

जैसा मैंने परिभाषा के सम्बन्ध में कहा कि उसमें इस बात को स्वीकार कर लिया गया है कि होम्योपैथी के साथ साथ वायोकेमिक को स्वीकार करते हैं और जो रजिस्टर र 1 जायेगा उनमें जो होम्योपैथी के प्रकटोशनर हैं या चाहे फिर वायोकेमिक के द्वारा ही प्रकटित करते हैं उनको भी होम्योपैथी का प्रैक्टीशनर मान कर रजिस्टर करेंगे। तो मैं समझता हूँ इस अधिनियम का जो नाम दिया गया है कि यह अधिनियम "होम्योपैथी केन्द्रीय परिषद अधिनियम, 1973" कहा जायेगा तो उसके साथ में वायोकेमिक का शब्द भी जोड़ दिया जाये और इसको इस प्रकार से रखा जाये — "होम्योपैथी तथा जीव रसायन एवं होम्योपैथी अधिनियम, 1973"। इस प्रकार मैं समझता हूँ जो अस्पष्टता है वह समाप्त हो जायेगी। दोनों के लिए समान रूप से रजिस्टर रहेंगे और दोनों प्रैक्टीशनर्स इस अधिनियम के द्वारा रजिस्टर किये जा सकेंगे, दोनों संयुक्त चिकित्सा पद्धति के रूप में देखे जायेंगे। मैं आशा करता हूँ मन्त्रि मंडल को स्वीकार करेगे।

SHRI A. K. KISKU: As I have already mentioned, there is no further need for any amendment and, therefore, I oppose this amendment.

MR. DEPUTY-SPEAKER: I shall now put amendment No. 2 to vote.

Amendment No. 2 was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

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

The motion was adopted.

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

SHRI A. K. KISKU: I beg to move:

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

MR. DEPUTY-SPEAKER: The question is:

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

The motion was adopted.

15.46 hrs.

CODE OF CIVIL PROCEDURE
 (AMENDMENT) BILL

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI NITIRAJ SINGH CHAUDHARY): I beg to move:

"That the Bill further to amend the Code of Civil Procedure, 1908, as passed by Rajya Sabha, be taken into consideration".

Sections 109 and 110 of the Code of Civil Procedure contain provisions relating to appeals to the Supreme Court. As laid down in the said Section 109, these provisions of the Code of Civil Procedure are subject to the provisions of Chapter IV of Part V of the Constitution which includes the provisions of art. 133. Sections 109 and 110 and the connected provisions of Order XLV, rules 3, 4 and 5 lay down the test for valuation of property or the subject matter of dispute as conferring the right of appeal to the Supreme Court. These provisions were in keeping with the corresponding provisions of art. 133 of the Constitution as it stood before it as amended by the Constitution (Thirtieth) Amendment. As a consequence of this amendment of art. 133, it has become necessary to amend these sections.

[Shri Nitiraj Singh Chaudhary]

By this Bill, section 109 of the Code of Civil Procedure Code is sought to be amended and sec. 110 is sought to be deleted; so also Order XLV, rule 3 is sought to be amended and rules 4 and 5 sought to be omitted.

This amendment is a consequential measure, consequent to the amendment of art. 133 of the Constitution. I commend it for the consideration of the House and hope the whole House will give unanimous support to it.

MR. DEPUTY-SPEAKER: Motion moved:

"That the Bill further to amend the Code of Civil Procedure, 1908, as passed by Rajya Sabha, be taken into consideration".

SHRI SOMNATH CHATTERJEE (Burdwan): This amendment Bill is really consequential to the amendment of art. 133 of the Constitution made last year. The necessity of this amendment surely did not have any urgency because the constitutional provision is to prevail. I would like to protest against this attempt at piecemeal amendments of the Civil Procedure Code wasting the time of the House and public money by bringing forward useless amendments after the Constitution has been amended when the crying need of the day is for an overall examination of the provisions of the Code of Civil Procedure.

15.48 hrs.

[SHRI K. N. TIWARY in the Chair]

When this matter of constitutional amendment was being discussed in this House on the 17th August 1972 the Law Minister, Shri Gokhale, promised that the matter was being looked into very urgently and Government would bring forth some measure for a radical reform in the procedural aspects of civil litigation in

this country which are the root cause for the dilatory steps that are being taken, creating almost a bottleneck in the dispensation of civil justice in this country. Therefore, speaking for myself, I do not understand why after the amendment of the Constitution, this Bill had at all to be thought necessary because the Constitution prevails over secs. 109 and 110 of the Civil Procedure Code.

I would like to ask the Minister to let us and the country know when the new Civil Procedure Code is going to be evolved and brought before the House.

We have been supplied copies of the Law Commission's recommendations which are also now about 10 months old. What is the Government doing with regard to those Law Commission's recommendations about the amendments to the Civil Procedure Code? I request the hon. Minister to tell us.

The importance of appeals to the Supreme Court cannot be minimised, because the Supreme Court occupies a special position in the judicial hierarchy of this country. The laws laid down by the Supreme Court or the laws declared by the Supreme Court are to be the laws of this country, whether there are statutory laws or not. Therefore, it has an overriding effect in the legal system in this country. When we were discussing the question of amendment of the Constitution, it was pointed out that merely providing appeals to the Supreme Court does not solve the problem. One of the reasons that had been put forward for introducing the amendments to article 133 of the Constitution was that it will do away with the distinction between the poor litigants and the rich litigants; that the test of appealability to the Supreme Court should not be dependent upon the value of the subject-matter of the proceedings. A person who loses his job is as much concerned

or more concerned than a rich person who loses a house in these litigations. I fail to understand what is the good of making all these provisions for the people to approach the Supreme Court and the supposed concern shown for the poor people in this country, when no steps are being taken by this Government for years now—a quarter of a century has passed—to enable the people who have no means of their own to approach the highest court in the country or when there was the Privy Council previously, with any sense of practicability. The first question with regard to practicability is the resources. I can tell you even in criminal cases, when there is no court-fee payable, it takes at least Rs. 750 to Rs. 800 if not more, even where the lawyers do not charge any fee, for a person to go and file an application for leave to appeal or file an appeal before the Supreme Court. What is being done? Every year, like the election pledges, it is being said on the floor of the House that this Government is too much concerned about legal aid to the poor and they are bringing forth legislation; that they are considering it and all that. This point was also raised during the last debate we had on the Constitution (Thirtieth Amendment) Bill, and the hon. Law Minister had also said that the matter was being looked into, and that suitable legislation would be brought forward. The Law Minister himself said that he was not satisfied with the apology of a legal aid provision made in the Advocates (Amendment) Act, but that was in August, 1972. We are now in November 1973, and I would like to know what concrete steps this Government has taken to bring forward any legislation for providing legal aid to the poor people who cannot afford to go to the highest court of this country. Not only in the highest court but in the high courts of the different States, people are having difficulty in carrying on litigation. There are cases of industrial disputes; there are cases where people are losing their jobs; there are

cases where, as far as labour legislation is concerned, apart from the high rate of court-fee which is payable even by a person who has been dismissed from service, other expenses have to be borne by the litigants. Therefore, let us not be carried away by a feeling that because we have now amended the Constitution and we are now consequently amending the Civil Procedure Code, we can do away with the distinction between the rich and the poor so far as their approach to the Supreme Court is concerned, and that we have solved all the problems and difficulties so far as litigants are concerned. That will be only trying to delude ourselves and also the people at large.

Therefore, I would like the hon. Minister at least to tell us in this House and through the House the people of this country, what concrete proposals, if any, they have before them so far as bringing forth necessary legislation for providing legal aid to the poor for appeals to the Supreme Court as well as to the high courts in this country, is concerned.

Apart from appeal to the Supreme Court under article 133 or the consequential provisions of C.P.C., the Supreme Court can be directly approached under articles 136 and 32 also. In such cases also, I would like to impress upon the Government the urgent necessity of bringing forth adequate legislation, so that really people who have to approach the Supreme Court but who have no means to do so can really get assistance. One can imagine the plight of persons who are far away from Delhi, who have to spend all their money to come to Delhi, stay in this city where costs are prohibitive, search a lawyer and get things cyclostyled. It is really prohibitive. It is no good making a legislation and giving an explanation for the legislation that it is for the poor. Therefore, don't say that. Say we want to amend. Therefore, I request the Minister that

[Shr: Som Nath Chatterjee]

instead of this piecemeal legislation, let there be a comprehensive amendment of the CPC just as we are changing the Cr. P. C. howsoever unsatisfactorily it may be. Let us have some provision for doing away with the system of arrears in the Supreme Court and high Courts and also for providing legal aid to the poor. With these observations, I support the measures which are now brought forth because they have become an anachronism in the CPC after the amendment of the Constitution.

SHRI C. K. CHANDRAPPA (Tellicherry): Sir, as the previous speaker has pointed out, this is a consequential amendment to the Constitutional amendment made last year. While supporting this amendment, I would like to share the feeling expressed by the previous speaker with regard to the various aspects he mentioned. The CPC was formulated at the beginning of the century, in 1908 to be precise, when the needs of the country, the way justice was done, for whom justice was done, etc., were all so much different. Since then, many decades have passed and after independence 25 years have passed. In this situation, when the values are undergoing changes, when the very approach to justice is being changed, what is required is a thorough revision of the CPC. All these 25 years I do not know what prevented the Government from coming forward with such a legislation by which the needs of the time could have been fulfilled. Now when the Government is amending one or two provisions in a piecemeal fashion, they say it would help prevent many unnecessary appeals to the Supreme Court and that way it would help the poorer sections of society. True, to a certain extent appeals will be restricted. But the question is in cases where the vital interests of the ordinary man are affected if he wants to go in for appeal, whether he will be able to meet the huge financial burden which is part of filing an appeal,

16.00 hrs.

As was pointed out, the Government could not bring forward any scheme by which the poor could be given financial assistance to get justice in these cases.

Another aspect is the inordinate delay in taking decisions. Whenever questions are asked in this House about pending cases in various courts, they invariably give a figure which is much more than the figure given in the previous session. This inordinate delay in giving justice also goes against the interests of the common man, because he will not be able to afford all those expenses for fighting a case against the rich person for generations to come. It is well-known that in civil cases it takes several decades for decisions to be taken by the Supreme Court or the High Court. We know many cases where it took generations for people to come to a decision on a dispute. This hinders in a way social progress. So, taking this opportunity I would like to make an appeal to the Government to come forward with a proposal for a comprehensive legislation by which the whole Code of Civil Procedure will be changed, as it is required by the present day needs of our modern society.

Secondly they should also come forward with a scheme by which the ordinary man will be able to go to higher courts whenever necessary and he should be provided with the necessary financial assistance. Thirdly, I would appeal to the Government that they should take measures by which the delay in taking decisions by the courts would be reduced to the minimum.

With these observations, I support this Bill. But I feel that the Government is taking too much time to bring forward such legislation of far-reaching consequence in a comprehensive manner.

सभापति मोक्ष : श्री राम रतन शर्मा । आपने एक एमेंडमेंट भेजा है। वह नाटरेड तक आना चाहिए था। आपने उस को आज भेजा है। इसलिए मैं इस को एलाऊ नहीं कर रहा हूँ।

श्री राम रतन शर्मा (बांदा) : सभापति महोदय, हमारी सरकार हर भाषण में बहुत समाजवादी और प्रगतिशील है, लेकिन जब भी किसी लेजिस्लेशन का सम्बन्ध होता है, कोई ठोस कदम उठाने की बात होती है, तो इस सरकार से अधिक प्रतिगामी और कोई सरकार दिखाई नहीं देती है।

1908 का जाब्ता दीवानी आज तक ज्यों का त्यों चला आ रहा है। 1908 में जो भी न्यायिक स्थिति थी, क्या वह आज भी उसी तरह की है? क्या सरकार उस समय की स्थिति और आज की स्थिति में कोई भी अन्तर नहीं पाती है? आज सरकार ने सैक्शन 109 को एमेंड करने के लिये यह छोटा सा बिल पेश किया है, जिस के बारे में उस का कहना है कि चूंकि सुप्रीम कोर्ट के पास काम ज्यादा है, इसलिए राइट आफ अपील को सीमित करने की आवश्यकता है, ताकि वहाँ ज्यादा अपील फाइल न हों। मैं सिद्धान्ततः इस बिल का विरोध करता हूँ।

सरकार की ओर से सब से बड़ी बात यह कही जाती है कि साधारण आदमी को न्याय मिलना चाहिये लेकिन साधारण आदमी को न्याय दिलाने के लिये सरकार ने कोई व्यवस्था नहीं की है—न इस बिल में कोई न बैसे सरकार सिर्फ जवानी जमा खर्च करती है—सदन में

भी और सदन के बाहर भी। उसने लिमिटेशन एक्ट को छुआ नहीं है। उसकी ओर से कोर्ट फीस को बढ़ा दिया गया है। कोर्ट फीस का संबंध केवल बड़े आदमियों से नहीं है, जो दो चार हजार रुपये दे सकते हैं। जो आदमी दो चार रुपये रोज कमाता है, वह कोर्ट फीस नहीं दे सकता है। उसकी वजह से पचासों मुकदमे नहीं लड़े जाते हैं। लोग रोषों कर अपने घर में बैठे रहते हैं और उनको न्याय नहीं मिलता है। सरकार ने कोर्ट फीस के बारे में कोई कदम नहीं उठाया ताकि गरिबों को कोर्ट फीस न देनी पड़े, उन्हें को लीगल एड मिले और वे अपने मुकदमे लड़ सकें।

मैं चाहता था कि सरकार इस पूरे कोड को एक-साथ एमेंड करती और आज की स्थिति में जिस तरह के सिविल प्रोसीजर कोड की आवश्यकता है, वैसा सिविल प्रोसीजर कोड बनाती; जिन बातों को वह कहती है, उनको कर के दिखाती उसकी कथनी और करनी में जो अन्तर है, उसको दूर करती। तब मैं उसका स्वागत करता।

मैंने इस बिल में एक एमेंडमेंट दिया है, जिसको आपने स्वीकार नहीं किया है। इस बिल द्वारा संशोधित सैक्शन 109 (1) में कहा गया है : "द्वि किंसे इनवाल्ज ए सवस्टेंगल क्वेस्चन आफ ला आफ जेनेरल इम्पाटेंस"। मैं मंत्री महोदय से आग्रह करूंगा कि वह इसमें से "आफ जेनेरल

[श्री नारायण राव]

इम्पार्टेंस" को हटा दें। अगर ये शब्द रहेंगे, तो मेरा विश्वास है कि कोई भी हाई कोर्ट अपील की परमिशन नहीं देगा और सुप्रीम कोर्ट में भी मुश्किल होगी। अगर "सबस्टेंशल क्वेश्चन आफ ला" प्रूव कर भी लें, तो "जेनेरल इम्पार्टेंस" को सिद्ध नहीं कर सकते। अगर कोई लिटिगेंट कोई जेनरल काज ले कर आता है तो उसको परेशानी होगी। इसलिए मेरा आग्रह है कि मंत्रो महोदय कम से कम इस एमेंडमेंट को स्वीकार कर लें।

THE MINISTER OF STATE IN THE
MINISTRY OF LAW, JUSTICE AND
COMPANY AFFAIRS (SHRI NITIRAJ
SINGH CHAUDHARY): Mr.
Chairman, Sir, I am thankful to the
hon. Members who have supported the
Bill.

Before I reply to certain other points, I would like to say one thing. About court fees, about which the last Member spoke, I wish he had read the provisions of the Constitution. If he had done so, he would have known that the "court fees" is a State subject, not a Central subject. If he has any complaint, he should go to the State Government. When his party was in power in certain States, why did it not take steps to reduce court fees? That is my complaint.

Coming to the Bill, nothing has been said about it. It has only been said that it is a piece-meal legislation. It would be agreed that if a law is not in conformity with the constitutional provisions and the provisions in a procedural law are in opposition to the constitutional provisions, it would look very odd. It is true that when there is a conflict between the provisions of law and the Constitutional provisions, the Constitution

rules supreme. To make the whole thing proper, this amending Bill has been brought forward.

It has been said that since the Civil Procedure Code has been there for so long, why a comprehensive Bill to amend it has not been moved. For the information of hon. Members, and, I think the hon. Member Shri Somnath Chatterjee is aware the matter was referred to the Law Commission. The Law Commission has submitted the Fifty-fourth Report which was laid by me on the Table of the House on the 13th of this month. They have also submitted the Fifty-fifth Report. It is under print. The hon. Members who have seen the Fifty-fourth Report would admit that it is a very voluminous document, a very important document. It took pretty long time. After it was printed, it is under study. Every Section is being studied, every Order has to be studied. As soon as a decision on that is taken, I assure the House that a comprehensive Bill to amend the Code of Civil Procedure will be introduced.

We are trying our best to do as early as possible. But things take time because they have to be considered. We cannot do it in a haste.

Another point that was made was about legal aid. About this, a proposal was made that a provision should be made in the Advocates Act. But at the select Committee stage, it was found that that was not the place. Therefore, the Government appointed a Sub-Committee under the Chairmanship of Mr. V. R. Krishna Iyer a Judge of the Supreme Court with jurists, teachers of law and public men. That committee submitted its report which is of about 400 odd pages. It was submitted, I think, sometime at the end of May or early June. That report is under study. Three Secretaries of the Ministry are working on it every day in the morning for four hours to formulate as to how things

have to be done. There is some difficulty, I think, because certain parts have to be implemented by the State Government.

I may inform the House that Justice Bhagwati, father of the present Judge of the Supreme Court had submitted a report to the Bombay Government about legal aid. That came to the Government of India on the basis of that report, the Government of India had sent a circular suggesting to the State Governments that legal aid should be given because administration of law and justice is a State subject. Thereafter, the present Mr. Justice Bhagwati who is now in the Supreme Court as Chief Justice of the Gujarat High Court prepared a comprehensive report about legal aid and he has enforced it in one taluk in each District in Gujarat. I have discussed the whole matter with him. He also appeared before the committee and advised the committee and after considering all these aspects, the committee has submitted a report. As I submitted, it is a voluminous report. It is under examination. As soon as the examination is over, that part which has to be implemented by the Central Government will have to be taken up by the Central Government and those parts for which the State Governments are responsible will be sent to them and an effort will be made to comply with and see that the legal aid is given to persons who are in need of it.

Sir, I once again thank the hon. Members for their support and request that the Bill be accepted by the House unanimously.

MR. CHAIRMAN: The question is:

"That the Bill further to amend the Code of Civil Procedure, 1908, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: There are no amendments. I will put all the clause to the vote of the House.

The question is:

"That Clauses 2 to 4, Clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clauses 2 to 4, Clause 1 the Enacting formula and the Title were added to the Bill.

SHRI NITIRAJ SINGH CHAUDHARY: I move:

"That the Bill be passed"

MR. CHAIRMAN: The question is:

"That the Bill be passed"

The motion was adopted

16.14 hrs.

MOTION RE. ANNUAL REPORTS OF UNIVERSITY GRANTS COMMISSION FOR 1970-71 AND 1971-72

MR. CHAIRMAN: Now the House will take up the consideration of the Annual Reports of the University Grants Commission for 1970-71 and 1971-72 for which the time allotted is four hours.

The hon. Minister.

THE MINISTER OF EDUCATION, SOCIAL WELFARE AND CULTURE (PROF. S. NURUL HASAN): I beg to move:

"That this House do consider the Annual Reports of the University Grants Commission for the years 1970-71 and 1971-72, laid on the Table of the House on the 1st June, 1972 and 13th August, 1973, respectively."

It was exactly two years ago to-date, on the 19th November 1971 that I had the honour to move a similar resolution before this hon. House in respect of the Report of the University