THE ST. JOHN AMBULANCE ASSOCIATION (INDIA) TRANSFER OF FUNDS (REPEAL) BILL. 2001

SHRI A. RAJA: Sir, I move:

That the following Amendments made by the Lok Sabha in the St. John Ambulance Association (India) Transfer of Funds (Repeal) Bill, 2001, be taken into consideration, namely:-

"ENACTING FORMULA

1. That at page 1, line 1,-
for "Fifty-second" *substitute* "Fifty-third"

CLAUSE 1

2. That at page 1, line 4,-
for "2001" *substitute* "2002"

The question was put and the motion was adopted.

SHRI A. RAJA: Sir, I move:-

"That the Amendments made by the Lok Sabha in the Bill be agreed to."

The question was put and the motion was adopted.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 2000.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI ARUN JAITLEY): Sir, I move:

"That the Bill further to amend the Code of Civil Procedure, 1908 and to provide for matters connected therewith or incidental thereto, be taken into consideration."

Sir, originally, the Code of Civil Procedure (Amendment) Bill, 1997, was introduced in this hon. House, on the basis of which the Bill was approved in the year 1999. But, before the amendments could be notified, there was a protest by some sections of the Bar all over the country. And the then Law Minister, my distinguished predecessor, Shri Jethmalani, made

a statement in this hon. House that the law would not be notified. There was also a request from various sections of the House that some provisions of it may, perhaps, require a reconstruction.

It was stated at that time that discussions would be held with the Bar and, thereafter, if any amendments were necessitated, the same would be introduced in the hon. House. Sir, thereafter, I had a series of meetings with the representatives of the Bar, representatives of the Bar Council of India and other Bar associations, with the Law Commission; and, after the series of meetings that we had, some amendments to the Bill which were approved by this hon. House in the year 1999, were introduced by me. These amendments were then referred to the Standing Committee. The Standing Committee, after approving a large number of them, had suggested some alterations with regard to some of them. I will just elaborate as to which we have been able to accept. If i may just give the nutshell of what the impact of the proposed amendments is, as introduced by me in the year 2000, which are also amendments either to the principal Civil Procedure Code or amendments to the proposal which was approved in the year 1999; and, on the basis of the recommendations of the Standing Committee, what changes we have introduced. Sir, these are broadly in the following categories. In the first instance, we have now introduced a provision which was not there in the original CPC or in the 1999 amendment, which states that a court, while regulating its hearing, will be entitled to fix and allocate the time required for oral hearing, that is for oral arguments, and may also give an opportunity to the parties to supplement the rest of their submissions in writing. The second aspect is - this is intended really to cut down delays because, as we see, the entire problem of judicial reforms in India, one of the principal criticisms which is made against us, is that our procedures are awfully slow -- now there is no time limit on the delivery of judgments by the court, and, therefore, it has been suggested that judgments should be delivered within 30 days of the hearing; and in case an extension of time is required for reasons which the judge will record, it can be extended ordinarily but not beyond a period of 60 days.

The third amendment which was not there in the original Bill, but which is on the basis of the 144th Report of the Law Commission is this. There were conflicting judgments by various High Courts as to whether a court can execute a decree outside its own jurisdiction. We have clarified that it cannot. The second also is intended to remove a possible confusion on account of the Report of the Law Commission that if any attachment order is passed by a court, and a transfer of property takes place

subsequent to the attachment, then this transfer of property itself will be void and will not affect the earlier attachment which has already taken place. Sir, one of the criticisms which was made against the 1999 amendment was that there were certain categories of orders passed by a single judge of the High Court against which no right of appeal was given; and the right of appeal which was there originally had been taken away, particularly, orders passed under articles 226 and 227. That right we are restoring, that is, against every judicial order which is passed, at least, one right of appeal would be there to correct an error into which the single judge could have fallen. But where a single judge exercises an appellate jurisdiction, against that, the second right of appeal before a Division Bench is not provided.

Sir, there is also a considerable amount of delay which is noticed in the case of service of summons. The 1999 amendment made one very progressive change that, it allowed various other methodologies of service, other than the traditional methods, through process fee and court processes, etc., and by registered post; it allowed electronic transmission of service of summons. But now, we have found that in addition to the postal services, there are parallel courier services which are being run across the country, and, in some cases, service of summons itself takes very long time. We have, therefore, said that every court, whether it is a High Court or a district court, will have a panel of approved courier service agencies which will also be entitled to serve summons. Their experience of the system has been that they have been quite expeditious in the process of serving.

Sir, there were two points of criticism which were made against the 1999 Bill. One was that there was a fixed time of 30 days which was given for filing a response to a case. The Bar Associations had expressed an opinion that if you have a fixed time, with no provision, in any exigency, for extension of that time, then there could be a hardship caused in certain cases, particularly, to the poorer sections of the society; people may have to arrange for money to pay their lawyer's fee; people in rural areas may actually require to travel to district headquarters in order to engage lawyers, collect all documents, collect all facts; there may be cases where a person may be unwell and, therefore, for him to file it in 30 days, under all circumstances, may not be possible; and if he does not file it in 30 days, adverse consequences would be attracted because the judge is powerless, if he does not file his reply within 30 days.

We have now said that, ordinarily, it should have to be filed within thirty days; but a discretion has been given to a judge to extend this period

further by sixty days, not more than sixty days, for special reasons, if he has to record in writing. So, the ordinary period of reply will remain* thirty days, with some power of extension, which a judge may himself have.

Similarly, Sir, the power of amendment of a pleading, whidh was taken away by the 1999 Amendment, also attracted a lot of commerrt, particularly, because in some cases, new factors may arise. The law may change. Subsequent facts may arise in a given case, which it may be necessary in the interest of justice, to bring it to the notice of the court. And adverse hardship would be caused, if those facts can't be brought to the court, and, therefore, some limited right of amendment. The Standing Committee has considered it. We had, in fact, limited the right in our original 2000 Amendment, but subsequent to the recommendations of the Standing Committee, which we have accepted the right of amendment to a large extent, which has been restored which has been mentioned in the official amendment to the Bill which we have introduced.

Sir, there was one area which was not in the original enactment in 1999, which we have now introduced. The longest duration which is taken in the life of a case, is in the recording of evidence itself. When evidence is recorded before courts--as far as recording of evidence is concerned, our experience is, their High Courts have original jurisdiction,-that itself takes time, time to the extent that if the case is fixed for recording of evidence, normally the first date given is after a few years. Therefore, it is a long drawn out process.

We have now suggested in the 2000 amendment, which we had introduced, that courts should have this discretion in delegating the power to record evidence, in his discretion, if a judge feels also to a Commissioner. If a judge feels that he has to record himself on the facts of the case, then the judge could record it himself on the facts of a particular case. The Standing Committee had expressed its opinion, pursuant to which I have made an official amendment, and the effect of the amendment is that, originally, we had created two categories, that in the subordinate courts and in the High Courts, we had provided for a different kind of systems. Now with the official amendment, it is a common system which is available in both, and we have said, "That the examination in chief will be on affidavit, which was also provided in the 1999 Amendment; the cross-examination shall be conducted, either before the judge or before a commissioner, appointed by the judge. This will be determined by the judge, the court itself, depending on various relevant factors, which the judge may

take into consideration. There may be a subject matter where the judge feels that he himself would record the evidence, or there may be a subject-matter where he feels that it can be delegated and instead of taking years before a court, we have also made a provision that when it is submitted before a commissioner, in whom the power is delegated, whose calendar is not as long as that of an ordinary court is, then normally, unless the period is extended, the commissioner will try to return the record of evidence, within a period of sixty days.

Sir, if you see the net impact of all these amendments, we have appreciated what representatives of Bar Associations and the Law Commission had to say, in giving some flexibility in the area of time for filing their responses and written statements. We have added new provisions with regard to"the mode of service, so that those methods could be expedited. We have also tried to compress the life of a case, in terms of recording evidence, or, at least providing an enabling provision under which a judge could delegate the function to a Commissioner, if the judge thinks it appropriate to do so.

We have also tried to empower the judge to regulate the time which is taken in oral arguments itself. We have also tried to give some indications though not a fixed indication that ordinarily, we have given a legislative intention or legislative desire that judgments also should be delivered expeditiously, so that the life of each case itself could be compressed, on account of these amendments.

With these few words, Sir, I commend to this hon. House that this amendment Bill be taken into consideration for approval.

The question was proposed.

SHRI KAPIL SIBAL (Bihar): Thank you very much, Mr. Vice-Chairman, Sir. First of all, I would like to congratulate my distinguished friend and the hon. Minister on having moved this amendment. It was long overdue. My only worry is that when the body politic suffers from an ailment, which is serious and exceptionally serious, what we need is a drastic surgery. I don't think that these amendments go far enough. We need a re-look at the entire Code of Civil Procedure.

I hope in the day? to come the hon. Minister will set up a machinery and within the Ministry will look at various issues because we have now another jurisdiction where matters come to court only after they have been informally tried outside court. It is called examination before trial.

So, much of the work is done outside the court. It is only when lawyers feel that the matter should now go to court, does the matter reach court. Perhaps we need that kind of a system. For that we need training of lawyers, discipline of lawyers and unquestionable integrity both of lawyers and commissioners who participate in those proceedings. Perhaps down the road we shall hope to evolve such a system. But having said that, I just want to make three broad points. The first point that I wish to make is with regard to the provision relating to order XVIII, the First Schedule in order 18, which requires the party concerned to address oral arguments in a case and submit written submissions before concluding the case, the hon. Minister in his opening address said that oral arguments will be supplemented by written submissions. But that is not how the amendment reads. I will read the amendment to the hon. Minister. I am reading 3(a) of the amendment to order XVIII, "any party may address oral arguments in a case and shall before he concludes the oral arguments, if any, submit it if the court so permits, concisely and under distinct heading, written arguments in support of his case to the court and such written arguments shall form part of the record." What the amended provision says is that any party may address oral arguments and shall submit written submissions. It is the other way round. What is mandatory is the written submissions and what is discretionary is oral arguments. My worry is that this amendment is liable to be misinterpreted. Therefore, written submissions are not supplemental to the oral arguments. They are obligatory and the oral arguments are discretionary. So, the hon. Minister would like to clarify at the end so that there is no misapprehension. It should not be as if the amendment is directed to do away with oral arguments and only demands written submission. That would be very, very dangerous for* the entire system because, I think, in our system the emphasis on the written brief is much less and the emphasis on the oral argument is much more. So, that imbalance should be modified. But it should not go the other way round so that we have no arguments at all. I am sure that the Minister will clarify that position as and when he deals with it. That is my first point. My second point is the issue of commissioners. Something that I have told the hon. Minister in confidence outside this House, I have to restate in on the record that we have had a very, very unfortunate experience with the entire arbitration process. We, in fact, amended the Arbitration Act. We brought about the co. ^ept of conciliation ever under the previous Arbitration Act, 1940. Arbitrators, unfortunately, did not rise to the occasion and did not discnarge their functions as arbitrator and as expected of them. We have

had some horrid stories of men in high places misusing the office of arbitrators. Now, once you give this power of commissioners to persons outside the court and allow evidence to be recorded by commissioners, I am afraid that office is liable to misuse and misuse in a very major way. Remember especially in the trial court. Of course, many High Courts do not have the original side jurisdiction, but some do. But at the trial court level, once the examination in chief is by affidavit and cross-examination is at the instance of the commissioner, what goes on.record in evidence is vital for the purposes of determination of the case. That is why the cross-examination should always be before the judge because 'the judge really monitors the cross-examination. He ensures that irrelevant questions are not put. He ensures that the true evidence comes on record as stated by the witness. The whole fate of the case can change if the commissioner does not record what is stated by the witness.

That's my apprehension. I, certainly, will not oppose, my party will not oppose, and I don't think anybody will oppose this legislation. But I want to put that apprehension on record. I have serious concerns about the working of Commissioners, under this new dispensation. And I do believe that this will become an office where manipulations will take place, where clients will be rushing to influence Commissioners through means, fair or foul. That will, in fact, further destroy the sanctity of the judicial system. I know the intention of the Minister is to expedite the entire legal process, and to ensure that people get justice quick and fast. But a remedy with that objective may ultimately boomerang. I only hope that the intent, with which the hon. 'Minister has moved this particular amendment, serves its purpose, and my apprehensions that I have placed on the record of this House turn out to be incorrect. But that is something that you will have to watch. And what happens if at any point of time, you feel that the system is not working well? I would expect the Minister to say that they would review the situation from time to time; and as and when they find that the system is not working well, they would go back to. the original system and would ensure that cross examination would be done only by the judge who tries the case. That is my second point. My third point is regarding another onerous provision that you have introduced in terms of amendment of Order XXXIX, rule 2(B), which you have introduced. This is how it reads, "The court may by order grant injunction under rule 1 or rule 2, as the case may be, on such terms as to the duration of injunction, keeping an account, giving security, or otherwise, as the court thinks fit." I am afraid, once you have this provision in the law, you are liable to give security for granting of

an injunction. The kind of security, the nature of security, can be very, very onerous. If, *prima facie,* the plaintiff has a case, and he is entitled to an injunction, I don't see any legal reason as to why he should be saddled with a disability of having to give security -- either the litigant has a *prima facie* case or he does not have a *prima facie* case. If he has a *prima facie* case, there should be no disability involved in that. There should be no relevance of having a security. If he does not have a *prima facie* case, he is not entitled to an injunction. That is what worries me. The genuine plaintiffs will not be able to give effect to their injunctions because they will not be able to discharge the security conditions imposed at the time of granting an injunction. That is something that we should be concerned about. I am sure, again, the intent with which the Minister has moved this particular amendment is that, in many situations, it has been seen that once an injunction is granted, it is never lifted. It has its effect for several years. Applications moved for lifting the injunction never come up in courts for several years. Therefore, the plaintiff is very happy to have an injunction and not to do anything about it, to ensure that the case does not move further. His lawyer takes adjournments from time to time. So, that is, probably, the reason why the hon. Minister thought that this provision is necessary so that he imposes on the person who gets the injunctions, a disability, in terms of security. But, then, I think that should be left to the judge because jt can also work the other way around. And this, certainly, should not happen in every case. So, I am sure, when the hon. Minister clarifies this issue, he will state that it is not the expectation of the Government that judges will insist that security must be furnished in every case. In fact, only in rare cases, security should, be furnished so that there is no unnecessary burden on the plaintiff who gets an injunction. With these three points, that I wished to make, I comment that this particular amendment of the Code of Civil Procedure, which has come too late, I request that it be passed as quickly as possible by this House, so that it may be given effect to; so that people get quick and fair justice. Thank you.

SHRI BACHANI LEKHRAJ (Gujarat): Sir, I heartily congratulate our Law Minister for bringing this Code of Civil Procedure (Amendment) Bill, 2000. Sir, at the time of the enactment of the Civil Procedure (Amendment) Bill 1999, it immediately transpired that in the name of reducing delays, some hardships would surely be faced by litigants, by parties, and by courts. And at that time, I remember that there were so many representations from the Bar Associations of the Supreme Court, High Courts, and also from other subordinate courts. The Bar Council of India

also passed some resolutions, and sent some representations, and our Law Minister considered all these representations, and the CPC (Amendment) Bill 1999 was not given effect to. Accordingly, within no time, the Law Ministry brought this Amendment Bill, and after two years, we are discussing this. By this Amendment Bill, courts, advocates and litigants, who were anxiously waiting for this Amendment Bill, will feel relieved and, henceforth,. courts would work smoothly.

Sir, in this proposed Amendment Bill about 11 items or points are covered. And the main object of the Amendment is to give proper justice to the litigants. Delay may not be caused intentionally, or by any reason, and the work of judiciary would be conducted smoothly by this proposed amendment.

Sir, the first amendment is regarding the service of summons; how summons can be served, and regarding filing of written statements. There were some provisions in the CPC (Amendment) Bill 1999, due to which the defendants were facing some difficulties. But, by making an amendment, service of summons is sought to be made in such a way that a lot of time of the courts will be saved. At present, we see that for months and years many times, the defendant is not tractable and the matter is left pending in courts. And, now, some opportunity is being given to the plaintiff; he will locate, he will see. And courts are given some resources, couriers, etc., so that search can be made in time.

Sir, the second item, which is covered by the proposed amendment, is regarding documents to be produced by the plaintiff and the defendant. By the last amendment Act of 1999, provisions were made in such a way that subsequent to the written reply, if anything was found with the parties, some documents that they could not produce earlier could be produced now. So, the old position has been restored. Rule 14 of Order VII in the First Schedule, of Civil Procedure Code, 1996, do not provide any opportunity to the plaintiff or the defendant, as the case may be, to produce documents at the hearing of the suit. So, the previous position has been restored. Mr. Vice-Chairman, Sir, the third item is regarding pleadings by parties. "The court may at any stage of the proceedings allow either party to alter or amend his pleadings only where it is satisfied that either new facts have come into existence subsequent to the institution of the suit necessitating the amendment or the amendment which is necessitated by change in law." For this purpose, rule 17 of Order VI is being restored. If

that is not restored, then, certainly, hardship will be faced by the parties. So, it is in the interest of justice.

Then, Sir, fourth item is regarding amendment of issues. It is also one kind of a procedural amendment, but from the point of view of delivering proper justice to parties, the thing which was omitted has been restored. Under rule 5 of Order XIV, of the Court, "amendment of issues or framing of additional issues may be allowed."/ This will also be omitted from the previous enactment.

Mr. Vice-Chairman, Sir, the fifth item for the proposed amendment is regarding grant of temporary injunction, under rule 1 or 2, of Order XXXIX. Sir, in this provision, some discretion has been given to the concerned court to order some terms-and conditions while issuing the injunctions. Naturally, it will be proper that that temporary injunction does not continue for years together. If terms and conditions are mentioned, then, proper justice will be done.

Sixth point is regarding the time limit for the arguments. Mr. Vice-Chairman, Sir, there was a provision for oral arguments. My learned friend, Shri Sibal, has said that one is discretion, the other is compulsory. I do not see that written arguments will be compulsory for the parties, but it will be one additional chance will be given to the parties. If they could ,not argue at the time of arguments or something was left, or, something was traced afterwards, then, they would get one opportunity for submitting the written arguments. In that way, matter will not be lengthened and parties, both sides, will be given a chance to give additional arguments, if they want, by written arguments. Then, Sir, regarding the recording of evidence. Sir, much time used to be taken in courts, at the time of hearing and recording of evidence, and so many adjournments used to be given. The witness is not present. He is not present for examination-in-chief. He is not present for cross-examination. So many reasons will be given. To do away with this delay and inconvenience, this provision of evidence to be recorded by the Commissioner is there. Actually, it is a very drastic amendment which will be in the interest of the parties, and matters will be disposed of by the courts in time.

Next item is regarding judgments to be pronounced by the courts. Mr. Vice-Chairman, Sir, we have seen that arguments are heard by the court and even dates for pronouncing judgments are also given to the parties. But, Sir, what happens is that, in the meantime, so many weeks

and months elapse, and the judge, under whose jurisdiction the hearing of the case is going on, is transferred. As a result of it, the whole matter is heard by a new judge again. Sir, to do away with this procedure, some compulsion is cast on the courts to give the judgement within 30 days. If it is not done within 30 days, then a provision of 'within 60 days' has been provided.

Then, Sir, so far as the matter regarding appeals is concerned, there was some provision for appeal in the case of money decrees, where the amount involved is more than Rs. 25,000. It was taken away. That position, Sir, is being restored. In some matters, the provision for second appeal was taken away. It has also been restored. So far as amendments in sections 39, 64, 32, 92 and Order XXI of the Code of Civil Procedure are concerned, they are provided for the purpose of clarifications. There is no new provision. But in order to clear the matter further, some amendments are proposed there. So far as section 39 is concerned, it has been clearty •' said, "Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction." As, sometimes, it happens that an Executive Court may give orders for the property which is not under its jurisdiction. So, that matter is also somewhat clarified. In the same way, it has been said, "Section 64 of the principal Act shall be renumbered as subsection (1) of that section, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely :-

> "Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment."

Sir, it is in the interest of the party or the plaintiff who has got the decree in his favour so that the property which is under attachment may not be mismanaged.

In the same way, it has been said, "For section 100A of the principal Act, the following section shall be substituted, namely :-

> "Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a

single Judge of a High Court, no further appeal shall lie from the judgement and decree of such single Judge."

In the same way, with regard to Section 102 of the principal Act, it has been said, "No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees."

So, Sir, my humble suggestion is that all these 11 items, which are covered under the proposed amendments, are mostly procedural in nature and are in the interest of justice. Prior to bringing this amendment Bill, the Bar Council of India was consulted, various legal luminaries were consulted, and, on this, the Law Commission has also submitted various reports. So, after taking into consideration all these things, the hon. Law Minister has brought this amendment Bill. I fully support this Bill, and I hope that it will be passed by the House unanimously. Thank you, Sir.

SHRI A. V1JAYA RAGHAVAN (Kerala): Thank you, Mr. Vice-Chairman, Sir, for giving me an opportunity to speak on this Bill.

Sir, in our country, we are having a dubious record of long litigations and pending cases before the civil courts. If a poor litigant enters into alitigation, he has to wait for years and years for getting the judgement. So, I think, this is a positive step from the Government side. This is an effective step which has been taken by the Government to accelerate the process and to help the litigants. Sir, I would like to congratulate the hon. Minister for having taken the initiative to have wider consultations with all sections, belonging to the legal hirarchy. It is a good thing that he has accepted .most of the recommendations of the Standing Committee. My learned friends, while participating in the discussion, have already expressed their views. We are more or less unanimous in agreeing to the suggestions made by the hon. Minister. There is only one area in which I have a reservation. It is regarding appointment of Commissioners. There is an apprehension raised by lawyers' associations and legal experts that greater authority is being given to the Commissioners. They are getting greater chance to take evidences and to record the demeanour of the witnesses, objections, etc. A suggestion was made that the existing pattern should continue, even though there is unanimity on other aspects.

In the case of appointment of Commissioners, there is a possibility of corruption and underhand dealings. The Government should come

forward to clarify the position because some suspicions are still there and they have not yet been cleared by the hon. Minister during his speech.

There is also a feeling that after this Bill is passed, the entire process will automatically get accelerated. There should be no such complacency. Some assurance should be given. Lakhs of cases are still pending in courts and people feel that once they enter the courts, they will have to wait for a number of years before they get justice. There has to be a comprehensive plan along with this amendment, in order to hasten the process of getting justice.

Sir, we have a problem. The rights of the poor litigants are to be safeguarded. To achieve that end we have to change the entire judicial pattern. At present we do not have suficient number of courts at the lower level. That is why the poor litigants have to go to the district headquarters. That aspect also has to be taken note of.

Sir, a large number of posts of judges are lying vacant. The process of filling up these posts is very slow. Undue delays in the appointment of judges should be removed, and there has to be some transparency in their appointments. After their appointment, they should be imparted necessary training.

We are now making a provision that the judgment should be delivered within a stipulated period. It would be useful only if the trial process is also speeded up.

My humble suggestion is that while we are passing this amendment Bill, there should be a comprehensive programme by the Government to change the system in order to accelerate the whole judicial process. I hope, while replying, some such assurance will be given by the hon. Minister. Thawk you.

SHRIMATI S.G. INDIRA (Tamil Nadu**):** I thank you, Mr. Vice-Chairman, for giving me this opportunity.

it has been mentioned that the objective of the Bill is to avoid delay, which causes hardship to the litigants. In that view, we welcome this Amendment. While we welcome the amendment which is supposed to help

the litigants, we would like care to be taken to see that the rights of the litigants are not curtailed through this Amendment. It has been provided that the plaintiff should produce documents and pay the requisite fees for service of summons on the defendants within seven days from the date of the order by the court for issue of summons. This provision, no doubt, should be welcome.

Another provision is that the summons may be served through private courier agencies approved by the court. Here, one would like to know on what basis the court is going to approve a private courier. It should not give rise to creation of more litigants and more problems. But for this aspect, this provision should also be welcome.

My third point is this. It is provided that the written statement should be filed within 30 days from the date of service of summons, but, if the court deems it fit, by a petition, the time may be extended up to 60 days. I think, through this amendment, they are only giving more powers to the court and no additional facility to the litigants. Sometimes, within 30 days, we cannot obtain the proper documents from officials, from somewhere else. So, I feel that this provision should be modified to the effect that the written statement should be filed within 60 days after the receipt of summons and if the court deems it fit, it can extend the time by further 60 days. Through such a provision, we will give powers to the court as well as rights to the litigants.

Another provision is that the documents should be furnished at the time of hearing the suit and after that, no chance would be given to the plaintiff or the defendant, at a later stage, to file documents. I feel that all the documents need not be obtained at the initial stage itself. Even at a later stage, important documents may be obtained. Therefore, I oppose the provision regarding this aspect.

Yet another provision is that the court may, at any stage of the proceedings, allow either party to alter or amend his pleadings, if it is satisfied that either new facts have come into existence subsequent to the institution of the suit or the amendment is necessitated by change in law. The defendant also has the privilege of prolonging the proceedings! He may file amendments on issues and he may go to further litigation. This may create more delay in the disposal of the suit. So, on this count also, I oppose the amendment.

A new rule 5(1) under Order XIV is sought to be inserted to enable the court to frame additional issues. I welcome this provision.

By clause 15 of the Bill, rule 2, sub-rule 2 is sought to be omitted and a new rule 2B is sought to be introduced. It provides that the Court may by order grant injunction under rule 1 or rule 2, as the case may be, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit. I welcome this provision for not insisting on security in obtaining an injunction.

The Bill also seeks to provide that a time-limit for oral arguments by the parties may be fixed and with the leave of the court, the parties may be required to submit written arguments before concluding the oral arguments in case. I welcome the Bill on this score too.

I oppose the provision that a Commissioner may be appointed and before him, the cross-examination and re-examination can be done. The judicial officer pronouncing the judgment in case should know the nature of the parties and the nature of the case and the judicial officer, who is on the chair, to observe the proceedings of the case at the time of the chief examination and cross-examination, may come to a definitive conclusion, and after hearing the arguments of both parties, he is psychologically able to pronounce the proper judgment. I oppose this point.

Further, the judgment ought to be given within a definite time frame, after the case has been heard. I support this point.

Then, the appeal to the Division Bench of the High Court in writs under articles 226 and 227 of the Constitution shall be restored. Section 10 of the Code of Civil Procedure Amendment Act, 1999 has abolished the appeal against the judgment of the Single Judge of the High Court in all cases. Now, I support this point, not for the writs under article 226 and 227 of the Constitution of India. Section 10 of the Code of Civil Procedure should stand in all cases, and not only for the writs under article 226 and 227 of the Constitution of India.

The next point is, no second appeal shall lie in the money suits where the valuation of the suit is below Rs. 25,000/-. I oppose this point, because if the valuation of the suit filed by the party is below Rs. 25.000/-, he cannot go to the second appeal. I oppose this point, and the said amendment should be deleted.

Finally, I would like to emphasise that the amendment should be comprehensive. It should not be a piecemeal legislation. There are many

3.00 P.M.

other ways of reducing the long delays. For instance, the vacancies, which are there in various courts, should be filled up on war footing. There are a number of posts of judges lying vacant in various courts. The same should be filled up expeditiously. The number of judges should also be increased. In all the States, at the district level, Family Courts should be set up, and the Central Government should assist the State Governments in setting up Family Courts in every district of the State. In conclusion, I would like to say that the amendment brought forward by the Minister is a piecemeal amendment. It is not a comprehensive amendment. So, I support some provisions and oppose some provisions of the Bill. Thank you.

SHRI RANGANATH MISRA (Orissa): Thank you, Mr. Vice-Chairman. I have only a short point. Sir, experience shows that injunctions are obtained and they are allowed to continue or arranged to continue for long. There should be a limit that within ten weeks or three months, the *ex-parte* interim injunction obtained, should automatically lapse, unless before that date, the injunction is varied, or, is extended after hearing the parties. It is a suggestion which the hon. Minister may kindly consider. Very often, after obtaining the interim order, no further action is taken by the plaintiff. So, this suggestion may be considered and inserted.

श्री सघं प्रिय गौतम (उत्तरांचल). उपसभाध्यक्ष जी , इस सशोधन की मंशा सिर्फ इतनी थी कि अदालतो में मुकदमों की सुनवाई मे देर न हो । जितना मुकदमों का अंबार अदालतो मे लगा हुआ है वह और आगे न बढे और उनकी संख्या कम हो जाए । इसलिए इसमे ये संशोधन लाये गये है । कपिल सिब्बल जी ने दो सुझाव दिए है, उनमे से एक का मै समर्थन करता हूं तथा एक का विरोध करता हूं तथा उसमे और कुछ जोड़ना चाहता हूं ।

जहां तक क्रास – एक्जामिनेशन की बात है, उन्होने सही कहा कि यह उसी पीठासीन अधिकारी को करना चहिए, जिसने बयान लिखा है हमारे मास्टर जी प्राइमरी स्कूल मे पढाते समय कहते थे कि जो आदमी असत्य बोलता है उसके मुंह से मेंढ़क निकलते है और जो सच बोलता है उसके मुंह से फ़ूल झड़ते है । जो आदमी सच बोलता है वह अपनी बात को जल्दी – जल्दी कहता है, बिना कौमा , फ़ूल स्टाप के कहते हुए चला जाता है । इस प्रकार उसके हाव- भाव से पता चल जाता है कि वह सच बोल रहा है । जो आदमी अटक-अटक कर, सोच-सोच कर रूक-रूक कर बोलता है, तो इसे वही अदालत देख सकेगी जिसके सामने उसने बयान दिया है । **...(व्यवधान)...**

श्री कपिल सिब्बलः गौतम जी, आप बहुत जल्दी-जल्दी बोल रहे है । इसीलिए आप सच बोल रहे है ।

श्री संघ प्रिय गौतमः वह अदालत उसके हाव-भाव को देखकर अंदाजा लेती है । इसीलिए अभी बोलने वाली मैडम ने ठीक ही बात कहि है कि वह बयान सही निर्णय देने मे सहायक होता है । इसलिए मै उनकी बात का समर्थन करता हूं । लेकिन दूसरा जो संशोधन **ऑर्डर** - 39, रूल -2 में है – जो आपने कहा – मै इसका विरोध करता हूं और एक दूसरा सुझाव देता हूं । यह जो प्राइमा फेसाई केस वाली बात है, आज तक इस पर विचार नही किया गया है । भूतपूर्व प्रधान न्यायाधिश भी यहां बैठे है । प्राइमा फेसाई केस प्रॉपटी में किसका होता है ? जिसकी अपनी प्रॉपटी हो । और अपनी प्रॉपटी कौन-सी होगी ? या तो दादालाई प्रॉपटी हो, या उसका बैनामा हुआ हो । want to draw your attention, Mr. Sibal – या तो दादालाई प्रॉपटी हो या उसने प्रॉपटी खरीदी हो , बैनामा हो या उसको गिफ़्ट हुई हो, दान मे दी गयी हो और उसने स्वीकार की हो याउसके नाम पट्टा हुआ हो । अगर इनमे से कोई भी चीज नही है तो यह अनऑथोराइज पोजैशन है । *Prima facie,* it does not have a case और वह आदमी इंजक्शन सीक करता है तो कमजोर आदमी को वह उसको ट्रांसफर नही होने देगा । दूसरा , अगर वह प्रॉपटी कोई सरकारी जमीन है और किसी जनहित के काम के लिए चाहिए तो वह जनहित का काम किसी एक आदमी की वजह से सफर करेगा इसलिए *Prima facie,* it does not have a case मेरा कानून मंत्री जी से सुझाव है की वह इसमे संशोधन लाए । इससे जनहित के कामो का बड़ा नुकसान हो रहा है । महोदय, मै आधे मिनट मे समाप्त कर दूंगा । नगर पालिका की एक जमीन थी और वहां पर वह स्वीपर्स के लिए 200 क्वाटर्स बनाना चाहती थी । एक आदमी ने अनऑथोराइज कब्जा करके , दीवार बनाकर फैक्टरी का एक फर्जी ढ़ांचा खड़ा कर दिया और फिर कोर्ट मे चला गया । इंजक्शन मिल गया । कह दिया, I have got a case, and if injunction is not granted, I am likely to suffer an irreparable loss. यह गलत है और इन लोगो ने जो कानून बनाया है, यह बड़े लोगो के हक मे है । इसलिए इसमे संशोधन होना चाहिए । वह जो शर्त बताई है, वह बनाई ही इसलिए है कि ऐसे आदमी जो करोड़ो रूपये की सम्पत्ति पर – आपका जो सैनिक फार्म है, यहां क्या हुआ, इसकी स्टोरी आपको मालूम है – कोड़ियों मे पट्टे कराकर लोगो ने करोड़ो रूपये की गांव की, समाज की जमीन का ट्रांज़ैक्शन कर लिया , गाँवो और समाज की जमीन गरीबो के लिए काम आती है । इसलिए मै आपके इस सुझाव का विरोध कर रहा हूं और उस पर लगना ही चाहिए । मै इतना सुझाव देकर माननीय मंत्री जी के विधेयक का समर्थन करता हूं ।

SHRIMATI VANGA GEETHA (Andhra Pradesh): Thank you, Sir, for giving me this opportunity to speak on the Code of Civil Procedure (Amendment) Bill. Sir, I support this Bill. I welcome it. I congratulate the hon. Minister. I also appreciate him for taking initiative to relook into the provisions which could cause hardship to the litigants. Thirteen amendments are being made in this Bill. A number of Members have raised some particular points. I support all the amendments. The amendment concerning the service of summons is a very good amendment because we have to cut short the delay. The provision to allow the courier service will be very helpful.

As regards the judgement part, judgement should be given within the stipulated time frame, because justice delayed is justice denied. The poor litigants have to wait for many years to have a judgement. Sir, I support all the amendments. Besides that, I want to raise one or two points. For a variety of reasons, *viz.* the time lag in filling up the vacancies and the refusal to set up benches of High Courts in different regions of the States, the cases drag on for years together, resulting in considerable suffering and expenditure to the litigants. A recent Press-report headline reads: "24 years old cheating case yet to clear first stage of legal journey." It reflects the state of affairs of our judicial system.

Providing speedy justice by cutting short the procedures and setting up more courts and High Court Benches has to be seen in the context of the backlog of 33 million cases pending in different courts. I hope that these amendments would benefit the litigants in practice. Thank you.

SHRI C.P. THIRUNAVUKKARASU (Pondicherry): Sir, I welcome this Bill. When the Civil Procedure Code (Amendment) Bill, 1999 was passed by the Parliament, there was a hue and cry from the side of the lawyers. The Bar Associations and the Bar Council of India also objected to the Bill fixing the date for enforcement of the Act. Taking all the aspects raised by the lawyers into consideration and the Bar Associations, the present Law Minister has taken into confidence all the sections of the lawyers, the judiciary and other people. He invited them and had a frank discussion on the matter. Subsequently, this Amendment Bill has been brought before the Parliament. This saner step has been taken only after the lawyers and the Bar Associations had expressed their anguish. I am thankful to the Law Minister for having brought forth this Amendment Bill.

With regard to disposal of cases, there are three points. One is, in order to avoid the delay, a time-limit has been fixed for filing the written statement. It has been further stated that a judgement should be delivered within a particular period. A period has been fixed by way of this amendment. Above all, a time-limit has been fixed for hearing oral arguments by the court. Within a stipulated period, arguments have to be concluded and, in supplement to that or in addition to that, written arguments can also be filed. These are the saiient features which will *ipso facto* prove, these things are being brought into force to avoid the delay in litigations.

I have a doubt with regard to three points, which the hon. Minister may kindly clarify. As my learned friend, Mr. Kapil Sibal, has said, as far as the injunction under Order XXXIX 2B is concerned, the law requires, if you want to file an application for injunction, that the litigant-public has to give security. There are three things, a *prima facie* case, balance of convenience and an irreparable injury. These are the three requisites that a litigant has to fulfil in order to get an injunction under Order XXXIX. Originally, there was no stipulation that you should furnish security as such. What I submit is, as my learned friend has pointed out, if you don't want to drag the proceedings after obtaining an injunction, fix a period that the injunction will be valid for a period of 30 days or 40 days. If it is there, there is no possibility of extending the injunction as such. Therefore, asking the party to furnish security is not good. In that respect, I submit that the Standing Committee in its Report said that insisting on security was not correct. In spite of that, such a provision has been incorporated in this Bill. I request the hon. Minister to take this into consideration.

As far as service of summons by courier is concerned, under the General Clause Act, if a postal certificate is produced, there is a presumption that it has been duly served. If it is refused, it is considered as duly refused. As far as service of summons by courier is concerned, there is no presumption under the law as such. If the courier agency manipulates, or, delivers it to some other person, or, makes an endorsement that he has refused, there is no provision under the law to take any action. As far as the *amins are* concerned, if he does not serve the summons or makes a false endorsement, the court can take action against him. If the postal person commits a mistake, the Postal Authority can take action against him, in the sense, if a public servant makes a wrong endorsement, you can take action against him. As far as a courier is concerned, it is not a public servant or he is not an officer of the court. Under these circumstances, courier has to be deleted as it is.

Another, point that I would like to stress is this. As far as affidavit is concerned, the chief examination can be done by way of an affidavit. What is the period by which an affidavit has to be filed before the court? It is not stipulated under the Act. Suppose the trial has begun, whether you have to file an affidavit prior to that or after the court has put you on notice that the trial will start from a particular date and you have tw file the affidavit by a particular date. If it is not stipulated, the Counsel will seek for an adjournment. He will say, "I want some more time to file an affidavit", and he will drag on the proceedings for a long time.

If the court passes an order fixing a trial, the court should also stipulate the time for filing the affidavits of the witnesses, for the plaintiff, by. such and such date. Suppose I want to examine three witnesses. I have to file all the affidavits within a particular period of time. Since it is not stipulated, I request the hon. Minister to fix the time; otherwise, they will be continuously dragging on. With these words, I welcome this Bill. This is j the need of the hour. Thank you.

SHRI B.J. PANDA (tJrissa): Sir, I thank you for giving me this opportunity to speak on this Bill. I rise to support this Bill. This august House has the privilege of Membership of a large number of luminaries in the field of law, both from the legal profession as well as from the judiciary. Some of them have spoken and givdfi very illuminating view points on the amendments that Have been proposed. I speak only as a layman. The rule of law 18 fundamental to any civil society and one of the most important measures of the rule of law in the functioning of any civil society Is the efficient functioning of the law. Shrimati Vanga Geetha rightiy said, "Justice delayed is justice denied." The statistics of lakhs of cases which are piled up in the IhdlaTi courts are witness to this fact that justice is undeniably delayed in this country. The phrase 'Pyrrhic victory' was probably coined for decisions finally arrived at in the Indian courts because, by arid large, the time taken is so long that any victory is only symbolic. Sir, the civil procedures have developed in a manner in our country that it opens itself to abuse, not just an occasional abuse but also a systematic abuse. In fact, the legal strategy of many litigants hinges on taking advantage of the delays that are built into the system. Sir, this happens in all manner of cases. This delay which invariably happens, whom does it assist? It assists the wealthy and it assists the strong against the common person and against the weak because those that have economic strength and those that have other kinds of strength and muscle power, have the ability to Stick it out and have the ability to take advantage of the situation while decisions get delayed for years and years together. These delays that have got inbuilt into our system provide both incentives as well as disincentives. It provides incentives to litigants to disregard their obligations, to sacrifice their rights under the law. It provides disincentives in encouraging people to stand up for their rights because the process of going through the courts is so tortuous; the prt.eSS of arriving at any decision, whether good or bad, is unlikely to have any bearing during the lifetime of the litigant that it provides disincentives for anybody to actually stand up for his rights. The rule of law, the efficient functioning of law is fundamental to many other aspects

other than just the civil society. It is fundamental to economic development itself which is a major issue for a country like ours which houses the largest number of poor people in the world. Let me give an example. The comparison in international markets of India's potential *versus* China has been debated for more than 20 years and for a long time it has been mentioned that India suffers from something which I have defined as the democracy tax. I will define it again. Democracy tax is something that calls for an excessive need for consensus-building before the country can move forward on important issues of policy. China does not suffer from this. Their system enables quick decision-making. But we are supposed to be enjoying something as a result of having democracy. We are supposed to be enjoying the rule of law. We are supposed to have a much better established system of rule of law than countries like China have.

But, in reality, that is not the case. In reality, what happens? Justice in China may be summary, but there is justice of some kind, there are decisions of some kind. What we ought to have been having is not only a balance between due process - we cannot have summary justice -but also an efficient and speedy functioning of the system. But, unfortunately, we suffer on both counts. We have an excessive need to build consensus; yet, we do not have speedy justice. There is also a commercial impact to an inefficient system of the rule of law. There is a very poor protection of contractual rights. I should say that this favours the wealthy; this favours the strong and this applies not only to individuals but also to the corporate world. Whom does it favour? This kind of a system favours large companies as against small companies. It perpetuates the *status quo* against introduction of a new and healthy competition. It supports monopolies against new competitors.

Sir, Shri Kapil Sibal has already mentioned about the issue of delays in arbitration. I would like to touch upon it briefly. The process of arbitration, normally, is seen as a means of cutting short the process of going through a judicial process in court. In our country, it has been perverted; arbitration is nothing but a further lengthening of the process.

The system has been abused; the laws that we have in place for arbitration have been abused. This runs across-the-board. Everywhere, there is delay; there is ahuse; there is systematic abuse and there is encouragement for this abu-^{Q}*» by the system itself. So, these amendments that have been brought forward by the hon. Minister are actually reinstatement of certain aspects of due process. This Bill, which was

approved in 1999, did incorporate many, many measures for speeding up the process, for making it more efficient. We have heard about the representations that have been received. And we have heard about the opposition from certain quarters. Almost all these hinge on the issue of due process. Whatever is our system, whatever are our judicial procedures, has to have this balance between speed and efficiency on the one hand and due process on the other. What we have had, historically, for the last so many decades, is undue process. We have had nothing but undue process. Justice is often forgotten in the whole business.

Sir, I will just end in a minute's time. These amendments would not only bring about speed in terms of specific amendments which relate to summons, time-limit for arguments, time-limit for recording evidence and also deleting second appeals in certain cases, but these have also reintroduced due process that I have mentioned, by way of restoring certain appeals, by way of extension of time-limits for genuine reasons, for reasons to be recorded in writing and these, I think, are excellent measures. Before concluding, I would just like to compliment the hon. Law Minister for bringing about this Bill. Many other suggestions have been made by the Members in regard to speeding up of other aspects of our legal system and I urge upon the Minister to take action on those suggestions as he has done on this one. Thank you, Sir.

DR. M.N. DAS (Orissa): Sir, I wanted to speak on this for a few minutes simply because I have suffered litigation for five years and I have 'gained some experience about how the legal fraternity works, how the judicial fraternity works. I am a poor, retired teacher without pay, without pension and I had to fight a case for five years against a multi-millionaire, film-maker, of Bollywood. What was my fault? He wanted me to write 64 episodes on a great historical character and I submitted them chapter-by-chapter. But when I got the information that he was going to sell my script to somebody else to make money, I had to publish my book. That was my fault. I thought the case would be disposed of within a month or so. But, to my surprise, It dragged on for years together. Mr. Law Minister, I appeal to you; when you think of legal reforms, reform of the Civil Procedure Code, etc., would you kindly prescribe a code of conduct for hon. learned members of the legal fraternity?

I would come to the court; my lawyers would come; but the lawyer of the opposite side would ask for adjournments; and the hon. Judge - with all respect, let me say - without thinking, or even pausing for a minute,

would allow adjournment. I had to suffer adjournments seven times. I used to come from my distant place, pay heavily to my lawyers, senior advocates of Supreme Court, and then go back. The case was adjourned seven times. So, I echo the sentiments of the hon. Member, Shri B.J. Panda, that justice delayed is justice denied. Why should the judge allow adjournment? Why should the lawyers from the other side request for adjournments, without any reason? I won the case. But after I won the case, my lawyers advised me that I should file a case for damages worth Rs. 1 crore. For filing arcase like that, what is the court fee? I think, It is Rs.1,20,000 or something like that. I said I was already a pauper; I had sold my lands for fighting this case because to me; it was money power versus moral power; I have won the case; I am not going in for damages because I cannot pay the court fee. I said I am satisfied that I have won the case. The point is: at what cost and how much delay?

DR. L. M. SINGHVI (Rajasthan): It Is often said that justice delayed is justice denied. It is also said, sometimes, that justice hurried is justice buried. This Bill seeks to strike a balance. We have waited for the passage of this Bill for some time. In fact, in 1999, we did pass the Bill. But it aroused some opposition, and I am glad the Government looked into the substance of what was represented to them, and has responded by bringing forth this Bill, which Is well-thought out, and a warm accolade Is due to our Minister of Law for having brought this Bill, though I regret that the Bill of 2000 is being passed now, in the year 2002. It should have also been expedited, just as litigation Is sought to be expedited by this Bill.

(THE VICE-CHAIRMAN (SHRI RAMA SHANKER KAUSHIK) in the ChalrJ

I think the Bill Is addressing a question that has become a chronic malady In our system. The hon. Minister himself has first-hand experience of litigation, and what Is more, he received feedback from the legal profession. On behalf of the legal profession, I should say that what he has done Is very, very satisfactory. This satisfaction comes from the fact that he has not stood merely by what was done In 1999, but has been willing, for instance, to restore the appeals to the Division Bench of High Courts with regard fo writs under articles 226 and 227. The restoration of some of these procedures was necessary, and I think it is a welcome provision that has been brought.

I think, Mr. vice-Chairman, the substance of this amendment Bill Is in expediting the entire process, in condensing and compressing the time-

frame for litigation, which tends to procrastinate itself, which tends to be protracted in our country, very rarely with a good excuse, and very often without any excuse at all. As the hon. Member, Shri Ranganath Misra, pointed out, sometimes an injunction is obtained, and then it becomes a matter of vested interest to delay the disposal of the case. Sometimes, a matter is brought to the court to harass someone, and to allow it to remain there so that the harassment continues. Very often, litigation is protracted and procrastinated because the summons are not served in time, documents are not filed in time, production of documents is delayed, pleadings are insufficient. All this happens mainly because the whole system has become too permissive, and lacks strict discipline.

The law that is now sought to be passed by this House is, I think, also clarificatory. It also restates that which has become established as a matter of law through decisions of courts. This is important, because restatement and reform of law go hand in hand. I think it is very welcome that the time limit for oral arguments has been limited. It is also welcome that the judgments have now to be pronounced within a reasonable timeframe. We know of many cases, I am sure that those of us who have practised at the Bar, all had this experience of a case being argued for a very long time, a year or two years before, and the judgment not having been delivered. When the judgment is delivered, it is out of touch with the record of the case. This is something which ought to be prevented. Although it did not require a written rule to be- enacted as a rule of law, it was necessary, because the breach of these provisions have become the rule, and, that is why, I think, it is important that the mandate of the law is made with regard to the judgments to be delivered in time. A very reasonable frame of time is prescribed in the proposed Bill. The time limit for oral arguments, I think, is also very important, and this is to be welcomed. The abolition of a second appeal in matters in which the valuation is only Rs.20,000 is also welcome. Time goes. When our Constitution was passed, even a valuation of Rs.20,000 was enough to qualify for an appeal to the Supreme Court, as a matter of right of appeal, but twenty thousand rupees of those days are no longer twenty thousand rupees of today. It is important, I think, that litigation must be given a push in the direction of expeditious disposal. A just sense of the people must be invoked; and, I think, it is from that point of view that this Bill deserves to be most heartily welcomed; and I do hope that it will have a quicker progress, not only in this House, but also in the other House, so that this legislation is put on the statute book, and would always remind us that, at

least, we gave some gentle nudge to the process of expediting the course of justice. With these words, may I say, Mr. Vice-Chairman, that Bills like this need to occupy more of our time, rather than fireworks which give us no light. Here is a Bill which is not spectacular, in which no great fireworks are to be witnessed; but here is a Bill which serves the cause of the common people. Thank you, Mr. Vice-Chairman.

श्री संघ प्रिय गौतमः मान्यवर , एक प्रतिष्ठित वकील नारीमन जी रह गए है ।

SHRI FALI S. NARIMAN (Nominated): Sir, if you permit me, I would like to say that it is unfair not to suddenly pounce upon everybody and say something. I just heard my hon. friend, Dr. Singhvi, saying that there are no sparks in this Bill. I think there are many more sparks in the Bill, for the legal profession.

DR. L.M. SINGHVI: I said that there are no fireworks.

SHRI FALI S. NARIMAN: Well, there are no fireworks, but there are a lot of sparks in this Bill, for the legal profession, and I am sure, the legal profession, to which many of us in this House belong, would certainly like to see a way forward because the people are very disgruntled and dissatisfied with what is happening in the country, insofar as the judicial system and the administration of justice is concerned. This Bill, in my humble opinion, will go a long way towards redeeming a pledge to improve the administration of justice. With these few words, I very strongly support this Bill.

SHRI ARUN JAITLEY: Sir, I am very grateful to a large number of hon. Members who have participated in this discussion. Most of them have supported the Bill. Some have also raised certain issues for clarification and certain other reforms which are relevant for us in future. But before I deal with what our lot of distinguished friends here have said, I must start by reacting to what the hon. Member, Shri Das said. In fact, his was pain and agony which an ordinary litigant has to bear, as far as the legal system is concerned. He has to bear it, because he finds that the system is becoming costlier, the system at times it is very slow.

Members here, who belong to the legal fraternity are fully conscious of the drawbacks within the legal system. We feel that our legal system has many strengths also. It is a fair independent system, it is a powerful system. But it is a slow system and we are trying to correct that, by virtue of several legislations to speed up the process. But eventually, the success or failure

of the implementation of a large number, of these legislations will also depend upon how the legal fraternity and both lawyers and judges react to a legislation of this kind.

Let me also say, even when we mention and state the problem, there is a lot of work which is being done. Figures were mentioned with regard to what is the pendency in our courts. The pendency in the subordinate courts in this country is a little over 2 crores, about 2.03 crores, but for the last five years, it is more or less static. When we state this figure, this looks very alarming. But when we compare it with another figure, that every year, one crore new cases.are filed and approximately one crore cases in the subordinate courts are disposed of, our problem today is how do we cut down this backlog and bring this figure of 2 crore cases downwards so that the delay which takes place in the system itself can be curtailed. But these systems which are capable of disposing of almost one crore cases in the subordinate courts every year. We are a large country, we are one-sixth of the world population. We had more than a lakh cases in our Supreme Court, but by speed, in the last 10-12 years, and by various other managerial skills, in the Registry, they have brought the figure down to just 21,000 or 22,000. Therefore, to say that in the legal system, there is nothing much happens is not correct. At times we come out of our anger or anguish at times when we react to a particular situation. But, I think, through this Bill, we are considering as to how do we resolve this whole problem.

Some hon. Members raised the point of vacancies, though it directly doesn't arise with the Civil Procedure Code. This is a matter of serious concern, Botf. the judicial institution and we have been taking it up with the States and High Courts. There are, at present, about a little more than 1800 vacancies in the subordinate judiciary in the country and 155 in High Courts. We are taking it up very strongly with High Courts that the recommendations with regard to this must be expedited, so that these vacancies can be filled up.

Recently we had a pronouncement of the Supreme Court, which said that we must radically increase the number of judges in the subordinate courts. Of course, this will be a burden on the exchequer itself, but it is a welcome suggestion and in phases we have to increase the number so that this figure of 2 crore that we find in the subordinate courts, at least, there would be more judges who can deal with the situation.

As far as the specific provisions are concerned, my friend, Mr. Sibal, raised some very substantive points. He is absolutely right when he says that our procedural laws in view of the changing situation in the world, the changing experiments which all other countries have tried, must also require an overhaul. Even when this particular Bill was discussed by the Law Commission, when they sent us this report, they also mentioned and I will just read the opening paragraph of what the Law Commission, told us, "In the second phase of this work, the Commission intends to take up the revision of a court in its entirety, since comprehensive revision of the entire court would take comparatively longer time." Similarly, for the purpose of reviewing the function of our Criminal Procedure Code, we have already appointed a committee which is now going around the whole country, meeting lawyers, litigants, police officers and State Governments, holding seminars, holdirrg discussions. They have already held about four major programmes all around the country and by the end of the year, we expect that committee, in relation to the Criminal Procedure Code, also to give its recommendations.

Some substantive points have been raised. Mr. Kapil Sibal raised a very important question with regard to the provisions of order XVIII. Order XVIII used the word 'may' in relation to addressing oral arguments and with the permission of the court shall in relation to giving written submissions, if the court so agrees to, for its purposes. Well, I may assure him that the intention of the Government certainly is not that oral arguments in any way are to be curtailed. The reason I may mention why the word 'may' has been used is because when you legislate, you follow a particular pattern which is used in several laws. The Criminal Procedure Code has a similar provision in section 314 and it is almost similar to the language in section 314 that this language of order XVIII has been used. And even in the Criminal Procedure Code where the section 314 says the accused or his counsel may address oral argument, it has never been interpreted to mean that there is a discretion whether he may or may not be permitted. The word 'may' perhaps has been used in order to give a right to an accused in the Criminal Procedure Code and a similar right to a litigant in the Civil Procedure Code that he is entitled to, if he so desires. I have no doubt that no judge is ever going to deny to a litigant a right to address his case orally. All that is intended is that we all have this experience that at times oral arguments continue for an indefinite period. Particularly, this has been seen more in High Courts than in any other layer of the judicial institutions. So, depending upon the subject matter, if a judge so desires, he may

regulate the time as far as oral hearing is concerned. This power to regulate the time of oral hearing is also contained in section 314 of the Civil Procedure Code. One issue which has been raised by several Members is in relation to the requirement of a security under order XXXIX. I may clarify it though this issue no longer remains very relevant today, there is a provision in the original Civil Procedure Code, under order XXXIX, rule 2. Order XXXIX, rule 1 relates to injunction in relation to property and order XXXIX, rule 2 is injunctions in relation to breach of contracts or any continuing breaches. Order XXXIX rule 2, sub-rule (2) already says - this is the old CPC - that the court may by order grant injunction under rule 1 or rule 2, as the case may be, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit. Now, this is a provision which has been time tested.

This is applicable to Order XXXIX rule 2, but not applicable to order XXXIX rule 1. The amendment in 1999 brought in a provision in relation to order XXXIX, rule 1, which was different in language from this provision, and almost granting of a direction with regard to the security mandatory. This led to various apprehensions because people may not come to the court to agitate their disputes in relation to a property because in that case they are confronted with a large amount of security which is to be given. Therefore, it was felt that the provision will require an alteration. What we did in consultation with Bar Councils and Bar Associations that provisions in relation to order XXXIX, rule 2, *ipso facto* now also was made applicable to order XXXIX, rule 1. That was the purport of the amendment of 2000. But the Standing Committee felt that no special situation has arisen since CPC has been in force, which shows that provisions lack, in view of this provision not being made applicable to order XXXIX, rule 1, and, therefore, suggested that we continue with the situation as it exists in the original Cr.PC as such. In deference to the opinion of the Standing Committee, we accepted that suggestion and in the official amendment which we have moved, this suggestion for making XXXIX (2) provision applicable to rule XXXIX(1). we have suggested that it should be deleted so that the provision in the original CPC continues to be maintained. That is the official amendment as such which we have suggested. Another provision which invited certain discussion was in relation to appointment of local commissioners for the purpose of recording evidence. Sir, the position as it stands of today, the judge has to record evidence himself. But what some High Courts and some other courts have been doing, though very rarely, is that if both the litigants agree, they refer the recording of the evidence to a commissioner

because the commissioner does not have the kind of time pressure which a court has, and, therefore, is able to record the evidence expeditiously and file a record with the court. We had extensive discussions. There were several issues which came up.

One issue was, in the trial courts, some litigants, in relation to small disputes, may actually be so poor, and the stakes may be so little that for them to afford a Commissioner's fee itself may be a little difficult. So, we came out with a suggestion that, as a rule, in the High Courts, where there is an original side, evidence can be recorded by the Commissioners because cases of larger stakes are there. In the subordinate courts, we left it to the discretion of the judge whether he wants to record it himself or it can be recorded by a Commissioner. But, after considering the various suggestions arid the report of the Standing Committee, we are, now, of the view that there need not be any distinction between the two fora, both in relation to High Courts and lower courts; if the judge feels that the subject matter is such that the evidence -- in the interest of justice -- can be recorded by a Commissioner, he will direct to do so. I am sure, some judicial forum will give proper guidelines by a judicial pronouncement as to which cases are to be recorded by a Commissioner and in which cases the judges themselves may record. May I just give an example? Today --when I looked at the figure, at least, it shook my conscience -banks and financial institutions have lent money to people. Every time an issue comes up. We raise the issue of non-performing assets. I tried to check up. Before a forum, like the Debt Recovery Tribunal, where moneys have been loaned by banks and tnancial institutions, the total claims pending -- and these are all moneys given through banking transactions, through drafts --are Rs.1,10,000 crores. And the only reason why people who had taken these moneys benefit is, they knew that there will be recording of evidence, and a date will be fixed after a couple of years, and then they can take an adjournment and can get another few years. In cases which are based on negotiable instruments, where cheques bounced, where moneys had been given and payments had almost been admitted, there are litigants who are waiting to recover their properties back. This kind of cases, if the judge feels, in the interest of justice, can be referred to a Commissioner for recording of evidence. We have said that if said that the Commissioner would record evidence and would return the evidence within 60 days because, in normal civil cases, except in very large commercial disputes, it does not take more than four or five sittings to record the entire evidence in

a case, and if this measure is implemented, it can reduce to sixty days the stage of a litigation, which, otherwise, will take several years. Therefore, we left it - in the first instance - to the discretion of the judge to decide whether the evidence is required to be recorded by a Commissioner or not. One objection that was made was that, traditionally, under the law of evidence, a judge must also know what the demeanour of a particular witness is. This was originally conceived to be so because, once the trial starts, till such time the trial concluded, the judge would record the evidence, he would immediately hear arguments and would then pronounce his judgement. This was the original concept under which we had a provision that he must also know what is the conduct of a witness like, what is the demeanour of a witness like; does he appear to be reliable or otherwise. Today, we actually have a situation where every date of evidence is fixed after two years. After three successors, somebody else comes and decides the case. Therefore, the successors are not likely to know what the demeanour of a witness before his predecessor was. Therefore, this provision, really, though relevant, has not been implemented so effectively. And, for this merely to stand in the way of recording the evidence itself, may not be sufficient in itself, particularly when the stage of a case itself could be curtailed, if this provision is made. On oral arguments being curtailed, I am sure, my very distinguished colleagues, the lawyers who are present here, would remember. When we argue some important cases, we look at the calendar as to how many days it will take, Let us recollect, how many days did the case, the most Important case of the world - the case which decided who the President of the US would be -before the US Supreme Court, Mr. Al Gor Vs. Bush, take? It took one-and-a-half hours. EL.;, in a case of ordinary property dispute, some intellectual property injunctions can take weeks and months of argument before a court. And nobody says that in those jurisdictions, justice gets buried merely because you regulate the time during which cases are going to be heard. Sir, there are several important suggestions that have been made. One particular suggestion that has been made by Justice Mlsra was with regard to the injunctions being applicable for a limited period of time. With all his judicial experience, for this, do we really need an amendment to the law? Can our judges not do it within the existing framework of law? I will just remind you when the Constitution was amended in the mid-70's, we added sub-article (3) to Article 226. Sub-article (3) said that the injunction may be disgranted in pursuance to a writ jurisdiction, and the person against whom it is granted, and the State against which it is granted, moves

an application for vacation. If the application is not disposed of in two weeks, the injunction is deemed to be vacated.

Now, I am sure, my very senior colleagues, may not remember many cases where we have. seen these provisions, actually being implemented before the courts. And, therefore, similarly, even while granting injunctions - some courts have always granted injunctions in terms of language - injunction granted for a period of six weeks; serve the defendant within two weeks and come before me. But effectively, it is for the judges to actually regulate the power under Order XXXIX and grant those injunctions. And, I am sure, seeing the equities of a particular case, if they grant these injunctions in this manner, it is perfectly within the powers of this court. I am sure, we, as lawmakers, would welcome a situation of this kind.

Sir, some suggestion was made with regard to the provision of sen/ice of summons. I don't think we should be particularly worried on this service of summons by couriers, because courier business has been acquiring a certain amount of credibility. They serve within 24 hours to 48 hours. That is why, we have said that every district court and every high court will have its own service of courier agencies. And, if they find somebody is unreliable, he can be taken off the list of that agency.

They would be interested in their own businesses and their own credibility will ensure that they serve their businesses well. Order V, Rule 16 itself provides for signatures on personal service, which is not a postal service. Similar would be the provisions in relation to this also. Because this would be another mode of personal service itself.

I would like to make one last submission. We should see the overall picture as it emerges. Mr. Panda said that there is a democracy tax. In a democracy tax, you try and balance between speed; you try and balance between the decision-making process, and you are able to carry all the sections along. The 1999 amendments have certain very well considered provisions. Some provisions have been smoothened out after discussion. Today, in the CPC - I would look in terms of its time-frame, -you file a case, you serve through expeditious process, through postal services, through process fee, through electronic devices and through courier services. So, instead of spending months and years, as Dr. Singhvi pointed out, you can serve the defendant within days. The maximum period for a written statement is ordinarily 30 days. For special reasons, the judge

can extend it by another 60 days. Issues get framed. If a judge records evidence, it depends on how much time the judge takes. If he refers to a Commissioner, ordinarily, within 60 days, unless the subject-matter requires extension of time. And, thereafter, the arguments come, for which, he can curtail the time. Finally, a judgement, which we have said, he must, ordinarily, deliver within 30 days. Well, all I can say to what Mr. Das has said is that we as law-makers can frame this. But to what extent this is mandatorily implemented is really for the Bar Association and the Bench to really cooperate within the system and decide this.

I will just end by narrating two anecdotes. Mr. Panda mentioned about the Chinese system and the due process of law there. The Vice-President of the Chinese Supreme Court was in India recently. We were asking each other, how many days does it take for cases to be tried in our jurisdictions? I was trying to very convincingly tell him that we are now trying to shorten our CPC time. He was being very apologetic. He told me, Sir, our system is now delayed. Originally, it used to take two weeks, now it can go up to four to six weeks to decide a case. That is the system which those countries have really been able to follow. When I said in response to Mr. Das that even our legal fraternity will have to consider this, I remembered an incident which I experienced. Somebody had asked a question in Parliament as to how many judgements are reserved for a period of more than one year after arguments have been heard. I addressed letters to Chief Justices all over the country that please give me the figures of each High Court as to how many judgements are reserved. Some High Courts said, none; some gave an honest figure and those who did not want to give the actual figures said, 'it is a question which relates to the independence of judiciary. And, therefore, 'we will not tell you the figures' I entered into further correspondence in regard to the figures, because just as we are entitled to know the number of cases, we are also entitled to know how many judgements are there because as law- makers, we must know where the shoe pinches, so that the law can be corrected accordingly. Now, somehow, one of the newspapers published it that there is this debate going on whether the courts can inform the number of judgments pending or not. I went to England last summer and I called on Lord Chancellor. And this curious newspaper cutting, where it had appeared, through the Internet, had been made available to him before my meeting with him. So, when I went and met him, amongst the various discussions, he said, 'I am told you are also having a problem with regard to delay in-delivery of judgments.' I said, 'How did you know it?' He said,

"Well, in the brief which was put up to me, this was informed to me." And I said, when you said 'also', it means, there is a similar problem here. He said, "Well, a.similar problem did arise". And I can only advise you what I told my colleagues." I told my colleagues that independence can never be a camouflage for inefficiencies. And, thereafter, the debate in my country came to an end." Therefore, I am sure, Mr. Das will appreciate that, we, in this legislature can make laws.The State Governments or the Central Governments make infrastructures available, but we expect the cooperation of the entire system, if we want to expedite this form to take place. Thank you,

उपसभाध्यक्ष (**श्री रमाशंकर कौशिक**) . प्रश्न यह हैः

'कि सिविल प्रक्रिया संहिता , 1908 का और संशोधन करने और तत्संबंधी अथवा आनुषंगिक मामलो का उपबंध करने वाले विधेयक पर विचार किया जाए ।'

प्रस्ताव पर मत लिया गया और पारित हुआ ।

धारा 2 से 6 विधेयक के अंग बने ।

CLAUSE -7 (Amendment of Order VI)

SHRI ARUN JAITLEY: Sir, I beg to move:

(3) That at pages 3-4, *for* clause 7, the following be *substituted*, namely:-

" 7. In The First Schedule, in order VI, for rules 17 and 18 (as they stood immediately before their omission by clause (iii) of section 16 of the Code of Civil Procedure (Amendment) Act, 1999), the following rules shall be substituted, namely: -

17. The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the court.'

प्रस्ताव पर मत लिया गया और पारित हुआ ।

धारा 7, यथा संशोधित, विधेयक का अंग बनी ।

धारा 8 से 11 विधेयक के अंग बने ।

CLAUSE 12 (Amendment of Order XVIII)

SHRI ARUN JAITLEY: Sir, I beg to move:

(4) That at page 6, line 12, the bracket and words "(other than the High Court)' be *deleted*.

(5) That at page 6, lines 16 to 18 be *deleted.*

प्रस्ताव पर मत लिया गया और पारित हुआ ।

धारा 12, यथा संशोधित, विधेयक का अंग बनी ।

धारा 13 विधेयक का अंग बनी

CLAUSE 14 (Amendment of Order XXI)

SHRI ARUN JAITLEY: Sir, I beg to move:

(6) That at page 7, line 14, *for* the figure "2000", the figure "2002" *be substituted.*

प्रस्ताव पर मत लिया गया और पारित हुआ ।

धारा 14, यथा संशोधित, विधेयक का अंग बनी ।

CLAUSE i5-(Amendment of Order XXXIX)

SHRI ARUN JAITLEY: Sir, I beg to move:

(7) That at page 7, clause 15, be *deleted.*

प्रस्ताव पर मत लिया गया और पारित हुआ ।

धारा 15, यथा संशोधित, विधेयक का अंग बना ।

CLAUSE 16 [Amendment of the Code of Civil Procedure (Amendment) Act, 1999]

SHRI ARUN JAITLEY: Sir, I beg to move :

(8) That at pages 7-8 for the figure "2000" wherever it occurs, the figure "2002" be *substituted.*

(9) That at page 8, *after* line 8, the following be *inserted,* namely:-

'(va)' in clause (s) for the figures "25" at both the places, the figures "26" shall be substituted.

प्रसताव पर मत लिया गया और पारित हुआ ।

धारा 16, यथा संशोधित, विधेयक का अंग बना ।

CLAUSE - 17 (Repeal and Savings)

SHRI ARUN JAITLEY : Sir, I beg to move :

(10) That at page 8, lines 29 to 32, be ***deleted***.

प्रस्ताव पर मत लिया गया और पारित हुआ ।

धारा 17 यथा संशोधित विधेयक का अंग बना ।

CLAUSE 1 (Short Title and Commencement)

SHRI ARUN JAITLEY: Sir, I beg to move :

(2) That at page 1, line 3, *for* the figure "2000" the figure "2002" be *substituted.*

प्रस्ताव पर मत लिया गया और पारित हुआ ।

धारा एक, यथा संशोधित, विधेयक का अंग बना ।

ENACTING FORMULA

SHRI ARUN JAITLEY: Sir, I beg to move :

(1) That at page 1, line 1, *for* the word "Fifty-first' the word "Fifty-third" be *substituted.*

प्रस्ताव पर मत लिय गया और पारित हुआ ।

अधिनियमन सूत्र, यथा संशोधित, विधेयक का अंग बना ।

शीर्षक विधेयक का अंग बना ।

SHRI ARUN JAITLEY: Sir, I move :

That the Bill, as amended, be passed.

प्रस्ताव पर मत लिया गया और पारित हुआ ।