

**THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1997**

THE MINISTER OF LAW JUSTICE AND COMPANY AFFAIRS (SHRI RAM JETHMALANI): Madam, I move:

"That the Bill further to amend the Code of Civil Procedure, 1908, the Limitation Act, 1963 and the Court of Fees Act, 1870, be taken into consideration."

Madam, I move that this hon. House may proceed to consider the Code of Civil Procedure (Amendment), 1997. This again is a very valuable legacy from the previous Government. It has been a very well considered measure. It is in accordance with, at least, two Committees and the Law Commission which have examined these provisions. Madam, I must confess that this is a measure which to some extent does help the problem of laws delays. But I say that this is only a very marginal change and it will produce marginal results. There are larger measures to be taken for eliminating the laws delays. Those are under active consideration of the Government and soon enough we will come up with those proposals before this august House. So far as this Bill is concerned, it is a very welcome measure and the changes it introduces are good and I commend them to this hon. House. For example, it reduces the number of appeals from single Judges of the High Courts. The appeal will lie hereafter rectly to the Supreme Court. It insists that if a summons is issued in a suit, it should not be a blanket time that is given now under section 27 of the Civil Procedure Code. The summons must be issued for a hearing within 30 days after the summons is issued. So it does make some good marginal procedural changes. It will go to some extent, at least one step, in the direction of eliminating laws delays. This is again totally non-controversial and I pray this may not only be considered but also passed.

*The question was proposed.*

THE DEPUTY CHAIRMAN: Will it help to expedite the cases pending in the civil courts?

SHRI RAM JETHMALANI: Very much.....*(Interruptions)*... It is a good step.

THE DEPUTY CHAIRMAN: Will the 50-year old cases be settled in 30 days?

SHRI RAM JETHMALANI: For that I have other remedies. I will come up before this House. As I said this would achieve the purpose to some extent but not wholly.

THE DEPUTY CHAIRMAN: Mr. Minister, bring a comprehensive Bill. *(Interruptions)*... This will reduce the grievances of the people. *(Interruptions)*

SHRI RAM JETHMALANI: We will do that .....*(Interruptions)*..... We will do that.....*(Interruptions)*..... But I cannot do it now. ....*(Interruptions)* ..... I must give credit wherever it is due. This credit is due to our predecessors. I feel that I must acknowledge that credit to them. A comprehensive legislation will wait for a little while.

SHRI H HANUMANTHAPPA (Karnataka): Madam, while introducing the Bill, the Minister has said that this is a marginal change and the results will also be marginal. He has promised that he would come up with a comprehensive Bill for better results. Why is this piecemeal legislation then? Why does he not withdraw this Bill and come up with a comprehensive Bill? Earlier also it has not been handled properly. Now we have a confident legal luminary heading the Law Ministry. He has conceded that it is only a marginal amendment and the results would also be marginal. Even to the questions put by the Chair, he says that it requires some more. Why should we not once and for all go in for it? ....*(Interruptions)*.....

THE DEPUTY CHAIRMAN: Let us go properly.

SHRI H. HANUMANTHAPPA: i would like to know whether the Minister would persuade himself for withdrawing this Bill and come with a comprehensive Bill.

THE DEPUTY CHAIRMAN: Mr. Minister, do you want to withdraw this Biff?

SHRI RAM JETHMALANI: Madam, I have great respect for whatever he says. But, this I cannot do because this will be necessary in any event. These procedural changes in the Civil Procedure Code will have to take place. And even when we bring out those comprehensive measures, this will be one of them and the Civil Procedure Code has to be dealt with separately. Now, let me illustrate the measure which I am thinking of is

that we have to increase the number of judges. Now, increasing the number of judges cannot be tied up and intertwined with the amendments of the Civil Procedure Code. Why not, therefore, take the step which will start with the work on which we are embarking and the others will wait? I promise that I will not waste any time. The proposals are under consideration. The moment I am ready I will come here and I will see to it since the change is for the better. I have publicly announced that give me two years and I shall see to it that this glut is removed from the legal system.

THE DEPUTY CHAIRMAN: Two years!

SHRI RAM JETHMALANI: Madam, it is not. You are talking of 50-year old suits ..... (*Interruption*) ..... This is a 100 years old disease; it cannot be removed at once. Madam, it would be very foolish of me to promise that I will do it tomorrow.

THE DEPUTY CHAIRMAN: Mr. Minister, you know better than I do about the Civil Procedure Code that people die but still their cases are pending. This is very unfortunate. This is against the spirit of the Constitution. The redressal of the grievances of the people have to be addressed immediately.

SHRI RAM JETHMALANI: Madam, you are absolutely right. But those hon. Members who have read my Prime Minister's speech, he delivered on the Law Day, to both the judges and the lawyers assembled, will know how serious we are about removing what we considered as a \*b!ot.'

SHRI PREM CHAND GUPTA (Bihar) : Madam, but the judiciary says that the Government.....(*Interruptions*).....

THE DEPUTY CHAIRMAN: Now, let us not bring in the controversy of judiciary *vis-a-vis* Government.

श्री प्रेम चंद गुप्ता: मैडम, जेठमलानी जी रेवोल्यूशनरी मिनिस्टर हैं और बहुत डायमेनिक हैं। आप नहीं कर पाएंगे तो कोई नहीं कर पाएगा।

Twenty million cases are pending in various courts in the country. You know, they go from generation to generation. The person is freezing and the family is ruined. There have been instances where decisions were

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announced in the third generation - grandfather to son and son to grandson. I have a humble submission to the hon. Minister of Law. He is the one who can initiate and do something. Otherwise, I cannot guarantee that it would be possible within two years time. We expect from you the good..... (Interruptions) .....It is not in our hands.....(Interruptions) .....

SHRI BRATIN SENGUPTA (West Bengal) : Madam, you give him a reasonable time ..... (Interruption).....

THE DEPUTY CHAIRMAN: Mr. Minister, in my tenure of presiding over this House for the last thirteen years, I have never seen any minister getting such tributes from the entire Opposition.

SHRI RAM JETHMALANI: I can only assure all my colleagues in this House that I shall strive my best to live up to their expectations; and if I don't, I will quit.

THE DEPUTY CHAIRMAN: And, for the sake of getting the things done, you may allow the Government to run for more than two years! Perhaps, that is the reason why you have given, at least, two years ..... (Interruptions) .....

श्री प्रेम चंद गुप्ता : आप का गरीब लोगों के ऊपर इतना भारी एहसान होगा कि आप को जनरेशन-टू-जनरेशन लोग याद करेंगे । मैडम, इतना अन्याय हो रहा है ... (व्यवधान)...

श्री बालकवि बैरागी: मैडम, कानून मंत्री जी ने इस के उद्देश्य और कारण का पृष्ठ नहीं देखा होगा । इस में अभी भी लिखा है, संयुक्त मोर्चा सरकार के न्यूनतम कार्यक्रमों के अनुसार ... (व्यवधान)...

उपसभापति : यह अभी पुराना बिल है ।

The Bill that is on my table is also of 1997. Where is the new one?

SHRI RAM JETHMALANI: Madam, numbering will have to be changed. We have got that amendment.

श्री बालकवि बैरागी ( मध्य प्रदेश ): मैडम, यह तो अभी भी संयुक्त मोर्चा सरकार का न्यूनतम कार्यक्रम ... (व्यवधान)...

जेठमलानी जी ने इसे देखा ही नहीं है ।

उपसभापति: बिल की कॉपी सब को लगायी नहीं ?

Amendment paper is with you. Those clauses will be amended. I was also noticing. I thought there was some printing mistake because it was the Bill of 1997.

SHRI BALKAVI BAIRAGI: It was not a printing mistake.

THE DEPUTY CHAIRMAN: No, I thought it was a printing mistake.

SHRI RAM JETHMALANI: It was the Bill of 1997.

THE DEPUTY CHAIRMAN: Any way, Mr. Bairagi, you see the papers attached to it. Today, we are very happy that we have Mr. Fali Nariman taking oath in this House. We have another legal luminary in this House. I would like him to comment, before I ask the Members, to speak. Why cannot we have your opinion? .....(*Interruptions*).....

SHRI FALI SAM NARIMAN (Nominated) : Thank you, Madam Deputy Chairperson. I share what hon. Members of the House have said with regard to, and what you have just said, about the condition in which litigation is to be found in this country. I have been repeatedly requesting all our erstwhile colleagues, who have gone on the Bench, that it is far better, until various measures come about within a year or two, that there should be greater anxiety on the part of the sitting judges, especially in the lower courts, to induce parties to settle the matter, to attempt to find out how the problem lies in each case and make an effort. And if once a judge makes an effort, the parties come around. I have always noticed, in my 49 years of experience at the Bar, that this has been a very salutary thing. If only judges could be induced not to accept lawyers' pleas for adjournments constantly, and go ahead with the matter, I think, quite a lot can be achieved, until we have formal amendments which are very, very important to be moved, to rule our entire legal system. The hon. Member said that there are about twenty million cases pending. It is a big blot on all of us. I share the blame. It is no use saying that I am not responsible. Everybody, whosoever is in the legal profession, is responsible. Hon. Minister, Mr. Jethmalani, is the most eminent member of our profession. I certainly think that a great deal of effort is required from all of us, including from all our hon. judges, right from the lowest level, in order to see that the things are pushed along.

THE DEPUTY CHAIRMAN: And from hon. lawyers also.

SHRI FALI SAM NARIMAN: Of course!

THE DEPUTY CHAIRMAN: They\* should not bring so many adjournments and delay the cases. I know many cases of women, who are widows, who are starving, but their cases have not been decided. Interested parties keep on taking dates. So, with these recommendations coming from the Chair also, I start the discussion in a proper manner.

**श्री बालकवि बैरागी :** महोदया, मेरी रिक्वेस्ट तो आप समझ लें। यह बिल अभी भी रमाकांत खलप के नाम से पेश हो रहा है। इस पर आप थोड़ा तो विचार कीजिए। यह बहुत आपत्तिजनक है।

SHRI H. HANUMANTHAPPA: This is very wrong, Madam. ...*(Interruptions)*... Mr. Jethmalani is introducing the Bill..... *(Interruptions)*.....

SHRI RAM JETHMALANI: It has already been introduced. We are now moving it for consideration.

SHRI H. HANUMANTHAPPA: That is why we have an objection ..... *(Interruptions!)*.....

SHRI RAM JETHMALANI: I want to give the credit where it is due ..... *(Interruptions)* .....

THE DEPUTY CHAIRMAN: The Secretary-General gives an explanation to that. This Bill was introduced earlier. That is why it is still going on. Amendments are there. Once the Bill is passed, it will go with the amendments and the new Bill will come.

SHRI H. HANUMANTHAPPA: Shri Ram Jethmalani is moving Mr. Khalap's Bill. That Government has gone now. ... *(Interruptions)*...

SHRI RAM JETHMALANI: I am not moving it. I am moving it for consideration.

**श्री बालकवि बैरागी :** इसीलिए मैं कह रहा हूँ।

THE DEPUTY CHAIRMAN: There are five amendments which say ..... *(Interruptions)*...

SHRI H. HANUMANTHAPPA: No, we have not received that.

**श्री बालकवि बैरागी :** मैडम, जो शुद्धिपत्र मिला है, इसमें गलतियाँ सुधारने का शुद्धि पत्र है, अमेंडमेंट नहीं मिला है। मैडम, इस पर थोड़ा तसल्ली से विचार कीजिए।

**उपसभापति:** देखिए, सवाल यह है कि इस बिल में जो अमेंडमेंट है वह कागज आपको मिला नहीं है, यह एक छोटा सा कागज है। I can read it out for you. There are five amendments in all. The first amendment is that "at page 1, line 1, for the word "forty-eight" the word "fiftieth" be substituted." The second amendment is that "at page 1, line 5, for the figure "1997" the figure "1999" be substituted." The third amendment is that "at page 3, line 21, for the words "twenty-five thousand rupees", the words "ten thousand rupees" be substituted." The fourth amendment is that "at page 12, lines 5 to 16 be deleted." Lastly, the fifth amendment is that "at page 15, lines 21 to 27 be deleted."

**SHRI H HANUMANTHAPPA :** Madam Deputy Chairperson, corrigenda are 24, amendments are only 25. Does it speak good of **the** Government?. Why should so many mistakes come in? Why **did** you not correct and give it? It does not look nice to come before Parliament with so many corrigenda?

**THE DEPUTY CHAIRMAN :** This paper was not circulated. The problem is that the Code of Civil Procedure Amendment Bill, 1997, was introduced in the Rajya Sabha way back, on the 14th August, 1997. This paper, the title of which I have read has not been circulated along with the old Bill, and the objection of the Member is that this Bill stands in Khalap's name. So it is coming in his name. Now, the new Minister has come and he is moving these amendemnts. He wants this Bill to be passed with these amendments. Now, as the Minister has brought forward the amendments, the amendments will go in his name because Mr. Khalap introduced the original Bill which will be now amended by the present Minister and I read out the amendments that now will be in his name.

**SHRI RAM JETHMALANI :** Then we are bound by the precedent which we have just created in the last Bill. The last Bill is Khalap's Bill. It is going as Khalap's Bill now. I have moved some amendemnts. The House has already accepted it. We are bound by that precedent.

**THE MINISTER OF PARLIAMENTARY AFFAIRS AND WATER RESOURCES (SHRI PRAMOD MAHAJAN) :** Madam, the greatest advantage of introducing a Bill in the Rajya Sabha is that it does not lapse for years together. If it is introduced in the Lok Sabha, even if it is passed and does not come to the Rajya Sabha, it lapses and the Lok Sabha has to again

pass it. Naturally, these are the Bills which were introduced in the Rajya Sabha, There are a few Bills which were introduced in the Rajya Sabha way back in 1986. Still they are pending. So, it is possible that the person may not be alive in whose name the Bill stands. Madam, no Bill is in anybody's name. The Governemnt of India is a continuous process. The Minister's name is there only for the purpose of introduction, just to understand. Otherwise, no statute book would say that this is Ram Jethmalanfs amendment and that was Khalap's amendment.

THE DEPUTY CHAIRMAN : I hope you will do the same thing Mr. Parliamentary Affairs Minister, in regard to the Women's Bill. If you introduce it in the Rajya Sabha, it will never die. The House may not pass it, possibly due to non-cooperation , but at least we can say that it has been introduced

SHRI RAM JETHMALANI : We will respectfully follow that advice.

THE DEPUTY CHAIRMAN : Please do. I am serious about it. I hope, as a Law Minister, Shri Ram Jethmalani cannot react irresponsibly.

SHRI H. HANUMANTHAPPA : There is a procedure to pass the amendments. But is there any procedure to pass the corrections also? Corrigenda are 24. What is the procedure for that? They should have corrected it and given it to us. We will pass the amendments to the Bill, but how to pass these things? That is not in the procedure. It is not a printing error..... (*Interruptions*) ..... No, no it is not printing error. If it is a printing error, it should not lie for 2 years, 3 years. The printing error should have been corrected.

THE DEPUTY CHAIRMAN : There are printing errors. I have seen in the last couple of years that the printing errors have increased, even in the question list. The whole thing is that ..... (*Interruptions*).....

SHRI H HANUMANTHAPPA : Madam, if you go to Page No. 3, line 33, it says, "after section 102 of the principal Act, the following shall be substituted, namely...". But now it is corrected as "following sections shall...". It is not a printing mistake. It is corrected.

**श्री बालकवि बैरागी:** मैडम, इसमें तो सैंस ही बदल रही है ।

THE DEPUTY CHAIRMAN : Which page you are referring to?



**श्री बालकवि बैरागी:** पेज नं. 2, इसमें आप देख लीजिए पंक्ति 25 में “द्वारा” को “पर” पढ़िए। पंक्ति 41 में “निष्पादन” को “निष्पादन” पढ़िए और पंक्ति 42 में “ रहेगा” को “रखेगा” पढ़ीए।

THE DEPUTY CHAIRMAN: Which page, Mr. Hanumanthappa?

SHRI H. HANUMANTHAPPA: Page No.3, line No.33.

THE DEPUTY CHAIRMAN: It reads:

At page 3, in line 33, for "following shall", read "following section shall".

SHRI H. HANUMANTHAPPA: So, it is not a printing mistake.

THE DEPUTY CHAIRMAN: Somebody did not put the word "section." He must have been hungry.

Now we have to cross this impasse. Otherwise, it will be like the civil cases in courts that for minor issues the cases are pending. We do not want the Bill to be pending in this House for ever. In that spirit let us pass it.

SHRI H. HANUMANTHAPPA: I am seeking the direction from the Chair. When we are passing the amendment, what is the procedure to pass the corrigenda? You read all the corrigenda and take the opinion of the House. How can you do that? That is the point. I am questioning the procedure of this House. We are passing the five amendments which have been moved. But there are 24 corrigenda. How do you incorporate them into the Bill that was introduced in 1997? What is the procedure?

THE DEPUTY CHAIRMAN: Mr. Hanumanthappa, these corrigenda also came in 1997. At the time when the Bill was printed, these mistakes occurred. The then Minister brought this paper with it. This is not a new paper. This paper was brought in 1997. The corrigenda are not in the form of amendments. For example, the word "section" was missing in printing, or somewhere else a bracket should be there. So, these mistakes are there, Now I leave it to the House. If a new Bill has to be printed and brought, it will take a lot of time. We are sitting here to see that the procedure is expedited. I ask of the House in that spirit to forgive at the request of the Chair. I would like to give a direction that in future when a Bill is

introduced, it should be read properly and proper corrections should be made. When it is printed at the Government Printing Press, they should be very careful about it. When legislations are passed by this House, they should not go by default that words are missing or brackets are missing because they can change the entire meaning of the whole sentence or the whole clause. So, with these directions, I request Mr. Govind Ram Miri to speak मिरी जी, आप बोलिए। इतना भाषण हो गया है ज्यादा मत दीजिएगा।

**श्री गोविन्दराम मिरी ( मध्य प्रदेश ) :** उपसभापति महोदया, मैं आपके इस मत से बिल्कुल सहमत हूँ कि दीवानी मामले जो हैं, उनमें आदमी की मृत्यु होने के बाद भी निर्णय नहीं हो पाता है। दीवानीवादों के बारे में यह कहा जाता है कि आज यदि कोई दीवानीवाद तैयार करेगा तो उसके पिताजी या दादाजी के ज़माने में उस पर निर्णय होगा और प्रक्रिया इतनी लंबी हो जाती थी कि लोगों को समय पर न्याय नहीं मिलता था। जिसके पक्ष में कोई निषेधाज्ञा जारी हो गई या इंजक्शन जारी हो गया, वह इसमें अनावश्यक कारणों से विलंब करता था। इसी प्रक्रिया को देखते हुए अनेक विद्वान वकील दीवानी मुकदमे लेना नहीं चाहते थे क्योंकि विभिन्न उच्च-न्यायालयों में उनके जो रूल्स हैं, उनमें जो वाद तैयार करने की प्रक्रिया अपनाई जाती थी, वह अलग-अलग थी। इसलिए इनमें एकरूपता लाने के लिए यह विधेयक लाया गया है। इसमें न केवल मलमथ कमेटी की रिपोर्ट या रंकिन कमेटी की रिपोर्ट, बल्कि लॉ-कमीशन की 77वीं और 127वीं रिपोर्ट और 11वीं लोकसभा की सब-लेनिस्लेशन कमेटी की रिपोर्ट को शामिल किया गया है और इसे इस सदन में 14.8.1997 को पेश किया गया था।

महोदया, यह संशोधन बहुत पहले पास हो जाना चाहिए था खैर देर-आयेद-दुरुस्त-आयेद, इस सरकार ने यह ठान लिया है कि न्याय में जो विलम्ब होता है वह न्याय को नकारने के बराबर है और इसी सिद्धांत को रखते हुए यह संशोधन लाए जा रहे हैं और मैं अपने विद्वान न्याय मंत्री को धन्यवाद देना चाहता हूँ कि वह इस ओर अग्रसर होंगे और जो कमियां हैं उन कमियों को दूर करने के लिए समय-समय पर वह संशोधन लाते रहेंगे। महोदया, इसमें जो खास बात आई है वह मेइन कहना चाहता हूँ कि इसमें पक्षकार को जो अधिकार दिया जा रहा है, सम्मन, न्यायालय के निर्देश पर डाक से, ई-मेल से, कूरियर से जैसा भी होगा वह भेजें और तीस दिन के भीतर, तामीली के भीतर दूसरे पक्ष को उसका जवाब दस्तावेजों सहित और प्रमाणों सहित देना होगा। इसमें दूसरी बात यह है कि पक्षकारों के बीच वाद बनने के बाद इसमें शांतिपूर्वक समझौते की बात की गई है, मामला सुलझाने का प्रयास किया गया है चाहे मध्यस्थ के जरिए हो या न्यायिक समझौते के द्वारा हो या लोक

अदालत के द्वारा हो यह बहुत अच्छी बात है और न्यायिक प्रक्रियाओं का लाभ लेकर के जो लोग ताकत के बल पर या पैसे के बल पर गरीबों पर जो अत्याचार और अन्याय करते थे उनको एक सहार मिल जाता था। मुझे आशा है कि इन प्रक्रियाओं को सरल करने से वास्तव में जो गरीब लोग हैं, जो मजलूम लोग हैं जैसा आपने कहा कि कई विधवाओं के मुकदमे लम्बित रहते हैं तथा अनुसूचित जाति और अनुसूचित जनजाति तथा बेसहारा जो लोग हैं उनको त्वरित गति से न्याय नहीं मिल पाता था और इसमें यह एक मील का पत्थर साबित होगा।

महोदया, मैं दूसरी बात इसमें यह कहना चाहता हूँ कि हम बार-बार मामलों में जो एडजोर्न लेते हैं, चूंकि जिसके पक्ष में थोड़ा सा भी प्राइमा फेसी न्याय मिल गया, इंजेक्शन मिल गया तो वह कोई न कोई कारण से यहां-वहां अपील रिविजन करके उसमें विलम्ब करना चाहते हैं। तो इसके लिए किया गया है कि माननीय न्यायाधीश को लिखित में कारण देने होंगे कि क्यों एडजोर्नमेंट किया जा रहा है। साथ ही जो एडजोर्नमेंट चाहते हैं उन पक्षकारों के ऊपर एक हैवी कॉस्ट जुर्माने के रूप में एक राशि लगाई जाए। यह भी उपबंध किया गया है कि जो एडजोर्नमेंट होगा वह तीन से अधिक नहीं होगा। यह बहुत अच्छा कदम है। जैसा मैंने पहले कहा इंजेक्शन मांगने वाले को सिक्योरिटी देने की जो प्रक्रिया इसमें लगाई गई वह भी बहुत कारगर साबित होगी क्योंकि लोग इसमें विलम्ब नहीं करना चाहेंगे जिससे हमें इसमें कुछ निजात मिलेगा। महोदया, इसमें एक बात और है कि दूसरे की जमीन पर जो अनाधिकृत निर्माण कर लेते हैं और उनके द्वारा यह था कि वह पहले तब तक इंजेक्शन आवेदन नहीं लगा सकते जब तक कि जो सक्षम न्यायालय है, क्षेत्राधिकार न्यायालय है उसमें वह वाद दायर नहीं करेंगे। इस कठिनाई से निबटने के लिए यह किया गया है जो पक्षकार इंजेक्शन चाहता है वह सक्षम न्यायालय में स्थिति के अध्ययन के लिए कमीशन नियुक्त करे और कमीशन की जो रिपोर्ट है वह जब मूल वाद चले उसको उसमें उपलब्ध कराया जाए। मैं समझता हूँ कि यह भी एक अच्छा कदम है। पहले बिना डिफ्री अपील फाईल नहीं होती थी, महीनों निर्णय नहीं मिल पाता था। अब इसमें यह किया गया है कि फैसला सुनने के दिन साथ-साथ पक्षकारों को यह निर्णय की प्रतियां, डिफ्री की प्रतियां उपलब्ध कराई जाएं ताकि उनको आसानी हो। महोदया, मैं इसमें एक बात और कहना चाहता हूँ कि आजकल कई लोक अदालतें अच्छा काम कर रही हैं और मेरे राज्य—मध्य प्रदेश जहां से मैं आता हूँ वहां मामलों के शिघ्र निराकरण के लिए पॉयलेट प्रोजेक्ट लागू है। पायलेट प्रोजेक्ट्स लागू होने से वादों का निपटारा जल्दी हो जाता है। इसी तरह से यह-मौखिक गवाही जो होती है, उसमें काफी समय लगता है। उसके एकजामिनेशन में क्रॉस एक्जामिनेशन में वर्षों लग जाते हैं। इसके लिए यह प्रावधान किया गया है कि शपथ-पत्र के जरिए गवाहों के जो मुख्य परीक्षण हैं,

वह उनमें पेश कर दिए जाएं और प्रति परीक्षण और पुनः परीक्षण के लिए न्यायालय द्वारा जो कमिशनर नियुक्त किए जाएंगे, वे इसको रिकॉर्ड करेंगे और वह वाद का भाग माना जाएगा। इस तरह से कुल मिला कर यह संशोधन बहुत ही महत्वपूर्ण है, अत्यंत उपयोगी है और सरकार की जो मंशा है कि हम लोगों को शिघ्र न्याय दे, सस्ता और सुलभ न्याय दे, उसमें यह अच्छा कदम होगा। मैं माननीय मंत्री जी से अनुरोध करता हूं कि केवल वह सी.पी.सी. में संशोधन लाएं बल्कि इसके साथ-साथ जो और भी संलग्न विधि हैं, कोर्ट फीस है, लिमिटेशन एक्ट है, और भी जितने एक्ट हैं, उनमें भी अमेंडमेंट लाएं तभी जाकर हम अपने उद्देश्य में सफल हो सकेंगे और मैं पुनः इसका तहेदिल से समर्थन करता हूं और माननीय मंत्री जी को धन्यवाद देता हूं।

महोदया, आपने मुझे बोलने का अवसर दिया, उसके लिए मैं आपको धन्यवाद देता हूं और आशा करता हूं कि इस संबंध में एक कॉम्प्रिहेंसिव बिल आगे भी लाया जाएगा ताकि हम लोगों को शिघ्र और सस्ता न्याय मिल सके।

SHRI RANGANATH MISRA (Orissa) : Madam Deputy Chairman, I thank you for giving me an opportunity to speak on the Code of Civil Procedure (Amendment) Bill, 1997. I have two suggestions to make for the consideration of the Minister. One is in respect of section 89. It is proposed, "Where it appears to the court that there exist elements of a settlement.." I would suggest that it should be changed to say that in every case that comes up after the issues are framed, the court should have an obligation to attempt a settlement by any of the three alternatives.. It is not clear as to what an element of settlement would appear in a case. Therefore, in every litigation there should be an obligation branch in the trial; and look at a settlement by adopting any three alternatives suggested.

The other one is under section 100A, a writ application disposed of by a single Judge becomes final, subject to an appeal to the Supreme Court. The other is the writ petition by law may be disposed of by two Judges or an appeal may be provided against the Judgement of the a single Judge. Otherwise, the Supreme Court will be unnecessarily saddled with a lot of litigations. For a litigant to come from the High Court to the Supreme Court it would also be very costly. It has been said that there will be no appeal against the Judgement of the a single Judge. We can now provide that. Rules vary from State to State or High Court to High Court. Somewhere a writ petition is disposable by a single Judge. Else where it is done by a Division Bench. Therefore, in courts where it is disposed by a

single Judge, an appeal is provided in that Letters Patent in their own court. If you are taking that away, then, let us make it uniform everywhere. It should be by a Division Bench. If it is not by a Division Bench, then, there should be some guarantee of a sense of justice being available at that stage. I would suggest these two alternatives for the kind consideration of the Minister.

THE DEPUTY CHAIRMAN: There should be some uniformity in all the States. It is a good suggestion. Now, the next speaker is Mr. CP. Thirunavukkarasu. Mr. Thirunavukkarasu, can you spell your name?

SHRI CP. THIRUNAVUKKARASU (Tamil Nadu) : Again trouble with my name?

THE DEPUTY CHAIRMAN: Can I have a short form of it ?

SHRI CP. THIRUNAVUKKARASU: Arasu.

SHRI GOVINDRAM MIRI: Madam, all the amendments are in his name.

THE DEPUTY CHAIRMAN: If he changes his name, then, he should gazette it. As it is written here, it is very difficult for me to pronounce it. I am sorry for it. Mr.CPT, Boliye.

SHRI CP. THIRUNAVUKKARASU: Madam Deputy Chairman, I am highly thankful to you for giving me an opportunity to speak on the Bill. Clause 7 of the principal Act, section 89 (I), the settlements have been permitted to be made either by arbitration, conciliation), judicial settlement, including settlement through Lok Adalat; or mediation.

Under clause 20, when the matter is referred for settlement under rule 1A before the Lok Adalat or any other authority, how long can they keep the case? That is not mentioned in the clause. No doubt, they are entitled to settle the matter. But either the matter should be settled within a time-frame or it should be returned to the lower court. If the time is not fixed, the Lok Adalat or other authority will keep the case pending for a long time. Then, we will be back to square one. There will not be any remedy to the parties concerned.

According to another clause, as soon as the trial has started, the parties are entitled to file an affidavit before the court. On perusing the affidavit,

cross examination can be made by the defendants. Either it can be done by the court or it can be referred to a Commissioner for recording evidence and taking cross examination. If the matter is referred to the Commissioner to record evidence, a time limit should be fixed in the court itself for such examination and return of the matter. In the main clause it has been stipulated that adjournment cannot be given more than three times. As far as the court is concerned, once the trial has started, they cannot adjourn more than three times. Therefore, as to how long a time can be taken by the Commissioner for recording evidence has to be stipulated. Otherwise, a lot of time will be consumed by the Commissioner. Our experience is that the Commissioner or the Advocate Commissioner is not reporting the matter as early as possible. They are taking a lot of time, in fact more time than the court itself, for recording evidence as it is.

Another clause is with respect to injunction. It is mentioned, as far as injunction is concerned, legal representative are entitled to make, before obtaining injunction, an application before the court for spot inspection by a Commissioner. After all, a person entitled to file a suit can appear and file the suit in seven days. If that be the case, in every suit, the legal representative will come and say, "The original owner of the property is not here, I am filing the suit; a Commissioner may kindly be appointed." Without affixing any court-fee, he will ask for this remedy. After the appointment of Commissioner, he will try to fish out evidence as to whether there is a case or not. After seeing the report of the Commissioner, if there is a case, he will file the suit; otherwise, he will not. So, there need not be an obstacle that a legal representative alone is competent to file an affidavit. Therefore, that could be amended. It is an unnecessary clause.

As far as the other things are concerned, a stipulation has been made that adjournment should not be given, within a period of 30 days, the defendant should file a written statement before the court, etc. These are the salient features of the Bill. I welcome them. I am sure that the suggestions I have made will receive due consideration.

THE DEPUTY CHAIRMAN: Shri Fali S. Nariman.

SHRI FALI SAM NARIMAN: You called me first.

THE DEPUTY CHAIRMAN: I see your name here.

SHRI FALI SAM NARIMAN: Madam, may I request the hon. Minister to consider this?

3.00 P.M.

THE DEPUTY CHAIRMAN: You are making a lot of maiden speeches!

SHRI FALI SAM NARIMAN: I request the hon. Minister to see clause 30. It is very important. It is an amendment of Order XXXIX which is the injunction clause. There seems to be something which is missing there. It says, 'The court shall, while granting a temporary injunction to restrain such act or to make such other order for the purposes of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of property...'. I would recommend, if it is not too inconvenient, to look at the object which is mentioned in the 'Notes on Clauses' at page 21 and draft something in a simpler format in that fashion. It says, "It has been observed that after obtaining temporary injunction the party in whose favour injunction has been granted causes delay in disposal of cases on flimsy and unreasonable grounds. To curb this practice it is proposed to amend Order XXXIX so as to provide that the party who applies for obtaining injunction shall also furnish security so that it may not adopt delaying tactics during the trial of the case. "Would it not be more convenient to adopt a very simple format that a person who applies for injunction shall furnish security to the satisfaction of the court? This is what the Bombay High Court Original Side rule provides, the Calcutta High Court Original Side rule provides. But no other High Court has this provision, and this Madam, has been a very iniquitous position all over. A party obtains an injunction whether in a writ or in a suit, and ultimately, after it is disposed of, it was found that this was wrongly granted, whether on arguments or *ex parte*, and ultimately, when the suit is disposed of, the party has no remedy. The normal rule is that the person who asks for an injunction and fails ultimately in that very suit has to be awarded some amount of damages and that act as a deterrent also to the party. There are responsible allegations then made and the injunctions are thereafter not applied for frivolously or on frivolous grounds. Therefore, the object is very, laudable and I would recommend very seriously that if we pick up from the very object which is mentioned at page 21 and draft the thing in a very simple form and leave it entirely to the discretion of the court to mould the relief with regard to security, it would be far better because we cannot imagine while at this drafting stage all the possibilities on which or the different types of suits in which injunctions are applied for. That is my respectful submission.

SHRI H.HANUMANTHAPPA (Karnataka): Madam Deputy Chairman, I am just on the point of injunction particularly when *ex parte* injunctions are given, there should be some limit. I would like to refer to a case here. Some person got an *ex parte* injunction. For six years, the case has not reached even. We are discussing the amendments. If a case is not listed or reached for six years, what is the remedy? An *ex parte* injunction has been given by the High Court and the case has not reached at all. Unfortunately, it is a case of a divorcee, a woman, who belongs to Scheduled Caste. In 1993, she got some sanction. Some fellow who is not connected with the case at all, filed a writ and got an *ex parte* injunction. Now, we are approaching 2000. It is a case of 1993. Six years have already passed but the case has not reached at all. What is the remedy? If the case is reached, if it is listed, then the question of amendment comes. We are talking of amendments. But how to see that the case reaches.

SHRI RAM JETHMALANI : You are talking of adjournment, not amendment.

SHRI H HANUMANTHAPPA: I am not on adjournment. If the case is heard, then the question of adjournment arises. It is not even heard. It is not even listed. It has not reached. What is the remedy? I think you have to find a remedy for this. Six years have passed but it has not been listed. Whenever there is an *ex parte* injunction, the moment the respondent comes and appears before the court, the *ex parte* injunction should cease and the matter should proceed. The respondent has come. She has filed her objections. She is being represented by an Advocate. But nothing is heard for six years. There should be a remedy for this. While granting an *ex parte* injunction, there should be a limit. The moment the respondent comes and appears before the court, the *ex parte* injunction should be withdrawn. Otherwise, there is no remedy. Of course, I was the Member of the Department-related Standing Committee who came forward with all these amendments. ...(*Interruptions*)...

SHRI RAM JETHMALANI: Now, the cat is out of the bag.

SHRI H. HANUMANTHAPPA: Some of the amendments are in pursuance of the recommendations of the Standing Committee which the Minister does not want to disclose here. So I support the amendments.



**श्री जलालुद्दीन अंसारी ( बिहार ) :** उपसभापति महोदया, यह बिल जो संशोधन विधेयक के रूप में आया है, यह बहुत ही इम्पोर्टेंट है, महत्वपूर्ण है। लेकिन इसमें सिर्फ संशोधन करने से जो मुकदमें, खासकर के दीवानी मुकदमों में जो इतना वक्त लगता है कि बाबा से लड़ाई शुरू हुई वह बेटे और बेटे के बाद पोते तक भी यह सिविल सूट खत्म नहीं होता, लॉ मिनिस्टर के पास बड़े पैमाने पर आंकड़े होंगे कि कितने मुकदमे पेंडिंग हैं डिफरेंट कोर्ट्स में, यह जो आप काम चलाऊ काम करने जा रहे हैं संशोधन के जरिये, इस काम चलाऊ संशोधन से कुछ होने वाला नहीं है। सही मायनों में रिलीफ जिनको मिलना चाहिए उनको नहीं मिलेगा। इसलिए मेरा सुझाव यह है कि एक कम्प्रिहेंसिव बिल, सिविल प्रक्रिया संहिता आप लाएं। यह देश के लिए, जनता के लिए बहुत ही आवश्यक है। हमारे विद्वान साथियों से कई बातों की ओर ध्यान इंगित किया है, लेकिन मैं पहली बात यह कहना चाहता हूँ कि इस बिल में अमेंडमेंट करके आपने यह बताया है कि कोर्ट्स की तामील की एक निश्चित तिथि होनी चाहिए, लेकिन देखा यह जाता है कि कोर्ट्स की तामील जो कमजोर हैं, उनके पास नोटिस पहुंचता ही नहीं है। मैंने भी थोड़े दिन वकालत की थी, ज्यादा दिन नहीं। जो वादी है, प्रतिवादी है, केस का, दोनों को एक नोटिस देना चाहिए विद इन ए लिमिट, यह ठिक है, आपने प्रोविजन किया है। लेकिन होता क्या है ? जो नोटिस लेकर तामील के लिए जाता है उसी को मिला लिया जाता है और वहाँ बगैर गए ही लिख देते हैं कि वह तो मिला ही नहीं। दूसरी बार लिख दिया कि लेने से इंकार किया और उस मुकदमे में एक्स पार्टी की डिक्री हो जाती है जबकि उस प्रतिवादी को मालूम ही नहीं हो सका और वह कोर्ट में हाजिर हो ही नहीं पाता और अपने दावे को पेश नहीं कर पाता है। यह भी एक बड़ी बात है, खासकर के जो समाज के वीकर सैक्शन हैं उनके साथ आम तौर से यह होता है कि बाद में उसको पता चलता है कि हम पर मुकदमा हुआ था और एक्स पार्टी हो गया इसलिए कि हम अपियर नहीं हुए। तो मैं लॉ मिनिस्टर साहब से कहना चाहूंगा कि इसमें भी कुछ प्रोविजन आप कीजिए तभी आम लोगों और समाज के गरीबों को राहत मिल सकती है अन्यथा यह संशोधन तो पास जो जाएगा लेकिन जिनको आप रिलीफ देना चाहते हैं उनको रिलीफ नहीं मिलेगा, यह मेरा कहना है।

दूसरी बात, हमारे कुलीग ने कही कि इन्जंक्शन तो हो जाता है लेकिन इन्जंक्शन होने के बाद वह मुकदमा कब तक चलेगा, कब खुलेगा मालूम नहीं। इन्जंक्शन गलत तरीके से भी ले लिया और बाद में जब मुकदमा डिस्पोज ऑफ हुआ तब पता चला कि इसमें मेरी डेट नहीं थी। एन्जंक्शन की एक लायबिलिटी फिक्स होनी चाहिए कि जो लोग परेशान हुए उनको कुछ हर्जाने के रूप में या किसी दूसरे रूप में वसूल करने का प्रोविजन होना चाहिए। इस पर जो आपका सैक्शन है उस पर विशेष ध्यान देना चाहिए और सही संशोधन करना चाहिए तभी लाभ मिलेगा अन्यथा उनको कोई लाभ मिलने वाला नहीं है।

तीसरी बात मैं कहना चाहता हूँ, जो हमारे कुलीग ने भी उठाई है कि कोर्ट कोई भी हो, एक टाइम लिमिट के अंदर वह निर्णय दे दे। ज्वाइंडर, रिज्वांडार और उसके बाद फिर रिज्वाइंडर, इतना लंबा प्रोसेस है कि वह खत्म ही नहीं पाता है। इक रिज्वाइंडर हुआ फिर दूसरी पार्टी जो है वह रिज्वाइंडर देती है, यह एंडलेस प्रोसेस है। जो जुरिसप्रुडेम्स का प्रिंसिपल है कि जस्टिस डिलेड इज जस्टिस डिनाइड, यह उसके खिलाफ है। तीन-तीन पुश्तों तक कोई फैसला नहीं होता तो फिर उसकी क्या मैटिरियल वेल्यू है? कोई वेल्यू नहीं रह जाती है। उसको जो रिलीफ मिलनी चाहिए वह उसको नहीं मिलती। मुकदमे बाजी का जो सिलसिला है उसमें लोगों को रिलीफ मिलनी चाहिए और इसकी एक लिमिट होनी चाहिए। इसलिए मेरा सुझाव यह है कि यह जो बिमारी है यह जो गड़बड़ी है लोगों को इससे मुक्ति मिलनी चाहिए, राहत मिलनी चाहिए। अगर ऐसा नहीं होगा तो उनको राहत नहीं मिल सकती। इसलिए मैं इस बिल का सपोर्ट करते हुए आपसे यह कहना चाहता हूँ कि इस बारे में एक कंप्रहेंसिव बिल लायें ताकि आज की स्थिति में जो आपका दायित्व है उसका आप निर्वहन कर सकें और लोगों को रिलीफ मिल सके। इन शब्दों के साथ मैं अपनी बात समाप्त करता हूँ।

THE DEPUTY CHAIRMAN: I have three more names with me and everybody is supporting the Bill. If they want to repeat the same thing, then they should say, 'I support whatever the rest have said.' If they want to say anything new, then they are welcome to speak. I have two people from the BJP. From AIADMK, Mr. Thallavi Sundaram and Mr. Margabandu. I will call Mr. Margabandu first. You also give us some *margdarshan* on this. ...*(Interruptions)*...

SHRI R. MARGABANDU (Tamil Nadu): I make my request to the hon. Minister for Law regarding Section 102. "No second appeal shall lie from any decree, when the amount or value of the subject-matter of the original suit does not exceed twenty-five thousand rupees." ...*(Interruptions)*... That is the amount.

THE DEPUTY CHAIRMAN: It is amended to ten. It is not a correction; it is an amendment.

SHRI R. MARGABANDU: In 1976, this Section was amended, giving effect to no second appeal in certain suits. No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees. So, the existing rule contemplates only money suit. It is

only money suits, not title suits; titles are not involved in that. If it is a small cost money suit; if it is of a value of Rs. 3,000/-, no second appeal will lie. That is acceptable and reasonable also. This amendment will lead to drastic results. There is no question of amending this existing Section 102. If the property is less than Rs. 1000/-, or, Rs. 2000/-, or, Rs. 3000/-, then there is no qualification added to that. The only qualification is for the value above Rs. 10,000/- or so. If this Section is applied to any property dispute, or, any title dispute, which involves a value of less than that amount, then the affected party will be put to a great loss. I humbly request that the consequences of amending this Section may kindly be considered. If it is only a money suit, or, a mortgage suit, or, any such thing, it does not matter; nobody will be affected. If any property is involved and if this qualification is added, those persons will be deprived. The intention of the Parliament is to see that there is no piling up of cases in the High Courts by way of second appeal. It is already there. Now, the High Courts are liberally admitting the second appeals, seeing the faces of the lawyers. Some Judges are admitting second appeals looking at the faces of the lawyers without going through the contents of the dispute that is involved in the case. While admitting the second appeal, the Judges consider what substantial law is involved in that case. If they confine to that position, more than 50% to 60% of the second appeals can be disposed of at the initial stage itself. The leniency of the Judges give room for mounting of second appeals. So, my humble submission is that if this amendment is passed, it will lead to a drastic situation. I humbly request, as a practising lawyer, that the existing amendment, which was introduced in 1976, should be retained as such and this amendment should not be insisted on.

In the case of service of summons, there are archaic principles of sending the summons, refusing the summons or, in a way, evading the summons. It takes years together. Nobody takes the responsibility. The courts are also very liberal in granting adjournments and in granting time for sending the summons. Fresh notice is given for ten or fifteen times. That doesn't serve the purpose at all. A period of 30 days has been very rightly fixed. If it is sent for the first time and if he evades the summons, order the issuance of notice for the second time. If he refuses to receive that, straightaway order for publication and close with that. If that procedure is adopted, within three months it will come to an end. Instead of resorting to such a course, we are ordering issuance of notice time and again. Similar is

the case with regard to filing of the written statement also. In the case of a pro-note only two defences are open, one is denial of execution and the other is "not supported by consideration". The lawyers go on seeking time because of these two reasons of defence and the Judges sitting there, without applying their mind, are granting time for filing the written statement. Even in a pro-note case they take four years or five years for filing the written statement. That is the sorry state of affairs in the sub-courts and the munsiff courts. There should be some time limit for filing the written statement.

Another suggestion which I would like to make is this. On the advice .of the lawyers or at the instance of the clients themselves—they manage the lawyers—they send the summons to the wrong address or to an address not in existence, knowing full well that the defendant is not living in that particular address. Repeatedly the notice is given and it is delayed. If it is delayed, when it comes to the court, the court must tighten its hold and see that his claim is rejected. If such a fear is inculcated in the mind of a lawyer or the party who is indulging in such delaying tactics, most of these delays can be reduced.

Then, madam, I would like to say something with reference to injunction suits, which my hon'ble friend Shri Hanumanthappa has also referred to. Order XXXIX Rule (3a) which has already been amended subsequently wherein if any application, or any *ex parte* injunction is granted, it should be disposed of within 30 days, but it has not yet been adopted by most of the courts. And the letter of law is, if it is followed in the case of *ex parte* injunctions, necessarily, this problem will be solved and this has to be done. I am referring to Order XXXIX, rule (3a), saying so because under Order XXXIX 39 (3a) which relates to interlocutory applications, where if any *ex parte* injunction order is granted, it has to be disposed of within 30 days. But in the guise of dragging the proceedings, some bare injunction suits are filed, not for the declaration, and filing some kind of receipt or tax receipts etc. they obtain injunctions. Mr. Hanumanthappa has rightly said that by obtaining an order of injunction in a mere bare injunction suit, it takes years together and the other party is put to harassment under the same Order XXXIX Rule (3a). Though it is applicable only to interlocutory applications, it should be made applicable to regular suits, to the bare injunction suits also. Recently, madam, Section 89 was introduced. But in view of the introduction of the Arbitration Act, that

Section 89 has already been omitted. Now, by this amendment, it is sought to be introduced, as rightly said by Shri Thirunavukkarasu. If it is referred to an arbitration proceeding, just like the commissioner, he should not take a long time. For disposing these matters, it should be rather time-bound.

**श्री संघ प्रिय गौतम (उत्तर प्रदेश) :** महोदया मैं नयी बातें ही कहूंगा जो किसी ने नहीं कही हैं। यहा पर अवकाश प्राप्त मुख्य न्यायाधीश, सर्वोच्च न्यायालय के, विराजमान हैं और विधि वेत्ता भी विराजमान हैं। अभी तो मुझे इन्जंक्शन के बारे में कहना है। दुनिया बदल रही है, इकोनामी का लिबरलाइजेशन हो रहा है, ग्लोबलाइजेशन हो रहा है और हम अपनी पुरानी बातों को छोड़कर आगे जा रहे हैं। अभी तक यह जो इन्जंक्शन्स ग्रांट करने का बेसिस रहा है उसमें — *Prima facie* one must have a case. Balance of convenience should lie in his favour and he should be likely to suffer irreparable loss.

लेकिन यह नहीं है कि मोड आफ गेटिंग प्रापर्टी क्या है, वह जायदाद, जमीन जिस पर इन्जंक्शन लेना चाहता है वहा कहां से आई। क्या उत्तराधिकार में प्राप्त की है, दादालाई है या क्या उसने कोई बेनामा खरीदा है अथवा उसको किसी ने दान में दी है या कोई पट्टा उसके नाम हुआ है? आम तौर से वे लोग जो अनाधिकार कब्जा कर लेते हैं वे ही इन्जंक्शन पाते हैं प्रापर्टी पर और आज के जमाने में सरकारी सम्पत्तियों पर अनाधिकार कब्जे बहुत ज्यादा हो रहे हैं और ये सब दादा और धींग लोग कर रहे हैं। अगर कोई संस्थान या सरकार गरीबों के लिए मकान, दुकान, शफाखाना, स्कूल बनाना चाहती है तो ये दादा लोग, धींग लोग इन्जंक्शन कोर्ट से ले आते हैं और वेल्फेयर की सारी स्कीम खत्म हो जाती है, और हमारी कंट्री वेल्फेयर स्टेट है। इसलिए अमेंडमेंट यह होना चाहिए कि अगर दादालाई जमीन नहीं है, अगर कोई दान में जमीन मिली हुई नहीं है, अगर बेनामा नहीं खरीदी है, पट्टा नहीं हुआ है तो उसको इन्जंक्शन मिलन ही नहीं चाहिए .....(व्यवधान) या जिसकी वसीयत नहीं हो। यही मतलब है यह अमेंडमेंट होना चाहिए। मैं यह देख रहा हूं कि तमाम वेल्फेयर की स्कीमें रद्द हो रही हैं केवल इसी कारण से हाईकोर्ट स्टे दे देता है। दूसरी चीज मैं कहना चाहता हूं, अलग कहूंगा जो बिल्कुल किसी ने नहीं कही है कि आपकी मंशा क्या है इस संशोधन को लाने की? आप समय को बचाना चाहते हैं, आप वाद का निस्तारण जल्दी कराना चाहते हैं तो जब हम राज्य सभा के लोग 10 बजे से 5.00 बजे के बजाए आवश्यक और महत्वपूर्ण मुद्दों पर सारी रात बैठ सकते हैं तो जज लोग दस बजे से पांच बजे तक बैठने चाहिए और कोर्ट का टाइम बढ़ाना चाहिए। एक घंटा ज्यादा बढ़ जाएगा तो क्या परेशानी हो जाएगी। वाद का निस्तारण जल्दी हो जाएगा दूसरे दो महीने की छुट्टी के बजाय एक महीने की छुट्टी गर्मियों में की जाय। (व्यवधान) उपसभापति महोदया, उस से समय भी बच जाएगा। आप कह रहे हैं कि

जजों की नियुक्तियां करनी है। आप हजार जजों की नियुक्तियां कर दीजिए, लेकिन समय बढ़ाइए और छुट्टियां कम कीजिए।

अब एक चीज इस में मेरी समझ में नहीं आई। इस की धारा-27 में आप ने कहा है कि बजाय उस के कि इक्जामिनेशन चीफ कोर्ट में हो, कमिश्नर उस का एक्जामिनेशन चीफ ले ले और वह कोर्ट में पेश हो जाय, फिर उस पर जिरह हो जाएगी। हालांकि उस को कांटेडिक्ट भी किया है, प्रोवीजन भी दिया है आप ने कि "Provided that in the interest of justice and for reasons to be recorded in writing the court may direct that the evidence of any witness shall be recorded by the court in the presence of and under the personal direction and superintendence of the judge" तो यह तो नेगेशन हो गया उसी बात का। Whatever you are doing, you are doing in the interest of justice. एक्जामिनेशन चीफ जज के सामने हो रहा है और यह ज्यादा महत्वपूर्ण है। एक्जामिनेशन चीफ कोर्ट में ही होना चाहिए। कारण क्या है कि गवाह जो बयान देता है, उस की भाषा क्या है, शैली कैसी है, प्रस्तुतीकरण कैसा है, हाव-भाव कैसा है — इस से पता लगता है कि वह सच बोल रहा है या झूठ बोल रहा है। हमें जब प्राइमरी स्कूल के मास्टर पढ़ाते थे तो कहते थे कि जो सच बोलता है उस के मुंह से फूल झड़ते हैं और जो झूठ बोलता है उस के मुंह से मेंढक निकलते हैं। हम ने पूछा कि मतलब क्या है तो उन्होंने बताया कि जो सच बोलेगा या फटाफट बोलेगा और जो झूठ बोलेगा वह रुक-रुक कर बोलेगा। इसलिए यह इन द इंटरेस्ट ऑफ जस्टिस नहीं है और इस को निकाल देना चाहिए। यह नहीं आना चाहिए।

अंतिम बात, मुझे यह कहनी है कि पब्लिक इंटरेस्ट लिटीगेशन के नाम पर अनेकों मुकदमें हो जाते हैं और जो बहुत महत्वपूर्ण मुकदमे चालीस-पचास साल से पेंडिंग होते हैं, वह छोड़ दिए जाते हैं और यह तो पब्लिक इंटरेस्ट लिटीगेशन है, इस में पब्लिक का फायदा कम और नुकसान ज्यादा हुआ है। यह मेरा अनुभव है। I can quote many cases.

उपसभापति महोदया, एक बात और इसी से जुड़ी हुई है कि मेरी समझ में नहीं आया कि सर्वोच्च न्यायालय ने अनेकों निर्णय दिए और उन निर्णयों को फिर बदल दिया, इस कारण फिर लिटीगेशन शुरू हो गयी। अब इस आरक्षण के सवाल पर अनेकों जजमेंट आए हैं। अब सुप्रीम कोर्ट ने फिर जजमेंट बदल दिया और फिर लिटीगेशन शुरू हो गया। हम ने यह माना कि हम कांस्टीट्यूशन के आर्टिकल-141 में अमेंडमेंट कर सकते हैं कि सुप्रीम कोर्ट के जजमेंट बाइंडिंग सब कोर्ट्स पर हैं। यह लिखा तो है नहीं कि सुप्रीम कोर्ट पर बाइंडिंग नहीं

हैं, लेकिन अंडरस्टूड है कि सुप्रीम कोर्ट पर बाइंडिंग नहीं हैं। आप जजमेंट को बिल्कुल बदल देंगे और सारा जितना पुराना कंसेप्ट था, वह बदल जाता है तो जब कंसेप्ट बदल गया तो लिटीगेशन फ्रेश शुरू हो गया। उपसभापति महोदया, हमारे संविधान की रुह क्या है — विकास एवं कल्याण। जो पर्सनल लिटिगेशन प्रोपर्टी के हैं, मनी के हैं या फौजदारी के हैं वह अलग चीज है, लेकिन जो कंस्टीट्यूशनल इश्यूज हैं वह कंस्टीट्यूशन की मंशा के आधार पर एक बार तय करने चाहिए *that it should go in the direction of development of the country and the welfare of the State* इन्हीं शब्दों के साथ मैं इस बिल का समर्थन करता हूँ। धन्यवाद।

**उपसभापति:** श्री नरेश यादव। आपके बोलने से पहले मैं एक बात कहना चाहूंगी की जिस सदस्य को सिरियसली अगर बोलना हो किसी बिल पर, तो वह कृपया समय पर अपना नाम टेबल पर दे दिया करें। मुझे जो लग रहा है अभी, वह यह कि बिल पर जो सब बोले हैं और जिनको बोलना है, वहीं बातें रिपीट हो रही हैं। इससे बिल को न तो कोई ताकत मिल रही है और न उससे कोई फायदा होने वाला है। मेरा इरादा था कि अगर यह बिल पार हो जाता तो मैं आपको स्पेशल मेशन पर बोलने की इजाजत दे देती। अगर आप अपने उस हक से दस्तबरदार हो रहे हैं तो आपकी मर्जी।

**श्री नरेश यादव (बिहार) :** महोदया, मेरा भी इरादा ऐसा है कि मैं उन बातों को जिज्ञा न करूँ, जिसका जिज्ञा हमारे सभी माननीय सदस्य कर चुके हैं। आपने मुझे इस महत्वपूर्ण संशोधन पर बोलने का अवसर दिया, उसके लिए मैं हृदय से आपका आभारी हूँ।

महोदया, मामले का निष्पादन यथाशिघ्र हो, गरीब न्यायालय की चक्की में पिसा न जाये इसके लिए सरकार की ओर से जो संशोधन आया है, उसका मैं समर्थन करता हूँ। इसी के साथ — साथ मैं यह भी कहना चाहता हूँ कि जजों का दृष्टिकोण आज मामले के निष्पादन से ज्यादा पोलिटिकल इंटरफीरेंस में हो गया है, जो एक अच्छी बात नहीं है। उनका जो काम है, जो न्यायपालिका है, उनका काम एक दायरे में है, उनके लिए एक कोड बना हुआ है, एक कानून बना हुआ है और उसी के दायरे में रहकर मामले का यथाशीघ्र निष्पादन उनको करना चाहिए, न कि पोलिटिकल इंटरफीरेंस करना चाहिए। इस मामले में मैं सरकार का ध्यान आकृष्ट करना चाहूंगा।

महोदया, इसी के साथ साथ मैं आपके माध्यम से सरकार का ध्यान इस ओर भी आकृष्ट करना चाहूंगा कि आज किस गर्व के लोगों के मुकदमें ज्यादा लंबित हैं। आज जो मुकदमें लंबित हैं वह ज्यादातर पिछड़ों और दलितों के लंबित हैं क्योंकि इनका प्रतिनिधित्व आज न्यायपालिका में नगण्य है। जब तक गरीबों का न्यायपालिका में प्रतिनिधित्व नहीं होगा, तब तक उन्हें न्याय मिलना मुश्किल है।

महोदया, मैं इन्हीं दो बिन्दुओं पर सरकार का ध्यान आकर्षित करना चाहता था कि निश्चित तौर पर दलितों का प्रतिनिधित्व, पिछड़ों का प्रतिनिधित्व न्यायपालिका में हो, जिससे न्याय का निष्पादन जल्दी हो क्योंकि दर्द उन्हीं का है, जिस क्लास से वह आता है। आज वहां कौन सा क्लास बैठा हुआ है ? इसलिए जो क्लास आज वंचित है, उसका भी रिप्रजेंटेशन न्यायपालिका में हो। यही हमारा सुझाव सरकार को आपके माध्यम से है।

महोदया, आपने मुझे बोलने का मौका दिया, उसके लिए बहुत बहुत धन्यवाद।

SHRI RAM JETHMALANI: Madam Deputy Chairman, I am grateful to the hon. Members who have spoken on this, and I am also, in a sense, very happy, and, perhaps even flattered, not on my behalf, but on behalf of Mr. Khalap, who was the original author of this Bill, that this Bill is not being seriously opposed by anyone. Some valuable suggestions have been made which, of course, deserve a very respectful consideration.

Madam, I wish to share one thought with the House. It is an illusion, which some people have, that law is the solution to all our problems. It is not so. Lawyers themselves have sedulously spread this illusion; it gives them a sense of a little importance. There are so many things, which the hon. Members have said, which are true and which are very sordid facts. But, Madam, for them, the solution is not legislation or amendment of the Civil Procedure Code. Now, for example, my learned friend just said that judges are becoming politicised; political considerations are coming in judicial verdicts. How can the Civil Procedure Code, by any section, prevent a judge from allowing politics to interfere in his decisions? That raises a serious problem in regard to recruitment of judges, methods of recruitment of judges, what should be the qualifications and who should ultimately select the judges who are supposed to discharge their duties without fear, without favour, without politics intruding into the whole affair. Now, once this is borne in mind, hon. Members will realise that whatever suggestions they have made are not really suggestions which are germane to the present topic which we are considering.

The second thought which I want to share with this august House is that you cannot eliminate judicial discretion. I don't know how many of my hon. friends here have come across a very interesting book, not recently, but two or three years ago; somebody has written an excellent book. I forget the name of the author, though I have read that book from cover to



cover. The title of the book is, "Death of Commonsense". That is a book written by some scholar whose theme is that, in our attempt to exclude discretion of individuals, we have gone on framing rules. Then, we go on making the rules so detailed that no discretion is possible. But rules are also framed by human beings. Ultimately, the rule-makers leave out contingencies which do not occur to them, and then, when those rules operate in contingencies for which the rules were never framed, it produces some disasters, some tragic results; The author has given hundreds of illustrations of where attempts have been made to exclude either judicial discretion or bureaucratic discretion, and, ultimately, it has led to disasters because the rules are also made by people with finite knowledge of the future, and, sometimes, in complete ignorance of situations which will arise in the complex affairs of human beings.

Now, for example, my friend said that people play mischief in the service of summons. This raises the problem of competence and integrity of the bailiff, it raises problems of conspiracy between the bailiff and one of the parties to the suit, it raises problems of judicial vigilance whether the presiding officer of the court is in a position to exercise some amount of rigorous vigilance over the staff members who are supposed to be process-servers of the court. In fact, on the criminal side, the same thing is happening. Police constables are supposed to serve summons on witnesses. In sessions' cases and other criminal cases, police constables are supposed to do it. Now, all that a clever accused, a resourceful accused, has to do is to bribe the constable, and the constable will never serve the witness with summons, and when the case comes up for hearing, the public prosecutor, the police prosecutor, whoever he is, is totally helpless, he says, "My witnesses are not present, the case is adjourned. The accused has won an adjournment." How do you prevent it by an amendment of the Criminal Procedure Code? These are things which require character, which require competence, which require vigilance, which are qualities which cannot be brought about by legislations. Therefore, hon. Members have made suggestions. These are ultimately matters which have to be left to judicial training.

Madam, I have gone round the country for the last so many years, ever since I have been associated with legal education in the Bangalore Law School. We have tried to create judicial academies which have come into existence in various States. I have personally gone and lectured to judges

who have been appointed. For six weeks, we have given them training before they assumed office. Now, we sensitised them to these moral, social and public issues so that when they sit on the Bench after a six weeks' or two months' training, they bear these considerations in mind. These are not written in the text of the law. They are somehow to be introduced. They have to be inoculated into the consciousness of the judges. They have to be put into their blood -stream. Now...

SHRI PREM CHAND GUPTA : Mr. Minister, I am sorry to interrupt you. Why can't you introduce some system of accountability? What is happening is this. I am not a law person, and I don't have the law background, but as a layman, I want to know this. कल्पनाथ राय को टाडा में बंद कर दिया, देशद्रोह में बंद कर दिया गया और सुप्रीम कोर्ट ने कहा कि इस जज को मालूम ही नहीं है कि कानून क्या है। तो Sir, why can't we have a check like this on these people? After all, they are also human beings. I know, Madam, in a High Court, for five days in a week, judges talked only of general law, this happening or that happening. लाइट क्यों लगा दिया, गाडी के ऊपर किसने लाइट लगाई, लिस्ट दीजिए। किसको सस्पेंड करेंगे, उसको सस्पेंड करेंगे। They can have light on their cars. They cannot stand it if a bureaucrat or somebody else had a light on his car. So, my submission is, why can't you introduce some sort of accountability so that these people are also under check?

THE DEPUTY CHAIRMAN: As far as Kalp Nath Rai is concerned, he is no more. He lost his last part of life in jail.

SHRI PREM CHAND GUPTA: He died because of this. ...*(Interruptions)*... I know. There is a limit. मैडम्, मैं जानता हूँ कि कल्पनाथ राय जी का मेंटल बेलेंस गड़बड़ हो गया था। वह सिम्पैथी से पार्लियामेंट में जीत करके आ गए थे। चलते-चलते वह बड़बड़ाते रहते थे कि ऐसा मैंने क्या किया, मेरे को जेल में भेज दिया गया, क्या मैं देशद्रोही हूँ, यह है वह है ? उसके लिए कौन जिम्मेदार है ? जज ने तो उसको देशद्रोही बोल दिया। The torture his family had to go through, सर, आप एक लेजिस्लेशन लाइए।

SHRI RAM JETHMALANI: Let me respond to you.

SHRI PREM CHAND GUPTA: The whole House and the country will be grateful to you.

**श्री संघ प्रिय गौतम:** एकाउंटेबिलिटी फिक्स हो जुडिशियरी पर, यह मसला ठीक है।

THE DEPUTY CHAIRMAN: He is responding.

SHRI PREM CHAND GUPTA: I am not against anyone. I am only expressing myself on the facts of life.

THE DEPUTY CHAIRMAN: The Minister is responding. Please sit down.

SHRI RAM JETHMALANI: Madam, I have come across, in the course of my legal practice, horrendous cases of miscarriage of justice. The case which you mentioned is one such illustration. I do not know how to apologise to the dead man. I apologised to him when he was alive. I apologised to him while he was being prosecuted, before the Supreme Court delivered its verdict, irrespective of our political differences. He belonged to a different party. We had difference of opinion. All our life, we had difference of opinion. When his case came, I studied his papers. I did tell him that it was a disgrace that he was being prosecuted. Madam, what I did behind the screen and without letting anybody know was to see that ultimately he got justice; very few people will know. Some day, I will write it in my autobiography or memoirs, if I publish them.

I have seen other miscarriages of justice. Did you not see the miscarriage of justice that 20 persons were recently ordered to be hanged, but in regard to 16 persons, the Supreme Court said that they were innocent? I see these cases almost everyday. But when you talk of judicial accountability, in the Supreme Court, we have had a small committee of senior lawyers, which is called the committee of judicial accountability. We are trying to enforce the principle of judicial accountability. We have had opposition. We tried to enforce that principle of judicial accountability in a particular case and we all were suspended by the Supreme Court Bar Association from practice. We tested it. But could you possibly do it by law? What do you do to a judge who, out of ignorance of law or because he has not sufficient knowledge of law, keeps an innocent man in custody, without realising that the man is innocent? What do you do? Do you punish him?

THE DEPUTY CHAIRMAN: If a bureaucrat or a policeman does something wrong, he is punished. ...*(Interruptions)*...

SHRI PREM CHAND GUPTA: There can be accountability, Madam.

THE DEPUTY CHAIRMAN: I am speaking in your term. A person loses the best part of his life in jail. The person loses his life due to somebody else's ignorance of law. Whoever gives the judgment, is he not accountable to this country?

SHRI PREM CHAND GUPTA: He still is sitting over there. ...*(Interruptions)*...

THE DEPUTY CHAIRMAN: Let us not start a debate. .

SHRI R. MARGABANDU: Either knowingly or otherwise, if a judge renders a judgment, there should be some provision to prosecute him or to make him accountable.

THE DEPUTY CHAIRMAN: Let the Minister speak. ....*(Interruptions)*.....

SHRI RAM JETHMALANI: First of all, it will require an amendment to the Constitution of India .....*(Interruptions)*.....

SHRI PREM CHAND GUPTA: The whole House will support you. ....*(Interruptions)* ..... Only a person like him can do it and not anybody else.

SHRI RAM JETHMALANI: Madam, I wish to pocket the compliment and just say 'yes'. But\* it is an extremely difficult task. I find the ex-Chief Justice of the Supreme Court sitting here; I find Fali Nariman, a more distinguished lawyer that nobody will come across. Let two of them at least apply their mind and tell me how to legislate the principle of judicial accountability. I will certainly collaborate with anyone who wishes to collaborate with me in this task. I will sit with you and try to find out if there is a possible method of doing it by legislation. According to me, the method is to improve our appointing procedures. For that we are trying now this experiment with the idea of National Judicial Commission, a National Judicial Commission in which the Government will be represented, in which the leaders of opposition will be represented, the bar, social elements, sociological experts will be represented. We are trying to make

an experiment. Ultimately, you have to select proper judges. You cannot send a judge to jail or, may be, if it is a gross case, you will stop his promotion or you may ask him to resign. But, these are the matters ..... (*Interruptions*).....

THE DEPUTY CHAIRMAN: Let him finish. .... (*Interruptions*)..... Do-not interrupt like this. He is in the middle of his sentence.

SHRI RAM JETHMALANI: These are the matters which require very deep thought and to the extent I subscribe to the principle of judicial accountability. Judges are responsible to the people of India. There is no doubt about it. The people of India are sovereign. If judges cannot produce a legal system which brings justice to the common man, then a judge is not worth his robes and he does not deserve the salary which he is getting. He is a blot on the public exchequer and he is a blot on the system. But, how do we improve this system? Merely changing the Civil Procedure Code or making any amendment to the law cannot change the system.

THE DEPUTY CHAIRMAN: What happens in the other countries?

SHRI RAM JETHMALANI: India compares to a lot of countries. We are now 185 in the comity of nations..... (*Interruptions*)..... You believe me that the criticism that I harbour in my mind about our judges, our judges can hold the candle to the best in any part of the world. Our judicial system compares to many countries and when I say 'many', I have to mean it an overwhelming majority of the nations which constitute the comity of nations, and we are better off. We have to go to some other countries and see what is happening there. Look at your own neighbours. The system is absolutely cracking down there. The judges are not able to hold their own and defend the Constitution of their own country.

SHRI PREM CHAND GUPTA: You must look at the advanced nations ..... (*Interruptions*).....

SHRI RAM JETHMALANI: I am comparing myself, therefore, with those nations' and countries which you have in mind. No country of the kind that you have in mind has a system of legislated judicial accountability. Judicial accountability is a matter of convention and it is a matter of convention; it is a matter of character. His colleagues once asked the Lord Chancellor who makes appointments, "How is it that you make such good

appointments all the time?" The Lord Chancellor answered, "If I go and sit with the members of the bar at a lunch table or a dinner table, can I look them straight in the eyes if I make one bad appointment?" Now, this is the character which comes up. We have to build that character. I do not underrate our character. I do not wish to say that our character is less than anybody else's character. These things are not said. If some of these things are failed, then you have to secretly strive to improve things.

SHRI JANARDHANA POOJARY (Karnataka): We are thankful to the hon. Minister ..... (*Interruptions*) ..... Madam, the way in which he has responded to your questions, we are thankful to him for that. At the same time, he made a mention of character and the appointment procedure that applies to the judicial officers. I may submit, when the nation is prepared even to make the Prime Minister, the Ministers, the Members of Parliament and the Legislature, accountable; when the Prime Minister of the country is prepared to say that he is prepared to be covered under the Lok Pal Bill, and when the accountability is the most important factor in this country, why is the judiciary, as expressed by this august House, not accountable? They are also human beings. They are also subject to every desire. Temptations are there in this country. Vices are there. When all the other wings of the Constitution, democracy, are subjected to accountability, why is this particular wing - judiciary - not accountable? I am also a lawyer. I had also practiced for eighteen years. I also had juniors and my own juniors have become judges. Now, my submission to you, Madam, and through you, to the hon. Law Minister, is this. He is a competent person. He can apply his mind with the help of other people. Here, the accountability should be there for the judicial officers also. You may be knowing that we have come across so many instances. What is happening in the higher judiciary? Corruption is there. Even if it is not within the reach of a poor man, he is paying to some of the judicial officers who are at the higher level. Why? There is no accountability. Nobody is there to look into the actions of those people. So, you have put a very, very relevant question. It is a very serious matter. The House and the entire nation will be grateful to this Government if they take some action. There has to be transparency, so far as their functioning is concerned.

SHRI M. VENKAIAH NAIDU (Karnataka) : I am afraid, such a sweeping remark against the judiciary is unnecessary. I do not think that it deserves to be on the record ..... (*Interruptions*) .....

SHRI JANARDHANA POOJARY: Here, this is the forum. When they pass such sweeping remarks about you people, we people, this is the forum where we can also express our views. We are not casting any aspersions. It is a ground reality .....(*Interruptions*).....

SHRI M. VENKAIAH NAIDU: Making a sweeping remark against judiciary is not a good thing ..... (*Interruptions*) .....

SHRI KHAN GHUFRAN ZAHIDI: It is not a sweeping remark.

SHRI M. VENKAIAH NAIDU: I have brought this to the notice of the Chair ..... (*Interruptions*)..... It is for the Chair to decide. There is a provision for impeachment. We could not do it earlier when the occasion arose. Let us also exhort the counsel.....(*Interruptions*).....

THE DEPUTY CHAIRMAN: May I ask everybody to sit down? Let us not distort the record. You have come just now. There was a discussion in the House, when the Minister of Law brought the Code of Civil Procedure Amendment Bill. There was a discussion on this. The question of accountability arose. Each one of us, as individuals, is accountable to someone. The Parliament, the Government, the people, the bureaucracy, the army, the police; everybody is accountable. Some Member felt that in certain cases, specifically, in the case of Mr. Kalpanath Rai, the higher court said that; it is not any member's judgment. The higher court, as has been mentioned in the House, said that a particular judge who called him "Deshdrohi", or, whatever it is, did not apply his mind..... (*Interruptions*)..... Just one minute.....(*Interruptions*) ..... You can correct the record. The main thing here is, one person lost a couple of years of his life in jail. It hurt his sentiments and mentally he was disturbed. In these cases, what should be the responsibility of the country? That is it. No comment is being made on any particular person. No allegation, while I am presiding over the House, has been made, without substantiating it. But there are cases where aberrations have taken place. This House is also responsible to the people of the country to try to correct those aberrations and that was being referred to the Law Minister because he got the maximum number of compliments today. I have never seen any Minister getting, across the House, compliments saying, "You are competent." I do not know whether they really want to compliment him or want to hang him. That is what he has to do and that has been happening. So, there was no

compliant against any particular individual. A case was referred. So, do not get worried. No judiciary is being insulted over here accountability question was raised in the House. मिनिस्टर साहब, अब आप कम्पलीट कर दीजिए।

**श्री प्रमचन्द गुप्ता:** मैडम, प्रधान मंत्री जी को इसमें .....

**उपसभापति :** आप प्रधान मंत्री जी को इसमें मत डालिए, पहले मिनिस्टर साहब बोले रहे हैं।

SHRI RAM JETHMALANI: Madam, some hon. Members are of the view that judicial accountability can be enforced by legislation. I am prepared to sit with them, collaborate with them, discuss it as long as they want. If we could arrive at a consensus on that issue, I can assure the House that I would certainly bring that measure before the House. But I will discuss with each one of them. Now, somebody talked of adjournments. I agree that one of the most copious causes of the delay in our judicial system, in our legal system, is the unjustified adjournments. But who is responsible for adjournments? First of all, the petty-fogging lawyer. A lawyer will always tell you "I am obeying the instructions of my client. He has told me that his father is not well, or, his son is getting married. I am applying for an adjournment, as per his instructions." What do you do with the judge? The judge whose only purpose is to sit on the bench and make himself very pleasant to the lawyers so that his popularity does not come down, grants an adjournment. You cannot legislate these things by law. How do you legislate in the Civil Procedure Code that no judge shall try to please the lawyer and grant an adjournment? You cannot do that. These are matters of training and character. As I said, the judiciary has to be sensitised. We are trying to find out methods of how young judges, before they sit and start their judicial functions, can be sensitised to these great issues. I have told the Bar Council of India that I am vicariously/ responsible. I am a lawyer myself. I am responsible for the conduct of the whole legal system because I am one of them. I have told the Bar Council of India to enact a rule of professional conduct. A lawyer who habitually asks for adjournments in the court with the sheer purpose of delay, should be debarred from practice, penalised. Now, this again is a matter of judicial ethics, or, professional ethics that can only be taught at the law college level. We have introduced a paper on professional ethics in our law colleges. We subject students to an examination in that paper. But these are



not matters that can be done by law. Sometimes, adjournments are absolutely necessary. So, the power of adjournment cannot be taken away from the judges. It must be left to their discretion and good sense. My friend, Shri Ranganath Misra, gave two suggestions. He said that he is not able to understand the meaning of the expression 'elements of a compromise' or 'elements of a settlement'. What it really means is that if, at any stage of the litigation, during the course of a hearing, a sufficient data has appeared before the court, on which he can *prima facie* come to

a ..... (*Interruptions*) ..... That expression was, itself, a subject-matter of controversy, when the Committee was considering this. They arrived at the final solution that this is the best expression to use. 'Elements of a compromise' means that when a judge Distinctly feels that he has sufficient material and has sufficient idea of the controversy, that the matter is capable of being settled, he must ask the parties to go in for a settlement. Otherwise, when you say that there should be a compulsory obligation for bringing about a settlement, that is provided by another section in which the judge, after reading the pleadings and framing the issues, after he has a hang of the matter, is supposed to mandatorily tell the parties to opt for one of the methods of conciliation and settlement. That is also provided for. But Sir, once again, as I have said, if you think that the Civil Procedure Code requires further amendments, please come back with formulated amendments after some time, after we have worked on this present amendment system. As I said, this is not the best but it is better than what we have had before. This will go, to some extent in ,alleviating the miseries of our judicial system. The other day, when people talked of the deficiencies of the legal system, my Prime Minister, who is sitting here, said that this was the failure of religion, the failure of dharma. It is a religious duty. In fact, it is a religious duty that people must get justice.

**उपसभापति:** आपने क्या कहा था ?

THE PRIME MINISTER (SHRI ATAL BIHARI VAJPAYEE): I said "dharma", not "religion".

THE DEPUTY CHAIRMAN : The Prime Minister has a right of "Dharma".

4.00 P.M.

SHRI RAM JETHMALANI : Madam, I only mention one suggestion that Fali has made. Fali is right that in good old days, when the Bombay High Court used to issue an injunction, at the time of issuing an injunction, they used to insist upon security being granted and being taken from the plaintiff. Now, this amendment says that it shall be compulsory hereafter. It says that security shall be mandatorily taken from the plaintiff when he obtains an injunction from the court and that security will cover both the compensation part and the other part which is more important. The effect of it is, now there is an insistence that every plaint shall be supported by an Affidavit so that people should realise that they cannot just go with any false case to the court and get away with it, after getting an injunction. My friend, Shri Hanumanthappa, is right that people obtain injunctions. Thereafter, there is no service and matters do not even come up on the calendar cause-list. What does the other side do? What does the other side's lawyer do? If he finds that the matter is not being heard, it is his duty to go to the judge, make an application "you have granted an injunction the other day; please hear this matter". The Bombay High Court invariably made an order, while issuing an injunction, that the respondent shall be at liberty on 24 hours' notice, to bring up this matter for hearing before the judge and, if he gave 24 hours' notice, the matter was heard. Now, the judges have to be sensitised.

SHRI H. HANUMANTHAPPA : It may come in the usual course. Even after six years, sometimes it does not come.

SHRI RAM JETHMALANI : I agree. Once again, the remedy is not amendment of the Civil Procedure Code. The remedy is, education of our judges and sensitising them to these problems. Madam, with these words ....(Interruptions)....

SHRI R. MARGABANDU : Madam, the question of appeals .... (Interruptions)....

SHRI RAM JETHMALANI : Madam, the question of appeals was dealt with by Shri Mishra as well as by Shri Margabandu. Shri Mishra said that, sometimes, these writ matters were heard by a single-judge; and, sometimes, by a division bench. I agree with him that this is a matter of rule- making in the High Courts, and we should make it that all the matters should be heard by a division bench. But some of the writ matters themselves are so paltry that it does not require wasting the time of the

division bench. They are either matters without merit, or, they are matters which have really no stake at all. But we will sensitise the High Courts to this matter that as far as possible, create uniformity. After all, when a single judge of the High Court decides, there is a Supreme Court to correct

it. Mr. Margabandu said that second appeals ..... (*Interruptions*) .....

SHRI R. MARGABANDU : What I am saying is ..... (*Interruptions*) .....

SHRI RAM JETHMALANI : You are happy with Rs. 3000/- , **but** not with Rs.10,000/- ..... (*Interruptions*) .....

SHRI R. MARGABANDU : No, no. Even now this can be raised to Rs. 25,000. I do not have any objection. If it is a money matter, then it is all right, but if it is matter involving title, if you fix a limit as Rs. 10,000/- or Rs. 25,000/-, most of the appeals will be disposed of. Lot of damage will be caused. If the matter involves title, some consideration is needed. .... (*Interruptions*) .....

SHRI RAM JETHMALANI : Madam, the amendment only takes away the right of second appeal. Now, it is well known that second appeal lies only on a point of law. If you are deprived of the remedy of a second appeal, you have always the remedy of going to a division bench, which lies, you have a remedy under 227, which lies; all those things are available. .... (*Interruptions*) .....

SHRI R. MARGABANDU . By this section, if any second appeal involves less than Rs. 10,000/-, even if it is a title suit, it will be thrown out, it will not be entertained. But there is a danger. The Law Minister should take into account this aspect and see that ..... (*Interruptions*) .....

SHRI RAM JETHMALANI : I do not want to go into the details of the law. You know that even in a title suit, you have to value the relief which you claim. Now, for the purpose of court fees, you value it deliberately at less than Rs. 25,000/-. You will not have the right of appeal. But if you value it properly, you will have the right of appeal ..... (*Interruptions*) .....

SHRI R. MARGABANDU : No, no; in the case of title, it is only 30 times of the value ..... (*Interruptions*) .....

THE DEPUTY CHAIRMAN : Mr. Margabandu, please sit down.

SHRI RAM JETHMALANI : Now, let us give this experiment a little trial, and if you want it, we can come back with an amendment. .... (*Interruptions*) .....

THE DEPUTY CHAIRMAN : Mr. Margabandu, please do not argue. The Minister has promised that he is going as per your suggestions, whichever amendments you want you can come forward with them. This Bill is going to be passed as it is. If you have any valuable suggestions, which I am sure you all have, come up with them; not on the spur of the moment, but please come thoroughly prepared, discuss it with the Minister. Let him bring a very comprehensive legislation before the House. Now, I am going to put the Motion to vote.

SHRI RAM JETHMALANI : Therefore, Madam, I pray that the House may proceed to pass it.

THE DEPUTY CHAIRMAN: The question is:

"That the Bill further to amend the Code of Civil Procedure, 1908, the Limitation Act, 1963 and the Court Fees Act, 1870, be taken into consideration."

*The motion was adopted.*

THE DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

*Clauses 2 to 8 were added to the Bill.*

**Clause 9: Amendment of Section 96**

THE DEPUTY CHAIRMAN: The question is:

"That clause 9 stand part of the Bill." There is one amendment.

SHRI RAM JETHMALANI: I move this very innocuous amendment. I move:

"That at page 3, line 21, *for* the words "twenty-five thousand rupees", the words "ten thousand rupees" be *substituted*".

THE DEPUTY CHAIRMAN: The question is:

"That at page 3, line 21, *for* the words; "twenty-five thousand rupees", the words "ten thousand rupees" be *substituted*."

I think Ayes have it.

*The motion was adopted.*

SHRI H. HANUMANTHAPPA: Nobody said that.

THE DEPUTY CHAIRMAN: Quietness is also approval. I am using that kind of excuse.

I shall now put clause 9, as amended, to vote.

*Clause 9, as amended, was added to the Bill.*

*Clauses 10 to 30 were added to the Bill.*

*Clause 31: Insertion of new Order XXXIXA*

THE DEPUTY CHAIRMAN: The question is:

"That clause 31 stand part of the Bill.

There is one amendment, No.4, by Shri Ram Jethmalani".

SHRI RAM JETHMALANI: I move:

That at page 12, lines 5 to 16 be deleted.

*The question was put and the motion was adopted.*

*Clause 31, as amended, was added to the Bill.*

*Clauses 32 to 35 were added to the Bill.*

*Clause 36: Amendment of the Second Schedule*

THE DEPUTY CHAIRMAN: The question is:

"That clause 36 stand part of the Bill.'

There is one amendment, No.5, by Mr. Ram Jethmalani.'

SHRI RAM JETHMALANI: I move:

'That at page 15, lines 21 to 27 be deleted'

*The question was put and the motion was adopted.*

*Clause 36, as amended, was added to the Bill.*

*Clause I: Short title and commencement*

[29 NOVEMBER 1999]

RAJYA SABHA

THE DEPUTY CHAIRMAN: I want to keep my procedure proper.  
The question is:

'That clause 1 stand part of the Bill.'

There is one amendment.

SHRI RAM JETHMALANI: I move

That at page 1, line 5, *for* the figure "1997" the figure "1999" be  
*substituted.*

*The question was put and the motion was adopted.*

THE DEPUTY CHAIRMAN: Until and unless you move, I cannot  
move.

SHRI SANGH PRIYA GAUTAM: It should be taken as moved.

THE DEPUTY CHAIRMAN: No.

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

#### **ENACTING FORMULA**

THE DEPUTY CHAIRMAN: The question is:

"That the Enacting Formula stand part of the Bill."

There is one amendment, No. 1.

SHRI RAM JETHMALANI: I move:

"That at page 1, line 1, *for* the word "Forty-eighth" the word  
"Fiftieth" be *substituted.*"

*The question was put and the motion was adopted.*

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

*The Title was added to the Bill.*

SHRI RAM JETHMALANI: Madam, I move respectfully:

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

*The question was put and the motion was adopted.*

THE DEPUTY CHAIRMAN: Thank you very much.

SHRI RAM JETHMALANI: Thank you, Madam. Thanks to the Members of the House.

Thanks everybody.

The House then adjourned at nine minutes past four of the clock till eleven of the clock on Tuesday, the 30th November, 1999.