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Title: Discussion on the Resolution on the Negotiable Instruments (Amendment) Ordinance and statutory resolution regarding disapproval of negotiable instruments (Amendment) ordinance and negotiable instruments (Amendment) Bill, 2015 (Motion adopted)

STATUTORY RESOLUTION RE: DISAPPROVAL OF NEGOTIABLE INSTRUMENTS (AMENDMENT) ORDINANCE, 2015

AND

NEGOTIABLE INSTRUMENTS (AMENDMENT) BILL, 2015

HON. DEPUTY-SPEAKER: The House shall now take up Items No. 8 and 9 together.

Shri Jai Prakash Narayan Yadav – not present;

Shri Adhir Ranjan Chowdhury – not present;

Shri N.K. Premachandran – not present.

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI JAYANT SINHA): I beg to move:

"That the Bill further to amend the Negotiable Instruments Act, 1881, be taken into consideration."

The hon. Supreme Court in the case of Dashrath Rupsingh Rathod versus State of Maharashtra and another Criminal Appeal No. 2287 of 2009, held that the territorial jurisdiction for dishonour of cheques is restricted to the court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn. Pursuant to the judgement of the Supreme Court, representations have been made to the Government by various stakeholders, including industry associations and financial institutions, expressing concerns about the wide impact this judgement would have on the business interests as it will offer undue protection to defaulters at the expense of the aggrieved complainant; will give rise to multiplicity of cases covering several cheques drawn on banks at different places, and adhering to it is impracticable for a single window agency with customers spread all across India.

To address the difficulties faced by the payee or the lender of the money in filing the case under Section 138 of the Negotiable Instruments Act, because of which large number of cases stuck, the jurisdiction for offence under Section 138 has been proposed to be clearly defined. The clarity on jurisdictional issue for trying the cases of cheque bouncing would increase the credibility of the cheque as a financial instrument. This would help the trade and commerce in general and allow the lending institutions, including banks to continue to extend financing to the economy.

The Negotiable Instrument (Amendment) Bill, 2015, Bill no. 151 of 2015, which proposed a principle for determination of the place of jurisdiction for cheque bouncing cases under Section 138 of the Negotiable Instruments Act, was introduced in Lok Sabha on 6th May, 2015 and considered and passed by Lok Sabha on 13th May, 2015. However, since the Rajya Sabha was adjourned *sine die* on 13th May, 2015, the Negotiable Instrument (Amendment) Bill, 2015 could not be discussed and passed by that House and the Bill could not be enacted. As Parliament was not in session and immediate action was required to be taken by the Central Government, an Ordinance, namely, the Negotiable Instruments (Amendment) Ordinance, 2015 was promulgated by the President on 15th June, 2015.

The Ordinance is similar to the Bill no. 151 of 2015, in the sense that the substantive principle for determination of the jurisdiction of the cases under Section 138 of the Negotiable Instruments Act remains the same, except that the two distinct situations of payment of cheque, (i) by submitting the same for collection through an account, or (ii) payment of a cheque otherwise through an account, that is, when cheques are presented across the counter of any branch of a drawee bank for payment, are explicitly covered under the Ordinance.

The Ordinance provides for the following amendments to the Negotiable Instruments Act:--

- (i) Filing of cases only in a court within whose local jurisdiction the bank branch of the payee, where the payee delivers the cheque for payment through his account, is situated, except in case of bearer cheques, which are presented to the branch of the drawee bank and in that case the local court of that branch would get jurisdiction;
- (ii) Providing that where a complaint has been filed against the drawer of a cheque in the court having jurisdiction under the new scheme of jurisdiction, all subsequent complaints arising out of Section 138 against the same drawer shall be filed before the same court, irrespective of whether those cheques were presented for payment within the territorial jurisdiction of that court; and
- (iii) Providing that if more than one prosecution is filed against the same drawer of cheques before different courts, upon the said fact having been brought to the notice of the court, the court shall transfer the case to the court having jurisdiction as per the new scheme of jurisdiction; and .
- (iv) Providing a new definition of a cheque in the electronic form.

The Negotiable Instruments (Amendment) Bill, 2015, the present Bill, is identical to the Negotiable Instruments (Amendment) Ordinance, 2015 except for an addition of Repeal and Savings Clause, which saves the action taken under the Ordinance and also repeals the Ordinance.

It is expected that the proposed amendments to the Negotiable Instruments Act, 1981 would help in ensuring that a fair trial of cases under Section 138 of the said Act is conducted keeping in view the interests of the complainant by clarifying the territorial jurisdiction for trying the cases for dishonour of cheques.

I would, therefore, request the hon. Members of this august House to support the Bill.

HON. DEPUTY SPEAKER: Motion moved:

"That the Bill further to amend the Negotiable Instruments Act, 1881, be taken into consideration."

श्री प्रह्लाद सिंह पटेल (दमोह) : उपाध्यक्ष महोदय, मैं परिक्रम में लिखित संशोधन विधेयक, 2015 के समर्थन के लिए यहाँ पर खड़ा हुआ हूँ।

पहले मैं आदरणीय वित्त मंत्री एवं वित्त राज्य मंत्री जी को धन्यवाद देता हूँ। समय के साथ परिवर्तन करने की शीघ्रता सरकार को करनी चाहिए, वह सरकार ने की है। चूंकि यह बिल राज्य सभा में नहीं पास हो सका, इसलिए यह फिर से इस सदन में चर्चा के लिए आया है। मैं सरकार को बधाई देता हूँ।

इसमें मुझे दो-तीन बातें ठीक लगती हैं। एक तो जो भी कंपनियाँ हैं या जहाँ से भी चेक जारी होते हैं, कई बार जब सदन में चर्चा होती है, तो जो मजदूरों की बात करता है, छोटे तबकों की बात करता है, तो वह सिर्फ उन्हीं की बात कहता है। कुछ लोग होते हैं, जो उद्योग सापेक्ष होते हैं, तो वे एकतरफा उन्हीं के हित की बात करते हैं। मैं समझता हूँ कि इस अध्यादेश के माध्यम से सरकार ने जो पक्ष सदन के सामने रखा है, उनमें सभी का हित है। इसलिए शायद यहाँ पर "सबका साथ, सबका विकास" का नारा सही लगता है। यदि कोई चेक बाउंस करता है, यदि एकाध करोड़ रुपये का मामला है, तो हो सकता है कि कोई आदमी, जहाँ पर उसका कार्यक्षेत्र है, जाकर अपने वाद को निपटाने की बात करे। लेकिन, यदि दस हजार रुपये का सवाल है और उसकी दूरी हजार किलोमीटर है, तो मैं नहीं समझता कि कोई व्यक्ति यहाँ पर जाकर वाद को निपटाने की बात सोचता है। इसलिए जो गरीब तबके के लोग हैं, यदि मैं मजदूरी करके आता हूँ या मैं कहीं पर छोटा-मोटा व्यवसाय करता हूँ और मेरे साथ कोई ऐसी घोसलाघड़ी हो जाए और मुझसे कल्ला जाए कि दिल्ली जाकर अपना मामला निपटाएं, तो मैं नहीं समझता हूँ कि कोई आकर यहाँ पर लड़ सकता है, न तो खर्च के आधार पर और न ही अपनी परिस्थितियों के आधार ऐसा कर सकता है। ऐसी स्थिति में, मुझे लगता है कि समय के साथ हमें बहुत सारी बातों में तब्दिली करनी पड़ेगी। इसमें जो एक और परिवर्तन किया गया है, उसका भी मैं स्वागत करता हूँ और आपको धन्यवाद देता हूँ। तकनीक बदल रही है और उसके आधार पर जब हम हस्ताक्षर करने के अलावा जो भी अमेंडमेंट्स हो सकते हैं, उसे विधिवत् आई.टी. अधिनियम, 2000 के तहत इस बात में बड़ा स्पष्ट किया है और जिन शब्दों का इसमें प्रयोग किया है, मैं उसे जस का तस पढ़कर उसे सदन के सामने रखना चाहता हूँ। स्पष्टीकरण तीन-

" इस धारा के प्रयोजन के लिए असीमित गूढ़ प्रणाली, कंप्यूटर साधन, अंकीय चिन्हक, इलेक्ट्रॉनिक रूप, इलेक्ट्रॉनिक चिन्हक के क्रमशः वही अर्थ होंगे, जो सूचना प्रौद्योगिकी अधिनियम, 2000 में उल्लिखित हैं। "

महोदय, जिन बातों में दंड प्रक्रिया संहिता, 1973 में और दूसरी बात, जो माननीय मंत्री जी ने कही है कि धारा 138 के तहत जो न्यायालय क्षेत्राधिकार होते थे, जिनमें ऐसी परिस्थितियाँ होती थी, ... (व्यवधान)

HON. DEPUTY SPEAKER: He is not yielding. Please take your seat. I will call you later.

श्री प्रह्लाद सिंह पटेल: मान लीजिए कि यदि मैं कोई संस्थान चलाता हूँ तो मेरा यह कहने का कानूनी हक है कि मेरे न्यायालय का क्षेत्राधिकार यह है। उसी के तहत ही आपको उस कानून का पालन करना होगा। मैं सरकार को इस बात के लिए भी बधाई दूँगा कि दंड प्रक्रिया संहिता, 1973 हो या धारा 138 हो, दोनों को एक तरफ से यह तय कर दिया कि धारा 142 के तहत ही मामले चलेंगे। यदि एक से ज्यादा मामले हैं, तो वे एक ही न्यायालय में आएंगे और वहीं पर उनका निपटारा होगा। इससे समय भी बचेगा, धन भी बचेगा और जो दुविधाएँ हैं, वे भी समाप्त होंगी। सबसे बड़ी दुविधा यह है कि हम उस पर लड़ पाएंगे या नहीं लड़ पाएंगे, इसका रास्ता साफ होगा। इस विचार पर मैं ज्यादा कुछ न कहते हुए सिर्फ इतना ही कहूँगा, चूंकि मैं गांव से आता हूँ, मजदूरों और किसानों की हमारी अपनी समस्याएँ हैं। मेरे सामने एक बार मामला आया, मुम्बई में हमारे यहाँ से अनाज़ के वैगन जाते हैं, उसके बाद जब उसने लेन-देन नहीं किया, तो सिवाय नेताओं के पास जाने के, उनके पास और कोई रास्ता नहीं बचा कि वे न्यायालय में जाकर लड़ पाएँ। यह सचवाई है। मैं एक बहुत छोटे-से गांव, गोटेगांव से आता हूँ। वहाँ के अनाज़ कभी पश्चिम बंगाल जाते हैं, कभी मुम्बई जाते हैं। व्यापारी जब लुट-पिटकर आते हैं, तो उनके पास सिवाय नेताओं के पास जाने के और कोई रास्ता नहीं रहता है। उनके पास लड़ने का कोई आधार नहीं रहता है। इसलिए मुझे लगता है कि ये ऐसे मामले हैं, जिनके तहत कहीं न कहीं रास्ता निकलेगा और समय आएगा, जब और इसे और बेहतर करने अवसर मिलेगा। मुझे यह विश्वास है कि यह सरकार उन कानूनों को निश्चित रूप से उन कानूनों को और सरलीकृत करके, स्पष्ट करके हम सबको लाभ देगी।

मैं सरकार को इस बात के लिए बधाई दूँगा कि हमेशा लोग एकतरफा चर्चा करने के आदी होते हैं, लेकिन भारतीय जनता पार्टी-एनडीए की सरकार ने सभी के पक्षों पर विचार करके इसमें स्थान दिया है। इसलिए मैं फिर से सरकार का अभिनन्दन करते हुए, इस बिल का समर्थन करता हूँ। धन्यवाद।

श्री राजेश रंजन (मधेपुरा) : उपाध्यक्ष महोदय, आपको जानकर बहुत दुःख होगा कि अभी दो घण्टे पहले पटना में दो नौजवानों की गोली मारकर हत्या कर दी गयी।... (व्यवधान) उपाध्यक्ष महोदय, एक साथ बारह महिलाओं के साथ बलात्कार हुआ है, मैं इसे कैसे छोड़ दूँ... (व्यवधान) मैं एक मिनट में मैं विनम्र निवेदन करना चाहता हूँ... (व्यवधान)

THE MINISTER OF URBAN DEVELOPMENT, MINISTER OF HOUSING AND URBAN POVERTY ALLEVIATION AND MINISTER OF PARLIAMENTARY AFFAIRS (SHRI M. VENKAIHA NAIDU): If you have a serious issue, give a notice to the Speaker, the Government has no objection to discuss that issue. Please do not show it in the House. Tomorrow, you raise it or today, after the discussions on Bills are over, you meet the Speaker or the Deputy-Speaker. Once they say, 'yes'; the Government has no problem. We will take note of it. I will convey it to the hon. Minister for Home Affairs, and ask him to take necessary action.

15.16 hrs

STATUTORY RESOLUTION RE: DISAPPROVAL OF NEGOTIABLE INSTRUMENTS (AMENDMENT) ORDINANCE, 2015

AND

NEGOTIABLE INSTRUMENTS (AMENDMENT) BILL, 2015 – Contd.

SHRI B. SENGUTTUVAN (VELLORE): Mr. Deputy-Speaker, Sir, thank you for giving me this opportunity to participate in the debate on the Negotiable Instruments (Amendment) Bill, 2015.

Sir, with the spurt in the economic growth and enormous diversity of commercial transactions taking place these days, business community at large tend to use cheques as legal tender. Despite the fact that great inroads have been made into business transactions, be it credit cards or debit cards, the cheque has been able to hold its own, and in the electronic age, it has even been able to morph itself into an electronic form too.

With a view to encouraging the practice of using cheques in commercial transactions, and in order to give cheques some more measure of credibility, Parliament thought it fit to bring about the first amendment to the Negotiable Instruments Act way back in 1988 whereby a new Chapter, Chapter No.17 was incorporated, and in which Sections 138 to 142 were added into the Act. Section 138 of the Act is both the definitive and the penal provision.

Under the provision of Section 138 of the Negotiable Instruments Act, the person, the drawer who issues the cheque where the cheque is dishonoured for the reason of insufficiency of funds in the account of the drawer or for the reason it exceeds the arrangement made by him to honour the cheque, then, in that event, the payee of the cheque or the holder in due course may give notice in writing of the factum of dishonour of the cheque to the drawer of the cheque within a month, within 15 days initially, and on receipt of it, the drawer if he fails to pay the money within 15 days of receipt of the notice, either deemed, constructive or actual notice, then, he is deemed to have committed the offence under Section 138 of the Act.

Section 139 is the presumption Section and Section 142 in the original Act, as it originally stood, provides for taking of cognizance. However, this Section does not provide for any particular territorial jurisdiction for commencement of the action. Later on, it was felt that the provisions were a little bit inadequate and there was difficulty in implementation and the conduct of the trials. There were so many backlog of cases. Therefore, in 2002, a second amendment was brought about by which the provision of Section 138 was amended, and also Sections 143 to 147 were incorporated into the Act.

The original provision of punishment which ran to one year was enhanced to two years in the 2002 amendment and the time for issuance of notice was enhanced from 15 days to 30 days for the benefit of the payee or the holder in due course. The other provisions from Sections 143 to 147 enlarge the scope of the trial insofar as the offences were to be tried by summary trial procedure and the offences were also made compoundable.

Since the provisions of Section 142 which provide for the process of taking of cognizance did not provide for territoriality of the venue of the trial in which the offence has to be tried. It was left to the court to interpret the place or places of jurisdiction in keeping with the provisions of Sections 177 to 179 of the Criminal Procedure Code. Therefore, the Supreme Court, in the case of K. Baskaran versus Sankaran Vaidyan Balan reported in 1999 7SCC 510 and AIR 1999 SC 3762 held that the cause of action for making a complaint consisted of a bundle of facts, at least five in number. One is drawing of the cheque, second is presentation of the cheque to the bank, third is returning of the cheque for reason of non-payment due to insufficiency of funds, and fourth is giving of notice and finally the failure of the drawer to pay money despite receiving the notice within 15 days of receipt of it.

As per this judgement, all these five acts which constitute the offence could take place anywhere; could take place within five territorial jurisdictions. Therefore, in pursuance of that judgement, all the five courts could try the offence. This being so, in the later case of Harmon Electronics versus Panasonic Private Limited which was reported in 2009 1 SCC 720, the Supreme Court, once again, held the place from which the demand notice was issued would not be deemed to have jurisdiction to try the offence. When this was holding the field, the Supreme Court in 2014 in the much discussed Dusharath Rup Singh Rathod versus State of Maharashtra reported in 2014 9 SCC 129 and AIR 2014 SC 3519 chose to take a different view and this case was decided by a large bench consisting of three Honourable Judges of the Supreme Court in which they overruled the decision in the Baskaran case and ruled as follows:

"We clarify that the complainant is statutorily bound to comply with Section 177 of Criminal Procedure Code and, therefore, the place or sight is where Section 138 complaint is to be filed is not of his own choosing. The territorial jurisdiction is restricted to the court within whose jurisdiction the offence was committed which in present context is a place where the cheques is dishonoured by the bank on which it is drawn."

Therefore, according to the judgement of the Supreme Court, the court having jurisdiction to try the offence is the one where the drawee bank is situated. In the judgement, the Supreme Court also directed transfer of lakhs and lakhs of cases where trial had not commenced. So, it led to a chaotic situation in judicial circles. Therefore, the Government quickly rose to the occasion and thought of bringing about this amendment to remedy the situation.

The Hon. Minister spoke at length on the purpose of those amendments. The amendments include Section 6 (a) wherein the definition of cheque in the electronic form has been given a new context and meaning. The second amendment, which is the most important one, is to amend Section 142. By this amendment, the Government seeks to create a new sub-section (2) in which Clauses (a) and (b) are incorporated. As per Clause (a), the territorial jurisdiction in a case of dishonour of cheque would be the place where the payee has an account. In the case of an at-par cheque, the territorial jurisdiction will be the place where the drawee has an account. Thus, there is a kind of evens out. The present amendment tries to strike a balance between the rights of the complainant and that of the accused.

The accused is further given another privilege in Section 142A where there is already a criminal complaint pending against him, the subsequent complaints will have to be transferred to the court which is already entertaining the complaints against him. That prevents him from the botheration of having to travel to other cities or places wherever he is prosecuted. Thus, the amendment, in my opinion is a very welcome one and it comes at a time when the payee or the complainant, who has already lost good money, is forced to travel to the place of the drawer to prosecute him. Therefore, I welcome the amendments.

But, this, by itself, will not redress the situation prevailing in the courts today. The courts, both appellate and trial courts are overloaded with cases and there are as many as five to six lakh cases relating to an offence under Section 138 which are pending even today. Thus an expeditious trial is one of the mandates of law particularly in the Negotiable Instruments Act under Section 143 (3). It is more honoured in breach than in observance. The trials in the trial courts stand protracted over long periods of time for the reason that service of summons could not be effected on the accused within a reasonable time, or even when the accused appears, he chooses to abscond from the trial. Even where non-bailable warrant is issued for his arrest, it is not simply executed by the police. Even if the accused is very much available within his own precincts, the police show exemplary indifference to apprehend the accused. This leads to protraction of trial in the trial courts and in the appellate forums.

We also see that the provisions are easily misused by the unconscionable few who fill up blank cheques which were taken not in discharge of any legally enforceable liability but as a matter of security from the drawer. Even after the discharge of the liability, the unconscionable payee would try to fill up the blank cheque and try to embroil in an unwanted litigation. This also is a facet that we see during the trial of cheque dishonour cases.

Then, though the offence is bailable, yet the course adopted by the magistracy in some parts of the country leads one to wonder whether we are doing substantial justice at all. It is because, on appearance of the person, he is directed to take bail. At the time of taking bail, he is compelled to deposit crores of rupees which, according to them, is a part of the cheque amount. This kind of practice makes bail, an illusory relief to the accused and this again forces him to abscond. So, we need to give more teeth to the Act to make it serve the commercial purpose for which it has been introduced in the beginning.

Sir, with this I conclude. I thank you for giving me this opportunity. I also congratulate the Ministry for rising up to the occasion in bringing about this very important legislation which affects almost about five or six lakh complainant parties before various forums.

SHRI TATHAGATA SATPATHY (DHENKANAL): Thank you, Sir. I welcome the move of the Finance Minister to bring forth this Negotiable Instruments (Amendment) Bill, 2015. It had come earlier to this House but it has to come back to this House because of political considerations.

It is a good Bill and it needs all-round support. We, from the BJD, support this Bill. As you are aware, India has virtually an economy which is 50:50. There is a banked economy and there is an unbanked economy. This problem pertains to may be 40 or 50 per cent of the banked economy where not only big corporates but even small businessmen and small individuals suffer because of this cheque bounce issue. The Supreme Court's Judgement obviously pertains to a big industry or big commercial transaction between big companies as was referred to by one of our learned colleagues from AIADMK. I am certain he is a very learned and able lawyer and that is why he gives so many details. That Supreme Court Judgement necessitated the Government to bring forth this Bill by which we are trying to set right where something had gone wrong. There are a lot of people in this country today who are very keen for plastic money. Those admirers probably forget that those countries, which had jumped into the plastic money economy, had less black money in their systems. Although it could have a good impact because there would be probably less black money in that system but plastic money also has had a very bad record as has been visible in the recent past. Many tiger economies have collapsed while India with its double economy has managed to survive. I am not an economist and the Finance Minister is a professional man so, he would know the details. What has happened in Western economies and even in certain Asian economies does not bode well for India to go in absolutely to the electronic transfer of money or electronic cheques. Maybe a balance should be found in this system also.

Practically, I have noticed one thing. When a cheque bounces, the bank sends us a notice that you have deposited a cheque on this bank from this client, from this town or city of such and such an amount and because of insufficient funds, the cheque has bounced. Now, as the beneficiary, the person who should have got the money, the burden now falls on him. I have to take that cheque. I have to take that bank's notice and I have to go to the police station. I have to first file an FIR. Without filing an FIR, I cannot file a case. This is a standard practice. That is happening in many places where the cheques are bouncing. I would like a clarification in this regard. Every layer means D&D- Delays and Donations'. So, when the bank is declining and it is attaching a memo with the cheque that is returned, I think, that should be document enough to file a case which is very tardy now because the process before filing the cheque is complicated and cumbersome.

It has been mentioned earlier that there is also the bail process and the proceedings that take place in the court. We are not taking into account one point. Eventually the person may get the money five years later or seven years later and we really do not know how many years later. I have personally seen in my own case that in respect of a small cheque of Rs.10,000 where the case has been filed, the case has gone on for over four and a half years now but the money has not yet come. The person cannot be arrested. He is somewhere hiding. He has run away. The cheque has bounced. Apart from losing the money, there is also the opportunity that the person who was supposed to the money loses out. That is not being taken into account.

People say that it is not a question of money but it is a question of principles. But we all know that when confrontation takes place between money and principles, invariably it is money that wins and not principles. So, when a small businessman, a small entrepreneur is involved, the protection has to be there. ...(*Interruptions*)

SHRI BHAGAT SINGH KOSHYARI (NAINITAL-U.S.N.): Ultimately principles win. ...(*Interruptions*)

SHRI TATHAGATA SATPATHY: I am only talking about the practical scope. I am talking about a small businessman. A small businessman can never come to the Supreme Court and he would rather say: "Okay, let this amount of Rs.20,000 go. Who can go to Delhi?" They do not have the facility and the ability to get lawyers here to fight cases involving the amount of Rs.10,000 or Rs.20,000. So, the man loses out on the opportunity also. Delay in getting the money obviously implies loss of opportunity too. So, I would request that the Government has to consider if something can be done in this Act itself through an amendment in this regard. There should be an attachment of property when a cheque bounces and it is certified by his or her bank to be regularly becoming a defaulter. A provision should be there whereby property can be attached. More teeth to this Amendment Bill could be given whereby people would be deterred; people would be scared to issue cheques when they do not have money in their bank accounts because there are people who are known to issue big cheques knowing fully that they do not have that kind of money in their accounts.

So, I would suggest that whilst I am supporting this Negotiable Instruments (Amendment) Bill, 2015 – please take note that I am supporting this Bill – more teeth could be given so that it is effective and small and petty businessmen are protected and habitual offenders are severely punished.

Thank you.

SHRI ANANDRAO ADSUL (AMRAVATI): Mr. Deputy-Speaker, Sir, I rise to support the Negotiable Instruments (Amendment) Bill, 2015.

I would like to express my sincere thanks to the hon. Minister. This Bill was passed by the Lok Sabha on 13th May, 2015 and it was pending in the Rajya Sabha. In that circumstance, this Ordinance was promulgated on 15th June, 2015.

There are two things. There are two main amendments – one for instruments and the other for court jurisdiction. If you go into details, you will notice that higher number of cheques is bounced and the amount of those bounced cheques is also given. A large number of these cases are pending in various courts. So, to regulate the banking sector and to keep the faith of the customers, this Ordinance was very much essential in this situation.

Sir, I would give some examples. Suppose, one payee deposits his cheque in his bank in whatever branch that is there. If this cheque gets bounced, he approaches the appropriate court wherever the branch is there. Or otherwise, he presents his cheque to a bank in any other way and the cheque gets bounced, then the jurisdiction of the court lies in the area of the bank where the drawer's bank account is there. In another case, suppose there are various cases of a client in various courts. As per the promulgation of this Ordinance, those cases would come together in a single court. This is also a good amendment for the sake of the clients of the bank.

The Negotiable Instruments Act, 1881, Clause 2(a) clears the definition of the cheque which says:

"a cheque in the electronic form means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be."

As per the Information Technology Act, 2000 also, this is a good Amendment. The definition in 1881 Act was:

"A cheque containing the exact mirror image of a paper cheque and generated in a secure system using digital signature. "

That is why the above Amendment is there.

Sir, I am working in the banking field and it is my experience that the sufferers are the small clients because they cannot go in the court of law as they cannot afford the fee of the advocates. As my colleague Shri Satpathy said, for Rs. 10,000, Rs. 20,000, he is a small person; and he is cheated by the cheque drawer or whatever person is there. That is why two special provisions are there -- one for the sake of instrument and the other for the court jurisdiction. I endorse him that these provisions should be there.

I am thankful to the hon. Minister for bringing this very good Amendment Bill. On behalf of my party Shiv Sena, I fully support this Bill. Thank you.

SHRI JAYADEV GALLA (GUNTUR): Mr. Deputy-Speaker, I am thankful to you for giving me this opportunity to speak on this Bill.

Though the Bill appears to be small, it has a lot of bearing on the banking sector, trade and commerce. The objective of the Bill is to give clarity on jurisdictional issues to try cases under Section 138 of the Act of dishonoured cheques and increase the credibility of the cheques as a financial instrument.

As the hon. Minister rightly said, this is the result of a Judgment of a Three-Judge Bench of the Supreme Court. It is also right that the present Bill proposes to amend Section 142 of the Negotiable Instruments Act and clearly states as to where a complaint should be filed. It proposes if cheques is delivered for collection to the account of payee, the jurisdiction lies in the area of bank branch where payee maintains the account. Or, if the payee presents a cheques to a bank in any other way, the jurisdiction lies in the area of bank branch where the drawer maintains an account. This balances both in favour of the payee and the drawer of the cheque, and I welcome this.

Sir, as an institution, Parliament is mandated to make laws for the country. But the execution or implementation of the same is given to the Executive. In the absence of a strict execution mechanism and monitoring by Parliament about execution of not only through this legislation but any legislation for that matter, we are not going to achieve the objectives mentioned in the Bill.

Coming to the Bill, let me bring to the notice of the House the problems being faced by people in bringing the cases filed under this Act to a logical conclusion. According to the recent media reports, 30 per cent of cases pending in various courts of the country are under the Negotiable Instruments Act and the Motor Vehicles Act. Secondly, it is disappointing to note that cheque bouncing cases are taking 3-5 years just like a civil suit for recovery of the money. If we have this kind of delay, the very objective of the Bill is defeated. I agree that there are many factors such as non-availability of Magistrates. Many courts still follow the archaic system of serving summons which takes advantage of upper limit of six months in serving the summons. I suggest for consideration of the hon. Minister that it should be mentioned in the Bill itself that summons can be served through either E-mail, fax, courier or any other newer and quicker method of delivery. By using only the Postal Department for delivering the summons, there are many cases and the hon. Minister who himself is a renowned lawyer should be aware that in many cases the accused manages with the Postal Department and returns the summon resulting in serving of summons for second time. So, the delay in cases starts right from day one. And, Sir, adjournments are granted liberally and no efforts are made to complete evidence and cross-examination on the same day. So, I suggest for consideration of the hon. Minister for providing a timeline in the Bill itself that within the prescribed time the case has to be disposed of.

The next point I wish to make is the problems relating to Electronic Clearing Service. Through this process, money is transferred from one account to another. But here also there are problems. I will give an example of India's leading bank, SBI. If you have a Savings Bank Account in SBI and if you have some Rs.1 lakh or Rs.2 lakh of money, what SBI will do is, it will transfer your money automatically to another account called Multi-Option Deposit which gives a little more interest when compared to the Savings Bank Account. If there is any cheque presented or ECS is to be done and if there is no balance in the account, SBI transfers the money from the MOD to the Savings Bank Account and honours that cheque. But there are some complaints that SBI is dishonouring cheques in spite of balance being in the MOD. In such cases, the drawer is penalized for no fault of his. So, I request the hon. Minister also to look into such transactions and make the bank responsible and it should be compensated to the customer.

Finally, the Bill says that the cases would be transferred to one court after this Bill becomes an Act. There are some objections to this. What will happen to the cases which are in the final stage? If such cases are transferred, the entire process will have to start again. So, the hon. Minister may consider that the victim be given the choice if he wants to transfer his pending case or just wish to continue it in the present court itself.

With these observations, I conclude my speech and I request the hon. Minister to please consider my suggestions. Thank you.

DR. BOORA NARSAIAH GOUD (BHONGIR): Sir, thank you for giving the opportunity.

I rise to support the Negotiable Instruments (Amendment) Bill. Basically, many of my predecessors, who have spoken at length, are renowned advocates and they know the subject. I will tell you that once upon a time, India used to live on ethics. Word is much more than a promissory note. That was the system. But unfortunately, because of globalization and neo-liberalisation, new litigations have come in. We used to say "*zubaan ki baat patthar ki lakir*". This was the situation once upon a time. Today, the only people who used to honour the words seem to be farmers in the rural areas. That is why if they cannot pay, they commit suicide. But most of the corporates, most of the people who have Rs.100 crore of assets by taking loans from various banks by using various means, are the ones who usually fail the cheques. This Amendment Bill definitely will smoothen the process for the complainant because when I was going through the Supreme Court judgement, it was so surprising that the onus of the entire problem has been on the complainant. The accused is always in a situation where the complainant cannot reach him. Suppose the accused gives a cheque from a particular State, the complainant deposits the same in his bank account in his own State. If he has to file a case against him, obviously he cannot reach to the accused, who has defaulted in payment to him. But this amendment will definitely help the complainant in regard to pursuing his case.

When you go to section 138 which deals with criminality part of the offence of default of a cheque, I am happy that the time has been increased from one year to two years, but as many of the speakers have spoken, it is taking three to five years for a case to be settled. The problem is for a person who has lent the money. In the new liberal era, the problem is that give money by eliminating it. That is the situation. The problem for the complainant is how to recover the money at the earliest. His problem mostly is not whether the accused is jailed or not and whether the accused is jailed for one month or one year. His problem is that his savings have vanished. Some people save throughout their lives and give it as an advance to the known fellows on compassionate or some other ground. It is a common knowledge that the criminal courts take four to five years. Ultimately, it defeats the very purpose of justice. So, I would request the hon. Finance Minister to think about it. If the money is not recovered and once the criminal part is there, again he has to file a civil case. He has to go to the court twice. He cannot get his money back by judgement in one court. He cannot get justice in one court. He cannot get money based on a judgement in one court. He has to go to two courts. In a way, that is an endless litigation process. More so, the accused is always known to the litigant and is also a habitual offender. To be frank, most of them are habitual offenders. In such a case, the complainant can never get back his money and justice. We welcome and agree with the amendment brought by the hon. Finance Minister.

Apart from that, I would like to suggest that there should be a time bound trial to recover the money. Secondly, the present criminal and civil courts cannot do justice in these matters. As some of the hon. Members have said, 30 to 40 per cent litigations are on this matter. So, you can make special courts for economic offences like this. It may be a small amount. Doing so does not require a big infrastructure as such cases do not require lot of evidence and counter-evidence because the *prima facie* evidence will be available in the form of a bounced

cheque. There should set up separate courts, at least one bench in each State or each district. It will help the complainant.

I come to my third suggestion which is very important though it may not be related to the present amendment. I have seen many of the banks, who lend money for a car or a house, are in the habit of taking blank cheques. I have also signed many cheques. Now-a-days the employees of the banks keep changing and we do not know in whose hands such cheques ultimately lie. So, this business of getting signature on blank cheques should be, by law, banned so that it is not misused.

With this, I support the Bill and thank you very much, Sir.

श्रीमती रमा देवी (शिवहर): मैंने तो बोलने के लिए अपना नाम नहीं दिया था।

उपाध्यक्ष महोदय, मैं इस बिल के समर्थन में बोलने के लिए खड़ी हुई हूँ। अभी तक जितने वक्ता बोले हैं, जो तकलीफ़ जनता के बीच में आती है, जो बैंक के दिआय में आती है... (व्यवधान)

मैं इस बिल का समर्थन बड़े पुरजोर ढंग से करती हूँ और मंत्री महोदय को धन्यवाद देती हूँ, जिस तरह की जनता की तकलीफ़ें हैं, बैंक का जो मिससूज़ होता है, तोग़ अपने बैंक को लेकर भटकते रहते हैं, हमारे पास भी आते हैं कि हमारा बैंक बाउंस हो गया है, उसके बाद हमको पैसा नहीं मिल रहा है। इसको विलयर करने के लिए नियम 138 का मैं हृदय से समर्थन करती हूँ।

धन्यवाद।

SHRI VARAPRASAD RAO VELAGAPALLI (TIRUPATI): Sir, thank you very much for this opportunity. I congratulate the hon. Minister for bringing clarity in the jurisdiction of the court where the Supreme Court on two occasions had to differ on their own judgements in 2009 and later. So, it is very much essential to protect the interest of genuine people. It is also very relevant as per the Law Commission Report. Literally, the cheque bouncing cases are choking the system. As many as 50 lakh cases are there all over the courts, and in Delhi alone it is touching almost 6 lakh cases. So, it is very much necessary.

My opinion is that a summary trial of three months may not be practical, and perhaps that needs to be re-considered. One more point that I want to mention, and I do not want to repeat what all other previous speakers have mentioned, is that the complainant may be given an opportunity to file where he wants it. As mentioned in the Supreme Court judgement of 1999, sometimes if the person who is committing the fraud has an edge in a particular court for various reasons, then the complainant will be at a loss. Therefore, since the complainant is at the losing end, so the privilege may be given to the complainant and wherever he wants to file the case he may be able to do it. It is also welcome that it is made as compoundable, but for habitual offenders mere two years may not be sufficient. So, as earlier speakers were mentioning, some more teeth may be given to this also.

One point, which was forgotten, was that there are several guidelines of the RBI with regard to NEFT, RTGS and IMPS, that is, transfer through mobile payment services, but these have not been considered. So, whenever a Bill is brought, if a comprehensive Bill is brought, then next time such a thing need not be brought. Therefore, when it is considered, the RBI guidelines and NEFT, RTGS and IMPS may also be considered.

Lastly, there is some discrepancy with regard to the CrPC Sections 177, 178 and 179 where the commission of place where this trial would be considered. Here, it is just opposite. So, there is a possibility that people could misuse the difference between CrPC and the present Negotiable Instrument Act. So, this also needs to be rectified.

With these few observations, we strongly support this Bill. Thank you very much, Sir.

THE MINISTER OF FINANCE, MINISTER OF CORPORATE AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI ARUN JAITLEY): Sir, before my hon. Colleague, Shri Jayant Sinha replies, just one or two questions that have been raised. Shri Sathpathy said that one has to first file an FIR. It is not necessary. Under Section 142, the complaint has to be made and cognizance will be taken only if the person aggrieved files a complaint. The Police cannot file a charge-sheet under a 138 case. Therefore, no FIR is required for an offence under 138. So, that may not be very accurate.

He wanted a provision with regard to attachment to be introduced. The provision for attachment already exists in the Code of Civil Procedure. Therefore, no independent procedure is required, and you will get attachment only if you file a civil claim. If you file a criminal complaint, then attachment cannot be there in a criminal case. If you file a civil suit for recovery of that money, then there is a corresponding provision in the Civil Procedure Code by which you can file an attachment.

The Members wanted that time-frame should be fixed for this. Now, in the 2003 Amendments, no specific time-frame was fixed. A new procedure was laid-down and the procedure was that along with the complaint an Affidavit has to be filed by the complainant saying that this is the bounced cheque, and this is a slip of the bank, which has given the reasons for bouncing.

16.00 hrs

The court will presume that slip to be correct. A provision to that effect was introduced in Section 146. Therefore, the moment along with the complaint you file an affidavit, which was provided for in Section 145, enclosing the copy of the bounced cheque and the slip, the court has to issue a notice. If it is not being done, I think it is for the courts to follow this procedure.

The last question which was raised was how do you serve the summons because this is a case where people avoid service of summons because they gain time. To make up for that, Section 144 was added that instead of a court process going and the summons being issued only by a court process which a person can refuse, then all possible modes of service – whether it was a court process or it was a speed post and any other procedure approved by a court – could be employed. Today, even summons under this can be sent by an e-mail to the person concerned. All those provisions already exist. It is only to be enforced by the courts. Governments are not the enforcing agencies; the courts are the enforcing agencies, so they have to enforce it.

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI JAYANT SINHA): Mr. Deputy-Speaker, Sir, thank you very much for giving me an opportunity to respond to the questions posed by the learned Members who have spoken. We have had a very good discussion this time about this Negotiable Instruments Act, the Ordinance and the amendments that we have introduced. We had a very good discussion last time about this matter as well.

As my distinguished and hon. colleague, the Finance Minister, has explained, there are some intricate legal things that have been placed into the Act and, of course, have further been refined in the amendment that provide the foundation for contracts to work in the economy. I think it is very interesting to regard this as an example of how a modern day complex market economy works. If we do not have a sound legal foundation for the enforcement of contracts and for the contracts to be actually worked through, we will end up as far as the market economy is concerned, as far as business and commerce are concerned, with significant problems. We have significant problems today.

If you look at the facts, the facts are that today we have something like 18.27 lakh cases pending in District and Subordinate Courts associated with bounced cheques. In addition to that, we have 38,379 cases in the High Courts. Since we do not have a good way of enforcing these contracts and because the Supreme Court Judgment further complicated matters in terms of where the jurisdiction for trying these cases should be, we have as a result of that created tremendous pendency and backlog in the courts and, of course, impacted how the market economy and how commerce are working.

So, it is very important, and learned hon. Members have indicated this that while this is a very small and short Bill, it actually has profound significant implications for the functioning of the market economy. The matters that we have considered and the amendments we brought to the Bill that was introduced in May, 2014, we think will further enable the enforcement of these contracts and enable these trials to come to a speedy conclusion by consolidating cases, by trying the cases in the jurisdiction of where the payee is. In that fashion, take into account, situations associated with small traders that are dealing with cheques that are bounced as well as very large organizations like banks and telecom companies that are dealing with a large number of cases that have been dis-honoured across the country.

So, these two amendments (1) in terms of the cheque collection through an account and (2) the new definition of the cheque in electronic form will enable us to be able to deal with this very large backlog of cases and be able to expedite the handling of these cases in such a fashion that we can really give a boost to commerce and the economy through what seems like a fairly simple Act.

Since all the learned Members here have supported this Bill, I hope all Members will pass the Bill. Thank you.

...(Interruptions)

HON. DEPUTY-SPEAKER: You can raise your point at the time of the Third Reading of the Bill. Otherwise, you could have participated in the debate.

श्री शरद त्रिपाठी (संत कबीर नगर): उपाध्यक्ष महोदय, माननीय विद्वान मंत्री जी जो विधेयक लाए हैं, वह आम जनमानस के लिए बहुत ही उपयोगी और बैंकिंग व्यवस्था को जवाबदेह बनाने में एक मील का पत्थर साबित होगा। मैं माननीय मंत्री जी से आपके माध्यम से कहना चाहूंगा कि दुर्बल जैसे देशों में बैंकिंग प्रक्रिया में यह व्यवस्था है कि यदि चेक बाउंस होता है और खाते में पैसा नहीं रहता है या स्पॉट हो जाता है कि चेक देने वाले व्यक्ति ने जानबूझ कर ऐसा किया और उसकी देने की नीयत नहीं थी। मैं आपके माध्यम से जानना चाहता हूँ कि यहां पर माननीय मंत्री जी इस विधेयक में कोई ऐसा प्रावधान करेंगे कि जो भी इससे संबंधित हो। ... (व्यवधान)

HON. DEPUTY SPEAKER: This is not the way.

...(Interruptions)

श्री शरद त्रिपाठी: उस व्यक्ति या फर्म के एकाउंट को हमेशा के लिए ब्लैक लिस्टेड कर दिया जाये। ... (व्यवधान)

HON. DEPUTY SPEAKER: It cannot be another debate. When the reply of the hon. Minister is over, it cannot go on like this. You can only raise points.

...(Interruptions)

श्री निशिकान्त दुबे (गोड्डा): उपाध्यक्ष महोदय, जो बिल के ऑब्जेक्ट एंड रीजन हैं, इसमें ट्रेड कॉमर्स और बैंकिंग इंस्टीट्यूशंस को फायदा होने वाला है। अभी माननीय मंत्री जी ने कहा है कि किसी न किसी कारण से इसे टाइम बाँड करने में परेशानी है। हम लोग सभी आचार संहिता का केस लड़ते हैं और हमेशा कोर्ट का चक्कर बार-बार लगाना पड़ता है।

मेरा आपके माध्यम से मंत्री महोदय से आग्रह है कि यदि आप इसे टाइम बाँड नहीं करते हैं, क्योंकि लोग कार और घर के लिए लोन लेते हैं, वे ई.एम.आई देते हैं, वे ई.एम.आई. के लिए एडवांस में चेक्स दे देते हैं। हो सकता है कि उस समय किसी कारण से उनके एकाउंट्स में उतना पैसा न हो। यदि उनका एक भी चेक बाउंस हो जाएगा तो उनको बार-बार दूसरे जगह चक्कर लगाना पड़ेगा। टाइम बाँड मैजर के लिए सरकार क्यों नहीं व्यवस्था करे?

SHRI B. VINOD KUMAR (KARIMNAGAR): Sir, many of the Members who participated in the debate have suggested for early disposal of cases. In 2009, the Law Commission had suggested for establishment of fast courts. However, after 2009, no fast courts were established in this country. But very recently, the 14th Finance Commission has already suggested to the Finance Ministry that many cases under the Negotiable Instruments Act are pending in this country for the establishment of the fast track courts. In Metros like Hyderabad, Mumbai, Chennai and Delhi where corporate sectors are available, many such cases are pending. I would request the hon. Finance to speak on this.

SHRI JAYANT SINHA: Sir, we have, in the Negotiable Instruments Act, increased the penalty so that if the cheque is dishonoured, one can face imprisonment up to two years. I think, the penalties are quite strong as they are right now. There are already 349 Special Courts operating in the States and Union Territories to deal with these cases. There are provisions that it should be done where the payee is located and the cases can be consolidated. We expect that that will really enable us to be able to resolve many of these pending cases quickly and be able to streamline these problems that we are facing right now.

HON. DEPUTY SPEAKER: The question is:

"That the Bill further to amend the Negotiable Instruments Act, 1881, be taken into consideration."

The motion was adopted.

HON. DEPUTY SPEAKER: The House shall 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 3

HON. DEPUTY SPEAKER: Shri N.K. Premachandran – not present.

The question is:

"That clauses 3 to 5 stand part of the Bill.

The motion was adopted.

Clauses 3 to 5 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

HON. DEPUTY SPEAKER: The Minister may now move that the Bill be passed.

SHRI JAYANT SINHA: I beg to move:

"That the Bill be passed."

HON. DEPUTY SPEAKER: The question is:

"That the Bill be passed."

The motion was adopted.

16.08 hrs