

Sixteenth Lok Sabha

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Title: Combined discussion on the Statutory Resolution regarding disapproval of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts(Amendment) Ordinance, 2018 and passing of Commercial Courts, Commercial Division And Commercial Appellate Division of High Courts(Amendment) Bill, 2018 (Resolution Negative and Bill Passed).

HON. DEPUTY SPEAKER: Now, let us take up Item Nos.13 and 14 together. Shri N.K. Premachandran.

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

“That this House disapproves of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018 (No. 3 of 2018) promulgated by the President on 3<sup>rd</sup> May, 2018.”

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF ELECTRONICS AND INFORMATION TECHNOLOGY (SHRI RAVI SHANKAR PRASAD): Sir, I beg to move:

“That the Bill to amend the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, be

taken into consideration.”

Sir, today is a very historic day when I am moving the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018. This Bill is a larger narrative pursuant to ensuring India's performance in 'ease of doing business', ensuring quicker adjudication of commercial disputes. Most importantly, a proper pre-litigation mediation is being involved in doing this.

First of all, I would like to share with this hon. House the importance of 'ease of doing business'. Ease of Doing Business is the ranking given by the World Bank based on what type of criteria you have for enforcing contract, for tax compliance, for regulatory compliance etc. I am very happy to share with the House that when we had come to power, we were at 142<sup>nd</sup> place in the ranking and now, we have jumped 42 points and India today is at 100<sup>th</sup> rank as far as 'ease of doing business' is concerned. Everything has been done with the cooperation of the House, reform measures taken, good governance and transparent governance.

Sir, we had come with the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill in 2015. When this Act came into being, we had given an exception. What was the exception? We have two systems. Delhi High Court has original jurisdiction and so has the Bombay High Court, Madras High Court, Calcutta High Court and Himachal Pradesh High Court. Therefore, they were given exemption. The suit had to be filed there in the Commercial Appellate Division. In the rest of the country, as you know, whether it is in

Patna, Raipur or Bhubaneshwar, a suit even of Rs. 5,000 crore will be filed in the district court. Then, it goes to the High Court.

Sir, we had kept the original pecuniary jurisdiction at rupees one crore in the High Court and, say, in Mumbai, it was Rs. 50 lakh and somewhere else, it was Rs. 25 lakh and like that. Now, a question arose whether we are discriminating between a small commercial dispute and giving fast track adjudication only to the big commercial disputes. India is a huge country and in this huge country, we must have adequate space for fast track adjudication of commercial disputes so that the person can take a call to remain there or not to remain there.

Sir, kindly see the whole issue of partnership disputes. It is, again, a commercial dispute. Supply is a services' dispute. They keep on lingering and lingering. It also impacts the financial health of the country. I only need to share with this House that India today is becoming one of the topmost economies of the world. As per the World Bank and the IMF, the largest amount of FDI has come into India. India today is being toasted as an important economic engine of the overall global economic narrative.

Good governance is also an important component of an economy. Good governance is not only of ordinary civil disputes, criminal disputes, which must be given a focus, but also of commercial disputes.

Sir, if you see the original Act, we have given a very expansive definition of what a commercial dispute is all about. After I hear my distinguished friends, hon. Members of this House, I will elaborate that by way of an initial comment.

When we came with this amendment, we said '....bring it to rupees three lakh from rupees one crore, but we must give latitude to the State Government and the High Court to take a call so that the amount of rupees three lakh should not become completely a base parameter for that.' For instance, in Uttar Pradesh, Agra can have more litigation of commercial nature. Maybe, Badaun may not have. The State Government may take up a proposal to club three or four districts together. In Tamil Nadu, there are many areas which are commercially very viable. There will be a higher number of commercial disputes in some areas while in some other areas, they may be in a smaller number.

In case of Maharashtra, Pune area has more commercial disputes than other areas. Then we came to the conclusion that a State Government, in consultation with the High Court, can create commercial courts as required.

I thought, I must convey to this House the total number of Commercial Courts. Sir, at present, there are 214 Commercial Courts in the country and there are 25 Commercial Appellate Divisions in 16 High Courts; 12 commercial divisions are there in other High Courts. A total number of 2164 cases of the value of Rs.1 crore and above are pending.

When we were drafting the law, there was a question. Suppose, there is a commercial dispute of Rs.5 lakhs, should we go to the High Court for appeal? In this law, what we have done is that there will be an Appellate Division at the district level for a smaller dispute.

The most important thing I would like to share with this House is that we must promote pre-mediation resolution of disputes. Suppose, two

partners have fallen out. If, by the intervention of mediators, the disputes can be resolved, we must give a chance for pre-mediation resolution of disputes.

Sir, one thing I would like to share with this House is that this is the most important commercial law initiative perhaps in the entire world where pre-mediation initiative has been given a very important focus. Suppose one partner has run away with all the profits. Then we need interim protection from the court. Therefore, the law says, 'except in the case of urgent interim relief, every commercial dispute must go to the mediation first'. Three months' period has been prescribed. First, you should use it. If you are not able to resolve, then come to the court. Therefore, pre-mediation litigation resolution is an important milestone.

Sir, one thing I would like to share with this hon. House is that I am not creating any new mechanism of mediation. Under National Legal Service Authority, mediators are there all over the country. We are making use of their services.

Sir, I only want to inform this House that there are 408 Alternative Dispute Resolution Centres in the country. There are 577 Mediation Centres; 11027 mediators are there. There are 4588 judicial officers as mediators. Therefore, a huge number of trained mediators are available.

We have also a provision of 48 hours training of new mediators. I want to share my experience with this House. Suppose, some retired Secretaries of India want to become mediators, let us use their services. Some retired CEOs of banks want to become mediators. Suppose a public man, for example, Members of Parliament wants to become a mediator as

pro bono, we should welcome it. They can go to the crux of the matter because of their vast experience and ask the parties to resolve the dispute.

Therefore, in commercial disputes, this enormous focus on use of alternative dispute mechanism forum is a very important component of this Bill.

But I would like to dwell upon the larger narrative/perspective behind all these things. A speedy resolution of dispute is also a part of good governance. If we have to have good governance, we must have mechanism for speedy disposal.

Sir, in the morning, I had an occasion to address the first question on the issue of access to justice and alternative dispute mechanism. We are also doing a lot of things in this regard. I would like to share with this House my opening comment on this. Let us take the case of appointment of High Court judges. We have increased the number. You were the hon. Deputy Speaker during 2014-15. Due to NJAC, the entire formula had been stayed except a few. We have our reservation with that. But once that decision came about, what did we do? We appointed 126 High Court judges which was the highest in the last 30 years.

In 2017, we had appointed 115 High Court judges. In 2018, we have appointed 34 High Court judges; we have sent 126 judges to the Supreme Court Collegium for appointing as judges. Sir, by this year's end, by God's willing, we will cross the highest number of appointments of High Court Judges ever in one year. The judges of Supreme Court have been appointed. About 300 to 400 judges have been confirmed.

Sir, I can anticipate the questions of my distinguished friends about subordinate judiciary. There also, we have given infrastructure where about 5,000 vacancies are there. Many of the persons present here are aware of it as I had mentioned it. While debating this issue on Commercial Court, I am going to urge the High Courts and the Supreme Court of India to ensure that these 5,000 vacancies of the Subordinate Judiciary are also filled at the earliest. I am saying this because we do not have any power nor the State Governments have any power in it. Many High Courts conduct their examination themselves or upon their recommendations the State Public Service Commission does it.

But what I said in the morning, I will say the same thing in my concluding comment while moving this Bill. If we need to have access to justice, then we must have competent judges -- well trained judges. Today, the National Law School is producing a good number of advocates, but my Government is equally committed to the deprived sections of India, namely, the SCs, STs, OBCs and minorities who also must get proper exposure in judiciary and proper training.

I think that the Subordinate Judiciary is the best place for this. Let there be a centralized examination. But what is important is that we want to showcase to the world that even in small disputes of commercial nature legal system is available to fast-track that proceedings.

This is how the whole architecture is there. I suppose that the entire House will support this Bill fully. Sir, I am grateful for this opportunity.

SHRI N.K. PREMACHANDRAN : Sir, I rise to oppose the Commercial Courts, Commercial Division & Commercial Appellate Division of High Courts (Amendment) Ordinance 2018. ... (*Interruptions*)

SHRI RAVI SHANKAR PRASAD : Sir, can I say something on a lighter note? Mr. Premachandran is a very good friend of mine.

HON. DEPUTY SPEAKER: He is a good lawyer.

... (*Interruptions*)

SHRI RAVI SHANKAR PRASAD : He has been together with me in the other House also. But I learnt to my dismay that in the last four years he has not supported any Bill. I think that for this Bill he should make an exception.

SHRI N.K. PREMACHANDRAN : I fully agree with the hon. Minister, but I am strongly opposing the Ordinance route of legislation. I have not spoken about the Bill. I will come to it at a later stage.

In this Monsoon Session, this august House is discussing the fifth Ordinance, and Statutory Resolution has been moved against all these five Ordinances.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF WATER RESOURCES, RIVER DEVELOPMENT AND GANGA REJUVENATION (SHRI ARJUN RAM MEGHWAL): One more is remaining to be discussed.

SHRI N.K. PREMACHANDRAN : Yes, the National Sports University Bill is remaining, which is also listed for discussion today.

As the hon. Minister, Shri Ravi Shankar Prasad, has rightly stated in this House that I had the fortune to move four Statutory Resolutions out of five. I cannot understand the logical reasoning of the Government regarding the promulgation of Ordinance one after the other. What is the emergency or exigency or urgency in issuing this Ordinance under Article 123 of the Constitution?

The hon. Minister, in his opening remarks, has stated or has made observations regarding the contents of the Bill. But I would like to know this from the hon. Minister, and that is the main point that I want to highlight in this august House. What is the urgency, exigency or necessity or what are the compelling circumstances, which prompted the Government to promulgate an Ordinance using the office of His Excellency the President of India?

I know that it is unfair on my part to say about the significance and ingredients of Article 123 or under what circumstances an Ordinance can be promulgated since the hon. Minister is the best legal luminary, and he is well aware of the provisions of the Constitution than anyone in this House. So, I need not explain it here as it will be unfair on my part if I am explaining it to him. Since he is fully conversant about the Constitutional provisions and the fact that Article 123 can be applied only in the case of extraordinary circumstances when the House is not in Session and some urgent action is required, then only this weapon shall / can be used.

If we go through the Statement of Objects and Reasons, paragraph three states that :

“As Parliament was not in session and immediate action was required to be taken to make necessary amendments in the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, to further improve India's ranking in the 'Doing Business Report', the President promulgated the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018 on 3rd May, 2018.”.

So, I would like to get a clarification from the hon. Minister as to what was the urgency to promulgate this Ordinance. That is my question.

Sir, regarding the nomenclature of the Bill, I would also like to suggest the hon. Minister that the long title and the short title of the Bill should also be changed. It is very difficult to pronounce it even in the court of law. If we want to quote the Sections of a particular provision of the Commercial Courts, Commercial Divisions, Commercial Appellate Division of the High Courts Act, it is very difficult to pronounce. The nomenclature of this Bill should be changed. I would like to pronounce it as Commercial Courts Act.

The original Act is Commercial Courts Act itself which was brought through an Ordinance. This was brought into public domain through an Ordinance on 23<sup>rd</sup> October, 2015. Yesterday also, the same point was raised. The other Bill which we discussed yesterday also came into public domain as an Ordinance. Subsequently, if an Act has come into existence in the public domain through the Ordinance route of legislation, again and

again, the amendments would also be brought through the route of Ordinance. It is not a good practice of parliamentary democracy. I would like to say that the Government is systematically undermining the parliamentary system of our country. This is quite unnecessary to opt for the route of Ordinance Legislation.

Let us examine the urgency of the Ordinance. I fully agree with the hon. Minister. He has already explained that the entire purpose of the original Act is to bring a fast-track mechanism for disposal of commercial disputes for which a commercial court is established at the level of district judge which is mentioned in the original Act and a provision of separate division is there in the High Court. Third, a Commercial Appellate Division in the High Court has to be constituted. These are the original provisions of the original Act. The Ordinance is now promulgated to amend the existing Act of 2015.

Sir, there are four important proposals or amendments which have been brought in the Ordinance. First is to reduce the specified value of commercial dispute from Rs. 1 crore to Rs. 3 lakhs and the parties to the dispute can approach the lowest level of subordinate courts for speedy resolution of commercial disputes. So, two intentions are there. First one is that a specified value of the commercial dispute which is reduced to Rs. 3 lakhs from Rs. 1 crore and the lowest subordinate judiciary can also act since the value has been decreased to Rs. 3 lakhs.

Second is about enabling the State Governments to constitute commercial courts at the level of district judge in respect of High Courts having original civil jurisdiction. As the hon. Minister has rightly pointed

out, Delhi, Mumbai and Chennai High Courts have original civil jurisdiction. At the level of district judge, commercial appellate jurisdiction is given. That is also a good suggestion.

Third is about enabling the State Governments to constitute designated commercial appellate courts at the level of district judge to exercise the appellate jurisdiction over the commercial courts below the level of district judge. That means for all the commercial disputes coming before the subordinate courts of the district court, appellate authority will be the district judge for which this Amendment has been brought.

The fourth one is to provide compulsory mediation before institution of a suit. I fully agree, this is the positive outcome of the Bill. The best thing that the Government has done in this Bill is the last one, i.e. chapter 3A, that is an amended chapter incorporating Section 12(a) by which the mediation before the institution of a suit is a welcoming step.

Sir, I would like to know from the hon. Minister as to what is the urgency in giving effect to these four amendments. Was there any urgency or any compelling situation prevailing so as to promulgate the Ordinance? Is it in order to give effect to these four Amendments from 31<sup>st</sup> May, 2017? What are the instances which have happened after 31<sup>st</sup> May, 2018 till the commencement of this Session?

Sir, regarding the Bill, I have certain reservations and I am seeking some clarification from the hon. Minister because I am not fully aware of the impact of this Bill. When the commercial courts are being constituted, what would be their impact? It is not very clear as far as I am concerned. I

am not opposing the Bill in toto but I have some reservations regarding the spirit of the Bill.

Today morning the hon. Minister answered a question about the pendency of cases before the Supreme Court and in subordinate courts. Arrears Committees have been constituted to reduce the number of pending cases. In 24 High Courts, Arrears Committees have been constituted. The Government is also trying and initiating action to minimise the pendency of suits and litigations before the courts of law. When we are making complaints regarding pendency of suits in various courts, we the Parliament and the Government have to keep in mind that we are further overburdening the judiciary by making enactments one after the other. While we are making new legislations and making new areas of litigation, we are not creating the proportionate judicial infrastructure. New courts are not being constituted. At a time when courts are overburdened with pending litigations regarding civil, criminal and many other cases, we are designating our courts as Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of High Courts. Giving preference to these cases will definitely adversely affect the other pending cases. That is the first reservation which I would place before the hon. Minister. Particular courts are being designated as Commercial Courts and certain Divisions of High Courts will be designated as Commercial Divisions and certain High Court Benches will be designated as Commercial Appellate Divisions of the High Courts. When you are doing all this, what will happen is that the courts have to give preferential treatment to these cases. It will then definitely adversely affect the other cases which are pending

before the court and the pendency of the litigation will increase. That is the first reservation that I have.

Crime is an offence against the State. Commercial disputes are also there. My apprehension is that when a criminal appeal which is being tried before a High Court Division or High Court, what will happen to the criminal appeals when such a High Court has been designated as a Commercial Court of Appellate Jurisdiction? When there is a long pendency of criminal appeals under High Court jurisdiction, at the same time we are designating that particular court as a court of appellate jurisdiction for commercial disputes, definitely the pendency of cases will be more. That is why I would like to say that indirectly it is affecting all other pending cases because you are giving preferential treatment to the cases of commercial disputes on the ground that ease of doing business is the prime motto of the Government. On that basis the Government is doing this. On that I would like the Minister to clarify.

Mr. Deputy Speaker, Sir, you may kindly see that there are so many special courts. Day before yesterday we were discussing the issue of trafficking of women and children. There also it was said that special courts will be constituted. We are actually not creating special courts, we are only designating the existing courts which are trying the offences, as special courts. That is the problem. That is why I say that whenever the Government comes with a legislation as a result of which there is possibility of increase in litigations, proportionate increase in judicial infrastructure has to be made. The number of courts, the number of judges, etc., should also be increased proportionately. Otherwise it will be affecting the other pending cases adversely and those cases will be the

cases of the poor people in the country. We have the juvenile courts of justice, SC/ST atrocities courts, family courts and many other courts.

Sir, the Government is reducing the specified value of a commercial dispute from Rs.1 crore to Rs. 3 lakh. I would like to ask the hon. Minister whether he has conducted any impact study on this. Suppose Rs. One crore is the specified value of the commercial dispute, you are decreasing it to Rs. Three lakh. In section 2(c), there are 22 items which are relating to the commercial disputes. Supposing all these 22 items of disputes in which the quantum of the specified value of the commercial dispute comes to Rs. Three lakh, our courts will be flooded with petitions of commercial disputes. What will be the fate of other civil cases?

This commercial dispute, according to me, is just like a civil dispute. What is the significance of it? If the value is Rs one crore and above, we can understand because the pecuniary jurisdiction will be increasing. Here in this case, what will be the impact? Suppose if it is being done, to my knowledge even a *munsif* court or even a magistrate court, subject to the pecuniary jurisdiction, can be declared or designated as a commercial court because of which other cases will suffer. When the specified value of the dispute comes to Rs. Three lakh, almost all the disputes relating to the commerce will be within the purview of the definition in clause 2(c) that is commercial dispute. Courts will be flooded with commercial disputes and thereby all other cases and disputes relating to various subjects will be insignificant or irrelevant in a court of law. So, I could not understand the logic of reducing the specified value of a commercial dispute to Rs. Three lakh. The hon. Minister has just stated that by doing this, poor petitioners will be able to file their petitions. For this, civil remedy is there. They can

very well approach the *mansif* court or the concerned court so as to redress their grievance. Suppose A is having an agreement with B and there is a violation of agreement and the specified quantum is Rs. 3 or 4 lakh, he is getting a preferential treatment to go to a commercial court and get the redressal at the earliest. What about other individual transactions of civil nature? The preference which is being given is illogical and there is no reasonable justification to have this preferential treatment to this particular commercial dispute.

I fully agree and accept the new proposal of pre-institution mediation and settlement for which a new chapter has also been brought in. I fully agree to it and I congratulate the Minister. This is the best course of action because we are having the Legal Services Authorities Act and it is functioning very well. So, the pendency of litigations can be reduced.

When all these amendments and enactments are being done to achieve the goal of ease of doing business and to accelerate the economic growth and improve the Indian justice delivery system, my humble submission to the hon. Minister is that acceleration of economic growth should not be at the cost of the common man. When you are giving preferential treatment in the adjudication of commercial disputes that is the disputes of business people, delivery of speedy and effective justice to other sections of the society should not be compromised or should not be suffer. Since there is no urgency in issuing an Ordinance of this nature, I oppose the promulgation of Ordinance and I support the Bill subject to the reservations and apprehensions which I have already made and for which I am seeking clarification. With this, I conclude.

HON. DEPUTY SPEAKER: Motions moved:

“That this House disapproves of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018 (No. 3 of 2018) promulgated by the President on 3rd May, 2018.”

and

“That the Bill to amend the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, be taken into consideration.”

**श्रीमती मीनाक्षी लेखी (नई दिल्ली) :** आदरणीय उपाध्यक्ष जी, बहुत-बहुत धन्यवाद कि आपने मुझे व्यावसायिक अदालतें, उच्च न्यायालय की व्यावसायिक डिविज़न और व्यावसायिक एपेलेट डिविज़न (संशोधन) अधिनियम, 2018 पर बोलने का मौका दिया। ... (*Interruptions*)

SHRI MALLIKARJUN KHARGE (GULBARGA): Hon. Deputy Speaker Sir, this is the privilege of the Opposition. You should give chance to the Member from Opposition to initiate the debate; he is ready. Every day, the initiation goes to the ruling party. The concerned Minister has already made his comments. They can wait. At least you can give the chance to the Opposition. Always this has been done and you are doing it. I don't know why you are doing it. Since yesterday, this has changed.

SHRI ARJUN RAM MEGHWAL: Sir, there is a mention here that item Nos. 13 and 14 may be discussed together. ... (*Interruptions*)

SHRI MALLIKARJUN KHARGE: We are not objecting to that. When the hon. Deputy Speaker said that, we kept quiet. ... (*Interruptions*)

Our submission is that the initiation should come from this side. ....  
*(Interruptions)*

HON. DEPUTY SPEAKER: You raised this yesterday also. So, I want to say something regarding this.

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... *(Interruptions)*

HON. DEPUTY SPEAKER: Smt. Meenakashi Lekhi, you may continue now.

**श्रीमती मीनाक्षी लेखी (नई दिल्ली) :** उपाध्यक्ष महोदय, यह कानून अदालत की व्यवस्था और व्यापारिक गतिविधियों के बीच में सामंजस्य बैठाने की एक कोशिश है। दिल्ली व्यापार का केन्द्र है। मुझे लगता है कि यह मुद्दा व्यापारियों के हितों और व्यवस्था से जुड़ा हुआ है। जहां व्यापार है, वहां विवाद है। जैसे-जैसे उद्योग और व्यापार बढ़ेगा तो यह एक सामान्य प्रक्रिया है कि वहां-वहां विवाद भी बढ़ेगा। उन सब विवादों का हम सही तरीके से निपटारा कर सकें, इसकी व्यवस्था भी हमें देश में खड़ी करनी होगी।

अंतर्राष्ट्रीय स्तर पर भी अगर दो देशों के बीच में कोई झगड़ा होता है, तो वर्ल्ड ट्रेड ऑर्गेनाइजेशन (डब्ल्यू.टी.ओ) के रूप में वहां पर व्यवस्थाएं बनी हुई हैं, जिसके जरिए उन विवादों को सुलझाया जा सकता है। घरेलू स्तर पर जब व्यापारियों के बीच अगर सरकार के साथ या आपस में कोई भी झगड़ा होगा या किसी भी किस्म के विवाद उत्पन्न होंगे तब ऐसी व्यवस्था को ठीक करने के लिए हमें एक समुचित व्यवस्था बनानी है। हाल फिलहाल में कई ऐसे कानून देश में बदले गए, चाहे वह स्पेसिफिक रिलिफ एक्ट हो या ऑर्बिट्रेशन एक्ट हो, तमाम

ऐसी चीजों को बदला गया ताकि देश में व्यापार की व्यवस्था ठीक हो सके। उसी व्यापारिक व्यवस्था को ठीक करने के लिए 2015 में एक कानून आया, जिसको कॉमर्शियल कोर्ट्स, कॉमर्शियल डिवीजन एंड कॉमर्शियल एप्पेलेट डिवीजन ऑफ हाई कोर्ट्स के एकट के नाम से दिया गया। उसके अंदर हाई कोर्ट्स में और जिला स्तर पर व्यावसायिक अदालतों की स्थापना करने की व्यवस्था थी। कुछ चार्टर हाई कोर्ट्स ऐसे हैं, जिनके पास ओरिजिनल ज्यूरिडिक्शन है जैसे दिल्ली हाई कोर्ट और कई ऐसी हाई कोर्ट्स हैं जहां पर ये ज्यूरिडिक्शन उपलब्ध नहीं हैं। इसी व्यवस्था को ठीक करने और तेजी से इन विवादों को समाप्त करने के लिए इस कानून का प्रावधान किया गया है। देश में विदेशी निवेश बढ़ रहा है। FDI is on the high. कामर्शियल लिटिगेशन भी बढ़ रही है और व्यापारिक लेनदेन में भी वृद्धि हो रही है। इसी के चलते विदेशी निवेशकों को हमारी ज्यूडिशरी और हमारे लीगल सिस्टम की एक सकारात्मक छवि मिले, उस दिशा में यह एक अच्छा कदम है। हाई कोर्ट्स में व्यावसायिक डिवीजन उसी के आधार पर बनाई गई है। व्यावसायिक डिवीजन और अपीलीय डिवीजन के मध्य में मई के महीने में 2018 में इस आर्डिनेंस को लाया गया था, लेकिन इस संशोधन का मूल है कि व्यवसाय को कैसे आसानी से किया जा सके। मंत्री साहब ने यह बात पहले कही है कि हमें ईज ऑफ डूइंग बिजनेस की रैंकिंग में सुधार करना है। 130वीं रैंकिंग से हम 100वीं रैंकिंग पर पहुंचे हैं, लेकिन अधिक से अधिक हमारी रैंकिंग और बढ़े, ऐसा संदेश हम पूरी दुनिया में दे सकें। ईज ऑफ डूइंग बिजनेस की हमें रैंकिंग बढ़ानी है और वर्ल्ड बैंक के जो क्वाइंटिफाइबल पैरामीटर्स हैं, उन पैरामीटर्स के तहत यह एक कदम है।

Repeatedly, Shri Premachandran has asked as to why the jurisdiction has been brought down to Rs.3 lakh instead of Rs.1 crore. The answer to that is, when a study was made - it nearly takes about four years, 1420 days, to resolve any smallest commercial litigation - as per 2013 record, 32,656 civil cases were pending in various High Courts and 52 per cent

were commercial disputes. When he is talking about reduction in the number of cases and benefit to common man, traders, small traders are also common people. They also help in the growth of GDP. Their pain needs to be resolved so that the circulation of money is increased. Premachandran ji asked as to whether there is any study made. I would like to say that yes, there is a study and as per that study in 2013, 32,656 cases are pending and 52 per cent of that litigation happens to be the commercial disputes. Most commercial disputes, especially of high value, have an impact on the financial investment and economic activity in the country.

Sir, the Law Commission in its 253<sup>rd</sup> Report, submitted in 2015, also recommended quick disposal of commercial cases and commercial disputes which require special expertise. There are lawyers who can practice on all sides. But, you get trained in certain format and under this particular aspect the commercial courts have been separated. This Act of 2015 was enacted to fast track the disposal of high value commercial disputes by establishing Commercial Courts at the district level and Commercial Divisions and Commercial Appellate Divisions at the High Court to adjudicate upon commercial disputes such as disputes relating to construction and building contracts and goods and services as well.

Now, what really has transpired in December 2017? As has already been mentioned by the hon. Minister, in December, 2017, the Government had established a total of 247 commercial courts across the country. But, the non-exhausted list of 22 disputes, termed as commercial disputes, has also been brought in. To increase the efficiency of the system, there are still many enactments and many things which we need to correct and this

is just one part of the correction to improve the ease of doing business. By bringing the jurisdiction to three lakhs, we will actually be bringing judicial accessibility to a wider audience and to a larger number of people. By making it available to a larger number of people, we will be resolving a larger number of disputes. It is in this context that the jurisdiction has been reduced after studying the data in detail.

This particular amendment has been brought in with the specific value which was determined under Section 2 (1) (i), where the minimum pecuniary jurisdiction is mentioned, which was one crore earlier before the Ordinance, now it has been brought to three lakhs. This jurisdiction will initiate more such disputes to have a faster disposal.

As I have mentioned earlier, under the Charter, there are Chartered High Courts and non-Chartered High Courts. So, certain original jurisdictions are vested with certain High Courts and not with every High Court. This was one impediment in establishing commercial divisions. So, there was a bar of some sort. To do away with the bar, this particular enactment has been brought in and this is another major change which has been brought in through this particular Bill.

The third aspect of the commercial appellate court is that normally at the District Level, either a District Judge or a Judge below the level of District Judge, will be notified as the Commercial Court Judge. Then the appeal need not go to the High Court. The appeal can go to the District Judge. That is also a part of this particular enactment.

Now, I come to mediation. A completely new chapter has been added. I think we must welcome this particular aspect. The most pre-litigation

mediation, which was non-existent and specially keeping the commercial disputes in mind, I think, this is a leaf we have taken out of the Italian Jurisdiction. In Italy, there has been a study that the efficacy of the system has been maintained and we have tried to replicate that by introducing this particular chapter in the entire Act. This chapter makes a couple of changes. First, it puts a time limit on the mediation. It is in three months in which a mediation process has to end. Second, in case where both sides agree and where both sides are in agreement, the mediation period can be extended by two months and that also has to be in writing. Third, whatever is decided in this particular mediation process, will be treated. Otherwise we have to move to the court in suit to make that particular order as a compromise and an agreement between the parties. Now automatically, a mediation order, whichever is passed between the parties, becomes a certified order and becomes an arbitral award. That change has also been brought in to the arbitration act which reduces the burden.

So, again I am answering the question asked by Shri N.K. Premachandran that as to why it has been brought down to three lakh rupees. The moment we make it three lakh, more and more number and a larger population will be able to access this methodology. Through mediation, we can end half of litigation. What everyone wants is some interest variation and a kind of dispute which can be resolved. So, after resolution, the order in the mediation cell achieves finality and is accorded the status of an arbitral award, which is fantastic. The present amendment Bill intends to do the same.

Now, I come to the issue of transfer of counter claims. There was a problem in transferring the counter claims. Now, with this, we have even

resolved that particular issue. Earlier, if a civil suit was involving at least Rs. 1 crore, it could not be transferred. But, it can now be transferred if a person specifically wants the case to be transferred to the commercial division.

I am again going back to ease of doing business. The ease of doing business is a global indicator where a quantitative mechanism by the World Bank has been established. It prepares a very credible and widely accepted nation's ranking on the index. This ranking is based on 10 sub-indices which contains qualitative measures of regulation for starting a business, dealing with construction permits, employing workers, registering property, getting credit, protecting investors, taxes, trading across borders, and enforcing contracts which is the primary purpose of this enactment. Earlier, we made that amendment even in the Specific Relief Act in 2018 itself.

As regards getting an electricity connection and closing a business, now this is very pertinent. India enjoys the disrepute for its ability to handle insolvency cases. We have improved from 136 to 103. So, we have jumped 30 ranks. This contributed the top most help which India needed to change its fortune. It is because the World Bank Ease of Doing Business ranking was low for a long time. The country enacted to fasten the process of winding up losing businesses.

What is happening is that when you start a business which is not making money and is actually a dead business, it needs to be shut down. Now because of so many litigations and other such things, the winding up of business itself was becoming a problem. The Insolvency Act which has

been brought in recently and all the changes which have been brought in will add to that. Then successful reforms are being carried out to improve India's ranking worldwide so that we can get more and more FDI; we can showcase our economy; and we can jump the rank. We have replaced France by becoming the sixth largest economy. In coming times, we would want to improve our place in the world ranking and we would like to be No. 1 in the world rankings.

All I can say that, *saaf niyat* and *sahi vikas* that is what the country is working towards and that is what we have done in four years. It is with *saaf niyat* and *sahi vikas* that these changes, as a composite package, have been brought in.

इस सदन में बैठे अपने सभी साथियों को मैं यही बताना चाहती हूँ कि जहां साफ नीयत है, बरकत वहीं है। विपक्ष में बैठे अपने सभी साथियों – प्रेमचन्द्रन जी और तमाम साथियों से कहना चाहूँगी कि हौसले में अगर पाकीज़गी होगी और नीयत में सच्चाई होगी तो इंसान कुछ भी कर सकता है। चार साल के बेमिसाल कार्यकाल में आपने देखा होगा कि चाहे मोहब्बत हो या इबादत, चाहे सियासत हो या तिज़ारत हम तो हर जगह साफ नीयत रखते हैं और पाकीज़ा फितरत रखते हैं। तभी राष्ट्रीय पटल हो या अंतर्राष्ट्रीय पटल, हर तरफ विकास का डंका बज रहा है और सबको सुनाई देता है। अतः मैं इस संशोधन विधेयक का समर्थन करती हूँ और सदन में बैठे अपने सभी साथियों से आग्रह करती हूँ, विनती करती हूँ कि इस विधेयक का समर्थन कर के मोदी सरकार की निरंतर बढ़ती विकास यात्रा में अपना अमूल्य योगदान दें ताकि देश की प्रगति में हम सब लोग भागीदार बन सकें।

धन्यवाद।

SHRI S.P. MUDDAHANUME GOWDA (TUMKUR): Sir, I may be permitted to speak from this place.

**14 58 hrs**

(Shri K.H. Muniyappa *in the Chair*)

Sir, at the cost of repetition, I would like to subscribe my views to the views expressed by my senior colleague, Shri Premachandran Ji, with regard to promulgation of this Ordinance and also the amendments.

The word ‘Ordinance’ has got its own seriousness. In Kannada, we use the word *sugrivaghne* which shows the seriousness of the word. In the rarest of the rare cases, we do adopt the measure of bringing legislation through Ordinances but here I would request the hon. Law Minister who himself is a legal luminary to convince us, explain to this House and let the country know what was the imminent urgency he had in bringing this legislation through the Ordinance route. The other Bill which is listed today, that has also been brought through the Ordinance route. If such a provision is used every now and then, definitely the seriousness of this provision will erode. If it is repeatedly and unnecessarily used, it will lose its seriousness. That is why, I have my own reservations in this regard.

**15 00 hrs**

Sir, the reasons assigned by the hon. Minister in the Statement of Objects and Reasons are to attract business at the international level and also ease of doing business and speedy disposal of commercial disputes for bringing forward this legislation. If the intention of the Government is to attract business at the international level, then why does the Government propose to reduce the pecuniary jurisdiction of the quantum from Rs. 2 crore to Rs. 3 lakh?

In Section 2(c) 22 items have been mentioned. Almost every alternate litigation that is pending in the civil courts is a commercial dispute including a commercial dispute of ordinary transactions of merchants, bankers, financiers, traders etc. If that is the case when the Government is bringing forward a special legislation to form commercial courts, then it should have some seriousness.

Today in the morning itself the hon. Minister conceded to the pendency of cases in the courts in the country, including civil and criminal cases. Reduction of the pecuniary jurisdiction of the quantum from Rs. 3 crore to Rs. 2 lakh to bring cases within the ambit of this legislation dilutes the importance of the legislation. The Government proposes to form commercial courts specifically with an intention to attract business at the global level. My observation is that by reduction of the quantum of pecuniary jurisdiction to Rs. 3 lakh takes away the seriousness of this legislation.

Sir, the intention of the Government is 'ease of doing business' and also speedy settlement of commercial disputes. If that is so, then what measures have the Government taken, under this Act, to create more infrastructure. Speedy disposal of cases requires abundant infrastructure. If the Government seeks to have speedy disposal of cases with the same infrastructure, I do not think the purpose of the Government would be served.

Sir, in the morning itself, from the reply of the hon. Minister himself what we could infer is that even in criminal cases where the punishment is supposed to be for a period of three years, there are many cases and

instances where there are under-trial prisoners who have been languishing in prisons for than four to five years. Due to lack of speedy disposal of cases even the prisoners are lying in the prison and are serving more period than the punishment that they are meant for. Forget about the fate of the civil litigants. Such cases of civil litigation are pending for more than 25 to 30 years in the civil courts. If that is the case, then how can the Government think of getting speedy disposal of cases without making any provision with regard to creation of additional infrastructure? In this Bill we do not find any provision for creation of additional infrastructure. For example, in the Commercial Appellate Division Court the Government proposes to appoint a sitting High Court Judge. The State Government shall, with the concurrence of the Chief Justice of High Court, appoint one or more persons having experience in dealing with commercial disputes to be the judge/judges of a commercial court from amongst the cadre of higher Judicial Services. Likewise, the Chief Justice of the High Court nominates such judges of the High Court who have experience in dealing with commercial disputes to be the judges of the Commercial Appellate Division. So, through the provision of the Bill, the Government seeks to extract manpower which is already working and the manpower which is already over-burdened resulting in the inordinate delay in disposal of criminal, civil and other matters.

If that is the case, unless you create more infrastructure, unless you appoint more judges and ease out the burden of the sitting judges both in the subordinate judiciary as well as the higher judiciary, the purpose of this legislation will not be meted out. That is the situation. Why I am mentioning this is, in the morning and now also, you have fairly conceded

to the fact that there is shortage of more than 5500 subordinate judicial officers. There are vacancies of nearly 50 per cent of the High Court judges. In this situation, unless more judges are appointed, more courts are created and more infrastructure is created, the very purpose of bringing this legislation will be defeated.

You are bringing the provision of pre-institutional mediation and settlement. This is a new chapter which you are bringing in here. What purpose are you serving by bringing this legislation? Here, you want to create authorities under the Legal Services Authorities Act for pre-mediation and settlement. You are making pre-mediation settlement as a mandatory thing. In every case, it is made mandatory. Even if it is a matter of Rs. 3 lakhs, it should be referred to under this provision.

There is also a provision created for a litigant. To avoid this provision, if he makes an interim application, then the matter is taken away from this provision. If any interim application is there seeking an order of injunction or some such order, then that matter is being taken away from this provision. Mere filing of an application is sufficient. Otherwise, where is the provision for it and who is going to decide whether this is a case that should be referred to pre-institutional mediation and settlement or not? Here they can save five months of time. That is why, anybody can file an interim application and file a petition before the commercial court. Absolutely, there is a scope for that.

Finally, I would like to place a problem regarding my own State. In the morning, my leader, Shri Kharge, raised a very important and pertinent issue which has been making a very big news in our State.

This August House was kind enough to give special status to Hyderabad-Karnataka under article 371J of the Constitution. That provision was given keeping in mind the backwardness of that area. Six districts are included in it, namely, Gulbarga, Bidar, Yadgir, Koppal, Raichur and Bellary. These districts come under Hyderabad-Karnataka area. Special status was awarded under Article 371J keeping in view the fact that the area requires further development. Fortunately, three Benches were created in Karnataka. One is in Bengaluru, the second one is in Hubli-Dharwad and the third one is in Gulbarga. If the benefit of article 371J is to be given to all the six districts, then geographically also, it should be kept intact.

What happened is, out of the six districts, two districts are taken away from the territorial jurisdiction of this court and are given to the High Court at Hubli-Dharwad. Suppose a litigation is filed under the provisions of article 371J at Hubli-Dharwad, any order that is going to be passed there affects the whole Hyderabad-Karnataka Region. That is why, my humble request to the Government of India is to please see that these two districts are kept intact in the territorial jurisdiction of Gulbarga High Court so as to see a real meaning in the special status given to Hyderabad-Karnataka under article 371J.

With these words, I conclude my speech and I thank you for having given me an opportunity to participate in the discussion.

SHRI J.J.T. NATTERJEE (THOOTHUKUDI): Thank you hon. Chairman Sir. The Commercial Courts, Commercial Division and Commercial

Appellate Division of High Courts (Amendment) Bill, 2018 amends the Commercial Courts Act, 2015 which provides for Commercial Courts and Commercial Divisions of High Courts to adjudicate commercial disputes with a value of at least one crore rupees. The Bill reduces this limit to three lakh rupees.

Sir, the pecuniary jurisdiction of Commercial Courts reduced from one crore rupees to three lakh rupees will lead to the transfer of all commercial disputes above three lakh rupees. It may over-burden the Commercial Courts and defeat the objective with which they were established. The courts in India are over-burdened with high pendency of cases.

As of April 2018, there are over three crore cases pending across the Supreme Court, the High Courts, and the Subordinate Courts including District Courts. Between 2006 and April 2018, there has been an 8.6 per cent rise in the pendency of cases across all courts.

Increase in the pendency of cases for long periods has resulted in the increase of under trials in prisons. There were about 5 lakh prisoners in jails. Of these, two-thirds were under trials and the remaining one-third were convicts. The Government should take necessary steps to address this issue.

The Bill also allows the State Governments to establish commercial courts at the district level, even in territories where high courts have ordinary original civil jurisdiction.

In areas where High Courts do not have original jurisdiction, State Governments may set up Commercial Appellate Courts at the district level

to consider appeals from Commercial Courts below the level of a district judge. The Bill does not clarify whether the cost of setting up of new commercial courts will be borne by the Union Government or by the State Governments or both.

Sir, I would like to record in this august House that the overall vacancies of judges have increased across all courts from 23 per cent in 2006 to 35 per cent in 2018. In the Supreme Court, it has increased from 8 per cent to 23 per cent; in the High Courts from 16 per cent to 38 per cent; and in the Subordinate Courts from 19 per cent to 26 per cent. The establishment of more Commercial Courts would require more judges and the Government should consider this issue and provide the courts with adequate number of judges.

Sir, the intention of the Government is very clear. It aims to transfer large number of already pending cases and new cases of pecuniary jurisdiction of Commercial Courts from courts. At the same time, it is the prime duty of the Government to provide adequate number of judges and to provide necessary infrastructure facilities for the newly established Commercial Courts in the country and should not burden the State Governments. Thank you, Sir.

**SHRI IDRIS ALI (BASIRHAT):** Thank you, Sir. I am deeply grateful to your honour for giving me the scope to say on this important Bill.

At the same time, I am also highly grateful to one of the great National Leaders, the Chief Minister of West Bengal, Ms. Mamata Banerjee who is also known as the second Mother Teresa because without her blessings, I would not have become a Member of Parliament.

Hon. Chairman, Sir, the Government on May 3, 2018 promulgated an Ordinance amending the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Sir, this Bill seeks to amend the Commercial Courts, Commercial Division and Commercial Appellate Division of High courts Act, 2015, and also seeks to replace the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018.

There are many cases pending in courts. This is really a cause of concern for the common man. Setting up of commercial courts would certainly give some relief to the people. But the Government has to appoint suitable judges for the purpose and they should also be provided training in micro economics.

As on date, the Judiciary is burdened with more than three crore pending cases in the Supreme Court, the High Courts and the Subordinate Courts. In the High Courts, 23 per cent of the cases have been pending for over 10 years. Further, over 29 per cent of all cases have been pending between two and five years. In the Subordinate courts, over eight per cent cases have been pending for over 10 years. The maximum number of cases have been pending in the Subordinate Courts for less than two years and that comes to 47 per cent.

Sir, the increase in the pendency of cases for long periods, over the years, has resulted in an increase in the number of under trials in prisons. As of 2015, there were over four lakh prisoners in jails. Of these, two-thirds were under trials and the remaining one-third were convicts. This is the reason as to why most of the people do not want to go to courts and get their disputes resolved outside courts.

We all know that there is a huge backlog and a large number of vacancies exist in courts. Unless those vacancies are filled early, any number of creating additional machineries may not solve the problem of accumulation of cases. Overall, vacancies in the country have increased across all courts from 23 per cent in 2006 to 35 per cent till April, 2018. In the Supreme Court, it has increased from eight per cent to 23 per cent; in the High Courts, it has increased from 16 per cent to 38 per cent and in the Subordinate courts, it has increased from 19 per cent to 26 per cent. As of April, 2018, the High Courts have a vacancy of 406 posts of judges against the sanctioned strength of 1,079 judges. In the Subordinate Courts, the vacancies of judges have increased from 19 per cent to 26 per cent between 2006 and 2017. In West Bengal, there is a vacancy of 40 posts of judges and Andhra Pradesh has a vacancy of 66 posts of judges.

SHRI IDRIS ALI : Sir, I would take only three minutes more to conclude because West Bengal should not be deprived. The hon. Law Minister is present here.

HON. CHAIRPERSON : No. Please conclude within a minute.

SHRI IDRIS ALI : Sir, one of the most critical changes introduced in this Bill is with respect to the appointment of Judges of Commercial Courts. Earlier, the State Governments could appoint those Judges only with the concurrence of the Chief Justice of the High Court whereas after the amendment, the State Government has the power to appoint such Judges even without the concurrent of the Chief Justice of the High Court. Unless all the vacancies of the Judges are filled up in the regular courts, the problem of disposal of cases will never get solved.

Sir, according to the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, herein referred to as the Principal Act under the provisions of Sections 19 and 20 of the Bill cast an obligation on the State Governments to provide infrastructural facilities. Considering the financial conditions of the States, the Centre should provide substantial funds for the establishment of these infrastructural facilities. In order to fulfil the objective of quick disposal of pending cases, the vacancies in the Judiciary at all levels should be filled up; and for that reason or purpose for the fulfilment of the Objects and Reasons, the Central Government should come up with sufficient financial support to the State Governments.

HON. CHAIRPERSON: Please conclude, now.

SHRI IDRIS ALI : Sir, give me just one minute. The hon. Law Minister is here, and I am duly obliged to him that he is noting down our points.

Mr. Law Minister, it is a fact that you have created Commercial Courts but for that purpose you have not created new posts of Judges to

deal with the commercial matters. In effect, a Judge, who is taking up the criminal matters, is also becoming a Judge for commercial matters.

Sir, the hon. Law Minister is an eminent lawyer and he knows everything.

Lastly, I would urge upon the Government to make sure that a poor person gets justice at his doorsteps at all levels. So, necessary steps may be initiated without further loss of time.

HON. CHAIRPERSON: Now, Dr. Shrikant Eknath Shinde.

SHRI IDRIS ALI : Sir, one minute ... (*Interruptions*)

Let me conclude my speech by adding one sentence in Bangla. I am thankful to our Chief Minister of West Bengal who is not only the most charismatic leader of this country but also a great revolutionary leader of West Bengal.

With these words, I conclude. Thank you.

DR. SHRIKANT EKNATH SHINDE (KALYAN): Hon. Chairman, Sir, I am thankful to you for giving me this opportunity to speak. Today, we are discussing the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018.

The pecuniary jurisdiction of the Commercial Courts will be brought down from present Rs. 1 crore to just Rs 3 lakh with this amendment.

At the same time, there will be provisions whereby the State Governments will be able to establish Commercial Courts where the High Courts have ordinary original civil jurisdiction.

There is no such provision in the present Act of 2015 and such High Courts, namely, Mumbai High Court, Delhi High Court, Chennai High Court, Kolkata High Court and Himachal High Court to establish Commercial Divisions to resolve the commercial disputes.

Hon. Chairman, Sir, the original law was enacted for the speedy resolution of commercial disputes.

Pendency of cases is a major challenge in front of our Judiciary. As on today, more than three crore cases are pending in various courts across the country.

Sir, commercial disputes need to be resolved speedily because it affects the investment in the country and the overall economy.

Foreign investors are interested in India's growth story but they might be put off if our redressal system is not expeditious.

Therefore, the speedy resolution of commercial cases is important for ease of doing business. Therefore, this Parliament had enacted this law in 2015 under which the pecuniary jurisdiction of the Commercial Courts was minimum of Rs. 1 crore. Now, with this amendment, the jurisdiction will be brought down to Rs. 3 lakh.

Sir, I appreciate the Government's concerns for the speedy resolution of commercial disputes. With job market slowing and the growing unemployment, we need more and more investments in

manufacturing as well as in service sectors to create more job opportunities. Therefore, the speedy recovery of commercial disputes may go a long way in assuring and comforting investors. I appreciate Government's concern. We have seen in many cases like Vodafone's tax issue or in Tata versus DoCoMo to name a few. Therefore, one cannot deny the necessity of a robust judicial framework for the speedy recovery. However, at the same time, we must also ask ourselves whether we have necessary infrastructure to bring about these changes.

It is widely believed that lowering the pecuniary jurisdiction of these courts will increase their work load tremendously. As on today, more than 39,000 cases are pending in commercial courts, which have risen by 123 per cent in just two years when the minimum limit was Rs. 1 crore. It means, we have just moved to the point of bottleneck from one court to another. Just imagine the number of additional cases these courts will be flooded with if we lower the minimum level to just Rs. 3 lakh.

The vacancy of judges is the major reason behind these large pendencies. As on today, 41 per cent of the approved strength of judges in High Courts and 23 per cent in subordinate courts are vacant. The Standing Committee on Law and Justice had clearly stated in its Report in 2015 that without filling up of these vacancies, the very purpose of creating commercial courts would be defeated. That is what we are experiencing with more than 100 per cent increase in pending cases in commercial courts.

Various measures were suggested to overcome this problem. One of them was doubling of judges' strength and appointing retired judges on an

*ad-hoc* basis for one year. Unfortunately, the Government has not yet made any move in this direction. The Standing Committee on Law and Justice has been consistently urging to fill up these vacancies. Even in a recently submitted Report of this Committee, it has expressed concerns about the large number of vacancies.

It has also recommended to increase the retirement age of Supreme Court Judges from 65 years to 67 years and of High Court Judges from 62 years to 65 years. The UPA Government has brought the Bill to increase the age limit of High Court Judges from 62 years to 65 years but, unfortunately, it was lapsed after the dissolution of the 15<sup>th</sup> Lok Sabha in 2014. More than 400 posts of judges are vacant in 24 High Courts of this country.

Therefore, I urge upon the Government to consider this recommendation and bring a Bill to increase the retirement age of Supreme Court and High Court Judges. While plugging one loophole, we cannot let the other loophole remain open, otherwise, the whole exercise of bringing down the specified value of commercial disputes from Rs. 1 crore each to Rs. 3 lakh would prove futile.

I welcome the Government's steps in this direction. The Government's intention is very good of bringing down the specified value of commercial disputes from Rs. 1 crore each to Rs. 3 lakh. It will encourage investors to invest and bring more investment but at the same time, the infrastructure should also be improved. I request the Government to consider all these suggestions.

With this, I support this Bill.

DR. A. SAMPATH (ATTINGAL): Chairman, Sir, I respect a lot the hon. Minister. I had an opportunity for the first time to be with him on a television debate on the Italian marines case. I hope, the hon. Minister may remember that English TV channel discussion we had during the time of the 15<sup>th</sup> Lok Sabha. We were in the same line regarding the United Nations Convention on Law of the Sea.

Here, Sir, I would like to invite the attention of the hon. Minister towards my request. He is an eminent lawyer of the Supreme Court. I bow my head before him as he is my learned senior. He may also accept my view if he was on this side along with me. It is because my Party will be on this side because we are from the Left and CPM is always on the left side of the Chair.

Sir, I would like to know whether we are having an Ordinance *raj*. This House is the supreme legislative body of this nation. We are the largest multi-party democracy in the world. We have adopted our bicameral legislative system. Regarding this exercise of law making by Ordinance, I hope, even the senior lawyer may disagree with the path undertaken by his own Government. Here what happens in this House is this. Even in previous discussions also, some of our eminent Members of Parliament – I also associated with them – have pointed out this matter. If a legislation has to be initiated in the House, the proper methods is this. That should be put to study including discussion with various stakeholders and also taking of evidences by the Departmentally Related Standing Committee of the Parliament. In this House, unfortunately, during the

tenure of the Sixteenth Lok Sabha, if you see, the Standing Committees have become just like the...\* It is for namesake. Many of the Standing Committees do not meet at all.

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF ELECTRONICS AND INFORMATION TECHNOLOGY (SHRI RAVI SHANKAR PRASAD): My very distinguished friend Sampath, ...\* will not be a right word for a Standing Committee. I leave it to you.

DR. A. SAMPATH : I do not want to stick on to the word. Any word that my learned senior may suggest, I will take with both hands. It is only for namesake, we have the Departmentally Related Standing Committees. It is because, it is a new invention that our Parliament has put forth to the whole Parliamentary democracy of other nations also. Now, I am a member of the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for quite a long time. It does not meet at all. I have had my service in the Standing Committee on Defence during the time of the Eleventh Lok Sabha. Then I was in the Standing Committee on Finance along with Shri Yashwant Sinha *ji*, when he was the Chairman. Advani *ji* was also there along with me in the Standing Committee on Home Affairs. The Standing Committees have a duty to scrutinise the laws. Sometimes, of course, it comes under the guise of amendments. Just because it is coming under the guise of amendments, can we say that it is not a new law? It is only putting some powers, some wings, some teeth and nails. Anyway, this method of making law is just like taking something straight from the oven. That type of legislation should be discouraged. That is my humble request to the hon. Minister, through you, Sir.

When it involves the interest of the common man, interest of the millionaires, the billionaires and the corporates, I would like to know whether the Government is with the millionaires, the billionaires, the corporates and the transnational corporations or it is with the common man. I am not saying the words '*aam admi*'. Some of my friends may ask me to delete that word also because Aam Admi Party MPs are here.

We are a nation in which the largest number of undertrial prisoners are languishing behind the bars. Many of them, even after completing their term, are behind the bars. We are the nation where the largest number of trials are yet to be initiated; we call them POCSO cases. Today, our Question Hour proceedings did not reach up to the Starred Question No.220. Had that come, the hon. Minister would have in any way given the reply to the supplementary questions also. In reply to Question No.220, the hon. Minister has given a detailed statement regarding the POCSO cases and the situation of the courts which try the POCSO cases.

Day before yesterday, we had a discussion on the Criminal Law (Amendment) Bill. We passed the Criminal Law (Amendment) Bill almost unanimously even though, some of us, including me, have certain differences regarding the capital punishment.

May I ask you a question? May I know the number of vacancies yet to be filled up in the Judiciary? Many of our friends have already pointed out this. It is more than 6000. For your information, in many nations, not only in the European nations but also in the developing nations, the ratio of judicial officer per lakh people is 10-40. It means 10-40 judicial officers are there per one lakh population. But in our nation, it is less than 30 per

one million population. How will justice be provided to the common man? Of course, the Goddess Thetis knocks the door of the rich while the majority of the people languish behind the bar and they run after Goddess Thetis and the Goddess Thetis is supposed to be blind-folded. For the Ease of Doing Business, I also agree with the Statement of Objects and Reasons as narrated here by my hon. Minister. I have no difference of opinion.

HON. CHAIRPERSON : Please conclude.

DR. A. SAMPATH : I will take two more minutes. This is regarding the law and justice. I am also putting some economics in this. I am not saying about the GDP, gas and diesel. Yesterday also, the fuel prices went up like anything. I am not saying about the GDP. One per cent of the total GDP is not earmarked for dealing with law and justice matters and for the courts of this country. There was an instance where the Chief Justice of the Supreme Court of India was virtually weeping before the Prime Minister of India. He was weeping and crying. Why had he cried with folded hands? It is because of the workload of the judiciary and the workload of his fellow beings and the vacancies which are yet to be filled up.

Through you, may I ask a question? Only through you, I can ask a question to the hon. Minister. This morning in answer to Question No.201, he gave a very good reply and he said that we have an independent judiciary. Of course, we all agree with him. I also studied like that. I also took lectures on that to my students in the Government Law College. At the same time, why are we not filling up the vacancies of the judges in the Apex Court as well as in the High Courts? What about the collegium recommendation? If the people are feeling that there is a tug of war

between the Executive and the Judiciary, I am not a person to be blamed for that. This House is not to be blamed for that.

HON. CHAIRPERSON : Please conclude.

DR. A. SAMPATH : I am going to conclude. Sir, the Government is very much eager to get this Bill passed. It is related with commerce. It is related with money. It is related with machines and not with man. When there is a battle between man and machine, I stand with the man. When there is a battle between man and the money, I stand with the man. We have to stand for the common people. How many legislations have we made to provide justice to the common man?

Before concluding, for the National Legal Service Authority and for the free legal aid which we provide to the poor, do you know Sir, the amount which we provide to the budding lawyers? It is from Rs. 500 to Rs. 1500. In that, only the junior lawyers may come to provide the free legal aid. That is the money which a lawyer may get. How many times do the young lawyers visit the jail?

I will take only one more minute. You kindly allow me one more minute because other political parties are not participating in this matter.

I am not here to raise the voice of the hi-fi people because they know how to manage and, if not, to manipulate. I am here to raise the voice of the voiceless. Here my request to the Government is this. There is a saying in English, 'Many have eyes but do not see; many have ears but do not hear.' Here it is the duty of the Government, especially when the Minister is an eminent lawyer, to provide justice to the common people and that too at the doorsteps of the people.

HON. CHAIRPERSON : Please conclude.

Now, Dr. Boora Narsaiah Goud.

DR. A. SAMPATH : Sir, I am going to conclude.

In the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, you are putting more burden upon the shoulders and heads of the existing judiciary. You are not appointing more people. At the same time, you are asking them to dispose of the cases within five years. There are pending cases. Even criminal cases are pending. If the criminal cases are pending, it is the violation of Article 21 as enumerated in the Constitution of India.

HON. CHAIRPERSON: Please conclude.

DR. A. SAMPATH : So, my humble submission to the Government, through you, Sir, is that they have to appoint more judges; they have to provide more money to the judiciary; and they have to also establish more courts.

HON. CHAIRPERSON: Please conclude.

DR. A. SAMPATH : Sir, there is one more point. Even though the Constitution enumerated, why is there no other branch of Supreme Court of India in other places? The Supreme Court is still here in Delhi and everybody has to come to Delhi.... (*Interruptions*)

HON. CHAIRPERSON: Nothing will go on record, except the speech of Dr. Boora Narsaiah Goud.

...(*Interruptions*)...\*

DR. BOORA NARSAIAH GOUD (BHONGIR): Sir, thank you very much for the opportunity. ... (*Interruptions*) देर है, मगर दुरुस्त है।

Sir, when I look at the Bill, I immediately remember the story of a play written by Shakespeare, 'The Merchant of Venice'. You know, Sir, that Venice was a very good commercial capital. As you know, in that play, there is a person called Bassanio who wanted to marry a very rich girl. So, he wanted 3,000 Ducats. So, he approached his good friend, Antonio for the loan. But unfortunately, Antonio did not have any money because he had invested all his money in the ship business. So, he had requested one moneylender by name, Shylock for the amount. But Shylock had agreed to give the loan on the condition that within three months if he did not repay, he should give pound of his flesh. That is the story. Then, of course, due to various reasons, Antonio could not repay it but the Duke, who had ruled, had given a nice judgment telling that Shylock can take the pound of flesh from Mr. Antonio provided he does not shed even one drop of blood. That is the moral of the story. This is how the judgment worked.

Now I remember the merchants of India. What happens to our merchants like Vijay Mallya or anybody else? When they take loan for the glamourous business purpose and when they cannot repay, they will go to London or they will go to Antigua or they will go to other countries and ask us to provide a video of five star jail system so that they can come back. That is the system. That is the fault in our judicial system which is affecting investment in India. That is the problem.

Today I want to bring one thing to the notice of the Minister. Why London, Singapore, Hong Kong and Dubai are successful commercial spots or capitals? That is because there is an effective dispute redressal system. That is the reason why they are successful commercial capitals. But what is happening in our country? Justice delayed is justice denied. But our typical judicial system is, as you know, तारीख पे तारीख, तारीख पे तारीख is the present malady affecting our judicial system. Now, you look at the statistics. ... (*Interruptions*) यह हकीकत है। ... (व्यवधान) तारीख पे तारीख, यह हकीकत है। हकीकत से दूर होने के लिए ... (व्यवधान) तारीफ नहीं, तारीख है। आप ने गलत सुना। मैंने तारीख ही बोला है। ... (व्यवधान) मैं मिनिस्टर साहब की तारीफ कर रहा हूं, लेकिन मैंने तारीख ही बोला है।... (व्यवधान)

Sir, today for a commercial redressal system, the average time taken is four years, that is, 1420 days. From 2015-17, there is a downward jump of 127 per cent, that means increase in delay in redressal of the disputes. But, on the other hand, the good thing is, India has jumped 30 positions in terms of Ease of Doing Business ranking.

If you look at the number of pending cases in various courts, there are 54,000 cases pending in the Supreme Court. Then, around 43 lakh cases are pending in the High Courts and almost three crore cases are pending in the subordinate courts.

In terms of vacancy, there are 43 per cent posts of the High Court judges that are vacant and 27 per cent posts of subordinate court judges are vacant. Sir, you know it pretty well that investment in a country is linked to the prevailing dispute redressal systems.

Sir, today the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018 is before the House. Basically, the spirit of the Bill is that it has reduced the specified value of a commercial dispute to Rs.3 lakh from Rs.1 crore. The Bill allows the State Governments to establish commercial courts at the district level, even in territories where High Courts have ordinary original civil jurisdiction. In areas where High Courts do not have original jurisdiction, the State Governments may set up commercial appellate courts at the district level to consider appeals from commercial courts. The most important thing is the inclusion of a dispute redressal system through mediation which may work out effectively.

Hon. Chairman, Sir, our legal system works in four ways – first is, litigation; second is, arbitration; third is, consultation and the fourth is, mediation. If all these processes are exhausted, we go to the court.

**HON. CHAIRPERSON :** Please conclude.

**DR. BOORA NARSAIAH GOUD :** Sir, I am just going to conclude. I have only five or six points to raise. I am not going to take excess time. I hope that our courts also clear their cases like this.

Sir, I would like to draw the attention of the hon. Minister on the word ‘may’, which means that it is on the discretion of the State Governments. I would prefer it to be made mandatory and not to be left on the discretion of the State Governments. It should have been ‘shall’ rather than ‘may’. Once you use the word ‘may’, a State which wants to do it, would do it and the other State, which does not want to do it, will not do it.

I would request the hon. Minister if this can be corrected at the time of framing of rules, I will be happy.

Second, you are drawing judges from the same pool of judges. Already there are a lot of vacancies pending. If you draw the same judges to the commercial courts, there will be a side effect of it like it happens in medicines. The pendency of cases will increase.

HON. CHAIRPERSON: Please conclude.

DR. BOORA NARSAIAH GOUD : I am going to conclude in just two minutes. I am not going to deliver a lecture.

I would like to draw the attention of the hon. Minister to create parallel commercial courts, including infrastructure as well as judges and staff. Then only it will be of some utility.

My third point is that we should have a time-bound judgement. The cases in these courts would be of commercial nature. They would also be of criminal nature. If it is time-bound, everything will be there in black and white. So, I request the Government to bring in a clause to make it a time-bound process.

Then, as I said, *tariq par tariq* is a big problem. How do we avoid it? We should create a clause which should disincentivize the lawyers who go for more adjournments. Unless and until we disincentivize these lawyers, the system would not work effectively. ... (*Interruptions*) As you know, Sir, all the big lawyers take fee for their appearance in the court. It means, more they appear, the more fee they get. So, you have to limit the number of appearances before the court. That will be helpful.

Before I conclude, I want to ask the hon. Minister that irrespective of whatever outcome of mediation process is, whether it will have any judicial impact on the litigation process or the final judgement. Sir, I fully support the Bill. I hope that whatever deficiencies are there, the hon. Minister would correct them, while framing the guidelines. Thank you very much.

SHRI ASADUDDIN OWAISI (HYDERABAD): Thank you, Sir. The Government might pass this Bill with its brute majority. But the fact of the matter is that setting up of commercial courts by itself will not reduce the massive backlog in cases without addressing the issue of vacancies in the posts of judges.

Sir, I have heard what the hon. BJP Member from Delhi has said. She said that 32,656 civil suits are pending in five High Courts in original jurisdiction of our country and of it, 51.7 per cent pertain to commercial disputes.

I wish to say to the hon. Minister that the proposed Bill is not a magic wand whereby you waive it and every issue will be solved. I would like to know from the hon. Minister whether the vacancies have increased in all courts from 23 per cent in 2006 to 35 per cent in 2018. Is this your governance? In Supreme Court, the vacancies have risen from eight per cent to 23 per cent. In High Court, the vacancies have risen from 16 per cent to 38 per cent. In subordinate courts, the vacancies have risen from 19 per cent to 26 per cent. The startling statistics is that out of 1,079 positions of judges in High Courts, 400 are vacant. In subordinate courts, there are 5,746 vacancies against the sanctioned strength of 22,474 judges. We have

more than two crore cases pending. For those cases to be decided with the existing strength, it will take us 365 years. I want to know from the hon. Minister what is the hard and fast solution that you are producing over here, without filling up those vacancies of judges. He takes credit for his Government, saying that they have filled so many vacancies. This is the record which I am putting in front of you. You are not at all interested in filling up vacancies in the Supreme Court, the High Courts and the subordinate courts.

My next point is about the appointment of judges of commercial courts. Earlier, the State Governments could appoint judges with the concurrence of Chief Justice of the concerned High Court. In the present amendment Bill, the hon. Minister's Government has given the power to appoint judges without the concurrence of the Chief Justice of the concerned High Court. Sir, we believe in theory of separation of powers. Parliament is independent; Executive is independent; and the Judiciary is independent. You might be having a 56-inch chest leader who wants to trample upon the separation of powers, but you cannot do this. How can the Chief Minister of a State appoint a judge without the concurrence, permission or whatever you call it, of the Chief Justice of the High Court? This will not stand the test of law.

**15 52 hrs**

(Hon. Deputy Speaker *in the Chair*)

Now, I come to overlapping jurisdiction. It is odd to note that the pecuniary jurisdiction of Commercial Division set up in the High Court is to be the same as that of the commercial court set up at the district level. If this is actually implemented, all low value claims will also have to be

admitted in the High Courts, thereby increasing their workload or jurisdiction. So, my request to the hon. Minister is to modify it to such pecuniary jurisdiction of Commercial Division of High Courts that commences from the value which is the maximum pecuniary jurisdiction of the commercial courts at the district level'. That has to be done.

These are all important points – litigation, procedure 256, Law Commission's recommendation etc. You are redefining the limits among the present High Courts and the judicial courts. Why are you not giving enough money to establish more new courts? When money is not the issue for you, why can you not do it?

I conclude by asking this to the hon. Minister. When it is being done in the interest of the country and ease of doing business, what about my State of Telangana? Why do you not give us a separate High Court? Should we also not improve our ease of doing business? These are all contradictions within this Government, a reactionary Government, which does not want to do its homework, but just to ensure that its political TRP increases, at the cost of justice and Judiciary, they are passing such a Bill.

Thank you.

**SHRI PINAKI MISRA (PURI):** Hon. Deputy Speaker, I am very grateful to you for giving me this chance to speak.

Sir, I rise in this hon. House to speak with some degree of concern as to why the Government has chosen to bring down the denomination value of these commercial courts to such a low level. In 2003, the 17<sup>th</sup> Law

Commission had recommended rupees one crore. The Commercial Courts, High Courts Bill, 2009 had mentioned rupee five crore as the benchmark. In 2010, the Select Committee on Commercial High Courts mentioned rupees one crore. The 20<sup>th</sup> Law Commission said rupees one crore. The Commercial Courts, Commercial Division Bill in 2015 said rupees one crore and the Standing Committee on Personnel, Public Grievances, Law and Justice had recommended rupees two crore. Of course, it is not just this Government, but the past Governments have also dealt with Standing Committee Reports always in the breach.

So, the Standing Committee Reports are to be disregarded. This has now been brought down to an alarming Rs.3 lakh level. I am not able to understand as to what can be the rationale behind it.

Mr. Deputy Speaker, Sir, it is a very piquant situation where, by this piece of legislation, the Indian rupee is actually being sought to be given such an exalted value when today actually the rupee is touching 70 rupees to a dollar. This has been brought down to Rs. 3 lakh which is virtually four and a half thousand dollars. That is called a high denomination litigation in this country. I am sorry to say that this is going to choke the courts completely. This was never behind the idea to bring about these commercial courts.

Shri Ravi Shankar Prasad is a very eminent and senior advocate. He is aware that the original idea was to fast track these high denomination commercial disputes because all over the world India continues to labour with the poorest possible reputation for the dispensation and the quick disposal of high denomination and high value claims.

Nobody wants to come to India and get embroiled either in litigation which is resolved via courts or in arbitration. Neither of the two modes of settlement of disputes has seen a quick and satisfactory redressal system. That is why this was brought in. It should actually have been brought with the greatest respect to at least Rs.5 crore so that the real heavy-duty litigation could have been dealt with. If it is only Rs.3 lakh, I do not believe that there is going to be a single commercial case, that is going to be left out. Nobody even bothers to go to courts for recovery of Rs.3 lakh. If a person owes somebody Rs.3 lakhs, he is not ready to go through the entire process and pain of filing a litigation. Now, every single litigation is covered under this. Every single litigation is going to these commercial courts. It is really relegating the position right back to where we were originally. The ordinary courts will deal with the ordinary litigations. I am not able to understand why the Government have chosen this particular piece of legislation and that too by Ordinance route to bring this to hon. House.

The second issue deals with the appointments of Judges. These fast-track courts also will become meaningless without adequate appointments. The hon. Minister has to answer to this hon. House for this present frightening situation. Today, "Live Law" tells us that 143 cases of judicial appointments in the High Courts and the Supreme Court are pending with the Government.

This is so even after 143 names have been handed over to the Government by the collegiums of the High Courts and the Supreme Court. We have roughly 800 judges in the High Courts. Today, there is a vacancy of over 40 per cent in all the High Courts. When you have over 40 to 50

per cent vacancy in the High Courts, I must say that it is a very shameful situation. I know that the hon. Law Minister keeps telling us that so many judges have been appointed. But by far, the number is too few. I can understand the Law Minister's anxiety that not enough names are coming from the collegiums as well. We have seen a huge amount of discord in the Supreme Court Collegium. I do not want to take any name. Even in the Collegium of High Courts, there is a massive discord. As a result of this, there is no unanimity in names being given to the Government. I want to make it clear that the Government alone is not to be blamed for that but the Government is also to be blamed for the manner in which the names have been sent back, the manner in which the names have been kept back and the manner in which the Government have sat over the files of judicial appointment.

Yesterday, a PIL was filed in the Supreme Court saying that a Mandamus must be issued to the Government that within six weeks, the Government must clear the names given by the Collegiums. That was the petition filed in the Supreme Court. This is a very unedifying situation. This is not a happy situation for this country particularly when the Law Department is headed by such an eminent counsel. He really ought to ensure that the system of Indian judiciary must flourish. Unfortunately, today, the system of Indian judiciary is not flourishing. It has virtually become moribund and has come to a very sorry pass. I am sorry that this piece of legislation is going to further add to the burden. I do not understand the rationale for this piece of legislation being brought to the House.

Therefore, I find myself unable, frankly, to support this piece of legislation.

Thank you very much.

**श्री राजेश रंजन (मधेपुरा) :** उपाध्यक्ष महोदय, मैं माननीय मंत्री महोदय से आग्रह करना चाहूंगा कि हमेशा अध्यादेश के द्वारा ऐसे सवालों को, खास तौर से पिनाकी मिश्रा जी और प्रेमचन्द्रन जी ने बातें उठायी हैं कि कोई भी व्यक्ति छोटी-छोटी कानूनी पेंचों में नहीं पड़ना चाहता है। आप छोटे विवादों को भी कोर्ट में भेजने का प्रावधान लाए हैं। छोटे और मध्यमवर्गीय व्यापारियों पर पहले से ही बोझ है। वे दादा-पिता के समय से चल रहे केसिस से बाहर नहीं आ पा रहे हैं, चाहे जमीन का विवाद हो या अन्य कोई विवाद हो। डेमोक्रेसी में सबसे ज्यादा महत्वपूर्ण गांव का अंतिम व्यक्ति है। आप उनको ध्यान में नहीं रखते हैं। आपका ध्यान केवल बड़े और कॉर्पोरेट लोगों को सुविधा देने पर है। मेरा आग्रह है कि विवादित मुद्दों को क्या पूंजीपति, उद्योगपति, माफिया या बड़े नेता न्यायालयों से प्रभावित होने देंगे? इसके अलावा कॉलेजियम सिस्टम का विवाद चल रहा है कि सुप्रीम कोर्ट बड़ा है या लोकतांत्रिक व्यवस्था में सदन और सरकार बड़ी है? यह सवाल लोगों के बीच में चल रहा है। यह ठीक है कि हमारी सभी व्यवस्थाएं बराबर हैं, लेकिन डेमोक्रेसी में सदन सर्वोच्च है। अब सदन की सर्वोच्चता पर भी सुप्रीम कोर्ट या हाई कोर्ट सवाल खड़े करता है तो फिर सदन की गरिमा और देश के 130 करोड़ लोगों पर वह सवाल खड़ा होता है। तीसरा, आप नये कोर्ट्स देश में बना रहे हैं, लेकिन कई स्टेट्स में हाई कोर्ट की दो-तीन खण्डपीठ हैं। वर्ष 1961 से बिहार में एक हाई कोर्ट है और मैंने आपसे मिलकर रिक्वेस्ट की थी कि पूर्णिया, दरभंगा या भागलपुर, खास तौर से पूर्णिया जो कि नेपाल से जुड़ा हुआ है। यह एक पुराना शहर है और यहां आप यदि हाई कोर्ट की एक खण्डपीठ देते हैं तो लोगों पर जो 600-800 किलोमीटर आने-जाने का बोझ है, वह कम होगा। वहां केवल 47 जज हैं। वहां जजों की सबसे ज्यादा कमी है। सरकार और न्यायालय के विवाद के कारण वहां जजों की नियुक्ति नहीं हो पा रही है। चौथा, जजों को सैलरी राज्य सरकार देती है। जब आप हाई कोर्ट में

किसी जज की नियुक्ति करते हैं तो आप राज्य सरकार से उसकी सहमति क्यों नहीं लेते हैं? आप केवल उनसे राय लेते हैं, जिसको आप मानने के लिए बाध्य नहीं हैं। बिना राज्य के मुख्यमंत्री की सहमति से आप यह क्यों कर रहे हैं? पांचवां, आप आचार संहिता को लेकर आए हैं। इसके कारण एमपी और एमएलए कोर्ट के चक्कर लगाकर थक चुके हैं। आचार संहिता के नाम पर सीओ, एसडीओ, बीडीओ एमपी को कोर्ट में खड़ा कर देता है। आचार संहिता जैसी चीजों को आप बदलिए। छठा, सरकार ओबीसी बिल लाने जा रही है। हिन्दुस्तान में दलितों की संख्या, ओबीसी की संख्या सबसे ज्यादा है, समाज के सबसे कमजोर और वंचित लोगों की संख्या सबसे ज्यादा है। मेरा आग्रह है कि सर्वोच्च न्यायालय और हाई कोर्ट्स में आरक्षण का जो मुद्दा है, नरेन्द्र मोदी जी कहते हैं कि मैं ओबीसी के लिए एक बड़ी चीज लाने जा रहा हूं तो क्या सुप्रीम कोर्ट में आरक्षण को आप लागू करेंगे? क्या एससी और एसटी से हाई कोर्ट्स और सुप्रीम कोर्ट में जज बनेगा? इस हिन्दुस्तान में कितने एससी-एसटी और ओबीसी जज हैं? इस हिन्दुस्तान में कितनी महिला जज हैं?

DR. RAVINDRA BABU (AMALAPURAM): Sir, the commercial courts are meant to resolve commercial disputes. It is not very clear whether this includes the tax dispute also.... (*Interruptions*)

HON. DEPUTY SPEAKER: Shri Rajesh Ranjan, please take your seat.

... (*Interruptions*)

DR. RAVINDRA BABU : Sir, commercial courts resolve the commercial disputes. Through you, I want to ask the hon. Minister whether this also includes tax disputes.... (*Interruptions*) Sir, hon. Minister is not paying attention.... (*Interruptions*) The ceiling of Rs. 3 lakhs is a ridiculous thing. For example, service tax exemption is available for small scale industries

(SSI) up to the limit of Rs. 10 lakhs. For Central Excise, it is Rs. 2 crore.... *(Interruptions)* If we have already fixed the limits statutorily, where is the question of disputes of Rs. 3 lakhs. If there are disputes of Rs. 3 lakhs, are you not burdening these judicial courts which are already overburdened? There are already ITAT, Central Excise and Customs Appellate Tribunal, Debt Recovery Tribal and there are so many other tribunals also which are languishing because of lack of staff, judges and members. Sir, in order to strengthen the commercial courts, we have to strengthen the tax dispute mechanism also because majority of them will resolve the disputes which will increase our ranking in Ease of Doing of Business Index.

As my friend, Shri Ranjan, correctly said, and I support that. He said that 41.7 per cent posts of the judges of the High Courts are vacant and 21 per cent posts of the judges of the District Courts are vacant as there are no judges.

Sir, I have made a fervent appeal to this august House to make All India Judicial Service. If we make All India Judicial Service, as my friend, Shri Ranjan, said, the people having SC/ST quota and OBC quota will also come in the system and deliver not only commercial justice but also social justice. We have been making fervent appeals about this.

First promulgating the Ordinance and then coming to the Lok Sabha is not correct. Repeatedly, this Government started resorting to Ordinance route just before the starting of the Session. This should not be encouraged. I fervently appeal that Rs. 3 lakh limit looks very ridiculous. We have the limits fixed statutorily for Service Tax, Central Excise, ITAT and also for

Debt Recovery Tribunal. So, when those limits are already fixed, changing them into Rs. 3 lakhs is not a good idea.

**श्री कौशलेन्द्र कुमार (नालंदा):** उपाध्यक्ष महोदय, आपने मुझे वाणिज्यिक न्यायालय, उच्च न्यायालय, वाणिज्यिक प्रभाग और वाणिज्यिक अपील प्रभाग (संशोधन) विधेयक 2018, 2018 का विधेयक संख्यांक 123 पर चर्चा में भाग लेने का मौका दिया, इसके लिए मैं आपको धन्यवाद देता हूं।

इस कानून में बदलाव से कारोबारियों की सुगमता रैंकिंग में और सुधार होने की संभावना है। जिस तेजी से देश में आर्थिक विकास के साथ वाणिज्यिक गतिविधियां बढ़ती जा रही हैं, उसी अनुपात में घरेलू और अंतरराष्ट्रीय स्तर पर कमर्शियल विवादों की संख्या में तेजी आई है। एफ.डी.आई. के साथ-साथ लेन-देन के विवादों में भी उल्लेखनीय वृद्धि देखी जा रही है। अतः इस तरह के विवादों के निपटारे के लिए जल्द से जल्द समाधान के तंत्र भी विकसित करने की आवश्यकता है। कानून में बदलाव से सकारात्मक छवि बनेगी।

महोदय, मूल कानून दिसम्बर, 2015 में लागू हुआ। उसके बाद उच्च न्यायालय में वाणिज्यिक प्रकोष्ठ का गठन भी हो चुका है। अब यह देखने वाली बात है कि व्यावसायिक विवादों का निपटारा समुचित और समय पर हो रहा है या नहीं। यदि नहीं तो क्या कारण है, उसे दूर करने की आवश्यकता होगी। मेरा सुझाव है कि सरकार को इस विषय पर अवश्य ध्यान देना चाहिए। मेरा मानना है कि अदालती कार्रवाई से ही समस्या का समाधान नहीं हो सकता। मध्यस्थिता के नियम को और लचीला और सुदृढ़ करने की आवश्यकता है। क्योंकि इसमें समय की बर्बादी होती है और पैसे की भी बर्बादी होती है। इसका सही समाधान होना चाहिए। अतः मध्यस्थिता की भूमिका को निश्चित करने की आवश्यकता है। बातचीत से जो मामला हल हो सकता है, वह दोनों पक्षों के हित में होता है। मेरा सुझाव है कि मुकदमा पूर्व मध्यस्थिता की व्यवस्था को अनिवार्य किया जाए।

इन्हीं शब्दों के साथ मैं इस बिल का समर्थन करते हुए अपनी बात समाप्त करता हूं। धन्यवाद।

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF ELECTRONICS AND INFORMATION TECHNOLOGY (SHRI RAVI SHANKAR PRASAD): Sir, I am extremely grateful to all the Members who have participated in the debate. In fact, today I saw a different version of Lok Sabha. अगर लोक सभा बहस करने के मूड में आती है तो बहस का स्तर बहुत ही आगे बढ़ जाता है। आज हर प्रकार के हमारे मित्रों ने जिस तरह से अपनी बातें कही हैं। मैं अपने दोस्त प्रेमचंद्रन जी, वह कहां गए, उन्होंने एक विषय रखा। माननीय मीनाक्षी जी, गौड़ा जी, श्री जे.जे.टी. नड्डर्जी, श्री श्रीकांत शिंदे, my good friend Mr. Sampath spoke with the same enthusiasm and hope. Thanks for the kind words said about me. उसके बाद बी.एन.गौड़ साहब ने बात कही, श्री पिनाकी मिश्रा जी ने बात कही, श्री राजेश रंजन जी, उनका उत्साह मैं हमेशा देखता हूं। हालांकि उनका छठा टर्म है, लेकिन उनका उत्साह जरा भी कम नहीं हुआ है, आपका अभिनंदन है।

मैं विशेष रूप से माननीय मीनाक्षी जी का धन्यवाद करूंगा कि बहुत कुछ उत्तर जो मुझे खुद देना था, उन्होंने अपने बहुत ही प्रभावी हस्तक्षेप में उसे रखा है। मैं उस पर आता हूं। लेकिन मैं विषयवार जाऊंगा, ताकि सभी मित्रों की जो चिंता है, उसका मैं निराकरण कर सकूँ। आर्डिनेंस क्यों लाया गया? आर्डिनेंस लाना कोई पाप नहीं है। भारत के संविधान के आर्टिकल 123 में इस बात का प्रावधान है कि इमरजेंसी में आर्डिनेंस आ सकता है और आर्डिनेंस का असर वही होता है, जो इस सदन के द्वारा पारित कानून के द्वारा होता है। आर्डिनेंस का मतलब यह नहीं है कि हम सदन की अवहेलना कर रहे हैं। समय सीमा के अंदर हमें सदन में आना पड़ता है और आज हम आर्डिनेंस लेकर आए हैं। लेकिन मैं सदन को बताना चाहूंगा कि हम आर्डिनेंस क्यों लाए हैं, मैं इस विषय में नहीं जाऊंगा। मैं किसी की

आलोचना नहीं करना चाहता, लेकिन क्या यह सचाई नहीं है कि पिछले सत्र में सदन नहीं चल पाया था। किन कारणों से नहीं चल पाया, मैं उसमें नहीं जाना चाहता हूं। लेकिन एक सचाई है कि सदन नहीं चल पा रहा था। अब इस साल वर्ल्ड बैंक के ईंज ऑफ ड्रॉइंग बिजनेस में हमें अपनी रैंकिंग को आगे बढ़ाना था। उनका अपना एक सिस्टम होता है, वह अपनी इंफॉर्मेशन को सर्कुलेट करते हैं। मई में कलैक्ट करते हैं और उनका आग्रह था कि आपने बड़े लोगों के लिए तो फास्ट ट्रैक कोर्ट बनाया है, लेकिन जो छोटे व्यापारी हैं, उनकी चिंता आप क्यों नहीं करते?

जब हमारे सामने जब सदन नहीं चल रहा है, किन कारणों से नहीं चल रहा है, उनमें मुझे नहीं जाना है तो क्या हम भारत की छवि को कमज़ोर होने दें, ये बड़े सवाल हैं। इसलिए हम अध्यादेश ले कर आए, ताकि दुनिया को हम बताना चाहते थे कि भारत आज इकॉनमी में बड़ी तेजी से आगे बढ़ रहा है। आज मुझे इस सदन को बताते हुए बहुत गर्व हो रहा है कि फ्रांस से भी ऊपर हमारी इकॉनमी बढ़ गई है।

सर, मैं देख रहा था और आपकी जानकारी के लिए मैं सदन को बताना चाहूंगा कि सन् 2017-18 में हमने 61.96 बिलियन यूएस डॉलर का एफडीआई भारत में प्राप्त किया है। अगर आप पिछले चार सालों के आंकड़े लेंगे तो 222 बिलियन यूएस डॉलर एफडीआई भारत में आया है। सर, हम इसमें अपनी छाती को कोई विस्तार से दिखाना नहीं चाहते हैं। इसलिए भारत दुनिया की ताकत अर्थ में बन रहा है। सरकार के वही अफसर हैं, हमने उनमें उत्साह पैदा किया, नियम-कानूनों को ठीक किया, ट्रांस्पेरेंस गवर्नेंस लाए और आज देखिए भारत कहां से कहां पहुंच गया है और दुनिया की सबसे बड़ी इकॉनमी बना है। हम सबको इस पर गर्व होना चाहिए।

सर, मैं एक बात और कहना चाहता हूं कि भारत में क्या बदलाव हो रहा है, जो पहले एफडीआई का विरोध करते थे, वे राज्य सरकारें भी आज एफडीआई चाहती हैं। आज वे भी इनवेस्टर्स मीट कर रही हैं। वे सरकार चाहे वाम की हों या तथाकथित दक्षिण की हों या कोई और विचार धारा की हों। India today is

emerging as a global hub of investment. Let us celebrate it. If we make a law for it, that should not be taken to be something wrong. So, I will explain the Ordinance part before the House. But it was done for a good legitimate reason. भारत की रैंकिंग कितनी बढ़ी है, 30 पॉइंट मैंने भी कहा है और बाकी सदस्यों ने भी कहा है। अब दूसरा विषय जो बार-बार उठा है कि आप इन्फ्रास्ट्रक्चर पर लोड क्यों देते हैं। सर, मैं एक बात कहना चाहता हूँ और यह बात मैं कुछ पीड़ा से कहना चाहता हूँ कि अगर भारत को हम दुनिया की बड़ी ताकत बनाना चाहते हैं तो ठेलेवाला, पाना वाला, फुटपाथ वाला, चाय वाला है, अगर उनका भी ट्रेड का कोई डिस्प्यूट है तो क्या हम उनके लिए फास्ट ट्रैक कोर्ट नहीं करेंगे? क्या हम उनको यह कहें कि जाओ यह रास्ता खाली बड़े-बड़े लोगों के लिए खुला है। ऐसा भारत हम नहीं बनाना चाहते हैं। हम ऐसा भारत बनाना चाहते हैं जहां छोटे व्यापारी भी अपने डिस्प्यूट के लिए वही रास्ता अद्यतयार करें जो बड़ों के लिए है। लेकिन मैं एक बात जरूर कहूँगा कि अगर हमारे सदस्यों ने विशेष रूप से इस पूरे कानून को पढ़ा होता तो हमने अपनी आरंभिक टिप्पणी में प्री-मेडिएशन की बात कही थी। सर, मैं एक बार सैक्षण 12ए को हाऊस के सामने पढ़ना चाहता हूँ। A suit which does not contemplate any urgent interim relief under this Act shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules.”

हम यह कहना चाहते हैं कि उसका सूट रजिस्टर नहीं होगा, जब तक वह प्री-मेडिएशन में नहीं जाता है। सर, हम इसको क्यों ले कर आए हैं और हमने इसको अर्जेंट रिलीफ क्यों कहा है? मैंने अपनी आरंभिक टिप्पणी में एक बात कही थी कि दो बिज़नेस पार्टनर हैं, अच्छा काम हुआ, प्रॉफिट हो गया और फिर लड़ाई हो गई। एक बिज़नस पार्टनर who is the controlling partner वह सारी संपत्ति बेच रहा है या विदेश ले कर जाने की तैयारी कर रहा है तो दूसरे पार्टनर को हम फोर्स करें। He can go to the court for urgent interim relief, before going to the mediation,

that he shall not alienate the property of the firm. यह प्रावधान तो होना भी चाहिए। जब मैं इस बिल को बना रहा था तब मैंने कहा कि यह प्रावधान रखो कि अगर ऐसे पार्टनर्स गड़बड़ी कर रहे हैं तो उस पर रास्ता मिलना चाहिए। फिर जो छोटे डिस्प्यूट पर इतनी आपत्ति प्रकट की गई तो मैं इस हाऊस को बड़े विनम्रता से कहूँगा कि अगर तीन लाख का छोटा डिस्प्यूट है तो शायद प्री-मेडिएशन में ऐसे ही खत्म हो जाएगा। मैं एक और बात कहूँगा कि तीन लाख सबसे पहली सीढ़ी है। कोई पांच लाख का भी हो सकता है, दस लाख का भी हो सकता है, पंद्रह लाख का भी हो सकता है, 25 लाख भी हो सकता है, पचास लाख भी हो सकता है तो इसलिए तीन लाख पर इतनी शर्मिंदगी क्यों है? नरेंद्र मोदी की सरकार में तीन लाख के व्यापारी को भी वही इज्जत मिलेगी जो तीन हजार करोड़ के व्यापारी को भी मिलेगी। यह हमारी सोच है, इस पर आपत्ति क्या है? इसलिए उसके कारण, इस पूरे बिल पर आपत्ति करना कि यह किस टाइप का बिल है, मेरे ख्याल में यह उपयोगी सोच नहीं है।

इंफ्रास्ट्रक्चर के सम्बन्ध में एक बात कही गई और मुझे लगता है कि वह चिंता सही है। मैं सुबह प्रश्नकाल में इसे विस्तार से नहीं पढ़ पाया था। आज मैं बताना चाहता हूँ कि हमारी सरकार ने इंफ्रास्ट्रक्चर के लिए क्या किया है। पहले मैं कोर्ट हॉल पर आता हूँ। आज की तारीख में भारत में सबऑर्डिनेट जूडिशियरी में 18,444 कोर्ट हॉल्स हैं और 2,709 कोर्ट हॉल्स बन रहे हैं। इसका मतलब है कि एक साल के बाद देश में कुल 21,153 कोर्ट हॉल्स हो जाएंगे। This is larger than the number of subordinate judiciary judges. हमने इतने कोर्ट हॉल्स बना दिए हैं। आप इनमें बैठिए।

Now I come to residential units for the subordinate judiciary. सबऑर्डिनेट जूडिशियरी में आज देश में जजों के रहने के लिए 15,853 रेजिडेंशियल यूनिट्स हैं और 1,472 यूनिट्स बन रही हैं। Therefore, after nearly one year, their number will come to 17,325. This is what I am proud to say. Since our Government came to power in 2014, the number of court halls

increased by 2,819 and the number of residential units increased by 2,321. Therefore, court halls for subordinate judges and residential units for subordinate judges have increased by leaps and bounds.

I now come to financial assistance. This was raised by many Members of the House. There is a financial assistance scheme since 1993-94. You have held the Office of the Law Minister; therefore, you would be able to recall that. For the last more than 25 years, the total amount given under this scheme is Rs. 6,302 crore. Out of that, Rs. 2,058 crore, which is nearly 45 per cent has been given in the last four years of Narendra Modi Government. We are giving money also.

With regard to the Fourteenth Finance Commission, the devolution has gone up from 32 per cent to 42 per cent. Therefore, we are doing our best for infrastructure. Let me share the information about computerisation of courts. Today, 16,089 courts of India have become computerised. There is a judicial data grid on which nearly 10.5 crore cases are available from which I take out old cases.

अब मैं एप्वाइंटमेंट पर आता हूँ, क्योंकि एप्वाइंटमेंट पर बहुत बातें कही गई हैं। सबसे पहले मैं आपको एक बात बता दूँ, यह नरेन्द्र मोदी जी की सरकार में ही हुआ कि हम लोगों ने वर्ष 2014 के बाद हाई कोर्ट जजेज में 173 नई पोस्ट क्रिएट की हैं। सबऑर्डिनेट जूडिशियरी में हम लोगों ने उनकी स्ट्रेंथ को बढ़ाया है। यह मैं आपसे कहना चाहता हूँ।

मैं इस हाउस में नेशनल जूडिशियल कमीशन एक्ट लेकर आया था और उस वक्त का मुझे राजेश रंजन जी का भाषण याद है। Even my good friend Sampath also spoke on that; I remember that. What happened was this. The National Judicial Commission was there, where the Law Minister was one

Member along with the Chief Justice of India, the Second Judge, the Third Judge and two eminent persons. The Supreme Court quashed it. The Supreme Court had stayed the appointments till the pendency of that case; that case was decided in November of 2015. वर्ष 2014-15 में नियुक्तियाँ कम हो पाईं, उसमें हमारी गलती नहीं है। सुप्रीम कोर्ट ने स्थगन आदेश जारी कर रखा था। जब वह खत्म हुआ तो क्या हुआ, वह मैं आपको बताना चाहता हूँ। I can share this with you because the Secretary-General was earlier Secretary, Justice. She knows about a lot of things in this. ... (*Interruptions*)

HON. DEPUTY SPEAKER: No, Minister, regarding the National Judicial Commission about which you spoke, what is the solution? Parliament passed the legislation. Is the Supreme Court supreme or is the law passed by Parliament supreme? Please let me know what remedies you have found out. We cannot simply put the blame for everything on the Supreme Court.

... (*Interruptions*)

PROF. SAUGATA ROY (DUM DUM): Sir, his pet project was a separate commission. ... (*Interruptions*) That was turned down by the Supreme Court. He said that as the Law Minister of India he wanted it but the Supreme Court did not want that. ... (*Interruptions*)

HON. DEPUTY SPEAKER: We are the law-makers. We have to find a solution for that.

... (*Interruptions*)

HON. DEPUTY SPEAKER: They are the interpreters. The judges are the interpreters. They are not law-makers; we are the law-makers.

... (*Interruptions*)

SHRI RAVI SHANKAR PRASAD: Earlier, I had an occasion to explain, in reply to the query you have raised, Sir, that we have accepted the judgement, but I have serious reservations on the reasoning of the judgement. I am saying this as a student of law and not necessarily as the Law Minister. For the first time, in the history of India, this Parliament, both the Houses except one Member, extended hundred per cent support. There was hundred per cent support of all the Vidhan Sabhas. There was a consensus in the polity of the country but they set it aside. And, what reasoning did they give? I would like to repeat that reasoning here in this House. They said, listen Prof. Roy, that since the Law Minister is its Member, an honest, fair judge cannot be appointed in the case of litigation against the Government. That is a very loaded comment. I am sorry to say that.

Let me repeat, Sir. We are in power today and you had been in power earlier.

PROF. SAUGATA ROY : It is a loss of face for Parliament....  
(*Interruptions*)

SHRI RAVI SHANKAR PRASAD: Please, let me complete. Sir, all of us assist the Prime Minister; the Finance Minister in Finance, the Defence Minister in Defence and the Law Minister in Law, but ultimately the Prime Minister decides and the President issues the warrants. A very loaded comment, that mere association of the Law Minister will cast upon the impartiality of judges' appointment, has been made.... (*Interruptions*)

HON. DEPUTY SPEAKER: You are representing the whole House.

SHRI RAVI SHANKAR PRASAD: Therefore, Sir, with greatest respect, as a student of Constitution of India, as a lawyer, I totally disagree with the reasoning given by the Supreme Court so far as setting aside of the NJAC is concerned.... *(Interruptions)* Let us not discuss it.

SHRI PINAKI MISRA (PURI): Bring another law with a slight tweaking and pass it again. This time it will fly in the Supreme Court, I guarantee you. Bring another law in this very Parliament Session.... *(Interruptions)*

SHRI DEEPENDER SINGH HOODA (ROHTAK): There should be a discussion on this.... *(Interruptions)*

HON. DEPUTY SPEAKER: The Minister will reply. Mr. Minister, you have understood the sentiments of the House.

... *(Interruptions)*

SHRI DEEPENDER SINGH HOODA : Sir, this is a very important Constitutional matter. We need to have a discussion on this.... *(Interruptions)*

SHRI RAVI SHANKAR PRASAD: Sir, I had said it on an earlier occasion also, I am more than willing, let the House discuss the state of Indian judiciary. I have no problem. Let us discuss it. I see the sentiments of this House. One Member has asked about increasing the age of judges. I am not in favour of increasing the age of judges. Please be very clear about it. ... *(Interruptions)*

Now, I come to what we have done. In 2016 we appointed 126 High Court judges. This was the highest number in the last 30 years. This is our record.

In 2017, we appointed 115 judges. This year, till now, we have appointed.... (*Interruptions*) Shri Venugopal, I am not yielding.

HON. DEPUTY SPEAKER: Let him finish.

SHRI RAVI SHANKAR PRASAD: We have appointed 34 judges and with regard to 126, I have sent the recommendations for consideration.

SHRI KODIKUNNIL SURESH : How many Scheduled Caste and Scheduled Tribe... (*Interruptions*)

HON. DEPUTY SPEAKER: Let there be order in the House.

... (*Interruptions*)

HON. DEPUTY SPEAKER: Mr. Minister, you address the Chair.

SHRI RAVI SHANKAR PRASAD: I am not yielding.

When I became the Law Minister in the Modi Government, I wrote to all the Chief Justices of the High Court that in appointment of judges the case of minorities, women, Scheduled Castes and Scheduled Tribes and Backward Class people must be recommended properly.

SHRI KODIKUNNIL SURESH : But nothing has happened.... (*Interruptions*)

SHRI RAVI SHANKAR PRASAD: I am not yielding.

My Government is very keen and I keep on emphasising that Scheduled Caste and Scheduled Tribe people should also be appointed.

I now come to the Commercial Courts. As far as Commercial Courts are concerned, I want to explain ... (*Interruptions*)

HON. DEPUTY SPEAKER: He is giving the reply.

... (*Interruptions*)

SHRI RAVI SHANKAR PRASAD: On the issue of Commercial Court, I am very clear that this particular law is designed to create more opportunities for disposal.

HON. DEPUTY SPEAKER: Let the Minister finish the reply. You can seek clarifications later on.

... (*Interruptions*)

SHRI RAVI SHANKAR PRASAD: Sir, I can tell you that in the mediation step itself many smaller disputes, which may not be required to go to the Court, can be taken care of.

Now, the question comes, should we just keep quiet? With great respect to my good friend, Shri Pinaki Misra, I want to submit that as Law Minister, I am not a Post Office. As a Law Minister, it is my duty to apply my mind and see that best appointments are made in the judicial process. I will keep on doing it regardless of judgement. We are verifying it. Why not? We should verify. Someone says that training should be proper. Yes, it should be proper. ... (*Interruptions*) I will not make any individual comment. I should not make that. That is not the tradition of this House. I want you to know it. ... (*Interruptions*)

As far as SCs/STs are concerned, I have myself conveyed to the collegium that the country expects that in the appointment of judges, people from that community also must get proper space. I will continue to insist it and want to insist that. . . . (*Interruptions*)

Now, I would like to inform the hon. Members that ultimately the collegium of the hon. High Courts and hon. Supreme Court recommends it. But, what is important is that I must also give my own feedback to ensure that all these things are done properly. Therefore, in my communication, I have always repeatedly said that people of SCs/STs, marginalised community, OBCs and also women must get proper representation. . . . (*Interruptions*) That I will continue to do so.

Now, I come to the training part of judges. Some of the hon. Member have talked about it. Yes, you are right that judges should also be trained. We are insisting on giving proper training to judges. The National Judicial Academies are coming up. Once this whole commercial litigation ultimately rises, more and more exposure will be given to this aspect of training of judges. I would like to convey my hon. Member – when he talked about income tax cases and other cases – that tax cases are not within the realm of commercial disputes because they are a separate procedure altogether.

Now, a question was asked by Shri N.K. Premachandran that with so many under-trial prisoners, it creates a load on criminal system, and, therefore, why are we doing this? I think you and Dr. A. Sampath are aware, both with strong legal background, that there is a provision of Section 436A of the Cr.P.C, which says that if you have spent nearly half

of your under-trial period in jail, you should be released. I have written to all the Chief Justices of High Courts. The hon. Supreme Court has given a judgement. We need to follow it up. ... (*Interruptions*) I take note of this thing, Shri Idris. I have taken your feedback. In my communication to the Chief Justice of hon. High Court of Calcutta, I will surely convey that this has been brought to our notice. The provision of Section 436A should be more liberally used to release those under-trials who have served half of their sentence. ... (*Interruptions*) Now, will you please sit down. I am replying to a query. Sir, I think, hon. Member, Shri Idris, should know that the order has to be passed by the judges and not by me as a Law Minister. I can only pursue it, fix a time-frame and do it fast. That I will surely take it up. ... (*Interruptions*)

HON. DEPUTY SPEAKER: Please address the Chair.

SHRI RAVI SHANKAR PRASAD: In case of women detenue, I have myself said that if they have covered 25 per cent, then they should be released on bail.

Sir, the Government is taking pro-active measures in case of judicial reforms. We have scrapped 1400 old laws. I must inform this House that this is one step. Tomorrow or day after tomorrow, I am coming with arbitration law. New Delhi is the centre of arbitration. All these things are designed to make India a good hub of domestic arbitration and international arbitration for the resolution of disputes. So, this Government is coming up with this whole package. When India is emerging as a big economic power house, surpassing even France, on a way to become the top three, these measures are important.

I have taken on-board the concerns of all the hon. Members. This is a historic legislation. ... (*Interruptions*) Today, you are making history. I can only tell you that even you will see this process unfolding itself as to how India's ease of doing business spectrum ultimately goes up. That is our aim.

I request this House to kindly support the Bill.

SHRI N.K. PREMACHANDRAN (KOLLAM): Sir, first of all, regarding the Ordinance route of legislation, the hon. Minister in his reply has reiterated that the Government is having the ample authority to promulgate an Ordinance. But that ample authority to promulgate Ordinance is subject to the law of the land. We know that the law of the land includes the Supreme Court judgments also.

The hon. Minister is well aware of the latest Supreme Court judgment regarding promulgation of Ordinance. It has explicitly stated that it can be issued only under the compelling circumstances and in the extraordinary situations. Not only regarding promulgation of Ordinance but regarding re-promulgation of Ordinance also, clear Supreme Court judgment is there. So article 123 is not an unfettered authority conferred upon the Government. I do not want to explain it again and again. That is why, in my opening remarks itself I had said that the hon. Minister is well learned and is a legal luminary. In all these aspects, better than anyone else, he is well aware of all these things. He is also aware of the Supreme Court judgments.

So the ample and unfettered authority cast upon the Government regarding the promulgation of Ordinance is subject to the law of the land. The law of the land means the Supreme Court judgments, precedents, and conventions. All these things come under the purview of the law of the land.

So my submission is that there are no compelling circumstances or extraordinary situation so as to promulgate an Ordinance when the House was to commence in the month of July, 2018, to have the Monsoon Session. There is no urgency and there is no exigency. So, still the reason for bringing an Ordinance is not clear.

Secondly, regarding burdening of Indian courts with cases, I did not get a satisfactory answer. The hon. Minister was talking about Section 436 of CrPC. As far as under-trial prisoners are concerned, if their term is about to expire, definitely they are entitled to have its benefits. But most of the under-trial prisoners in the country are not getting that benefit as per Section 436 of CrPC.

But my point still remains and that is why I am critically examining it. If you can elucidate the august House regarding what would be the impact of other pending cases, it will be good. When you are giving a preferential treatment and preferential court for the commercial disputes under Section 2 (Clause C) of this Act, what would be the fate of other cases which are pending in various courts including criminal as well as civil disputes?

Sir, I am having a dispute with my friend here and suppose it is a civil dispute. Now a commercial dispute of Rs.3 lakh is getting a preferential

treatment. But what is the legitimate or logical explanation for preferential treatment for a commercial dispute alone? I think the sole reason is Ease of Doing Business. So, this point has to be cleared. It has not been cleared.

Lastly, I fully agree with the hon. Deputy-Speaker. The entire House as also the Rajya Sabha endorsed your view when you had brought the National Judicial Appointments Commission Bill. We praised you a lot because you made a historic speech in this Parliament while introducing that Bill.

Now we are fully supporting this Bill but suppose the Supreme Court struck down this Bill. Is there any other alternative or remedy to go? Why is the Government not having the political will to over-write the Supreme Court judgment? As far as law making for the country is concerned, still I believe, this Parliament is the supreme law making body. Suppose the Supreme Court struck it down, definitely there are ways and means to get over this. The question is whether the Government has the will to overcome the situation. I fully agree with you that this is a balanced legislation. It is a good legislation as far as the country is concerned. It is balancing the Judiciary, the Executive as well as the Parliament.

So, on behalf of the House, I once again urge upon you to kindly take the initiative to get the Bill passed in any way and get the endorsement of the Supreme Court.

With these words, I thank you for giving me this opportunity.

SHRI K.C. VENUGOPAL (ALAPPUZHA): Sir, I do agree with the sentiments shown by this august House regarding the National Judicial Appointments Commission. The Parliament had passed that Bill and it should be honoured. But I have a question to ask from the Government.

I have a question to the Government. You are saying that the Judiciary should be independent. We totally agree to this but the view of the Government towards the Judiciary should also be independent. But that has not happened. The collegium had recommended the name of a judge....

\* HON. DEPUTY-SPEAKER: The name will not go.

SHRI K.C. VENUGOPAL : Why did the Government reject only that name? What situation prompted the Government to reject that name? ... *(Interruptions)* For a Government also such things are not good. ... *(Interruptions)* Therefore, this Government is also threatening the Judiciary ... *(Interruptions)* This Government is also threatening Judiciary ... *(Interruptions)* That is why this situation has arisen ... *(Interruptions)* Only talking about the independence of the Judiciary is not acceptable.

**श्री निशिकान्त दुबे (गोड़ा):** माननीय उपाध्यक्ष जी, मेरा प्रश्न दूसरा है लेकिन ऑर्डिनेंस रूट पर लगातार जो चर्चा हो रही है, मैं उसके बारे में कहना चाहता हूं। आपको वर्ष 2013-14 का ध्यान होगा, सेबी के ऑर्डिनेंस के लिए कांग्रेस सरकार, जिसे सपोर्ट कर रहे हैं, चार बार ऑर्डिनेंस लेकर आई थी।

कमर्शियल कोर्ट का बिल लेकर ईंज़ ऑफ डुंडिंग बिजनैस के आधार पर सरकार आई है, हम इसका पूरा समर्थन करते हैं। मैं जिस इलाके से आता हूं, वह

इलाका संथाल परगना है। जब बिहार और झारखंड अलग हुआ, झारखंड में एक अनऑफिशियल भारत सरकार के साथ बातचीत हुई।

HON. DEPUTY-SPEAKER: What is the clarification you want to ask?

**श्री निशिकान्त दुबे :** हम गरीब हैं, हमारा हाई कोर्ट रांची है। आप डिस्ट्रिक्ट कोर्ट के लिए ज्युरिस्डिक्शन तय कर रहे हैं, एक करोड़ से तीन लाख ला रहे हैं। आप गरीब व्यापारियों को ध्यान में रखकर काम कर रहे हैं। संथाल परगना के गरीब लोगों को 350-400 किलोमीटर जाने में देर लगती है। आपने अधिकार हाई कोर्ट को दिया हुआ है। हाई कोर्ट के बैंच का मामला संथाल परगना, दुमका में पेंडिंग है। मेरा निवेदन है कि आप उसके बारे में ध्यान दें।

**श्री दुष्यंत चौटाला (हिसार):** माननीय अध्यक्ष जी, माननीय मंत्री जी ने कहा कि यह प्रणाली एक करोड़ से तीन लाख इसलिए की जा रही है ताकि अंबानी और ठेले वाला बराबर अपने अधिकार के लिए लड़ाई लड़ सके।

हम अमीर और गरीब की बात कह रहे हैं। मैं माननीय मंत्री जी से पूछना चाहता हूं कि एक गरीब आदमी क्या सुप्रीम कोर्ट में पांच लाख रुपए में वकील खड़ा कर पाएगा? इसके लिए सरकार क्या व्यवस्था करेगी? जब आप कोर्ट में केसेस की संख्या बढ़ाएंगे तो वकीलों की फीस भी ज्यादा होगी क्योंकि अवेलेबिलिटी कम हो जाएगी। गरीब आदमी को भी अधिकार मिले और वह सुप्रीम कोर्ट में जा सके, क्या इस बिल के बाद आप कोई व्यवस्था करेंगे?

**श्री विनायक भाऊराव रात (रत्नागिरी-सिंधुदुर्ग):** माननीय अध्यक्ष जी, मेरी जानकारी में है कि सुप्रीम कोर्ट ने सरकार से कहा है कि हाई कोर्ट के रिटायर्ड जज को एडहॉक बेसिस पर नियुक्ति की जाए। हाल ही में सदन में सैक्सुअल हासमेंट और ह्यूमेन ट्रैफिकिंग दो महत्वपूर्ण विधेयक पास किए गए हैं। ऐसी स्थिति में

एडहॉक बेस पर रिटायर्ड जज नियुक्त होंगे तो क्या सरकार सैक्सुअल हासमेंट के केस उनके माध्यम से देखे जाने का कोई प्रावधान करेगी?

DR. A. SAMPATH : Sir, I would like to have a clarification from the hon. Minister. I am not speaking about 'ease of doing business' and right to life etc.

There have been various reports on the appointment of the judges of the Supreme Court. The hon. Minister is very well aware of the Memorandum of Proceedings (MOP). There has been a delay on the part of the Government in the correspondence between the Supreme Court and the Government. When the Supreme Court suggests some names to the Government, the Government takes quite a lot of time to reply back to the Supreme Court.

Sir, I would like to know from the hon. Minister if it is a sin to be in the Supreme Court if two or more judges are speaking the same Mother Tongue and are from the same State. Is it a sin to be a judge of the Supreme Court if they are from the same State but are efficient, senior and eligible? This has happened.

Sir, I am from South India. We the people from South Indian States have a feeling that we are being deprived. I asked him even during the discussions. Even now the hon. Minister is not able to give a proper reply. Even though it is enshrined in the Constitution, yet no Benches of the Supreme Court has been established in any other place than Delhi.

The seat of power is still in Delhi. The seat of political power is still in Delhi; the seat of judicial power is in Delhi and the seat of financial power is in Delhi. Will the Government take initiative for decentralisation of the judicial power?

**SHRI KODIKUNNIL SURESH :** Sir, I would seek a clarification from the hon. Minister. He has said that the Government has given instructions to the Supreme Court and the High Courts on appointment of Scheduled Castes and Scheduled Tribes but unfortunately, it is not happening. There is a very serious disparity in the appointment of High Court and Supreme Court judges. Representation of Scheduled Castes and Scheduled Tribes is very poor in the High Courts and Supreme Court.

I would like to ask one question to the hon. Minister through you, Sir. If the Supreme Court and the High Courts do not take steps in this regard, what action will be taken by the Government of India?

**SHRI RAVI SHANKAR PRASAD:** Sir, on the Ordinance route, I have explained it in detail. I do not want to repeat. लेकिन एक बात जो बार-बार कही जा रही है कि लगता है कि सब कुछ कमर्शियल कोर्ट में ही होगा, बाकी बंद हो जाएगा। मीनाक्षी जी ने बहुत विस्तार से बताया कि लॉ कमिशन ने एक एन्जाम्पल लिया था कि इस तरह के 47 परसेंट कमर्शियल केसेज़ हैं। आज भी दिल्ली हाईकोर्ट हो, पटना हाई कोर्ट हो, मुम्बई हाई कोर्ट हो या राजस्थान हाई कोर्ट हो वहां क्रिमिनल केस भी होते हैं और सिविल केस भी होते हैं। आप निचले कोर्ट में चले जाएं चाहे पूर्णिया हो या केरल हो, वहां मुंसिफ़ दीवानी केस भी सुनता है और मजिस्ट्रेट क्रिमिनल केस भी सुनता है। यह बात कही जा रही है कि चूंकि

कमर्शियल कोर्ट हो रहा है, तो सब कोर्ट बंद हो जाएंगे, यह हम उचित नहीं मानते हैं। बार-बार एडहॉक जजेज़ के बारे में बात कही गयी। ... (*Interruptions*) Please do not disturb me as I did not disturb you. That is a friendly commitment which I want from you. You have spoken brilliantly today.

The point which I am trying to highlight is very important. We have enough judges if appointment is done. There are 5000 vacancies in the subordinate judiciary. All of you know that the Government of India has no power; the State Governments have no power and I totally see the reasoning of the All-India Judiciary Service but the High Courts do not agree. Therefore, we have suggested that a centralised examination for 5000 posts be done in which reservation should also be given for SCs, STs and OBCs who will ultimately become Additional District Judges and become High Court Judges. All these matters are pending in the Supreme Court. I am doing my best on behalf of the Government so that diversity of the judiciary is also maintained.

A question came up about the Benches. The Supreme Court itself has said that the Supreme Court Bench should remain in Delhi. Now, what should I do, Adv. Sampath? You are an eminent lawyer yourself. What can I do? Supreme Court has given a judgement that for creation of new Benches, the consent of the Chief Justice is important. अगर पटना हाई कोर्ट के चीफ जस्टिस माननीय राजेश रंजन जी यह अनुशंसा करें कि एक बैंच पूर्णिया में खोली जानी चाहिए, तो हम गंभीरता से विचार करेंगे। माननीय निशिकान्त दुबे जी अगर झारखंड हाई कोर्ट के मुख्य न्यायाधीश से सम्पर्क करके और उनसे चर्चा करने के बाद कहेंगे कि एक बैंच दुमका में लाइए, तो उस पर भी विचार करना पड़ेगा। लेकिन, जब तक हाई कोर्ट की अनुशंसा नहीं होगी तब तक हम इस दिशा में आगे नहीं बढ़ सकते हैं, यह हम आपसे कहना चाहते हैं।

It is not a sin, Adv. Sampath, if judges come from one State. But surely, while making appointment to the Supreme Court of India, if many High Courts go unrepresented where senior competent persons are there and we are having appointment from only one High Court, then as the Minister for Law and Justice, I am duty bound to convey that concern to the court. It is for them to decide but when I notice the appointment process in the Supreme Court, I am very clear that Supreme Court appointment must also indicate the diversity of India. It is equally important.

One thing I want to clarify here. With your wide experience, you are aware that we do not discuss individual judges' names in this House. That tradition ought to be maintained. ... (*Interruptions*) Sir, I am not yielding to Shri Kharge. We had enough discussion on this subject. I am open to have a full-length discussion, if Shri Anant Kumar permits, on the Judiciary service.

Sir, I request you to start the voting process as I have replied to all the queries.

SHRI MALLIKARJUN KHARGE : Mr. Deputy Speaker, Sir, this is not a question of any individual. This is a question of justice. Once it came to Government- the...\* case, you sent it back.

HON. DEPUTY SPEAKER: The name will not go on record.

SHRI MALLIKARJUN KHARGE : It has come again. It has been recommended again. Still, that file is pending with them.... (*Interruptions*) Are they acting judiciously or independently? You are always interfering.

Whomsoever you like, you are supporting and whomsoever you do not like, you are opposing. This is your attitude. You give the explanation....  
*(Interruptions)*

HON. DEPUTY SPEAKER: I cannot compel the Minister. I am sorry.

... *(Interruptions)*

HON. DEPUTY SPEAKER: The question is:

“That this House disapproves of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018 (No. 3 of 2018) promulgated by the President on 3<sup>rd</sup> May, 2018.”

*The motion was negatived.*

HON. DEPUTY SPEAKER: The question is:

“That the Bill to amend the Commercial Courts, Commercial Division and the Commercial Appellate Division of High Courts Act, 2015, be taken into consideration.”

*The motion was adopted.*

HON. DEPUTY SPEAKER: The House will now take up clause by clause consideration of the Bill.

The question is:

“That clauses 2 and 3 stand part of the Bill.”

*The motion was adopted.*

*Clauses 2 and 3 were added to the Bill.*

**Clause 4**

**Amendment of Section 2**

HON. DEPUTY SPEAKER: Shri N.K. Premachandran, are you moving amendment No. 1?

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

“ Page 2, line 14,-

*for “three lakh”*

*substitute “seven lakh and fifty thousand”. (1)*

HON. DEPUTY SPEAKER: I shall now put amendment No. 1 moved by Shri N.K. Premachandran to clause 4, to the vote of the House.

*The amendment was put and negatived.*

HON. DEPUTY SPEAKER: The question is:

“That clause 4 stand part of the Bill.”

*The motion was adopted.*

*Clause 4 was added to the Bill.*

*Clause 5 was added to the Bill.*

**Clause 6**

**Amendment of Section 3**

HON. DEPUTY SPEAKER: Dr. Shashi Tharoor – Not present.

Prof. Saugata Roy – Not present.

The question is:

“That Clause 6 stand part of the Bill.”

*The motion was adopted.*

*Clauses 6 was added to the Bill.*

*Clauses 7 to 10 were added to the Bill.*

**Clause 11**

**Insertion of new Chapter 111A**

HON. DEPUTY SPEAKER: Shri N.K. Premachandran, are you moving amendment No. 3?

SHRI N.K. PREMACHANDRAN : I beg to move:

“ Page 3, lines 23 and 24,-

*for “such manner and procedure as may be prescribed by rules made by the Central Government”*

 *substitute “the provisions of Code of Civil Procedure, 1908”.* (3)

HON. DEPUTY SPEAKER: I shall now put amendment No. 3 moved by Shri N.K. Premachandran to clause 11, to the vote of the House.

*The amendment was put and negated.*

HON. DEPUTY SPEAKER: The question is:

“That clause 11 stand part of the Bill.”

*The motion was adopted.*

*Clause 11 was added to the Bill.*

*Clauses 12 to 16 were added to the Bill.*

HON. DEPUTY SPEAKER: Shri N.K. Premachandran, are you moving your amendment no. 4 to clause 17?

SHRI N.K. PREMACHANDRAN : Sir, the amendment no. 4 is concerning the State Legal Services Authority. So, I am not moving amendment no. 4.

HON. DEPUTY SPEAKER: The question is:

“That clauses 17 to 20 stand part of the Bill.”

*The motion was adopted.*

*Clauses 17 to 20 were added to the Bill.*

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

SHRI RAVI SHANKAR PRASAD: Sir, I beg to move:

“That the Bill be passed.”

HON. DEPUTY SPEAKER: The question is:

“That the Bill be passed.”

*The motion was adopted.*