

श्री दीपांकर मुखर्जी : ये उन कुत्तों का विरोध कर रहे हैं ...(व्यवधान)... बुश का विरोध क्यों नहीं करते ? ...(व्यवधान)...

श्री कलराज मिश्र : आप यह पता लगाइए ...(व्यवधान)...

श्री उपसभापति : कलराज मिश्र जो आप बैठिए। ...(व्यवधान)...This subject is over. Nothing will go on record. This is over. मंत्री जी आप बोलिए।

## GOVERNMENT BILL

### The contempt of courts (Amendment) Bill, 2006

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ):

Sir, I move:

"That the Bill further to amend the Contempt of Courts Act, 1971, as passed by Lok Sabha, be taken into consideration."

(THE VICE-CHAIRMAN, (SHRI KALRAJ MISHRA) in the Chair)

Sir, I would like to make a brief comment before I request the House to take up this Bill. The House is aware that the existing provisions of the Contempt of Courts Act, 1971 has been interpreted by various courts and judicial decisions to the effect that truth cannot be treated as a defence to a charge of contempt of court. It was the law. Therefore, after a lot of discussions in the legal and judicial circles, it was thought that there is room to amend this law and make the truth one of the valid defence. Some eminent jurists expressed their views and wrote articles also, and suggested that the truth can be a very valid defence subject to the court permitting it.

I am also happy to inform that the previous Government started this task and the matter was referred to the National Commission to Review the Working of the Constitution. The Constitution Review Committee, headed by hon. Justice Venkatachaliah, *inter alia*, recommended that in matters of contempt it shall be open to the Court to permit a defence of justification by truth. The Government has been advised that amendments to the Contempt of Courts Act, 1971 to provide for the above provision would introduce fairness in procedure and meet the requirements of article 21 of the Constitution. So, Sir, Section 13 of the Contempt of Courts Act, 1971 provides certain circumstances under which contempt is not

punishable. It is, therefore, proposed to insert sub (b) to that section by an amendment.

Sir, the Bill was referred to the hon. Standing Committee of Personnel, Public Grievances, Law and Justice and it was examined there. The hon. Committee has submitted the report to the House on 29<sup>th</sup> August 2005. The Government has gone into the report and the Committee's suggestions have been studied. The Committee has accepted that the law should be amended, but suggested to delete the words 'in public interest'. Sir, I would like to take the House into confidence that the National Commission for Review of the Constitution, appointed by the NDA Government, had suggested that 'truth' and 'public interest' both should remain because this law of contempt is regarding protecting the Judiciary from scandalisation and disrepute. Therefore, we have to have a balanced view and the recommendation made by the Constitution Review Committee headed by Justice Venkatachaliah is being retained.

This Bill has found a unanimous support in the Lok Sabha; I hope, this House will also give support for this limited amendment. Thank you, Sir.

*The question was proposed.*

SHRI RAM NATH KOVIND (Uttar Pradesh): Mr. Vice-Chairman, Sir, we are discussing the Contempt of Courts (Amendment) Bill, 2008. As the hon. Law Minister has told just now, this Bill was, originally, moved by the previous NDA Government, but in the meantime, with the dissolution of Lok Sabha, the Bill also lapsed. Thereafter, the Bill was moved. It was referred to the Standing Committee on Personnel, Public Grievances, Law and Justice, of which I happen to be a Member also. Due deliberations took place, and as told by the hon. Minister, the Committee had suggested two amendments. Before I go to those suggestions, I would like to read out the relevant section, that is, section 13, of the Contempts of Courts Act. It says, "Notwithstanding anything contained in any law, for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice...". Sir, the Standing Committee on Personnel, Public Grievances, Law and Justice has made two suggestions. One suggestion was for deletion of the words-- as also suggested in the Bill-- "in public interest" from clause (b) of the proposed amendment of section 13. However, this

has not been accepted by the Government. But the second suggestion, which says that the truth could be a valid defence during the contempt of proceedings before the courts, has been accepted. Sir, what I want to convey is this. We know that under the Contempt of Courts Act, 1971, for the last, say about, 30 or 34 years- it is virtually 34 years as of now-- so many judicial pronouncements came from various High Courts, which even said that truth cannot be a valid defence. Even a contemnor, we can say, has no defence at all. Even if he says truth, even if he reacts on the inefficiency or the corruption being prevailed in the judiciary; even if he is able to prove it by evidence, that contemnor has no defence at all. This is the situation as per the existing law; that is why, this provision has become very much relevant. Sir, as we know, under article 19 of the Constitution, we have a fundamental right, that is, right to freedom of speech and expression. Sir, judiciary is also a part of the system of the Constitution. And, we can say that the Judges of the High Courts and the Supreme Court are appointed by the President of India. If the President of India, i.e., the appointing authority can be criticized, if we can react as people's representatives or any citizen of this country can criticise the President of India for his wrong-doing, I don't think, it could be a valid reason if judiciary is exempted. But it has been done so, just to maintain the independence of the judiciary.

Sir, under the Chapter on Fundamental Rights, every citizen has got a fundamental right to speak the truth. If he wants to say anything on the matter of inefficiency or the corruption, he is most welcome. Sir, it is not only the citizen. We know that once even the Chief Justice of India had said -- he did admit - that some percentage of the judiciary is corrupt. Of course, he can't be hauled up for the contempt of court because he happens to be from the same community. But the fact is that the ordinary citizen must have a right to react. His reaction could be for wrong-doing or his reaction could be for rectifying them, whatsoever it may be. And, for that reason, I would rather congratulate the Law Minister that he has come forward with this legitimate amendment of Section 13 of the Contempt of Courts Act.

Sir, as we know, all the major democracies, including the United States of America and the United Kingdom, have the law relating to contempt. So, India also being a democracy does have it. That is okay. But if we go back to the history, we can find that sometimes this power of contempt has rather been abused by the judiciary, and I can give one

illustration. At one time, even when the former Law Minister, Mr. P. Shiv Shankar, had said publicly that Judges have an unconcealed sympathy for the 'haves', he was hauled up for the contempt of court. Sir, even the former Law Minister was hauled up for contempt of court. Now, what I mean to say is that for what he said, he being an ordinary citizen of this country, he was hauled up for contempt of court. But, simultaneously, when the Chief Justice of India remarked that 'yes, some of the Judges are corrupt', he was not hauled up. This is discriminatory -- we can say -- attitude which our law of contempt has got. Therefore, I do congratulate the Law Minister for bringing forward this measure.

Sir, I would also like to quote one more instance about the abuse of this power. Sir, at one time, a High Court Judge was scheduled to travel by train and, incidentally, the coach didn't have the First AC. Then, he immediately sat down on the platform itself of the New Delhi Railway Station, and said 'Yes, call the Railway officers, I am going to hold the court'. It was during the night, he called them in the night itself, and then the Railway officers were summoned, oral notices were issued for contempt of court. Of course, later on, they were let off. But, we can say this much that this is the climax or this is the height of the abuse of this power. This is the contempt power.

Sir, my humble submission is that even if we accept this amendment, the courts would have wide discretionary powers. Of course, if derogatory remarks are made to defame the judiciary, the contemtor should be punished. He must be punished. But, Sir, there is an element of non-accountability in the judiciary. This is rather adversely affecting our judicial system and the deliverance of administration by the system. I would certainly request the hon. Law Minister to ponder over this and bring some law to introduce the factor of accountability in judiciary also.

Sir, I would say the ideal situation would be when this Contempt of Court's Act would be used very rarely. That is because it has to come from the heart; whether it is the litigant, whether it is the media or the politicians, they have to feel respect from their hearts. The law cannot impose a sense of respect in the hearts of our citizens. That is why, my submission is, the lesser the judiciary uses this Act the better it would be.

With these words, I conclude my observations and I support the amendment. Thank you.

**श्री जय प्रकाश अग्रवाल** (राष्ट्रीय राजधानी क्षेत्र, दिल्ली) : आदरणीय उपसभाध्यक्ष महोदय, दरअसल मैं वकील नहीं हूँ, लेकिन कुछ वकीलों की सोहबत में जरूर रहा हूँ और आज हंसराज भारद्वाज जी के दो बेंच पीछे भी बैठा हूँ। महोदय, मैं शायद इसकी व्याख्या तो बहुत ज्यादा नहीं कर सकता, लेकिन मुझे बोलने का मौका मिला है तो आज के जो हालात हैं, उस में मैंने सोचा कि इस बहाने मैं अपनी बात मंत्री जी तक पहुंचा सकता हूँ।

सर, अभी तक इसे एक हथियार के रूप में इस्तेमाल किया जाता रहा है। हमेशा एक डर दिखाया जाता था कि अगर आप बोलेंगे तो कंटेम्प्ट लग जाएगा, अगर आप कोर्ट में किसी एक पार्टीकुलर तरह से व्यवहार नहीं करेंगे तो कोर्ट में कंटेम्प्ट लग जाएगा जब कि लोग जहां इसाफ के लिए जाते हैं, लोगों के मन में यह भावना होनी चाहिए, वहां वे एहसास करते हैं कि हम किसी कोर्ट में खड़े होंगे तो वहां न्याय की कुर्सी पर बैठा व्यक्ति हमें इसाफ देगा और उस से हमें दहशत खाने की जरूरत नहीं है। लेकिन कई बार ऐसा लगता है कि हम न बोलकर भी उसे बढ़ावा देते हैं। महोदय, कंटेम्प्ट एक सीधा सा सवाल है कि अगर हम कानून की व्याख्या के खिलाफ या उस दायरे में जाने की कोशिश करते हैं जिसे बेईज्जती कहा जा सकता है या जिसे insult कहा जा सकता है या जो कोर्ट के ऑर्डर हैं, उस के खिलाफ अगर हम कोई काम करते हैं तो उसे कंटेम्प्ट मानकर सजा दी जा सकती है। तो मैं मंत्री जी को मुबारकबाद देता हूँ कि उन्होंने उस दायरे को सीमित किया या उस परिभाषा को कंट्रोल करने की कोशिश की लेकिन उस के साथ-साथ जो कुछ हो रहा है, उस में हमें अपनी बात कहने में कैसी रोक है? उस में किस बात का कंटेम्प्ट है?

महोदय, मैंने इस हाउस में कई बार देखा है, जब हम कोई समस्या उठाते हैं तो कह देते हैं कि "the matter is sub-judice, or. It is in the court". तो इस हाउस में भी हम अपनी बात नहीं कह सकते। हम किसी जज को क्रिटिसाइज नहीं कर रहे, हम उन के खिलाफ या उन की शान में कोई बात कहें, तब तो उसे गलत माना जा सकता है। अब जैसे दिल्ली का कहा गया कि sub-judice है, आप नहीं उठा सकते। सर, आप उस में थोड़ा सा प्रोसीजर देखें कि किस तरह से काम हुआ है? सर, डेढ़ महीने के अंदर एक कोर्ट से तकरीबन 12 बार फैसले हुए हैं। इस तरह के फैसले हुए हैं, जिनको शायद कोई नहीं मान सकता। यह कोई जंगल नहीं है। एक दिन कोर्ट यह ऑर्डर करती है कि आप फार्म हाऊसेज बन्द कर दो। किसी फार्म हाऊस में कोई शादी नहीं होगी।...(व्यवधान)...

**SHRI RAVI SHANKAR PRASAD (Bihar):** I am sorry for interrupting my friend, "यह कोई जंगल नहीं है", शायद ज्यूडिशियरी के सम्बन्धि में यह शब्द नहीं जाना चाहिए।...(व्यवधान).... आप विचार कर लें।...(व्यवधान)...

**SHRI H.R.BHARDWAJ:** I think it should be deleted. ...(Interruptions)...

**श्री जय प्रकाश अग्रवाल :** जंगल कोई गाली तो नहीं है।...(व्यवधान).... मैं समझा नहीं, सर।...(व्यवधान).... यह गाली तो नहीं है।...(व्यवधान)....

**श्री रवि शंकर प्रसाद :** आप देख लें । ...**(व्यवधान)**... मेरा यह आग्रह है, मेरा निवेदन है ।  
...**(व्यवधान)**...

**उपसभाध्यक्ष (श्री कलराज मिश्र) :** ठीक है। ...**(व्यवधान)**... इसको, जंगल शब्द को देख लीजिए । ...**(व्यवधान)**...

**श्री जय प्रकाश अग्रवाल :** महोदय, क्या यह भी कंटेम्प्ट हैं ? ...**(व्यवधान)**...

**उपसभाध्यक्ष :** नहीं , यह असंसदीय तो नहीं है, लेकिन ...**(व्यवधान)**...

**श्री जय प्रकाश अग्रवाल :** महोदय, इससे जो कुछ हुआ, कितनी परेशानी सब को महसूस हुई और लोगों को किस तरह से तंग किया गया ।

इसी तरह डिमोलीशन का जो हाल दिल्ली में हुआ, उसमें जो नाजायज फायदा उठा सकते थे या उसका किन्होंने फायदा उठाया कि तोड़ने दो, वरना कंटेम्प्ट लग जाएगी? मैं इसे नहीं समझता । मंत्री जी, इस पर कही तो कोई ऐसी रोक होनी चाहिए । एक ही महीने के अन्दर एक ही ऑर्डर बार-बार दिए जा रहे हैं। आप सौ साल पुरानी बसी हुई दिल्ली को दो या दस कोर्ट ऑर्डर्स में एकदम बदल देंगे । बटन दबाएंगे और मकान खड़ा हो जाएगा या बटन दबाएंगे और मकान टूट जाएगा या आप जिस साइज का बनाएंगे, बन जाएगा। लोगों ने कितनी गालियां दी होगी, दिलों को कितनी तकलीफ हुई होगी? जिनकी शादियां रुक गई है, जिनके घर में फंक्शंस थे, वे बन्द हुए और वे इधर से उधर भागे । तो सर, इसमें कोई ऐसा चेक जरूर होना चाहिए । आपकी कोई बाँडी हो, कोई कमेटी हो, किसी के अन्दर तो ये सब चीजें आनी चाहिए , जहां हम यह बात कह सकते हों। अगर हम इस हाऊस में भी नहीं कह सकते, तो कोई तो ऐसा दायरा बनाइए, जहां हम जाकर यह कहें कि हमें इन चीजों से तकलीफ है।

महोदय, उसी तरह से आपके जो कोर्टस हैं, जो वहां सिस्टम हैं, आप उसकी हालत देखिए। जिनकी तारीख होती है और जो वहां कोर्टस में जाते हैं, वे सुबह से रात तक खड़े रहते हैं । आपने तो सुबह 10 बजे का टाइम दे दिया । सर, अगर वह आदमी एक प्याली चाय पीने भी चला जाता है, तो कहते हैं कि कंटेम्प्ट लग गयी और तुझे जेल भेज देंगे । ऐसे कई केस हैं, जिनमें अगर उस आदमी की उस कोर्ट से नहीं बनती, जो वहां इंसाफ मांगने गया है, तो उसके खिलाफ उन्होंने कार्रवाई की है, जबरदस्ती की है। वह सुबह से बगैर खाए-पिए, वहां खड़ा है। या तो आप टाइम दे दें कि आपका 10 बजे का टाइम नहीं है, आपको 12 बजे आना है, आपको 2 बजे आना है, आपको ढाई बजे आना है, आपको पांच बजे आना है। यह तो नहीं कि वह तो 10 बजे खड़ा हो जाएगा और जज साहब 10 बजे वहां नहीं है या उसके बाद वे जितनी तारीखों-पर-तारीखें देते रहेंगे और वह वहां खड़ा रहेगा, लेकिन अगर वह चला गया , तो उसकी मुसीबत है, या उसके वकील, जिनको कई जगह जाना होता है, यदि वे नहीं है, तो भी उनके ऊपर कंटेम्प्ट लगा देते हैं ।

इसी तरह दिल्ली में अभी वकीलों की जो हड़ताल हुई, उस समय कइयों के केस लगे हुए थे। मैं उस पार्टिकुलर केस को जानता हूँ, जिसमें वकीलों ने जाने नहीं दिया। जो मुवक्किल हैं, वह बाहर खड़ा है और कोर्ट ने उसके खिलाफ एक्शन कर दिया कि आप पेश नहीं हुए । भई, पेश कहां से होंगे । एक वकील कोई कोर्ट में नहीं जा रहा, वहां जो आदमी है, जिसका केस है, वह अन्दर जा नहीं सकता, आपके पास प्ली नहीं कर सकता , आपके पास

इंसाफ मांगने आपके कमरे में नहीं आ सकता। इसमें उसका क्या कसूर है? सर, इस तरह की जो चीजे होती है, इसमें भी मैं चाहता हूं, मंत्री जी यहां मौजूद हैं कि वे इसमें कुछ ऐसा करेंगे।

सर, कुछ केसेज में गवाह तोड़ लिए जाते हैं। जैसा हमने अखबार में पढ़ा कि बेस्ट बेकरी केस में गवाह पेश हुए, गवाह पर दबाव हुए, फिर उसने अपना बयान बदल लिया। अब मान लीजिए कि अगर मेरे खिलाफ कोई केस है, और मेरा कोई गवाह है। अगर उस गवाह को कोई तोड़ता है और उसमें अगर उसको किसी सच्चाई के नाम पर छोड़ दिया जाएगा। सच्चाई अपनी जगह हो सकती है। वह सच्चाई, उसके लिए क्या सच्चाई है और मेरे लिए क्या सच्चाई है, इसे कौन तय करेगा? ऐसे मामलों में भी कम-से-कम उन लोगों के खिलाफ तो सख्त एक्शन होना चाहिए कि जो बदल जाते हैं और बदल कर सारे केस को ही बदल देते हैं। आप जेसिका लाल का दिल्ली वाला केस देख लीजिए। इसमें क्या हाल हुआ? किस तरह से जितने गवाह थे, जितनी चीजें थी, सब बदली गई। मैं चाहता हूं कि कोई-न-कोई ऐसा रास्ता होना चाहिए, कोई ऐसा सुझाव हो, मुझे नहीं मालूम, मैं कह नहीं सकता, लेकिन ये चीजें अब बन्द होनी चाहिए। इससे लोगों के दिल में बहुत चोट पहुंचती है। हम कहां ले जाना चाहते हैं? हम यह कहते हैं कि इंसाफ देंगे और इंसाफ के नाम पर जो कुछ होता है, जो दिखता है, वह बहुत खराब है।

सर, उसी तरह कुछ प्रोसीजर ऑफें लोग डिलेज है। कोर्ट में जो तारीखें दी जाती हैं, उसमें अपनी मर्जी हैं, बड़ा लंबा समय मिलता है, दो साल दे दिया, एक साल दे दिया और जिससे नहीं बनी, उसे कह दिया कि कल ही आ जाओ, कल ही केस का फैसला करेंगे। तो यह जो प्रोसीजर डिले का है, इसको देखना होगा।

महोदय, फिर कोर्ट की हालत आप देखिए। मेरी पहले वाली कंस्टीट्यून्सी में तीस हजारों कोर्ट हैं, मंत्री जी जानते हैं कि वहां की हालत बड़ी गंदी है। जिस तरह से वहां कोर्ट लगती है, कोर्टों में लोग आते हैं, खड़े होने को भी वहां जगह नहीं होती। कोई सिस्टम नहीं है, क्योंकि जिस कमरे में कोर्ट लग रही है, प्लास्टर उसका गिर रहा है, कहीं तो कोई पंखा भी नहीं है। कौन देखता है इन सब चीजों को? मैं यह चाहता हूं कि कोई ऐसी एजेंसी, जैसे बार एसोसिएशन को आप इन्वोल्व करें या किसी और को इन्वोल्व करें, ताकि इन हालात को सुधारा जा सके। उधर जो वकील है, वकालत पढ़कर आते हैं, उनकी हालत वहां देखिए। वे पेड़ के नीचे स्टूल पर बैठकर अपने क्लाइंट से बात करते हैं, कोई टेलीफोन की सुविधा नहीं है। आज हम कम्प्यूटर की बात करते हैं, लेकिन हमने उनकी क्या हालत कर दी है? सिवाय इसके कि वे अपने घर से काला कोट पहन कर वहां, जरूर आते हैं, मगर उनकी हालत किसी सब्जी वाले से कम नहीं है। इस तरह वकीलों को हरेसमेंट का अहसास होता है। अगर जगह कम है, तो आप और जगह सरकार से लीजिए, एक्वायर कीजिए, गवर्नमेंट से कहिए कि इतनी जगह में काम नहीं होता, हम और बड़ा करना चाहते हैं। ऐसा कुछ कीजिए, ताकि वहां के हालात सुधरें।

महोदय, एक कोर्ट का झगड़ा है, जो अभी भी चल रहा है, उसमें कोई सुधार नहीं हुआ है। मुझे लगता है कि सरकार को उसके अंदर दखल देना चाहिए, ऐसा नहीं होना चाहिए कि अगर यह उनके और वकीलों के बीच में झगड़ा है, तो सरकार कुछ न करे। ऐसे झगड़ों में तो लोग ही मरते हैं, लोगों को परेशानी होती है, तकलीफ होती है। आज लोग तंग हैं, उनको जस्टिस नहीं मिल रहा है। इसको भी आप देखिए।

[3 March, 2006]

RAJYA SABHA

महोदय, अंत में इस बिल का मैं समर्थन करता हूँ, लेकिन जो भड़ास मेरे मन में थी, वह आज भारद्वाज जी को देखकर मैंने निकाल दी। धन्यवाद।

SHRI PRASANTA CHATTERJEE (West Bengal): Sir, I rise to support the Amendment Bill placed here for approval. Sir, we know that the first Contempt of Courts Act was introduced in the British days in 1926. Thereafter, after the Constitution was adopted in 1952, the 1926 Act was amended. Then again, in 1971, Sir, considering the right to freedom of expression and personal liberty, significant changes were effected in the Act of 1971. Section 13 of the Contempt of Courts Act, 1971, provides certain circumstances under which contempt is not punishable. Illegal check against using the Contempt of Courts Act indiscriminately was thought in section 30. Blanket protection of judiciary should not be there. Freedom of speech should be guaranteed; that was the idea. But, arising out of the situation in view of the judicial decisions not allowing truth as defence, a charge of contempt under the existing provisions of 1971, the Government was advised for substitution of new section 13 for section 13 and hence, the Amendment Bill is placed here. Sir, we know from the history numerous judgements in political cases - the Kanpur-Meerut case, the Chori Choura case against Gandhiji, even Nehru, and even after Independence, the particular law has continued to follow the same path. Sir, I remember that our Government in Kerala, led by Shri E.M.S. Namboodiripad, the Marxist Government, as it was called the Supreme Court affirmed that the Marxist political leader of Kerala was guilty of contempt of Court because he made a general comment that Judges belong to a certain class and suffer from class bias. That was the case we know from the history. So, Sir, the present Contempt of Courts Act of 1971 faced constraints and restrictions from the people who wanted to face the contempt of court case based on truth and facts.

Sir, this issue was discussed in the Standing Committee, and, as mentioned by our Law Minister, opinions from the legal luminaries like Justice Venkatachaliah, Justice Krishna have been sought for, and, they advocated for the amendments. The National Commission to Review the Working of the Constitution recommended introduction of truth as defence by way of an amendment to the Constitution of India because they opined that mere legislation by the Parliament alone might not suffice. The views of the Secretary, Department of Justice and the Attorney General were obtained. The former Attorney General opined in favour of the amendments, and, even the views of the Chairman, Bar Council, were sought for.



Sir, Parliament makes the law. it can amend the Constitution. But the judiciary, the Supreme Court, can interpret the Constitution. Legislature cannot do that. Judges are not elected. The independence of the judiciary is to be protected and the truth should prevail which is in public interest. Now, the only question is whether the closure of defence against contempt of court should be allowed to continue or not. Blanket ban on defence should be lifted. Nobody should interfere in the fair course of justice. At the same time, fundamental right of the people should be granted.

It is absolutely true, and it has been referred to here also that corruption has entered in all the spheres of public life, even in the judiciary, and the Legislature. Suppose, Sir, a Judge has been prized with a very modern car, very valued car, for ulterior motives. And, I know that is corrupt and, if I say that, I will face contempt. And, the concerned corrupt Judge will continue to enjoy the benefits. This cannot be allowed to continue.

So, I should have every right to say anything that is true according to me, against a corrupt person, whether he is a Judge or any other person. Truth serves the public interest. A trial is not fair without any defence and that is the main thing. With these few comments, I support this Bill placed before the House. Thank you.

SHRI RAVI SHANKAR PRASAD: Sir, I am grateful that you have given me the opportunity to make certain observations. If the hon. Law Minister will kindly listen to me, I will be grateful.

SHRI H.R. BHARDWAJ: 'Sir, I am very eager to hear you. ...interruptions)... It is a privilege to us.

SHRI RAVI SHANKAR PRASAD: Sir, first of all, I must congratulate the hon. Law Minister for bringing forward the Bill. At least, he found something good that the NDA Government has done. Maybe, it is a good beginning also.

Sir, let me make an initial comment because that is very important to be noted. We have gone for a Constitutional system of Government, democratic norm governed by the rule of law, and, the judiciary has been given the power to ensure the rule of law. We never forget this basic concept. When I talk of rule of law, let me also make an initial observation. Sir, how is this rule of law enforced? Sir, let us accept that there is a decline in the standards of life, in politics, in social life, in civil

administration. Sir, one question has always troubled me and I want that question to be shared in this House. Why is it that in spite of all criminality that we are witnessing, here is a case that an Additional District Judge gives punishment to a serial killer, either of hanging or of life imprisonment, and, when he retires, there is no retribution against that Judge? Maybe, there have been cases in Punjab where some retribution was done. But how is it that a serial killer who does not even bat an eyelid in killing a SP or IG, very meekly surrenders for the imposition of life imprisonment or hanging. And that judge after retirement goes to a market to purchase something and the goons see him, but they don't have the courage. I think this is the power of moral authority of our judiciary. We are very happy to note that this moral authority is still maintained after 57-58 years of independence. And that is a matter of great pride for us. Let us collectively decide that nothing should be done to impair this moral authority in any way. That is a very fundamental question that I would like to state at the very outset. Why do I say so? Because there have been observations of the courts that rule of law is not legalistic simpliciter. It has great moral springs on which the whole edifice is built. Having said that, let me juxtapose my observation in the context of the rule of law and the freedom of the people. How do we see it? Hon. Law Minister is aware with his wide experience that there is civil contempt for disobedience of an order, and there is a criminal contempt for scandalising the court.

Now, you have come with this provision. Yes, the introduction of this provision, I would say, is part of the accountability process, which some of my friends talked about. This is a welcome suggestion, and therefore, jurist of eminence, Justice Venkatachaliah, in the Constitution Review Commission decided to come with this suggestion. But I have two caveats which I would like hon. the Law Minister to kindly respond to. If you examine the Constitution, there is a provision under article 129 for the Supreme Court; and there is a provision under article 215 for the High Courts. And what do they say? The Supreme Court and the High Courts are courts of record. And they have also got the power to punish contempt. Let me just read one provision here. Let me just read article 129. It says, "The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish contempt of itself." Therefore, the powers of the High Courts and the Supreme Court flow from the Constitution. They are independent of the Contempt of Courts Act.

1.00 p.m.

The question which troubles me, hon. Law Minister, is this. Should we presume that these amendments would not supersede the independent mandate of these two courts from the Constitution itself? This is the question. You know we cannot amend the Constitution by a simple legislation; there is a whole constitutional process. If that is the case, then how does it impact upon the independent power of the Supreme Court and the High Court which is substantive under articles 129 and 215 respectively of the Constitution? Now, I would like to make certain other observations to the hon. Law Minister. Don't you think it is time we need to understand as to how many contempt cases are pending in all the High Courts and the Supreme Court? I know that in many cases their numbers run into thousands and thousands. There are cases of civil contempt; disobedience of order for pension, for gratuity, and for a whole lot of things. Maybe it is time the courts understand that these contempt cases for really common cause benefits must be disposed of at the earliest.

There is one more issue, hon. Law Minister, which I would like to share with you today. This has been troubling me a lot, and I would be happy to see your reaction on that.

Over the time, decline is also there in our judiciary. We can say with confidence that more than 90 per cent is still transparent. We are proud of that. Maybe it is 95 per cent. But there are areas of concern. How do we address that? Don't you think it is time that this accountability and process of transparency have some mechanism? Let me say this. The problem comes when an idea is given that the High Courts are subject to the Supreme Court in matters of their judgements. But they are not administratively subordinate to the Supreme Court. And there is a fair view. The High Court's order can be set aside by the Supreme Court, but the judges or the High Court by itself is not subordinate to the Supreme Court on other issues. Yes, there is a moral authority of the Supreme Court. There is a problem there. Transfers have been there, but they have not served the long-term issues.

How to go about it? We keep on hearing instances after instances of extraneous influence. We wish the number remains very limited because an independent judiciary is very dear to our Constitution. But even if there is one instance, there has to be a mechanism for redressing that. Mr. Law Minister, with great respect to you, you will certainly appreciate that

impeachment has failed completely. In this history of our Constitution, we brought one case -- I don't want to name that Judge -- in the Supreme Court. And what happened? For two days, the House debated, ultimately splitting over regional considerations. Don't expose our judiciary to the vagaries of political process and, therefore, the founding fathers' intention of having the impeachment in our Constitution, I am sorry to say, had not served any purpose at all. On the contrary, I would say the sooner this provision is deleted, the better it is. But there has to be a mechanism, there has to be a proper mechanism, which is insulated from governmental influence, which is insulated from bureaucratic pressure and which is insulated from media's overbearing interference. Let there be an in-house mechanism. The mechanism, in-house mechanism, of the judiciary has to be there because accountability process must be there, but should be as far away as possible from the din and bustle of our democratic life, the Parliament and a whole lot of things. I always feel, an independent judiciary is very much needed. Let me say so, I am proud of the independence of our judiciary. But, yes, there are certain disturbing trends which we need to address. I would like to have a response. There is one last issue I would like to say that this is an occasion, I must say that. We all appreciate Public Interest Litigation. They are a good cause. In my professional capacity, I have myself filed many public interest litigations for exposing corruption cases, for giving redressal to those who are needy, for the deprived. But what troubles me, Mr. Law Minister, is that there is a suggestion going that PIL has become a 'Forum of Parallel Governance'. Is it fair? We need not interfere in that. The judiciary will have to reflect upon that. There have been series of judgments of the Supreme Court where they have said that Public Interest Litigation is becoming publicity interest litigation. You must have come across such judgments. But, unfortunately, this impression is getting round. I would only request, I would only suggest, that the judiciary need to reflect upon. Honourable Vice-Chairman, I took some liberty to address issues of vital concerns for our judiciary and its independence we pray, which we always value dearly. But yes, if certain declining trends been noticed, there has to be a mechanism to address that. Having said that, let me support this Bill, This-Bill is a welcome suggestion. It will go a long way in strengthening our institution. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Shri N. Jothi.  
Not here. Shri Chandra Sekar Reddy.

डा. (श्रीमती) नजमा ए. हेपतुल्ला (राजस्थान) : सर, क्या आज लंच नहीं होगा?

**उपसभाध्यक्ष :** अगर सदन की अनुमति हो, तो लंच इस बिल के पास हो जाने के बाद होगा।

**SHRI RAVULA CHANDRA SEKAR REDDY (Andhra Pradesh):** Sir, I rise to- support the Bill. Sir, the Bill intends to substitute section 13 with a new section of the Contempt of Courts Act.

Sir, the very purpose of bringing forward this Bill is to give reasonable opportunities for those people who are subjected to contempt of courts. Sir, I fully agree with what Mr. Ravi Shankar Prasad said. There are two types of contempts, like, disobedience of court order is one and there is another aspect of disrespect to the courts and judiciary. Sir, disobedience is often heard at the lowest level, people not implementing orders of the court for small things like giving pension or promotion to employees. As far as poor people are concerned, they are neither aware of the legal proceedings nor are they aware of the contempt aspect. Often, poor people, illiterate people, are also dragged into this.

Sir, people should have faith in the judicial system and respect for the same. At the same time, it is the duty of the administration to see that all the legislations and all such provisions are brought to the notice of those people who are moving the courts for redressal of their grievances. Sir, there are two, three aspects. One is protracted litigation. Sir, very often, people are frustrated, disappointed and disgusted, and they try to break the law, they try to disobey the orders, they try to disrespect the judiciary out of frustration or out of anger. In such cases, the present Amendment is helpful to those people who are really denied or deprived of their defence. Sir, there are aspects of truth. Now, the present Amendment is trying to bring in that factor into this. Earlier, he could not plead the defence, and he was subjected to punishment. Now, an opportunity is given to the people who can advance their defence of truth, and thereby, they can get over the clutches of the contempt proceedings. Sir, by virtue of article 21 of the Constitution, people are given personal liberty. In view of this article, now, the Government wants to propose this Amendment. It is a welcome Amendment. One needs to give a reasonable opportunity to those people who are denied and deprived of their defence. It has gone to the Standing Committee, but, by virtue of the dissolution of the Lok Sabha, it could not be considered at that time. Though it is a belated stage, it has come up for consideration. While supporting the Bill, I request the hon. Minister to look at the aspect of modernising the courts. Now, the technology has improved. Sir, you are going in for video conferencing, and we need a congenial

atnidsphere also. Sir, th^ other Member was saying, and he is 100 per cent rigW, f come- from a remote area. I was practicing for some time. The courts bulfcflngs and atmosphere is a bit frustrating at the tower level. We need to modernises the courts, and we need to minimise the time of administering justice. Sir, the new aspect of Lok Adalats has to be encouraged in a big way, and the fast track courts is a welcome step on the part of the Government. Since they have gone in for fast track courts and Lok Adalats, they are yielding very good results. To pursue those things, we need to have more modernised mechanisms and systems which are made available to the Judiciary so that speedy Justice can be done. With these words, while supporting the Bill, I must congratulate the Minister for bringing in this Sill.

SHRI RAM JETHMALANI (Maharashtra): Sir, I am very, very sorry that I have to oppose this Bill. I have only to recount how this Bill has come before this House in this form. Sir, this Bill was considered by the relevant Standing Committee, which recorded evidence, The Committee's report is before this House. Amongst the distinguished witnesses who gave evidence, we're the ex-Chief Justice, who was one of the leading members of the Bar, and at one time, Mr. Shanti Bhushan, an ex-Law Minister; they were the Chairmen of the Bar Council of India and some professors. It was unanimously the view of all witnesses that the Amendment Bill should be worded like this, maybe, a word here or there, but I am recounting from the memory. The report is with the hon. Minister. It is like this, "Whoever makes a statement which is true or which he, after reasonable care and caution, believes to be true, though, in fact, not true, wiH not be held guilty of contempt of court". This was actually formulated and put to each of the witnesses, "Will you accept the amendment in this form?". And it was so said. When the Committee's Report came--it reached me, as a Member, on the previous night--! waS horrified to read the Report. It didn't contain anything of this kind and, sitting at night, I had to communicate to the

Chairman of the Committee that it was almost a \* it was insubordination. I asked, "Whose Report is this?". The Report was to be tabled on the next day. With his goodness, the Chairman expressly sought an adjournment from the House and did not present the Report. Then, I again protested in the Committee. Ultimately, what they have done is, instead of saying what I was saying was the unanimous view of the Committee, they have forwarded a Report which contains the original Report plus my Report saying that

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\* Expunged as ordered by the Chair

these are the viewt of an individual Member. Now, this is \*. These were not the views of an individual Member. These were the unanimous views of the Members of the Committee.

SHRI JANARDHANA POOJARY (Karnataka): Sir, I would like to know whether the words ' and " used by the hon. Member are unparliamentary.

उपसभाध्यक्ष (श्री कलराज मिश्र) : आप बैठ जाइए। You take your seat, Poojaryji.

SHRI JANARDHANA POOJARY: I would like to know whether they are unparliamentary, Sir.

SHRI RAM JETHMALANI: I have said that it is a committed by the person who sent this Report. We drafted it.

उपसभाध्यक्ष (श्री कलराज मिश्र) : आपने जो कहा है, उसको बाद में देख लेंगे।

SHRI RAM JETHMALANI: You kindly see the Report, Sir. You will find that the two Reports have been joined together and it has been stated in this Report as if it has come from Mr. Ram Jethmalani. Long ago, in 1950-51, a Constitution Bench of the Supreme Court had held that truth is a defence and if truth is a defence, then *bona fide* belief in truth with reasonable care and caution will always be a truth on any principle of criminal jurisprudence. Now, what have they done is, "the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is *bona fide*". Do we need an argument in this country of "*satyameva jayate*" that disclosure of truth is always in public interest and, particularly, when you are taking away the liberty of a person to criticise some judicial actions which are today, unfortunately, getting more and more frequent? We know about Judges who are facing trial for corruption, not merely Subordinate Judges, but a High CofJrt Judge who is facing corruption charges and still the case is not even going on. If this is the state of affairs today, why should the citizens be deprived of an

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\* Expunged as ordered by the Chair

opportunity, at least, to speak the truth? I will go further. The Supreme Court, unfortunately, in a very unfortunate case, gave a judgement wherein they said that the Supreme Court was not bound by the Contempt of Courts Act. Sir, this is mind-boggling. This is judicial vanity gone berserk. Kindly see what has happened. *Prima facie* the law of contempt is a restriction on the liberty of speech guaranteed under article 19(1)(a). You can restrict it only by imposing a reasonable restriction and the reasonable restriction must be such as, first of all, the Parliament approves as reasonable. The Supreme Court may still say that it is an unreasonable restriction. But the Supreme Court has no right to say that the restrictions which the Parliament has put are too mild and we are completely above the Parliamentary Statutes and we are not bound by the Statutes. Is it suggested that the Parliament can impose a sentence of death or a sentence of seven years rigorous imprisonment, when the Acts say that the maximum punishment is three months? It is berserk and the time has come. Every day you are complaining that the Judiciary is interfering with the Legislature and the Executive too much. But when an opportunity comes to make a reasonable change in the law or the situation, this is the state of attendance in this House.

I regret to say this Bill, in the interest of purity of parliamentary procedure, must go back to the Committee for reconsideration. Let a report come. Sir, this is the House of Elders. It is supposed to be a revising House. It is supposed to put a break upon hasty legislation which comes. I am here pointing out that it does not satisfy a single witness who has given evidence. The power of the Supreme Court under article 128 and the power of the High Court under article 215 must be subordinated to parliamentary legislation. Sir, that is the amendment which had been approved by all the witnesses who gave evidence that articles 215 and 129 are subject to jurisdiction of Parliament because Parliament is the body which decides to what extent you shall restrict the freedom of speech, not the judges. I respectfully appeal to my friend that for God's sake, at least, show this much courtesy to Members of the Committee, to distinguished witnesses who have appeared, which is the need of the hour. The need of the hour is that judges must be told that you cannot, cannot and cannot thwart truth by frightening people with your power of contempt. If today you miss this chance, you will miss it for all times to come, unless Mr. Law Minister, you are prepared to give an undertaking to this House that this Bill may be passed today but for further relaxations you will immediately refer



this matter to the Committee so that they consider it again and produce a better Bill.

**प्रो० राम देव भंडारी (बिहार) :** माननीय उपसभाध्यक्ष महोदय, देश के विख्यात कानून विद माननीय श्री राम जेठमलानी जी के बाद आपने मुझे बोलने का अवसर दिया है। महोदय, भारतीय संविधान में देश की न्यायापालिका स्वतंत्र है और देश की जनता का न्यायापालिका पर पूरा विश्वास रहा है और अभी भी है। मैं माननीय कानून मंत्री जी द्वारा लाए गए इस विधेयक का समर्थन करता हूँ। महोदय, कंटेम्प्ट ऑफ़ कोर्ट का कानून लाने के पीछे, मेरी जानकारी के अनुसार, मेरी बुद्धि के अनुसार दो बातें हैं और इन पर पहले भी यहाँ चर्चा हुई है। अगर कोर्ट से कोई फैसला होता है तो उसका अनुपालन होना चाहिए। अगर उसका अनुपालन नहीं होता है तो कंटेम्प्ट ऑफ़ कोर्ट की उस पर कार्यवाही होनी चाहिए। दूसरी बात यह है कि स्वतंत्र न्यायपालिका में किसी तरह का हस्तक्षेप न हो। इसके लिए भी कंटेम्प्ट ऑफ़ कोर्ट का कानून है कि अगर कोई न्यायपालिका के प्रति अनादर का भाव प्रदर्शित करता है या इस प्रकार की कोई बात कहता है जिससे न्यायापालिका का अनादर होता है तो उनके खिलाफ भी कानूनी कार्यवाही होनी चाहिए। मैं यह कहना चाहता हूँ कि संविधान के प्रति हम सभी की जिम्मेदारी है, जवाबदेही है कि संविधान का पालन हो। इसके लिए चाहे पार्लियामेंट के मेम्बर्स हों, चाहे ब्यूरोक्रेट्स हों या ज्यूडिशियरी से हों, सभी को संविधान के आदेश का पालन करना है। संविधान में अभिव्यक्ति की स्वतंत्रता है, हम अपनी बातें कहने के लिए स्वतंत्र हैं। महोदय, पिछले कुछ वर्षों से हमें ऐसा लगने लगा है कि ज्यूडिशियरी में भी उन बुराइयों का प्रवेश हो गया है, जिनके कारण आज पोलिटिकल सिस्टम बदनाम है या ब्यूरोक्रेसी बदनाम है। जो लोअर कोर्ट्स हैं, उनमें तो भ्रष्टाचार के बारे में कुछ कहना ही नहीं है, लेकिन हाई कोर्ट्स या जो ऊँची कोर्ट हैं, अब उनकी तरफ भी लोगों की अंगुलिया उठनी शुरू हो गई हैं।

जनता के प्रति और संविधान के प्रति judiciary की भी जवाबदेही है। इस देश की जनता हमारे सभी कार्यों को बहुत पैनी नजर से देखती है और वह चाहती है कि चाहे कोई भी सिस्टम हो, उसमें पारदर्शिता होनी चाहिए। सुप्रीम कोर्ट के जज या हाई कोर्ट के जज क्या कर रहे हैं, उनके आचरण से देश को क्या संदेश पहुंच रहा है या किसी तरह की दूसरी बात हो रही है, इस पर जनता नजर रखती है। अब तो सभी सिस्टमों में पारदर्शिता होनी चाहिए। कई ऐसे जजमेंट आ रहे हैं, जिनमें जनता की नजर में जो दोषी होता है, वह साफ दिखाई पड़ता है कि इसने हत्या की है, इसने बलात्कार किया है, लेकिन कोर्ट से वह छूट जाता है। इसलिए कोर्ट कहती है कि गवाह मुकर गए या पुलिस ने ठीक से केस को कोर्ट के सामने नहीं रखा। ऐसे केसेज में जनता की जो आस्था judiciary में होती है, कभी-कभी वह डिगने लगती है। हम judiciary में, न्यायापालिका में सुधार की हमेशा चर्चा करते रहते हैं, कमीशन बनाने की बात भी चलती रहती है। अब मैं इस बात में विश्वास करने लगा हूँ कि judiciary में भी पारदर्शिता होनी चाहिए और judiciary में भी अगर किसी जज के खिलाफ भ्रष्टाचार के आरोप हों या दूसरी तरह के आरोप हों, अगर वे आरोप लगते हैं, तो impeachment के सिवाय दूसरी बातें भी होनी चाहिए, ताकि जो उनके चरित्र के ऊपर दोषारोपण हो रहा है, उसके बारे में इंक्वायरी की जा सके और कार्यवाही की जा सके।

महोदय, इस देश के जो दलित वर्ग के लोग हैं, जो गरीब लोग हैं, जो पिछड़े वर्ग के लोग हैं, जो न्याय के लिए ऊँची-ऊँची अदालतों में नहीं जा सकते हैं, judiciary को उनके प्रति

भी संवेदनशील होना चाहिए। देश की जो सामाजिक व्यवस्था है, उस व्यवस्था में बड़े लोगों को तो न्याय मिल ही जाता है। और वे खरीद ही लेते हैं - न्याय मिलता है और लोग खरीद भी लेते हैं, लेकिन जो छोटे लोग हैं, जो गरीब लोग हैं- जो पिछड़े हैं, उनको न्याय नहीं मिल पाता है। तो judiciary को देश की बहुसंख्यक जनता के प्रति संवेदनशील होना चाहिए।

महोदय, मुझे याद है कि बरसों पहले सरकार ने पटना में किसी मंदिर को तोड़ने का आदेश दिया था, शायद वहां पर सड़क बन रही थी, उधर वहां से एक जज साहब जा रहे थे, तो उन्होंने वहीं गाड़ी रोककर फैसला दे दिया था, पता नहीं क्या होता है, कैसे वह सिस्टम चलता है, दूसरी तरफ अगर किसी की हत्या होती है, किसी का बलात्कार होता है और उस तरफ से अगर जज साहब जाते हैं, तो इसकी ओर उनका कोई ध्यान नहीं जाता है। वही मामला अगर उनके कोर्ट में जाता है, यदि उसमें गवाह नहीं मिलते हैं तो अपराधी छूट जाता है, जबकि जहा से वे गुजरते हैं, उसके आस-पास वह घटना घटी होती है।

**उपसभाध्यक्ष (श्री कलराज मिश्र) :** आपका समय पूरा हो गया है।

**प्रो० राम देव भंडारी :** महोदय, मैं यह कहना चाहता हूं कि देश की जो गरीब जनता है, उसके प्रति judiciary को संवेदनशील होना चाहिए। दूसरी बात यह है कि judiciary system में पारदर्शिता होनी चाहिए, क्योंकि जनता को सारी बातों को जानने का अधिकार है। अब तो Right of Information का बिल भी पास हो गया है। हमारे politicians क्या कर रहे हैं, इसकी जानकारी सबको होती है, जनता हमें सजा भी होती है, अगर हम ठीक से काम नहीं करते हैं, तो दोबारा जब हम लौटकर उनके पास जाते हैं, तो वह जनता हमें चुनाव में हरा देती है। जजों की नियुक्ति का भी mechanism इस प्रकार का होना चाहिए कि उसमें किसी तरह का पक्षपात न हो और judiciary में अच्छे से अच्छे लोगों की नियुक्ति हो। इन्हीं शब्दों के साथ मैं इस बिल का समर्थन करता हूं। आपने मुझे बोलने का समय दिया इसके लिए आपका धन्यावाद।

**उपसभाध्यक्ष (श्री कलराज मिश्र) :** श्रीमती एन.पी. दुर्गा जी, बोलिए। आपके पहले वक्त ने पूरा समय ले लिया है। you nava only two minutes.

SHRIMATI N. P. OURGA (Andhra Pradesh): Sir, I rise to support the Contempt of Courts (Amendment) Bill, 2006. Mr. as per the Contempt of Courts Act, 1971 if anybody scandalises or lowers the authority of any court or interferes with the course of any judicial proceedings, he is liable to be punished for criminal contempt and, if there is a wilful disobedience to any judgment, decree, direction, order or writ, it is a civil contempt.

The contempt of court represents a range of offences and those can be divided into three broad categories. The first one is contempt of publication. The second one is contempt by disobedience and the third one is contempt in the face of the court.

Sir, there are two main reasons to confer the power on the courts to punish people for contempt. The first one is that the courts should be

armed with the power to enforce their orders. Secondly, they should be able to punish obstruction to the administration of justice. We have imported this contempt of court from the British jurisprudence. In Britain, the Law of Contempt was evolved by judges themselves. Later on, they expanded their own powers to punish people for acts of scandalising the court. We have imported exactly this very phrase from British and put it under Section 2 of the Contempt of Courts Act, 1971. So, any imputation of dishonesty to judges or their judgments is regarded as contempt.

Recently, the Law of Contempt has been liberalised in the United States of America and the United Kingdom. In the United Kingdom, it was liberalised on the recommendations of the Phillimore Committee to provide truth as a defence to a charge of contempt. So, India has also started amending its Contempt of Court. This clearly shows that the influence of the British is still there on our judiciary.

Coming to the Bill, I would say that, according to the existing provision, even the truth of imputation could not be pleaded in defence. Thus, if one called a judge dishonest and had evidence to prove it, the courts would not allow it on the ground that such an imputation, even if true, would impair public confidence in the administration of justice. The proposed BHi, to some extent, covers this because you are inserting a clause, which permits the truth as a valid defence. But there is a rider. The rider is that it should be in the public interest. I would like to know what is public interest. The word has a very wide meaning. Nowhere, it has been mentioned as to what constitutes public interest.

The other point I would like to know from the hon. Minister is this. Sir, the National Commission to Review the Working of the Constitution recommended the amendment of the Contempt of Courts Act, since the inherent powers of contempt were vested with the Supreme Court and the High Courts. But, in the Pritam Lai case, the Supreme Court had said that its powers of contempt could not be restricted by any ordinary legislation, including the Contempt of Courts Act. In the light of this ruling, how is the Government going to justify the proposed amendment? Is it going to bring amendment to the relevant articles -- articles 129 to 142 -- so as to set aside the judgement of the Court in the Pritam Lai Case? I request the hon. Minister to reply to this question.

Finally, Sir, I would say that there are inconsistencies in looking at and deciding the contempt cases. For example, the Supreme Court in the

Arundhati Roy case has pronounced one day's imprisonment with a fine of Rs. 2,000, in a contempt case. In 1997, a Chandigarh-based professor was imprisoned for six months for making derogatory remarks against a former Chief Justice of India. At the same time, there were others similarly placed who were either ignored or got away with just having been reprimanded. Dr. Kiran Bedi committed contempt of court when she failed to submit an undertrial's medical report to the Supreme Court. A former Law Minister called judges 'rotten eggs'. A former Chief Minister escaped from the contempt in spite of making contemptuous utterances. So, the common man is unable to understand as to which one amounts to contempt of court. Even in England the Contempt law has hardly been used for more than the last seven decades.

Speaking on the-use of this Law, Lord Denning observed, "Let me say, at once, that we will never use this jurisdiction as a means to uphold our own dignity". If such power is necessary for preserving the public confidence in the judiciary, then the same argument would hold good for preserving confidence in the Government, its bureaucracy and police. After all, these are also performing public functions and it is equally important for their efficacy that public confidence in them should also be preserved. So, I would suggest that the best check against their degeneration was their accountability to the people for which it was essential that the people should have the right to freely comment on them and criticise them.

So, I would suggest that the Government should streamline or repeal this outdated piece of legislation to protect the freedom of speech and expression provided under article 19 of the Constitution to every citizen.

SHRI H.R. BHARDWAJ: Hon. Vice-Chairman, Sir, I have listened carefully to all the hon. Members. They have touched various aspects of legal and judicial system, although this Bill relates to a very limited aspect of the contempt of courts. But, since two-three of my senior colleagues have touched very important points, I will respond to them. But, basically, let me first explain why I have gone for this limited measure in the beginning. Sir, as I started from the beginning, after long years of debate on the Contempt Law, both in the United States and in England, I have been carefully studying what happened in the United States. Clearly, there is a view amongst the judges that they should not be afraid of fair criticism, as their integrity and their scholarships will speak for them. Sir, there was the same view in England. I was in England some years ago. When Lord Chief Justice

of England was addressing the Bar, he said that the judges should not be afraid of the criticism because their judgements will speak for them. This is the view which is emerging globally. I am very happy that the earlier Government brought this law. We have in our ethos in India, the Vedas say, *satyameva jayate*. It should not be disputed at all; Nobody should gag the truth. I share what the hon. senior Member said. But, you all know that certain safeguards are given to institutions for discharging of their duties. Just like the Members of Parliament, or, cumulatively, the Parliament has certain privileges so that they can make speech fairly; they can vote fairly. Similarly, the Judiciary has been given this protection, against scandalising, or, for getting their orders obeyed, by way of 'the contempt of court', for smooth functioning of the institution. The public servants enjoy the safeguard of the sanction to prosecute. Some institutional safeguards are provided to all institutions so that they can discharge their functions fearlessly, independently and to the satisfaction of the people of this country.

Now, this Contempt Law, I personally see, is a very bad law, no doubt about it. Because if something is happening within your view, as one hon. Member said, suppose some judge is doing corruption, within your view, and when you are faced with contempt, and you say, "I have seen this happening before my own eyes," There should be no reason that he should be denied the defence, the truth as a defence. So, this is where this law will help. Hon. Member, Shri Ravi Shankar Prasadji raised this issue that the High Courts and the Supreme Court are the courts of records, and they have the powers to punish their own contempt. The lower courts have to recommend to the High Court for punishing a contemtor. But, these courts can straightway take cognizance and send a person to jail. These are constitutional powers. But, as I submitted, when I made my brief remarks earlier, this amendment of the Contempt of Courts relates to the procedural part of it; that article 21 says that the procedure which deals with life and liberty should be reasonable and fair. So, when you say that there is no defence of a matter of contempt, that is not reasonable and fair. I think, this amendment will introduce an element of reasonableness and fairness. But, much remains to be done in tftis Act.

Sir, one hon. Member touched the question of accountability. I would assure this House that after 50 years of adoption of our Constitution, institutions need much more transparency, as one hon. Member said. The institutions also need much more accountability to the people. There was

one time when our founding fathers started functioning in these Houses, the public had tremendous respect for them. There was no reason to criticise them. Each one was a specimen of sacrifice, and they did their job very well. But the lack of probity in public life and lack of transparency in the system of governance, the public has shown some anxiety and there is lot of disquiet in public. Let us acknowledge it. This House took some decisions on certain Members; and that House took certain decision. This is a good beginning of accountability. We should appreciate it and we are proud of it. Similarly, judiciary is a sacred cow. We give respect to the judiciary. But when there is murmuring going on in the country, as you say, we will have to think. I agree with you on this that Parliament is the body, which takes policy decisions; it is not the courts. Parliament will take a decision and policy decisions will be taken by the Government as to what kind of accountability we want for the judiciary. But again, what my hon. friend, Shri Ravi Shankarji reminded, and Mr. Ram for whom I have great respect, he has almost become synonymous with the institution, he is not a person now, we have regards for him, he also says the same thing, but I always bear in mind that judiciary has been assigned a very difficult task, and the confidence which the people reposed in judiciary is much more than what they repose in you and me. This is the situation. Their profile in public is much more higher and people rely on them, 'yes, we will rely on judiciary.' They are prepared to accept verdicts. Therefore, we will be slow in reducing their powers or effecting certain amendments in laws, which reduce their authority of administration of justice. There is no manner of doubt that universally all over the world, there are two things for which the democracy stands - independence of Bar and independence of judiciary. There are no two-opinions world over and these are the two professions, which are very, very venerated and respected professions. Judiciary has gone up but the Bar, of late, does not enjoy that kind of respect of the people because of the decline in the standards of Bar. That is a separate issue. But they are the two who are the defenders of rule of law. There can be no rule of law unless these two are strengthened. Can there be a rule of law if there is no intervention by judiciary, no interpretation of Constitution? Arbitrariness of the State - who checks the arbitrariness of the State in which Ministers are included? It is the judiciary, which goes into the actions of the Executive and declare them. Therefore, they perform a very difficult task. And this has been assigned by whom -- by the Parliament only. I always remember what Nehru said in the Constituent Assembly 'we want first-rate judges, the judges who are independent and

who can correct us when we go wrong.' This is the role, which has been assigned to judiciary. We would not like to minimise this role if we are the successors to that legacy. But also I share the concern of those hon. Members who have shown it that if there is an erring member of the judiciary, there should be a method, there should be some check. On that, I am cognizant of that fact. What hon. Members have spoken that two former Justices made some stray observations. Let me tell you frankly and confide in this House that I have been in touch with Justice Khare also recently when he said that there is corruption in judiciary. Similarly, Justice Sam Bharucha also said certain things. I was not the Minister. Either Mr. Ram was the Minister or Mr. Arun Jaitley was the Minister. But after that, immediately when I assumed office, I immediately made a study of what kind of accountability we should bring into judiciary. I must take the House into confidence that I have studied the Canadian provisions, the American provision and of some other countries. We have already drafted a law on National Judicial Council, which will go into the complaints of misconduct against sitting judges. I had consultation with the earlier Chief Justice, Justice Lahoti. He wanted to see it. So, I discussed it with him. Then there was a suggestion emanating from judiciary that it is a good beginning, but why cannot you have a Law Commission review on this. So, I also consulted the Law Commission.

I have received it back and I have discussed it with the leading members of the Bar. There is unanimous demand that such a law should come. When we want transparency and accountability -- Parliament is accountable to people, the Executive is accountable to Parliament -- Judiciary should be accountable also to a certain extent. But considering the delicate nature of their work we are asking for an inhouse procedure like we have in other countries, democratic countries. Their own peers will go into it. As a matter of fact, you must have come across Justice Venkatachaliah who had laid down certain guidelines, some guidelines for judicial accountability but they have not been followed. Like we have the Ethics Committee the report of which was given to us. The same procedure for disclosure of conflict of interest, the accounts, their liabilities, their assets, all these were also prescribed for judiciary. But they have not been followed up; and as you say, the High Court judges say, "we are not the subordinate court to the Supreme Court". The Supreme Court has no supervisory control over the High Court. We are independent. So, in order to do away with all these anomalies, we have drafted a law on judicial accountability that if there is a complaint and the complaint is worthwhile to

go into that, it will go to their own peers and if their peers decide to investigate that it would be another way of dealing with this. We are giving interim powers to their press in that law to withdraw work or to ask them to resign. All these provisions we have borrowed and we have drafted it and we will be coming to the House on that issue. Combined with a little work on the Contempt Law and a lot of work on judicial accountability, if there is a provision there also that if a man complains to the peers about the misconduct of a judge, will that amount to contempt? No, that won't be contempt. So, with all these aspects, despite our desires, personally, I am a very aggressive lawyer. He knows it. All those lawyers who practice criminal law are aggressive in nature rather than the civil lawyers who are little slow to act. But I spoke recently about the cuts in liberties and civil rights in a forum. My own brothers filed contempt against me. As a Law Minister I had to feel very sorry that when I am invited to a seminar, where we discuss the question of bail and question of trial. These days you are facing prosecution. The lawyer hastened to file a complaint against me.-But I am very happy to note that Supreme Court and courts also have changed their attitude. They are not rushing for contempt anymore, as they used to earlier. In Shiv Shankar's own case, which hon. Member referred to, the Supreme Court ignored those observations and they said, 'no, we will not go into it although the Law Minister has made these observations'. They did not issue a notice. So, if the Bar is powerful, it is not really necessary to abuse judges or say anything against them. If the Bar is performing its duty and senior members of the Bar have the guts to address what they ought to address to the court, I don't think larger amendments of law will not be required. If you can argue your case properly and the judge hears you properly, I think, it has gone on for a long time, I have seen very senior counsel, eminent counsel saying certain things and judge is accepting it, although sometimes it may offend a judge. I have seen and Ram is famous for that. He does not feel that his defence he cannot project, even though it may offend a judge. But this is an area where you can run and not rush through amendments. Step by step we will go. We will honour what he wants. We will honour what the Venkatachaliah Review Committee said and we will honour what future wants in the country. Future wants proper accountability of all the institutions which have powers because absolute power corrupts. That is well said and we accept it. The Executive has been curtailed by judiciary but it is the duty of this House, the Parliament to see that judiciary also functions within the demarcated area. There is a debate already going on. What is the scope of separation of



power and -what is the scope of adhering to various powers which have been bestowed on the various institutions, the pillars of the State.

Now, these are not the matters which I will discuss here. Let us have a debate on the functioning/state of the judiciary in the country. There are so many things - modernisation of judiciary, slow process of law, disposal of cases, etc. - which can be discussed. All these are matters which we can discuss at an appropriate time. But, this is a good beginning. It was made by the earlier Government. There is no doubt about it. We have followed it up. Now, we are jointly passing it. Our task will not end with this. It is rather a beginning for taking things to the logical conclusion. I have noted the speech of the senior Member and I have also noted other observations made by the hon. Members. They will be kept in mind. As I said, today, the public perception of judiciary is such that you cannot say that ours is better. So, we will pass this law and, thereafter, continue our study of updating Law of Contempt and if it is necessary to keep only the word 'truth' and do away with 'public good', or, 'bona fide', we can look into that. As a matter of fact, 'public good' and 'bona fide' exist in various statutes. Anything done in good faith is not an offence. Anything done bona fide is not an offence. But, I personally feel the very opening of the defence of truth is a good beginning. And, you can build your case properly around this. I had to face contempt proceedings. I argued it myself and I won my own defence in a famous live-judge case and the court went into my favour when I demonstrated that I was not at fault, but it was the judge who was at fault. It was a famous case of Bansi Lal in Haryana in 1979. The counsel should be bold enough to put forth his case. Counsel cannot be browbeaten in the court, whoever it is. Therefore, we have to do so many things in order to see that judiciary is accountable. I am taking the steps one-by-one. I need your support. You are kind enough to support me here.

**श्री जय प्रकाश अग्रवाल :** सर, एक मिनट ।

**उपसभाध्यक्ष (श्री कलराज मिश्र) :** अभी नहीं, पहले मंत्री जी को बोल लेने दीजिए ।

**श्री जय प्रकाश अग्रवाल :** सर दिल्ली में कई दिनों से वकीलों की हड़ताल चल रही है , लोग बहुत तकलीफ में हैं।

**SHRI W.R BHARDWAJ:** I am only explaining to you that you are raising too many issues in this amendment measure. This is a separate issue. Now, on the one hand the hon. Member said something. Look at the state of courts. The Britishers built these courts. All these District Courts, or,

most of the Sessions Courts, are pre-Independence courts. Or, they were constructed in 50s or 60s. At that time, the strength of the Bar was very limited. With the advent of democracy and light going to the poorer houses, the strength of the lawyers has risen in India to one million. That is good. But, we have not provided the infrastructure to courts. Now, the same number of people are not there. A large number of lawyers have come. Now, in Delhi, some courts have been built, other than Tis Hazari Courts. Huge costs -- Rs. 50 to Rs. 60 crores -- have been incurred in decentralizing this. The legal community is not cooperating with the administration. If you have no space at one place, you will have to disperse. Therefore, these are matters where the Bench and the Bar should have talked to each other and they should have discussed it. The Government of Delhi is there.

Sir, on demolition, I am very sorry, the Government must look at the grievances or the problems of the people. There is an elected Government. It should have a policy. Why do you allow unauthorised constructions? This is one question. And, if you allow, it will go on. If you want to condone, you have the power to condone. But, if petitions go to court, the courts will have to listen to them, whether you like it or not. people go to court. How can the court say, 'we decline to entertain your petitions?' if the Government leave areas for the courts, the courts will certainly do something either this way or that way. Even now, a clear-cut policy should come. Either the MCD or the DDA should come out with a policy. There are the institutions. What for they exist? Don't blame judges on this issue. I don't share that perception. The only thing is we should do our job and let them do their job. I can blame the judiciary if they don't work hard. They are working with limited tools. You will have to invest money to improve judicial manpower and infrastructure. That is what I say. Lawyers are not a community which should go on *hartal*. I don't share even that. It should be only a token protest.

**श्री जय प्रकाश अग्रवाल :** वकीलों की जो हड़ताल हो रही है वह तो टूटनी चाहिए।

**श्री हंसराज भारद्वाज :** तुडवाइए न, आप तो लीडर हैं।

**श्री जय प्रकाश अग्रवाल :** हां, तुडवाएंगे, आप मालिक हैं।

**उपसभाध्यक्ष (श्री कलराज मिश्र) :** आप कंक्लूड कीजिए।

**श्री हंसराज भारद्वाज :** सर, मैं इनसे विनम्र निवेदन करता हूँ कि ये दिल्ली के नेता हैं। आप उनको समझाइए -- बच्चों को कि वे हड़ताल तोड़ दें। उनकी दिक्कतें हम दूर कर

देंगे। मैंने तो वहां 25 साल प्रेक्टिस की है। लॉयर्स की हड़ताल बिल्कुल नावाजिब हैं। सुप्रीम कोर्ट भी परेशान है, हाई कोर्ट भी परेशान है और लोग भी परेशान है। हम वकील लोग यह समझते हैं कि सारा कुछ, यह सारा देश सिर्फ हम लोगों के लिए बना है। हमें सेवा भाव से जनता की सेवा करनी चाहिए, तभी यह काम ठीक होगा। इसलिए मैं सभी सदस्यों का धन्यवाद करता हूं, जिन्होंने इसका समर्थन किया। अभी बहुत काम बाकी है, जेनरेशन को मेहनत करनी पड़ेगी। The British took so much time. Now, it is for us to develop. We are an independent country. Let us develop first-rate institutions of Judiciary/Bar, then, only all our problems will be solved. You have to compete with the best in the world. So, try to be the best in the world. This is the time when younger generation will be charged to do this work, and I am hopeful, Sir, that our institutions, despite lack of infrastructure and financial support, have done very good work. I agree with hon. Shri Ravi Shankarji when he says that rule of law is the primary concern. If rule of law does not prevail in the country, democracy will not survive, and that job, enforcing of rule of law, has been entrusted to lawyers and judges. People respect us; let us maintain our respect. Sir, I commend that this Bill be passed.

**उपसभाध्यक्ष (श्री कलराज मिश्र) :** अब मैं प्रस्ताव उपस्थित कर रहा हूं। प्रस्ताव यह है:

“न्यायालय अवमान अधिनियम, 1971 का, लोक सभा द्वारा पारित रूप में, और संशोधन करने पर विचार किया जाए।”

**प्रस्ताव स्वीकृत हुआ**

**उपसभाध्यक्ष (श्री कलराज मिश्र) :** अब हम प्रस्ताव पर धारावार विचार करेंगे।

**धारा -5 विधेयक का अंग बनी**

**श्री हंसराज भारद्वाज :** महोदय, मैं प्रस्ताव करता हूं:

कि विधेयक पारित किया जाए।

**प्रस्ताव पर मत लिया गया और पारित हुआ**

The House then adjourned for lunch at fifty-four minutes past one of the clock.

The House reassembled after lunch at thirty-three minutes past two of the clock,

MR. DEPUTY CHAIRMAN in the Chair