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Title: Motion to consider the Negotiable Instruments (Amendment) Bill, 2017- Bill Passed.

वित्त मंत्रालय में राज्य मंत्री (श्री शिव प्रताप शुक्ला) : महोदय, मैं प्रस्ताव करता हूँ:

“कि परक्राम्य लिखत अधिनियम, 1881 का और संशोधन करने वाले विधेयक पर विचार किया जाए।”

श्री दीपेन्द्र सिंह हुड्डा (रोहतक) : महोदय, निर्दोषों की हत्या हुई है।...(व्यवधान)
मेघवाल जी का भी उसके ऊपर एक स्टेटमेंट आया है।...(व्यवधान)

श्री शिव प्रताप शुक्ला : महोदय, परक्राम्य लिखत अधिनियम, 1881 प्रोमिसरी नोट्स, बिल्स ऑफ एक्सचेंज तथा चैक से संबंधित है। इस अधिनियम का समय-समय पर संशोधन भी होता रहता है, जिससे चैक के विदड़ॉल के मामलों से निबटा जा सके।

मान्यवर, चेक अनादा अनावरण के सम्बन्ध में सरकार को समय-समय पर अनेक रिप्रेजेंटेशन भी मिले हैं। इसमें सामान्य से लेकर व्यापारी वर्ग सभी के सभी सम्मिलित हैं। अक्सर देखा गया है कि कपटी जारीकर्ता, मतलब जो चेक जारी करते हैं, तथा अन्य समय इसमें अदालती स्थिति हो जाती है तो अदालती इतने लम्बे समय तक हो जाती है कि उन लोगों को, जिन्हें इसका फायदा मिलना चाहिए, वे इसका फायदा कभी ले नहीं पाते हैं। चेक के प्राप्तकर्ता को उसका मूल्य प्राप्त करने में विभिन्न प्रकार की अदालती कार्यवाही और, या तो आपस में समझौता की स्थिति करनी पड़ती है, जिसमें भी उसको बहुत नुकसान होता है। यह

हम सभी लोगों, किसी के साथ भी जुड़ सकता है कि अगर समय से उसका समाधान नहीं होता है तो लोगों के लिए बहुत प्रॉब्लम्स हो जाती हैं।

इसमें जो हमने किया है, इसमें नेगोशिएबल इंस्ट्रूमेंट एक्ट, 1881 की एक नई धारा 143(क) का समावेश किया गया है तथा धारा 138 के अन्तर्गत अपराध की सुनवाई करने का, न्यायालयों को चेक जारीकर्ता को निर्देश देने का यह अधिकार दिया है कि शिकायतकर्ता को चेक की राशि का 20 प्रतिशत का अन्तरिम भुगतान करें। चेक जारीकर्ता 60 दिनों के अन्दर अन्तरिम मुआवजे का भुगतान कर सकता है तथा 30 दिनों के अन्दर उसे बढ़ाया भी जा सकता है। यदि चेक जारीकर्ता को दोषमुक्त कर दिया जाता है तो अदालत अपीलकर्ता के अन्तिम मुआवजे के रूप में भुगतान की राशि भारतीय रिज़र्व बैंक द्वारा प्रकाशित तथा वित्तीय वर्ष के आरम्भ में प्रचलित बैंक ब्याज दर पर देना पड़ता है।

नेगोशिएबल इंस्ट्रूमेंट एक्ट, 1881 में एक नयी धारा 148 को समावेशित किया गया है। इसके अन्तर्गत अदालत न्यायालयों को अपीलकर्ता को ट्रायल कोर्ट द्वारा निर्धारित दंड तथा भुगतान, इसी के अन्तर्गत जैसा कि पहले निवेदन किया था, 20 प्रतिशत जमा करने का आदेश दिया गया है। यह राशि धारा 145(क) के तहत भुगतान किए गए किसी भी अन्तरिम मुआवजे के अतिरिक्त होगी। चेक जारीकर्ता को आदेश की तारीख से 60 दिनों के भीतर जमा राशि का भुगतान करने की स्थिति होगी और फिर बाद में अगर कोई पार्टली होगा तो उसे 30 दिनों तक बढ़ाया जा सकता है।

अपीलीय न्यायालय अपीलकर्ता तथा जमा राशि, अपील के लम्बित रहने के दौरान किसी भी समय शिकायतकर्ता को जारी निर्देश दे सकता है। यदि वह दोषमुक्त हो जाता है तो अदालत शिकायतकर्ता को इस प्रकार जारी की गई राशि, जो आर.बी.आई. का सिस्टम है, उसके आधार पर वित्तीय वर्ष के प्रारम्भ में चल रही बैंक ब्याज की दर से भुगतान करेगा।

मान्यवर, प्रस्तुत विधेयक में चेक प्राप्तकर्ता को राहत प्रदान करने के उद्देश्य से चेक के अस्वीकृत होने सम्बन्धी मामलों में अनावश्यक विलम्ब की समस्या के समाधान के लिए इस एक्ट में जगह-जगह इसके पर्याप्त उपाय भी कर दिए गए हैं। इस विधेयक को लागू होने के आवश्यक विवादों को इसी से निपटा जा सकता है, अपेक्षाकृत बहुत अधिक समय तक कोर्ट में जाने के। इससे चेक की विश्वसनीयता बढ़ेगी तथा बैंक सहित उधार देने वाली संस्थाएँ, जो देश की अर्थव्यवस्था के संदर्भ में उत्पादक क्षेत्रों को उपलब्ध कराते हैं, उनकी अनुमति लेकर सामान्य व्यापार तथा वाणिज्य को भी इसमें सहायता मिलेगी।

मैं इस सम्मानित सदन के सदस्यों से अनुरोध करता हूँ कि इस विधेयक को समर्थन देते हुए पारित करने की कृपा करें।

HON. DEPUTY SPEAKER: Motion moved:

“That the Bill further to amend the Negotiable Instruments Act, 1881, be taken into consideration.”

DR. A. SAMPATH (ATTINGAL): Sir, I am on a point of order under Rule 110.

The Bill which has been initiated by the hon. Minister is absolutely unconstitutional. There is a reason for why I am saying that it is absolutely unconstitutional.

It is at page no. 46 and specifically I am specifically sticking to that. This Bill should be withdrawn. As you are sitting in the Chair now, I request you to give a direction to the Minister to withdraw the Bill, because this Bill intends to take away the constitutional right of the

litigants who are put in the array of the accused. If this House is going to discuss this Bill, - of course, because the Treasury Benches have the majority – the business people may be interested to see that this Bill gets passed.

HON. DEPUTY SPEAKER: Please do not go into the merits of the Bill. What is your point of order?

DR. A. SAMPATH: Sir, my point of order is that this is an unconstitutional Bill and this House lacks the authority to discuss and to pass a Bill, which is purely unconstitutional. So, it is my primary duty to bring this to the notice of the House, through the Chair. I would like to invite the attention of the hon. Minister also to this. I have objection to this Bill. ...
(Interruptions)

HON. DEPUTY SPEAKER: There is no point of order. Please take your seat.

DR. SHASHI THAROOR (THIRUVANANTHAPURAM): Mr. Deputy Speaker, Sir, I thank you for the opportunity given to me to initiate the debate on the Negotiable Instruments (Amendment) Bill, 2017.

It is, obviously, a very important legislation, as the hon. Minister has just explained, to address some of the existing concerns around cheque payments in our country and for that very reason, the Indian National Congress, which has worked tirelessly to represent the voices of small, medium and even, when appropriate, big industry does not object to it on principle. But the question I have to ask the Minister is this. Is this version of the Bill the best that we can do for this country at a time when the strains and stresses on the economy have reached an all-time high due to

the twin disasters of demonetisation, which was a bad idea, implemented badly and the botched up roll-out of GST, which was a good idea, implemented badly. Now, in these circumstances, unfortunately, the answer is 'no' and I will try and explain what my concerns are. They differ slightly from my hon. neighbour Mr. Sampath. But on the constitutionality, I am sure he will address the matter. My concern is about the practicality.

Now, what is the purpose of the Bill? The purpose of the Bill is to deal with cheque bouncing, ensure that we have, therefore, one more contribution to the ease of doing business, the annual set of matrix on commercial activity undertaken by the World Bank which our Prime Minister has announced as a major target for this country. As you know, the Prime Minister said that he wanted to put India in the first 50 of all countries in the Ease of Doing Business Ranking and that is a laudable and challenging objective, which will certainly be undermined if we do not fix our cheque system.

Having said that, we now have the word of the World Bank's own Chief Economist, Paul Romer, who says there are serious flaws in the methodology employed in calculating the Ease of Doing Business Ranking. So, maybe, that is not what we should do. We should, instead, be looking much more at the decent lives of our own citizens and ask ourselves this question, Can we do more, can the Government and this Parliament do more to help struggling citizens who are coping with this problem of cheque bouncing that happens? If somebody gives a person a cheque that he has no intention of honouring, he, then, ends up with the cheque bouncing and the innocent citizen is left without recourse under our existing laws.

Now, Sir, we all know that investment and the inflow of capital into our country are both essential for the development of our nation. We all know that without cheques, we cannot have commercial activity. We can talk, whether we like or not, about a cashless society, but cheques are the first sign of a cashless society before we get into credit and debit cards. In fact, I have looked into this and it seems that commercial transactions in August, 2017 alone, just to take one month, the transactions by cheque were worth more than Rs. Six lakh crore, which is more than three times the amount conducted in debit card or credit card transactions in our country and as per the Reserve Bank of India's Annual Report for the last fiscal year, 2016-17, there were Rs. 74 lakh crore in cheque transactions.

So, the credibility of cheques is not only important for corporate entities, but also for ordinary people, when they receive payments such as their salaries in the form of cheques. Now, the existing law, Mr. Deputy Speaker, has a swift procedure under Chapter 17 of the Negotiable Instruments Act on cheque bounces. There was an amendment made in 1988, which is Section 138, in order to give credibility to the settlement of liabilities and then in 2002, the Act was again amended to provide for the summary trial of wrong doers in such cases. The idea was, of course, something that I will address later, that is the delays already in the judicial process even then. But unfortunately, despite those two amendments, our courts are clogged with innumerable cheque bounce cases, creating tremendous stress on the judiciary and hurting the interests of the aggrieved parties. Unfortunately, the slow pace of deciding these cases because of the sheer backlog involved has not only undermined the "ease of doing business", it has actually improved the "ease of doing cheating" in

our country. Now, according to the 213th Report of the Law Commission of India, there are 38 lakh cheque dishonour cases pending before our courts in 2008 which constitutes 20 per cent of all the criminal cases in India. I am not even sure we often realize and the House realizes it, that one fifth of all the criminal cases in India actually involve cheque bouncing. This is a very serious problem and the Bill proposed does not do enough to address it. I will explain why. What has been proposed certainly is desirable. It will strengthen the purpose of the existing Bill. But though these measures may be necessary Mr. Minister, they are not sufficient. They are not sufficient to handle the very, very serious dimensions of the problems. For instance, the interim compensation to the complainant can only be ordered by the court after the accused has been brought to the court and pleads his innocence at the stage of framing of charges. Now, I hope you all know, you cannot always bring these chaps to the court. A lot of time is spent even trying to serve a summon to the accused. They do not cooperate. They often abscond, or they evade the arms of the law in a bid to frustrate the entire legal process. While the Criminal Procedure Code provides for the attachment of the property of the absconder to compel his participation in a trial, there is a flaw that I have already mentioned last week in addressing the Fugitive Economic Offenders Bill, it does not provide for trial in his absence. So, once the person absconds, you cannot try him; there is nothing you can do. It is very interesting. There is famous line in Shakespeare's "Cymbeline" which says that the comfort of being in jail is that one need not fear paying the tavern-bills. In India, it seems to be the opposite, that the absconders need not have any fear about paying his tavern-bills because he would not be there for the courts to take action against him and put him in jail.

Mr. Deputy Speaker, now, I would like to draw your attention to two cases. One is *Kalai Selvi Vs. Siva Subramaniam* in your own State, Mr. Deputy Speaker, where the accused was convicted of dishonouring a cheque under the existing law. He filed an appeal. After filing an appeal, he became an absconder. Neither he, nor his counsel appeared before the court. So, the Appellate court directed the lower court to implement the judgement. But then he went to the Madras High Court, which reversed the decision on the grounds that in a criminal case, an ex-parte decision cannot be taken because every individual has a right to be fundamentally defended by lawyer. So, he is not showing up in the court and not being there with his lawyer meant that he could actually escape judgement. Now, if a person wilfully avoids a legal process and refuses to appoint a lawyer to represent him in order to frustrate the proceedings, should the aggrieved party be denied of his fundamental right to justice? But under our existing law, unfortunately that is what happens. The Supreme Court actually took note of this issue in another case *Hussain Vs. Union of India* in which the court observed that denial of timely justice is a violation of human rights and erodes the public's confidence in the administration of justice. The court, therefore, recommended - because only the Government can do it - that the Government should introduce an amendment to the Criminal Procedure Code to provide for a trial in *absentia* of absconders.

This is something, which for example, the Bangladeshi Government did. They also inherited the same Criminal Procedure Code from the British Raj but they have created their Section 339 B, in which they have introduced trial *in absentia*. The Supreme Court, in May of this year, has reiterated this recommendation through an order in the Bachche Yadav

Case. If trial *in absentia* can be allowed specially for cheque bounce cases, the delay in the cases can be avoided to a large extent.

Now, as I have mentioned, I have made the same suggestion with regard to fugitive economic offenders. Once they go off as fugitives, our law seems helpless to deal with them. We need to have the Government introduce a trial *in absentia* provision, and I recommend it very strongly.

The Government, in drafting this Bill, also does not appear to have taken account of the best practices from other jurisdictions. In France, for example, a person, who defaults on his cheque payments is added to a Central Register known as the Fichier Central des cheque (FCC); and he is banned from issuing any cheque for a period of five years. You could have put that into the law. You have not done so. This is actually proving to be a very effective deterrent in France. A similar mechanism could easily have been considered in drafting your Bill, that if somebody bounces a cheque, he cannot write another cheque for five years; and there is a Central Register; so, his cheques would be dishonoured.

Similarly, in some States in the USA, such as Arkansas, increased penalties were imposed if there is a second instance of a bounced cheque after the first conviction. So, that again, would have been another possibility. If you do not want to ban him for five years, give him one more chance; fine. But after the second instance, he should be banned. But we do not have any of these provisions in the Bill. That is why I said, it is a good Bill up to a point, but it is not sufficient; and much more should be added.

Now, no matter, how many procedures are prescribed through legislation, Mr. Deputy-Speaker, there is absolutely going to be only a minimal impact of this law unless reforms are undertaken in the very institutions that support our legal system.

The Law Commission had, for example, recommended the establishment of Fast-Track Courts for cheque bounce cases. The idea was that the adjudication of such cases could be expedited. Now, we often hear a 'Fast-Track Court' as a term in our country but the truth is that they are not mainly newly established courts; instead they are existing courts that are designated as Fast-Track Courts or Special Courts. In addition to the general matters they are handling. They have the burden of managing some fast-track processes. Very honestly, none of the Fast-Track Courts works as fast as the legislation had intended.

So, I would have urged the Government to include in this Bill, this recommendation to include Fast-Track Courts exclusively meant to hear cheque bounce cases, negotiable instruments cases. If you had done this, Mr. Minister, this would go a long way in boosting the faith in our business environment and improving the lives of our people, who depend on cheque transactions.

My last point, Mr. Deputy-Speaker, Sir, is the larger question that this entire exercise brings to bear on this state of our Judiciary. The Government informed this House on the 18th of July that there were 417 vacancies in the Higher Judiciary and a total of 5,436 vacancies in the Lower Courts. Now, on current count, we are a country where we have

only 16 Judges per million head of population, which is the lowest of any major country in the world, the lowest number of Judges.

It is a disturbing and worrying statistic, and on the top of that, we have such a large number of vacancies. Our courts lack basic infrastructure and facilities. Our Finance Minister does not give them adequate budgetary allocations. Even the Supreme Court has said that the Lower Judiciary is likely to crumble under the twin pressures of the lack of facilities and of Judicial Officers unless this crisis is addressed immediately.

The level of pressure on our Judges is enormous. For none other than the then Chief Justice of India – you may remember, Mr. Minister – broke down in front of the Prime Minister and wept in 2016 lamenting the inaction by the Government in remedying the problem of not having enough Judges in this country. The Prime Minister had said at that time that he would take action. Sad to say, two years later, no action has been taken.

So, as such, no matter how many laws we pass in this House, unless this Government shows the will to improve our courts, I am afraid, the justice will remain just as elusive as the money that is owed on bounced cheques to so many millions in our country.

In conclusion, Mr. Deputy-Speaker, Sir, let me say to the Government that we are not going to vote against this Bill. The only problem with the Bill is that it is inadequate.

It could have been a much better Bill, if it had included trial *in absentia*, fast track courts and the other ideas as I have mentioned in my

remarks. If the Government wishes to bring those amendments in, we will be very happy and if not – if the Government wants to go ahead with this Bill in its present form – I would only recommend and request that it consider seriously bringing in a new amendment that will take into account these approaches. It is because right now we have a Bill that is, actually, grossly inadequate to the purposes that you are trying to serve through this legislation.

With those words, Mr. Deputy Speaker, Sir, I conclude my remarks.

SHRI SHIVKUMAR UDASI (HAVERI): Thank you, Sir, for giving me this opportunity to speak on the Negotiable Instruments (Amendment) Bill, 2017, a Bill further to amend the Negotiable Instruments Act, 1881.

Mr. Shashi Tharoor was speaking about this Bill. He said that this Bill is an inadequate Bill and some more amendments are required to improve ‘ease of doing business’. We all know, Sir, that reform is a continuous process. We have to amend it as and when we get to know about the ground reality. This is a part of the Parliamentary Procedure which is happening in this country and all-over the world. This has been amended so many times for that sake. If you go through the Statement of Objects and Reasons of this Bill, this Negotiable Instruments Act, 1881, was enacted to define and amend the law relating to Promissory Note, Bills of Exchanges and Cheques. The said Act has been amended from time to time so as to provide *inter alia* speedy disposal of cases relating to the offence of dishonoured cheques. As the hon. Minister in his opening remarks has said, the Government is receiving several representations from

the public including the trading community relating to pendency of cheque dishonour cases. This is because of delaying tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on the proceedings. They were using the courts to delay the payment after dishonour of the cheques. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of cheques. Such delays compromise the sanctity of cheque transactions. So, in this context, in order to give them a comfort zone, this Bill is going to be amended.

It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigations which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce, in general, by allowing the lending institutions, including banks, to continue to extend financing to the productive sectors of the economy. As hon. Minister has already said, 'ease of doing business' is the primary objective of this Government, the Government led by hon. Prime Minister Mr. Narendra Modi. We have already taken out 1,400 redundant laws of this country which were obsolete. They have been taken out of the Statute Book. So, this Government is trying to help to make ease of doing business a reality.

It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely: — (i) to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138 may order the drawer of the cheque to

pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent. of the amount of the cheque; and (ii) to insert a new section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial court.

This is a very simple Bill so as to have ease of doing business. Hon. Dr. Shashi Tharoor was speaking about shortage of judges in the country. I fully agree with him. I have read somewhere, there are about 24,000 courts in this country, but there are only 22,800 judges in this country. Of course, physical infrastructure is there. Our Government is also seeking help of the Judiciary in this matter so that faculty and persons are allocated there so as to have speedy trials by the courts. Of course, as he said, out of the total criminal cases, 20 per cent of the cases – around 36 lakh – are cheque bounce cases. To have simplicity, we are amending this Bill. In this regard, the Government is genuinely trying to address this issue. Meanwhile, we are having a number of such type of cases against the Bill because we have around three crore cases pending in the smaller and lower courts. We want to avoid that.

Earlier, when we amended this Bill in 2017 also, the place of jurisdiction was also amended so that there is early and speedy recovery. In the case of *Somnath Sarkar versus Utpal Basu*, the Supreme Court has capped the liability of compensation to twice the cheque value. Any

amount exceeding the cap would be violative of Section 138. In cases of complaints filed under section 138, to what extent does the liability of accused lie? In those cases, so many frivolous cases would have come from other jurisdictions. That has now been attended to. This amendment is a very small amendment. I hope, all the hon. Members would accept this and pass this Bill to facilitate the ease of doing business in this country.

In case of dishonour of a cheque under section 138, which court shall have jurisdiction to try the case? According to Negotiable Instruments (Amendment) Ordinance, 2015, Section 142 has been amended. In case of a cheque delivered for collection through an account, a cheque bouncing case can be filed only in the court at the place where the bank in which the payee has account is located. For example, you are based at Delhi and you have an account in a bank in a particular area of Delhi. You receive a cheque from someone in Mumbai. You present your cheque in Delhi in the bank where you have your account. Now, if this cheque is dishonoured, then the cheque bounce case can be filed only in Delhi.

This has been amended and this has also helped in a lot of cases. Further, the sections where amendments were required, where nuisances were there, that has been addressed by this Government. So, I would urge upon all the Members to support this Bill and pass the Bill. Thank you for giving me an opportunity to speak on this subject. Thank you very much, Sir. SHRI MALLIKARJUN KHARGE (GULBARGA): Hon. Deputy Speaker, Sir, when a discussion is going on, on a Bill or anything, two Cabinet Ministers should be present.... (*Interruptions*)

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): There is a Cabinet Minister with me.... (*Interruptions*)

SHRI MALLIKARJUN KHARGE : You can come to your place and talk. ... (*Interruptions*) There are two of you, I agree. But, one Cabinet Minister has no trust in your Government. ... (*Interruptions*) The Cabinet Minister has no confidence in your Government. ... (*Interruptions*)

Sir, I ask you. You satisfactorily reply.... (*Interruptions*) One Minister has no confidence in this Government at all. He never participated.... (*Interruptions*)

Sir, you give the ruling.

HON. DEPUTY SPEAKER: What ruling can I give on this?

... (*Interruptions*)

HON. DEPUTY SPEAKER: The Minister is replying.

... (*Interruptions*)

SHRI ARJUN RAM MEGHWAL: Shri Anant Geete is not an MoS, Kharge *sahib*. He is a Cabinet Minister and he is sitting.... (*Interruptions*)

SHRI MALLIKARJUN KHARGE: He never participated; he never voted. ... (*Interruptions*)

श्री अर्जुन राम मेघवाल: सर, हाउस ने जो नियम बनाए हैं, उसके तहत एक कैबिनेट मिनिस्टर होना चाहिए।...(व्यवधान) गीते साहब हमारे कैबिनेट मिनिस्टर हैं।...(व्यवधान)

कृषि और किसान कल्याण मंत्रालय में राज्य मंत्री (श्री गजेन्द्र सिंह शेखावत): अब आप लोगों का कांफिडेंस भी हमारे ऊपर रिबिल्ट हो गया है।...(व्यवधान)

SHRI S.R. VIJAYA KUMAR (CHENNAI CENTRAL): Hon. Deputy Speaker, the Negotiable Instruments (Amendment) Bill, 2017 seeks to amend the Negotiable Instruments Act, 1881. The Bill inserts a provision allowing the trial court to direct the drawer to pay interim compensation to the complainant. This interim compensation may be paid under certain circumstances, including where the drawer pleads not guilty of the accusation. The interim compensation will not exceed 20 per cent of the cheque amount and will have to be paid by the drawer within 60 days of the trial court's order.

This Bill inserts a provision specifying that if a drawer convicted in a cheque bouncing case, the appellate court may direct him to deposit a minimum of 20 per cent of the fine or compensation awarded by the trial court during conviction. This amount will be in addition to any interim compensation paid by the drawer during the earlier trial proceedings.

In case the drawer is acquitted, the court will direct the complainant to return the interim compensation along with interest. This amount will be repaid within 60 days of the court's order.

Sir, Section 138 speaks of dishonour of cheques for insufficiency of funds in the account of the drawer. This section imposes criminal liability on the person who is responsible for issuing a cheque to another person for

the fulfilment of his liability without having sufficient funds in his account. This is a welcome Bill as it helps the lender to get some interim compensation and relief. As far as genuine loans and money transactions are concerned, this new Bill will definitely serve some purpose.

But the ground level situation is something different in most cases. Practically, this section was actually misused rather abused mostly by the private moneylenders. They forcefully get blank cheques duly signed by the borrower before giving loans at the interest rate of 48 per cent or 60 per cent or even more illegally. When a person, after paying heavy interests, is unable to pay the loan amount, they force him to land in jail even if he had no dishonest intention to cheat the payee. A lot of innocent poor and middle class people suffer very much in the clutches of muscle and money power of moneylenders and in most cases, they lose their property and belongings fearing the cases against them under the Negotiable Instruments Act.

Therefore, while the Government is keen in passing this Bill, I wish the Government should come forward to protect the interests of millions of innocent poor and middle class people being exploited by private moneylenders, only to be harassed and threatened to destroy their prestige and social status and finally end up in capturing the property and belongings using this law as their trump card.

SHRI KALYAN BANERJEE (SREERAMPUR): Hon. Deputy Speaker Sir, today, we are discussing the Negotiable Instruments (Amendment) Bill, 2017. Some beneficial provisions have been made in this Bill. No doubt, it is a good endeavour. But the question is somewhere else. The question is

that in relation to Negotiable Instruments Bill, when the complaint is lodged, whether the trial will take place or not. Most of the cases take time for years together. There are deficiencies in the parent Act of 1988.

The entire object is that when the cheque is dishonoured or bounced, the victim must get justice as quickly as possible. In fact, getting justice for the victim in every criminal case is a facet of article 21 of the Constitution of India. Now, incidentally and unfortunately, the cases in relation to the Negotiable Instruments Act, while the cheques are bounced, are not being taken up seriously even by the courts. The sufferers are mostly the middle-class and the lower middle-class people. The poor people are also suffering even in a small commercial transaction. They are the worst sufferers. I am not talking about the rich people. There is no time stipulation although you are saying about the trial but that is a summary trial. But there is no time stipulated in the Bill itself as to within how many days the trial has to be completed.

But when the matter comes to the fast tract court, it takes up not so much seriously. The amendment, which has been sought for, is 143A(1), that is, "In a summary trial or a summons case, where he pleads not guilty to the accusations made in the complaint." Until the summons are served, they would not come. Now, in these types of cases, maximum number of persons really commit faults. They are masters of committing faults. It is difficult to serve summons to them. I appreciate your endeavour but in reality, it is difficult. I know that the systems of the courts are not within your jurisdiction. Since you are also a part of the Ministry of the Government itself, in that case, the court should be made more serious in dealing with the Negotiable Instruments Act. All the facts and figures are

given to you. Almost 25 per cent of the cases in relation to the NI Act are pending before the court.

Now, the question is about the fast track court which is often being talked about. What is a fast track court? Does it mean that a person, who is handling a normal case, would be given the jurisdiction of the fast track court? The moment you start speaking about the fast track court, you must create posts for that court. Otherwise, it is futile to talk about any fast track court itself. The trials are going on and on and it is not unknown that the under-trial prisoners are languishing in the jail for years together. Therefore, neither the victim is getting justice nor the accused is getting justice at all. Nobody is getting justice because of the pendency of the cases. It is also correct that the criminal courts of our country are overburdened.

Hon. Deputy-Speaker, Sir, I have a suggestion and I request the hon. Minister to consider it. I am not saying that you have to do it immediately. In the Negotiable Instruments Act, a complaint has to be lodged with an appropriate criminal court within 15 days after the summon is served. Keeping in view the concerns of the affected persons, I request the Government to make a provision that along with lodging a complaint one should also lodge a complaint with the police station concerned. If it is done in the police station, then in the situation of serving of a notice, immediate action could be taken by the police because police is the appropriate authority which can catch hold of the accused. But when the summons are served by the court against the persons, who are accused of dishonouring the cheques, they would avoid it as they know how to avoid

the serving of summons. Therefore, I request the hon. Minister to consider this aspect also.

Today everybody in India is concerned about the delayed justice. It is often said, justice delayed is justice denied. If you look at the situation of vacancies in the Supreme Court itself, you will find that seven or eight posts are vacant. In case of High Courts, more than 400 posts are lying vacant. I do not have the exact figure with me right now. The same is the situation in the lower judiciary.

Hon. Deputy-Speaker, Sir, I am fully supporting this Bill. There is no problem. But since I have got an opportunity to present my views and the hon. Minister is himself present in the House, I would request the hon. Minister to think over it in terms of delivery of speedy justice in our country.

Sir, until the person concerned appears before the criminal court, there is no benefit of getting any benefit from 20 per cent deposit. I request the hon. Minister to refer to Clause C of the Bill. When an appeal is preferred, the person concerned has to deposit such a sum which shall be a minimum of 20 per cent of the final compensation awarded by the trial court. Is this amount sufficient?

Sir, in a trial court, one has to first suffer for four to five years. After it, he has to deposit a sum of minimum of 20 per cent of the compensation awarded. I want to know as to why he should not deposit 50 per cent or 100 per cent. I request you to think about it.

Then, there is a provision which says that deposition made is not compulsorily given to the victim and the appellate court may direct the

release of the amount deposited by the appellant. It means that it is not mandatory. It remains at the discretion of the appellate court. The point that has to be noted is, when a cheque is issued admittedly, some dues would have been there and that is the reason that a cheque has been given.

If that is so, why will 100 per cent money not be deposited at the stage of filing an appeal in the appellate court and why has it been kept at a minimum of 20 per cent? In the trial court, where the trial will take place, one has to say that he has put the signature on the cheque itself or not. The question is not why the cheque has been issued; the question is why the cheque has not been paid. The reasonableness of issuance of the cheque will not be the subject matter before the court; the question would be whether the cheque has bounced or not. Therefore, the signature is the only thing in question. If that is so, when you are thinking loud, kindly think about this also. Why should 100 per cent not be deposited in the appellate court? At the time of admission of the appeal or before granting bail, a condition should be imposed that the amount should be given to the victim person. ... (*Interruptions*) I will conclude in just two minutes.

Therefore, I will request the hon. Minister to consider this aspect of the matter also because my experience tells me that mostly only the middle-class or the poor people are suffering in these matters. I would request the Minister to kindly think about that in future.

With this, I conclude my speech. I would say that the endeavour is good, but more endeavours have to take place. You are thinking about the victims. Therefore, you also think about that.

Thank you.

DR. PRABHAS KUMAR SINGH (BARGARH): Hon. Deputy Speaker, Sir, I thank you for giving me an opportunity to speak on the Negotiable Instruments (Amendment) Bill, 2017.

First, let me go to the history of the Bill. Although various forms of cheque have been in use since ancient times and at least since the 9th Century, it was during the 20th Century that cheques became a highly popular non-cash method for making payments. Cheque processing became automated by the second half of the 20th Century and billions of cheques were issued annually. Their volume peaked in or around the early 1990s, but thereafter, cheque usage has fallen, being partly replaced by electronic payment systems. In many countries, cheques have either become a marginal payment system or are on the way to be phased out.

I would like to request the hon. Minister to apprise us of the position in India. What is the extent of the use of digital payment system and its impact on the use of cheques? What is the volume of the usage of cheques in India? Is there any move to phase out cheque system in India? I would also like to know the percentage of cheques that have bounced and the amount involved therein. Cheques are a relatively expensive payment instrument in terms of the resource costs incurred by financial institutions and merchants in accepting payments from the people. I will request the hon. Minister to tell the House what the cost is for both the drawer and the drawee for executing a single cheque.

Now, I am not going into the details of the Bill, but I would like to highlight some of the important issues. While I fully support the Bill, I have some suggestions to give. The Bill clearly defines promissory notes, bills of exchange and cheques, all of which are negotiable instruments, thereby limiting vagueness and giving more clarification.

The most important provision is that of payment of interim compensation of 20 per cent of the cheque amount by drawer to payee which is there in the Amendment Bill. I want to know from the hon. Minister why it cannot be 50 per cent which may be followed by another 25 per cent during the course of trial because many of the people are looting and cheating the general public and sometimes, they are also looting the government money.

15 00 hrs

This will enhance the confidence in cheque system, its credibility and thereby encourage less cash economy and promote ease of doing business which is important for our trade and commerce to flourish. Certainly, it will discourage vexatious litigations, inordinate delay and the interim compensation will render some relief to the victims.

The Bill has clarified the jurisdictional issues in the cheque bouncing cases. The jurisdiction has been extended to the local court and the drawee (payee)/victim which is desirable from equity point of view and will ensure fair trial.

We are all aware about the health of our banking system and I am confident that this Bill will certainly enhance our banking operations and will ensure more savings.

The delay tactics, misusing judicial delay will also reduce considerably. I fully agree with my learned colleague, Shri Kalyan Banerjee, what he spoke about the delayed justice, how we can address the justice system and how we can give justice in a timebound manner.

Regarding the payment of 20 per cent or 50 per cent, we should not look at all the victims in the same manner. This deterrent punishment should be made strict against the well-off businessmen, business families. Most of them deliberately commit fraud or do not want to pay the amount or play delay tactics to repay the amount. In case of marginal and small farmers, this type of rule should be relaxed because sometimes farmers are also victims of natural calamities. So, we cannot put them on par with others.

In the 21st century, we are talking about digital India. But our digital infrastructure is not firm enough to withstand cyber attack. We must be careful about cyber attack because it is not easy for a digitally challenged rural Indian to be aware in case his or her account being hacked which subsequently resulted in cheque bounce. Therefore, punishment and compensation in cases of digital fraud has to be specified because in the Act of 1881, payment issues related to digital medium are not addressed.

This Negotiable Instruments Act which was earlier under civil offence was subsequently transferred to criminal offence. But we all know bouncing of cheque is a commercial offence in specific. Therefore, I request the hon. Minister to constitute a commercial division in high courts and transfer cheque bounce cases to commercial court and commercial

division instead of session court and high courts. This will reduce the burden on judiciary.

I support the Bill with some objections and amendments. These amendments will not only strengthen the power to achieve the objectives but also help the banks to become financially productive to the economy.

With these words, I support the Bill.

SHRI KONDA VISHWESHWAR REDDY (CHEVELLA): Mr. Deputy-Speaker, Sir, thank you.

Not being from a legal background, the first thing I did today was to check what exactly is a negotiable instrument. The answer I got from the dictionaries and Google was, it is a promise or an order to pay a certain amount of money at a specified time or on demand. There is no choice. If I write a cheque, it is a negotiable instrument. If I write out a cheque I have to pay that amount. That amount has to be in the bank at the time it is presented to the bank.

English is a very strange language. There is a word called onomatopoeia, which means the word sounds like its meaning, the example being 'boom'. But this one sounds and means exactly the opposite of the word.

It is because a cheque in English language is a negotiable instrument in which actually nothing can be negotiated, that is, neither the time or the amount or the payee. So, I think that not only the Bill needs Amendment, but the English language itself needs Amendment.

So, nothing is negotiable. Probably, some of these cheque writers -- who are habitual cheque bouncers -- are mistaking the literal English word for 'negotiable instrument' where nothing is negotiable. ... (*Interruptions*)

SHRI SHIVKUMAR UDASI (HAVERI): Sir, allow me to mention one point. ... (*Interruptions*)

HON. DEPUTY SPEAKER: No, let him conclude, and afterwards you mention it.

... (*Interruptions*)

SHRI KONDA VISHWESHWAR REDDY : Sir, the number of cheque bouncing cases in this country are phenomenal, which was 38 lakh in 2008. Some recent figures show something like 60 lakh plus cheque bouncing cases, which are literally clogging the courts and the judicial system. I think that the burden on the judiciary is very high even for all the other cases, and this is only adding to it.

However, I must say that this is welcome. The 20 per cent interest to be paid by the complainant is very good because there are also some fake cases of cheque bouncing. So, it protects even the person who writes the cheque, that is, if there is a fake claim against me, then I am forced to pay 20 per cent. But if I win the case, then they have to pay back the 20 per cent with interest.

So, some of these are very good points, but it has to have teeth. The sword needs to be really sharp. We have got in this Bill a little blunt sword.

Usually, cheque bouncers are habitual cheque bouncers. They not only bounce a cheque to me, but hundred other people and I am one of the hundred victims of the cheque bouncers. So, a second time offender should be having a more stringent punishment, which is absolutely absent in this Bill and this is unfortunate.

As regards timely judgment, even the judiciary is not taking this up very seriously. Very often, it is merely a slap on the wrist and I think that the judiciary has to take note. Also, it is totally left to the judiciary as to what is the compensation that they will give. Is it the bank interest rate or any other compensation? I am saying this because I may have bounced a Rs. 1 lakh cheque and the recipient of my bounced cheque might have faced another Rs. 10 lakh losses because of it. So, there is no compensation for cheque bouncing mentioned in this Bill.

Another very important thing is that the big business houses are habitual cheque bouncers when it comes to small vendors. They may be honouring the cheque of another big business house or another big vendor, but I think that small-time vendors are really cheated, and they have the audacity to say : “Do what you want as there is nothing you can do. You can go to the civil court.” So, this is very important, and we need to include this in it.

I would like to conclude as there are not many points that I would like to make. I think that the Bill is very much required, but what is required is an even more stringent Bill. We look forward to additional Amendments to be brought by this Government to make the sword even more sharper. Thank you, Sir.

DR. RAVINDRA BABU (AMALAPURAM): Good Evening, Sir. Thank you very much for giving me the opportunity. This Bill talks about 'cheque bouncing'. ...*

HON. DEPUTY SPEAKER: No, it is not connected to the Bill.

... (*Interruptions*)

DR. RAVINDRA BABU : Sir, I am coming to the Bill. ... (*Interruptions*)

HON. DEPUTY SPEAKER: No, you have not come to the Bill.

... (*Interruptions*)

DR. RAVINDRA BABU : Sir, let me come to the Bill. ... (*Interruptions*) I am talking on the Bill. ... (*Interruptions*)

HON. DEPUTY SPEAKER: Yes, you come to the Bill.

... (*Interruptions*)

DR. RAVINDRA BABU: Whenever any cheque bouncing is there, there has to be some punishment, which has been included in the Bill. ... (*Interruptions*)

HON. DEPUTY SPEAKER: The other things whatever he said nothing will go on record.

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

DR. RAVINDRA BABU : The 20 per cent compensation or 20 per cent of the cheque amount to be deposited is not sufficient. It should be 50 per cent.

What about the chronic defaulters or habitual offenders and defaulters? Nothing is mentioned about it.

The entire spirit of the Bill goes against the spirit of the present Government.

HON. DEPUTY SPEAKER: It is not allowed.

Dr. A. Sampath.

DR. A. SAMPATH (ATTINGAL): Deputy Speaker, Sir, I will confine my speech to the complications and the questions that have been raised in the introduction of this Bill. Nothing political I want to say because all of us are politicians in this House.

Why am I objecting to the introduction of this Bill? I was begging for your kindness for pointing out that this Bill is an unconstitutional one. Article 20(1) of the Constitution says that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Article 20(2) says that no person shall be prosecuted and punished for the same offence more than once. Article 20 (3) of the Indian Constitution declares that no person accused of an offence shall be compelled to be a witness against himself.

Every Member of Parliament believes and know. Article 21 of the Constitution of India, 1950 provides, “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Sir, many of the Members on that and this side, including myself have practised in the courts of law. I am not questioning any of the intentions of the hon. Minister because of his sheer innocence. I agree that he has a smiling face.

In the Statement of Objects & Reasons, in para 3 (i), it is stated - to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial... My humble question, through you, Sir, is this. Before taking evidence, how can a court of law be instructed by this august House - because we are making an amendment - that 20 percentage of the amount in question should be paid as compensation to the complainant. It is stated here – not to be deposited in the court. It is also stated here to pay to the complainant.

Regarding the number of cases involving cheques, many of the hon. Members have suggested that it may amount to five million or so and the number of transactions may also increase. Did anybody spend some time to verify in how many cases involving cheques, in a layman’s language, acquittals have taken place? The number of acquittals have to be taken into consideration. This is a very important Bill. I may be permitted to disagree with some of my hon. friends who have told in this House that

this is a very simple Bill. This Bill should have been examined by the concerned Standing Committee of Parliament.

If this Bill is enacted as it is, we will be opening more doors to the poor people to commit suicide. The number of cases of suicides would increase. We all know that some people would come; they sell; they engage in some transactions; and they ask us to sign a cheque. Happily, a housewife or a common man would sign a cheque; they put it in a bank. When they deposit in a bank, the amount would not be what is intended to be deposited but it is something higher than what is intended to be deposited.

So, only when it is taking the evidence, the Court can come to the conclusion whether the cheque was issued as a blank cheque or whether there was any manipulation. ... (*Interruptions*) I want only one more minute. There is ample time.

There should be a fair trial, a just trial. I can agree with the Minister if the law intends to enact that 20 per cent of the sum in question should be deposited only at the time of filing an appeal. After the conviction if the accused is filing an appeal, then depositing 20 per cent of the sum is all right. But, when the trial is beginning or at the stage of summary trial, if you ask the person to deposit 20 per cent and pay it as a compensation to the complainant, that is not correct.

What happens if the accused gets acquitted? He is not convicted; she is not convicted. He is only put in the array of being accused. This particular person --- whether a male or a female or a transgender – who is an accused, has to run after the complainant. What happens if the

complainant does not come to the Court? He has got the money. He may fly. Many people know the art of leaving India. My humble submission is that this Bill is for the money-lenders, by the money-lenders and of the money-lenders. I may be permitted to strongly oppose the introduction of the Bill also. I oppose the Bill *in toto*.

श्री गणेश सिंह (सतना) : उपाध्यक्ष महोदय, आपने मुझे परक्राम्य लिखत (संशोधन) विधेयक, 2017 पर बोलने की अनुमति दी है, इसके लिए मैं आपका धन्यवाद करता हूँ। मैं सबसे पहले मंत्री जी को धन्यवाद करना चाहूंगा कि देश में एक बहुत बड़ी समस्या देखने में आई है, वह चैक बाउंस की समस्या है। इसमें अभी तक जो कानूनी प्रावधान था, वह निश्चित तौर पर कारगर तो था, किंतु अपील में जाने के बाद बहुत लंबा समय लगने के कारण, पीड़ित को इसका लाभ नहीं मिल पाता है। इसमें दो छोटे-छोटे संशोधन लाए गए हैं। सन् 1881 के इस कानून में दो संशोधन आए हैं, जिसमें धारा 143 (क) का एक प्रावधान हुआ है। दूसरा, धारा 148 का प्रावधान है। इसमें सबसे महत्वपूर्ण विषय यह है कि जो न्यायालय के निर्णय होते थे, उन निर्णयों में जिसके पक्ष में निर्णय होता था, वह लंबे समय तक इंतजार करता था कि न्यायालय ने जो आदेश दिया है, उसका हमको अधिकार मिल जाएगा, हमको लाभ मिलेगा। लेकिन अपीलकर्त्ता अगली अदालत में जा कर उसको लिंगर-ऑन करता था। पूरे देश में ऐसे लगभग बीस लाख केस पेंडिंग हैं, जो पांच साल से ऊपर के हो गए हैं। मंत्रालय को, माननीय मंत्री जी को और हमारी सरकार को इस संबंध में लगातार लोगों के पत्र मिलते थे, शिकायतें मिलती थीं। कंपनी के लोग आते थे और वे कहते थे कि इसमें कुछ कारगर प्रावधान किए जाएं ताकि समय पर हम लोगों को इसका लाभ मिल सके। इसी के चलते इसमें जो नेगोशिएबल इस्ट्रूमेंट संशोधन बिल, 2017 का है, जो 02 जनवरी, 2018 को संसद में पेश हुआ था, यह सन् 1881 के कानून में संशोधन करने का प्रयास करता है। यह एकट प्राइमरी बिल ऑफ एक्सचेंज और चैक्स की परिभाषा प्रस्तुत करता है। इसके अतिरिक्त चैक बाउंस होने और ऐसी ही दूसरी

नैगोशिएबल इंस्ट्रूमेंट्स की धारा का उल्लंघन होने पर सजा भी निर्दिष्ट करता है। अंतरिम मुआवजा बिल एक प्रावधान को शामिल करता है, इसके अंतर्गत चैक बाउंसिंग से संबंधित अपराध पर विचार करने वाले न्यायालय को अनुमति दी गई है कि चैककर्ता द्वारा शिकायतकर्ता को अंतरिम मुआवजा देने का निर्देश दे। यह अंतरिम मुआवजा कुछ विशिष्ट स्थितियों में दिया जा सकता है। इसमें वह स्थिति भी शामिल है कि जब चैक कर्ता ने आरोप से इंकार किया हो। यह अंतरिम मुआवजा चैक 20 प्रतिशत की राशि से अधिक नहीं होगा। निचली अदालत जिस तारीख को मुआवजा देने का आदेश देगी, उस तारीख के 60 दिनों के भीतर इसे चैककर्ता को चुकाना होगा। अपील की स्थिति में यह बिल एक प्रावधान और करता है। इस प्रावधान में निर्दिष्ट किया गया है कि अगर चैक बाउंसिंग मामले में अपराधी ठहराया गया चैककर्ता अपील करता है तो अपीलीय न्यायालय उसे अपराध सिद्धि के दौरान निचली अदालत द्वारा निर्देशित जुर्माने या मुआवजे की कम से कम 20 प्रतिशत राशि जमा करने का निर्देश दे सकता है।

यह राशि उस अंतरिम मुआवजे के अतिरिक्त होगी, जो चैककर्ता ने निचली अदालत में मुकदमे के दौरान चुकायी थी। अंतरिम मुआवजा लौटाना - इसमें यह प्रावधान किया गया है कि अगर चैककर्ता दोषमुक्त हो जाता है तो न्यायालय शिकायतकर्ता को निर्देश दे सकता है कि वह ब्याज के साथ अंतरिम मुआवजा राशि न्यायालय के आदेश के सात दिन के अंदर चुकाए। इस एक्ट में इस संशोधन की बहुत जरूरत थी और इस पर हमारी सरकार आज सदन में चर्चा करा रही है। मैं एक उदाहरण बताना चाहता हूँ। यह विषय निश्चित तौर पर बहुत गंभीर हो गया है। अभी हमारे एक साथी कह रहे थे कि डॉ. मनमोहन सिंह जी के द्वारा दिया गया चैक बाउंस हो गया। अब जब इतने बड़े नाम के साथ इस बात को जोड़ा जा सकता है तो सहज रूप से इसे समझा जा सकता है। इसके कई कारण हैं। कुछ लोग तो जानबूझकर ऐसा करते हैं, कुछ की ऐसी मजबूरियाँ हो सकती हैं और कुछ के फेल होने के चांस भी होते हैं। यह बात सही है कि यह कानूनन अपराध है। अगर कोई क्षमता से अधिक व्यापार करता है या क्षमता से ज्यादा लेन-देन करता है और

समय पर पैसा नहीं लौटाता है तो निश्चित तौर पर वह चैक का सहारा लेता है। चैक के सहारे के माध्यम से अगर वह समय पर भुगतान नहीं करता है तो एक तो उसे सामाजिक नुकसान की क्षति उठानी पड़ती है और दूसरा, यह कानूनन अपराध भी है। इस प्रावधान की जरूरत थी।

मैं माननीय मंत्री जी को धन्यवाद देना चाहता हूँ कि वे बहुत अच्छा विधेयक लेकर आये हैं और यह विधेयक लोगों को बहुत राहत देने का काम करेगा। मैं इसका समर्थन करते हुए अपनी बात समाप्त करता हूँ। धन्यवाद।

श्री शरद त्रिपाठी (संत कबीर नगर) : महोदय, आपने मुझे बोलने का मौका दिया, इसके लिए आपका धन्यवाद। आज बाल गंगाधर तिलक और पंडित चन्द्रशेखर आजाद जी का जन्म दिवस भी है। मैं उन्हें अपने श्रद्धा सुमन अर्पित करता हूँ।

महोदय, आज जो यह बिल लाया गया है, इसकी बहुत दिनों से आवश्यकता महसूस की जा रही थी। हमारे प्रधान मंत्री जी द्वारा डिजिटल इंडिया को बढ़ावा दिया गया है और अगर नियमतः डिजिटल इंडिया के अंतर्गत कार्य किया जाये तो प्रायः अब चैक की स्थिति ही नहीं आयेगी। कुछ ऐसे संस्थान हैं, जो चैक के माध्यम से अभी भी कार्य कर रहे हैं। चैक बाउंस होने की स्थिति में प्रायः अब तक जो अपील होती थी, उस अपील के आधार पर जो भी प्राप्तकर्ता था और जो अपील करता था, उसको बार-बार परेशानी का सामना करना पड़ता था। यह विधेयक ऐसे लोगों के जख्मों पर मरहम लगाने का काम करेगा। चैक लिखने वाले के खाते में पर्याप्त पैसा न होने के कारण या अन्य कारणों से चैक बिना भुगतान के लौट जाते हैं, तो छोटी या मझोली इकाइयों को लंबित अवधि में बहुत परेशानी उठानी पड़ती है और उनके कारोबार को बहुत नुकसान पहुँचता है। इस बारे में सर्व साधारण और व्यावसायिक समुदाय से मिले सुझावों के आधार पर यह बिल हमारे माननीय मंत्री जी लाये हैं। परक्राम्य लिखत अधिनियम, 1881 में संशोधन कराकर यह विधेयक पीड़ित पक्ष के लिए मुकदमे और अपील दोनों चरणों में अंतरिम क्षतिपूर्ति का

प्रावधान कर रहा है। सरकार के समक्ष अक्सर यह शिकायत आती थी कि बेईमान किस्म के लोग भुगतान में विलंब करने के लिए चैक बाउंस करवाते हैं या अन्य तरह के हथकंडे अपनाते हैं। इस बिल के आ जाने से अब पीड़ित पक्ष को तत्काल न्याय भी मिलेगा और चैक बाउंस होने पर पीड़ित पक्ष को अपना पैसा हासिल करने के लिए अदालतों में बहुत अधिक धन और समय व्यय नहीं करना पड़ेगा। मैं इस विधेयक का समर्थन करता हूँ। बहुत-बहुत धन्यवाद।

श्री भैरो प्रसाद मिश्र (बांदा) : महोदय, आपने मुझे बोलने का मौका दिया, इसके लिए आपका धन्यवाद।

मैं सदन में प्रस्तुत परक्राम्य लिखत (संशोधन) विधेयक, 2017 का समर्थन करता हूँ। इससे चैकों की विश्वसनीयता में वृद्धि होगी। इस बिल में अंतरिम मुआवजे के रूप में 20 परसेंट राशि पहले देने का प्रावधान किया गया है। पहले मुकदमों में बहुत समय लगता था। ये दीवानी जैसे मामले होते हैं और इनमें बहुत समय लगता है। इस बिल के आने से शिकायतकर्ता को राहत मिलेगी। इस बिल से उसे यह लाभ होगा कि 20 परसेंट राशि उसके खाते में पहले जमा हो जायेगी। इससे उसको कम से कम कुछ राहत महसूस होगी और जब फैसला होगा तो उसे पूरी रकम मिलेगी।

महोदय, इस बिल में ब्याज सहित पैसा लौटाने का प्रावधान किया गया है। जब वह दोषमुक्त हो जायेगा तो उसे ब्याज सहित पैसा लौटाया जायेगा। इसमें बैंक के ब्याज का प्रावधान किया गया है। यह प्रावधान बहुत ही अच्छा है। इसमें अपील पर ही शिकायतकर्ता को 20 परसेंट की राशि मिल जायेगी, इससे भी उसकी गंभीरता बढ़ेगी। मैं सिर्फ एक बात कहकर अपनी बात को विराम देता हूँ।

महोदय, मैं माननीय मंत्री जी से यह कहना चाहता हूँ कि इसमें बैंकों को यह निर्देश होना चाहिए कि जो आदमी जब बैंक में खाता खोलता है, उस पत्र में उस बैंक के प्रावधान रहते हैं तो जिसका खाता हो, उसे वह जरूर ध्यान दिलाने का काम

करे कि आपका चेक आया है। इससे ऐसे छोटे-छोटे मामलों में, जिसमें चेक बाउंस होते हैं, उसमें रुकावट आएगी। इसलिए इस पर जरूर ध्यान दिया जाना चाहिए कि जिसका खाता है, उसे बैंक कम से कम एक बार या दो बार यह कहे कि आपका चेक लौट आया है।

SHRI ANANDRAO ADSUL (AMRAVATI): Hon. Deputy Speaker, Sir, I stand to support the Negotiable Instruments (Amendment) Bill, 2017.

Sir, as I am connected to the banking industry for the last more than 40 years, I know about the problem of dishonoured cheques. The Amendment brought by the Minister of State for Finance is a very valid measure and it definitely supports not only the banking industry but all others concerned too.

Sir, cheques and Bills of Exchange are there. The documents are called negotiable instruments. There is understanding between two parties or between banks and borrowers. As per that understanding, they have to make their payments in time. If their cheques bounce and there is a payment default as a result of that, definitely it is a criminal offence. So, unless the defaulters are penalised, transactions between two parties or between banks and borrowers would not take place properly. There is a provision in this Bill to ensure that.

There are two types of defaulters particularly in the case of banks. One is of an honest person who is unable to repay his loan within time because of reasons beyond his power. The other is of a wilful defaulter who is a cheater and who does not want to pay back his loan. We have so many examples of wilful defaulters in front of us in the country now and I

will not go into those details. If no action is taken against such wilful defaulters and no penalty is charged from them, they will forever remain wilful defaulters. As a result, the parties involved and the banks would suffer. There are legal transactions and there also cheques bounce. There is a provision in court which says that if a cheque bounces and a borrower defaults on his payment, he has to pay 20 per cent of that cheque amount in the bank within a period of sixty days. Sometimes the party goes to appellate court. In appellate court there is a provision that the appeal would be taken into consideration only after payment of 20 per cent amount of the cheque by the borrower.

Sometimes, it happens that the party that is a drawer justifies why his cheque was bounced and the appellate court considers this. In this case, the appellate court may direct the payee to give the refund of 20 per cent amount which he deposited in the bank along with interest. I do not agree to this provision. It is because there is an agreement between the borrower and the bank. If he is not repaying his loan in time, if three instalments are not recovered, that account is treated as an NPA account and it is the loss for the bank. The bank has to make the provision of that total amount out of its profit. Sometimes, in case of a small bank if there are so many defaults, the bank goes into loss. That is why it is to be taken seriously. The hon. Minister has taken it seriously and suitably made the amendment. I welcome the amendment and I give sincere thanks to our hon. Minister of State for Finance. Thank you.

वित्त मंत्रालय में राज्य मंत्री (श्री शिव प्रताप शुक्ला): माननीय उपाध्यक्ष महोदय,

हम लोगों के समक्ष इस विधेयक पर कुल मिलाकर 12 माननीय सदस्यों के अच्छे सुझाव आए हैं।

मान्यवर, मैंने पहले ही कहा था कि इस समय विभिन्न माननीय एवं आदरणीय सदस्यों ने जो अपनी बात कही, इसकी शुरुआत आदरणीय डॉ. शशि थरूर जी ने की। हमने इस बिल को इस नाते भी प्रस्तुत किया है जिससे जो लोग चेक देकर धोखा देने का काम करते हैं, उससे नुकसान तो उनका होता है जिनको चेक से राशि प्राप्त होनी होती है। हम इस आधार पर उसके चेक का जो 20 परसेंट रकम है, उसी समय जब अपीलीय न्यायालय में दाखिल करते हैं, तभी इसमें प्रावधान किया गया है कि उसे देंगे। कभी-कभी कुछ नोटोरियस लोग ऐसे होते हैं जिनकी चर्चा हुई है। वे नोटोरियस लोग फिर उसको अपील में ले जा जाते हैं ताकि लिंगर-ऑन होता रहे और लिंगर-ऑन होने की स्थिति में उनको इसका फायदा मिले। उसमें यह दिया है कि एक बार लोअर कोर्ट में जब उसका केस सबमिट हो जाता है तथा यह कहा जाता है कि इतनी राशि और चाहिए, जिसने चेक दिया है और जब उसका केस अपीलीय कोर्ट में चला जाएगा तो उस स्थिति में यह भी प्रावधान है कि उसको 20 परसेंट और राशि दी जाए, अगर वह लोअर कोर्ट के निर्णय से असंतुष्ट है। अगर वह कहता है कि वह लोअर कोर्ट के निर्णय से संतुष्ट नहीं है और वह इसका अपील कर देता है, उसको लगता है कि कहीं न कहीं उसको चेक का लाभ प्राप्त करना है, उसको धोखा देने का काम करता है। ऐसी स्थिति में यह व्यवस्था की गई है कि जो 20 परसेंट रकम है, उस रकम को भी वह कोर्ट में जमा करे ताकि अगर कहीं ऐसी स्थिति आए जिसमें लगता है कि उसकी काफी क्षति हुई है, जिसको चेक जारी किया गया था तो वह 20 परसेंट और हो जाएगी।

मान्यवर, हमने इसका प्रावधान इस नाते भी किया है कि देश के सबॉर्डिनेट कोर्ट्स में, जिसकी चर्चा मैं पहले कर रहा था, इस समय चेक बाउंस के पूरे 16 लाख केसेस हैं, एक-दो नहीं, बल्कि 16 लाख केसेस हैं और ऐसे ही उच्च न्यायालय में भी इस प्रकार के 35 हजार केसेस लंबित हैं। जो बेचारे अपना चेक लेकर चलते हैं, वह बाउंस हो गया और यह विषय आया कि कभी-कभी उसके खाते में पैसे नहीं होते हैं,

तो जब वह अपील में जाएगा और अपना पैसा जमा कर देगा, तब वह अपील में जा सकता है। इस नाते उसका प्रावधान है कि अगर उसके खाते में पैसे नहीं हैं, तो भी मुझे लगता है कि यह चलेगा।

उसको हम 20 पर्सेंट बाद में देते हैं। इसे पेनाल्टी के रूप में लेते हैं और साथ ही साथ नियमतः जो इंटेस्ट होता है, उस इंटेस्ट को भी उसके साथ जोड़कर देना पड़ेगा।

मान्यवर, जहां पूरी रकम की बात आ रही थी, पूरे चेक के पैसे की बात आ रही थी, तो कोर्ट पर इसे डाल दिया गया कि अगर कोर्ट चाहे, तो उसे हंड्रेड परसेंट पेनाल्टी भी जमा करने को कह सकती है। यह अलग विषय है कि सरकार ने इसे इस नाते लाने का काम किया कि लोगों को इसका लाभ पहुंचे - इसमें कोई भी हो, चाहे बाहर का भी हो, इसकी आवश्यकता है। विशेषकर जो साहूकार होते हैं, उनके माध्यम से अगर लोगों को क्षति पहुंची है, तो उस पर भी हम संज्ञान लेते हैं। उसके बाद उस कार्य को पूरी तौर पर कर सकते हैं।

डॉ. शशि थरूर (तिरुवनन्तपुरम): लेकिन अगर अपराधी अदालत में नहीं गया, एब्सकांडर हो तो कैसे करेंगे?

श्री शिव प्रताप शुक्ला: अगर वह एब्सकांडर रहता है, उस समय नहीं दिया, तो भी कोर्ट में केस है। ऐसे तो यह क्रिमिनल केस हो जाएगा। यह भी वैसे क्रिमिनल केस माना जाता है। ऐसी स्थिति में जैसे अन्य क्रिमिनल केसेज के साथ व्यवहार किया जाता है, उस प्रकार का व्यवहार अदालत के बाद किया जाएगा। अगर वह कहीं नहीं आएगा और उससे कोई चेक प्राप्त करता है और वह उसे भुगतान नहीं करेगा, तो उस स्थिति में कुछ नहीं किया जा सकता है, जब तक कि वह न दे। इसकी मूल भावना है कि हम भारत के न्यायालयों पर विश्वास करते हैं। भारत के न्यायालय ने बहुत साफ शब्दों में इस बात को कहा कि आप यह कीजिए और समय-समय पर इस पर निर्णय भी दिए हैं। इसी नाते मैंने कहा कि ये 1-2 नहीं, बल्कि 16 लाख केसेज ऐसे हैं। स्वाभाविक है कि जब चेक आया है और चेक बाउंस हुआ है, तभी

यह हुआ है। अगर इस पर विश्वास करके पहले ही आपसी निगोसिएशन कर लेते, उस निगोसिएशन के आधार पर होता, तो हम लोगों को इतना कष्ट नहीं उठाना पड़ता। हम लोग यह सोच रहे हैं कि किसी भी स्थिति में जो चेक बाउंस हुआ है, जिसको चेक से पैसे प्राप्त करने हैं, वह होना ही चाहिए। मैं माननीय थरूर साहब के साथ अन्य सभी सदस्यों को धन्यवाद दूंगा कि उन्होंने इस पर सकारात्मक बहस की है, सुझाव भी दिए हैं और हम उस सुझाव को पूरी तौर पर मानकर, यह प्रयत्न करेंगे कि अगर कोई ऐसी स्थिति हुई, क्योंकि समय-समय पर इसमें परिवर्तन होता रहा है। आज यह सबसे महत्वपूर्ण परिवर्तन है। इस नाते मैं चाहूंगा कि सभी माननीय सदस्यगण उन लोगों की पीड़ा को समझें, जिनके चेक बाउंस हो जाते हैं। मैं सबसे इस बात के लिए निवेदन करूंगा कि इसको सर्वसहमति से पास करने का कष्ट करें।

HON. DEPUTY SPEAKER: The question is:

“That the Bill further to amend the Negotiable Instruments Act, 1881, be taken into consideration.”

The motion was adopted.

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

Clause 2 Insertion of new section 143A Power to direct interim compensation

HON. DEPUTY SPEAKER: Shri N.K. Premachandran – not present; Prof. Saugata Roy, are you moving your amendments?

PROF. SAUGATA ROY (DUM DUM): Sir, I am moving my amendments.

Page 2, line 2, --

for “twenty”

substitute “twenty-five”. (6)

Page 2, line 4, --

for “sixty”

substitute “forty-five”. (9)

Page 2, line 5, --

for “thirty”

substitute “twenty”. (11)

I would also like to say something. This is the introduction of a new concept of interim compensation.

If the cheque is ultimately honoured, the money will be refunded to the person.

What is the compensation? It shall not exceed 20 per cent of the amount of the cheque. ... (*Interruptions*)

HON. DEPUTY SPEAKER: I do not want any comments. Let him speak. The Minister will reply to him.

PROF. SAUGATA ROY : I have proposed that this should be 25 per cent.

It is said that the compensation shall be paid within 60 days from the date of the order. I have proposed that it should be 45 days. For “Within such period not exceeding 30 days” I have proposed that it should be made 20 days.

Cheque dishonouring is a big problem and the Minister has brought a Bill to stop this practice and to be fair to people whose cheques are being dishonoured. So, as a matter of principle I have nothing to speak....
(*Interruptions*)

HON. DEPUTY SPEAKER: All right.

PROF. SAUGATA ROY: Why are you being so stingy! We are in no hurry to pass Bills today. Sir, let me make another statement. Please do not be impatient. Sir, you have always been patient.

All I am saying is, the banking system is in doldrums in this country. The total NPA is amounting to Rs.9 lakh crore and the Reserve Bank has ordered prompt corrective action. Many banks are being prevented from giving loans. You will be surprised that a bank like Dena Bank has been asked not to ... (*Interruptions*) How is this irrelevant? Dena Bank has been asked not to lend any money. Due to this new IBC Code people are being given haircuts to the extent of 80 per cent. ...
(*Interruptions*)

Sir, I have just one point to make. Shri Nishikant Dubey and Shri Udasi have become the shouting brigades of the BJP. They have been instructed to shout whenever any criticism... (*Interruptions*)

HON. DEPUTY SPEAKER: I shall now put amendment nos. 6, 9 and 11 to clause 2, moved by Prof. Saugata Roy, to the vote of the House.

The amendments were put and negatived.

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

Dr. A. Sampath, are you moving amendment nos. 18 and 19?

DR. A. SAMPATH (ATTINGAL): Yes, Sir, I beg to move:

Page 2, lines 11,-

for “sixty”

substitute “thirty”. (18)

Page 2, *after* line 18,-

insert “(7) Sub-sections (1) to (6) shall be applicable for commercial transactions only, that is, if the cheque is issued against valid invoices and bills and where the consideration in question is for transfer of money from one bank to another bank.” (19)

Sir, I may be permitted to move the amendments which I have already submitted for the consideration of the House. I may also seek a clarification from the Minister. I hope my learned friends will not disturb me. You may protect me. ... (*Interruptions*)

HON. DEPUTY SPEAKER: Please, let there be order in the House.

DR. A. SAMPATH : We are very good friends. The Minister may be able to give the clarification so, I can clear my doubts also.

The Bill intends to pay the compensation to the complainant. The definition of compensation is very precarious. If the accused is acquitted, within 60 days from the date of the acquittal the complainant has to pay back that amount with the interest as fixed by the RBI to the accused. If the complainant is no more or if he is refusing... (*Interruptions*) I specifically mean the complainant. Now, 20 per cent of the amount is with the complainant. My argument is that if the complainant has manipulated the instrument.

The amount has been manipulated. Sometimes, it may be a blank cheque. You can add zeros. ... (*Interruptions*) Meghwal Ji, let me finish. All this may happen. If the complainant has left the nation; if the complainant is no more; and if the complainant is refusing, how will that amount be repaid to the poor accused? In the eyes of law, he has been put as an accused and not as a convicted or criminal. Here, till the trial is completed, we cannot say that he is a convict. If one person has signed a cheque, that does not mean that he has executed *suo motu* his death warrant. It is just like that.

The courts have freedom and have their own prerogative. Even now, during the appeal stage, many High Courts also insist that you deposit 20 per cent of the amount in question. That is put in the court and not in the hands of the complainant. It means that one party is at the mercy of another party. One party is not put to the mercy of the court. One party is left to the mercy of another party. It will not be level playing. You can say

that. But, this is happening in our country. ... (*Interruptions*) The hon. Minister can very well tell us the number of cases in which acquittals have been made. The appointment of judicial officers is our duty. That is not the duty of the common people. Just because the vacancies are yet to be filled up, you are pushing and pulling everyone and asking them to pay. It is just like a penalty, fine and convicting a person. There are quite a lot of cases pending. So, this will affect the cases which are already pending in the courts of law. ... (*Interruptions*)

HON. DEPUTY SPEAKER: Shri Shivkumar Udasi, please sit.

DR. A. SAMPATH : The accused may not be convicted. ... (*Interruptions*)

HON. DEPUTY SPEAKER: You address the Chair. When you are moving amendment, generally, we would not give much time, but since you want to explain it, I am giving you time. But, do not drag it. You have already spoken on the Bill.

DR. A. SAMPATH: Why I am begging for your mercy is not because for me. I am neither an accused nor a complainant.

HON. DEPUTY SPEAKER: Then, do not do it.

DR. A. SAMPATH : I am only expressing the voice of the people. The rich people know how to fight a case. They will get very good lawyers. They know how to manage the law, if not manipulate. Only the poor people are at the doorsteps of the court. They do not have access to judicial officers. They do not get advocates and they are languishing.

HON. DEPUTY SPEAKER: Hon. Minister, do you want to say something?

श्री शिव प्रताप शुक्ला: माननीय उपाध्यक्ष जी, अभी माननीय सदस्य ने जो कहा है, मैं उसका जवाब पहले भी दे चुका हूँ कि वह भुगतान उसका करेगा। रिजर्व बैंक ऑफ इंडिया द्वारा प्रकाशित तथा वित्तीय वर्ष के आरंभ में निश्चित रूप से कर देगा। अगर कोई कोर्ट में जाएगा ही नहीं, हमें और किसी को नहीं पता है कि उसका चैक बाउंस हुआ है या नहीं, क्या लेन-देन था ऐसी स्थिति में बिना सबॉर्डिनेट कोर्ट में गए उस पर कुछ किया नहीं जा सकता है।

HON. DEPUTY SPEAKER: I shall now put amendment nos. 18 and 19 to Clause 2 moved by Dr. A. Sampath to the vote of the House.

The amendments were put and negatived.

HON. DEPUTY SPEAKER: The question is:

“That clause 2 stand part of the Bill”.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 Insertion of new Section 148

Power of Appellate Court to order

**payment pending appeal against
conviction**

HON. DEPUTY SPEAKER: Prof. Saugata Roy, are you moving amendment nos. 13, 15 and 17?

... (*Interruptions*)

HON. DEPUTY SPEAKER: I do not want any comments from you. If you want, you can come, sit and conduct the proceedings. I am not in a position to run the House as Members from both the sides keep on speaking. It is very embarrassing.

PROF. SAUGATA ROY: Yes, Sir, I rise to move:

Page 2, line 23,-

for “twenty”

substitute “twenty-five”. (13)

Page 2, line 27,-

for “sixty”

substitute “forty-five”. (15)

Page 2, line 28,-

for “thirty”

substitute “twenty”. (17)

HON. DEPUTY SPEAKER: I shall now put amendment nos. 13, 15 and 17 to Clause 3 moved by Prof. Saugata Roy to the vote of the House.

The amendments were put and negatived.

HON. DEPUTY SPEAKER: Shri N.K. Premachandran – Not present.

The question is:

“That Clause 3 stand part of the Bill”.

The motion was adopted.

Clause 3 was added to the Bill.

Clause 1 Short Title and Commencement

HON. DEPUTY SPEAKER: Hon. Minister, you may move the Government Amendment no.2.

संशोधन किया गया:

पृष्ठ 1, पंक्ति 3 में,

“2017” के स्थान पर

“2018” प्रतिस्थापित किया जाए। (2)

(श्री शिव प्रताप शुक्ला)

HON. DEPUTY SPEAKER: Shri Shashi Tharoor, are you moving amendment No.3 ?

DR. SHASHI THAROOR : I am not moving.

HON. DEPUTY SPEAKER: The question is:

“Clause 1, as amended, stand part of the Bill.”

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula

संशोधन किया गया :

पृष्ठ 1, पंक्ति 1 में,

“अड़सठवें” के स्थान पर

“उनहत्तरवें” प्रतिस्थापित किया जाए। (1)

(श्री शिव प्रताप शुक्ला)

HON. DEPUTY SPEAKER: The question is:

“The Enacting Formula, as amended, stand part of the Bill.”

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Long Title was added to the Bill.

श्री शिव प्रताप शुक्ला: मैं प्रस्ताव करता हूँ:

“कि निगोशिएबल इंस्ट्रूमेंट्स (अमेंडमेंट) बिल संशोधित रूप में पारित किया जाए।”

HON. DEPUTY SPEAKER: The question is:

“That the Bill, as amended, be passed.”

The motion was adopted.