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Title: Further discussion on the motion for consideration of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 (Discussion Concluded and Bill Passed).

HON. DEPUTY-SPEAKER: Now, the House will take up Item No. 23, further consideration of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015.

Shri B. Senguttuvan.

SHRI B. SENGUTTUVAN (VELLORE): Hon. Deputy-Speaker, Sir, please permit me to speak from this seat.

HON. DEPUTY-SPEAKER: All right.

SHRI B. SENGUTTUVAN : Sir, I am greatly obliged to you for having afforded me this opportunity to participate in the debate on this important Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015.

The intent and the purport of the Bill under debate is to constitute commercial divisions and commercial appellate division in the High Courts and commercial courts in the districts to resolve and adjudicate what are called the commercial disputes. The rationale for this legislation is the ever increasing number of commercial disputes that crop up as a result of increasing economic activity in the country. It is a fact that there is a huge pendency of high value commercial disputes, the reduction of which is necessary to make India a desired, a more attractive and a more favoured destination for investors to do business in. The quick adjudication of commercial disputes would faster the growth of trade and commerce. This can happen only if we have a specially sensitized judicial officers and changed procedural laws that make for quick disposal.

The Parliamentary Committee to which this Bill was referred to by the Rajya Sabha held a sitting in Chennai eliciting inputs from our State Government.

I am happy to acknowledge the fact that many of the suggestions given by our Government have been incorporated into the Ordinance as well as the Bill. Still we, however, have reservations about two other Clauses in the Bill to which I will revert later.

Sir, it is a regrettable fact that when all of India is marching into the 21<sup>st</sup> Century, the Indian justice delivery system remains adamantly rooted in 19<sup>th</sup> Century. Some of our laws remain archaic. The Civil Procedure Code that guides the procedure in the trial of the civil cases is of the year 1908. The need of the laws is to evolve with the changing times, changing mores, changing values, and changing ethos. But our laws remain static, trapping life, the incessant shower of innumerable atoms, in a state of stasis.

From out of practical experience, we know that a civil suit ordinarily takes a period of at least three years to conclude in the court of first instance. Thereafter, the first appeal, then the second appeal before the High Court and the SLP before the Supreme Court etc. consume close to a decade.

The Subordinate Judiciary is burdened with about three crore pending cases. The 24 High Courts in India are faced with a backlog of 41.53 lakh cases. Many of these cases are more than 20 years old. The Supreme Court has 58,906 pending cases on hand. With this many cases pending in the courts and with many more cases being filed every day, the chance of wiping out the backlog are well nigh impossible.

India is embarked today on a mission to becoming global economic super power. The initiatives of the Central Government and those of the Government of Tamil Nadu which under the leadership of our leader, Dr. *Puratchi Thalaivi Amma*, has attracted foreign investment to the tune of Rs. 2,42,000 crore would place India on the global map as a great economic power.

But such factors as the delays and the resistance to reforms etc. in the judicial system, which ail the justice delivery mechanism, has placed India at the lowly rank of 142 out of 189 in the Ease of Doing Business Index prepared by the World Bank. For India to move toward the status of economic super power, it is a must that a healthy and speedy justice delivery system is put in place.

This Bill as well as the Arbitration and Conciliation (Amendment) Bill, 2015 are two of the important commercial legislations brought about by the Government with a view to providing ease of doing business in India.

The Law Commission of India, headed by Chief Justice A.P. Shah (Retd.), in its 253<sup>rd</sup> Report dated 29<sup>th</sup> January, 2015 submitted to the Law Ministry, proposed a new legislation to deal exclusively with Commercial Disputes. The hon. Finance Minister, in his Budget Speech for the year 2015-16, made a statement in this regard. The Union Law Ministry introduced this Bill in the Rajya Sabha in the Monsoon Session which was referred to the Parliamentary Standing Committee.

This Bill seeks to refer the Commercial Disputes as defined in Section 2 (c) of Specified Value Rs. One crore and upwards to be tried in Commercial Courts at the District level and to Commercial Division, where the High Court has original civil jurisdiction and all the appeals arising out of commercial disputes to Commercial Appellate Division of the High Court. The Commercial appellate divisions to be set up under the Bill in all High Courts shall hear appeals against: (i) orders of Commercial Divisions of High Courts; (ii) orders of Commercial Courts; (iii) and appeals arising from arbitration matters that are filed before the High Courts.

The Commercial Appellate Division may, in addition to commercial dispute appeals, also hear appeals relating to debt recovery appellate tribunal, Intellectual Property Appellate Board, Company Law Board or the National Company Law Tribunal, Securities Appellate Tribunal; and Telecom

Dispute Settlement and Appellate Tribunal, etc.

Such appeals to the commercial appellate division of the High Courts must be made within a period of 60 days of the order of the lower court and shall be disposed of within six months.

This Bill further provides that the number of High Courts Judges required to be appointed for a Commercial Division or Commercial Appellate Division of a High Court would be determined by the Chief Justice of the High Court who shall nominate such numbers as required.

The judges must have experience in dealing with commercial disputes and the nomination would be for a period of two years or as determined by the Chief Justice of the Concerned High Court.

Judges of a Commercial Court shall be appointed by the Chief Justice of the concerned High Court. The senior most judge would be the Principal Judge and would have the same powers as that of a Principal District Judge of a District court.

The Bill defines what a commercial dispute is. According to Section 2(c) of the Bill, 'commercial dispute' is very comprehensively and widely defined. A wide variety of trade or business disputes arising out of as many as 23 different legal relationships are categorised as commercial disputes.

The Bill makes provision for speeding up of commercial disputes. On the face of it, it is obvious that the intention of the Government is to provide for a quick disposal of commercial disputes so that a conducive atmosphere for conduct of business in India prevails. The speedy disposal of the commercial disputes makes India an attractive international destination to do business and thereby it encourages foreign investment. It also paves the way for greater economic growth of India. This appears to be the philosophy behind this legislation.

On a guesstimate, the commercial disputes of the specified value currently pending in the courts would comprise about 50 per cent of litigation. Once the Bill comes into force by virtue of the provisions of Section 15 of the Bill, all these disputes will get automatically transferred to the commercial courts or commercial divisions of the High Court.

The Bill has 23 Sections. The proceedings of the commercial courts will be regulated by the provisions of the Bill, amended and new provisions of Civil Procedure Code as well as the practice directions to be issued by the High Court from time to time. Very importantly, certain provisions of the CPC, 1908 have been amended in the Schedule and certain new provisions of CPC have also been enacted to apply to the procedure of adjudication of commercial disputes. These provisions have been incorporated by the Schedule to the Bill. These amendments and new provisions in the CPC ensure quick disposal of the commercial disputes.

The amended and new provisions of CPC, contained in the Schedule of the Bill, apply to the Commercial Dispute proceedings. They are: (i) Section 35 relating to costs, (ii) the time for filing of written statement and counter claims is prescribed as 30 days from the date of service of summons which at any rate shall not be extended beyond 120 days on sufficient cause being shown, (iii) the form of pleadings by the parties and the verification of pleadings undergo a vast change.

A statement of Truth is to be verified by the parties so as to ensure that the pleadings and evidence are truthful. It goes without saying any untrue statement made in the pleadings or in the affidavit will attract the penal provisions of perjury or Section 340 Cr.PC.

The plaintiff as well as the defendant should file all the documents that he relies on or in his possession etc. along with their pleadings. This again is a measure for saving unnecessary wastage of time.

The other provisions of CPC which have been amended in relation to the hearing of a commercial dispute are: Order 5 R1, O 6 R 3A (new) and O 6 R 15A (new). Order 9 relating to disclosure, discovery and inspection of documents in suits before the Commercial Division of a High Court or a Commercial Court, has been thoroughly recast. New Order 13-A has been included in the CPC which provides for Summary Judgment. This has been incorporated with a view to disposing of a commercial dispute on the basis of documentary proof alone without recording oral evidence. A new provision of Order 15-A has been inserted for the purpose of regulating the procedure for disposal of commercial disputes under the caption, 'Case Management Hearing'. This is an altogether new provision

The Bill is explicit that no revision under Section 115 CPC would lie against any interlocutory Order passed by the Commercial Court or Commercial Division as per Section 8. This is to ensure that revisions against interlocutory orders do not consume or do not act as a red herring.

As regards appeals, the appeal should be filed within 60 days of passing of the order to the Commercial Appellate Division; and it shall be disposed of within a period of six months as per Sections 13 and 14 of the Bill.

First, the main aim of creating the commercial courts is not only reduction of the pendency of suits already filed but also to quickly dispose of the new cases that would be filed. Although timelines have been set within which the Commercial Courts and the Commercial Divisions have to complete the proceedings within a stipulated period of time, only the implementation of the provisions will prove how efficacious they really are.

Sir, as I said before, our Party has reservations on two points in the Bill. One is with regard to the "Specified Value" as defined in Section 2 (1) (i) of the Bill. The Specified Value as defined under Section 2 (1) (i) for a Commercial dispute as per this Section is Rs.1 crore. We want that to be enhanced to Rs.10 crore at the least so that the private parties may not drag the Government to Court on low value contracts.

Our second reservation is that the provisions of Sections 19 and 20 of the Bill cast an obligation on the State Government to provide infrastructural facilities to the Commercial Courts, Commercial Divisions and Commercial Appellate Divisions, etc. and also provide further that the State shall in consultation with the High Court offer such facilities for the training of the judges to be appointed to the Commercial Courts, Commercial Divisions and Commercial Appellate Divisions, etc. Since the Commercial Courts, Commercial Divisions and Commercial Appellate Divisions etc. not only adjudicate the disputes pertaining exclusively to State Subjects but also those arising out of many Central Legislations, in the fitness of things the Centre should provide substantial funds for the establishment of these infrastructural facilities.

These are our two reservations. I request the hon. Minister for Law and Justice to ponder over these reservations and provide solutions to them. The

mere establishment of special courts alone would not provide the answer to the question of quick disposal of cases. The cooperation between the Bench and the Bar, a high level of competence of both, avoidance of unnecessary adjournments and the application of the provisions of the Bill in letter and spirit alone would make for quick disposal.

At present we see a trend in the higher judiciary that not much regard is given to the doctrine of *stare decisis*. With the result, we see no uniformity in legal interpretation of law and there are many conflicting judgments on certain points of law. In the interest of the nation, it is important that the judiciary is efficient, intelligent, uniform and objective.

Judges should ensure that the commercial disputes are not merely quickly disposed of but a meritorious judgment is delivered as disposal without merit will lead a litigant to a very lamentable plight.

The courts owe a duty to the nation. They should ensure speedier settlement of commercial disputes which would create a conducive investment climate because an efficient judiciary and a good economy go hand in hand. A robust legal system is not only a source of income to the practitioners of law but will eventually prove to be a good foreign exchange earner as well.

In order to fulfill the objective of quick disposal of the pending cases, the vacancies in the judiciary at all levels should be filled up. There are over 400 vacancies in various High Courts. The Supreme Court did itself no favour by striking down the 99<sup>th</sup> Amendment to the Constitution and the National Judicial Appointments Commission Act whilst admitting that the collegium system is not all that perfect. In the recruitment of judges to the High Court, the Collegium should see beyond its nose, cast its net far and wide in the districts also where there are very many good legal practitioners with impeccable background.

The Judiciary by itself cannot achieve much. The Centre and the States should provide world-class infrastructural facilities to the Supreme Court down to the Munsif Court.

The quality of legal education is another matter of grave concern. There can be no second opinion that the quality of legal education imparted in the country should be world-class. There is a mushroom growth of substandard law colleges in the country that should be curbed.

When an ideal judicial system is set in place, it will, in turn, escalate economic growth, increase foreign investment and make India an attractive place to do business in. It will also benefit the economy as a whole. A robust dispute resolution mechanism, consisting of capable judges and competent lawyers, is an essential requirement for a very good democracy and all-round development of our country.

With these observations, I support and welcome the Bill. I thank you for affording me this opportunity.

**श्री किरिं आज़ाद (दरभंगा) :** मैं इस बिल के समर्थन में बोलने के लिए खाड़ा हुआ हूँ। इसकी काफी आवश्यकता थी, जब से व्यापार बढ़ा है, कामर्स बढ़ा है, ट्रेड हुआ है। वर्ष 1895 में ही इंग्लैंड में चालू हुआ था और 17 ऐसे देश हैं, जहां कमर्शियल कोर्ट्स हैं, उसमें हमारा एक पड़ोसी पाकिस्तान भी है, जहां यह कोर्ट्स हैं। इसके सैलियंट फीचर्स बहुत अच्छे हैं।

Generally, commercial dispute is defined to include any dispute related to transactions between merchants, bankers, financiers, traders, etc. Such transactions deal with mercantile documents, partnership agreements, intellectual property rights, insurance, etc. जो हम देख रहे हैं कि सर्विस सेंटर में बहुत ही महत्वपूर्ण हो गया है। यह बिल कहता है कि कमर्शियल कोर्ट्स हरेक राज्य में और यूटी में बनाई जाएंगी। ये डिस्ट्रिक्ट कोर्ट के बराबर होंगी। कमर्शियल डिविजन हाईकोर्ट्स के ओशीजिनल ज्यूरिकडिक्शन में सेट की जाएंगी जैसे मुंबई, दिल्ली, कोलकाता और चैन्नई में। केसिस का वेंच्यूरेशन एक करोड़ रूपए या इससे ज्यादा का होगा। एपिलेट डिविजंस हरेक हाई कोर्ट में खोली जाएंगी। जो जज एपॉयंट होंगे to the Commercial Division of the High Court shall have relevant experience dealing with commercial disputes जो कि बहुत आवश्यक होगा।

महोदय, यह बिल तो बहुत अच्छा है, चूंकि मैं इतिहास में रनातक हूँ इसलिए मुझे मातूम है कि एक राजा मोहम्मद बिन तुगलक थे जिन्हें टि वाइजेट फूल कहा जाता था उनकी सोच अद्विती थी, लेकिन उनका इम्प्लिमेंटेशन सही नहीं था। मैं यहां कुछ बातें रखूंगा जिन्हें आलोचना नहीं समझा जाएगा, अपितु उन्हें एक सुझाव के रूप में लिया जाएगा, ऐसी मैं अपेक्षा रखता हूँ। लगभग 1017 सैवशंड पोस्ट्स हमारी कोर्ट्स में खाली हैं जिनमें से 392 हाई कोर्ट में हैं और 625 दूसरी कोर्ट्स में हैं। हमारे यहां लगभग 2 लाख 6 करोड़ केसिस पेंडिंग हैं जिनमें से 67 प्रतिशत केसिस किमिनल नेचर के हैं और 33 प्रतिशत केसिस सिविल नेचर के हैं। आप जब इनके लिए स्पेशल कोर्ट्स बनाएंगे तो मैं यह भी चाहूंगा कि जब आप कमर्शियल डिस्प्यूट्स को एक्सपेडाइट करना चाहते हैं कि जल्दी उनका हल निकले, तो ऐसे में यदि जजेज की कमी रहेगी तो वैसे ही 2 करोड़ 6 लाख केसिस हमारे यहां विलम्ब से चल रहे हैं तब उनके ऊपर और समस्या आने वाली है। मैं स्वयं इन केसिस के अंदर भुगतानी रखा हूँ। सही मायने में 67 प्रतिशत जो किमिनल केसिस हैं ये डिस्ट्रिक्ट कोर्ट्स में आपको मिलेंगे। अधिकतर दो करोड़ से ऊपर के केसिस हैं जो डिस्ट्रिक्ट्स में होंगे, गांव में होंगे, पिछड़ी जगहों पर होंगे और मैं स्वयं भुगतानी रखा हूँ। बहुत सारे लोग ऐसे बैठे हैं, जिनके ऊपर राजनीतिक रूप से केस हुआ होगा और वह केस सालों तक चला होगा। मेरे ऊपर भी 12 साल तक केस चला, बिजली हमारे क्षेत्र में आती नहीं थी और उसके लिए मैंने शांतिपूर्ण धरना किया तो मेरे ऊपर किमिनल केस हो गया और 12 साल बाद मैं बरी हुआ हूँ। ऐसे आप सोच सकते हैं कि कितने सारे लोग होंगे, जिनके साथ यह दुविधा हुई होगी।

मेरे जैसे व्यक्ति ने तो इसे झेल लिया।... (व्यवधान) हमारा नाम किमिनल में आ रहा था। हमने कोई मर्डर नहीं किया, कोई डकैती नहीं की, कोई फिरोती नहीं ली, किसी का अपहरण नहीं किया लेकिन किमिनल केस हम सभी लोगों पर हैं। आज भी मेरे पर नौ केसिस हैं। मैंने तो झेल लिया है क्योंकि मेरे पास सामर्थ्य था लेकिन कभी आपने सोचा है कि छोटे-छोटे कमर्शियल आस्पेक्ट्स किसी गरीब आदमी ने अपनी बेटी की शादी के लिए या घर में किसी की तबीयत खराब हो गई उसने जमीन को बेचा, जमीन को बेचने के बाद किसी प्रबुद्ध था, उसने पूरा पैसा नहीं दिया, उसके ऊपर घर खाड़ा कर लिया, वहां के पूशासन ने उसकी मदद कर दी और उस पर यदि केस है तो वह चले जा रहा है। आज हमें कमर्शियल कोर्ट्स की आवश्यकता है। लेकिन जो लोग 67 प्रतिशत किमिनल केसिस में फंसे हैं, जिनका संविधान के अनुरूप मौलिक अधिकार का हनन हो रहा है, उसके बारे में भी कम से कम हमें सोचना चाहिए। हम जजिज की एपॉयंटिंग के लिए आ जाते हैं, उसकी कमेटी बनाते हैं। यहां हमारी कमर्शियल सोच चल रही है, लेकिन इन किमिनल केसिस के बारे में कौन सोचेगा और यदि हम यहां से स्पेशल ट्रिब्युनल्स बनाएंगे और अलग कमर्शियल कोर्ट्स बनाएंगे और उसमें बिना जजिज की वैकेंसीज को भरे हुए भेजेंगे तो यह दो करोड़ छह लाख केसिस बढ़ कर चार करोड़ बारह लाख केसिस हो जाएंगे।

## 15.00 hours

इसके लिए भी कम से कम सरकार को नियुक्तियों को लेकर जल्दी से जल्दी कार्यवाही करनी चाहिए। मेरा तो यह भी सुझाव है कि जैसा कि यूपीएससी के एग्जाम आईएस, आपीएस के होते हैं तो ज्युडिशियल सिस्टम के क्यों न हों? Why not an Indian Judicial Service? Why only Indian Administrative Service, Indian Police Service and why not Indian Judicial Service? लोग उसके अंदर इतिहास देंगे, उसके बाद जो उत्तीर्ण होंगे, उनको जगह मिलेगी। कहते हैं कि you are a good lawyer if you know the law; you are a great lawyer if you know the judge. वरना आज कल जो हम केसेज़ देखते हैं, कोर्ट्स में चल रहे हैं कि डिग्न मारने पर तो आदमी जेल जाता है, लेकिन आदमी को रॉट देने पर छूट जाता है। यह परिस्थिति आज हमारे ज्युडिशियल सिस्टम में है।

में किसी की बुराई नहीं कर रहा हूँ, मैं किसी जज की बुराई नहीं कर रहा हूँ, लेकिन मैं उन जजमेंट्स की बात कर रहा हूँ, एक गरीब आदमी मर गया, उसको मातृम ही नहीं है। अब यह पता नहीं, वह गाड़ी शायद वह ड्रिगन चला रहा था यह अभी किसी को पता नहीं लगा है। आज ज्युडिशियल सिस्टम में इंप्रूवमेंट की जरूरत है। एफिशिएंसी की जरूरत है। कोई आदमी 12-12, 15-15 साल के बाद में पकड़ा जाता है। उसके ऊपर जो प्रभाव होता है, उसके ऊपर जो आरोप लगे होते हैं न, तो आरोपों को भी लोग कहते हैं कि अरे 15 साल पहले था, कौन पछुने वाला है, ऐसे लोग भी हैं, जो बरी होते हैं, 15 साल तक जिनको या तो जेल में भेजा जाता है या उनके ऊपर केस चलते जाते हैं और उसके बाद उनको बरी करते हैं। जैसा कि आपके नेता को अभी कोर्ट ने बरी किया है, कितने सालों तक उनके ऊपर केस चलता रहा। इसलिए ज्युडिशरी में जब तक तेजी नहीं आणी तब तक न एम्ब्रवयुटिव काम कर सकता है, न लैजिस्लेटिव काम कर सकता है। It is most important, Mr. Deputy Speaker, Sir, that we improve the efficiency. And we can only improve the efficiency if we fill in the vacancies. अभी आपने कमर्शियल कोर्ट किया है, लेकिन इसके अंदर इन्होंने कुछ स्पेशिफाई नहीं किया है। अगर यही पुराने ढर्रे से चलेगा, इसके लिए अगर स्पेशल प्रोसिजर कोर्ट आप कमर्शियल कोर्ट में नहीं करेंगे तो ये अपने पुराने सिविल स्ट्राइल से चलता रहेगा। सालों साल लग जाएंगे।

सिंगापुर में ये केसिज़ जब जाते हैं, इनका निष्पादन डेढ़ सौ दिनों में, पांच महीने में होता है। हमारे यहां चार-चार साल लग जाते हैं। सिंगापुर में, क्योंकि वह कमर्शियल डब है, वहां पर तीन केसिज़, पहले तीन जो आप कोर्ट में जाएंगे, वे फ्री हैं। उसके बाद चार्ज लगता है। अगर आप चौथी बार कोर्ट में गए तो आठ सौ सिंगापुर डॉलर, पांचवी बार कोर्ट में गए तो डेढ़ हजार सिंगापुर डॉलर, जितनी बार वह एक्सटेंड होता है, उतनी बार करना पड़ता है। वह इसलिए करते हैं, क्योंकि जो फ्रैलस कंटेन्स आते हैं, जो गलत कंटेन्स आते हैं, उनको रोकने के लिए उसको किया जाता है। इसलिए सिंगापुर ने इस प्रकार का प्रवधान लगाया है, जो हमारी स्टैंडिंग कमेटी ने भी रिपोर्ट किया था। Court fee at initial level in commercial cases should be low and it should increase at each stage of appeal. तरीका अच्छा है, यहां तक कि माननीय सुप्रीम कोर्ट ने सुब्रत येंग सहारा वरिंस यूनियन ऑफ इण्डिया के केस में उन्होंने ऑब्ज़र्व किया है कि delays in hearing and passing of repeated orders consumes a lot of judicial time. So, steps should be taken to deter frivolous litigation. बहुत लोग ऐसे ही लिटिगेशन लगा देते हैं। बड़े से बड़ा आदमी, जिसने 4000 करोड़ रुपये 5000 करोड़ रुपये लोन लिया हुआ है, उसको तो हाथ जोड़-जोड़ कर उसके पीछे सरकार, विभाग और बैंक कहते हैं कि साहब हमको पैसा दे दो- हमको पैसा दे दो। वहीं एक गरीब आदमी अगर एक किशत मिस कर जाता है, जिसने मोटर साइकल खरीदी हो या टैक्सी के रूप में अंते चलाता हो या गाड़ी चलाता हो तो उसके घर से, उसको पकड़ कर कर, उसके वहीकल को इंपाउंड कर ले जाते हैं। एक गरीब किसान जो ट्रैक्टर खरीदता है, जिसको सब्सिडी मिलती है, वह यदि सुखाड़ के कारण से या बाढ़ के कारण से या किसी प्राकृतिक विपदा के कारण से वह पैसा नहीं जमा करा पाता क्योंकि उसकी फसल नहीं हो पाती है, तो उसको जबरदस्ती सबसे ज्यादा तंग किया जाता है। इसके समाधान के लिए क्या सोचा गया है? क्या वही अंग्रेजों के समय के सिस्टम पर हम चलते रहेंगे?

हमारे देश में अमीर और अमीर होता चला जा रहा है और गरीब और गरीब होता चला जा रहा है। वह कोर्ट जाता है, बैठता है, उसका समझ नहीं आता है, इतना लम्बा हमारा कानून है। मैं कोई कानून के ऊपर, जो हमारा संविधान बना है, उसके ऊपर मैं कोई टिप्पणी नहीं कर रहा हूँ, गलत टिप्पणी नहीं कर रहा हूँ, लेकिन एक आदमी जो अनपढ़ है, जो उसे नहीं समझ पाता है, जब मेरे जैसा आदमी इतने बड़े संविधान को नहीं समझ पाता, उसके अलग-अलग अनुच्छेद कौन से हैं, तो वह अनपढ़ आदमी क्या समझता होगा। वह फंसा हुआ है, तारीख पर तारीख लगे जा रही है, डेट पर डेट हुए जा रहा है, कभी जज नहीं आए, डिस्ट्रिक्ट जज नहीं आया, कभी पता लगा कि पीपी नहीं आया, कभी जिसने कम्प्लेन सरकार की तरफ से की है, वह नहीं आया या जिसके साथ मेरा विवाद हो रहा है, वह बार-बार स्टे पर स्टे लिये जा रहा है और मैं अपनी जमीन पर जमीन बेचे जा रहा हूँ। बीवी का गढ़ना कर्जे पर रखा हुआ है। ये सब ऐसी आवश्यक चीजें हैं, जिनको विशेष रूप से हमें अपने कानून में देखना होगा। हमको अपनी कानून व्यवस्था सुदृढ़ करनी होगी। यह कानून सिर्फ उनके लिए नहीं है जिनके पास पैसा है। आज यदि कोई डिस्ट्रिक्ट कोर्ट में भी चला जाता है तो 50 और 60 हजार रूप एक पेशी के लेते हैं। इतने पैसे कोई कहीं से देगा? हाई कोर्ट में जाइए, हाई कोर्ट के अन्दर पाँच लाख, छह लाख, सात लाख, आठ लाख और स्टे मिलता है तो वलिये यह एक बार मीटर चालू हो गया, जैसे टैक्सी का मीटर होता है, टैक्सी की मीटर शुरू हुआ, एक किलोमीटर गया तो 100 रूपया लगा, दो किलोमीटर गया तो 200 रूपया हो गया, वही परिस्थिति कोर्ट्स में है। इसलिए Speedy justice is required. उस स्पीडी जस्टिस के लिए मैं माननीय मंत्री जी से कहूँगा कि अब कामर्शियल कोर्ट्स के बारे में आपने सोचा, बहुत अच्छी बात है, मैं इसका समर्थन करता हूँ। लेकिन उस गरीब आदमी के बारे में भी सोचिए, उन 67 प्रतिशत किमिनल केसेज के बारे में समझिए, संविधान के अनुरूप जो उन लोगों के मौलिक अधिकार का हनन हुआ है, उनका क्या होगा? इसलिए मेरी माननीय मंत्री जी से अपील रहेगी कि अगर हम इस बिल के लिए आपके समर्थन में खड़े हैं तो हम आपसे यह भी अपेक्षा रखते हैं कि आप, जो हमारा किमिनल जस्टिस सिस्टम है, उसको भी ठीक करेंगे और जो मेरा सुझाव है कि इंडियन जूडिशियल सर्विस का भी एजाम आप कराएं, इसको जरूर लेंगे। इन्हीं शब्दों के साथ मैं इस बिल का समर्थन करते हुए आपका बहुत धन्यवाद करता हूँ।

**श्रीमती अर्पिता घोष (बालूरघाट) :** महोदय, मैं आपकी आभारी हूँ और अपनी पार्टी तृणमूल कांग्रेस की आभारी हूँ कि इस विषय पर मुझे बोलने का मौका दिया गया है। I welcome this Bill on behalf of my party. This is really a good step कि एक अलग से कामर्शियल कोर्ट आ जाएगी, क्योंकि सिविल कोर्ट जो है, हाई कोर्ट्स आदि में, किमिनल कोर्ट्स जो हैं, वहाँ पर बहुत सारे केसेज पेनिडिंग हैं। अभी कीर्ति आजाद साहब इस बारे में बोल रहे थे कि वहाँ इतने सारे केस पेनिडिंग हैं कि हम लोग वह ऑफड़ा देखकर चौंक जाते हैं कि कब ये विलयर होंगे। यह सच में आम आदमी के लिए बहुत ही मुसीबत वाली बात है, जो कीर्ति आजाद साहब बार-बार बोल रहे थे। यह हमारे लिए बहुत मुसीबत वाली बात है। इसी कारण से ज्यादातर लोग कोर्ट में जाना नहीं चाहते हैं और वे मामले को बाहर ही सुलताना चाहते हैं। इस कारण से कम्प्लेन भी बढ़ता है। वे कहते हैं कि बाहर ही मामले को सुलता लो, अगर कोर्ट में जाएंगे तो वहाँ बहुत समय लगेगा। ये कामर्शियल कोर्ट जो बनने की बात हो रही है, यह बहुत ही बेहतर है। अभी जो पेनिडिंग सिविल सूट्स जो हम देख रहे हैं, वे बहुत सारे हैं। बॉम्बे, कोलकाता, देहली, मद्रास, हिमाचल प्रदेश आदि में अभी बहुत सारे केसेज हैं। एक करोड़ की जो मॉर्ग है, यह केवल उसी का है। हम देख रहे थे कि केवल देहली में ही 12,693 पेनिडिंग केसेज हैं। एक करोड़ के लिए पेनिडिंग केसेज कामर्शियल डिस्प्यूट्स से हैं, यह हम केवल देहली के बता रहे हैं। अभी बॉम्बे है, कोलकाता है, मद्रास है, हिमाचल प्रदेश आदि हैं।

यह तो बहुत ही अच्छा है कि अगर हमारे पास दूसरी कोर्ट्स आ जाएं, लेकिन जो बातें हो रही हैं कि इनके लिए सही जजेज चाहिए जो सही तरह से प्रॉपर इसका जजमेंट कर पाएं। कामर्शियल डिस्प्यूट के लिए माइक्रो इकोनॉमिक्स के ऊपर उनकी कुछ ट्रेनिंग बहुत जरूरी है और कान्टिन्युअस ट्रेनिंग बहुत जरूरी है ताकि वे कामर्शियल डिस्प्यूट को ठीक से निभा पाएं और जल्दी से उसका कोई अंजाम दे पाएं। It should be a time-bound judgement. क्योंकि हमारे यहाँ जो भी जजमेंट्स आते हैं, ये सालों-साल चलते हैं। अभी कीर्ति आजाद साहब बोल रहे थे कि उन्हीं के ऊपर एक केस 12 साल से चल रहा है। यह बहुत ही जरूरी है कि the judgement should come out time-bound. मेरी मंत्री जी से रिक्वेस्ट है कि वे इसके बारे में सोचें कि कैसे टाइम बाउंड जजमेंट हमारे यहाँ आ जाएं, जो बहुत ही जरूरी है। We should keep in mind that the judges should come according to the need.

Huge backlogs are there. अभी उसको भी कैसे निपटारा जाये, इसके बारे में भी हमको सोचना चाहिए कि कैसे किया जाये। अभी हम देख रहे थे, पेपर्स भी देख रहे थे, क्योंकि यह मेरा सबजैवट है नहीं, पहले ही बता देना चाहिए। I am from science background; I am not a lawyer. लेकिन हम लोग आम आदमी हैं, हम लोग आम जनता हैं, हम लोग देखते हैं कि पब्लिक के लिए यह बहुत ही मुसीबत वाली बात हो जाती है। यह कॉमर्शियल कोर्ट में अभी छोटे-छोटे विषय में, आपके घर का कुछ हो गया है, वे एक कोर्ट में चले जाते हैं, वह सालों-साल चलता है तो पैसा कहां से आएगा।

If the Government is really interested to set up commercial courts, they should first think कि कैसे हम इसको लोगों के लिए अर्देवित्व किया जाये, ताकि लोग वहां जायें और उनको जजमेंट मिले। उनको पॉस्ट से पैसा दे देते हैं, जब हम फकीर हो जायें, उसके बाद कोई जजमेंट आये, हम मर जायें, ऐसे बहुत सारे केसेज हैं, जहां पर लोग जिंदा भी नहीं हैं, मर गये और उसके बाद जजमेंट आता है तो ऐसा टाइम बाउंड जजमेंट नहीं होने से कॉमर्शियल कोर्ट्स बनाइये या कुछ भी बनाइये, चाहे हमारे सिविल कोर्ट्स में और किमिनल कोर्ट्स में इतने सारे जजमेंट पड़े हुए हैं, अभी उनमें से कुछ को कॉमर्शियल कोर्ट्स में ट्रांसफर किया भी जाये, अगर प्रोपर जजेज नहीं होंगे, अगर वहां पर जजमेंट नहीं आएगा, टाइम बाउंड कोई काम नहीं होगा, तब हमारे लिए यह फायदेमंद नहीं रहेगा। यह गवर्नमेंट जब यह एक अच्छा स्टेप ले रही है कि एक नया कॉमर्शियल कोर्ट आएगा और एक अपीलेट डिवीजन भी होगा, यह सारे डिस्ट्रिक्ट में जाने के लिए बता रहे हैं कि छोटे-छोटे डिस्ट्रिक्ट कोर्ट्स हो जाएंगे, तब सब ठीक है, लेकिन इतने जजेज कहां से आएंगे।

We should see whether the judges could be trained or not and how could they be trained. और जो जजेज हैं, उन्हीं में से उठाकर आप कॉमर्शियल डिवीजन में भिजवा देंगे कि नहीं। अगर वह होता है तो इधर पॉइंटिंग बढ़ जाएंगे। इसके लिए पहले सोचना जरूरी है कि though setting up commercial courts is very good and we welcome that really we should think how trained judges could be appointed in commercial courts and appellate divisions of high courts ताकि हमारे जजमेंट्स जल्दी आयें। हमारे लिए सबसे ज्यादा जरूरी है कि जजमेंट जल्दी आना चाहिए। आज निर्भया केस के बारे में बात चल रही थी, तब मुझे याद आ रहा था, अभी कोई भी केस हमारे पड़े रहते हैं, पड़े रहते हैं, इसको पहले कहीं पर गवर्नमेंट को डील करना चाहिए। कैसे जजेज आएंगे, जो सिटिंग जजेज हैं, जो दूसरी सिविल कोर्ट्स और किमिनल कोर्ट्स में काम कर रहे हैं, उनको उठाकर न लाकर कैसे चुन

कर सही तरह से माइक्रो इकोनॉमिक्स के ऊपर जिनका काम है, जो कॉर्पोरेट डिस्प्यूट्स में काम कर सकते हैं, उनको बुलाकर जो लोग आ रहे हैं, उनको कैसे यूटीलाइज़ किया जाये, गवर्नमेंट की इसके लिए अलग से सोच होनी चाहिए। मुझे लगता है कि टाइम बाउंड जजमेंट अगर आ जायेगा तो हम सब के लिए, भारतवर्ष के लिए यह बहुत ही वैल्यूम डिस्क्रिप्शन हो जायेगा।

हम मंत्री जी से इतना ही जानना चाहते हैं कि जजेज़ की एपाइंटमेंट के बारे में उन्होंने क्या सोचा है। मुझे लगता है कि वे इसमें कुछ अलग बात करेंगे। बहुत-बहुत धन्यवाद।

SHRI TATHAGATA SATPATHY (DHENKANAL): Thank you, Sir.

At the outset, I oppose this Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 which seems to me to have been drafted in a half-hearted manner. At this juncture, I would suggest that the Bill be referred to the Standing Committee, more so since it has not gone through the scrutiny and through that process which is essential for guarding the interests of the House.

I begin now – first I began with opposition – to point out a few mistakes that I have noticed in this Bill. I refer to Chapter 13 clause 12 which very clearly states that cases only above Rs. 1 crore would be handled by commercial courts that would be appointed under this law. How would this change in law affect the work of judges or the courts is something that is to be considered.

The Government is very busy prioritising the problems and trying to solve the problems of only very-very big business. Extremely big business, are the only people who will benefit from this law but micro, small and medium enterprises are being completely ignored. We are not bothered about them. We are not even bothered about start-ups where young people with very little money are coming up with brilliant ideas and are trying to do what many other Western countries had done long back of innovating, of finding new methods, finding new solutions to day-to-day lives that would actually make not only them rich but could make India rich by the positive points that they add to our business environment.

It seems like the Government is actually creating this provision only to help big business. This specific sum of Rs.1 crore seems a little dicey to me. It seems like the cases of lower value do not seem to attract the Government and the Government is not interested in solving the problems of those companies which have disputes of value lesser than Rs.1 crore.

Sir, this Bill was brought in by an Ordinance on 23<sup>rd</sup> October, 2015. It is a very interesting thing. Why an Ordinance? The Ordinance obviously lapsed at the beginning of this Winter Session of 2015. I would like the hon. Minister to specifically reply as to what are the cases, from October 23 till date, that have been drawn into the net to this new law that the Government has come up with and who is going to benefit from those cases that have already come in.

Section 4 states that the judges for these courts will be appointed by the Chief Justice of respective State High Courts. Why is there a provision to allow selection of judges by the Chief Justice alone? Why not involve the State Governments also? What will be the criteria for allotment of judges to a particular case? Will there be some hidden agenda behind that also? How transparent will this system be? In my opinion this is an indicator of the perpetuation of the collegium system through a devious way in selection of judges for appointment to certain cases. We need more transparency in this matter in order to ensure that justice is served, not only served but it should also seem to be served which is of very vital importance in India today.

As we all know, Sir, in a legal system that we have here where judges are hired by a collegium system, the backlog of pending cases are taking years. Like, our senior colleagues have mentioned earlier also, they are taking years to be cleared by normal courts. Do we really need to create an alternative means of justice only aimed at the corporates because, Sir, the judges that will be taken for these commercial courts will be from the high courts itself? That means they will again lose sight of their day-to-day work and concentrate on commercial cases. Should we not look to the faults of our existing system and reform it for the common person first? Why ignore this common person, her or him, all the time? That is becoming a habit with this Government. Is it their fault that they have voted a certain Party in place of another Party hoping that there will be a qualitative change in the process of administration? Are we to actually blame the people for that or should they be happy that they chose you and you should be living up to their expectations? Instead, what you are asserting, re-asserting and thumping with it that since you have chosen us now 'take it'. You are forcing it down their gullet.

Look at Section 2, sub-section 19. You have been very judiciously doling out favours till now. If you see Chapter 1, Section 2, Para 19, you have included a provision that adds:

"Exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum."

Whom will it benefit? Which major company in India is involved in gas exploration? Which company is involved in petroleum? Who are the companies involved in electromagnetic spectrum? We have to get a very clear answer from the Government as to which are the companies that you are aiming to benefit. We would also like to know it. The country would like to know who your benefactors are whom you are returning favours which you received two years ago.

When foreign companies or big corporations complain of long drawn legal battles in India which is presumably a reason that the Government has shown for this Bill, the Government hurriedly rushes through a Bill in the House. When you play favourites in law making, we must address these issues at all levels that affect the people and it can only be done by creating a level playing field for all under the same law.

It seems the urgency is only to favour corporates. The excuse that this will create ease of doing business is only an excuse again for big players and not for MSMEs. I think every Member in this House will stand up in support if it supports Start-ups which the young people are doing in this country, if it supports the medium and small enterprises because they are finally the biggest employers. We are ignoring them all the time.

I have one last question to ask the hon. Minister and the Government. What if this Bill does not pass through Parliament? Suppose it falls through in Lok Sabha or let us assume it falls through in Rajya Sabha. Then, your Ordinance would also lapse. Some people who have jumped into the net which you created to protect them from 23<sup>rd</sup> October, 2015, till the beginning of this Session which was 26<sup>th</sup> of November or the Monday after that,

what happens to them? Will they get your benefit or will they be deprived of the benefit? Who are the companies? Why should we presume that you are actually interested in this law and not interest in helping only a few through this Ordinance? This is a question that I think anybody who is conscious and aware in this whole country would like to get a reply from the Government.

**श्री विनायक भाऊराव राऊत (रत्नागिरी-सिंधुदुर्ग) :** उपाध्यक्ष महोदय, आपने मुझे बोलने का अवसर दिया, इसके लिए मैं आपको धन्यवाद देता हूँ। वाणिज्यिक न्यायालय की स्थापना करने का जो विधेयक सरकार लेकर आई है, उसका समर्थन करने के लिए मैं खड़ा हूँ। विधि आयोग की सिफारिश के बाद, विधि आयोग की जो रिपोर्ट थी, रिपोर्ट नंबर 188 और 253 की सिफारिश के बाद केन्द्र सरकार ने एक सही कदम उठाया है। पिछले कई वर्षों से जो प्रस्तावित पृष्ठ था, उसके ऊपर इलाज करने का काम इस विधेयक के माध्यम से हो रहा है। मैं इसके लिए एक बार फिर तौ मिनियुट को धन्यवाद देता हूँ।

इस विधेयक को ताने का उद्देश्य यह है कि कॉमर्शियल कोर्ट जब स्थापित हो जाएगी तो आर्थिक वृद्धि में बढ़ोतरी तो होगी, लेकिन साथ-साथ भारत की न्याय करने की प्रणाली की अंतर्राष्ट्रीय छवि भी सुधरेगी। यह बात सही है। आजकल भारत के न्यायालय की छवि ऐसी बन चुकी है कि कोर्ट का मतलब तारीख पर तारीख। दादा जी के बाद पिता जी, पिता जी के बाद उसका बच्चा, बच्चा के बाद उसका बच्चा, यानी एक कोर्ट में जब मुकदमा दर्ज होता है तो उसका न्याय लेने के लिए कम से कम 15-20 वर्ष आराम के साथ निकल जाते हैं।

हमारे साथी ने बताया है कि कितने लोक प्रतिनिधि के ऊपर सामाजिक आंदोलन के तहत किये गये कई मुकदमों आज भी 15-20 साल से वैसे ही हैं। कई जजों को सेशन छोड़ कर भी वहां हाजिरी लगानी पड़ती है। भारत की ऐसी छवि को सुधारने के लिए, खासकर कॉमर्शियल साइड की तरफ, जैसे ऐसी न्यायालयों की स्थापना होने के बाद, वैसे तो मुंबई और दिल्ली में कॉमर्शियल कोर्ट स्थापित हुये हैं, लेकिन आज भी देश के कई उत्तम न्यायालयों में कम से कम 20,000 कॉमर्शियल मुकदमों वर्षों से प्रस्तावित हो चुके हैं। कई प्रॉपर्टी के केसेज हैं, कई कंपनीज के केसेज हैं, ज्वाइंट वेन्चर के केसेज हैं, ऐसे मुकदमों जब वर्षों से कोर्ट में चलते आ रहे हैं, तो इन्वेस्टमेंट करने वाले थक जाते हैं। एक बार ऐसा हुआ था कि मुंबई जैसे बड़े शहरों में गैंगस्टर्स ऊपर आ गये, न्यायालय में होने वाले विलम्ब से गैंगस्टर्स का कारोबार बढ़ा। प्रॉपर्टीज के बारे में या उनके मालमता के बारे में जब सही वक्त पर न्याय नहीं मिलती है, प्रॉपर्टी नहीं मिलता है और पैसा भी नहीं मिलता है, जो इन्वेस्टमेंट किया, उसके बदले में कुछ नहीं पाते हैं तो लोग कोर्ट को छोड़ कर जो दूसरी व्यवस्था गैंगस्टर्स की थी, कानून के बाहर जाकर उनके पास एप्रोव करते थे। उनके पास जाने के बाद फोन से यहां-वहां से लोगों को बुला कर, जो 10 वर्षों से नहीं हो रहा था, उसे 10 दिनों में निपटारा करने की ताकत उनके पास थी और उनको बढ़ावा मिला, उसका कारण न्यायालय में विलंब होना था। आज जब विधि न्यायालय, कॉमर्शियल न्यायालय की स्थापना करने के लिए सरकार जाती है तो मेरा भी डर यही है कि आज ढाई-तीन करोड़ मुकदमों पूरे देश में हैं, मेट्रोपोलिटन कोर्ट, डिस्ट्रिक्ट कोर्ट से सुप्रीम कोर्ट तक लंबित हैं। लेकिन आम आदमी डिस्ट्रिक्ट कोर्ट, मेट्रोपोलिटन कोर्ट या ज्यादा से ज्यादा हाई कोर्ट में जाते हैं, उनको सही समय पर न्याय देने की इच्छा सरकार की है तो ज्यादा से ज्यादा कोर्ट का निर्माण करे और वहां अधिकतम जजों की भी नियुक्ति करने की जरूरत है। इसके लिए माननीय सदस्य कीर्ति अजाद जी ने जो सुझाव दिये, पूरे सभागृह को उसका समर्थन करना चाहिए। आज सभी कोर्ट्स में कम से कम 30 प्रतिशत से 40 प्रतिशत जजों के पद रिक्त हैं। इस क्षेत्र में अच्छे जज आने चाहिए, लोगों को न्याय की अच्छी सुविधा की व्यवस्था तैयार करके देनी चाहिए। इसलिए इंडियन जूडिशियरी सर्विस की शुरुआत करने की जरूरत है। इस बिल के माध्यम से मैं माननीय मंत्री महोदय से विनती करूंगा कि उन्हें इसके ऊपर ध्यान देना चाहिए।

### **15.29 hours (Shri Hukum Singh in the Chair)**

महोदय, अभी सलमान खान को 12 वर्ष तक केस चलने के बाद रिहा कर दिया गया। न्याय व्यवस्था ऐसी है कि 12 वर्ष के बाद सलमान खान को रिहा किया गया, लेकिन सवाल यह है कि जिस रात को वह इन्डिस्टेंट हुआ था, उसमें जिनकी मौत हुयी थी, आखिर उसके जिम्मेदार कौन हैं? वह घटना किसने की? उसकी खोज किसी ने नहीं की? सलमान खान को रिहा करने के बाद जिनकी जान गयी उसको ऐसे ही छोड़ दिया, ऐसी व्यवस्था नहीं होनी चाहिए। जब किसी को न्याय देते हैं तो जो असली गुनहगर हैं, उनको ढूंढने का काम जूडिशियरी और साथ-साथ में पुलिस डिपार्टमेंट का होना चाहिए। यह बदलाव सिस्टम में लाने की जरूरत है।

महोदय, आज जो बाहर आते हैं, वे पीआईएल के माध्यम से कोर्ट में दौड़ते हैं, कोर्ट के पास सारे मामले पीआईएल के माध्यम से जाते हैं, यानी संविधान के द्वारा सभी ड्यूटीज फाइनेलाइज की गयी हैं। लेकिन जूडिशियरी में आज एडमिनिस्ट्रेशन साइड के सारे मुकदमों भी वहां जाते हैं। किसी को पानी देना है कोर्ट में चलो, किसी को अनाज देना है कोर्ट में चलो, किसी के बारे में और कुछ करना है तो कोर्ट में चलो। जिस तरह पीआईएल की संख्या बढ़ती जा रही है, इससे पहले सुप्रीम कोर्ट और हाई कोर्ट ने गलत तरह से पीआईएल करने वाले लोगों पर जुर्माना लगाया, उन पर पाबंदी लगाने की कोशिश की। मेरा डर है कि जब कॉमर्शियल कोर्ट का निर्माण करने जा रहे हैं, आज जज जिस कोर्ट में काम कर रहे हैं, उन्हें वहां से हटाकर कॉमर्शियल कोर्ट में उनकी नियुक्ति न करें। अगर कॉमर्शियल कोर्ट में अच्छे जज बिना हो तो जिस कोर्ट की जगह वेकेंट हुई है, वहां तुरंत जजों की भर्ती होनी चाहिए ताकि भारत में जल्दी से जल्दी लोगों को न्याय मिले।

इस सुविधा के माध्यम से मैं कानून मंत्री माननीय गौड़ा साहब और पार्टियामेंटी अफेयर्स मंत्री माननीय वैकैट्या नायडु साहब से भी विनती कर रहा हूँ कि बॉम्बे की जगह मुम्बई आया, मद्रास की जगह चेन्नई आया, लेकिन आपने बॉम्बे हाई कोर्ट को मुम्बई हाई कोर्ट करने का आश्वासन दिया, चेन्नई का नामकरण करने का भी आश्वासन दिया। उसके लिए न्याय की मांग करते हुए दस वर्ष हो चुके हैं। इस विधेयक के माध्यम से मैं विनती करना चाहता हूँ कि इसी सत्र में बॉम्बे की जगह मुम्बई हाई कोर्ट और चेन्नई हाई कोर्ट का विधेयक लाएं, उसका नामकरण करें। आप से जल्दी से जल्दी न्याय मिले, यही अपेक्षा करके मैं अपनी बात समाप्त करता हूँ। धन्यवाद।

DR. RAVINDRA BABU (AMALAPURAM): Sir, I thank you very much for giving me this opportunity. On behalf of TDP, I fully support this Bill and I heartily welcome this Bill but I would like to seek a few clarifications from the hon. Minister.

I would like to draw his attention to definitions part. What is a commercial dispute? It has been clearly defined that commercial dispute means nothing but interpretation of documents or agreements or contracts relating to the business of the following transactions type. For example, it is mentioned as immovable property, exports imports, shipping, oil and gas exploration, seismic studies and other things. Every commercial transaction or commercial dispute always revolves around money or revenue. My only pertinent question is, if any revenue is involved in these transactions, in the document preparations, and if any revenue dispute arises in this and if the definition is silent, then these commercial courts do not serve the purpose because there are already courts dealing with the revenue and money matters. There are consumer courts, Income Tax Appellate Tribunals, Customs and Service Tax Appellate Tribunal and the High Courts which are dealing with such disputes also. Will these courts have a parallel jurisdiction with those Tribunals or those courts which are already established or are they going to be combined and made as one or what is the road map for the establishment of commercial courts?

There is another clarification which I would like to seek. On the orders passed by the District Courts, appeals lie with the High Court and on the orders passed by the High Courts, appeals lie with the Appellate Divisions of the High Court. This is the way. Whereas in the Statement of Objects and Reasons, it is written that on orders passed by the High Courts also, appeals lie with the High Court Appellate Division. I do not know whether this is a typing mistake or is there any special provision made in this regard. It is because on any order passed by the High Court, the appeal always with the Supreme Court. It is a common dictum. It is always like that. But in this special Act, it has been clearly told that on orders passed by the commercial courts, appeal lies with the High Court Appellate Division and on orders passed by the High Courts also, appeal lies with the Appellate Division. Therefore, I need some clarification on this.

Regarding the issue of appointment of judges, it is a million dollar question as to how the Law Minister is going to address this problem. There is acute deficiency of the judicial officers. As my colleagues have already mentioned, appointment in judicial services takes a lot of time. It is a cumbersome process. I have a small suggestion. Please consider this very seriously. This is a very inexpensive suggestion to implement.

There are so many law experts, there are so many revenue experts and you have so many revenue officers who have retired. There are so many financial consultants, there are so many financial consultancy firms, like the KPMG, Deloitte, etc. There are a lot of Chartered Accountants and Chartered Accountancy Training Institutes. There are a lot of faculty members. We have them in IIMs also. We have a lot of technical expertise with the understanding of the Indian judicial system. Therefore, my request would be let us not repeat the mistake of appointing a non-technical person, that means a judge having a judicial background, to deal with the commercial disputes which is highly technical in nature. To understand commercial dispute, to resolve a commercial dispute arising out of exports and imports, definitely requires understanding of the Customs Act and custom law procedures, international laws and procedures and also the understanding of the financial transactions. These types of complex things get struck even at the level of High Courts and Supreme Court. They take a lot of time to resolve them. Therefore, my earnest request to the Law Minister is to think of appointing technical experts, having technical knowledge of the revenue matters particularly. They should be those who have dealt with commercial disputes and commercial frauds. Those who have dealt with commercial frauds, they can easily sit in judgement of the commercial disputes. Give them the judicial status. They can be of immense use.

My last submission is, the ITAT, the Income Tax Appellate Tribunal and the Customs, Excise Service Tax Appellate Tribunal officers are very competent. There is always a system of taking a technical member, judicial member. You always take the technical member from the administrative side. You please think of appointing technical members also for these commercial courts, commercial appellate divisions and commercial high courts in all the districts and the High Courts. This is my suggestion. I have also asked for a lot of clarifications. I would request the hon. Minister to clarify those things. Thank you. *Jai Hind. Jai Telugu Desam.*

SHRI B. VINOD KUMAR (KARIMNAGAR): Mr. Chairman, Sir, thank you. I, on behalf of my Party, Telangana Rashtra Samiti, support this Bill.

At the outset, I would like to say that a few apprehensions were expressed by the Member who spoke before me. In enforcing the contracts, as per the World Bank Report, India stood at 186<sup>th</sup> place out of 189 countries. With regard to contract enforcement time, it takes four years. It is the time taken to enforce a contract in Indian courts. As on today, to enforce a contract in Indian courts is around four years.

The cost of the legal fee and the time consumed is around 40 per cent of the claim of the disputes. Out of around 32,000 cases in the five High Courts, where there is original jurisdiction of the civil disputes, more than 50 per cent are commercial disputes. Even in the district courts, among the civil suits, as per the statistics, around 52 per cent are commercial disputes. So, around 52 per cent of the cases are commercial disputes. What is a commercial dispute? As per this Bill, a commercial dispute is defined to include any dispute related to transactions between merchants, bankers, financiers, traders, etc. Such transactions deal with mercantile documents, partnership agreements, Intellectual Property Rights, etc. These disputes in the growing economy, like India, which is a developing country, are the order of the day. So, we should not feel as if these commercial courts, commercial division, commercial appellate division of high courts, which the Government is proposing, are only for the corporate sector. This is my personal opinion. It is because these commercial courts are dealing with cases where the suit value is only Rs. 1 crore. I think the amount of rupees one crore is nothing. It is not a very big amount. Even to start a small company, that would be the total value of that small industry also. So, I think the commercial courts will definitely help the needy.

As on date, even now when, family disputes arise, they constituted the Family Courts. With regard to negotiable instruments, when there were cheque dishonour cases, we constituted the Negotiable Special Courts under the Negotiable Instruments Act. Also, when there were terrorist activities, we constituted the TADA courts also. We also constituted the Fast Track Courts for different disputes. We also constituted the Economic Courts which are now existing. Earlier, when land ceiling was implemented, we also constituted the Land Reforms Tribunals. Thus, I feel, we should not get worried in establishing such courts. These are only exclusive for some category of citizens.

I appreciate the additional features of the Bill and I welcome it. They have taken steps to amend the CPC. It is a welcome step. It is said that arguments in the case should be concluded not later than six months from the date of first case management hearing. The first case management is a new order inserted in CPC as per the orders. We are also amending the orders and the rules in the CPC. This is a welcome step. In the Schedule, it is mentioned that the case management is in order 15, Chapter-IV of CPC. We are amending the CPC also. These are welcome steps.

With regard to hearing also, written arguments are to be submitted before four weeks of the oral hearing following revised written arguments, if any. The judgement should be pronounced within 90 days after conclusion of the arguments.

Regarding evidence, it should be on a day to day basis. These are some salient features which I welcome. At the same time, I propose a few amendments. This is with regard to clause 20, page 7, after line 28. As has been mentioned by a few Members, there is an apprehension that the judges who are going to be appointed in commercial courts, commercial divisions and commercial appeal divisions of High Courts in order to support or in order to have some know-how from the experts, my amendment is this. My amendment is:

"The Central Government shall constitute a panel of eminent and objective financial experts comprising of chartered accountants, company secretaries, economists, tax lawyers and such other experts who may be consulted by the Commercial Courts, Commercial Divisions or the Commercial Appellate Divisions of High Courts on the relevant subject matter."

In the event, if they feel that they should know the subject matter of the issue framed in the cases, they may be allowed to consult the experts. They should have some provision in the Act in order to get the expert opinion. So, I thought that it would be better if we insert such a clause in the Bill.

With regard to oral evidence, they said it should be on a day to day basis. I am also proposing to insert a clause wherein I propose that the Court shall, in addition to recording the oral evidence of the witnesses, also ensure video recording of the same. Today, video-recording is a general thing. So, I think, if the judges are transferred and some other judges comes into office, basing not only on the oral evidence but also he can visualize the video-recording. So, for that purpose, I thought that it would be better if we have such a clause also.

With regard to adjournments by the advocates, there is a provision that the advocates can seek adjournment by paying some cost. That is not a new clause. In the present CrPC procedure also, that clause is there. I thought that we can fix a number of adjournments in the event the advocate wants to seek some adjournments. I thought that adjournments should not be more than three. With these three suggestions from my side, I support the Bill, in the event of the Government coming forward to accept these suggestions.

SHRI M.B. RAJESH (PALAKKAD): This Bill seeks to ensure speedy disposal of high value commercial disputes. As my esteemed colleagues, Shri Tathagata Satpathy has pointed out, this Bill has got a clear class bias. This is nothing but an effort to serve the interests of corporates. In the very first paragraph of the Statement of Objects and Reasons of this Bill, it is clear that there is class bias. It says, early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system.

I will come back to this aspect later. Before that, let me go into some aspects of this Bill. The 78<sup>th</sup> Report of the concerned Standing Committee has made some important and serious observations and recommendations in this regard.

Firstly, the Government should establish commercial courts on the basis of the requirement. The Standing Committee pointed out that Sikkim and Uttarakhand are having one and 25 cases in total respectively. So, the requirement of commercial courts is varied in States. Instead of establishing commercial courts throughout the country, it should be based on requirement. The Government should have collected statistical data regarding the number of commercial suits, applications, appeals, and petitions pending before the various courts in the country.

Secondly, resolution of commercial dispute is the service provided by the State to a section of litigants who can very well afford the cost of such adjudication. Hence, there is an urgent need of working out and revising the existing court fee structure.

Thirdly, the Standing Committee has pointed out that there is no need for transferring all pending commercial cases to the commercial courts. Instead, the litigants can be given a choice to remove commercial courts. All the pending cases need not be transferred to commercial courts.

An important observation made by the Standing Committee, and concerns were raised by my colleagues who spoke before me regarding the appointment of Judges in commercial courts. Clause 5(3) of the Bill gives the power of appointment to the Chief Justice of the High Court concerned. The power of appointment of person to the post of District Judge in a State lies with the Governor of that State who exercises that power in consultation with the High Court of the State concerned. Now, in this Bill that power has been given to the Chief Justice of the High Court of that State. As recommended by the Standing Committee, appointment powers of the State Government should be left as provided in the Constitution. So, the current provision is not in conformity with the provision under article 233 of the Constitution.

Coming back to the class bias of this Bill, I would like to mention what has been stated in the Statement of Objects and Reasons. It says that early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system. It is good. This Government's obsession with the notion of ease of doing business is well known and this Bill is there to facilitate the ease of doing business. The Government is more concerned about ease of doing business, but this Government is least concerned about the ease of doing farming and the Government is not at all concerned about the ease of life of the ordinary people of our country. Anyway, we do not have any complaint if the Indian legal system is responsive to the investor world. It is all right. But what is the responsiveness of our legal system to the common people of our country?

In this regard, I would like to raise two or three issues. The Standing Committee Report itself has shown that there is a large number of vacancies in higher judiciary. According to a reply given in Parliament in March, 2015, 2,68,51,766 cases were pending in subordinate courts. This is an alarming number and this figure has remained unchanged since 2012. In the last three years, there has not been any improvement in clearing the pending cases. The number of pending cases in all courts is estimated to be more than three crores. One of the major reasons for this huge backlog is the enormous number of vacancies of the post of judges remaining unfilled.

The Law Ministry has, in a reply given in Parliament in August this year, accepted this fact. According to the Law Ministry, High Courts had a shortfall of 384 out of the sanctioned strength of 1,017 posts. But according to the Standing Committee, on 1<sup>st</sup> September, 2015, out of 1,017 sanctioned posts of judges, 392 posts are lying vacant in various High Courts. In August, the vacancy figure was 384, but in September it has increased to 392. This is the state of affairs. In December, 2013, the Supreme Court has stated that out of a sanctioned strength of 19,518 posts in the subordinate courts, there were 4,403 vacancies. So, from the subordinate courts to the High Courts, a large number of vacancies are lying unfilled. What about filling up of these vacancies? What is the cost of these unfilled vacancies? The Allahabad High Court is operating at less than 50 per cent of its sanctioned strength and there are one million cases pending before this High Court alone.

The National Judicial Data Grid (NJDG) set up by the hon. Supreme Court of India stated that as of 25<sup>th</sup> September, 2015, there were two crore cases pending before the District Courts and two-thirds of these cases are criminal cases.

Sir, 10 per cent cases are pending for more than 10 years. In Gujarat, nearly 25 per cent are pending for over ten years. Nearly 18 per cent cases are pending for ten years on a national level. Around 30 per cent cases are pending between two to five years.

Sir, about 56 lakh cases across 15,000 courts are pending for more than five years. At the current rate of disposal, Districts courts will take 10 years to clear pending cases. What about speedy disposal of civil and criminal cases keeping in view the poor and ordinary people of our country? It will



take ten years to clear all this if we will go at this pace. Bihar, Gujarat, Maharashtra, West Bengal, Jharkhand and Jammu and Kashmir would never be able to clear all pending cases. This is the situation.

Sir, why is there a huge number of under-trials in our jails? It is because of failure of our justice delivery system. The Justice delayed is justice denied. That maxim has become a cliché. We have been listening this almost each and every day. What is our position? According to National Crimes Record Bureau Data 2013, two-third of prisoners in India are under-trials. Over 3,000 of the 2.8 lakh have been in jails for over five years. Here Salman Khan's example was given by one hon. Member. We all know about the prime accuse in Coimbatore Bomb Blast case. He spent nine years in jail and finally he was acquitted. Among these under-trial prisoners, Muslims, dalits and tribals people constitute majority of these under-trial prisoners.

**15.58 hours** (Hon. Deputy-Speaker *in the Chair*)

Near about 21 per cent of under-trial prisoners are Muslims. Only 17 per cent out of them are convicted. Hon. Law Minister may recall one instance. It is my personal experience also. When he was the Chief Minister of Karnataka, one tribal MCA student and his father was booked under serious charges of waging war against a State, branding them as Maoists and he was put behind bars. Both of them spent more than one year. I myself went to Bengaluru and met the then Chief Minister Sadananda Gowdaji. I am very thankful to him that he looked into that seriously and finally all cases against them were dropped. But they had to spend one year in jail. At the age of 22, a brilliant MCA student, who was an activist of our own organisation Democratic Youth Federation of India, had to spend one year in jail. Finally, after the then Chief Minister's intervention, police had dropped all charges against them. So, *dalits*, tribals and minorities are languishing in jails as under-trials.

The Government is very much concerned about ease of doing business, speedy disposal of commercial suits and high valued commercial suits. But what is your priority? What should be your priority? Why has the Government not concerned about making Indian legal system more responsive to ordinary poor and common people of our country? Why has the Government not bothered about the large number of cases pending? Why has the Government not bothered about a huge number of under-trials languishing in our jails? That is why I said that this Bill is a class-bias. There is a class-bias in Indian legal system also.

**16.00 hours**

So, I would like to make an appeal to the hon. Minister to address these serious issues which concern the ordinary and poor people rather than those business people and their high value commercial suits.

Thank you.

SHRI VARAPRASAD RAO VELAGAPALLI (TIRUPATI): Hon. Deputy Speaker, Sir, I thank you for giving me this opportunity. I compliment the present and also the past Government for bringing out legislation like this.

Coupled with the establishment of courts and coupled with the proposed Bill of Arbitration and Conciliation, this will definitely bring out good legal reforms in India. ...(*Interruptions*)

SHRI P. KARUNAKARAN (KASARGOD): Sir, it is very sad that most of the Treasury Benches are empty. ...(*Interruptions*)

HON. DEPUTY SPEAKER: All right. Shri Varaparasad Rao, you please continue.

SHRI VARAPRASAD RAO VELAGAPALLI: Since already the issue of establishing commercial courts has been referred to the Standing Committee and the Law Commission has dealt with it twice, I think, it is high time that we established commercial courts quickly.

In most of the high value commercial disputes, the facts are complex and the questions of law are intense. Therefore, proper judges may be appointed. We also compliment the Law Commission for bringing out various issues and to establish the commercial courts quickly. The limit of Rs.1 crore is also found to be reasonable. Less than that, in any case the existing legal system will take care. More than that, since the commercial cases are complex, the special courts will take care.

We also strongly believe that justice delayed is justice is denied. Therefore, just as the hon. Minister has suggested, the timeframe in the Arbitration and Reconciliation Act, perhaps should also be put in respect of some of the cases, particularly the cases of commercial nature. We all believe that the establishment of commercial courts will definitely improve the economic growth where the present Government is looking forward. In the existing system if anybody wants to open a company in India, they have to satisfy as many as 40 Acts. Therefore, to minimize the number of Acts that they have to be crossed and to enable investors to come to India, I think, this is a good step forward. This will also improve the faith of investors both from India and abroad.

Till now, India is in a very bad shape as far as ease of doing business is concerned. Since the present Government has a very high ambition of accelerating the economic growth, this will also definitely help in ease of doing business in India. As I was suggesting, timeframe is very essential to bring out efficiency in these cases.

We all know that there is a huge backlog and a large number of vacancies in courts. My earlier speaker, Shri M.B. Rajesh has given elaborate details. While we say that justice should be given expeditiously, the Government is not taking any effective steps in filling up the vacancies in the lower courts, high courts and supreme courts. Unless that is taken care of, any number of creating additional machineries may not solve the problem of the accumulation of cases.

Now, these Commercial Courts are going to deal with different kinds of things like the transaction of the merchants, bankers and financiers. At the same time, they are also going to tackle the important technical issues like Intellectual Property Rights. I doubt whether the value could be fixed at like Rs. 1 crore as far as the intellectual properties are concerned.

Secondly, not every Judge could sit on the Judgments of the Intellectual Property Rights. While the power has been given to the Chief Justice of the respective courts to nominate the Judges as far as the Special Courts are concerned, I would request the hon. Minister that a special mechanism could be evolved where trained Judges could be considered, where efficient people could be considered, and where honest Judges could be considered.

Now, Sir, we are evolving the multiple systems. Multiple bodies are there. Regular courts are there; commercial courts are also coming up; and arbitrators are going to be established. So, we should ensure that the multiple bodies should not affect the existing legal system.

As my learned colleagues were speaking, which is a very serious issue, three-fourths of the under-trials are coming from the minorities, *dalits* and tribals. Every fortnight, it is appearing in the newspapers in big letters. But I do not see the Government taking any steps towards this, for the simple reason that these communities are extremely weak, socially and economically. The Government has put in a system of legal assistance. But I must say that it is extremely ineffective. The Advocates are picked up without following any system and some of them even do not know why the legal system for the poor people has been established in India. That is one of the reasons why these vulnerable sections are remaining under-trials for a number of years in the jail. The Hon. Minister may kindly look into this aspect and try to help the weaker sections of society.

Sir, the hon. Minister has considered the penalty, incentives and disincentives as far as the Arbitration and Conciliation Act is concerned. But he has not considered this aspect in this Bill. So, unless these two are matched, the efficiency and the speedy justice will not come forward.

To avoid any selfishness or corrupt practice, I consider it on the lines of several Indian Services Systems. We have Indian Civil Services, Engineering Services and all that. It is the need of the hour that the Government takes up steps to establish the Indian Judicial Services as well so that they are accountable and answerable like all other Civil Servants.

Sir, the hon. Minister has also considered the Summary Judgments in this regard. That means, one does not have to record the oral evidences here. Considering the present system that we have, be it in the arbitration system or here, it may lead to the misuse of the provisions. So, I would request the hon. Minister to kindly consider this aspect of the Summary Judgment without recording the oral evidences and see how it could be effectively implemented.

The last point, which I would like to mention is this. Earlier speakers have also mentioned about it. Several States have a lot of objections as far as the establishment of the Commercial Courts is concerned, for the simple reason that a very high cost is involved there. Secondly, all the retired people will be coming and sitting there. Therefore, basing on the cases, the respective States could be given the opportunity either to establish it where there are lots of case or not to establish it where the number of cases is very small.

Sir, with these few suggestions, I would once again thank the Chair for giving me this opportunity and I also thank my leader Shri Jagan Mohan Reddy for this chance to speak. Thank you so much.

SHRI P.P. CHAUDHARY (PALI): Hon. Deputy-Speaker, Sir, I am thankful to you for giving me this opportunity to participate in the debate on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts, Bill, 2015.

I rise here to support the Bill. This Bill, in fact, is the need of the hour. As on today, there are all types of commercial disputes. Despite the fact that the cause of action arose in our country, some of the disputes are being resolved outside the country. So, with this Bill, it will improve the faith of the investors in legal culture of the nation, improve the international image of the Indian Justice Delivery System and consequently, it will accelerate the economic growth of the country. In the globalized economy and in the international trade, the commercial disputes have increased to a large extent. We need specialized courts for this purpose. All over the world, the specialized courts have been set up and we are far behind for setting up of these specialized courts. I would like to name some of the countries. So far as the United Kingdom is concerned, it has set up its specialized courts. Apart from that, at least 17 countries of the world, have set up the specialized commercial courts and these commercial courts are dealing not only with the domestic disputes but also are dealing with the international disputes. I would like to name Singapore and Dubai where they are not only dealing with the domestic disputes but they have also set up the commercial courts of such a nature for resolution of the commercial disputes and they are treated as Commercial Dispute Resolution Hub.

Now, in Singapore, they have Singapore International Commercial Court. It was started recently in 2015 and in these courts, not only the Judges of that Court, even the Judges from outside are being appointed to participate in the Justice Delivery System and the lawyers from abroad are also being allowed to argue the cases before these courts and in case of Dubai, International Financial Central Court, it also decides cross border disputes. So far as India is concerned, we are far behind in it and in our Justice Delivery System, delay is being caused. In legal parlance, it is well-known and said that the 'Justice delayed is Justice denied' but at the same time, it is also said that the 'Justice hurried is Justice buried'. We are not finding the second part in our country. If we see the pendency of cases in the subordinate and High Courts, about three crore cases are pending. So, in India, we take at least on an average four years to decide the commercial disputes whereas in other parts of the world, like in Singapore, only 5 months are being taken.

I congratulate hon. Law Minister that six months time has been provided to dispose of the matter and it will certainly attract investment in the country and the FDI will also be increased. It will also instil confidence in domestic as well as foreign investors. The Law Commission also in its report feared about the delay in adjudication in Court and that amounted to breach of India's obligation under bilateral and multilateral investment treaties. In India, so far as the civil disputes are concerned, if we count them, only in five High Courts where original jurisdiction is there. In terms of percentage, it is 51.7 per cent civil cases where the original jurisdiction is there. In a globalized economy, bilateral investment treaties have been signed by the Government of India and the countries who are signing these treaties are making it sure that in case of any dispute, despite the fact that the cause of action is in India, those disputes can only be resolved outside the country because in Justice Delivery System, they know that delay is there and for enforcement of any contract, it will take longer time. The commercial courts are proposed to overcome the delay in judicial process and so far the Government of India is committed to create an FDI friendly environment to attract more foreign investment in economic

growth of the country. In the 'Ease of Doing Business Report, 2015 of the World Bank, India has slipped to 142 out of 189 countries.

There is an endeavour. I am happy that the Government is very conscious of this fact and if this happens, then it is a feather in the cap of the Government. In our country, there is an endeavour from the Government to improve this position of the country by placing it within top 50 countries of the world.

Now, if we see the Bill, basically, it creates courts where the original jurisdiction of the High Court is also there. But so far the original jurisdiction of the five High Courts, namely, Chennai, Kolkata, Mumbai, Delhi and Himachal Pradesh, is concerned, I fail to understand this because the original jurisdiction of the High Court was created during the colonial time and that was created to serve the purpose of the colonies. Still, we are continuing with it. No doubt, recently the amendment was made in the Delhi High Court Original Jurisdiction Act with respect to enhancing the jurisdictional limit from Rs.20 lakh to Rs.2 crore. Now, in the present Bill, the limit is only Rs.1 crore.

So far as Delhi is concerned, it will be a problem. If the cases are transferred on account of the Delhi High Court Bill, then those cases will go to the district court but under this Bill Rs.1 crore limit is there. So, my suggestion to the hon. Law Minister is that either the original jurisdiction of all the High Courts may be repealed and uniform jurisdiction of all the High Courts to be created in the country or in the alternative, so far as the Delhi Act is concerned, there also the limit may be increased to Rs.2 crore.

The commercial dispute has to be heard by experts with demonstrable expertise than those people having the commercial law because it is not the institution that we are creating. The judge who is manning the court is very important. We can see the quality of judgment when we appoint specialised judges. Specialised judges can only be appointed by a transparent method. We have to evolve a transparent method of appointment of judges and appoint those judges having specialised knowledge in commercial law because we are in a globalised economy and specialisation in every subject is very necessary. That is why, we are talking about the All-India Judicial Services whereby we can recruit judges. Just like the Indian Administrative Service, Indian Foreign Service, Indian Forest Service, Indian Police Service, we can recruit the judges in commercial courts, especially, those who are having knowledge in commercial law. But if we are recruiting judges having knowledge of general law and not having specialised knowledge of commercial law, then the same situation will arise where it is not the system which would fail us but we will fail the system itself. So, we have to devise that method also. By this method, since a large number of Tribunals are there, the cases will automatically be transferred after the coming into force of this Act and the delay which is being caused in the Tribunals like Competition Appellate Tribunal, Debt Recovery Appellate Tribunal, Intellectual Property Rights Appellate Board, Company Law Board, National Company Law Tribunal, Security Appellate Tribunal, Telecom Dispute Settlement and Appellate Tribunal, will be reduced. So, the cases will go to the Commercial Appellate Division of the High Court to hear appeals arising out of these Tribunals.

So, time limit has also been prescribed under this Bill. Under this Bill, the oral and written argument should be completed within the stipulated time by the advocates and the Judge is also required to give the judgement within the stipulated time. He cannot keep the judgement pending after hearing the arguments for more than three months. These are all welcome moves and I congratulate the hon. Law Minister that by this process the commercial dispute, at least, will be decided within the stipulated time.

We are also seeing that in article 226(3), the amendment was made long back that in case the *ex-parte* interim order is passed by the court and in case any application is moved, then that application has to be decided within a period of 14 days. Our experience shows in how many cases those applications are being disposed of! So, it is not the law but at the same time it is the implementing agency which has to be taken care of.

So, enforcement is also a very important aspect of the matter. No doubt, in the present case no provision has been made to file any appeal or further proceeding against the interlocutory order made because there is no final adjudication. In case such type of provision is there, then it will certainly delay the process for disposal of the cases because the very purpose for disposing the cases within six months will be frustrated.

Apart from this, in advanced countries in Europe and America, the process of pre-litigation mediation is there. Any party approaching any process of court can have a pre-litigation mediation and around 75 per cent cases are resolved by this process. But in our country we are not finding such any law. No doubt, the Arbitration and Conciliation Act is there but that cannot redress their grievance. Pre-litigation mediation is entirely different where without invoking the jurisdiction of any court or authority one can have a pre-litigation mediation, where both parties get together and decide whether they can argue their cases at their own level and they can dispose of the matter without approaching the court. If this provision is taken into consideration, like other countries we can also mitigate these grievances to a large extent and around 75 per cent cases can be reduced in our country. Thus, the pendency of cases can be reduced to a large extent. So, it is also one of the big judicial reforms. This judicial reform is the need of the hour.

In respect of some of the provisions, I would like to make a few things clear. In respect of provision regarding commercial dispute, the definition has been given under Section 2 (c). My suggestion to the hon. Law Minister is that instead of doing this, we can include all those Acts which are dealing with the commercial disputes. It is because we have a galaxy of Acts, which deal with the issue of commercial disputes. Those Acts can be clubbed together and can be made as a part of the Schedule of this Bill. Whenever any Act is enacted, the principal Act can be amended and added. Otherwise, the definition of the word 'commercial dispute' is very exhaustive and can create a lot of problems in deciding whether a particular dispute is a commercial dispute or not. So, it is better if a particular enactment defines the commercial dispute. Otherwise, some of the disputes of that Act would fall within the definition of the commercial dispute which has already been given and some of the disputes will not fall within the meaning of the commercial dispute. So, it is my suggestion to the hon. Law Minister that though the word 'commercial dispute' has already been defined, it again needs to be reviewed. Not only this, it may include the Schedule along with the Bill, including all the Acts.

Since we are creating these courts and they are the new courts, we have to establish them on a pilot mode. Otherwise, what will happen is that the

cases from various tribunals will be transferred to these courts. The question that comes is whether we require transferring of those cases pending with various courts or not. They may be at various stages; some of the cases will be at advanced stage of hearing; and some of them will be very old. If all the cases are transferred altogether, the system may crumble itself. So, we have to take into account that we establish these courts on pilot basis. Not only this, we have to create adequate funds, the state of the art infrastructure and human resources including judges and staff. So, this is to be taken care of. Otherwise, the very purpose for enacting this Act will be a futile exercise.

So far as pecuniary jurisdiction of the original High Court is concerned, I have already stated that it will create basically a chaotic situation in respect of Delhi High Court where the original jurisdiction of the Court is Rs.2 crore whereas in the present case it is only Rs.1 crore. Below rupees two crore, all the cases from the High Court shall be transferred to the district courts. But herein, by this Act, all the cases above rupees one crore will be transferred to the High Court. So, this controversy has to be resolved and taken care of.

There is an official amendment in regard to appointment of judges. So far as appointment of judges in the commercial courts is concerned, it is to be made by the High Court whereas Articles 233 and 234 of the Constitution specifically provide that the appointment of judges in the district courts and the appointment of judges in the munsif courts is to be made by the State Governor in consultation with the High Court and by the Governor in consultation with the Public Service Commission respectively. After the official amendment, which I have received today, it has been clarified.

Sir, I have been allotted 30 minutes because the first speaker of my party took only five minutes. ...(*Interruptions*) I extend my thanks to him.

Sir, an official amendment is there on this issue which the hon. Law Minister has brought. Otherwise, we would have been required to amend the Constitution. The Constitution provides for appointment of judges in the district court to be made by the Governor of the State in consultation with Chief Justice of the High Court and the appointment of judges in the Subordinate Judiciary is to be made by the State Governor in consultation with the Public Service Commission. So, in case the appointment of judges in the commercial courts is to be made by the High Court only, then it is in contravention of the mandate of Articles 233 and 234. Therefore, an official amendment has been brought so that the appointment shall be made in consonance with Articles 233 and 234. For this purpose, I extend my thanks to the hon. Law Minister.

Not only for the purpose of disposing of commercial litigation and commercial disputes, the time has come for having other specialised courts as well. We are having specialised professors and we are having specialised doctors. Then, why are we not having the specialised courts in our country? If we have specialised courts, then our justice delivery system will also be of international level. As a result, the FDI will increase and consequently, the economy of the country will grow.

There are two types of justice delivery system – criminal and civil. In these commercial courts, we have to spend a huge amount of money. For whom do we do it? The arguments also came that this money is spent for deciding disputes with respect to big companies, whether they are domestic companies or international companies. Who is paying for it? Why should the Government pay for it? Why should it be done at the cost of the Public Exchequer? So, we have to make a distinction between the criminal justice delivery system and the civil justice delivery system.

So far as the criminal justice delivery system is concerned, it is the sovereign duty of the Government, but so far as civil justice delivery system is concerned, it is a service being rendered by the Government. So, for that service, the Government should be compensated suitably. For this purpose, a professional cost accounting wing should be established in every High Court. It should assess the amount to be charged and how much court fees needs to be levied from a particular litigant. Or, it may fix a common court fee for this purpose. It should also look into the issue of adjournment.

Since I come from the legal fraternity, I know the adjournment part of litigation process. No doubt, the adjournment part has been curtailed and taken care of. No adjournment is permissible, but the cost has not been provided. The cost should be provided for seeking an adjournment and it should increase gradually. It should be a particular amount for the first adjournment, and thereafter, for the second, third and fourth adjournments it should increase gradually. It should work as a deterrent for those persons who are seeking adjournment and adopting the delay tactics.

We can enact the law, but at the same time enforcement is equally very important. Articles 145, 227 and 229 provide the Supreme Court and High Court to frame rules subject to the law made by the Parliament or State Legislatures respectively. So, the Supreme Court and High Court are required to provide it in the law with respect to case management, cost management and time management. Hence, all these factors are to be taken into consideration, and then only we can implement this law properly and instil faith in the justice delivery system.

Now, in arbitration, conflict can also be there. So, as regards the Arbitration and Conciliation Act and commercial courts, the choice should be given to the litigant. If one approaches for arbitration and thereafter he is coming to the commercial court, but in case one approaches for arbitration, then the sunset clause should be there and it should come to an end. I am saying this because arbitration is the choice of the litigant. Once they go there, then ultimately, they should not be permitted to touch the fountain of justice by way of approaching the commercial courts. Otherwise, it will again delay the justice delivery system. Further, the verdict given by the arbitrator should also be binding on him.

Sir, I thank you very much for affording me an opportunity to participate in the debate.

**डॉ. अरुण कुमार (जहानाबाद) :** उपाध्यक्ष जी, आपने मुझे कामर्शियल अपीलेंट कोर्ट बिल, 2015 पर बोलने का अवसर दिया, इसके लिए मैं आभार व्यक्त करता हूँ। यह समय की मांग है। आज वैश्विक इकॉनामी का वातावरण दुनिया में बना है और बिना इनवेस्टमेंट के हमारी इकॉनामी वाइबेंट नहीं हो सकती है। जब हमारी सरकार केंद्र में बनी और नरेन्द्र मोदी जी के नेतृत्व में पूरी दुनिया में भारत की प्रतिष्ठा बढ़ी तो भारत के प्रति लोगों की उम्मीद भी बढ़ी है। एक ऐसे वातावरण का निर्माण हुआ है, जिसमें देश में इनवेस्टमेंट काफी मात्रा में आने की गुंजाइश है। कामर्शियल अपीलेंट कोर्ट बनाने से और तौ कमीशन के सुझाव पर सरकार ने कामर्शियल कोर्ट के गठन की प्रक्रिया इस बिल के माध्यम से शुरू की है। हम निश्चित तौर से सरकार के इस प्रगतिशील कदम का स्वागत करते हैं।

महोदय, वाणिज्यिक विवाद 6 महीने के अंदर निपटारे से निश्चित तौर से इनवेस्ट के मन में एक विश्वास पैदा होगा। मैं कदूंगा कि जिस तरीके से सिंगापुर और दुबई जैसे देशों में इंटरनेशनल फाइनेंशियल कोर्ट्स हैं, इस तरीके की एक ट्रांसपैरेंट आर्गनाइजेशन का भी चिंतन करना चाहिए। कुछ साथियों ने कहा कि इसे स्टैंडिंग कमेटी में वापस करना चाहिए। हम समझते हैं कि यह एक

सुविचारित बिल है और समय कम वेस्ट करते हुए इस बिल को सरकार लाई है। यह सुविचारित बिल है। निश्चित तौर से सदन को इस बिल को सर्वमत से पास करना चाहिए। यह देश के हित में है और हमारी वाणिज्यिक गतिविधि के हित में है।

महोदय, इसके साथ हम माननीय मंत्री जी से निवेदन करना चाहेंगे कि निश्चित तौर से आज देश में जुडीशियल सिस्टम पर हर जगह पूरन उठ रहा है। अधीनस्थ कोर्ट में करोड़ों मुकदमों लंबित पड़े हुए हैं। हमारे कुछ साथी बोल रहे थे कि अधीनस्थ कोर्ट्स में दो करोड़ केसेज पेंडिंग हैं। यह उनकी अपनी राय है। हमें इस समस्या का निदान ढूँढना चाहिए जो पिछले 30-40 वर्षों में कोर्ट की तरह पेंडिंग केसेज का अंबार बना हुआ है। हम माननीय मंत्री जी से अनुरोध करना चाहेंगे कि यह एक ऐसा जटिल नेवसस है, एक समस्या है, एक चुनौती के रूप में यह है, जिसका निदान ढूँढने के लिए अधीनस्थ कोर्ट और ऊपर के कोर्ट में जो केसेज पेंडिंग हैं, अधिक समय तक न्याय प्रक्रिया में जो चीजें फंसी रहती हैं, उसके चलते भी क्राइम बढ़ता है। इसके निदान के लिए जजों का अप्वाइंटमेंट, जैसे लोक अदालत के माध्यम से उनका निपटारा करने का प्रयास किया गया है, लेकिन हम रेगुलर कोर्ट्स में जजों की नियुक्ति पूरी तरह से नहीं करेंगे, इसका निदान नहीं ढूँढेंगे, तब तक इस समस्या का हल नहीं निकल सकता है। कभी-कभी ऐसे केसेज देखने को मिलते हैं कि जो व्यक्ति हत्या के जर्म में जेल में बंद रहा, लेकिन 20 वर्षों के बाद वह व्यक्ति जिंदा ही है, लेकिन उसने 20 वर्षों की सजा भी काट ली। इस तरह से न्याय प्रक्रिया में जो फैलेती हैं, उसे दूर करने के लिए जो रेगुलर कोर्ट्स हैं, जो फौजदारी मुकदमों हैं, उनके निपटारे के लिए भी हमें चिंतन करना चाहिए। इन्हीं शब्दों के साथ मैं बिल का समर्थन करता हूँ।

**श्री संतोष कुमार (पूर्विया) :** उपाध्यक्ष महोदय, आपने वाणिज्यिक न्यायालय, उच्च न्यायालय वाणिज्यिक प्रभाग और वाणिज्यिक अपील प्रभाग विधेयक, 2015 पर विचार रखने की आपने अनुमति दी है, इसके लिए मैं आपका धन्यवाद करता हूँ। सरकार ने यह विधेयक अपने अध्यादेश को कानूनी रूप देने के लिए प्रस्तुत किया है। सरकार अपने उद्देश्य में सफल हो, इसकी मैं आशा करता हूँ। सरकार का कहना है कि इस कानून के बन जाने से आर्थिक स्थिति में बहोतरी होगी, कम एवं तय समय सीमा के अंदर व्यावसायिक मुकदमों का निपटारा होगा, जो एक करोड़ से अधिक के दावे हैं। सरकार युक्तियुक्त यानी कम अदालती खर्च की बात करती है। किन्तु, मेरा मानना है कि जिस तरह से फीस पर पारदर्शिता इस विधेयक में नहीं दिखाई गयी है, शायद ही यह उस उद्देश्य को पा सके। इस तरह के खंडपीठ में सेवानिवृत्त में न्यायाधीशों को नियुक्त किया जायेगा तो फिर फीस कम कैसे हो सकती है? वह तो अपनी फीस ज्यादा से ज्यादा चार्ज करेंगे।

अतः मेरा मानना है कि सामान्य न्यायालयों जैसे न्यायाधीशों की नियुक्ति होती है, यही प्रक्रिया इस खंडपीठ के लिए भी लागू होना चाहिए। अगर न्यायाधीश रिटायर्ड हो गये तो उनकी जीवन भर की कमाई का यह खंडपीठ एक स्रोत नहीं बनाया जाये। अगर दूसरे बाहरी लोगों को ही लेना है तो बहुत ही व्यावसायिक फील्ड के एक्सपर्ट्स हैं, जैसे, सीए, सीएस अन्य प्रबुद्ध वर्ग हैं, अच्छे व्यावसायी हैं, उनका पैल बना कर ये नियुक्तियां हो सकती हैं, जिससे न्यायालयों के खर्च कम किये जा सकते हैं। मैं आशा करता हूँ कि कभी-कभी एक करोड़ व्यावसायिक मुकदमों जो भिन्न न्यायालयों में लंबित हैं, उनका निपटारा जल्द होगा और लंबित मुकदमों की संख्या कम होगी। मेरा सुझाव है कि एक करोड़ केसेज की सीमा को कम करके 25 लाख किया जाना चाहिए। मैं यह भी आशा करता हूँ कि विधि आयोग की सिफारिश की 253वीं रिपोर्ट को ध्यान में रख कर सरकार इस कानून को पूर्णतः पारदर्शी, कम खर्चीला और त्वरित न्याय दिलाने के लिए एक सक्षम कानून बनाने का कार्य करेगी। क्योंकि मामले सामने आते रहते हैं, अगर एक करोड़ का दावा है तो न्यायालय के आदेश आते-आते इतना या इससे अधिक न्याय पाने में खर्च हो जाता है। यह कदापि न हो। तय समय सीमा का पूर्ण पालन हो और जल्द से जल्द न्याय देने की प्रक्रिया पूर्ण हो। कानून में सरकारी से पालन की व्यवस्था हो। अगर ऐसी व्यवस्था इस कानून के माध्यम से सरकार देती है तो अधिक खर्चीले मध्यस्थता कानून की शायद आवश्यकता ही नहीं पड़ेगी क्योंकि उस कानून की व्यवस्था में कोई गुंजाइश नहीं है जो इसे सफल होने में शक की ओर ले जा सकती है।

मेरा विश्वास है कि अगर सरकार इस कानून को पूर्णतया पारदर्शी बनाने में सफल होती है तो जो लोग विदेशी व्यापारिक मुकदमों के लिए सिंगापुर और लंदन को सबसे अधिक पसंद करते हैं, वे भी भारत में ही जल्द निपटारे के लिए आकर्षित होंगे। इससे देश की साख बढ़ेगी, सरकार का उद्देश्य एफडीआई को बढ़ावा देने का है, वह भी पूरी तरह सफल होगा। वर्ल्ड बैंक के ईज ऑफ डूइंग बिजनेस में भी भारत सर्वोच्च स्थान पर होगा। धन्यवाद।

**श्री दुष्यंत चौटाला (हिंसार) :** उपाध्यक्ष महोदय, आपने मुझे कमर्शियल कोर्ट, कमर्शियल डिबीजन और कमर्शियल एपेलेट डिबिजीन ऑफ हाई कोर्ट, 2015 पर बोलने का मौका दिया। आज जहां हम कमर्शियल कोर्ट्स की बात कर रहे हैं, देश को देखें तो दुनिया में अगर सबसे ज्यादा कोर्ट केसेज किसी देश में पेंडिंग हैं तो वह हिन्दुस्तान है। आज लगभग 2 करोड़ 6 लाख 57 हजार 841 केसेज हमारे देश में पेंडिंग हैं जिनमें से 40 लाख से ज्यादा कमर्शियल केसेज हैं। माननीय मंत्री जी की एक अच्छी शुरुआत है कि उन्होंने कमर्शियल कोर्ट्स की ओर जाने के बारे में सोचा। हमारे देश में पिछली सरकार द्वारा ग्लूम न्यायालय बनाए गए थे। कानून भी पारित हुआ, 15 करोड़ रुपये राज्यों में बांटे गए। मैं सरकार से पूछना चाहूंगा कि क्या ग्लूम न्यायालयों से किसी को फायदा पहुंचा। क्या आज वे ग्लूम न्यायालय एक्टिव कर रहे हैं? आज कानून बनाकर एक बॉडी खड़ी करना बहुत आसान है, लेकिन उसके परफॉर्मिंग इम्प्लीमेंटेशन के लिए हमें बहुत मशक्कत करनी पड़ेगी। अगर हम सिविल केसेज की बात करें तो 3 लाख 68 हजार सिविल केसेज हमारे देश में पेंडिंग हैं। अगर पांच से दस साल की बात करें तो 10 लाख 8 हजार से ज्यादा केसेज पेंडिंग हैं। लगभग 17 लाख सिविल केसेज तो पांच साल से ज्यादा पाइपलाइन में पेंडिंग पड़े हैं। फैसला कब आएगा। हम कमर्शियल कोर्ट्स की बात करते हैं। वे क्या एक्टिविटी मॉनीटर करेंगे। क्या पैसा, क्योंकि हमारे देश में छोटी-छोटी ट्रांजैक्शन बड़े पैमाने पर कैश के माध्यम से दी जाती हैं। क्या उन्हें भी मॉनीटर करने का काम करेगा?

मैं बिल पढ़ रहा था, उसमें लिखा है कि एक करोड़ से ज्यादा की ट्रांजैक्शन को कमर्शियल कोर्ट्स मॉनीटर करेंगे। हमारे देश में एक करोड़ की हैसियत वाले कितने लोग हैं। आज कितने लोगों के पास पैसा है। जिनके पास एक करोड़ रुपये हैं, उनके पास अच्छे वकील करने के लिए पैसे हैं। वे अच्छे वकील करके भी हाई कोर्ट और सुप्रीम कोर्ट में जा सकते हैं। लेकिन क्या कमर्शियल कोर्ट्स उन छोटे दुकानदारों की तरफ भी देखेंगे जिन्हें दिन-दहाड़े तूट जाता है, जिन्हें छोटी-छोटी ट्रांजैक्शन में फसाया जाता है। मैं माननीय मंत्री जी से आग्रह करूंगा कि आपके एक करोड़ के पैमाने को घटाकर कम से कम 25 लाख तक लाने का काम करें ताकि मीडियम स्तर के दुकानदार को भी इस कोर्ट के माध्यम से न्याय दिलाने का काम हो।

एप्वाइंटमेंट ऑफ जजसे - मैं पढ़ रहा था। उसमें लिखा था -- The Chief Justice of the High Court will appoint the judges. कौन्सिलरूशन पर डिबेट हुई। कौन्सिलरूशन में लिखा गया है कि ज्युडिशियरी, लेजिस्लेटिव और एग्जीक्यूटिव हमारे तीन पिलर हैं। लेकिन आज हम जिस तरह के कानून बनाते हैं, ज्युडिशियरी जजों को एप्वाइंट करने में व्यस्त है। हम यहां से कानून बनाकर भेजते हैं, सुप्रीम कोर्ट उस कानून को 4-5 जजों का एक कोलेजियम बनाता है और उसे मोड़कर हमारे पास भेजने का काम भी नहीं करता। क्या आज हमारे देश में यही काम रह गया है? जजों की ड्यूटी लोगों को न्याय दिलाने की है या अपने सहयोगियों को एप्वाइंट करने की है। मैं माननीय मंत्री जी से वलेंटीफिकेशन भी चाहूंगा कि हम जहां कमर्शियल कोर्ट्स की बात करते हैं, जो मिनी सैक्टेरिएट होगा, जहां आज हमारे जज डिस्ट्रिक्ट लैवल पर बैठते हैं, कमर्शियल कोर्ट के लिए, क्योंकि इसमें डिस्ट्रिक्ट के बराबर कमर्शियल कोर्ट को बनाने की बात की जाती है। क्या आप वहां डिस्ट्रिक्ट कोर्ट के बराबर एक नया पैरलल सिस्टम खड़ा करने का काम करेंगे, क्या आप कमर्शियल एक्टिविटीज को मॉनिटर करने वाले जजों को अप्वाइंट करेंगे, क्या वह कमर्शियल बैंकग्रांड से आते हैं, जैसे कोई चार्टर्ड अकाउन्टेंट हो, कोई लॉयर हो, जो स्पेसिफिकली उन ट्रांजैक्शन को मॉनिटर कर सकेगा। हमारे द्वारा अप्वाइंटेड जजों में से कोई व्यक्ति कमर्शियल कोर्ट का जज बनेगा, नियम के अनुसार हर छह महीने में रोटर बदलता है और उनका ट्रांसफर हो जाता है। यदि कोई कमर्शियल कोर्ट में आएगा तो उसको कमर्शियल एक्टिविटीज को जानने और समझने में कम से कम छह साल या साल भर का समय लगेगा और उससे पहले आप उसके पहले ही उसका ट्रांसफर हो जाएगा। जब हम हाई कोर्ट लेबल पर कमर्शियल कोर्ट की बैठने की बात करते हैं, क्या जो जजों वहां आएंगे वे रोटर के साथ नहीं बदले जाएंगे? कीर्ति आजाद जी ने ज्वाइंट ज्युडिशियल एजाम कराने का सुझाव दिया था। जिस तरह हम आईएस, आईपीएस की भर्ती करते हैं उसी तरह से हम जजों की भर्ती क्यों नहीं कर सकते, क्यों नहीं नई पीढ़ी जो लॉ की बड़ी-बड़ी डिग्रियां लेकर आ रही है वह इस क्षेत्र में अपना टैलेंट दिखाए वह इस देश का जज बनकर देश का भविष्य तय करने का काम करे। आज कोई भी गरीब आदमी जो हाई कोर्ट और सुप्रीम कोर्ट में लड़ाई लड़ता है तो उसे कभी न्याय नहीं मिलता है क्योंकि उसके पास वकील को देने के लिए लाखों-करोड़ों रुपये नहीं होते हैं। हम कमर्शियल डिबीजन बनाने की बात करते हैं, यह सारा ट्रांजैक्शन रिटेटेड मैटर है इसके लिए लोगों को मंहने वकील भी करने पड़ेंगे, उनका विचार-विमर्श करते हुए हमें इस बिल की ओर देखना पड़ेगा। आपने बोलने का समय, आपका आभार प्रकट करता हूँ।

SHRI N.K. PREMACHANDRAN (KOLLAM): Thank you, Mr. Deputy-Speaker, Sir.

I rise to oppose this Bill. The Statutory Resolution disapproving the Ordinance was in my name but unfortunately I could not be present on that day

because of the boycott in the Parliament; so, the Statutory Resolution was taken up but it was not moved and the discussion was postponed for today.

First of all, even the introduction of this Bill before this House and the discussion on this Bill is against the Rules of Procedure and Conduct of Business in the Lok Sabha. I would say that this Bill has originated as a part of the recommendations in the 188<sup>th</sup> Report of the Law Commission. As a part of those recommendations, the Commercial Courts and Commercial Appellate Division of High Courts Bill, 2009 was introduced in this House and it was passed by this House. Subsequently, it was transmitted to the Rajya Sabha. When it went to the Rajya Sabha, there was a dissenting view expressed by many Members in that House. Therefore, it was again transmitted or referred to the Law Commission. Subsequently, the Law Commission submitted a new report, the 253<sup>rd</sup> Report.

On the basis of the new report, a new Bill was drafted and presented before the Rajya Sabha on the 24<sup>th</sup> April, 2015. The interesting fact to be noted is that when it was introduced, the Bill was directly referred to the Standing Committee. When the Bill was pending before the Standing Committee, the Ordinance was promulgated. That is why I had given a Statutory Resolution to disapprove the Ordinance. The matter is pending scrutiny of the Standing Committee, which is a Joint Committee consisting of Members of the Lok Sabha and the Rajya Sabha. So, the matter is under scrutiny of this House but an Ordinance is promulgated and in order to replace the Ordinance a new Bill is introduced in this House during this Winter Session when an identical Bill is still pending in the Rajya Sabha and the matter is under the scrutiny of the Standing Committee.

Though I may not use the word 'callous' to describe the Bill drafting and legislative process, you may kindly see how it has been done. When the Bill was under scrutiny of the Standing Committee and the Report has not been submitted to the House, the Bill is taken for consideration. The Bill has been taken for consideration on the last day though the Standing Committee Report has not been submitted before this House. ...(*Interruptions*) All right, it was submitted in the morning; in the afternoon you have moved for consideration and my Statutory Resolution is killed!

The way the legislative process is going, the Treasury Benches are not serious and the Opposition is also not serious. The very purpose of the legislature is to make law or to legislate. Unfortunately, the procedure, rules and the legislative process is being taken for granted. That is the first objection which I would like to raise. It is against the Rules of Procedure and Conduct of Business of this House and also against the basic principles of Constitution. I will come to that in a second.

Coming to this Bill, why I am opposing this Bill is, all the enactments or the legislation coming in this House is for ease of doing business. We have passed last week, the Negotiable Instruments Act. The next Bill which is coming before the House is Arbitration and Conciliation Bill. Then we have the Land Bill. Almost all the legislation which is being aggressively pursued by this Government is for ease of doing business and not for the common downtrodden people of this country. Can you suggest any Bill which is for the common people of this country?

After assuming power, during this one-and-a-half years of power in Government can the Government suggest or cite an individual Bill which is a beneficial legislation as far as the common people are concerned? Has any such original Bill been introduced in this House? They keep on saying that this is the original Bill. Every legislation is for the rich, the corporates, for the haves and not for the have nots. This is the thinking and mindset of this Government. How much interest the Government has taken in promulgating an Ordinance when the Bill is pending for consideration of a parliamentary Standing Committee? What is the urgency and what is the extraordinary situation in promulgating such an Ordinance? Can the Government explain it?

There was no exigency. The only thing is to by-pass the Rajya Sabha. The Bill was pending in the Rajya Sabha under the scrutiny of the Standing Committee. The Government has to by-pass the Rajya Sabha so as to introduce the Bill in the House and for that purpose the Government has promulgated an Ordinance and in order to replace the Ordinance the Bill is introduced in the House. The indirect way by which the Bill is being pushed through or bulldozed through the Lok Sabha with the huge majority of the Government is my first objection.

Sir, I now come to the contents of this Bill, This Bill has been introduced with a *bona fide* for the rich corporates to have a fast track mechanism for disposal of commercial disputes of specified value of Rs.1 crore or more. You may kindly see the constitution of commercial courts at the district level, constitution of commercial division courts in the High Courts and the commercial appellate division in the High Court. I reasonably believe that Shri P.P. Chaudhary will endorse the view which I am going to make. Shri Satpathy has also touched upon that issue.

Sir, I am referring to the definition clause, Clause 2 (c). In my limited experience of legislative process this is the first time in the House that the definition is being stated in such a way. Sir, I may be given some time so that I can substantiate my point. Clause 2 says:

"Commercial courts mean commercial courts constituted under sub-section 1 of section 3.

(c) Commercial dispute means a dispute arising out of (one to 21) various kinds of commercial transactions in which dispute arises. "

Everything under the sun will come within the definition. Kindly see 22 which says:

"Such other commercial disputes as may be notified by the Central Government."

Now whatever will be the whims and fancy of the Central Government that will be a commercial dispute. Then my humble clarification from the hon. Minister would be as to why these 22 sub-clauses are there. Instead of having these 22 sub-clauses, you can very well say that a commercial dispute means a dispute arising out of a commercial transaction and such other commercial transaction as may be prescribed by the Central Government. It means the right of the Parliament to define what is a commercial dispute is being taken away from the Legislature by the Executive with the connivance of this Government for which I cannot agree. I have moved an amendment for this. Kindly that amendment may be carried out. Otherwise, what is the meaning of legislation. The Executive is given ample power to define what is a commercial dispute. Even the Parliament is not having the authority to define the crux of the legislation.

The same thing is there for specified value also. I am not going into the provisions because of the paucity of time. In respect of specified value also it

is being described that it would be not less than Rs.1 crore or more as prescribed by the Central Government. So the specified value of the commercial dispute will be determined by the Government or the Executive. What is a commercial dispute that will be determined by the Executive and what is the intent of the legislator, it is still not known. The hon. Minister or the Government is submitting to the Parliament that you pass the law and we will define the commercial dispute later according to the whims and fancy of the Government. This is not a due process of law making. That is the point which I would like to make.

As regards Chapter V of the Bill, there is a provision regarding transfer of pending suits in various courts. Section 15 (1) says:

"All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division."

Clause 10 says:

"Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and –

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 that have been filed in a High Court, shall be heard and disposed of by the Commercial Appellate Division where such Commercial Appellate Division has been constituted in such High Court."

So this has been stated in Clauses 10 and 15...(*Interruptions*).

HON. DEPUTY SPEAKER: He is explaining it in his own way. The Minister will reply to him. You need not worry.

...(*Interruptions*)

HON. DEPUTY SPEAKER: You need not explain to anybody. You come to the point.

SHRI N.K. PREMACHANDRAN (KOLLAM): In Clause 2, 22 items are described to explain what a commercial dispute is. What about 22<sup>nd</sup>? Chapter V of the Bill deals with the transfer of pending suits and application under the Arbitration Act to the commercial courts. It is also contradictory. I will explain it once again.

HON. DEPUTY SPEAKER: Mr. Premachandran, you come to the point. You need not explain it again. There is paucity of time.

SHRI N.K. PREMACHANDRAN: Soon we are going to take the Arbitration and Conciliation (Amendment) Bill, 2015. In that, there is no definition as far as commercial dispute is concerned.

### **17.00 hours**

There is no definition as far as the commercial disputes are concerned. There is no definition as far as the commercial courts, or the commercial Divisions or the Commercial Appellate Tribunals are concerned. What is the basic principle of legislative process? If you draft legislation, then the legislation should be distinct, independent and comprehensive. If you go through the Arbitration and Conciliation Act, all the arbitrations which are related to the commercial disputes are to be transferred to the commercial courts or commercial Divisions or Commercial Appellate Division. What does it indicate and what does it mean? The Arbitration and Conciliation Bill of 2015 is silent about the definition of commercial dispute. Even this Act also is silent about the arbitration proceedings. So, there is an alternative dispute redressal mechanism in the Arbitration and Conciliation Act. There is also a constitution of High Court and the original jurisdiction is given as far as the international commercial jurisdictions are concerned. What mechanism will be applicable in a case where the specified value is more than Rs. One crore which is also a commercial dispute. I would like to know whether such a case will be decided by the High Court as per the original jurisdiction envisaged in the Arbitration and Conciliation Act or it will be done by the Commercial Division. That is why I am saying that either in the Commercial Act or in the Arbitration and Conciliation Act this matter has not been specified, defined and explained. So, that contradiction has to be explained by the hon. Minister in respect of ...(*Interruptions*)

SHRI KIRTI AZAD: Arbitration is always outside the court and not inside the court...(*Interruptions*)

HON. DEPUTY-SPEAKER: Shri Premachandran, you make your points.

SHRI N.K. PREMACHANDRAN : Then you have not read the Arbitration Act. As per the proposed Act the original jurisdiction for an international commercial transaction will be High Court...(*Interruptions*) If the hon. Minister can convince us on this, then it is all right. We are going to create a new court as per the Arbitration and Conciliation Act in which the original jurisdiction is going to be provided. This contradiction has to be explained as far as these two Acts are concerned.

The third point is regarding article 14 of the Constitution. I feel that if this legislation goes to the Supreme Court, or High Court, definitely this will be struck down. This is why because commercial dispute which involves Rs. One crore or more is being given a special treatment. As per article 14 of the Constitution, there should be equality before law and equal protection of law. The discrimination should be justified on reasonable grounds. What is the reasonable ground? Hon. Member Shri Satpathy read out the provision regarding oil exploration. Who is doing these oil explorations and coal mining and all those activities which result in commercial disputes? From the hon. President to the police constable, from the Prime Minister to the peon, all are equal before law. If that is the case, in the judicial system, the Multi-National Companies and the rich people in the country are dealing with huge amounts of commercial transactions. They are getting a special treatment in the judicial system. This is absolutely a discrimination against the poor common people in this country.

Therefore, my point is that this provision or this Bill is against the principle of equality before law and equal protection of law. Otherwise, the

Government has to substantiate the reason for this...*(Interruptions)* Your classification is that rich will be getting speedy justice and poor people will be getting delayed justice. That classification is not a reasonable classification. If my commercial dispute is in respect of Rs. 10 crore, then I will be having a special preference in the High Court and I can have an original jurisdiction in the High Court and the dispute will be resolved within a maximum period of 18 months, but a poor man whose commercial dispute involves a sum of Rs. 10 lakh, he will be have a lesser preference. This means that a poor man will have a poor treatment and the rich will have a better treatment. Is it a reasonable classification, Shri Chaudhary? ...*(Interruptions)* Is it that family courts are exclusively for a particular class of people? There is no distinction in family courts as rich family and poor family. If it is a dispute in the family of Reliance, then their cases will be heard first and if it is a case in the family of a common worker's family, then that will be heard later. There is no such provision. It is exclusively for family matters and that is common for all, whether they are rich or poor. Here, in this Bill, I make a very serious allegation that we, the Parliament, are making a classification like poor versus rich. ...*(Interruptions)*

SHRI P.P. CHAUDHARY: The Supreme Court and the High Court have already created it in the month of July...*(Interruptions)*

SHRI N.K. PREMACHANDRAN : That is why, I am asking as to why the Bill is withdrawn from the Rajya Sabha. Why was this Bill withdrawn from the Rajya Sabha? The elders have shown all these points. That is why, the Bill was again referred to the Law Commission and it has again come back. It is because of political influence and political pressure, and the influence of the multinational corporates on the Government. That is why, the Bill has again come with the recommendations of the Law Commission.

My point is, this has to be taken care of as far as poor and common people are concerned. You have said that delay defeats justice. Yes, it is absolutely a common principle. So, considering all these points like from the date of the introduction of the Bill in 2009, the introduction of the Bill in Rajya Sabha, sending it to the Standing Committee, promulgation of the Ordinance and further replacing the Ordinance, things are done in a hurried manner. There is haste and hurry so as to pass this Bill and this itself means that it is not for the common people of the country and it is only for a particular class of the society.

So, I strongly oppose this Bill.

\*SHRI SHER SINGH GHUBAYA (FEROZEPUR) : I thank you, Hon. Deputy Speaker Sir, for giving me the opportunity to speak on the important bill – "The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015". This is a wise and sagacious move by the Hon. Minister and I congratulate him for this timely initiative. It is the need of the hour and I rise to support this bill.

Sir, several Hon. Members have given their pertinent suggestions regarding this bill. I would like to speak on the issue of empowering the Panchayati Raj institutions. Lakhs of cases are pending in various courts. If trivial or small cases could be dealt at the level of Panchayats, the burden on higher judiciary will decrease. So, the cases should be sorted out on the basis of their nature or their value. The lower courts can dispense justice in the cases that are not of very high value or importance. Only cases of very high value or importance should be taken up by the higher judiciary.

Sir, it is a known fact that the rich, the influential and the business magnates and tycoons wield immense clout. They are able to get speedy justice and have the capability to influence the legal system in their favour. However, the poor people do not stand any chance at this level and justice is delayed for them. They cannot bear the costly litigation and justice becomes a casualty in their case. Thus, the poor people lose out to clout and wealth. So, the cases should be evaluated in the beginning and the Panchayats should also be involved, depending upon the nature and value of the cases.

Hon. Deputy Speaker Sir, the same holds true for criminal cases or cases pertaining to financial irregularities or banks. Over 2 crore cases are pending in the courts. Although Lok Adalats have tried to dispense speedy and economical justice, but the rot in the system has not yet been fully stemmed. The sheer number of cases is overwhelming. So, timely and speedy dispensation of justice is needed. Disposing of cases within a fixed time-frame is one solution to the problem. It will go a long way in providing justice to the poor. Although, all are equal in the eyes of law, but in reality, influential and rich people are more equal than others. Hence, I urge upon the Hon. Minister to kindly look into my suggestions seriously.

Sir, the criminal cases bring out the worst flaws in our judicial system. People are wrongly convicted at times in cases of Cr Pc 302. So, justice becomes a casualty at the alter of clout and influence wielded by the rich and the powerful. The Government must come to the aid of the poor people. They cannot be left in the lurch. It is the responsibility of the Government in a welfare state to ensure that speedy justice is provided to the poor and the common man without fear and favour.

Sir, there should be transparency in the banking transactions. Farmers generally take agricultural loans. If their standing crops are destroyed due to natural calamities, the farmers fail to return their loans in time. Similarly, small industrialists take loans from the bank for setting up industries. However, if their industries fail due to any reason, they too are not in position to repay their loans. The interest keeps on accruing. So, the Government must bail out such hapless people.



Sir, in the end, let me say that the small families will gain out of this bill. The amount of Rs.10,000/- will be sufficient for them. I urge upon the Hon. Minister to make the necessary change in the bill. This is a landmark bill and I support it. Thank you.

**श्री दहन मिश्रा (श्रावस्ती) :** उपाध्यक्ष महोदय, कानून मंत्री जी द्वारा लाए गए वाणिज्यिक न्यायालय, उच्च न्यायालय, वाणिज्यिक प्रभाग और वाणिज्यिक अपील प्रभाग विधेयक, 2015 का मैं समर्थन करता हूँ। भारी धनराशि वाले वाणिज्यिक विवादों को निपटाने के उद्देश्य से चुनिन्दा न्यायालयों में वाणिज्यिक पीठ की स्थापना के उद्देश्य से अक्टूबर में सरकार द्वारा जो अध्यादेश लाया गया था, यह विधेयक उसी का स्थान लेगा। यह विधेयक सरकार की भारी मातृ में विदेशी निवेश जुटाने की इच्छा की पृष्ठभूमि में लाया गया है। सालों तक चलने वाले कानूनी मुकदमों के कारण कुछ विदेशी कंपनीज भारत में कारोबार करने से हिवकिवाती हैं।

वाणिज्यिक प्रतिष्ठानों की अगुवा प्रतिनिधि संस्था 'एसोचैम' के सुझाव पर न्यायिक सुधार के माध्यम से अर्थव्यवस्था को मजबूत करने के उद्देश्य से हमारी सरकार द्वारा यह एक मजबूत विधेयक लाया गया है। उच्च न्यायालयों की दीवानी न्यायालयों में लम्बित एक करोड़ रुपए और उससे ऊपर की राशि के सभी वाणिज्यिक विवाद और आवेदन सम्बन्धित वाणिज्यिक प्रभागों या वाणिज्यिक अदालतों को स्थानांतरित कर दिए जाएंगे।

वाणिज्यिक अदालतों की स्थापना दिल्ली, मुम्बई, कोलकाता, चेन्नई तथा हिमाचल प्रदेश के उच्च न्यायालयों में की जाएगी। वाणिज्यिक अदालतों का दर्जा जिला अदालतों के बराबर होगा। ऐसे न्यायालयों की स्थापना से शीघ्रतापूर्वक न्याय मिलने से देश के विभिन्न क्षेत्रों में परियोजनाओं के वृहद मुकदमों में लगने वाली अरबों रुपए की राशि की बचत हो सकेगी। जिसका उपयोग उत्पादकता बढ़ाने में किया जा सकेगा। इस प्रणाली व सुधार के तहत न्यायसंगत उत्पादकता सुनिश्चित की जा सकेगी।

विकसित देशों में 70 प्रतिशत दीवानी मामले मुकदमा शुरू होने से पहले ही सुलझा लिए जाते हैं, क्योंकि न्याय प्रक्रिया में लगने वाले लम्बे समय और तारीख पर तारीख की अवधारणा इस कर्म में होने वाले समय और धन के नुकसान को लेकर दोनों पक्ष चिंतित रहते हैं। इसी कर्म में हमारे देश में वाणिज्यिक अनुबंधों के समानुसार और प्रभावकारी कार्यान्वयन के लिए प्राथमिकता के आधार पर ऐसे मामलों से निपटने में यह व्यवस्था काफी कारगर साबित होगी। 'मेक इन इंडिया' को बढ़ावा देने और ईज ऑफ डुइंग बिजनेस के तहत यह कदम ऐतिहासिक होगा, जिससे लम्बी न्यायिक प्रक्रिया और आर्थिक नुकसान से डरने वाले निवेश हमारे देश में निवेश कर सकेंगे। ऐसे में इस प्रणाली को सरलीकृत और नवीकरण करने की आवश्यकता है, जिसकी पूर्ति इस बिल के माध्यम से हो रही है।

महोदय, न्याय का मौलिक सिद्धांत है कि विलम्ब का मतलब न्याय को नकारना होता है। देश की अदालतों में विचाराधीन मुकदमों की तीन करोड़ की संख्या का पिछमिड देशवासियों में चिंता और भय पैदा कर रही है। अदालती फैसलों में पांच साल लगना तो सामान्य सी बात है, लेकिन 20-30 साल में भी निपटारा न हो पाना लोगों के लिए किसी त्रासदी से कम नहीं है। देश की अदालतों में जब करोड़ों मामलों में न्याय नकारा जा रहा हो तो आम आदमी को न्याय सुलभ हो पाना आकांक्ष से तारे तोड़ लाने जैसा होगा। अदालतों में तुरंत निर्णय न हो पाने के लिए कार्यप्रणाली ज्यादा दोषी है, जो अंग्रेजी शासन की देन है। लेकिन उसमें व्यापक परिवर्तन नहीं किया गया है। कई मामलों में तो वादी और प्रतिवादी प्रयास करते हैं कि फैसले की नौबत ही न आए। समाचार पत्रों और टी.वी. चैनल्स के माध्यमों के बावजूद नोटिस तामिली के लिए उनका सहाय नहीं लिया जाता और तामिल होने में वक्त जाया होता रहता है। आवश्यकता इस बात की है कि कानूनों में सुधार करके जमानत और अपीलों की वेन में कटौती की जाए और पेशियां बढ़ाने पर बंदिश लगाई जाए।

सुप्रीम कोर्ट के मुख्य न्यायाधीश महोदय और अन्य न्यायाधीश लम्बित मुकदमों के अम्बार देखकर चिंता में डूब जाते हैं, लेकिन चिंता का किसी को हल नजर नहीं आता। उधर सुप्रीम कोर्ट में जजों की भारी कमी है। उच्च न्यायालयों में 1500 और निचली अदालतों में 23,000 जजों की आवश्यकता है। अभी स्थिति यह है कि उच्च न्यायालयों में 280 से अधिक पद रिक्त पड़े हैं। हकीकत यह है कि न्यायपालिका की क्षितिजता और अकुशलता से अपराध और आतंकवाद तक को बढ़ावा मिलता है। कई वर्ष पूर्व मुम्बई में हुए आतंकी हमलों के प्रकरणों का निपटारा आज तक नहीं हुआ है। जबकि ब्रिटेन में हुई ऐसी घटना के प्रकरणों में एक-दो साल में निपटारा हो जाता है।

वस्तुतः न्यायपालिका की स्वतंत्रता के साथ ही इस अंग की कार्यकुशलता और सुविधा लोकतंत्र के लिए बेहद आवश्यक है। मुकदमों का अम्बार निपटाने और सुधार करने के लिए केवल कार्यपालिका, न्यायपालिका और विधायिका ही नहीं, वरन् देश के अग्रणी न्यायविदों, समाजशास्त्रियों और आम लोगों को विश्वास में लिए जाने की आवश्यकता है। भारत में न्यायपालिका के सामने मुकदमों का बोझ एक बड़ी समस्या है। आज़ादी के बाद से ही देश में अदालतों और जजों की संख्या आबादी के बढ़ते अनुपात के मुताबिक कभी भी संतुलित नहीं रही। इस वजह से न्याय के नैसर्गिक सिद्धांत के मुताबिक न्यायपालिका में भी मांग और आपूर्ति के बीच संतुलन कायम नहीं हो सका। समय के साथ व्यवस्था के तीनों प्रमुख स्तम्भों के बीच बढ़ते टकराव ने इस समस्या को और गम्भीर बना दिया। सुप्रीम कोर्ट संवैधानिक महत्व के मामलों को निपटाने के अपने मूल काम के बजाए सामान्य पारिवारिक मामलों की ही अपीलें निपटाने तक सीमित होकर रह गया है।

देश की सभी अदालतों में लगभग 3.13 करोड़ मुकदमों लम्बित हैं। इनमें से अकेले सुप्रीम कोर्ट में 63,843 मामलों में फैसले का इंतजार है, जबकि देश की 24 हाई कोर्ट्स में लम्बित मामलों की संख्या 44,62,000 है और निचली अदालतों में 2 करोड़ 68 लाख तक पहुंच गई है। दुनिया के किसी और दूसरे मुक्त में इतनी तादाद में मुकदमों लम्बित नहीं हैं। न्यायपालिका को स्वतंत्र और निष्पक्ष बनाने के सभी संवैधानिक उपाय पिछले पांच दशकों में निपूणावी साबित हुए हैं, अगर न्यायपालिका को 24 घंटे सातों दिन काम करना पड़े, तो भी इस बोझ से उन्हें छुटकारा मिलना मुश्किल है। निचली अदालतों में जजों और वकीलों के अभाव में होने वाले फैसलों से असंतुष्ट पक्षकार अपील के लिए उच्च अदालतों में जाने के लिए विवश होते हैं। अंतरराष्ट्रीय मानकों के अनुसार 24 हाई कोर्ट्स में जजों की संख्या 906 होनी चाहिए, लेकिन अभी 636 ही है, जबकि 280 जजों की कमी को पूरा करने में सरकार सालों से संसाधनों के अभाव का रोना येकर असमर्थता जता रही है।

हाई कोर्ट में मांग के मुताबिक जजों की मौजूदा अधिकतम संख्या 25 फीसदी का इजाफा करना तत्काल आवश्यक है। इस प्रकार सभी हाई कोर्ट में कम से कम पांच सौ जज तैनात किए जाएं तब उच्च न्यायालयों में लंबित मामलों में निजात मिल सकती है। वकीलों की महज तारीख बढ़वाने वाली सोच अगर चिंता पैदा करती है तो कानून की किताबों में लिखी इबारत से विपके लकीर के फकीर बन के बैठे जजों का अड़ियल रवैया भी मुश्किलों को कम नहीं कर रहा है।

महोदय, सरकार नई अदालतों और अतिरिक्त जजों के लिए संसाधन उपलब्ध कर कर जिम्मेदारी दिखा सकती है तो संसद मौजूदा कानूनों की विभिन्न अदालतों में होने वाली व्याख्या को नये कानूनों में डाल कर अदालतों का काम आसान कर सकती है। पुराने अप्रसंगिक और अप्रचलित कानूनों को समाप्त करने के लिए भी हमारी सरकार ने प्रभावी कदम उठाए हैं। न्यायिक प्रक्रिया में आमूल सुधार के लिए अदालतों का बोझ भी हल्का हो सकता है और लोगों को न्याय मिलने में देरी से रोका जा सकता है। न्यायपालिका में लोगों के विश्वास को बहाल करने के लिए तत्काल परस्पर सहमति से प्रभावी कदम उठाने की आवश्यकता है। हमें विश्वास है कि यह विधेयक अदालतों के बोझ को कम करने में भी काफी हद तक कारगर साबित होगा। इन्हीं शब्दों के साथ मैं अपनी बातों को विराम देना चाहूंगा। धन्यवाद।

**श्री राजेश रंजन (मधेपुरा) :** उपाध्यक्ष महोदय, सरकार न्यायालय की स्वतंत्रता या कार्यपालिका की स्वतंत्रता के लिए संसद की स्वतंत्रता को लगातार खतरे में डालती जा रही है। यह प्रत्येक सरकार में देखा गया है कि जब कभी पूंजीपतियों के लिए, उद्योगपतियों के लिए और खास आदमी के लिए इस देश में कोई विधेयक लाया गया है तो वह अध्यादेश के माध्यम से लाया जाता है। अधिकतर अध्यादेश गलत राह की ओर रहे हैं। आप आज वाणिज्य विधेयक को सदन में लाए हैं, लेकिन आपका अध्यादेश लाने का जो माध्यम है, वह सही नहीं है। आपको याद होगा कि मध्यस्थता की प्रथा शुरू से ही महत्वपूर्ण रही है। महाभारत के काल में भगवान कृष्ण पांडवों के लिए पांच गांव मांगने के लिए कौरवों के पास आए थे। भगवान राम ने भी युद्ध प्रारम्भ होने से पूर्व अंगद को मध्यस्थ बना कर रावण के पास भेजा था। ऐसे आदमी को मध्यस्थ चुना गया जो विश्वसनीय भी था और नैतिकता भी उसमें थी। यह मध्यस्थता कृष्ण और राम के माध्यम से थी, जिनका मकसद विश्व कल्याण, मानव कल्याण और धर्म की रक्षा करने के लिए था। वर्तमान में आप जो मध्यस्थता का बिल लाए हैं, उसमें आप जिनके माध्यम से मध्यस्थता करना चाहते हैं, उसमें मुझे आश्चर्य होता है कि आप कार्यपालिका और न्यायपालिका को आप स्वतंत्रता देना चाहते हैं, वह निश्चित रूप से लोकतंत्र के लिए आवश्यक है। लेकिन संसदीय प्रणाली की स्वतंत्रता को आप समाप्त कर रहे हैं। प्रणालीबद्ध बदलाव के माध्यम से न्यायसंगत उत्पादकता में सुधार के कारण आस्ट्रेलिया, अमेरिका और कनाडा में 70 प्रतिशत दीवानी मामले मुकद्दा शुरू होने से पहले ही सुलझा लिए जाते हैं। ऐसा इसलिए होता है कि मुकद्दे से जुड़े दोनों पक्ष संभावित समझौते और तारीख पर तारीख वाली अवधारणा से एक-दूसरे को अवगत करा लेते हैं।

मेरे दो-तीन आग्रह हैं कि जिन चीजों में राष्ट्र का विकास हो या जिन चीजों से भारत की समृद्धि हो और यह देश प्रगति की ओर जाए वैसे विधेयक आप लेकर आए। लेकिन सिर्फ पूंजीपतियों और उद्योगपतियों को सुख करने के लिए आप इस तरह के अध्यादेश न लाएं। जिसकी भी सरकार आती है वह सर्वोच्च न्यायपालिका को सुख करती है। हमारे मित्र प्रेमचंदन जी ने बहुत सारी बातें कह दी हैं, मैं भी उन बातों को यहां कहना चाहता था, मैं उन बातों को अब यहां दोहराना नहीं चाहता हूँ। मैं दो-तीन बातें कहना चाहता हूँ कि जजों की नियुक्ति की प्रक्रिया सही नहीं है। आप इसको एक बार स्टैंडिंग कमेटी में सारी चीजों में संशोधन के लिए इसको भेजें। प्रेमचंदन जी ने जिन-जिन प्वाइंटों को उद्धृत किया है, मैं उन्हीं को कहना चाह रहा था, उनको मैं यहां दोबारा नहीं कहना चाहता हूँ। हमारे छोटे भाई चौटाला जी ने कुछ प्वाइंट कहें और हमारे एक मित्र ने अभी सिविल केसों की बात कही है। उन्होंने बैंकिंग सिस्टम की बात कही है। गरीब और वंचित समाज के लोग इस देश में अधिक प्रभावित होते हैं। गरीबों के लिए या किसानों के लिए या असंगठित मजदूरों के लिए इस देश में अध्यादेश नहीं आया है। जब भी कोई अध्यादेश आया है, इस देश के खास आदमी के लिए, पूंजीपति वर्गों के लिए, सामंतवादी वर्गों के लिए आया है, सर्वसाधारण वर्ग के लिए नहीं आया है। मेरी आपसे विनती है, आग्रह है कि आप किसी भी सरल प्रक्रिया, प्रक्रिया बिल्कुल सरल हो, प्रक्रिया बिल्कुल स्वतंत्र हो, न्यायालय की स्वतंत्रता बनी रहे, इसके लिए आप पुनः एक समीक्षा करें और इसके लिए जरूरी है कि आप इसको वापस स्टैंडिंग कमेटी में भेज दें। स्टैंडिंग कमेटी के माध्यम से जब कोई निर्णय हो कर आता है तो पुनः आप इस विधेयक को यहां लाने का प्रयास करें।

THE MINISTER OF LAW AND JUSTICE (SHRI D.V. SADANANDA GOWDA): Mr. Deputy Speaker, Sir, at the outset I thank all the hon. Members who have participated in this debate. Even though the Bill is for a particular issue, my friends have traversed almost all the areas of the Judiciary, right from appointment of judges, criminal justice delivery mechanism etc.

HON. DEPUTY SPEAKER: That is the practice in the parliamentary system.

SHRI D.V. SADANANDA GOWDA: Yes Sir. I thank them only for this. There are so many areas which need to be taken care of and they have been brought to my notice by my friends here.

Now I would like to say few things about this Bill. What is the intention of bringing this Bill? I made it very clear to the House that the purpose of the Bill is to accelerate economic growth, improve the international image of the Indian justice delivery system, and the faith of the investor world in the legal culture of the nation. Today everybody spoke about ease of doing business and we all know what the ranking of our country is. But nothing has been done to take it forward. So, this is an attempt to take our country forward so that our ranking goes up in the Ease of Doing Business Index of the world. This Bill has been brought only with that aim in mind.

With regard to commercial cases, we need speedy and time-bound disposal. That is the need of the hour. Some of my friends have stated that in Singapore, the time consumed for disposal of a commercial dispute is 125 days and in our country it is more than four years. So, we need to improve the situation and we have to make an attempt to see that speedy disposal is brought.

Then, ease of doing business is another area which needs to be taken care of because we are a developing country. A country like India can go forward only when you accelerate this process. Commercial disputes require better understanding and specialization. So, continuously keeping some judges who are not specialized in the subject also creates delay in the disposal of the cases. Commercial disputes involve complex facts and complex question of law. Here, in the Bill we have made a provision as to how persons who are specialized in commercial matters would be posted and how they are to be trained. So, to say that this Bill has been brought only to favour some industrialists, big people and it violates article 14 of the Constitution is not correct. I do not understand the argument of my learned friend Shri N.K. Premachandran. He is one of the best parliamentarians I have seen. Now there are special courts like Family Courts to deal with family disputes; there are special courts to deal with corruption cases; there are *Gram Nyalayas* and TADA Courts etc. Similarly, commercial matters should be dealt with separately. So, this Bill does not violate article 14 of the Constitution and it does not infringe upon any right of poor people. I would like to inform my friend Shri N.K. Premachandran that by taking away commercial matters from the normal courts, they can deal with other cases quickly and speedy disposal can be brought about. Automatically, the number of cases will be lessened in that court and speedy disposal will also be there. We should see the other side of the coin also. When we say all these things, there should be some basis.

I would like to answer the question raised by hon. Satpathy ji. He raised two valid points. One of them is, what was the necessity of an Ordinance when the Bill was pending in the Rajya Sabha? Shri Premachandran has also raised the same issue. He also said when the Bill was pending and the Standing Committee has not submitted its Report, why have you brought out this Bill in this House in a hurried manner? Shri Premachandran knows very well that his friends are not allowing that House to function. Nothing can be taken there. At least, after hearing the debate in this House, let them think that this Bill is one of the best Bills and that should be passed in the Upper House. Recently, we passed a Bill, the Delhi High Court (Amendment) Bill, 2015 where we have enhanced the jurisdiction of the District Court of Delhi from Rs. 20 lakh to Rs. 2 crore. There were agitations and other things. Hon. Deputy Speaker knows it very well as to how the agitations were going on for a long time and finally we got this Bill passed. Almost all the parties supported this Bill. After it was passed, we got the President's assent, and we wanted to notify it. Meanwhile, the proposal of bringing this Commercial Courts Bill was also tabled. In Commercial Courts Bill, the original jurisdiction of the Delhi High Court is Rs. 2 crore and above. Once the Delhi High Court (Amendment) Bill is notified, automatically all the cases of commercial disputes below the value of Rs. 2 crore will be transferred to the District court. If the Bill relating to commercial disputes will be passed, then again the disputes of commercial nature of more

than Rs. 1 crore have to be taken back to the High Court. So, there will be confusion not only for the litigants and advocates but also there will be delay in the disposal of these cases. So, we thought it fit that both these legislations should be brought together. As a result, the Delhi High Court Bill was notified and simultaneously, the Commercial Courts Ordinance was promulgated. Afterwards, we wanted to bring the Bill before the Parliament. For that reason, I would like to inform my friend Shri Premachandran that this Bill is not there in the Upper House. It has already been withdrawn. Only this Bill, which you are debating here, is there. Satpathy ji, we promulgated this Ordinance in Delhi just to avoid confusion. Now, we are bringing this Bill before Parliament.

Sir, a few of our friends said that, it ought to have been referred to the Standing Committee again. The Standing Committee submitted its Report on the 9<sup>th</sup> of this month. When the Standing Committee was taking evidence from various stakeholders, the Ordinance was brought to the knowledge of the Standing Committee. In its Report everywhere they observed that this Ordinance has been promulgated and concurred with it. Except in a few areas, they concurred with the present Bill. Certainly, I can rely upon the 78<sup>th</sup> Report of the Commercial Courts and Commercial Divisions and Commercial Appellate Divisions of High Court Bill, 2015. This was the Bill which was withdrawn in the Rajya Sabha. ...(*Interruptions*)

SHRI M.B. RAJESH (PALAKKAD): The Committee has not concurred with one thing, that is, regarding appointment of judges. ...(*Interruptions*)

SHRI D.V. SADANANDA GOWDA: I have brought an official amendment after going through the Report. After seeing the versions of the Committee Members and the Chairman, I have brought an official amendment, which is before the House. ...(*Interruptions*) I will not again answer that because there may be views that the rights of the Legislature have been taken away and the rights of the State Government have been taken away. That will be complied with by bringing that amendment.

This Report says:

"The Committee also notes that the Ordinance issued by the Government has omitted Clause 14 of the Bill and thereby excluded all the six Tribunals/Boards from the appeal to be heard and disposed by the Commercial Appellate Division of the concerned High Court. The Committee is in agreement with such exclusion."

The Committee has observed in so many areas. It says:

"The Clause 5(3) of the Bill, however, gives that power to Chief Justice of the High Court concerned. This is not in conformity with provision under Article 233 of the Constitution. The Committee feels that the appointment of judges of Commercial Courts 'â€'

Finally, it says:

"The Committee also takes note of the Clause 3(3) of the Ordinance issued by Government on the 23rd October, 2015. The said Clause empowers the State Government in consultation with the concerned High Court to appoint judges of Commercial Court from the Higher Judicial Service of the State. The Committee feels that this Clause is in conformity with the constitutional scheme."

So, all the matters had been debated and discussed, and the 78<sup>th</sup> Report was submitted by the Committee.

My friends raised certain small queries. Some of the Members mentioned about pecuniary jurisdiction, and asked as to why it should be only Rs.1 crore and above. Some Member has said that it should be Rs.50 lakh; some other Member said that it should be more than Rs.10 crore or something like that.

Section 2 (1) (i) gives a direction to the Central Government to increase the limit, one of the corresponding requirements is that at any time the specific value by notification may be increased. After some time, if the Government feels, it can certainly enhance the pecuniary jurisdiction of the court as per the provision that is provided under the Act.

One of my friends asked as to why appeal has to be made in the High Court only. There are few High Courts in Chennai, Kolkata, Mumbai, Delhi, Himachal Pradesh, and other States. They have got some original jurisdiction. Where there is an original jurisdiction, the Commercial Bench will be established there and Commercial Appellate Division also will be there. That will be a Bench consisting of two judges. So, automatically the appeal will go from the original side to the appellate side. Other appeals will go directly from the district court to the appellate division. So, there is also clarity.

I do not want to explain Sections 3 and 4, which deals with the appointment of judges because this has been observed by the Committee and that Committee concurred with it.

Sir, some of my friends talked about judicial reforms, pendency of cases with regard to appointment of judges and all those things. Practically, my friend said that there is a huge pendency, it is increasing and no steps have been taken either by the Government or by the judiciary to reduce the pendency in the courts. It is not true. I will give certain facts. Shri M.B. Rajesh has raised this issue. The pendency in the Supreme Court as on 31-12-2012 was 66,692.

But as on 30/11/15 -- these are the latest figures, which I have collected. -- it has reduced to 58,870 cases. But I do concede this huge pendency should not be there.

SHRI M.B. RAJESH: Mr. Minister...(*Interruptions*)

SHRI D.V. SADANANDA GOWDA: Please wait. I will conclude, now.

Practically, there is a small decrease in the pendency. It has started, now. This Government has taken several initiatives and that is why so many cases have been disposed of rapidly in various courts.

Sir, about pendency in the High Courts, as on 31/12/2012, it was 44.34 lakh; and as on 31/12/2014, it had come down to 41.53 lakh. Now, have also started computation of courts. Phase I is completed; and the Phase II has already been taken up. We will computerize all the courts. As on today, we have computerized more than five crore disposed and pending cases. Nearly, 1.92 crore judgments have also been computerized.

Therefore, we are taking all these steps so that anybody, be it public, be it litigant, be it the Advocate or be it the Judge, can very well see how many cases are pending and how it can be taken up.

Sir, about pendency, in the District and Subordinate Courts, as on 31/12/2012, it was 2.68 crore but as on 31/12/2014, it had come down to 2.64 crore. So, the pending cases have been reduced by four lakh. The Lok Adalat is doing extremely well. About a week back, a Lok Adalat was conducted and nearly, 18 lakh cases have been disposed of by that Lok Adalat. Similarly, we have brought so many legislations, especially the Motor Vehicles Act, Negotiable Instruments Act, Commercial Disputes Act, and the Arbitration Act, which is tabled for consideration.

So, Sir, all these imitations have been taken up by this Government; and we will see that there will be a big reform in the Judiciary also. I hope that this Bill is one the most important Bills, which is the need of the hour. It will have a bigger impact on Judicial Reforms. Thank you.

HON. DEPUTY-SPEAKER: The question is:

"That the Bill to provide for the constitution of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes and for matters connected therewith or incidental thereto, be taken into consideration. "

*The motion was adopted.*

HON. DEPUTY-SPEAKER: The House will not take up clause-by-clause consideration of the Bill.

Prof. Saugata Roy – Not present.

Shri N.K. Premachandran

### **Clause 2 Definition**

SHRI N.K. PREMACHANDRAN (KOLLAM): Sir, I beg to move:

Page 2, *omit* lines 36 and 37." (3)

Page 2, line 40,--

*after* "immovable property"

*insert* "given as security or is subject matter of a commercial dispute".

(4)

Page 21, line 42,--

*after* "immovable property"

*insert* "given as security or is subject matter of a commercial dispute".

(5)

Page 3, *for* lines 17 and 18,--

*omit* "or such higher value, as may be notified by the Central Government". (6)

Sir, about my Amendments No. 3 to 6, I may be permitted to just explain. I am not against all these things. My point is that when we legislate things, they should be in proper sense. My first Amendment is regarding Section 2 -- Definition. My submission is about 'such other commercial disputes as may be notified by the Central Government.' I would appeal to the whole House that this is where we are going to start a new

precedent, by giving the Executive an authority to define what the legislature intends to legislate. This is not correct. That is my Point No.1. It is a harmless Amendment and I hope that the Minister will also reply on it as he forgot, while replying to the debate, to answer my submission, which I made during my speech earlier.

Sir, another Amendment is very, very important. I think it is a mistake on the part of drafting. *Explanation* says: '(a) it also involves action for recovery of immovable property'

Sir, kindly see. It says: '*Explanation*-- A commercial dispute shall not cease to be a commercial dispute merely because -- (a) it also involves action for recovery of immovable property'

That means, action for immovable property will also come within the purview of commercial dispute. My Amendment is harmless. You kindly go through it. Just that the proposal of Amendment coming from the Opposition will be negated, is not a healthy legislative process.

What is my amendment? My amendment is that it also involves action for recovery of immovable property given as security or subject matter of the commercial dispute. If the immovable property is the subject matter of the commercial dispute or if it is given as a security for the commercial transaction, then it will come within the purview of the commercial dispute, otherwise, all the actions for the recovery of the immovable property will definitely come within the purview of the commercial dispute. This is part one.

Part two is correct. The response is correct. The second part of the definition is absolutely correct. That will be a commercial dispute. So, here also, my suggestion is given as security or as subject matter of a commercial dispute, then the definition will come within the full definition of commercial dispute. That is the thing which I would like to say regarding these two amendments. Kindly approve these amendments.

HON. DEPUTY SPEAKER: I shall now put Amendment Nos. 3 to 6 to Clause 2 moved by Shri N.K. Premachandran to the vote of the House.

*The amendments were put and negated.*

HON. DEPUTY SPEAKER: Shri Adhir Ranjan Chaudhary – Not present.

The question is:

"That clause 2 stand part of the Bill."

*The motion was adopted.  
Clause 2 was added to the Bill.*

**Clause 3 Constitution of Commercial Court,  
Commercial Divisions and  
Commercial Appellate Divisions**

SHRI N.K. PREMACHANDRAN (KOLLAM): Sir, I beg to move:

"Page 3, line 35, -

*for* "one or more persons"

*substitute* "a person". (7)

"Page 3, line 36, *omit* "or Judges". (8)

Sir, in Clauses 7 and 8, a person will be appointed as a Judge. Here, persons will be appointed as judges of a court. Then, you have to draft 'of courts'. If you are drafting it and making it 'of a court', then it will be singular. That will be a person. That will be a person and the other one will be a Judge. There is nothing harm for the Government accepting these amendments because even the literal sense of this drafting is not correct for 'a judge' and 'a person'.

HON. DEPUTY SPEAKER: I shall now put amendment nos. 7 and 8 to Clause 3 moved by Shri N.K. Premachandran to the vote of the House.

*The amendments were put and negated.*

HON. DEPUTY SPEAKER: The question is:

"That clause 3 stand part of the Bill."

*The motion was adopted.  
Clauses 3 was added to the Bill.  
Clauses 4 to 6 were added to the Bill.*

### **Clause 7 Jurisdiction of Commercial**

#### **Divisions of High Court**

*Amendment made:*

"Page 4, line 20, -  
*after* "and filed"  
*insert* "or pending". " (19)

(Shri D.V. Sadananda Gowda)

HON. DEPUTY SPEAKER: The question is:

"That Clause 7, as amended, stand part of the Bill."

*The motion was adopted.  
Clause 7, as amended, was added to the Bill.*

### **Clause 8 Bar against revision application or**

#### **Petition against an interlocutory order**

SHRI N.K. PREMACHANDRAN (KOLLAM): Sir, I beg to move:

"Page 4, line 28, -  
*for* "including"  
*substitute* "except"." (9)

HON. DEPUTY SPEAKER: I shall now put Amendment No. 9 to Clause 8 moved by Shri N.K. Premachandran to the vote of the House.

*The amendment was put and negatived.*

HON. DEPUTY SPEAKER: The question is:

"That Clause 8 stand part of the Bill."

*The motion was adopted.  
Clause 8 was added to the Bill.  
Clause 9 was added to the Bill.*

### **Clause 10 Jurisdiction in respect of**

#### **Arbitration matter**

SHRI N.K. PREMACHANDRAN (KOLLAM): Sir, I beg to move:

"Page 4, *for* lines 47 and 48, -  
*substitute* "of under the Arbitration and Conciliation Act, 1996"." (10)

"Page 5, lines 4 and 5, -

*for* "the Commercial Appellate Division where such Commercial Appellate Division has been constituted in such High Court."

*substitute* "the courts having jurisdiction as per the Arbitration and

Conciliation Act, 1996." (11)

"Page 5, lines 10 and 11,-

*for* "the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted."

*substitute* "the courts having jurisdiction as per the Arbitration and

Conciliation Act, 1996." (12)

Sir, Amendment nos. 10 to 12 are also having correction which I am proposing. Everywhere in the provisions, it is being said that "Commercial Appellate Division where such Commercial Appellate Division has been constituted in such High Court". There is no need of saying so. Under the Arbitration and Conciliation Act, that will be the proper drafting of the Bill. If the Government is interested, I am that moving that amendment.

HON. DEPUTY SPEAKER: I shall now put Amendment Nos. 10 to 12 to Clause 10 moved by Shri N.K. Premachandran to the vote of the House.

*The amendments were put and negatived.*

*Amendments made:*

"Page 4, for line 47, -

*substitute* "of by the Commercial Division where such Commercial Division (20)

Page 5, line 4, -

*for* "Commercial Appellate Division"

*substitute* "Commercial Division". (21)

Page 5, line 5,-

*for* "Commercial Appellate Division"

*substitute* "Commercial Division". (22)

(Shri D.V. Sadananda Gowda)

HON. DEPUTY SPEAKER: The question is:

"That clause 10, as amended, stand part of the Bill.

*The motion was adopted.*

*Clause 10, as amended, was added to the Bill.*

*Clauses 11 and 12 were added to the Bill.*

HON. DEPUTY SPEAKER: Prof. Saugata Roy – Not present.

Shri Adhir Ranjan Chowdhury – Not present.

The question is:

"That clauses 13 to 19 stand part of the Bill."

*The motion was adopted.*

*Clauses 13 to 19 were added to the Bill.*

### **Clause 20 Infrastructure facilities**

HON. DEPUTY SPEAKER: Shri B. Vinod Kumar to move Amendment No.16 to clause 20. Are you moving?

SHRI B. VINOD KUMAR (KARIMNAGAR): Sir, I beg to move:

"Page 7, *after* line 28 *insert*,--

"(2) The Central Government shall constitute a panel of eminent and objective financial experts comprising of chartered accountants, company secretaries, economists, tax lawyers and such other experts who may be consulted by the Commercial Courts, Commercial Divisions or the Commercial Appellate Divisions of High Courts on the relevant subject matter." (16)

Sir, this amendment is only to fine tune Section 20. Section 20 deals with training and continuous education for the judges. This amendment, which I moved, is with regard to having financial experts. In the event if the judges want to have an expert opinion, they may take their opinion. So, in order to have that facility, I am moving this amendment because this is fine tuning the existing Act. I hope the Minister will accept this amendment.

HON. DEPUTY SPEAKER: I shall now put Amendment No. 16 to Clause 20 moved by Shri B. Vinod Kumar to the vote of the House.

*The amendment was put and negatived.*

HON. DEPUTY SPEAKER: The question is:

"That clauses 20 and 21 stand part of the Bill."

*The motion was adopted.*

*Clauses 20 and 21 were added to the Bill.*

HON. DEPUTY SPEAKER: Shri Adhir Ranjan Chowdhury – Not present.

The question is:

"That clauses 22 and 23 stand part of the Bill."

*The motion was adopted.*

*Clauses 22 and 23 were added to the Bill.*

### **Schedule**

HON. DEPUTY SPEAKER: Shri B. Vinod Kumar to move Amendment Nos. 17 and 18 to Schedule.

SHRI B. VINOD KUMAR (KARIMNAGAR): I beg to move:

"Page 19, *after* line 28 *insert*, --

"4A. The Court shall, in addition to recording the oral evidence of witnesses, also ensure video recording of the same." (17)

"Page 20, *after* line 38, *insert*,--

"Provided that not more than three adjournments shall be granted." (18)

It is the same thing here also.

HON. DEPUTY SPEAKER: I shall now put Amendment Nos. 17 and 18 to Schedule moved by Shri B. Vinod Kumar to the vote of the House.

*The amendments were put and negatived.*

HON. DEPUTY SPEAKER: The question is:

"That the Schedule stand part of the Bill."

*The motion was adopted.*

*The Schedule was added to the Bill.*

HON. DEPUTY SPEAKER: The question is:



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

*The motion was adopted.*

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

HON. DEPUTY SPEAKER: The Minister may now move that the Bill, as amended, be passed.

SHRI D.V. SADANANDA GOWDA: Sir, I beg to move:

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

HON. DEPUTY SPEAKER: The question is:

"That the Bill, as amended, be passed.

*The motion was adopted.*

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