

[13 May, 2002]

RAJYA SABHA

DR. M. N. DAS: Sir, I want to take this opportunity to remind you what you had suggested in this very House the other day, that this issue should be taken up for full discussion, as a Short Duration Discussion. I appeal to you, Sir, and, through you, to the Members of the Business Advisory Committee, and the hon. Minister, Shrimati Sushma Swarajji, to kindly fix time for a debate on this issue so that the hon. Members may express their free and frank opinion. This is very sensitive issue, affecting the morale of our children and youth, and we cannot confine this issue to just a short question like this. I request, what you had suggested should be implemented.

MR. CHAIRMAN: I agree with you. The Minister is ready. But the questioner is not present. So, you cannot take up the question.

THE MINISTER OF INFORMATION AND BROADCASTING (SHRIMATI SUSHMA SWARAJ): Even if the House wants to have a Half-an-Hour Discussion, the time is to be decided by the Business Advisory Committee. I am ready for discussion.

MR. CHAIRMAN: Question No. 664.

Staff for Fast Track Courts

***664. MISS MABEL REBELLO:** Will the Minister of LAW, JUSTICE AND COMPANY AFFAIRS be pleased to state:

(a) whether it is a fact that Fast Track Courts do not have adequate staff; and

(b) if so, how can they be expected to function efficiently and really work as Fast Track Courts?

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI ARUN JAITLEY): (a) and (b) A Statement is laid on the Table of the House.

Statement

(a) The Scheme of Fast Track Courts provides for a stenographer, a peshkar/superintendent and a peon as supporting staff to each court. These are *ad hoc* courts and have, therefore, *ad hoc* staff. It is for the respective State Governments/High Courts to provide additional staff for the Fast Track Courts, if required.

(b) In spite of teething problems, Fast Track Courts have started disposing of cases which had remained pending for a long time.

MISS MABEL REBELLO: Sir, the hon. Minister has stated in his reply that the Scheme of Fast Track Courts provides for a stenographer, a peshkar / superintendent and a peon as supporting staff to each court. This is totally inadequate. There is a staff of only three for the Fast Track Courts. They need, at least, two more staff members. You need to have a Bench Clerk there, a clerk-cum-peshkar, and one person as coordinating staff. The existing courts do not have adequate staff. In the absence of any surplus staff, from where could be courts provide this additional staff to the Fast Track Courts? The Scheme of Fast Track Courts should have made adequate provision for the requisite staff. When you prepared the Scheme, you should have done it. How will you make these Fast Track Courts deliver the results fast? Unless adequate staff is there, there cannot be efficiency. So, what are you planning to do?

SHRI ARUN JAITLEY: Sir, adequate arrangements, with regard to the staff, were proposed in the scheme. In any case, the scheme came up for consideration before the hon. Supreme Court, and, on 6th May, the Supreme Court, while upholding the constitutional validity of the entire scheme under which these Courts have been set up, issued detailed guidelines. So, wherever any inadequacy of staff has been felt, —so far no such complaint has come to us that there is inadequacy of staff; it only arises in the event when any staff member goes on leave—the Supreme Court has issued detailed direction to the High Courts and the State Governments to make a provision under the scheme itself to provide for such contingencies.

MISS MABEL REBELLO: Sir, the Minister says, in his reply, that these Fast Track Courts are *ad hoc* Courts. What are you doing, Mr. Minister, to make justice speedy and inexpensive in normal Courts? After all, people should get justice speedily and at less expense. They do not have that sort of money. So, what are you planning to make the normal Court a Fast Track Court?

SHRI ARUN JAITLEY: Sir, the very reason why we have set up these Courts is on account of the arrears; a large number of cases are pending before the normal Courts, as a result of which several delays take place. This was one of the several steps that the Government has taken in order to expedite the entire process. With regard to the specific question that the hon. Member has raised, in 1987, the hon. Parliament, this House, was pleased to legislate the National Legal Services Authority Act which did provide, in the case of legal aid being given, for giving it to those people who are not able to afford it. It also had a separate Chapter which did provide for creation of Lok Adalats at various levels.

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That is one of the parallel alternative dispute redressal mechanism which has gone on. As per that Act itself, we have now been able to set up, almost in every State, State-level authorities, authorities right up to the district level, to assist those who have asked for legal aid. More than 40 lakh people have already been given legal aid under this scheme, and we have been able to resolve, under that Act, 1,36,00,000 matters in the last 12 years by way of settlements and conciliations brought about by the Lok Adalats itself.

SHRI KAPIL SIBAL: Sir, while I commend the hon. Minister for setting up the Fast Track Courts, I would like to remind the Minister as to what our experience has been in respect of Special Courts. And the Minister is aware of the fact, Mr. Chairman, Sir, that when the Special Courts were set up, we thought, particular kinds of cases, like cases involving corrupt public servants and other cases of that nature, would be quickly disposed of by the Special Courts. But the experience is just to the contrary. In fact, what is happening is that those Special Courts themselves are now clogged up because the other Courts can't take up those matters which are already before the Special Courts. So, the result is that the cases go on for years and years. There are cases where people have been prosecuted but, even after seven years, the cases haven't reached the stage of trial. So, if this is the kind of experience which we have of the Special Courts, then perhaps, that is exactly what is going to happen with these Fast Track Courts. And, I hope what the Minister says is true, that speedy justice is going to take place. When we set up Fast Track Courts, unless we have fast track judges also, not slow track judges, we are not going to get any justice.

SHRI ARUN JAITLEY: Sir, these courts are somewhat different from the Special Courts which have been created. I will refer to the Special Courts a little later. The whole concept was that, in every district of the country, the Central Government, under a scheme formulated by the Eleventh Finance Commission, bears the entire expenditure, and five courts, at the level of Session Courts are created at the level of every district authority. We requested the State Governments and the High Courts, under the scheme, to constitute these Courts with the Central Government's expenditure, and all criminal sessions trials, cases which were more than two years old or cases where the accused was under trial, still in person, but has been denied bail, all such cases should be transferred to them. Now, our experience so far has been that in some of the States, where this has been effectively implemented, —there are some States where it has not been effectively implemented,— you could also give cases, which are ordinary criminal cases, to these courts. The expectation was that unlike the normal courts, they

would dispose of 14 sessions trials every month. Now, when this scheme was formulated, it seemed a tall order, because it is normally very difficult. But if we see the experience of what is happening in Maharashtra and Rajasthan,—I am mentioning the two States where it has been effectively implemented—not only have they implemented it, but they have also achieved, broadly, the target figure in those cases. As a result of it, the experience has been, that the old cases are being disposed of in those States where it is being effectively implemented before these courts, and chargesheets which were filed only a few months ago, their trials are on before the usual courts.

As far as Special Courts is concerned, Mr. Kapil Sibal is absolutely right when he says that since these are cases of corruption, you are expected to dispose them of quickly so that people are held accountable. That is one mechanism. This is done on account of the pressure on the premier investigating agency. But our experience of the Special Courts has also been that unless you increase the number of these Special Courts and go in for day-to-day trials, merely going about it in a routine way is not only taking years; it is taking probably, decades in some of the cases.

SHRI KAPIL SIBAL: Sir, the hon. Minister just took the name of two States. We have the experience of Delhi with us. As far as Delhi is concerned, on the criminal side, there is no disposal taking place. The reason for this is in most of the States, the recruitment at the lower level does not take place. It takes years for recruitment to take place. At the lower level, at the Magistrate level, there are not enough judges. So, even if you have Fast Track Courts, if you don't have enough judges, you will not be able to deal with the problem. How does the Minister intend to tackle this problem?

SHRI ARUN JAITLEY: Mr. Sibal is right when he gave the example of Delhi. In Delhi, it is a very peculiar situation where the number of Sessions Courts is today much higher than the number of Magisterial Courts. Normally, the number of Magisterial Courts has to be much higher.

SHRI KAPIL SIBAL: Also in Haryana.

SHRI ARUN JAITLEY: And this problem has really occurred because the High Courts and the State Governments are to make the recruitment; the recruitment process has been a little slow. I am told that the process has now been expedited. We have also written to all the State Governments and the High Courts—since the Subordinate Judiciary comes within the administrative

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jurisdiction of these institutions—to expedite the process of recruitment. I may mention that there are, even today, more than 1800 posts which are lying vacant, as far as the Subordinate Judiciary is concerned. In fact, the States are, under a directive of the Supreme Court, to substantially increase the judge strength. Now, it is very desirable that we increase the judge strength. But it is, probably, more desirable that we fill up the existing vacancies and then go in for an increase.

SHRI KAPIL SIBAL: Would the Minister take the initiative in this regard and request the Chief Justice of India to call a meeting of all the Chief Justices and ensure that this recruitment process is expedited so that people can get speedy justice?

SHRI ARUN JAITLEY: Sir, not once, but on several occasions, I had written to the State Governments and the Chief Justices. The Chief Justice of India has also taken up this issue. We are requesting them, both at the level of High Courts and at the level of Subordinate Judiciary, to expedite the process, because we are now in a system where judicial appointments are really made on the recommendation of the Judiciary, and where the delay is really taking place is in the recommendation process itself.

SHRI KAPIL SIBAL: The problem is, the Chief Justices themselves are there only for two-three months. Therefore, how will they be able to do it? If a Chief Justice is there for 15 days, 20 days, three months ...(*Interruptions*) How will this happen?

SHRIMATI VANGA GEETHA: Sir, in his answer, the hon. Minister has stated that it is for the respective State Governments and High Courts to provide additional staff to the Fast Track Courts. Actually, there is lack of staff in Family Courts and High Courts. As a result of that, so many cases are pending in the High Courts and in the District Magistrate Courts. What steps the Government is taking in this regard? I also want to know from the hon. Minister how much amount the Government has allocated for maintenance of these Fast Track Courts.

SHRI ARUN JAITLEY: Sir, the real problem has been with regard to recruitment of judges. There is no major problem with regard to administrative staff. The hon. Member wanted to know how much money we have allocated. For a period of five years, we have allocated an amount of about Rs. 502 crores, of which, we have already sent Rs. 188 crores to the States which are implementing the scheme. In fact, there are States where the default figure is a little higher. I would suggest to the hon. Member that these issues should be considered,

because these are two States which I have mentioned, which are really turning out to be success stories. It is for the other States, really, to pick up the lessons from these success stories.

With regard to High Courts and Family Courts, the Family Court experience has been that, wherever the States have set them up—18 States have so far set up Family Courts; I have the figure till the year 2001—these Courts have been able to dispose of as high as 5,21,000 cases relating to family disputes which are mostly in the nature of matrimonial disputes.

The Family court experiment, wherever it is being implemented, has proved to be quite successful. The disposal figure is much higher and the rate of disposal is much quicker than in the usual courts. At some places, on account of accommodation, etc., where Family Courts have not been set up, we are writing to the States to make sure that they are set up. With regard to High Courts, I may mention that there also, the problem is not really with regard to the administrative staff. We have about 155 vacancies in the High Courts, and we have been writing to the Chief Justices to make recommendations. So far, I have recommendations for only less than 50 out of the 155 vacancies.

SHRI R. SHUNMUGASUNDARAM: Sir, there are no specific norms fixed for the recruitment of judges to the fast track courts; there are no norms for their training also. There is no particular programme spelt out, for training them. They are appointed only for a temporary period of five years or ten years. But, after that, what will happen? Will they be considered for regular posts in the subordinate judiciary or for elevation to the High Court? Is there any specific proposal by the Central Government to establish separate courts for cases investigated by the Central Government agencies? Apart from CBI, no other Central Government agency has separate courts. In other countries, they have separate commonwealth courts and State courts. Is there any proposal in that regard?

SHRI ARUN JAITLEY: With regard to the recruitment of judges for the Fast Track Courts, we had given three options to the High Courts. The first option was that they could appoint people from amongst the retired judges. At the Sessions' level, they could also, on an *ad-hoc* basis, promote Magistrates of the civil courts. They can also take up people from the Bar. Since this scheme is, currently, for five years, and people are to be recruited for a five year period or less, they could recruit people, using these options.

The Supreme Court, while upholding the scheme, primarily, because on account of the number of in-service people being higher, has laid down the preferences. The first preference will be given to those who are promoted on an *ad-hoc* basis. If adequate number is not available from this, then take from the retired persons, and, then, finally, take from the members of the Bar itself. That is now part of the Supreme Court directive.

With regard to training of these persons, they are appointed from among in-service judges, no special training would be required. But I may point out now that, for the first time, in the last few years, a programme has been started where States have set up Judicial Academies. More and more States are setting up Judicial Academies in their States for training of judges. We have also, under the old scheme, the National Judicial Academy, which is being set up; the work is almost complete. Before the end of this year, it will be inaugurated. There is an extensive programme which the judiciary itself is taking up for training of judges in these institutions.

With regard to setting up of Special Courts, Special Courts are set up only when legislation so provides. For instance, the CBI cases. There is a provision for Special Courts being set up under the legislation, and, therefore, wherever legislations provide for such Special Courts, Special Courts are set up. They are not case-specific, but they are specific to the requirements and mandate of a particular law.

श्री मोतीलाल बोरा: माननीय सभापति महोदय, प्रश्न बहुत साफ है और इस प्रश्न में केवल इतनी बात कही गयी है कि फास्ट ट्रैक न्यायालयों में पर्याप्त स्टाफ नहीं है जबकि माननीय मंत्री जी ने काफी घुमा-फिराकर फेमिली कोर्टस् लोक अदालत और स्पेशल कोर्टस् के बारे में उल्लेख किया है। महोदय, प्रश्न केवल इतना है कि फास्ट ट्रैक कोर्टस् में न्यायाधीशों की कमी है, आप ने बताया कि अभी हाल में इंस्ट्रक्शंस दिए हैं कि रिटायर्ड जजेज और बार मेंबर्स को उन में ले लिया जाए, तो मैं माननीय मंत्री जी से कहना चाहता हूँ कि वह जवाब को घुमा-फिराकर न दें बल्कि सीधे जवाब दें। सभापति महोदय, जिन फास्ट ट्रैक कोर्टस् की घोषणा 9 महीने पहले की गयी थी, उस में आप ने केवल 3 राज्यों की जानकारी दी है, तो आप कृपया पहले यह बताएं कि देश के विभिन्न जिलों में कब तक इन कोर्टस् के न्यायाधीशों की नियुक्ति हो जाएगी और कब तक उन का प्रशिक्षण हो जाएगा क्योंकि एक तरफ तो आप कहते हैं कि they have to be trained और दूसरी तरफ they have to be taken from the retired judges also. What is the policy of the Government, at present? Kindly tell us this. Don't try to take all these matters together.

SHRI ARUN JAITLEY: Sir, I was only reacting; I have an obligation to react to whatever supplementary put by hon. Members, whether it is about Family Courts or about training. The hon. Member has asked about the appointment of judges, as far as Special Courts are concerned. In this regard, I may mention that the total number of Fast-Track Courts, intended to be set up under the scheme, is 1,734. It is the High Courts which select the judges. The State Governments have to provide the infrastructure, and we have to provide the funds. About, 1,064 courts have already been notified. The number of those that are actually functioning is a little less than that, because some may be in the process of transferring the files, appointment of judges, doing up the rooms; etc. Almost in every State, same number of courts have been set up. Some States have set up half the number of courts. Some have set up three-fourths of the number of courts. In some States, the figure is much higher. The States have been in the process of setting up these courts. The High Courts, in most States, have taken the view that they would prefer to employ retired people. Then, they found that getting sufficient number of retired people itself was a problem. We have, then, been suggesting to them that they should take people on *ad hoc* promotion from the magistracy itself. Now that the Supreme Court has passed that direction, this shortfall between 1,734 and 1,064 will, probably, be cleared.

FDI in Real Estate

†*665. SHRI GHULAM NABI AZAD:
DR. T. SUBBARAMI REDDY:

Will the Minister of URBAN DEVELOPMENT AND POVERTY ALLEVIATION be pleased to state:

(a) whether the housing industry which will have to construct around 6.5 million dwelling units per year till 2010 to meet the Prime Minister's "Shelter for all" has made a strong plea to Government to allow Foreign Direct Investment in the real estate sector;

(b) if so, whether they have also called for a reduction in the steep stamp duty imposed by the States;

(c) if so, whether any programme in this regard has been worked out by Government; and

(d) if so, the details thereof?

†Original notice of the question was received in Hindi.