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Participants : Yadav Shri Ram Kripal, Tripathy Shri Braja Kishore, Chakraborty Shri Ajay, Bhargav Shri Girdhari Lal, Prabhu Shri Suresh, Athawale Shri Ramdas, Bhardwaj Shri H.R.

Title : Further discussion on the motion for consideration of the contempt of courts (Amendment) Bill, 2004 moved by Shri H.R. Bhardwaj on 17 February, 2006 (Bill Passed).

MR. SPEAKER: We will now take up item No. 18, further discussion on the Bill. Shri Braja Kishore Tripathy to continue his speech.

SHRI BRAJA KISHORE TRIPATHY (PURI): Hon. Speaker, Sir, I was speaking on this Contempt of Courts (Amendment) Bill, 2004. This is intended to introduce fairness in the procedure and meet the requirement of article 21 of the Constitution. I am just referring to article 21 of the Constitution [\[R16\]](#).

This is for the protection of the life and personal liberty. It says:

“No person shall be deprived of his life or personal liberty except according to the procedure established by law.”

14.01 hrs.

(Shri Devendra Prasad Yadav *in the Chair*)

The hon. Law Minister is here. He is one of the leading lawyers of our country. I do not understand how this provision of the Constitution was ignored by the Contempt of Courts Act. If somebody is proceeded with contempt of the Court, how does the liberty and life of a person get infringed? How this constitutional provision was not attracted there in the earlier provisions of the Act? How will this amendment help? This is what is mentioned in the Statement of Objects and Reasons of the Bill. It is mentioned that this provision would introduce fairness in the procedure to meet the requirement of article 21 of the Constitution. When the Executive is not implementing the order of the Court, naturally, the recourse for the Court is to proceed with contempt proceedings. There was no other recourse available with the Court or the Judiciary. If one encroaches on that thing, there will be no result. The Executive will become powerful. They will not implement the Court order. They can take the plea that they are doing that in fairness and in public interest. They can speak in that language that they are not implementing it just in the public interest. The Executive is powerful. They will say

everything and will not implement the Court order. This will open the whole Pandora's box. My request to the Law Minister is that he should not go through this amendment. What are the long consequences of it? What are the far-reaching consequences of this? If the verdict of the Court is not implemented, what is the recourse left to the common man who has gone to the Court to get justice? It will become meaningless if that order is not implemented. This amendment is a very dangerous amendment. Although it is a very small amendment, yet it has its far-reaching consequences. We should consider that aspect.

We are going to open the flood-gates with this. There may be some wrong order passed regarding the contempt of Court. This does not mean that Court's order will not be implemented. This provision will help the Executive not to implement the Court order. In that case, contempt of Court will be infructuous in future. My request to the hon. Minister is to reconsider this. This amendment has a far-reaching consequence. Its impact will be very dangerous and disastrous. I do not see any objection in following the procedure. The Court always follows the procedure. If there is any lacuna in following the procedure, I will support that thing. You may amend it, there is no difficulty. If there is a lacuna in the original Act, that amendment will be a welcome thing. But this is wrong, just to help the Executive and to prohibit, the Court not to proceed with contempt. In that case, the Executive will not do anything. They will say that they are doing it in public interest. Who is there to justify this? How will you make this provision in the law to help the Executive? The Executive will be powerful. Whatever provisions are there in the law, whatever powers are vested with the Judiciary, they will go away. My request to the hon. Law Minister is to reconsider this. This amendment will have far-reaching impact and it should be withdrawn.

श्री गिरधारी लाल भार्गव (जयपुर) : मान्यवर, यह वाजपेयी सरकार की मंशा थी कि नेशनल ज्यूडिशियरी कमीशन बने। र्वा 2003 में यह प्रस्ताव इस सदन में पेश किया गया था, लेकिन दुर्भाग्य से, जैसे कि राज्य सभा का कार्यकाल 6 र्वा के लिए, एमएलए का पांच र्वा के लिए और पार्द का पांच र्वा के लिए होता है, वहीं लोक सभा का कार्यकाल एक दिन का भी होता है। आज लोक सभा है, लेकिन कल नहीं है, आज जो कर गए, वह कर गए, उस समय जो परिस्थिति बनी थी, उसकी वजह से यह बिल ड्राप हो गया था। मेरा निवेदन है कि अवमानना के बारे में व्याप्त भ्रम की स्थिति को दूर करने की कोशिश की जाए। किसी जज या कोर्ट के बारे में सच्चाई उजागर करने के मकसद से की गई बात को कोर्ट की अवमानना की श्रेणी में नहीं रखा जाए। हमारे राष्ट्रीय चिह्न में लिखा हुआ है "सत्यमेव जयते" यानी सत्य की हमेशा जीत होती है। मैं इस बात को मानने वाला हूं। गांधी जी के वक्त में नारा चला था "ईश्वर सत्य है" लेकिन बाद में गांधी जी ने कहा कि "सत्य ही ईश्वर है"। र्वा 1971 के कानून की कमियों को दूर करने के लिए सरकार यह विधेयक 2004 में लायी थी। वर्तमान कानून के अनुसार कोर्ट के अधिकारों को नीचे दिखाने वाले वक्तव्य बोलना या छापना कोर्ट की अवमानना होती है। इस संशोधन के बाद न्यायपालिका में मौजूद भ्रटाचार को उजागर करने में मदद मिलेगी, क्योंकि इससे पहले यह कानून इस कार्य में रोड़ा अटकाता था। इस अधिनियम के अनुसार कोर्ट के किसी आदेश या प्रक्रिया को जान-बूझकर नहीं मानना एक दंडनीय अपराध है और कोर्ट के बारे में टिप्पणी छापना, कोर्ट के अधिकार को नीचा दिखाना और न्यायालय प्रशासन को नीचा दिखाना फौजदारी अपराध की श्रेणी में आता है और दण्डनीय भी है। हम इस बिल को लाने के पीछे आपकी भावना

का स्वागत करते हैं। हमारे कानून मंत्री कानून के पुराने जानकार रहे हैं। आप बहुत अच्छा बिल लेकर आए हैं। लेकिन मैं आपके ध्यान में एक बात लाना चाहता हूँ कि आज न्यायालयों में जजों की बहुत कमी है और इस वजह से बहुत से केस पेंडिंग पड़े हुए हैं। आज यदि कोई व्यक्ति मुकदमा दायर करता है तो उसका नतीजा आने में वॉर्न लग जाते हैं। जजों की कमी को दूर करने की भी कोशिश होनी चाहिए और स्पैसिफिक टाइम में केस का निबटारा होना चाहिए।...(व्यवधान)

सभापति महोदय : रामकृपाल जी, आप खड़े क्यों हैं, बैठ जाइए। एक वक्त में केवल एक ही सदस्य खड़ा हो सकता है।

श्री गिरधारी लाल भार्गव : आज इलैक्शन पिटिशन के निबटारे में ही पांच साल से ज्यादा समय लग जाता है। जो व्यक्ति दो-चार वोट से जीतता है, वह भी कोर्ट केस की वजह से परेशान रहता है और जो व्यक्ति हारता है, वह भी कोर्ट का फैसला जल्दी न आने की वजह से परेशान रहता है। इस तरह के मुकदमों का निबटारा एक साल के अंदर हो जाना चाहिए, चाहे उसका निर्णय पक्ष में आए या विपक्ष में। कई न्यायालयों में न्यायाधीशों ने निर्णय के खिलाफ फैसला दिया [cè\[c17\]](#)। जस्टिस बी.के. राय ने ऐसा ही निर्णय दिया और लॉ इंस्टीट्यूट की जमीन के आवंटन को उन्होंने रद्द कर दिया। पूर्व जज के साथियों को जब जमीन दे दी गई, तो उन्होंने उस फैसले को बदल दिया। इससे न्यायालय में हलचल मच गई कि वाह, वाह, हमारे ही जज ने इस प्रकार फैसले को बदल दिया। कोलकाता हाई कोर्ट में भी इसी प्रकार का निर्णय हुआ। न्यायमूर्ति लाहोटी, जो दिल्ली के सम्मानित जज हैं, उन्होंने भी न्यायाधीशों के बारे में कहा है, विद ड्यू रिस्पैक्ट, मैं सभी माननीय न्यायाधीशों का, न्यायपालिका का पूर्णरूप से, अक्षरशः सम्मान करने वाला व्यक्ति हूँ, मेरे दल ने भी न्यायपालिका के खिलाफ कहीं कोई विचार व्यक्त नहीं किए हैं, हम उनका सम्मान करते हैं। पहले न्यायाधीशों की नियुक्ति में गड़बड़ थी। अब आखिरकार सुप्रीम कोर्ट ने कह दिया कि हमसे भी राय ली जाएगी जो बहुत अच्छी बात है। जो बनाने वाले हैं, यदि उनमें ही भ्रष्टाचार होगा तो निश्चित रूप से यह अच्छी बात नहीं है। इसलिए सारे सम्मानित न्यायाधीश, जिनकी आप नियुक्ति करें, उन सबका सम्मान करते हुए, आपका सम्मान करते हुए, आप लॉ के व्यक्ति हैं, आप अच्छे न्यायाधीशों की नियुक्ति करेंगे और निश्चित समय में कोर्ट का फैसला हो, इसलिए कोर्ट के बारे में सच्चाई उजागर करने के मकसद से कही गई कोर्ट की अवमानना श्रेणी में अब नहीं आएगी, यह संशोधन बहुत ही अच्छा है।

मैं अपनी पार्टी की ओर से, श्री वाजपेयी जी के समय में जब यह बिल आया था, तब भी हम इसका समर्थन करने के लिए खड़े हुए थे। आज आप जो बिल लेकर आए हैं, मैं आपकी बात का पूरी ईमानदारी से, माननीय न्यायाधीशों के प्रति पूरा सम्मान करते हुए, आपके प्रति पूरा सम्मान करते हुए आपको धन्यवाद देता हूँ।

SHRI AJOY CHAKRABORTY (BASIRHAT): Thank you, Mr. Chairman.

The scope of discussion is very limited because the hon. Law Minister has brought forward an amendment to the Contempt of Courts Act. I rise to support this amendment.

The judicial system of our country is a very age-old system. This system was introduced for adjudication of all litigation and all grievances of different agencies including public. It has adjudicated all the problems very impartially and neutrally. We should give due respect and honour to all the judgements passed by different courts including the High Courts and the Supreme Court.

But now a tendency has grown to flout the orders of the courts, particularly in some sections of Government agencies and police agencies. So many judgements are being passed by the lower courts and the higher courts, but police refuse to obey the order of the learned courts.

I am residing in a place situated near the Bangladesh border. One BSF Officer committed rape on a village girl. A case has been instituted against that BSF personnel, the court has given orders and issued a warrant. In spite of that, the BSF authorities are very much reluctant to arrest that BSF personnel or direct him to surrender before the appropriate court. Knowing full well, the BSF officer wilfully violating the order of the court.

This tendency has grown in the police force also. Nowadays, police, in every State including my State, has become powerful and they do not want to obey the order or authority of the court. This type of a tendency has grown, to defy the court order, not to carry out the court's order, not to implement the court's direction or verdict[R18]. Other problems are there. Our distinguished colleague, Shri Girdhari Lal Bhargava raised the issues of long pendency, vacancy of judges in different courts and such other problems. The sphere of discussion here is very small. So, I am not going into all those things. I would only like to draw the attention of the Government that the Government agencies meaning the Government of India and the State Governments and particularly the police have a tendency to defy the court orders. I would also like to say that the courts should function impartially and neutrally. Nowadays, there is a growing tendency in both the High Courts and the Supreme Court that all the orders are passed at the sweet will of a particular judge. They can make and un-make the laws. The judges of the High Court and the Supreme Court pass such orders which are derogatory and not in the interest of either the common people or the country as a whole. One fine morning as per the sweet will of a judge of the Supreme Court or the High Court an order is passed to demolish all the houses. One fine morning a Delhi High Court judge or for that matter any other judge passes an order to demolish all the slums and all the *jhuggis and jhonparis*. Delhi is the Capital city of our country. Thousands and thousands of people from different parts of the country, particularly the people of Eastern regions, Bihar, Jharkhand, West Bengal, Orissa, Assam, U.P. and Madhya Pradesh come to Delhi for their livelihood. One fine morning as per the sweet will of a judge all those people who came here to earn their bread, their livelihood are evicted from their places. Courts should be practical and they must not

limit their jurisdiction. Members of Parliament and the Members of State Legislatures must be loyal and give due respect to the judges and the judges also should be loyal and give due respect to the legislators.

Nowadays, there is a growing conflict in the two systems of our country. Our ten colleagues in this House have been expelled from the Parliament. Some Members rushed to the Supreme Court and some to the High Court. The Supreme Court has issued a notice to the hon. Speaker of this House. Hon. Speaker has called a meeting of the Leaders of different Parties and Groups in the Parliament. Two distinguished legal personalities also attended that meeting. What is the authority of the Supreme Court to issue notice to the hon. Speaker of the Lok Sabha, the highest panchayat of this country? This practice should be avoided. Judicial system has its own right and it should exercise its power impartially and should maintain neutrality. The common people are blaming the Courts and they doubt the verdict, the judgement and the orders of the Supreme Court and the High Courts. They challenge the neutrality of the judgements passed by the Courts. This is a sorry state of affairs.

I do not want to go into all these things because we should confine ourselves only to the proposed amendment. If we get any further scope, we should discuss all these problems. I support this Amendment and hope that everybody cutting across Party lines should support it.

सभापति महोदय : श्री गणेश प्रसाद सिंह- अनुपस्थित।

श्री राम कृपाल यादव (पटना) : सभापति महोदय, मैं आपके प्रति आभार व्यक्त करता हूँ कि आपने न्यायालय अवमान (संशोधन) विधेयक पर विचार रखने का मुझे अवसर प्रदान किया।

मैं इस न्यायालय अवमान (संशोधन) विधेयक, 2004 का समर्थन करता हूँ। माननीय मंत्री जी परिस्थिति अनुकूल इस विधेयक को खामियों या कमियों को दूर करने के लिए लाए हैं, इसलिए निश्चित रूप से यह स्वागत योग्य है। कई माननीय सदस्यों ने यहां अपनी भावनाएं व्यक्त की हैं। खास तौर पर न्यायालय की जो अवमानना अधिकारियों या आम लोगों द्वारा की जाती रही है और सीधे तौर पर गिरफ्तार करने या और भी जो कार्रवाई करने का आदेश आता था, उस पर थोड़ा अंकुश लगाने का काम माननीय मंत्री जी ने किया है। निश्चित तौर पर यह एक सराहनीय कदम है और हम इसका समर्थन और स्वागत करते हैं।

न्यायालय और न्यायाधीश की अपनी एक पहचान भी है और प्रतिष्ठा भी है। सब लोग इनकी प्रतिष्ठा करते हैं लेकिन लगता है कि न्यायालय के प्रति आदर और सम्मान पर प्रश्न चिन्ह लग रहा है। जिस तरह से न्यायालय के माध्यम से छोटी-छोटी चीजों में भी हस्तक्षेप हो रहा है और लगता है कि कोई एग्जीक्यूटिव बॉडी के रूप में काम हो रहा हो, निश्चित तौर पर इससे आम लोगों के मन में न्यायालय के प्रति जो प्रतिष्ठा रही है, उसमें गिरावट आई है। जब न्यायालय और न्यायाधीश के प्रति लोगों के मन में प्रतिष्ठा गिरेगी तो लोकतंत्र के लिए यह शुभ संकेत नहीं है।

यहां विधि मंत्री मौजूद हैं। वह स्वयं भी अधिवक्ता हैं और काफी दिनों तक उन्हें विधि मंत्रालय चलाने का अनुभव रहा है। मैं आपके माध्यम से निवेदन करूंगा कि इस विषय पर निश्चित रूप से डिसकशन होना चाहिए। धीरे-धीरे लोगों के मन में न्यायालय के प्रति जो आक्रोश व्याप्त हो रहा है, जैसा अभी एक माननीय सदस्य ने चर्चा की कि आदेश आ गया कि पूरी झोंपड़ियों को तोड़ दिया जाए, मकानों को गिरा दिया जाए, इससे जन-भावना को ठेस पहुंचती है। न्यायालय के प्रति सब लोगों के मन में काफी आदर, सम्मान रहा है लेकिन व्यावहारिकता में जो आदर होना चाहिए, उसमें थोड़ी कमी आई है।

14.24 hrs.

(Mr. Deputy-Speaker in the Chair)

इसलिए मैं आपके माध्यम से निवेदन करूंगा कि न्यायालय और न्यायाधीश के प्रति लोगों के मन में गरिमा बनी रहनी चाहिए। आम लोगों को ऐसा नहीं लगना चाहिए कि अपने स्तर से अधिक कार्यवाही करने का वे काम कर रहे हैं और एक अरब से भी अधिक लोगों के मन में न्यायालय और न्यायाधीश के प्रति गरिमा और आदर बना रहना चाहिए अन्यथा लोक तंत्र के लिए यह शुभ संकेत नहीं है। हर काम में हस्तक्षेप करना न्यायालय के लिए उचित नहीं है। मैं समझता हूँ कि अगर आने वाले दिनों में हमें लोकतांत्रिक व्यवस्था कायम रखनी है, तो इस पर ध्यान देना होगा। दुनिया में हमारा देश सबसे बड़ा लोकतांत्रिक देश है। हमारा संविधान सर्वोपरि है। सबकी अपनी-अपनी सीमाएं हैं। विधायिका, न्यायपालिका और कार्यपालिका, इन तीनों के अलग-अलग कार्य हैं। लेकिन हमें यह जरूर लगता है कि न्यायपालिका अपने कार्यों से विधायिका और कार्यपालिका पर अतिक्रमण करने की कोशिश कर रही है। यह शुभ संकेत नहीं है। इसलिए किसी को सीमा नहीं लांघनी चाहिए। इसका कानून में भी प्रावधान है। सीमा लांघने के बाद लोगों में आक्रोश व्याप्त होता है। आज निश्चित तौर पर आम लोगों के मन में न्यायालयों और न्यायाधीशों के प्रति ऐसी धारणा बन रही है और उन्हें ऐसा अनुभव हो रहा है कि वे हमारे कार्यों में हस्तक्षेप कर रहे हैं। इसलिए इस प्रवृत्ति को रोकने की कोशिश करनी चाहिए। सबका एक दूसरे के प्रति सम्मान होना चाहिए। इसलिए भारत की लोकतांत्रिक व्यवस्था को बरकरार रखने की आवश्यकता है।

इन्हीं शब्दों के साथ मैं विधि मंत्री जी द्वारा प्रस्तुत इस विधेयक का स्वागत करता हूँ और समर्थन करता हूँ। इस आशा के साथ, कि न्यायपालिका और न्यायालय अपने स्वरूप को, अपनी प्रतिष्ठा के अनुरूप आम लोगों के मन में बरकरार रखने में निश्चित तौर पर अपनी भूमिका के अनुसार सफल हो पाएंगे।

उपाध्यक्ष महोदय : आपने देखा राम कृपाल जी कि आप जब बोल रहे थे, तो विपक्ष के किसी सदस्य ने आपको नहीं टोका। आप भी ऐसा ही करें।

Shri Prabhu, please finish your speech within two minutes.

SHRI SURESH PRABHAKAR PRABHU (RAJAPUR): Sir, I do not wish to indulge in contempt of the Chair, but if you could give me a little more than two minutes, then that would be better.

Sir, the Constitution of India had very clearly demarcated roles for all the three organs of the State, namely, the Executive, the Legislature and the Judiciary. Over a period of time we are seeing a growing friction between the three arms of the State. Of course, the Executive is supposed to be answerable to the Parliament, the Legislature; and the Legislature in its own wisdom has the inherent right to interpret the Constitution, amend the Constitution and also bring about such changes as would be really required in consonance with the need of that particular time.

We have been seeing that there have been growing attacks on the Judiciary from various quarters resulting into erosion of the authority of the Judiciary as well as not allowing it to function in an independent manner as is really desired and required for smooth functioning of democracy in modern times. The common man has been knocking the doors of Judiciary with the hope that since he is not getting justice from the Executive because of its inability to fulfil the demands that are there on the Executive, therefore, the Judiciary becomes the last resort for many people to get justice. This new phenomenon of Public Interest Litigation is nothing but a failure of the Executive because the answers that the people are searching for is from a system which is not trying to deliver. Therefore, I feel that while we bring about this amendment which is really required, as per the recommendation of the National Commission for Review of the Constitution, we should always be very careful to make sure that what the Judiciary would like to interpret we should not try to force them by codifying a law in a manner that will bind their hands and will not allow them to function independently. This is very much required.

We have seen that even recently some of the decisions of the Executive when were challenged in the courts, the courts had given decisions in favour of the petitioners saying that probably the Executive had exceeded its brief. It is really required that when it comes to interpreting the decisions of the court if we try to interpret it in a manner that we think it is desirable and if it amounts to contempt of court, then we should not again tell the courts that because we are now making an amendment and now we are free to even attack the Judiciary in a manner we think it is required. Therefore, the Executive has to be extremely careful to make sure that they do not cross the boundaries and that they work within the limits as enshrined in the Constitution. Not only that, it is very important also to note that the first Prime Minister of India used to spend a lot of time in the Parliament and it was not because he had business in the House but he did so because he realised that remaining in the Parliament is a

matter of setting new customs and procedures and thereby he attached more importance to the functioning of the Parliament[snb20].

So, some [bru21]of the areas need not be codified. They have to be acted upon by indulging into practice which will become the order of the day. So, the Executive has to be extremely careful to make sure not to cross the limits and that they allow the courts to interpret. Therefore, contempt of court is an extremely important issue and this is the only way to deal with it. When the court judgement is not respected, it is amounting to contempt of court. This is the only way in which we can actually keep the entire judicial process above certain limits. I would request the hon. Minister to say that, while replying to the debate, in fact, this tradition that has been followed for many years should be followed in future also. The independence of the judiciary should be maintained and we always respect the judiciary in the way it is required and the supremacy of the Parliament which is a sovereign authority will remain for a long time to come.

श्री रामदास आठवले (पंढरपुर) : उपाध्यक्ष जी, बाबा साहब अंबेडकर जी ने देश का संविधान बनाया, उसमें न्यायालय को उनके अपने अधिकार दिए गए। अपनी जो डेमोक्रेसी है, लोकतंत्र है, लोकतंत्र के सभी अंग एक दूसरे पर निर्भर है। श्री हंसराज भारद्वाज जी, 1971 के न्यायालय अवमानना अधिनियम में संशोधन करने के लिए जो नया बिल लाए हैं, मैं उसका सपोर्ट करने के लिए खड़ा हुआ हूँ। मेरा सुझाव है कि न्यायालय को भी अपने अधिकारों के संबंध में निर्णय देने की आवश्यकता है, न्याय देने की आवश्यकता है। कई बार झुग्गी-झोपड़ी में रहने वाले लोगों के लिए, पर्यावरण के विनाश को लेकर, उनकी जिंदगी का विचार न करते हुए, जब सुप्रीम कोर्ट में यह प्रश्न आया था, तब सुप्रीम कोर्ट ने प्राइवेट एजुकेशन संस्थानों में एससी और एसटी को रिजर्वेशन नहीं देना चाहिए, इस प्रकार का निर्णय दिया था। उसके बाद यहां धारा 184 को अमेंड कर दिया गया है। मेरे कहने का मतलब यह है कि न्यायालय का भी अपमान न हो और न्यायालय को भी दूसरे का अपमान करने का प्रयत्न नहीं करना चाहिए और सभी अंग एक दूसरे पर निर्भर रहने चाहिए। भारद्वाज जी जो बिल लाए हैं, मैं उसका समर्थन करता हूँ।

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): Hon. Deputy-Speaker Sir, at the outset, I would thank all the hon. Members who have participated in the discussion of this Bill.

I have received support from almost all quarters because this Bill is very limited in scope and widely acceptable to all sections of the people. I will now enumerate on what basis it is

acceptable.

Sir, many hon. Members have touched various points commencing from judicial activism, judicial restraint, judicial accountability, slow performance and many matters which this Bill does not deal with. It deals with only one measure. There has been a discussion going on for a long time in the judicial and the legal circles on whether the closure of defence against contempt of court should be allowed to be continued or not. There is no defence available against the act of contempt. That is where the leading personality, namely, Justice Shri V.R. Krishna Iyer started this campaign in India of course borrowing some ideas from US judges also that this blanket ban on defence against contempt should be lifted. The issue was referred to the Law Commission and the Law Commission went into it and decided that the time has come now that we should allow limited defence in this matter, that is, the truth should be made as defence[[bru22](#)]. Several Members have highlighted the importance of truth. I myself believe that in our culture and civilisation, we attach very high importance to truth. "*Satyameva Jayate*" is part of our national emblem. That is what Vedas and Upanishads say. So, we cannot gag the truth. But having regard to the importance of the institution, namely the judiciary, we had allowed blanket ban on defence against the contempt matters. But this provision in regard to contempt has not helped in developing a good relation. Many a time, judges also err. Members of the bar have a duty to assist the court in reaching the right conclusions.

There was a powerful demand from all sections that we should now re-consider section 13 which prohibits the courts from sending a person to jail unless it is satisfied that the nature of the offence is such that it has a tendency to interfere in the fair course of justice. As a matter of fact, the whole philosophy of law of contempt is to see that justice flows smoothly and that there is no interference in the administration of justice from any quarter. It is universally accepted that justice must flow smoothly and nobody should be allowed, howsoever powerful he may be, to interfere in the fair course of justice. So, that law stands.

By this Bill, we are adding one another sub-section, which is section 13 (b), according to which the court may permit -- we are giving the power to the court itself -- in any proceedings for contempt, justification by truth as a valid defence. Not only this, we are adding another condition "if it is satisfied that it is in public interest and that the request for invoking the said defence is *bona fide*". Therefore, the benefit will accrue to the contemner only if he satisfies

the courts that what he is saying as a defence is true, it serves public interest and his request is genuine.

This matter was examined by the Parliamentary Standing Committee. Some of the very senior members of the bar participated in that. They asked them as to why do we need this "public interest and genuineness". They suggested "truth" alone should be there. We still have taken precaution. We would not like to weaken the judiciary at all because judiciary enjoys the confidence of the people. Judiciary has performed a very difficult task. Whatever we may say, after the advent of the Constitution, judiciary in this country has done very good work. The credit goes to our founding fathers who provided an independent judiciary in the Constitution. They provided an equally independent bar in this country. India is one of the civilised countries where there is powerful independent judiciary and powerful independent bar. That is how our rights and liberties are being protected. So, the idea is the judiciary should not be browbeaten or scandalised. So, that is the intention of enacting the law. It is to support the judiciary. If anybody scandalises or even tries to threaten or browbeat the judiciary, he should be punished.

Article 21 is equally important. One of the hon. Members wanted to know from me why article 21 is mentioned in the Statement of Objects and Reasons. When we started practice, article 21 had hardly any meaning. It was said that under article 21 no person shall be deprived of his life and liberty and that he cannot be hanged without trial. But post-Maneka Gandhi's case, Justice Bhagwati had interpreted it in such a way, that it is now said that the procedure prescribed under article 21 should not be arbitrary, it should be reasonable, fair and it should be seen to be fair[r23].

How many times are the courts now interpreting article 21? The environmental law is being expanded on the basis of article 21. Even every day, article 21 is being expanded. That is why, when article 21 is being expanded, then citizens or any person who is arraigned as a contemner or an accused should also have a reasonable and fair trial. That is why, if you say you are a contemner, whatever you are saying is contempt, you have no defence. It simply does not appeal to a commonsense that a person says, yes, what he says is true. Suppose, there is a corrupt judge and he is doing corruption within your sight, are you not entitled to say that what you are saying is true? Truth should prevail. That is also in public interest. Therefore, having regard to both sides and again keeping the balance, we are giving a limited right to the citizens that what they are saying is true and it serves public interest. If court does believe like that, then they may allow a defence. Otherwise, there is no defence. Can you say a trial is fair when the other side does not get any defence? This is where we have invoked article 21. On that basis, the Law Commission says, public interest must be there. Even in a defamation law, I see that the Indian defamation law is the weakest in the world. But there also, the public good

can be a defence. So, public good is paramount in our society. Even with regard to contempt of court, public good must be shown.

Otherwise, the judges perform difficult duties and, therefore, they are entitled to all kinds of protection which are provided by the laws.... (*Interruptions*)

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Can I put a question?

SHRI H.R. BHARDWAJ : Why not? You are such a... (*Interruptions*)

MR. DEPUTY-SPEAKER: Mr. Varkala.

SHRI VARKALA RADHAKRISHNAN : He has agreed.

MR. DEPUTY-SPEAKER: Until and unless you get the permission from me, you cannot be allowed.

SHRI VARKALA RADHAKRISHNAN : I seek your permission.

MR. DEPUTY-SPEAKER: First, you should get the permission from the Chair.

SHRI VARKALA RADHAKRISHNAN : I seek the permission of the hon. Deputy Speaker.

MR. DEPUTY-SPEAKER: Now, you can speak.

SHRI VARKALA RADHAKRISHNAN : Now, I raise a very simple question that two things have to be proved. One, 'public interest', and two, 'in good faith'. These two elements will have to be proved. Generally, justification by truth will come into play. Here the question is who is to decide. Is the very same Judge against whom corruption is charged or corruption is alleged? Who is the person to decide? Otherwise, the purpose will be defeated. Do you think that the judge against whom an allegation is... (*Interruptions*)

SHRI H.R. BHARDWAJ: I have understood. He is a very senior Member. He has a lot of experience. I always, when I go out, learn from him whenever he speaks. We are lucky he is in the House.

MR. DEPUTY-SPEAKER: You should also not address him. You should address the Chair.

SHRI H.R. BHARDWAJ: Let me submit that in matters of contempt, there are two types of contempt – contempt of Subordinate Courts and contempt of Court of Records. The Court of Records have been empowered to punish their own contempt. In Subordinate Court, the recommendation can be made to the High Court to punish an act of contempt. Therefore, the Constitution gives that power to the Court of Records to punish their own contemptees. It is not by this law that we are empowering. Therefore, having regard to the superior courts, they possess the power to punish their own contempt. Only, on this matter, we are relaxing it while a judge says you have no defence. If the man says he has a valid defence and that is the truth, then the Judge will decide it whether that is true or is in public interest. Then, he may say: “Okay, I will allow you to adduce your defence.” Then, it is an appealable order. So, these safeguards are being given to the citizens as well as to the court. Many speakers have said so many things about the Judiciary, the Legislature and the Executive. I may remind that let there be no fear in anybody’s mind we have run this Constitution successfully [\[mks24\]](#).

India is a proud nation where, despite all tensions, all institutional tensions, the Judiciary has done well, the Executive has done well and this Legislature has done well. Wherever the Constitution is interpreted, it is always by the Judiciary. The Legislature cannot interpret the Constitution. It can amend the Constitution. But once you amend it, the interpretation of your amendment is always done by the Supreme Court. You have given that power. This Parliament has given that power to the Judiciary. The Judiciary has also shown regards. In Parliament, the Chair always says: “Do not discuss the conduct of the sitting Judges.” We have refrained from doing it. Our whole energy should be devoted to the extent that when we debate, we debate according to the rules, according to the Constitution and not attack the Judges.

Similarly, the Judges also should act like that. I have always spoken publicly, sometimes harshly also, that Judges also should see that there is an elected body, namely, the Parliament which decide about the projects, about the policies and programmes. It is their right. They are the elected people. Judges are not elected. Therefore, they should leave it to the elected people. Wherever the Executive actions are arbitrary, they can strike them down. There is no harm in doing so because they have to uphold the rule of law. So, we have carried this country for 50 long years. Today, we are proud of it that institutional safeguards have been maintained by and large and there are no areas of confusion. Therefore, today, while we are requesting a little amendment in Contempt of Court, it may be accepted.

I hasten to add here that I want to preserve the independence of Judiciary. This Government is committed to it. We do not want to show any disrespect to the Judiciary. But, on the other side, the powerful demand of the legal world all over the world and mostly in the Western countries is there. I remember Lord Taylor of England, the eminent Chief Justice of England himself advised the Scottish and the English Bar - I was present there – that now, times have changed; the Judges should not be too much scared of their own criticism. That is why they are now separating Lord Chancellor's Office in separate wings. So, changes are natural in a democracy. Any democracy which is static and which does not change with times will have to pay the price. So, our Judiciary also welcomes it. Now, time will not be far off when we will also introduce Judicial accountability like we are introducing accountability of Parliamentary forums, of Executive actions. So, the Judiciary also should consider it. But that does not mean that we are not showing respect to the Judiciary.

Our Judiciary enjoy the highest confidence of the people. They have done their work well. It is with this view that we are only rationalising the law of contempt. I would request this House to pass this measure which has the wholehearted support of the Parliamentary Standing Committee. It was, as a matter of fact, the previous Government that started with this measure. We are only passing it in our term.

MR. DEPUTY-SPEAKER: The question is:

“That the Bill further to amend the Contempt of Courts Act, 1971, be taken into consideration .”

The motion was adopted.

MR. DEPUTY-SPEAKER: The House will now take up clause-by-clause consideration of the Bill. The question is:

“That clause 2 stand part of the Bill.”

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1

Short title

MR. DEPUTY-SPEAKER: The hon. Minister is requested to move Amendment No.2 to Clause No.1

Amendment made:

Page 1, line 2,--

for “2004”

substitute “2006” (2)

(Shri H.R. Bhardwaj)

MR. DEPUTY-SPEAKER: The question is:

“That clause 1, as amended, stand part of the Bill.”

The motion was adopted.

Clause 1, as amended, was added to the Bill[\[R25\]](#).

Enacting Formula

Amendment made:

Page 1, line 1,--

for “Fifty-fifth”

substitute “Fifty-seventh” (1)

(Shri H.R. Bhardwaj)

MR. DEPUTY-SPEAKER: The question is:

“That Enacting Formula, as amended, stand part of the Bill.”

The motion was adopted.

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

The long Title was added to the Bill

MR. DEPUTY-SPEAKER: The Minister may now move that the Bill, as amended, be passed.

SHRI H.R. BHARDWAJ: Sir, I beg to move:

“That the Bill, as amended, be passed.”

MR. DEPUTY-SPEAKER: The question is:

“That the Bill, as amended, be passed.

The motion was adopted.

14.51 hrs.

MOTION OF THANKS ON THE PRESIDENT’S

ADDRESS – contd.