

[अध्यक्ष महोदय]

जवाब नहीं देता है। ... (अध्यक्ष) ... अगर स्पीकर को एयारिटी है, डिस्क्रिशन है तो वह चलेगी वरना आप उसको वापिस ले लीजिए।
• (अध्यक्ष) • अगर आप मुझे भी हुक्म करें तो आपको फाइल दिवा दू कि क्या रीजन्स हैं। कल आप एतराज करते थे कि उस मेम्बर ने फाइल क्यों लो, मैंने मिश्रा जी से बात की थी ...

श्री अटल बिहारी वाजपेयी : एक बात मुझे और कहनी है। यह चीज सर्कुलेट की गई है, यह क्या है? अलीगढ़ यूनिवर्सिटी बिल का कारिजेन्डम सर्कुलेट किया जा रहा है, क्या इसकी भी आपने इजाजत दी है ?

अध्यक्ष महोदय : वह तो प्रिंटिंग मिस्टेक्स है।

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय, आप बैठ जाइए, मैं आपको बताना चाहता हूँ। आप हमारे साथ जबर्दस्ती कर रहे हैं। (अध्यक्ष)

अध्यक्ष महोदय आपको तो एक पार्टी लीड करनी है, आपमें इतनी तेजी आ जाये तो कैसे रोक जायेगा। ... (अध्यक्ष)

श्री अटल बिहारी वाजपेयी यह यहाँ पर बाटा जा रहा है। • (अध्यक्ष) • यदि अलीगढ़ यूनिवर्सिटी बिल में कोई अमेन्डमेंट करना है तो वह सदन में आना चाहिए, इस तरह से नहीं आ सकता है।

अध्यक्ष महोदय इस समय मेरे सामने आइटम नं० 2, इंडियन पीनल कोड है और इस पर अभी वोटिंग नहीं हुई है।

श्री अटल बिहारी वाजपेयी : मेरे हाथ में यह आ गया तो मैंने कहा एक यह नयी मुसीबत आ गई। • (अध्यक्ष) •

अध्यक्ष महोदय : क्या अपोजीशन का यही काम है बात पर खड़े होना ? मैं जानता हूँ

अपोजीशन छोटा है, मेरा फर्क है, मैंने आपको एकोमोडेट करके और मैंने बड़े मामलों में आपको एकोमोडेट किया है, कभी डिस्क्रिशन क्लेम से एकोमोडेट किया है। अगर उसको जोबर-एग्जाजरेटेड समझें तो वह बात कल होगी। ... (अध्यक्ष) •

श्री इयान मन्वान निम्न (वेगुसराय) : केयर को भी ममता होनी चाहिए और हमको भी। काम तौर पर जो भी विधेयक बायें उनको ऐसे ही न मान लें। ... (अध्यक्ष) •

MR SPEAKER • The question is :

"That leave be granted to introduce a Bill further to amend the Indian Penal Code, the Code of Criminal Procedure, 1898 and the Unlawful Activities (Prevention) Act, 1967."

The motion was adopted

SHRI F H MOHSIN I introduce the Bill.

13.08 hrs.

HIRE PURCHASE BILL—Contd

MR. SPEAKER : We will now proceed with the further consideration of the Hire Purchase Bill Shri Somnath Chatterjee.

SHRI SOMNATH CHATTERJEE (Burdwan) Mr Speaker, Sir •

So far as this Bill is concerned, I consider it as a welcome measure because it has become necessary to control the abuse of the hire purchase system on the part of financiers and various financial institutions and to save the hirers who generally hail from the weaker sections of the society. As I indicated yesterday, one of the greatest evils which has crept into this system is that the financiers were procuring the signatures from the hirers on forms in which blanks were there and they were being utilised by the financiers for filling in the blanks suitably. They have been taking signatures on bank promissory notes, blank hundis, etc., apart from taking penal interest.

Another gross misuse of the system is the power taken under these agreements by the financiers to seize the vehicles and goods even though 95 per cent of the instalments may have been paid and only one or two instalments remain unpaid. In that case, the hirer not only loses the instalments he has paid but the property as well. So, there was a considerable demand for bringing proper legislation to control the abuses and evils which have crept into the system. In modern commercial activities these hire purchase transactions have greatly increased in number and it was necessary that legislation should have been introduced to regulate these transactions. That is why I welcome this measure.

13 10 hrs.

[MR. DEPUTY SPEAKER *in the chair*]

Another evil that has not fully met in the present Bill is the system developed by these financiers namely, after paying 4 or 5 instalments, if the hirers could not pay further, the owners would seize the vehicles and enter into a fresh agreement with the hirer adding the unpaid balance to the price without reducing the amount already paid and charge more for the same vehicle. I do not find any provision which fully meets that kind of racket which is going on.

About the right of the owner at the time the agreement is entered into, clause 6 specifically provides that

“Notwithstanding anything contained in any contract, in every hire purchase agreement, there shall be implied warranty—

- (a) that the hirer shall have and enjoy quiet possession of the goods, and
- (b) that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass.”

It does not make any provision as to the right of the financier with regard to the goods at the time the contract is entered into. The Minister yesterday in his introductory speech referred to this aspect. He also referred to some amendments we have tabled and he also referred to the 20th report of the

Law Commission Page 14 of that report says

‘ In practice, the amounts received by the financiers from the hirer are in turn paid over to the dealers, and by the time the hirer qualifies himself to obtain a purchase by payment of all the instalments, the financiers would have obtained a clean title to the goods. If we are now to provide that the condition as to title should operate as on the date of hire purchase agreement, we would be striking at this class of business.”

With great respect to the Law Commission, I would submit that this is not the correct approach. Take the provisions which are incorporated in clause 9 of the Bill, at page 6

“(1) The hirer may, at any time, during the continuance of the hire purchase agreement and after giving the owner not less than fourteen days' notice in writing of his intention so to do, complete the purchase of the goods by paying or tendering to the owner the hire purchase price or the balance thereof.”

Suppose there is an agreement providing for the payment of the money in 20 instalments. After three instalments the hirer wants to purchase it. He is given right to purchase the goods under clause 9. Now the position is this. The Law Commission says that the owner at the time of entering into the agreement need not have the title. It is only when the 20th instalment is to be given, the last instalment is to be paid by the hirer, the owner himself acquires the title, which would be sold after the payment of the 20th instalment. This is what I read out from the recommendation of the Law Commission, which apparently has been accepted by the government. How will this clause 9 work in such cases?

Clause 9 cannot operate because the owner by that time has not acquired the title and so he cannot transfer the title under clause 9. The hirer will be without remedy, or a remedy which will be infructuous because the owner will have no title to the goods at the time of entering into the hire purchase agreement itself. What we have suggested is that the owner must have the right to enter into such agreement. It may be that he has a contingent right,

[Shri Somnath Chatterjee]

a contingent title in the sense that he has done something and by doing something more he will acquire complete title. But there must be an assurance that there cannot be a charge or encumbrance in favour of a third party. Suppose a person takes a truck under a hire purchase agreement and pays ten instalments. Then it appears that somebody has a better right to these goods than a third party, who is not bound by this, takes away the goods and the hirer will have to run and file a suit or proceedings for the purpose of recovery of the amount which he has already paid, with umpteen difficulties, consequential difficulties, and I do not know under what the claim can be made. Therefore, for the purpose of the protection of the hirer it is necessary that there is provision in the law that the owner will have the right to enter into this agreement and nobody else will have any claim or encumbrance over the goods which will be the subject matter of the hire purchase agreement.

It is said here that it will strike at the root of the matter, namely, that it will, so to say, shrink the number of transactions. We feel that it is hardly justified to say that, particularly when no statistics have been given to show how it will in any way affect the nature of the transaction.

The other aspect on which we wanted to stress is that this Bill does not take into consideration and does not bring within its ambit sales which are credit sale transactions. I purchase some goods I cannot pay the whole amount at a time. So, I enter into an arrangement with my seller that I shall pay it by instalments and upon the payment of the instalments my rights would be complete. Now, there have been many transactions of credit sale nature which have all been given the garb of hire purchase agreement. This is our experience and in courts of law we have seen how this is done; credit sale agreements have been entered into under the garb of hire purchase agreements, although all the necessary incidence of hire purchase agreements are not there. When trouble comes the owner or the seller takes advantage of similar clauses in the hire purchase agreement and they try to take possession of the goods, although it is a credit sale. Therefore, one would have thought that credit sales should have been included in this Bill to save those persons who enter into transactions in an unwary manner without fully understanding the implications of that.

The last point on which I wish to make a submission before the Minister and before the House is about the financial position of those persons who have to take recourse to this hire purchase system. I am referring to the final report of the Road Transport Taxation Enquiry Committee: which made its final report in November 1957, under the chairmanship of Shri B. V. Keskar. Sir, at page 26 of this Report, it has been said, "We are of the opinion that Government should do something to help the small man in the road transport industry and not leave him to find his resources entirely from the private agencies. We are informed that banks and State Finance Corporations are generally unwilling to advance loans for the purchase of motor vehicles. The Government should recognise the genuine needs of the small operators in the industry and make available same facilities for easy and liberal credit by a suitable procedure under the aegis of the Reserve Bank or the State Bank. We hope that the Study Group which is dealing with this problem in detail will make suitable suggestions in this regard."

My submission before this House will be that it is not sufficient to provide some law to regulate the hire purchase transactions. To make hire purchase facilities more readily available to ordinary people in this country, some sort of scheme should have been provided for the purpose of providing adequate finance through appropriate financing institutions under the Government so that ordinary people are not forced to go all the time to the unscrupulous financiers and the financial operators who are really misusing these provisions for the purpose of their own end and they have the hirer at their mercy.

I have proposed certain amendments or which I shall make my submission when I come to detailed discussion; at this time I shall draw your attention to clause 18. It is a very welcome proposal. Proviso to clause 18 gives the right to the hirer to pay the arrears in instalments and then to save himself from the clutches of the owner in taking possession of the car. It gives only one week or in some cases two weeks time. I was suggesting that some provision should have been made for increasing the time if the court allows. I, therefore, submit this point which the hon. Minister should also consider. I shall make my submissions in more details when I deal with them.

श्री सरजू दांडे (गाजीपुर) : उपाध्यक्ष महोदय, यह जो बिल यहां पेश किया गया है वह

सराहना योग्य है। मगर जैसी आशा थी कि सदन में जब हायर पर्चेज बिल आयेगा तो वह एक काम्प्रिहेन्सिव बिल होगा और उससे जो हमारे छोटे मोटे खरीदार हैं उनको मशीनों और दूसरी चीजें खरीदने में आसानियां पैदा होंगी उसकी पूरी तरह से पूर्ति नहीं होती। मंत्री जी को एक काम्प्रिहेन्सिव बिल लाना चाहिये था ताकि कानून को रोज-रोज बदलने की आवश्यकता न होती।

आप जानते हैं कि हमारे यहां हायर पर्चेज पर मशीनों देने का काम कुछ बड़ी-बड़ी कम्पनियां करती हैं और काफी फायदा उठाती हैं। जो छोटे मोटे मशीनों खरीदने वाले लोग होते हैं उनके रास्ते में भीषण बाधाये उत्पन्न की जाती हैं। हालांकि इस विधेयक में कुछ सुविधायें दी गई हैं लेकिन जिस तरह से मूद वगैरह की व्यवस्था इस में हुई है उससे छोटे मोटे लोगों का नुकसान उठाना पड़ता है।

जैसा मेरे मित्र ने अभी कहा, बिल में व्यवस्था की गई है अगर कोई पर्चेजर ठीक टाइम से पैसा देने में फेल हो जाता है तो उसको एक सप्ताह का नोटिस देने के बाद ऐग्रीमेंट को खत्म किया जा सकता है। मैं समझता हूँ कि यह समय बहुत थोड़ा है और इस तरह का प्राविजन इसमें नहीं किया जाना चाहिये। उनको और समय देना चाहिये ताकि वह बीच के समय में पेमेंट कर सकें।

इसी तरह से अगर हमें बैंकों से ऋण मिलता है सामान खरीदने के लिये तो उसमें मूद की दरें बहुत ज्यादा हैं। इसके लिये भी इसमें व्यवस्था होनी चाहिये ताकि खरीदारों को आसानियां मिल सकें। उनको बैंकों से आसान किस्तों में ऋण मिलना सम्भव होना चाहिये ताकि वह दूसरी जगहों न जायें और उनका शोषण न हो सके।

मैं मंत्री महोदय से कहना चाहता हूँ कि आज हमारे देश में जो बलैक मनी है उसका लोग नाजायज इस्तेमाल करते हैं। उसको रोकने का एक ही रास्ता है। जो हायर पर्चेज सिस्टम है उसपर

छोटे लोगों को मामान दिलाया जाये, और इसकी काफी गुंजाइश हो सकती है और छोटे लोगों को भी सामान मिल सकता है। संलेक्ट कमेटी में बार-बार कहने पर भी मंत्री महोदय इसकी पूरी वृटियां को दूर नहीं कर सके हैं। जब क्लोज वाई क्लोज कंसिडरेशन हांगा तब उस पर विचार किया जायेगा।

मैं इतना ही कहना चाहता हूँ कि निकट भविष्य में मंत्री महोदय कोई ऐसा बिल लायें जिसके द्वारा जो छोटे मोटे कारबार लोग करना चाहते हैं वह हायर पर्चेज पर मामान खरीद सकें। वह लोग छोटी-छोटी मशीनों लगा कर अपने देश में ज्यादा वक्त काम कर सकें।

मैं इस मिलसिले में ज्यादा नहीं कहना चाहता क्योंकि काफी बड़ी-बड़ी वहाँ हो चुकी है। लेकिन मैं यह जरूर चाहता हूँ कि पर्चेजर को और ज्यादा टाइम देना बहुत जरूरी है। अगर कोई आदमी टाइम से किस्म देने में फेल हो जाता है तो सरकार ने नोटिस देने के बाद उसकी सारी चीजें नीलाम कर देने की व्यवस्था की है। इस तरह में नहीं रखना चाहिये।

लोग ज्यादा से ज्यादा चीजें हायर पर्चेज के द्वारा खरीद सकें, इस लिये इस विधेयक की आत्मा का मैं समर्थन करता हूँ लेकिन चाहता हूँ कि निकट भविष्य में मंत्री महोदय इस बिल को सुधार करके दूसरा बिल लायें।

*SHRI E. R. KRISHNAN (Salem) :
Mr. Deputy Speaker, Sir, on the Hire Purchase Bill brought forward before the House by the hon. Minister Shri Nituraj Singh Chaudhary, I would like to say a few words. This Bill has been considered by a Joint Committee of both the Houses of Parliament and has been passed by the Rajya Sabha On behalf of the Dravida Munnetra Kazhagam, I welcome this measure and support it.

Sir, nowadays a large number of transactions are taking place on hire purchase basis in our country. We find large number of people purchasing big Benz trucks, buses, cars, auto-

[Shri E. R. Krishnan]

rickshaws and bicycles on hire purchase basis. Though such hire purchase transactions have been taking place in our country for quite a few years, the Government have only now thought it fit to bring forward a legislation to protect the interests of the common people who make purchases on instalment basis.

Sir, it is indeed regrettable that even this Bill has not given adequate protection to the buyers under hire purchase scheme. This Bill contains no provision which puts a restriction on the maximum rate of interest to be charged by the sellers or dealers.

It is only those people who do not have ready cash in their hands or enough resources are driven to purchase articles under hire purchase system. It is common knowledge that people who want to engage themselves in some gainful activities purchase buses, trucks and cars. These people generally belong to the middle income group or low income group. The financiers who advance money charge huge rates of interest. The rates of interest vary between 15% to 30%. They even charge interest for the money paid every month. For example, Sir, if a person purchases an article of the value of Rs 300/—he is to pay Rs. 15/—every month for a period of 20 months to cover the price of the article. But he is also asked under the hire purchase agreement Rs. 2/—or more by way of interest on each instalment and if one calculate the purchaser is required to pay a very high rate of interest.

In the cooperative sector and in other financial institutions of the Government in order to protect the interests of the poor, money is advanced on low rates of interest. These institutions may belong to the State Governments or the Central Government. But the financiers who advance money to the common people adopt unscrupulous means and charge very high rates of interest which may even be 24% or more. That is why, Sir, though I have extended my support to this Bill I pointed out earlier that it is regrettable to note that the Bill does not make any provision to put a restriction on the maximum rate of interest chargeable.

Sir, the economic conditions of our people are such that even to purchase the ordinary domestic items like benches, chairs, electric articles, fans and utensils and so on, they have

to go in for hire purchase. Since there is no fixed rate of interest under the law we find the buyer has to pay 25%, 30% or more as interest. The necessity for putting a restriction on the rate of interest chargeable in any scheme of hire purchase cannot be over-emphasised.

Sir, I would now refer to the pernicious method of asking the intending buyer to make initial deposit. The initial deposit in many cases amounts to 30 to 40% of the value of the article to be purchased. Here also there is a need to put some restriction. The initial deposit should not be in any case more than 10% of the value of the article. The rest of the amount should be realised through several easy instalments.

Sir, in big cities like Madras there are many rich persons who advance money to people in the low income brackets for the purchase of trucks, buses, cars and so on. In their zeal to become self employed many innocent people fall victim to these unscrupulous financiers. After getting the truck or the bus, as the case may be these poor people find themselves unable to pay instalments with the huge interest thereon within the stipulated time. As a result they lose the buses or trucks which are taken away by the financiers. In this process they also lose the amounts they had already paid. You will agree with me, Sir, their conditions are indeed, pathetic.

Poor people, because the initial payment being less than the value of the article are attracted by the hire purchase scheme. The poor man goes in for a hire purchase of a cycle which normally costs 400 rupees because he is to pay only Rs. 100 by way of initial deposit. Subsequently, even if he fails once to make payment of Rs. 10/ a month he loses not only the cycle but also whatever money he had already paid. Thus the poor are greatly affected in such circumstances.

The Bill is no doubt a welcome measure in view of the large number of hire purchase transactions that are taking place in our country. However, I would like to draw the specific attention of the hon. Minister to two basic issues I have raised. As I said Sir, there must be restrictions on the quantum of money to be paid as initial deposit. Secondly, there must be statutory restrictions on the maximum rate of interest that can be charged under the hire

purchase scheme Even at the expense of repetition I would point out here Sir that while in the cooperative sector the loans are advanced at the rates of 6% to 8% interest the financiers charge starting from 12% to 24 or 30% as interest The poor and the common people are greatly harassed They resort to hire purchase scheme only because they have no other means of purchasing the articles which they need badly It is a desire to become self employed that prompts them to purchase trucks, buses, cars etc Therefore it is very essential that their interest should be protected I appeal to the Minister that he should give careful consideration to the points I have mentioned

Though the Bill has come rather belatedly I welcome it With these words I conclude,

श्री कृष्ण चन्दा बर्मा (उज्जैन) उपाध्यक्ष महोदय, मैं आपका आभारी हूँ कि आपने मुझ बोलने का समय दिया है। हायर परचेज बिल पर हम चर्चा कर रहे हैं। यह विधेयक सयुक्त प्रवर समिति के पास इस भावना के साथ भेजा गया था कि वहाँ इस का विस्तृत विवेचन होगा और यह बिल पूणता लिए हुए इस सदन के अन्दर प्रस्तुत किया जाएगा। लेकिन दुख के साथ कहना पड़ता है कि जिस भावना के साथ इस बिल को उसके पास भेजा गया था वह भावना पूरी नहीं हुई। इस बिल में जो कमियाँ थीं उनकी दूर नहीं किया गया और अधूरे स्वरूप में ही इस बिल को हमारे सामने प्रस्तुत कर दिया गया है।

आज के युग में हायर परचेज का बड़ा महत्व है। इस सदन की यह इच्छा थी और मैं भी यह चाहता था कि इस बिल के माध्यम से हायर परचेज को एनकरेज किया जाता, लोगों की परचेजिंग केपेसेटी को बढ़ाया जाता। इस ओर इस बिल के अन्दर कोई ध्यान नहीं दिया गया है। यदि इस पर ध्यान दिया गया होता तो आज ब्लैक मनी जो कि काफी बड़ी मात्रा में लेन देन का, आदान प्रदान का साधन बना हुआ है, उस पर भी कुछ हद तक रोक लगाई जा सकती थी, यह बिल उसको भी कम करने में सहायक हो सकता था। लेकिन इस ओर कोई विशेष ध्यान नहीं दिया गया। ब्लैक मनी पर

रोक लगती तो लोगों की खरीदने की जो तावत है वह सुदृढ़ हो सकती थी। लेकिन ऐसा हममें कुछ नहीं किया गया है।

हमारे समाज के अन्दर और देश के अन्दर हायर परचेज प्रणाली विभिन्न प्रकारों से चल रही है। इसके माध्यम से लाखों रुपये का प्रतिदिन ब्रय विक्रय होता है। काँग्रेस प्रगतिशील नीतियों का, समाजवाद का डोल बार-बार पीटती रहती है। यदि इस बिल के अन्दर इस बात का समावेश किया जाता कि लोगों की परचेजिंग पावर बढ़े तो मैं सोचता हूँ कि यह इस सदन की भावनाओं के अनुरूप होता। इस तरह का इसमें समावेश नहीं हुआ है। यदि यह कर दिया गया होता तो मैं पूरी तरह से इस बिल का समर्थन करता। जिन बातों का इस बिल में समावेश किया गया है, उनसे मरा सन्तोष नहीं हुआ है।

मन्त्री महोदय ने सयुक्त प्रवर समिति के प्रतिवेदन ही देखा होगा। उसमें हायर परचेज करने वाले लोगों को पूरा प्रतिनिधि-व नहीं दिया गया है। मैं चाहता हूँ कि जब मन्त्री महोदय उत्तर देता इस बात पर विशेष रूप से प्रकाश डाले।

मैंने कुछ सशोधन प्रस्तुत किए हैं उनमें मैंने कुछ बातें उठाई हैं। जब धारावार चर्चा होगी तब उन पर मैं बोलूंगा। इस वकन का उल्लेख मैं एक बात करना चाहता हूँ। आपने न्यायालय का प्रावधान किया है। दीवानी न्यायालयों की हालत इस सदन से छिपी हुई नहीं है। मन्त्री महोदय को तो उनका काफी विस्तृत ज्ञान है वह वह ला मिनिस्टर है और उनको अच्छी तरह से मालूम है कि आज जो सिविल कोर्ट हमारे देश में हैं उनमें दस-दस और पन्द्रह-पन्द्रह वर्ष तक मुकदमों पैडिंग पड़े रहते हैं, उनका ठीक से निर्णय नहीं होता है। क्या गारंटी है कि हायर परचेज के जो मामले हैं उनका निपटारा जल्दी होगा। मैंने एक एमेंडमेंट दिया है जिसमें मैंने माँग की है कि न्यायालय के स्थान पर विशेष ट्रिब्यूनल की नियुक्ति की जाए और उसकी जो पावर हैं वे

[श्री फूल चन्द वर्मा]

वही हो जो न्यायालय की होती है। इससे एक बात का लाभ अवश्य होगा। हायर परचेज के अन्तर्गत जो विवाद उत्पन्न करेंगे वे ट्रिब्यूनल के पास जायेंगे और वहाँ एक निश्चित अवधि रहेगी और उस निश्चित अवधि के अन्दर उनका निपटारा हो जाएगा जिससे लोगो का पैसा बचेगा, समय बचेगा और हेरासमेट के उनको छुट्टी मिलेगी।

यह भी जरूरी है कि हायर परचेजर और फाइनेसर के बीच मधुर सम्बन्ध हो ताकि हायर परचेज प्रणाली का प्रोत्साहन मिल सके। इस सम्बन्ध में भी इस बिल के अन्दर कोई विशेष बात नहीं कही गई है। मैं समझता हूँ कि फाइनेसर और हायर परचेजर के बीच अगर सम्बन्ध मधुर होगा, उनके सम्बन्धों में काफी निकटता होती तो विवाद कम खड़े होंगे। इस ओर यदि ध्यान नहीं दिया गया तो नाना प्रकार के विवाद उत्पन्न हो सकते हैं। मदन के माननीय सदस्यों ने विस्तृत रूप से इसके सम्बन्ध में प्रकाश डाला है। मे चाहता हूँ कि जिन बातों की ओर मंत्री महोदय का ध्यान आकर्षित किया गया है उनकी तरफ वह विशेष ध्यान दें। जहाँ तक एम्बेडेड्स का प्रश्न है, जब धारावार बहम होगी तब मैं उन पर बोलूँगा और अपने विचार विस्तृत रूप से आपके सामने रखूँगा।

THE MINISTER OF STATE IN THE
MINISTRY OF LAW AND JUSTICE (SHRI
NITIRAJ SINGH CHAUDHARY) I am
thankful to the hon Members who have taken
part in the debate and who have generally
supported the measure and who have also
made some very useful suggestions

Regarding the suggestions that have been
made, most of them are included in the
amendments to the various clauses to which
we shall come a little later. When these
amendments come up, I will put forth the
Government's point of view and I will leave
it to the House to consider what decision there
should be

Shri Somnath Chatterjee has made two

very important suggestions. He has said that
presently the position is that if the hirer
defaults even one or two instalments, the
financier takes away the property and forces
the hirer to enter into a fresh agreement. I
would request him to refer to Clauses 18 and
21 in the present Bill. I feel that these two
clauses protect the hirer. Firstly, one default
does not allow the owner to take possession
of the property. A notice is necessary. After
that if he wants he has to go to a court of
law and in the court of law the person who
has defaulted can make the payment. Sufficient
provision is made for that. He made references
to credit sales.

SHRI SOMNATH CHATTERJEE
Clause 18 deals with notice before termination
Clause 21 deals with notice after termination

SHRI NITIRAJ SINGH CHAUDHARY
He referred to credit sales. May I refer to
Law Commission's report where they have
said I quote

"While circulating the draft Bill for
opinion we had sent a questionnaire in
which one of the questions was whether
credit sale agreements should be included
within legislation. The opinion is over-
whelming against such inclusion. We have
therefore decided to exclude them from
such legislation. If it should become neces-
sary at any time owing to the exigencies
of business to enact legislation for granting
relief to purchasers under credit sale agree-
ments, that should in our view, be more
appropriately done, by inserting special
provisions in the Sale of Goods Act,
1930

Credit sales have been left out

SHRI SOMNATH CHATTERJEE That
is the Government view also ?

SHRI NITIRAJ SINGH CHAUDHARY -
This is just the beginning. This is not a full
legislation. We are trying to make certain
provisions. Shri Somnath Chatterjee referred
to Clause 6(2) (a). Clause 6(2) (a) says that
the owner should have the title at the time
when the property is to pass. When the hirer
gives notice, it is for the owner to give his
title within the period of notice. There is no
inconsistency between these clauses.

Shri Krishnan said that the persons advancing money charge exorbitant rates of interest, from 12 to 30 per cent. I may say, there have been cases where they even demanded 50 per cent. Provision is now made so that such things do not happen.

Shri P. C. Verma made certain references to the Joint Select Committee. He said, they did not pay full attention. I am sorry, he has not fully studied the report of the Joint Select Committee. They went into the matter for nine months, they made a very useful report and I think they must be thanked for the work that they had done. About other points made by Shri P. C. Verma, he has moved certain amendments, when those amendments are taken, I will make my submission.

MR. DEPUTY-SPEAKER : The question is :

"That the Bill to define and regulate the rights and duties of parties to hire-purchase agreements and for matters connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY-SPEAKER : We go to Clause-by-clause consideration. For Clause 2, there is no amendment. I will put Clause 2 to the vote of the House. The question is :

"That Clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3—(Hire-purchase agreements to be in writing and signed by parties thereto)

MR. DEPUTY-SPEAKER : For clause 3, there are two amendments.

SHRI SOMNATH CHATTERJEE : I move :

Page 2, line 40,-

add at the end—

"including the surety, if any, in the presence of one or more witnesses or wit-

nesses who shall belong to any of the following categories of the persons, namely, a notary, a magistrate, a gazetted officer of the Central Government or of a State Government, a member of any municipal corporation or municipal committee or district board, an officer of any scheduled or nationalised bank, a teacher of any school and such other class or classes of person or persons as may be designated by notification to be issued by the Central Government under this Act." (14)

My next amendment is Amendment No. 15. I beg to move :

Page 2,—

omit lines 44 to 47. (15)

Clause 3 (1) says that 'Every hire-purchase agreement shall be in writing and signed by all the parties thereto.' As I said, This is one greatest evil which has crept into our hire purchase transactions. By this, we wish to avoid that. He should not get a dominating position. That is, the owner or the financier should not be in a dominating position and the hirer should not be placed in a situation where he would be an underdog. In view of the dominant position of the financier, what happens is, in respect of the total amount, in respect of the particulars of the vehicle, in respect of the particulars of the goods, blank forms are obtained so that he may utilise those documents as and when they become necessary. The owner or the financier fills in the particulars and uses them in a court of law. I have seen it in my own experience. These are very common litigation in Calcutta. All these have been very common type of litigation for the last 2 years. If they enter into agreement for a motor car or a truck, they have no option but to go and surrender completely to the owner of the vehicle, or the financier. This is because the motor companies insist on delivery being taken at once. They cannot have the money and so they have to submit to such a thing. To avoid the possibility of any blank form being obtained from them we must provide for signatures of witnesses. It is not in the form of attestation. There should be an independent person before whom this document should be signed. In this way blank forms will not be procured from the hirers by the owners of the financial institutions. That is why I say in amendment No. 14 that we may add the words

[Shri Somnath Chatterjee]

'including the surety if any, ..' etc If the Minister wants to increase the categories, he can do so. I am not on that point I am only on the point of principle One may say that these types of people may be won over by the financier or the owner. But, as I said, this will be some sort of protection to the hirer so that they are not made to sign on the dotted line There is no model form which is being prescribed in 'he rules Under this Act no rules are to be framed So, what is the objection on the part of the Government to accept this amendment? If this amendment is accepted, nobody can dispute the agreements and the owners or financiers would not indulge in any 'sharp practice' if I may use that expression

My second amendment to Clause 3 is only consequential upon the other amendment that I have suggested Sub-clause (3) of clause (3) says

'where there is a contract of guarantee, the hire purchase agreement shall be signed by the surety also, and if the hire purchase agreement is not so signed, the hire purchase agreement shall be voidable at the option of the owner "

One cannot contemplate why there should be this provision There is a tripartite arrangement It contemplate the owner, the hirer and the surety, that is, a guarantor But there may be cases where the guarantor does not sign at the time of the execution of the agreement If it is not signed, what will happen? It becomes voidable at the option of the owner. It should be made incumbent upon the guarantor also to be a party to it at the time of the agreement.

I command my amendments to the hon Minister for acceptance

SHRI NITIRAJ SINGH CHAUDHARY

Your amendment seeks to incorporate the words 'in the presence of one or more witnesses or witnesses who shall belong to any of the following categories of the persons, namely, a notary, a magistrate, a gazetted officer of the 'Central Government' and so on and so forth May I refer him to clause 25 which says that a copy of the document shall be provided to the hirer When a copy of the document is provided to

the hirer the question of leaving any blanks or filling up later does not arise.

SHRI SOMNATH CHATTERJEE : They will obtain signature from then saying that a copy has been given That is how it is being operated He will see in his experience that this will happen

SHRI NITIRAJ SINGH CHAUDHARY . We have provided for the signature of the surety in sub-clause (3). He wants it to be done in the presence of one or more witness or witnesses who shall be long to any of the following categories of persons, namely, a notary, a magistrate gazetted officer ..' We feel that it would cause considerable inconvenience to the parties the hire purchase agreement is to be signed in the presence of these persons because this is not only restricted to metropolitan cities, it will go to kasbas and other places where these persons may not be available. Therefore, it is not possible for me to accept the amendments.

MR DEPUTY-SPEAKER I shall put amendments 14 and 15 to the vote of the House

Amendment Nos 14 and 15 were put and negatived

MR DEPUTY-SPEAKER . The question is '

"That clause 3 stand part of the Bill "

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4—(Contents of hire-purchase agreements)

SHRI SOMNATH CHATTERJEE : I beg to move . amendments Nos 16 and 17.

Page 3,—

after line 13. insert—

'(f) that the owner has a right to enter into the said agreement and that the goods are free from any charge or encumbrance in favour of any third party at the time when the agreement is entered into." (16)

Page 3,—

Omit lines 17 to 23. (17)

I have made my submission in the opening and I shall not take long. These amendments are necessary so that the hirer may have undisturbed right to enjoy the goods he is taking on hire. There should be an undertaking from the owner that the property is free from any charge or encumbrance and that at that time he has got a right to enter into that agreement. Otherwise, after a number of instalments have been paid, if somebody comes and puts forward a claim and seizes the vehicle or the other goods and removes them, the hirer is completely at the mercy of the owner ; he has to file litigation and carry it on. In clause 4 we say what are the provisions which must be included in the hire purchase agreement ; so also in clauses 6 (1) and (2) we are providing what the warranties and conditions are implied. A warranty is being asked for in respect of a future event, future state of affairs. I am saying : why depend upon a future warranty ? Why not a present warranty ? The hirer will probably give his life's savings to get a truck so that he can run it and earn some money for the purpose of living. He puts in his money. Why should not the owner and the financier give an undertaking that he has a right to deal with that property and that there is no charge or encumbrance so that nobody else interferes with the possession of the hirer. I do not know why the Government does not agree to it. I read out the portion of the Law Commission's recommendations. It says it may shrink business. There are no materials before us how it will affect the business. On the other hand, the hirer gets into serious difficulty and there is a great deal of apprehension that the hirer will suffer if such a clause is not inserted.

Amendment No 17 is not quite consequential upon the other amendment. I have asked for the omission of sub-clause (3). This sub-clause provides for the institution of a suit by the hirer for getting the hire-purchase agreement rescinded. That means, if an agreement is entered into in violation of these provisions, the hirer has to rush to the court for getting it rescinded and getting into a situation in which he does not get any immediate relief. A mere provision asking the hirer to go to court to establish his title

will not help the hirer. So instead of leaving it to the hirer to go to court, it should be the owner's res obligation to state in the agreement that he has this right.

SHRI NITIRAJ SINGH CHAUDHARY :
About amendment no. 16, the doubts of the hon. member are that the hirer is at a disadvantage. The amendment is unnecessary because of the provisions of clause 6 (2) and clause 6(2)(a). Clause 6 (2) provides for the warranty as to quiet possession and the warranty as to the goods being free from any charge or encumbrance. Clause 6(2) (a) provides for the condition as to the title.

The amendment is inconsistent with clause 6(1)(b), according to which the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass. The warranty as to the goods being free from any charge or encumbrance should properly only at the time when the property is to pass. If it is made applicable at the inception of the agreement, the smaller businessmen will be thrown out of business and no advantage will be secured to the hirers.

Regarding amendment No. 17, if sub-clause (3) of clause 4 is omitted, there would be no sanction for ensuring that the provisions of clause 4 are complied with by the owner. This will cause great hardship to the hirer who is a weaker party to the transaction. He referred to the Law Commission's report. I will refer him to page 15 of that report. It is a long para and I will not read it.

With these words, I submit that it is not possible to accept these amendment.

MR. DEPUTY-SPEAKER : I will now put amendments 16 and 17 to the House.

Amendments Nos. 16 and 17 were put and negatived.

MR. 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—(Warrantees and conditions to be implied in Hire-Purchase agreements)

SHRI SHANKERRAO SAVANT (Kolaba) : I beg to move :

Page 3, line 44,—

for "when the property is to pass" substitute—

"when the agreement is entered into and at all times during the continuance of the agreement" (1)

SHRI PHOOL CHAND VERMA (Ujjain) I beg to move .

Page 3,—

for lines 43 and 44, substitute—

"(a) an implied condition on the part of the owner that he has a right to sell the goods at the time when the agreement is entered into and at all times during the continuance of the agreement," (7)

MB DEPUTY-SPEAKER Amendment No. 26 is the same as No 7

14 hrs.

SHRI SHANKERRAO SAVANT Sir, my amendment is nothing new. It only seeks to revert to the position as it emerged from the Joint Committee report. The Joint Committee had decided that the title passes even at the time of agreement. Accordingly, they made the necessary amendment. No reasons were given why in the Rajya Sabha the unanimous report of the Joint Committee was passed over. Secondly, I may point out that as the general law stands, the seller will have the title at the time he enters into the agreement of sale. Hire purchase agreement is nothing but a deferred sale. That being the position, why should we not give protection to the hirer at the time of the agreement itself? Now the position will be that when the agreement is entered into, for all times during the continuance of the agreement there will be a presumption on the part of the owner that he has a right to sell the goods. This is in consonance with the general principles of law on the sale of goods etc.

It is also in consonance with the unanimous recommendations of the Joint Committee. I, therefore, request that the amendment may be accepted.

SHRI NITIRAJ SINGH CHAUDHARY .

The object of these amendments is to provide that the implied condition as to title should apply right from the inception of the hire-purchase agreement. In the Bill as introduced, it was provided, in accordance with the recommendations of the Law Commission, that the owner should have a right to sell the goods at the time when the property in the goods is to pass to the hirer. The Joint Committee amended the provision to provide that the condition as to title should be implied not only at the time when the property in the goods is to pass to the hirer but also from the inception of the hire-purchase agreement. When the Bill was considered in Rajya Sabha, Rajya Sabha accepted the official amendment, which had the effect of restoring the position as it stood in the Bill as introduced. The above amendments are for the purpose of reverting to the position as suggested by the Joint Committee.

The Joint Committee had given two reasons in support of their recommendation

First, that it will be in the interests of orderly growth of hire purchase business

Secondly, that it will avoid fraudulent transactions and ensure that a hirer gets a clear title

Coming to the first reason if according to the view of the Committee, the condition as to title is to be satisfied from the inception, only businessmen who have the means or adequate finances to purchase the goods will be able to carry on hire-purchase business. Small businessmen will have to give up the business. Hire purchase business in less expensive consumer articles like radios, sewing machines, etc., is generally carried on by the smaller business people. All these people will be thrown out of their business. Further, bigger business people may not adequately cater to the needs of small places. It may also be mentioned that honesty and fair dealings are not necessarily the monopoly of the affluent business people and it is difficult to appreciate as to why it is necessary to make hire-purchase business their monopoly for ensuring orderly growth of hire-purchase business.

The second reason adduced by the Committee may be considered. Would a fraudulent man be deterred from giving on hire-purchase goods which he does not own just because the law implies a condition that a person should have title to the goods at the time when he gives them on hire-purchase? The answer is a clear no. As observed by the Law Commission, "it would make no difference" to a fraudulent dealer because he has "no thought of giving a good title at any time" (page 15 of the Law Commission Report). On the other hand, the amendment suggested by the Joint Committee, which is now sought to be restored by the Hon. Members, will prevent an owner who did not have title at the inception of the agreement but who is willing and able to perfect his title from doing so and completing the agreement.

In short, the amendments suggested by the Members will throw out of hire-purchase business small business people. It will not help the hirers in any way nor will it reduce fraudulent transactions. On the other hand, it will prevent honest dealers acting under *bona fide* mistake from completing the transaction. Under the laws of other countries such as England, Australia, etc., the condition as to title applies at the time when the property is to pass.

Therefore, I would request the hon. Members to withdraw the amendments and if they do not withdraw, I am sorry I cannot accept the amendments.

MR. DEPUTY-SPEAKER : Mr. Savant, in deference to the Minister, will you withdraw your amendment?

SHRI SHANKERRAO SAVANT : I do not agree with him, but nevertheless I shall withdraw my amendment.

MR. DEPUTY-SPEAKER : Has Mr. Savant leave of the House to withdraw his amendment?

HON. MEMBERS : No.

MR. DEPUTY-SPEAKER : Then I shall put amendment No. 1 to Clause 6 to the House.

Amendment No. 1 was put and negatived.

MR. DEPUTY-SPEAKER : I will now put amendment No. 7 to Clause 6 by Shri Phool Chand Verma to the House.

Amendment No. 7 was put and negatived.

MR. DEPUTY-SPEAKER : The question is :

"That Clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

MR. DEPUTY-SPEAKER : Dr. Laxminarayan Pandeya is not here. So, his amendment is not moved.

Clause 7 - (Limitation on hire purchase charges)

SHRI PHOOL CHAND VERMA : I beg to move :

Page 5—

for lines 29 to 33, substitute—

"(f) 'statutory charges', in relation to a hire-purchase agreement, means the amount calculated in accordance with the provision of sub-section (2) hereinafter provided" (8)

Page 5—

for lines 34 to 49, substitute—

"(2) 'statutory charge' in relation to a hire-purchase agreement shall be an amount calculated at a flat rate of not less than seven and a half per centum per annum on the net cash price of the goods comprised in the agreement or such other rates as may be specified under sub-section (3)." (9)

Page 6, lines 1 and 2—

for "less than ten" substitute—

"more than a flat rate of fifteen" (10)

SHRI SOMNATH CHATTERJEE : I beg to move :

[Shri Somnath Chatterjee]

Page 5—

after line 28, insert—

“(iv) any amount which has been paid or is payable on account of commission, financial or otherwise, to the owner in respect of the agreement ;” (18)

MR. DEPUTY-SPEAKER : I put amendments 8, 9, 10 and 18 to Clause 7 to the House.

Amendments Nos. 8, 9, 10 and 18 were put and negatived.

MR. DEPUTY-SPEAKER : The question is :

“That Clause 7 stand part of the Bill”.

The motion was adopted.

Clause 7 was added to the Bill.

MR. DEPUTY-SPEAKER . The question is :

“That clauses 8 to 11 stand part of the Bill”.

The motion was adopted

Clauses 8 to 11 were added to the Bill

Clause 12—(Assignment and transmission of hirer's right of interest under hire-purchase agreements

MR. DEPUTY-SPEAKER : Dr. Laxminarayan Pandeya is not here.

SHRI PHOOL CHAND VERMA : I beg to move :

Page 8, line 11—

for “court” substitute—

“Special Tribunal” (11)

Page, 8—

for lines 15 to 17, substitute—

‘Explanation,—In this sub-section,

the “Special Tribunal” means a tribunal specially constituted for the purpose of hearing cases arising under this Act.’ (12)

MR. DEPUTY-SPEAKER : I shall put amendments 11 and 12 to the House.

Amendments Nos. 11 and 12 were put and negatived.

MR. DEPUTY-SPEAKER : The question is :

“That clause 12 stand part of the Bill”.

The motion was adopted

Clause 12 was added to the Bill.

Clauses 13 to 16 were added to the Bill.

Clause 17—(Rights of hirer in case of seizure of goods by owner)

SHRI SOMNATH CHATTERJEE : I beg to move :

Page 9,—

for lines 26 to 29, substitute—

“(2) For the purposes of this section, the value of any goods on the date of seizure is the price that may be agreed by and between the parties to the agreement and in default thereof, as may be ascertained by the court having jurisdiction to entertain a suit for any relief claimed under or in respect of the agreement and for the purposes of assessing such value, the court shall ascertain the best price that can be reasonably obtained for the goods by the owner on that date, less the aggregate of the following amounts, namely :—” (19)

If you please see *Clause 17* of the Bill, it says in sub-clause (1) :

“Where the owner seizes under clause (c) of section 19 the goods let under a hire-

purchase agreement, the hirer may recover from the owner the amount, if any, by which the hire-purchase price falls short of the aggregate of the following amounts, namely :—

- (i) the amounts paid in respect of the hire-purchase price up to the date of seizure ;
- (ii) the value of the goods on the date of seizure."

Sir, the intention is that if the goods are seized the hirer may recover the balance amount of what he has paid and the value of the goods on the date of seizure.

Sub-section (2) purports to define the value of the goods. It says :

"(2) For the purposes of this section, the value of any goods on the date of seizure is the best price that can be reasonably obtained for the goods by the owner on that date less the aggregate of the following amounts, namely :—..."

The intention obviously is that the hirer atleast should get back the difference between the amount which he has paid and the real value of the goods. But how does he realise it ? In all cases he is forced to go to court. There is no other way out. Certainly the owner will not say that this is the value of the goods. Therefore, whatever the value the hirer mentions, the owner is certainly not going to accept it. What is the position ? Therefore, I have made a suggestion that in cases where both the parties may take up a reasonable attitude, they may arrive at a figure. It may be upon bargaining between them. Then, if that figure is accepted and it becomes the value of the goods on the date of seizure within the meaning of clause 17(1), it will avoid litigation between the parties concerned. Now, the only method is to go to courts. There is no method. Therefore, I have suggested in my amendment No. 19 that, for lines 26 to 29, substitute :—

"(2) For the purposes of this section, the value of any goods on the date of seizure is the price that may be agreed by and between the parties to the agreement and in default thereof, as may be ascertained by the court having jurisdiction to entertain a suit for any relief claimed under or in res-

pect of the agreement and for the purposes of assessing such value, the court shall ascertain the best price that can be reasonably obtained for the goods by the owner on that date, less the aggregate of the following amounts, namely :—"

The real alteration that I am suggesting is that instead of making the parties in all cases to go to court, you give an opportunity to them to come to an agreement or an agreed valuation as to the price of the goods on the date of seizure so that on the basis of that, the parties may regulate their rights under clause 17 and must not have to go to court in all cases.

SHRI NITIRAJ SINGH CHAUDHARY :
I submit that the parties are not debarred from coming to an agreement. In every dispute, they are free to come to an agreement. It is unnecessary to provide that here. If the parties agree the matter could be determined in accordance with the agreement. Clause 17 becomes really relevant only when there is a dispute between the parties, not otherwise. When there is a dispute, the matter can be taken to a court having competent jurisdiction in accordance with the provisions of the Code of Civil Procedure. If there is no dispute and the parties have come to an agreement, they can decide it amongst themselves. I think, this is abundantly clear. There is no necessity of amendment.

SHRI SOMNATH CHATTERJEE :
Clause 17 (2) says :

"...the value of any goods on the date of seizure is the best price that can be reasonably obtained for the goods by the owner on that date..."

I say, this is the only provision which has been made how to ascertain the best value of the goods. Where is the scope of an agreement here ?

SHRI NITIRAJ SINGH CHAUDHRY :
In every dispute, when the parties come to an agreement, the court enforces that agreement.

MR. DEPUTY SPEAKER : Now, I put amendment No. 19 moved by Shri Somnath Chatterjee to the vote of the House.

Amendment No. 19 was put and negatived

[Mr Deputy Speaker]

MR DEPUTY SPEAKER The question is .

"That clause 17 stand part of the Bill"

The motion was adopted

Clause 17 was added to the Bill

Clause 18 (*Rights of owner to Terminate hire purchase agreement for default in payment of hire or unauthorised act of breach of express conditions*)

SHRI SOMNATH CHATTERJI: I beg to move

Page 10, line 15,—

after ' weeks insert—

or within such time as may be allowed by the Court on an application made by the hirer (20)

Page 10, —

after line 16 insert —

Explanation.—In this sub section court means a court which would have jurisdiction to entertain a suit for the relief claimed in the application (21)

Sir, I do hope this time, the Minister will not look to the departmental officers only

The marginal note to clause 18 says

' Rights of owner to terminate hire-purchase agreement for default in payment of hire or unauthorised act or breach of express conditions '

Then, clause 18(1) says

"Where a hirer makes more than one default in the payment of hire as provided in the hire purchase agreement, then subject to the provisions of section 21 and after giving the hirer notice in writing of not less than—

(i) one week in a case where the hire is payable at weekly or lesser intervals, and

(ii) two weeks, in any other case

the owner shall be entitled to terminate the agreement by giving the hirer notice of termination in writing

Provided that if the hirer pays or tenders to the owner the hire in arrears together with such interest thereon as may be payable under the terms of the agreement before the expiry of the said period of one

'week or as the case may be, two weeks, the owner shall not be entitled to terminate the agreement "

This is a protection which otherwise is welcome, namely, that an opportunity is given to the hirer to remedy the breach. That opportunity is being given. You continue to enjoy the benefits of the agreement. I take it that is the intention.

The time limit is provided only one week before the expiry of the agreement or in case where the amount is payable at weekly or lesser intervals.

What I am proposing is this. There may be genuine cases of great distress on the part of the hirer. He may provide money in one month's time, or in one week's time or in two weeks' time. In such cases, he cannot take advantage of clause 18. The Minister may point out Clause 21 which is the situation which will arise after the agreement has been terminated, the parties' relationship will be considerably altered. What I am suggesting is this. Kindly see amendment No 20, it says

"or within such time as may be allowed by the Court on an application made by the hirer "

This is a right given to the hirer if he can make out a case by making an application to the appropriate court. The time is ordinarily two weeks. But, in these circumstances, if he gets a little longer time, then he can pay off. The court will decide. It is well known that in the case of Limitation Act when certain proceedings cannot be filed within the time, there is a provision for extension of time, and the court will decide if a sufficient case is made out. I am suggesting this amendment because it is not left to the hirer's

discretion but the court will go into the matter whether he should be given a little longer time; the court will decide. Kindly see again amendment No. 20. It is only giving power to the court in appropriate cases where the hirer makes an application.

Amendment No. 21 is a consequential amendment indicating which is the court that will have jurisdiction in deciding this matter—in a similar language as has been provided in in Clause 12 which the House has passed. In Clause 12 you will find the definition of 'court' given in this explanation. A similar definition has been provided.

I do feel that the hon. Minister will favourably consider these amendments.

SHRI NITIRAJ SINGH CHAUDHARY : Clause 18 provides that the hirer makes more than one default—not one default; the defaults have to be two or more. The hirer gets a fair chance and time. Thereafter when the matter goes to the court, at the time of the hearing of the suit or application by the owner for recovery of goods, the hirer can obtain relief. Sufficient time is there... (*Interruption*) If it was only one default, what you say would have had very great force, but the provision is where there are more than one default.

SHRI SOMNATH GHATTERJEE : The hirer involuntarily makes the default. Nobody wants to make a default; because he is in financial difficulties, he makes a default. He must find money within a fortnight to pay all the arrears. Can the Government not make a provision for the hirer to obtain extension of time from court, if the court is satisfied that there has been a sufficient case? Is a fortnight's time sufficient to get the money?

SHRI NITIRAJ SINGH CHAUDHRY : It is not only a fortnight. This is only when there is more than one default. Then he gets another chance to pay the money in the court when the matter comes there.

I am, therefore, not accepting the amendments.

MR. DEPUTY-SPEAKER : I shall now put amendments Nos. 20 and 21 to Clause 18

to the vote of the House.

Amendments Nos. 20 and 21 were put and negatived.

MR. DEPUTY-SPEAKER : The question is :

"That Clause 18 stand part of the Bill."

The motion was adopted.

Clause 18 was added to the Bill.

Clause 19 was added to the Bill.

Clause 20—(*Restriction on owner's right to recover possession of goods otherwise than through court.*)

MR. DEPUTY-SPEAKER : Mr. Lakshmi Narayan Pandeya is absent.

Mr. Phool Chand Verma.

SHRI PHOOL CHAND VERMA : I beg to move :

Page 11, lines 34 and 35,—

for "any court having jurisdiction to entertain a suit for the same relief."

substitute—

"the Special Tribunal" (13)

MR. DEPUTY-SPEAKER : I will now put amendment No. 13 of Shri P. C. Verma to the vote of the House.

Amendment No. 13 was put and negatived.

THE DEPUTY SPEAKER : Now, the question is :

"That Clause 20 stand part of the Bill.

The motion was adopted.

Clause 20 was added to the Bill.

Clause 21—(Relief against termination for non-payment of hire)

SHRI SOMNATH CHATTERJEE I beg to move

Page 11, line 42,—

after 'application' insert—

"or within such time as may be allowed by the court in that behalf" (2)

Page 11, line 47,—

after "delivery," insert—

'or order for appointment of a receiver or injunction' (23)

Because of the provision of clause 21, as I understood the hon Minister has opposed my amendment to clause 18 because he said the hirer will get another chance. As he will get another chance under clause 21, why, therefore, he be given opportunity under clause 18? Although I am wholly unimpressed by this argument we have to submit to the wishes of the massive mandate

Now clause 21 says

"Where the owner, after he has terminated the hire-purchase agreement in accordance with the provisions of sub-sections (1) of section 18, institutes a suit or makes an application against the hirer for the recovery of the goods, and at the hearing of the suit or application, the hirer pays or tenders to the owner the hire in arrears, together with such interest . . .

Then what will happen ?

"..the court may, in lieu of making a decree or order for specific delivery pass an order relieving the hirer against the termination, and thereupon the hirer shall continue in possession .."

In cases of hearing where instalments are paid weekly, if a fortnight lapses and when the owner goes to a court and asks for a decree for taking possession, what is the time allowed

to the hirer to take advantage of it? Only at the hearing of the suit or the application he must pay. Therefore, before the matter is disposed of, he has to pay off all the arrears of instalments together with interest, etc. Otherwise, he does not get the benefit at all of this section. What I have suggested is this that it may be that during the hearing or before the hearing is over the hirer cannot pay but the court in appropriate cases, after looking into the facts and the circumstances of the hirer and the owner may decide, 'Yes, although I am disposing of this application or the suit, I am giving you one month's time or three weeks' time or 2 weeks' time to pay off.' This is precisely what I have suggested. It says

"or within such time as may be allowed by the court in that behalf"

which is to be added after the words 'after the hearing of the suit or application' 'At the hearing has a very technical meaning. It means before the time it is disposed of 'At the hearing of the suit or application or within such time as may be allowed by the court in that behalf' Can't you trust the court? I cannot understand. This is not a matter for the owner to decide it himself. Here, we are asking the court before which the matter is brought by the owner to decide as to what is the time which should be allowed to the hirer to pay off the arrears of instalments including the interest. What is the objection of the Government, I cannot understand?

In another amendment to this clause what I have provided is apart from a decree or order for specific delivery also an order for the appointment of a Receiver or injunction. The purpose of this is, I shall say. The position is this. It contemplates that instead of making a decree or order for specific delivery, if the clause stands as it is without amendment, if at the hearing of the application, that is the final disposal of the matter and the application or the suit, if the hirer pays the amount, then the court will not pass a decree or order for specific delivery, that is, that the hirer do make it over to the owner. But there are many cases where during the pendency of the suit or an application, there may be applications for appointment of Receiver and although he would have otherwise got the opportunity of paying up the

arrears in instalments and retaining the possession of the car, he cannot take advantage of it. Even when an application for Receiver is made and the Receiver is appointed by the court there is no restriction on the court in appointing a receiver or making an injunction against the hirer restraining him to use the vehicle during the pendency of the application before the court. I do not know these obvious glaring lacunae we find in the Bill. Give an opportunity to the court to fix a reasonable time. If you could make it effective by appointment of the Receiver or making an order of injunction, that is not taken away. Therefore, I do commend these amendments for the hon. Minister's kind consideration and acceptance. I do not see any basic objection to this

SHRI NITIRAJ SINGH CHAUDHARY : Clauses 18 and 20 do not modify the existing law to the detriment of the owner because of protection of the hirer. We must balance the interests of both As I have already submitted, the hirers interest are sufficiently protected. The Bill does not seek to codify the law relating to hire-purchase and the provisions of general law, Civil Procedure Code, Specific Relief Act, Contract Act etc will apply to the extent that they are not modified by the Bill.

May I also request Shri Somnath Chatterjee to refer to Order 40 of the CPC which provides for receivers, and it will apply, as he has said ?...

SHRI SOMNATH CHATTERJEE : Such an application for receiver can be made and then the receiver will be appointed. Where is the bar ? The bar is only against making an order for specific delivery.

SHRI NITIRAJ SINGH CHAUDHARY : I do not question what he says. I have myself said...

SHRI SOMNATH CHATTERJEE : How does he intend to protect the hirers ?

SHRI NITIRAJ SINGH CHAUDHARY : As I have submitted, the hirers interests are sufficiently protected. We are trying to strike a balance between the owner and the hirer by providing more relief to the hirer.

SHRI SOMNATH CHATTERJEE : By giving him only verbal protection, which can never be enforced.

SHRI NITIRAJ SINGH CHAUDHARY : Not verbal protection, but actual protection.

MR. DEPUTY-SPEAKER : I shall now put amendments Nos. 22 and 23 to clause 21 to vote.

Amcndments Nos. 22 and 23 were put and negatived

MR. DEPUTY-SPEAKER : The question is :

"That clause 21 stand part of Bill".

The motion was adopted.

Clause 21 was added to the Bill.

Clause 22 was added to the Bill.

MR. DEPUTY-SPEAKER : There are some amendments seeking to introduce new clauses 22 A to 22 C. But the hon. Member concerned is absent.

The question is :

"That clause 23 stand part of the Bill".

The motion was adopted

Clause 23 was added to the Bill,

Clauses 24 to 28 were added to the Bill.

Clause 29 — Service of notice)

SHRI SOMNATH CHATTERJEE : I beg to move :

Page 14, line 9, *after* "sending it by" *insert* "registered" (25)

The attitude of the hon. Minister does not encourage me but I shall be failing in my duty if I do not press this amendment. After all, this ought not to be a controversial legislation. I am sure the hon. Minister will be convinced of the efficacy of this amendment and its usefulness, but I do not know why he is not able to accept it.

SHRI NITIRAJ SINGH CHAUDHARY : He will withdraw it after I make my submissions.

SHRI SOMNATH CHATTERJEE .
Clause 29 reads thus .

"Any notice required or authorised to be served on or given to an owner or a hirer under this Act may be so served or given—

- (a) by delivering it to him personally ,
or
(b) by sending it by post to him "

There are various provisions in this Bill which require notice to be given either by the owner or the hirer I am suggesting here that it will also increase the revenue of the State if we provide that the notice should be sent by registered post It will also avoid many controversies, because otherwise it would be one of the methods of raising disputes. One will say that he has sent the notice while the other will say that he has not received it That means that there will be controversy over the posting of the letter, about how the letter was sent, whether it was properly addressed and whether the envelope bore the proper and adequate stamp and so on Where real protection is intended to be given, why not clearly say that the notice should be sent by registered post ?

SHRI NITIRAJ SINGH CHAUDHARY
I am sure my hon friend will agree with me that there are overriding provisions in the General Clauses Act in this regard Section 27 of the General Clauses Act provides :

"Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served *by post* whether the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be affected by properly addressing, pre-paying and posting *by registered post* a letter containing the document "

SHRI SOMNATH CHATTERJEE . Does the hon Minister mean that wherever it is provided as in this case that the notice be sent by post, because of the General Clauses Act, it must be sent by registered post ? Is that his view ?

SHRI NITIRAJ SINGH CHAUDHARY .
Yes.

SHRI SOMNATH CHATTERJEE : Let it be recorded.

MR. DEPUTY-SPEAKER : I shall now put amendment No. 25 to vote

Amendment No. 25 was put and negatived.

MR. DEPUTY-SPEAKER : The question is .

"That clause 29 stand part of the Bill"

The motion was adopted.

Clause 29 was added to the Bill.

Clauses 30 and 31, clause 1, the Enacting Formula and the Title were added to the Bill

SHRI NITIRAJ SINGH CHAUDHARY
I beg to move

"That the Bill be passed"

MR DEPUTY-SPEAKER The question is

"That the Bill be passed"

The motion was adopted

14 33 hrs

ALIGARH MUSLIM UNIVERSITY
(AMENDMENT) BILL

MR DEPUTY-SPEAKER We have half an hour before we reach the deadline of 3 p m. for the motion fixed to be taken up at that time Now Prof S Nurul Hasan

श्री अटल बिहारी वाजपेयी (ग्वाल्ियर) :
उपाध्यक्ष जी, मेरा प्वाइट वाफ आर्डर है । आज कोरिजेंडा के नाम से एक कागज मैम्बरो मे वितरित किया गया है जिसके बारे मे कहा जाता है कि वह अलीगढ बुनिवर्सिटी एमेन्डमेन्ट बिल 1972 का कोरिजेंडा है ।

उपाध्यक्ष महोदय, आप इसे देखेंगे तो यह कोरिजेंडा नहीं है, बल्की स्पेलिंग मिस्टेक को