. In legal lexicon, that is called the main gate entry. On his return, he writes in the records that no witness was available at the time of pasting the summons on the gate of the house. There is also a system of sending the summons through the post office. The postman goes to the spot and returns to the court saying that no person was available. This kind of malpractice in serving summons is an age-old practice. It is not something new. There is also a provision of sending electronic mail, courier service or Fax. I would like to say that not only in rural areas but also in urban and semi-urban areas the devices like electronic mail, Fax or courier services are not available. Some flexible or easier methods should be adopted so that the summons is served as early as possible. One of the reasons for the delay in deciding the cases is the non-serving of summons. Until and unless the accused person receives the summons, the case cannot start. This is the position.

I am sorry to say that law in our country is a purchasable commodity. Shri Raghuvansh Prasad Yadav has said that the lawyers of the lower courts or the junior lawyers are facing starvation. Their position is very much bad. There should be a law to limit the fees of all the reputed lawyers of the High Court. Suppose 'A' person is a rich man. He rushes to the High Court and engages a reputed lawyer by paying a huge amount as his fees. "B" person is financially not sound to appoint a lawyer of the same standard as appointed by "A" for himself and hence he appoints a junior lawyer who is a newcomer. No court will hear or take cognisance of the submissions made by that new comer lawyer. So, I would suggest that there should be a procedure by which the fees of the lawyers of the High Courts or the Supreme Court are fixed, otherwise nobody will be able to appoint the lawyers. A provision should be there for the appointment of lawyers so that cheap legal aid is available to the common people.

Another question is with regard to the appointment of the Lawyer Commission. There is a provision in the Civil Procedure Code that the Lawyer Commissioner will go to the house of the sick or the injured person and take his evidence. The court can appoint a Lawyer Commissioner to visit the field and submit a report to the Court. The Court should appoint such Lawyer Commissioners cautiously and carefully. I would say that no junior lawyer should be appointed as the Lawyer Commissioner. Only senior lawyers, who have to their credit some 10 to 15 years of practice, should be appointed as the Lawyer Commissioners. He should take the evidence and hear the party in the presence of lawyers of both the parties and then submit the report. There should be no scope for any deviation.

With these words I support the Bill. I know the Law Minister is a prudent lawyer. I urge upon the Minister to bring forward a Judicial Commission Bill to rectify all the errors and delays in the Civil Procedure Code as well as Criminal Procedure Code. The Minister should bring a Judicial Commission Bill before the House for discussion and passing.

SHRI PRAKASH YASHWANT AMBEDKAR (AKOLA): Thank you, Mr. Chairman, Sir, for giving me time to speak. The Minister while replying to the clarifications regarding appeals has said that any appeal from an original or appellate order is decided by a single Judge. I have a specific question to him.

(j3/1635/rc/hng)

There are certain matters which are in the set up of the country. There are certain matters which come up from lower courts. I will give you an example from the Charity Commissioner's matter. The first appeal is referred to the city civil court and from the city civil court, the second appeal is referred to the High Court. You have clearly mentioned, it is going to be a single judge bench. I have not applied my mind to it but it seems that there is not going to be a Division Bench at the High Court. If there is not going to be a Division Bench, then let us see who is going to hear those appeals from the city civil courts. Will they have to come direct to the Supreme Court? Or, you will think of a medium in which they can be heard by the High Courts. This is one issue which I have.

Secondly, you have mentioned that on the matters which are being heard, the judgements will have to be delivered. We are aware of the practice and the procedure of the High Courts where the assignment changes after one or one and a half-month. The matters do not carry along with him. If the matter is not carried along with the judge who is hearing the matter, how is he going to give a judgement? Are you going to specify or are you going to assure this House that the judge hearing the matter will have to give the judgement? Is it the interpretation of the new section that you have introduced? Are they have to give judgement no matter how long it takes? These are two specific issues which have not been clarified. I think there is going to be ambiguity in the whole aspect.

Secondly, the Minister has pointed out that there are nearly 45 lakh cases pending in the High Courts. The State Legislatures have been passing new Bills which are now encroaching upon the Constitution. The appeals against such enactment are pending in the High Courts. The judgements would come after three-five years. The enactment that are passed by the Assemblies may be struck down but by that time certain actions would have been taken by the Government. Some of them may relate to the State Government and some may relate to individuals. May I know from the Minister whether he is going to make any kind of distinction between the matters which are of individual or personal nature and the matters which come in the category of encroachment upon the Constitutional rights? I may point out one specific case where I am also waiting for the High Court to hear the case. It is regarding Enron where the State Government has given a guarantee. As you are quite well aware, the guarantees are given under certain conditions where the annuities are there. A blanket guarantee cannot be given. But this matter is pending for a long time with the High Court. I do not go to the court for the matters which are pending. But where there are nearly about 20,000 matters pending to be admitted, I do not expect that the judge will have time to hear these kinds of matters. But are you going to adopt some new methodology to see that the matters which concern the nation, the system, the attitude or the confidence of masses, are heard in preference to other matters? I think, somewhere this kind of preferential treatment will have to be evolved if the confidence in the judiciary has to remain. It is because it is a matter which concerns a large number of people.

Lastly, you have thought of appointing Commissioners as a methodology for getting over time factor. I do not know how far it will be effective. Having worked with the trade unions where Commissioners are appointed, I know the manner in which they function.

Without specifying their qualifications, it is left to the sweet will of the judiciary as to who should be appointed as a Commissioner and I do not know what kind of commissioners are going to be appointed. But, I have a suggestion here.

Last time when I raised this issue, another Minister was here. It is regarding setting up of an All India Judicial Service. It is one of the mandatory provisions for any Government to have an All India Judicial Service. But, for the last fifty years we have not thought about it. One of the reasons may be that since there will be an entry point, the question of reservation will come and therefore let us not follow it. It might be that case. But this is a haphazard manner in which the whole system is functioning without anything being controlled. May I ask the Minister whether he is going to think of an All India Judicial Service, whereby instead of allowing the judiciary to appoint the commissioners, he will have persons readily available with him who could be appointed as commissioners?

Lastly, I will come to an issue from where issues are arising day by day. As the Minister has mentioned, a security has to be given. In the Bill it is not specified as to what it is. In a majority of cases, what is stated is that *status quo* has to be maintained. Nobody knows what is that *status quo*. To get a clarification about the *status quo*, you will have to file an application again. May I ask the Minister, who must know it, as to what it means? We will ask the judiciary to stop this process of stating that *status quo* is to be maintained and instead specify what is to be maintained in the injunction. I think that will stop of a lot of litigations and will lessen a lot of burden over the petitioner and the defendant.

These are some of the suggestions that I have and I hope that the Minister would pay attention to them.

SHRI P.C. THOMAS (MUVATTUPUZHA): Mr. Chairman Sir, it is a common dictum that 'Justice delayed is justice denied'. It is also a common dictum that 'Justice hurried is justice buried'. I am happy that this second dictum is also taken into account in this Bill. Therefore, I find that it is a beautiful combination of the spirits of these two dictums.

The Law Minister has done a good thing in consulting all the concerned people. The process of striking a balance between these two has been maintained. In the matter of service of summons within a short period, some new course has been stipulated. The rigid rule of not giving any time for anything under any circumstance is spared and is dealt with accordingly. Therefore, in the case of written statements, taking of evidence, hearing of pleadings, framing of issues and not allowing a further appeal on the judgement of a High Court Judge who is already sitting on an appeal are all matters relating to this change. I congratulate the Minister for having brought all these changes. I do not have much to say on these things.

The fact that 35 lakh cases are pending is really a disturbing factor. Justice can be seen to be given only when it goes up to the lower strata of our society and the poor man is able to get justice in the normal course. I think that the Legal Aid System which we have should be strengthened.

As regards appointment of commissioners, I think it is a welcome step. There is nothing to say that the lawyers who will be appointed as commissioners may not be acting in good faith.

I think the wordings given in Section 12 are "may have some implications that the general powers are all given to the court, provided that the court may, while appointing a Commissioner under this sub-rule, consider taking into account such relevant factors as it thinks fit." I think this has to be elaborated. Otherwise, when the rules are framed, I do not know how this matter, "as it thinks fit" is going to be dealt with. I think some more elaboration is necessary and some more direction needs to be given in the Act itself. The only thing, I am afraid, is who will bear the expenses for the Commissioner. A normal litigant who may not need or who would rather prefer the judge himself to hear may be put to a loss by asking him to go and pay for the Commissioner. I would suggest that a general fund of some nature can be thought of for giving remuneration to the Commissioner. I think there is nothing wrong even if junior lawyers also come into this because we cannot brush aside all the junior lawyers and say that only senior lawyers with certain experience should come into it. After all, it is only recording of evidence. They are not going to decide it. You have provided for even the demeanour to be taken into account.

KUMARI MAMATA BANERJEE : Junior lawyers are better than senior lawyers.

SHRI P.C. THOMAS : They are sometimes better. So, I would think that these things may be taken into account. Though I am not directly connected with these things, at one point, I think we should have some kind of decentralisation with regard to matters in the Supreme Court. There are people who are not able to go upto the Supreme Court, get a good lawyer, argue the case and get justice from the Supreme Court. Even for small things, for prestige sake and only because one party is going to the Supreme Court, the other party is also going up. The other party may not get justice and if he is a poor person, he will find it so difficult. So, in a federal State like ours, you have to decentralise this by way of either giving Supreme Court Benches to every State or confine the jurisdiction in the State itself. You may further give an appellate body from the High Court also. I do not mind it. But it has to be confined to the State itself so that the final appeal is decided there itself in small cases. Let the Supreme court decide on constitutional matters, matters relating to inter-State issues and issues of such large implications where the question of law has to be interpreted. Otherwise, let one-to-one case where a decision can be made be confined to the State itself. In cases where probably decision cannot be made, finally by a High Court, an appeal has to be provided. I would suggest that we have to find another way to have an appellate body, say a federal court in the sense a final court, in the State itself. Therefore, we will have the final judicial verdict in the State itself.

SHRI KHARABELA SWAIN (BALASORE): Sir, I congratulate the Law Minister for bringing forward some amendments in the Civil Procedure Code which address some major concerns, though not all. I am not going to repeat all those concerns like the amendment of petitions, recording of evidence, filing of reply or service of summons.

I have only three or four suggestions to make. Firstly, the Government of India is the number one litigant in this country. The Government always files appeals against its own employees. So, my appeal to the hon. Minister is that, just to reduce the number of cases, he should see to it that the Government does not go and appeal against its own employees on very small matters like promotions, increments and so on.

Secondly, what about the reduction in the number of adjournments? I am not a lawyer. But I would just like to say that a rich person goes on getting adjournment after adjournment.

Can he do anything about this matter so that the number of adjournments can be limited?

My third suggestion is with regard to the appointment of Public Prosecutors in the states. In these days, it is a political appointment. Whenever there is a new Government, its own party people are only appointed. So, the rate of conviction is abysmally very low. Most of the time, there is some compromise with their professional ethics. The Public Prosecutors are not answerable to anybody. Can we have a law so that there could be a permanent cadre of

Public Prosecutors? If that is done, they will become Government employees and they will be responsible to the Superintendent of Police of the district. There will be better coordination and there will be more convictions from the Government side.

Last but not least, what about the pre-trial negotiations? In so many countries of the world, the pre-trial negotiations have been given a statutory authority. So, can we give something like this?

With these suggestions, I conclude. Thank you very much for giving me this opportunity to speak.

**श्री गिरधारी लाल भार्गव (जयपुर) :** सभापति महोदय, मुझे इतना ही कहना है कि कानून मंत्री जी कमीशन, सभी दलों और स्टैडिंग कमेटी की रिपोर्ट आने के बाद यह संशोधन लाए हैं, ऐसे में हमें उनकी भावना की कद्र करनी चाहिए।

यह बात सत्य है कि यदि एक मुकदमा सुप्रीम कोर्ट में चलता हैं तो उसके पड़पोते उस मुकदमे को लड़ते हैं। आप जो संशोधन लाए हैं, हमें उसकी भावना की कद्र करनी चाहिए। मंत्री जी ने हर स्टेज पर समय निर्धारित करने का काम किया है। 30 दिन के भीतर प्रतिवादी अपना नाम दे दे, डिक्री किस की होगी, दूसरी अपील नहीं हो सकती, इन सब का उसमें उल्लेख है। उन्होंने कहा है कि सम्मन रजिस्टर्ड लैटर, स्पीड पोस्ट और कोरियर द्वारा भेजे जा सकते हैं। उन्होंने यह एक नई व्यवस्था की है। पहले सम्मन सर्व करने में बहुत बड़ी दिक्कत का सामना करना पड़ता था। आदमी जाता था, फैसला होता था, लेकिन दो गवाहियां नहीं होती थीं। उन्होंने सम्मन सर्व करने के समय ठीक प्रकिया को अपनाने का प्रयास किया है। मैं समझता हूं कि निश्चित रूप से यह सराहनीय कदम है। यदि वह व्यक्ति उससे इन्कार करेगा तो उसमें ऐसी व्यवस्था की गई है कि तारीख तय होने के बाद सम्मन वादी को दिए जा सकते हैं। ऐसे समय वह प्रतिवादी को सम्मन इशू करा सकता है। इसमें सम्मन को पुनः जारी करने की व्यवस्था की गई है। यदि दावे में किसी प्रकार की कमी रह गई तो वह उसे 14 दिन के भीतर फाइल करा सकता है। प्रत्येक प्रतिवादी को कापी देने का काम भी किया गया है। सात दिन के भीतर सादे कागज पर टाइप करा कर उसे सारे प्रतिवादियों को सौंपना अनिवार्य होगा। इसमें समय कम करने का प्रयास किया गया है और उत्तर देने का समय भी 30 दिन रखा है। प्रतिवादी उसे 90 रोज के भीतर निश्चित रूप से एप्लाई करेगा। मंत्री जी ने इसमें समय को ठीक प्रकार से व्यवस्थित किया है। यदि कोई आदमी सम्मन इशू करने की फीस निर्धारित समय में जमा नहीं करता है, उसका केस खारिज कर दिया जाएगा लेकिन यदि ठीक समय पर वकील कारण बताता है तो कोर्ट आदेश नहीं देगा। कहीं मौखिक वाद होता है तो अच्छी बात है लेकिन लिखित में सारी बात को कायम किया जाएगा।

इसमें कमीशन नियुक्त करने की भी बात कही गई है और वह इसलिए की गई है कि कोर्ट के पास इतना समय नहीं होता है। कमीशन के सामने गवाही हो जाएगी तो मैं समझता हूं कि उसे निश्चित रूप से अदालत में जाकर बार-बार बयान करने में समय खर्च नहीं करना पड़ेगा। कमीशन चार दिन के भीतर अपनी रिपोर्ट दे देगा। उच्च न्यायालय और जिला न्यायालय द्वारा कमीशन के पैनल में जो लोग आएंगे उन्हें इसमें नियुक्त किया जाएगा। वादी को फीस अपनी ओर से देनी पड़ेगी। निर्णय के बारे में कहा गया है कि 30 दिन के भीतर कोर्ट निर्णय देगा। यदि किसी प्रकार की दिक्कत आएगी तो 60 दिन से ज्यादा समय नहीं लगाना पड़ेगा।

इसमें चुनाव याचिका की बात भी कही गई है। माननीय मंत्री जी उत्तर देते समय यह बताएं कि निर्धारित समय में 6 महीने के भीतर निर्णय हो जाएगा वरना जो चुनाव याचिका जीत गया, किसी बल पर जीत गया, दादागिरी के आधार पर जीत गया, पैसे के आधार पर जीत गया

एक बार चुनाव जीत गया तो जीत गया। उसके बाद पांच-छः साल तक रिट पिटीशन पर कोई निर्णय नहीं होता है। मैं समझता हूं कि आप निश्चित रूप से इस बारे में भी बात करेंगे। कमिश्नर किस आधार और योग्यता के अनुसार नियुक्त किये जायेंगे और उनकी क्या फीस होगी, यह भी माननीय मंत्री जी बताने का प्रयास करेंगे।

सभापति महोदय, आज बहुत सारे केसिज अदालतों में पैंडिंग पड़े हुए हैं तथा जजेज के स्थान भी रिक्त पड़े हुए हैं। 35 लाख मुकदमे आपने अपने श्रीमुख से स्वयं स्वीकार किये हैं। माननीय मंत्री जी मैं समझता हूं कि आपकी भावना अच्छी है। मैं अपनी तथा अपने दल की ओर से आपकी भावना की कद्र करता हूं। हम आशा करते हैं कि आप देश में एक ऐसा कानून लायेंगे जिससे सिविल कोर्ट में वाँ तक जो मुकदमे लम्बित पड़े रहते हैं, उनका शीघ्र निपटारा होगा तथा हाई कोर्ट में जो जजेज के स्थान रिक्त पड़े हुए हैं, आप उनकी भी आपूर्ति शीघ्र करेंगे।

सभापति महोदय, आपने मुझे बोलने का समय दिया उसके लिए मैं आपका बहुत आभारी हूं।

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI ARUN JAITLEY): Sir, I am extremely grateful to the hon. Members who have spoken on this Bil. All most all the Members have supported the Bill, and raised some very relevant issues. If I understand the issues, they broadly relate to two objectives. The first is that there must be fairness in the system of judicial trial. As Shri P.C. Thomas, who is one of the latest speakers, said justice must not be buried merely because we are going in for speed. At the same time, a number of Members felt that when the process is very slow, delay itself defeats the cause of justice. Through this particular Bill, we are trying to find a middle path and reconciliation between speed in the judicial process on the one hand, and following the rules of due process of law, on the other hand.

Sir, this is necessary. We are in jurisprudence or we are in a society where the norms of a civil society require that disputes between individuals should not be resorted and resolved merely by use of force but must be resolved and adjudicated by a judicial tribunal. That is the requirement of the society which is governed by the rule of law.

The second factor is that delay in the judicial process or the high cost of the judicial service itself should not be such that it dissuade people from going to court and taking the law into their own hands and resolving the disputes by extra constitutional methods. We have tried to find, therefore, the middle course, as I said, between speed, between fairness and between due process of law. The concern really arises. Hon. Member, Kumari Mamata Banerjee mentioned the concern when she was speaking. In the High Court, there are about 35 lakh cases pending . In the lower courts, as far as the whole country is concerned, the figure is little more than two crores. Out of these two crore cases, about one-third are civil cases and two-third are criminal cases.

Shri V.P. Singh Badnore when he was speaking raised a question as to what are we going to do about the Criminal Procedure Code because that has a much larger bearing as far as the rules of civil society are concerned. If people who commit offence cannot be punished, then there are serious concerns as to what really happens to our society. I may just respond to a suggestion that the hon. Member had given. We have appointed a Committee last year headed by retired Judge, Justice Mallimath. I would request the hon. Members also if they have any views, they should send it to me or to that Committee as to what changes are required in our Criminal Procedure System. When we do this, we must keep in mind the serious fact that in a serious crime, not in any ordinary crimes like challans or other small offences, the conviction rate in this country has come down to little over six per cent. Ninety-three to ninety-four per cent of the people who are charged for criminal or serious offences managed to get acquitted. Therefore, there is a serious cause for introspection that when crime becomes a very low risk area, and that you commit a crime, you profiteer from crime and the risk of getting convicted is going to be very low. Then, this itself is going to have a serious impact on the rule of law and the rule of civil society. Criminals and *mafias* will hold the society at ransom. Therefore, we have to seriously introspect as to what really is wrong with our criminal law system.

That Committee is now going round the country. It is meeting police officers, human rights groups, political persons, judges, lawyers, etc. They had about four seminars all over the country. I had an occasion to interact with them on three questions. Very fundamental issues are now going to arise which the world is dealing with.

**17.00 hrs.**

What do we do with the problem of hostile witnesses because criminal jurisprudence is being governed by this institution of hostile witnesses? The ordinary citizens are not coming to depose where this should be justified as the truth in courts. We have followed a norm which is a constitutional guarantee that the accused has a complete right of silence. Now, with 6 or 6 ½ per cent conviction rate, how do we reconcile this? The Law Commission is also seriously examining this issue. The police and prosecuting agencies have one view on this issue because we have very serious questions on which again I have to take the view of the society as to how we manage our criminal law jurisprudence systems in the society. In every case, should the onus of proof be entirely on the prosecutor? Should the accused merely use the right of silence and get away? These are fundamental questions. I am not giving an answer to any one of them because these are very difficult to answer. But, I think, it is time that this House, as the law making authority of this country, should seriously start considering these issues.

Sir, there is an Expert Group going into these questions. When we get its report we will place it before this hon. House also for a discussion because that one issue is going to make an impact on law and order, public order, norms of civil society and rule of law as far as India is concerned. This is my response to what the hon. Member has said. We are expecting the report of that group some time at the end of this year. These are not changes that we should make in a hurry or as a knee-jerk reaction. But they should all be very well considered.

The hon. Member who spoke first, Shri Varkala Radhakrishnan had raised the question about the issue of the appeal and I tried to clarify in an intervention. We have to really choose between two systems. One is that even in a judicial forum, it is quite possible that there may be errors which may be committed and, therefore, a citizen should have a right to make an appeal against that error. But how many appeals do we allow against one order? The basic principle that there must, at least, be one appeal, in addition to the constitutional right to go to the Supreme Court under article 136, is very well established. There should be no order which should not be appealable at all. But at the same time, to have four or five appeals against one order itself may create a complicated situation. So, in this Civil Procedure Code (Amendment) Bill we have tried to reconcile that. When single judges of the High Court decide an issue in their original jurisdiction under article 226 of the Constitution or under any other power, there will be a right to appeal to the Division Bench. But single judges are hearing appeals against lower court orders, then there will be no right to appeal.

Shri Prakash Yashwant Ambedkar wanted to know whether appeals can directly go to the Division Benches also. He also wanted to know whether this is being forbidden. These are all governed by separate rules which the High Courts frame for themselves. There are High Courts which permit appeals being filed against the District Judge's orders. There are others which permit appeals being filed to the Division Benches. Then there are some High Courts which allow appeal being filed before a single judge. These are all matters which are governed by the High Court procedures themselves.

Shri Varkala Radhakrishnan wanted to know as to what was the need to bring this amendment which is of a clarificatory nature to the effect that a civil judge cannot execute a decree outside his jurisdiction. If properties are located outside his jurisdiction, then obviously properties outside the jurisdiction will have to be attached. He is very correct. The provision under Section 39 of the Code of Civil Procedure is, a person can get a transfer order of the decree and go to the judge under whose jurisdiction he is located. This is the existing provision. But some conflicting judgements have come. So, the Law Commission, in its 144$^{th}$ Report, advised that this confusion created

by conflicting views should be removed and a clarificatory amendment should be brought. Therefore, this amendment is only a clarificatory amendment which reaffirms the present view.

Sir, a question has been raised by some hon. Members as to how much time should be given to file a written statement. The Bill which we had passed in 1999 simply said that it should be within 30 days and not a day more. Even the Judge will not have the power to give a day more. This was one provision against which a lot of protest had taken place. Finally, when we had discussions with the Bar Council of India and with various Bar Associations, I had even requested some

lawyer-Members of this House to come and participate in the discussions. Shri Pawan Kumar Bansal was with me in all those meetings. When we discussed this issue with them, the Chairman and the Members of the Law Commission were there, the Attorney General was there, and we discussed this issue threadbare. Now it sounds very reasonable to say that we should give only 30 days to file an appeal, not a day more. This was the provision in the Bill which was passed in 1999.

There were many issues which were thrown at us, if I may say so, during those discussions. We have a large section of people who are very poor. Even before they go to engage a lawyer, they may have to raise money. Then, there are people who are illiterate, who do not know where their documents are and they may have to go to the Registrar and get documents as far as the office of the Registrar is concerned.

Similarly, somebody may be unwell. In large commercial disputes, the litigation may be in India, but the client may be outside the country. So, do you want the rule of thumb '30 days and not a day more' and not give the powers to the Judge?

There was some element of discussion as to what should be the reasonable time. After considerable discussion, keeping all these factors, he said: "The ordinary rule is 30 days. This rule of 30 days can be breached only if the Judge is convinced that there are sufficient reasons that it should be breached. But the outer limit, in any case, will not be more than 90 days, that is, 30 plus 60 days." This is the outer limit. In fact, I may tell that at one stage even my initial view was that '30 plus 30' would be appropriate. But there are lawyers, particularly those practising in the subordinate courts. They deal with clients who have very little paying capacity and whose capacity to actually get hold of their documents is also limited. He may be very poor. You may have a farmer who may be busy in the fields. But they raise all kinds of problems. We felt, particularly, when we had the discussions. The hon. Vice-Chairman had said: "In some areas, you did try to accommodate the viewpoint of the lawyers." Yes, we did. This is one area.

Of the two areas where we accommodated their viewpoint, one was that some flexibility was to be given, but with an outer limit, which is 90 days.

The second area where we accommodated their view was that the Bill of 1999 stated that there would be no power of amendment of a pleading at all. Now whatever case is going on and something happens after the filing of the case, a decision is necessary for that case. Several examples are there. This happens every day.

So, for subsequent events, you have to give a limited power of amendment. We accommodated their viewpoint. But we also persuaded them to agree to our viewpoint. What they agreed on was much more. For example, there is the right of a Judge to stop these endless arguments which go on. Now these endless arguments can go on for days. For injunction applications, the arguments can go on for days and months. I must confess that we as Members of the Bar argued cases for days and months together. It cost the litigant. It cost the court its timing. This does not happen anywhere else in the world.

Recently, the Vice-President of the Chinese Supreme Court was here. I asked him a question: "How long does it take in your country for a case to be disposed of?" He was very apologetic and said: "Earlier, it was very quick. Now, it is delayed a little." I said: "How much is the timing?" He said: "Earlier, it was about two weeks. Now, it can take up four to six weeks." He was apologetic about a case taking four to six weeks.

I gave a comparison in the other House. In the United States, probably last year, the most important case the world heard was the election case filed by Mr. Al Gore against Mr. Bush to decide who the President of USA will be. The total time taken in the US Supreme Court was one-and-a-half hours. They allocate the time and say: "Whatever else you have to say, you please give it in writing." Nobody has said that those legal systems are defective or that they suffer because the timings are rationed and you are not allowed to argue for days indefinitely. Here in India, a system had actually existed when the Judge looked at his watch said: "How much more time will you take?" We tell him: "Please look at the calendar and not your watch because we have to tell you how many days we will take to complete this."

Now, with this kind of a discipline, how do we balance between a due process and speed? Therefore, we have said and the Bar agreed: "All right, restrict the timing as far as arguments are concerned but to compress the life of a case." For an original trial in the Mumbai High Court or the Delhi High Court, the average life is 15-20 years. In the

lower courts, it can be anything between three and five years.

The recording of evidence takes place. In the High Court, it takes indefinite number of years. In the lower courts also, it can take some years. Now, there are cases of all kinds. We have not said that all cases will go to the Commission. Hon. Member, Shri P.C. Thomas, said: "How will the litigant be able to pay?" Well, the Judge will keep this in mind. If there is a poor litigant, he will record the evidence himself and not refer it to a Commission.

But let me give you another example. I recently associated with a function. Every day, we raise this issue in the 'Question Hour' or the 'Zero Hour'. Shri Rupchand Pal raises it about the non-performing assets of banks and financial institutions. We have constituted Debt Recovery Tribunals all over the country. Banks have filed cases for recovery. Are we aware of the total amount of claims? The total size of India's Budget is Rs. 4-1/2 lakh crore. The bank claims before the DRT today are for Rs. 1,10,000 crore. There are individuals, companies and others who have taken money. But the creditor has to chase the debtor.

Nowhere in the world does it happen. Now, in such a case all you have to do on those forums is that you have to record evidence. The bank is not a poor litigant; please appoint a Commissioner because there are bank documents which are to be proved. Why should such a case take ten years to be disposed of? There are cases relating to property, there are cases relating to family where litigation can be mentally very disturbing. All these factors will be taken into consideration whether the Commissioner""s cost is shared or the richer litigant will bear this. These are the matters of judge""s discretion. We have said in the law.

A question was raised, who will appoint the Commissioner? An apprehension is expressed that somebody may favour some advocates. We have said, "No. The High Court or the District Judge shall prepare a panel of Commissioners." After all, you are leaving this power to the Chief Justice of the High Court. He will say in the High Courts, so and so and a District Judge will say these are the 50 advocates, I am convinced; they are up to the standard; these other kinds of people I am still not satisfied; so I will not put them. How much money will they charge? The Judge has no power to award any money. "â€¦The court may, by general or special order, fix the amount to be paid as remuneration." So, there will be a scale. Now, this one factor is accompanied by a factor which the bars substantially agreed to because there were some who had reservations that the Commissioner records evidence and ordinarily what takes five or ten years in the High Court, three to four years in the lower court, within 60 days, he files the record of the evidence before the court, unless the subject matter is such that the judge decides to extend the time.

SHRI A.C. JOS : What about stipulating a seniority for a lawyer to be a Commissioner?

SRI ARUN JAITLEY: I think, Shri Jos should consider it in a larger object. Some issues were raised. There may be a subject matter where a very senior lawyer may be expected to be there. Let me give a practical illustration as the hon. Member without referring to the case mentioned to it. We have discussed every day in this House, outside in the media that the case in Uttar Pradesh which creates a problem every day has been going on for some fifty years. Why does it take 50 years for a civil case? Finally, what is the solution that the judge has found? We can only hear it on some days, when we cannot hear it we will have a Commissioner. So, they thought that the Commissioner must be some retired high court judge because this is an important case. In a small dispute he may find that even an ordinary young man is very enthusiastic. In an important matter he may feel somebody senior enough is there. After all we are delegating the power by legislation not to every magistrate in the country or every civil judge, we are delegating this power to the Chief Justice or the District Judge.

SHRI PRIYA RANJAN DASMUNSI : The hon. Minister can explain it by his own experience. We are not competent that way. It has also been observed that there are frequent adjournments on flimsy grounds. The other side is ready but the senior lawyer is busy. That is why it cannot be taken up. Now, this way, you see how many hours have been destroyed. What will the hon. Minister do with that?

SHRI ARUN JATILEY: I am very grateful to the hon. Member. Shri Swain also raised the same question.

SHRI A. KRISHNASWAMY : Advocate Commissioners have already been appointed, but they do not submit their reports within three months. The concept of Advocate Commissioner is already in existence.

SHRI ARUN JAITLEY: The Advocate Commissioner gets normally appointed when both sides consent. Now, you are giving a power even without consent. For instance, I gave an example of a bank. The man who has to pay Rs.1,10,000 crore to those people, is not going to agree to a Commissioner being appointed and a decree against him in three months"" time. So, he will try and delay the case. In these cases, if Commissioners do not submit their report, I am sure the Chief Justice will see to it that the defaulting Commissioner will be out of the list.

Let us not be in perpetual distrust of high constitutional authority to whom we are giving the power. If some commissioner is going not to perform his obligation or duty, this is the power how to manage the court discipline. On

every small point we need not have to legislate, we can leave some factors even so far as judges are concerned.

A question was raised as to what happens in the case of repeated adjournments? Litigants go to court, and not only this in the High Courts they come from far flung districts; and in the Supreme Court they come from far flung areas in the country. When these litigants go to these places, and they are told that the lawyer is not available or there is a strike or some such problem has taken place, I may point out that in the 1999 amendment -- though there are some areas we have improved upon, some areas we have made it more flexible -- there were some very good areas. And one of the areas in that amendment under Order 17 Rule (i) was that in any given case in the entire life of a case there will be not more than three adjournments.

That amendment because of the whole agitation was not put into force, but once this particular Bill that we pass today is put into force, then the 1999 amendments, to the extent we amend them by the provision today, will all be incorporated into one. And after the Presidential Assent, we will put them into force. So, the net cumulative effect of the amendments will be that at least, we, by law, give the legislative intention. After all what can the Legislature do? We can only legislate. We can give the legislative intention but the principal players are the lawyers and the judges. Once the Legislature has said, they will also have to realize their responsibilities. If you look at the big picture of what the Civil Procedure Code looks like, you have 30 days to file your written statement. Instead of one year for service of summons, we have said dozens of different methods by which you can serve summons. Service of summons through courier in a district also takes two or three days and not more. You have to file your written statement in 30 days with exception only in cases where it can be extended. Evidence to delegate the functions is within 60 days. Argument to allocate the time and judgement to deliver is done within 30 days. Sir, 30 days is the rule. Some comment was made on this. But in some cases, the subject matter may be so large that we have said this could be extended for reasons to be recorded in writing as to why the judgement could not be delivered for another period of 30 days.

Sir, if you permit me, I may just narrate an incident. Somebody in this House had asked the question how many judgements are pending undelivered for more than one year. I wrote a letter to the Chief Justice of every High Court that I have been asked this information and I have to provide this information. So, this information may be given. Some people gave the information. Some people said this is the issue relating to independence of judiciary and we cannot tell you. I was helpless because I could not give effective answer to the House because I did not have the figure. So, I kept corresponding and persuading them to give me the figures. Some newspaper Reporter somehow got to know of it. One newspaper published an article that this controversy has started.

Last summer I had gone to England for some Conference. I called on the Lord Chancellor who is their Law Minister and Head of the Judicial System also. A brief was put up to him about India. From the Internet, they must have got all this information. This amusing news article was also before him. So, he asked me a question and said, "I am told you are also having this problem in India where your judges are not telling you how many judgements are pending". I said: "Why do you use the word 'also'?" He said: "Because I also have it here." So, I said: "How did you deal with it?" And he used a very beautiful cryptic sentence and said: "Well, I told my judges you must be independent, but independence cannot be used to camouflage inefficiency." The two are entirely different and they operate in a different domain. Now, therefore, in this Civil Procedure Code, from day one to the last day, we have given the legislative guideline, and the legislative guideline is that judgements must be delivered quickly. Evidence must be recorded easily and quickly. Arguments must be short and crisp. Replies must be filed quickly, and in time. But if somebody still decided not to obey the mandate of law, I am sure the higher echelons of the judicial institution will also take care of this.

Sir, several important issues have been raised. Hon. Chairman speaking as a Member raised the issue how do you make it cheaper. This is the question that Kumari Mamata Banerjee also had raised. How do we make litigation cheaper in this country? It is because it is indeed very costly. On Friday only, we cleared a very important piece of legislation, the Legal Services Authority Act. I had given one figure in that Act that today barring two of the three new States which we created, it is almost in the process of completion. In Uttranchal and Jharkhand also, I am told now it is taking place. Every State in India, we have a State-level Legal Services Authority. Right up to the district level, we have a district-level Legal Services Authority. We are funding those Authorities. Those Authorities are expected to make sure that no litigant who comes to them, who deserves legal aid because he has inadequacy of income, goes unrepresented by a lawyer merely because he has no money. I gave the figure that day that those district-level authorities have been able to give legal aid so far to about over 40 lakh people. Sir, 40 lakh litigants have come.

We have, then, tried to create *Lok Adalat* system in the whole country. Through that *Lok Adalat* system, in the last 12 years, we have been able to sort out at that levelâ€”the figure of two crore cases looks very largeâ€”1,36,00,000 cases.

We have now amended that Act in the Lok Sabha. I am having it taken to the Rajya Sabha and having it approved

there, if possible, in this Session.

Shri Kharabela Swain had raised the point that in every public utility service like Municipality, housing board, telephone companies and electricity companies, it is now compulsory at all levels in the Centre and States to have *Lok Adalats*. We have discussed on Friday alternative routes available to a litigant. He need not go to the court. He could go to the tribunals and *Lok Adalats* and try to resolve small issues without spending any money.

Shri Vijayendra Pal Singh Badnore had raised an important question. We had an Arbitration Act of 1940 and it became almost a virtue under our system to see that once arbitrations were held and awards were given, we would invent new methods of challenging those awards. Arbitration is a process where we would not go to court, we would select our own private judge and whatever the judge decides − it is like a *panch* − we would abide by it. Judges are always told that they have great powers. This is one more reason why they think that they have power to interfere in arbitration awards. So, we made arbitration a costlier and longer procedure than a normal case. Thus, our Act became totally unworkable and useless. Therefore, in 1996, following a model law that various countries in the world have adopted, we enacted something close to that law. There are still some drawbacks in that law that we are examining. The Law Commission has given me a report and very soon I would be coming back for changes.

We have a very good arbitration law but excessive judicial intervention. We have arbitrators of international standards. If you ask any Indian company, they would tell you that their foreign collaborators have now started insisting that in the event of a dispute, it would be a foreign arbitration or a foreign venue. The reason why they insist on a foreign arbitration or a foreign venue is that in our country courts interfere too much and it takes too much time. So, those Indian partners who need that investment have no option but to sign on the dotted line. When they go in for arbitration abroad, as it happened in the Enron case, Indian companies find the cost to be unbearable. Therefore, in the interest of our own companies, if we have to have an arbitration practice system in India in terms of quality arbitration with least judicial intervention, something which the best international benchmark, so that we could tell the foreign investors that India itself is a very appropriate venue for arbitration and they have nothing to worry about.

There were several other questions raised. Shri A.C. Jos mentioned that the limit of Rs.25,000 could be raised. We have said that in cases where the amount of money is Rs.25,000, there would be no second appeal. The original 1999 amendment provided, 'where the subject matter is Rs.25,000'. Now, there is a difference between 'where the amount of money is Rs.25,000' and 'where the subject matter is Rs.25,000'. For instance, in most agricultural properties or properties in villages and smaller areas, valuations are done as per traditional valuation methods. They do not value properties very highly. In all those cases, if there were property disputes, the right of appeal would be lost. So, we have kept it at Rs.25,000 but we have put a restriction on the right of appeal.

An hon. Member asked about the need for giving surety in the matter of injunctions. One of the questions raised was, in matters of injunctions, why should we have vague *status quo* orders, etc. As far as the terms of the orders are concerned, it is a judicial discretion. This provision of surety exists already under order 39, rule 2. The proposal was to bring it under order 39, rule 1, in the same identical language. When it went to the Standing Committee, the Standing Committee said, 'There is no special reason where anything has happened since 1976 that we have felt the necessity of bringing this provision.' We have respected the opinion of the Committee. Therefore, in the official amendment that I have circulated, there is no provision for surety. ...(*Interruptions*) We have put off that provision after the Standing Committee opined that there was no need for it. This is the official amendment that I have moved.

Shri P.H. Pandian and Kumari Mamata Banerjee had raised some questions on two or three areas. They raised a question about PIL. Another question was about how to tackle corruption in judicial institutions. The third was with regard to appointment of judges. India is a country where, by judicial interpretation and not by the original language of the Constitution, instead of the Executive it is the judges who appoint judges and the Government merely notifies them.

All these vacancies which exist -- the High Court figure is about 155 -− are slowly coming down. The lower court figure is about 1800. We have been taking it up with the judicial institutions. But I must just mention and I would not make a detailed comment on this. Most political parties in their electoral agenda or manifestos have spoken in favour of a National Judicial Commission. The Commission which we have set up headed by Justice Venkatachalaiah to review the functioning of the Constitution also has made a recommendation. I have already addressed letters to the President of every political party − Centre and State political parties − inviting their comments on that part of the recommendation of the Justice Venkatachalaiah Commission. And as soon as I get back those opinions of political parties -- and I will be grateful if the hon. Members could also make sure that the parties to which they belong also could make response to this − I will see if there is a broader consensus because the Constitution amendment is involved and I will come out with an appropriate Constitution Amendment which can take place only with the larger consensus as far as this House is concerned.

Sir, a question was raised as to how do we tackle judicial corruption. I must clarify it. I have checked up this issue in

person also and several questions had come. The former Chief Justice who retired recently never said that 20 per cent of the judges were corrupt. He said to the contrary that, to my knowledge, at least, 80 per cent of the judges are very hard working and honest. So, we have presumed what he did not say. Even in those words, he had not mentioned this thing. The question is as to how to deal with this issue of judicial corruption. It is still easier to deal with it at the lower levels because the lower court judges are all under the disciplinary control of the High Court. Therefore, there is an Authority. But as far as higher judiciary is concerned, hardly there is a disciplinary control.

SHRI PRAKASH YASHWANT AMBEDKAR (AKOLA): About four applications have been made by some of the litigants which have been set free by the Supreme Court also, and that in their matters corruption has taken place at the judges level. They have asked permission from the Department to prosecute them. I would like to know whether you would give this permission or not.

KUMARI MAMATA BANERJEE : In the States, the judiciary is not with the High Court, but it is with the State Government now.

SHRI ARUN JAITLEY: Whenever we get these applications, within the parameters of law, we consider them. There is a legislation of Parliament − the Judges Protection Act − which has certain restrictions on permission of this kind. We must keep the law also in mind. The arguments in support of the judges will always mean that there should be an in-house mechanism within the judicial institutions to correct whatever misdemeanour takes place. Therefore, the Executive really should not be intervening in this. This has been the traditional argument given.

Now, how far the in-house mechanism has been successful? They appoint PR Committees at times and there have been several cases. In fact, only one case came to this House about six or seven years ago. But there have been several cases where factors have come to light. Media reporting has come to light. But eventually this question, if I may very honestly submit, remained even today unanswered. Every misdemeanour is not misdemeanour, which asks for an impeachment. There may be misconduct of a nature, which does not warrant an impeachment. Impeachment is a very difficult, rarest of rare remedies or near impossible remedy. How do we deal with those situations? This is an unaddressed question. And the point of view in favour of the judiciary has been that there must be an in-house mechanism in the judiciary. But, so far, we have not seen an effective in-house mechanism. I think, one of the recommendations of the Justice Venkatachalaiah Commission has been that the National Judicial Commission would also go into these questions in the case of such misconduct which is of a nature where this does not warrant any impeachment proceedings. I think, we must all take that recommendation from an academic point of view also a little seriously.

SHRI A.C. JOS : The Apex court can formulate an in-house mechanism to deal with the corruption and allegation against the judges in the High Court and the Higher Courts. Even now it can be done without any constitutional amendment.

SHRI ARUN JAITLEY: May I say one more thing? I am just flagging the issue for consideration of this House at an appropriate time since we ourselves have already initiated a discussion both on the appointment procedure and on the disciplinary procedure emanating from Justice Venkatachalaiah Commission Report.

The Report has been put on the Web. Even suggestions from Members of Parliament would be welcome on this. I am trying to get the recommendations published as a book so that we can make it available to everybody.

DR. NITISH SENGUPTA : In the known case of impeachment in this House, our experience was not very happy.

SHRI ARUN JAITLEY: Sir, the last question raised by Kumari Mamata Banerjee was about the Benches of the Supreme Court. This is also a very difficult question. The Government's stand has also been, and the Parliamentary Standing Committee has also taken a view, that Benches must be created, at least in some parts of the country. North-East is one area where there is a very strong case for creating a Bench because of their economy. ...(*Interruptions*) There is a very strong demand which has been coming from the South because of the distance the people have to travel, the cost which they have to incur and so on.

SHRI A.C. JOS : There is a suggestion to subsidise the travelling expenses of the clients coming to the Supreme Court in Delhi from the South because it is very expensive for them to come to Delhi.

SHRI ARUN JAITLEY: There is a provision in the Constitution. Article 130 says that the Supreme Court will create Benches at such placesâ€¦ (*Interruptions*)

**सभापति महोदय :** साढ़े पांच बजे "आधे घन्टे की चर्चा" थी, इस चर्चा को माननीय मंत्री जी और माननीय सदस्य की सहमति से कल के लिए पोस्टपोन किया जाता है।

SHRI ARUN JAITLEY: Sir, this is the last point I am dealing with. ...(*Interruptions*)

**श्री सुरेश रामराव जाधव :** माननीय मंत्री जी, न्यायिक सेवा आयोग के गठन के बारे में बताइए।

**श्री अरुण जेटली** : यह विाय इस चर्चा से संबंधित नहीं है। That is a separate subject under consideration. Article 130 says:

> "The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint."

So, the original Constitution itself envisages that the Supreme Court will sit in Delhi or in such other places which the Chief Justice, after approval of the President, that is, the Government of India, will decide. So, the Chief Justice has to initiate and the Government has to approve while, on the contrary, the Government has been writing to the Supreme Court that we, now, feel that there is time to consider creation of Benches. But even recently, the full Bench of the Supreme Court decided that they felt that the time had not yet come for creation of this particular Bench and the issue remains an issue where the Government and the Parliament, on the one hand − because the Standing Committee has also expressed that opinion − and the court, on the other hand, have a different perception.

I may just wind up and say that this is an amendment which has been supported by all sections. The object really has been to expedite the hearing of a case, to compress every stage of a case, and this is one step which we are taking among several others in order to make litigation quicker as far as the litigation is concerned.

I commend to this House that this Bill be adopted by this House.

MR. CHAIRMAN: The question is:

"That the Bill further to amend the Code of Civil Procedure, 1908

and to provide for matters connected therewith or incidental thereto,

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 16 stand part of the Bill."

*The motion was adopted.*

*Clauses 2 to 16 were added to the Bill.*

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

SHRI ARUN JAITLEY: Sir, I beg to move:

"That the Bill be passed"

MR. CHAIRMAN: The question is;

"That the Bill be passed."

*The motion was adopted.*

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MR. CHAIRMAN: Now we shall go to item no.11 − the Bill further to amend the Insurance Act, 1938.