

MR DEPUTY CHAIRMAN Please write to the Speaker

SHRI BHUPESH GUPTA I will write to him but, Sir, you are concerned in a way, because it seems they have received certain papers of our Privilege Committee to deal with this matter

MR DEPUTY CHAIRMAN Anyway, you write to him

SHRI BHUPESH GUPTA Who supplied it?

MR DEPUTY CHAIRMAN You please write to him

SHRI BHUPESH GUPTA Evidently you did not supply it. It is quite clear, otherwise you would have said so. Misapplication of a case in order to convict an editor and a correspondent

MR. DEPUTY CHAIRMAN We go to Legislative Business

THE FOREIGN AWARDS (RECOGNITION AND ENFORCEMENT) BILL, 1961

THE MINISTER OF COMMERCE (SHRI N KANUNGO) With your permission, Sir, I beg to move

"That the Bill to enable effect to be given to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, on the tenth day of June, 1958, to which India is a party, and for purposes connected therewith, be taken into consideration"

Sir, the last legislation on the subject which is operating now is the Foreign Arbitration Act of 1937, which was passed by the Legislative Assembly of that time. That was passed to give effect to what is known as the Geneva Convention of 1927. Broadly, the idea has been that arbitrary awards in different countries should be effective in the countries which have entered into convention

to respect them. Obviously in commercial undertakings it is necessary that arbitrations should be encouraged and as a necessary corollary, the awards of these arbitrations should be effective subject to the conditions of public policy and law in different countries.

After the Geneva Convention of 1927 there have been many changes in the world and many changes in the commercial practices also. Now, under the aegis of the United Nations Economic and Social Council a further convention was discussed in 1953 and was finalised in 1958. This is the Convention which now replaces the old Geneva Convention. Therefore, Sir, this Act is meant to give effect to the Convention to which India has agreed. It will mean that the enforcement of foreign awards is made a little more comprehensive than it was before because of the discussions between the different States and different commercial bodies which participated in the discussion of the matter over a number of years. I commend, Sir, that the Bill be taken into consideration.

The question was proposed

SHRI ROHIT M DAVE (Gujarat): Sir, this particular Bill is merely reproducing, almost verbatim, the Convention which was signed at New York and which later on was ratified by the Government of India, and this particular Bill is now there to give legal recognition to this ratification. Now, Sir, as far as the Bill is concerned, perhaps it is merely a formal affair but as far as the principles involved in the Bill and originally in the Convention are concerned, I think it would be quite proper to make a few general remarks.

Sir, it is now quite clear that whenever there are agreements of a commercial type between one country and another the question of enforcement of that particular agreement that may be outside our jurisdiction has to be considered. Now, Sir, under

a Convention which was signed at New York, it seems, it was decided to enforce an arbitration award in consequence of certain commercial agreements that might have been entered into between the residents of one country and another so that the arbitration award could be enforced in the country in which one of the residents is staying. So far so good. But Sir, as far as the Bill is concerned, clause 2 seems to be of a rather wider scope than what has been contemplated in the Convention as such.

Sir, in the Convention it has been stated that this particular convention is to be applied on a reciprocal basis. That is, if a particular country agrees to honour the arbitration awards entered into in certain countries on a reciprocal basis and if India, as mentioned, is one of the countries wherein this particular arbitration is awarded, would be given effect to India would also reciprocally recognise arbitration awards which have been decreed by other courts in other States. But as far as clause 2 is concerned, it goes a step further because, Sir, in sub-clause (a) of clause 2 it has been mentioned that under this particular law as in force in India it could be applied to all arbitration awards made after the 11th day of October, 1960.

"in pursuance of an agreement in writing for arbitration to which the Convention set forth in the Schedule applies, and "

Now, Sir, I am not quite sure but perhaps this phraseology which has been used over here might mean not only that the awards which are entered into and decreed upon in the countries with which we have got reciprocal arrangement may be enforced in this country but even awards in which two contracting parties have agreed that an arbitration award could be enforced even in the country with which we have not got any reciprocal arrangement, even such an agreement for such

awards could be enforced. It all depends upon the construction that is placed on the word "and". Does that "and" mean that both these conditions are to be fulfilled before the arbitration award is enforced in this country or whether it means that there are two possibilities under which this particular law would apply, one in which there are agreements between two countries with reciprocal arrangements and, two, between the countries in pursuance of an agreement irrespective of reciprocity where arbitration award has been decreed upon? In some countries where we have not got reciprocal arrangement, in pursuance of an agreement the matter could be turned into an award, an award decreed in any country could then be enforced in this country as also those awards which have been decreed in the countries with which we have got reciprocal arrangements, both these awards could be enforced in this country. I should like to know whether these are two distinct things or whether it means that there are two conditions to be satisfied before an arbitration award which has been decreed in some other country has to be enforced in this country, (i) that there should be one agreement and (ii) that this arbitration award should have been decreed in the country with which we have got reciprocal arrangement. I am not quite sure by reading this particular clause whether the word "and" could be given this interpretation. Therefore, I would like some clarification from the hon. Minister.

There was another point also on which I would like some clarification and that is clause 3. The last few lines of clause 3 say that if it is found that one particular party wants that the proceedings should be stayed, then the court has got the right to stay the proceedings. As far as the Convention is concerned, the Convention makes further provision that whenever a court stays proceedings according to clause 3, it will demand

[Shri Rohit M. Dave.]

certain surety or security from the persons who have applied for the stay of the proceedings, and only after the security has been provided for that the proceedings will be stayed. I would like to know from the hon. Minister why the particular provision regarding the security has been omitted from the Act as such though it finds its expression in the Convention. As far as the other clauses are concerned, I am quite satisfied with the Bill and I hope that the Minister, in his reply, would throw some light on these two questions that I have raised.

SHRI K. K. SHAH (Maharashtra): Sir, so far as the contention of my hon. friend is concerned, I think probably he has been worried about a decision of the High Court where 'and' has been construed as 'and/or' but that decision does not apply here because that decision was arrived at on account of a certain context. Here the context is clear. It says:

"Unless the context otherwise requires, 'foreign award' means an award etc."

Then it says:

"(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the Schedule applies, and

(b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, by notification . . . applies."

Therefore this cannot apply to a State with which we have no reciprocal arrangements. In fact that is the provision made in the Convention. So far as that difficulty is concerned, my learned friend need not therefore worry.

I wish to point out to the Minister that there are certain basic changes so far as the Bill is concerned. First of all, the Convention applies to all arbitral awards, not only commercial

but so far as we are concerned, we have accepted provision (3) of Article I of the Convention which gives permission to a contracting State that it may declare that it will apply the Convention only to differences arising out of legal relationship, whether contractual or not, which are considered as commercial under the national law of the State making such declaration but that is a part of sub-clause (3) of Article I. So far as clause 1 of Article I is concerned, it says:

"This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than . . ."

Therefore I do not know why we have opted for clause 3 and not for clause 1, because there have been cases where a lot of foreign exchange has to be spent because the awards made in respect of other matters are not recognised either in India or in the contracting State but if a provision can be made with the contracting State that all awards mentioned in Article I, clause 1 of the Convention will be enforceable, then it will save a lot of foreign exchange. I know of a case where an application for judicial separation was filed and also an application was filed in India for divorce. Now both referred to the same matter but unless there was an agreement between the contracting States and unless the award in both the cases could be filed in respective courts and could be recognised, one case could be settled by referring the dispute to an arbitration here and the other case in another court could not be settled by the same award.

DIWAN CHAMAN LALL (Punjab): How can you settle a divorce case by arbitration?

SHRI K. K. SHAH: There is provision in the Civil Procedure Code that it can be referred to arbitration and the award . . .

DIWAN CHAMAN LALL: A divorce will be out of court completely. If

you enter into any mutual agreement between the parties, that would by itself throw you out of court

SHRI K K SHAH. The matter can be referred to arbitration and the award is accepted in the Court as a judgment

DIWAN CHAMAN LALL. Not in a divorce case. A divorce case cannot be settled by arbitration. There is no such thing applicable to a divorce case.

SHRI K K SHAH. In the same manner I would request the Minister to refer to clause 2(a) which says:

"(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the Schedule applies . ."

So far as the Convention is concerned, they have wisely defined what is meant by an 'agreement in writing'. We have conveniently omitted it probably because we have depended upon the definition of 'agreement in writing' as it appears in the Contract Act but that has not been sufficient and it would be wise to include what is provided in the Convention as to what is meant by the term 'agreement in writing'. The Convention says:

"The term 'agreement in writing' shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams"

It is true that the contract can be entered into by exchange of letters or telegrams but it is not always accepted that the arbitration clause is also binding because sometimes there is an omission in one of the letters. For example, along with a letter a bill is sent and the bill is accepted. On the reverse of it there are clauses, one of which says that any dispute arising shall be referred to arbitration. If this definition of 'agreement in writing' is accepted,

then this clause will amount to an agreement in writing for arbitration because it is contained in the exchange of letters and telegrams.

So far as the definition is concerned, there is another big change. The word 'physical' has been omitted. The Convention says:

"This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal"

Here also if you do not say 'between persons, whether physical or legal', then in view of the fact that the word 'person' has been defined in the Convention as 'Physical or legal' and if you omit the word 'legal' from the definition of 'person', legal entities as Corporations will not be covered. It will be construed that so far as the Government of India and the courts in India are concerned, the word 'person' has been restricted to the physical person and does not apply to the legal person. The entire effort of having this reciprocal arrangement will become null and void, because once the Convention defines and the contracting countries to the Convention agree that the word 'person' shall apply both to the physical person and the legal person and, if we omit 'legal', it will not cover legal entities like corporations and will not have the desired effect.

So far as Article VII is concerned, a foreign award may not be enforced under certain circumstances. I thought that clause 7 should have been lifted verbatim from the Convention and put intact here because this is provided by the Convention itself but I find certain changes and they are very material changes. For example, it is said that the recognition and enforcement of the award may be refused,—this is a very important power given

[Shri K. K. Shah.]

to the courts,—at the request of the party against whom it is invoked only if that party furnishes to the competent authority with proof of the reasons against the enforcement mentioned in clause 7. Here it must be remembered that when an award is sought to be enforced in this country, it will be against a resident of this country or a subject of this country. Therefore, it is the resident of this country in whose favour this right will be exercised. It is not against the resident of this country that these rights are to be exercised. Therefore the wider the definition, the greater the liberty to the residents of this country to take advantage of the jurisdiction of the High Court in fighting out an award made in a foreign country. Here in defining the powers of the Court clause 7(1)(a)(iii) says that the award may not be enforced on the ground that the award deals with questions not referred to in the agreement. Therefore a man who wants to say that this award cannot be enforced, has to prove that the award deals with questions which are not in the agreement for arbitration. The Convention says:

“where the award deals with a difference not contained in it or not falling within the terms of the agreement.”

It is a very very wide provision in favour of a resident of this country that the resident of this country who is a party to this arbitration or legal proceedings has a right to challenge that award not only on the ground of questions which are not referred to but on the ground of differences which are not contemplated and not falling within the terms or the scope of the agreement. I think this is a very important clause and the Legal Department and the Minister concerned, I hope, will be good enough to give due consideration to this aspect of the matter. With these words, Sir, I do commend this measure. I think that this is a very important and useful measure and it

is very necessary. I hope this will be followed by other measures which will make it possible not only to have awards filed, but the judgments of our courts would be operative in other countries, which are contracting States. At present, the judgments passed by High Courts or other courts in this country are not enforceable in other countries and even if you obtain a decree in this country, you have to file a suit in the other country, wasting a lot of our exchange. But there are countries which have come to an agreement that where a judgment is passed by a competent court in one country, it can be enforceable on certain questions in other countries.

With these words, Sir, I once again commend this measure to the House.

SHRI N. SRI RAMA REDDY (Mysore): Mr. Deputy Chairman, I rise to give my full support to this Bill. This Bill is intended to facilitate international commercial business on a reciprocal basis. As has been correctly pointed out already, this measure replaces the Geneva Convention which has been agreed to and which has been in operation hitherto. By means of this Bill, certain difficulties that had been noticed in the working of this Convention are proposed to be removed. Certainly, it facilitates international trade and it fosters confidence in the countries abroad and therefore, it has got to be welcomed wholeheartedly by this House.

This Bill lays down a procedure for settlement by arbitration of disputes arising from international trade. Therefore, this is a very welcome measure. I have not been able to follow the subtle differences that have been referred to by our learned friend here—Shri K. K. Shah. After reading the provisions in this Bill, to me it seems that this is a very necessary measure and it should be given our complete support. The details with regard to giving effect to foreign awards, also to the filing of

foreign awards in the courts and their enforcement and also the conditions for the enforcement of these awards, and the provisions of this Bill have been, as far as my knowledge goes, very clearly laid down and there should not be any difficulty felt anywhere. The High Court also has been given the power to make such rules as are necessary in this behalf. Therefore, I feel we can, without much discussion, accept this Bill. All the intricacies have been explained by my learned friend Shri K. K. Shah and I wholeheartedly support this Bill.

SHRI P. N. SAPRU (Uttar Pradesh): Mr. Deputy Chairman, I think this Bill requires no long argument to support it. The Statement of Objects and Reasons clearly gives the reasons which have necessitated the Government to proceed with this measure. The last Bill was passed in the year 1937, and now it is proposed to change it in accordance with the new settlements which have been arrived at at the International Convention on the Recognition and Enforcement of Arbitral Awards as adopted at New York on the 10th June, 1958.

I have not been able to discover any legal flaws in the Bill such as were put forward by my learned friend there. My mind is not subtle enough to find these legal flaws. Perhaps, not being familiar with the working of commercial concerns, it is not possible for me to follow the arguments which were put forward by my hon. friend, Shri K. K. Shah.

I find that under clause 11, the High Court has been given power to make rules consistent with this Act, for the filing of foreign awards, and all proceedings consequent thereon or incidental thereto, and also for

"the evidence which must be furnished by a party seeking to enforce a foreign award under this Act;"

This is in accordance with accepted principles of private international law.

It will be for the High Court to determine and to lay down the rules which would ensure that a foreign award has been correctly filed and it will also be for the High Court to lay down the rules regulating the procedure or the evidence which a party must furnish before proceeding to enforce a foreign award under this Act. Also I note that a foreign award will not be enforced under this measure, under clause 7, if it does not satisfy certain conditions. And if you look at those conditions, you will find that they are just those conditions which domestic tribunals require for the enforcement of awards in domestic matters. It will be open to the court to refuse a foreign award if it comes to the conclusion that the subject-matter of the differences is not capable of settlement by arbitration under the law in India or that the enforcement of the award will be contrary to public policy. Therefore, the power to review whether the award goes beyond the subject-matter of the differences or is consistent or non-consistent with public policy has been reserved for the High Court, and this is as it should be. I think this is also in accordance with the convention which was arrived at in Geneva.

Clause 4 makes it clear that a foreign award shall, subject of course to the provisions of this measure, be enforceable in India as if it were an award made on a matter referred to arbitration in India. Now, obviously, the award has in mind commercial agreements. You do not refer all matters to arbitration. It is not possible, for example, to refer every matter for arbitration even under our domestic laws and, therefore, the criticism that certain matters are excluded from the purview of this Bill has no validity. It has also been laid down that it will be for the court to determine whether the foreign award is enforceable under the law, and if it comes to the conclusion that it is enforceable under the law, the decree shall follow the judgment and it will not be open to any party to appeal from that decree except in so

[Shri P. N. Sapru.]

far as the decree is in excess of or is not in accordance with the award. These are precisely the grounds on which you may challenge an award of a domestic court, if I may use that word in contradistinction to awards of international courts. As far as I can see, this Bill follows the law of arbitration as understood in our country and as can be made applicable to international agreements.

SHRI K. K. SHAH: There is not only 7(1)(b) but 7(1)(a) also. You are referring to 7(1)(b).

SHRI P. N. SAPRU: What the point about 7(1)(b) is, I have not been able to understand. Clause 7(1)(b) says,

"If the court dealing with the case is satisfied that—

(i) the subject-matter of the difference is not capable of settlement by arbitration under the law of India;"

This is so far as domestic tribunals are concerned. Everything cannot be referred to arbitration under the Arbitration Act and certainly it is for a court to see whether the award is in accordance with public policy or not. If an award of a domestic court is not in accordance with public policy, it cannot be enforced. Therefore, here also, if the courts should come to the conclusion that the award is not in accordance with public policy, then, notwithstanding the fact that it is an international award, it will not be enforced. I can see nothing wrong with the clause as it is worded and my mind does not work in the subtle directions in which . . .

SHRI K. K. SHAH: I had referred to clause 7(1)(a) and not 7(1)(b).

SHRI P. N. SAPRU: I am paying the hon. Member a compliment.

My mind does not work in the subtle directions in which Mr. K. K. Shah's mind works. Mr. K. K. Shah is an

authority on drafting. Drafting has not been my line. The interpretation of drafts is something which I understand and, as far as I can see, the Bill follows generally the Geneva Convention and it gives effect to the Geneva Convention. It is desirable in the interests of trade and commerce to encourage international arbitration. Difficulties were felt in the working of the old Act and what this Bill seeks to do is to remove those difficulties.

With these words, Sir, I give this Bill my support without any "ifs" and "buts". I give the Bill my whole-hearted support. I can suggest no improvement in the Bill. I think it is as perfectly drafted as my limited intelligence thinks it should have been and I, therefore, have no fault to find with the Bill as drafted by the Ministry of Commerce and Industry.

SHRI N. KANUNGO: Sir, I must confess that perhaps I have not been able to understand all the subtle distinctions which have been made by Mr. Shah who ought to know much better than I do about the applicability and the results of a legislation like this.

The point I would try to make is that the process of recognition of decisions of courts in different countries, though a desirable matter, depends also on the understanding of a full nature between the countries concerned, apart from the legal systems and the juristic principles which are followed in different countries and which change from time to time. There is another aspect; reciprocity is of greater importance in these matters. Assuming that the legal system of country X is on all fours with that of country Y and also assuming that the juristic principles followed by the legislative enactments of country X and country Y are on all fours, it has still got to be considered whether both the countries agree to this reciprocity or not. Again, reciprocity has got to be

extended gradually, assuming that all the other factors are equal. It would be a happy day indeed if we can have even limited agreement on giving effect to decisions of one country in another country but such a day has not arrived yet, and yet, the history of this particular legislation would show that we have progressed considerably between the years 1927 and 1960. A mere perusal of the Geneva Convention of 1927 and the Convention of New York would show as to how far we have progressed in that direction, and yet, we have not progressed far enough.

I must frankly admit that 1 P.M. we have approached this subject with a certain amount of hesitation. I must also frankly admit that the distinction which Mr Shah has drawn between Articles I and III of the Convention is very right, and we have deliberately gone in for the limited application of Article III and not Article I because we do not think ourselves prepared yet for various reasons. The chief of them is whether there is any necessity for it or not in the sense whether Indian nationals will be involved in large-scale arbitral awards in matters other than commercial in different parts of the world.

Sir, may I continue after lunch?

MR DEPUTY CHAIRMAN: Yes. You will continue after lunch. The House stands adjourned till 2.30.

The House adjourned for lunch at one of the clock.

The House reassembled after lunch at half past two of the clock, THE VICE-CHAIRMAN (SHRI NAFISUL HASAN) in the Chair.

SHRI N KANUNGO: As I was saying when we adjourned, we have deliberately gone in for Article III of the Convention and we are in no hurry to go in for Article I, where matters other than commercial are covered. It will depend upon the way things

move in the world and also move in our country, one of the factors being whether Indian nationals are likely to be involved at all in such matters in other countries or not.

A reference was made to the question of security for holding in abeyance the execution of an award, if the situation so demands. It will be remembered that in the last Act there was no such provision and I believe this is one item on which we have made advance. It is within the discretion of the courts in India to decide whether there should be any security or there should be no security.

Reference has been made to the fact that in clause 7 of the Bill provision has been made for certain conditions under which an award may not be enforceable. Obviously these are provisions which give certain rights to the nationals of India to protect themselves against what I should call a rubber stamp decision of an award. It is possible that there might be conditions whereby a national of India against whom an award has been made may require protection. If such conditions are not there, obviously the awards will be enforced. To the extent that these exceptions are made it certainly limits the scope of awards being enforced in India. But it has been done in the interests of the defendants and also in the larger interests I believe in similar legislations relating to other contracting parties of the Convention, such protection is provided.

The suggestion made that not only awards but judgments of foreign courts should be made enforceable in India is certainly an idea which is desirable, but I do not think that the stage has come when we can contemplate that stage. With the development of mutual confidence in the judicial systems of different countries of the world such a day may come and it may come much sooner than we envisage at the moment. But for the present I think we will be wise in going slow.

[Shri N. Kanungo.]

One remark was made that the Convention has been bodily incorporated in the Bill. It is true. This follows the structure of the earlier Act which this Bill proposes to replace and the Convention is part of the statute. Reciprocity is provided in the sense that the Central Government has provided in clause 2(b) of the Bill that until reciprocity is available and the Government of India is satisfied that such reciprocity is available and declares its decision in the Official Gazette, the provisions of this Bill will not apply. In other words, though the Convention has been agreed to by various countries, the application of the Act as far as awards in those countries or other countries are concerned, will depend on the assessment at a given time of the laws which are passed in the other countries and reciprocity being available to the Government of India along with those countries. When these conditions are satisfied, such countries will be included and notified in the Gazette and then only the provisions of the Bill will be enforced.

I certainly admit that the Bill does not go even as far as the Convention has gone, but the Convention is merely an intention of the countries which are parties to it. It will depend upon whether we go further or not. It will depend upon the conditions existing in other countries and in our country as well.

The distinction made between the physical person and legal person, which has been mentioned, applies to Article I only and not to Article III. The question of that distinction does not arise. Whatever doubt there was about corporations being governed under this Bill has been provided for by amending the Companies Act. Certain doubts were expressed by certain courts in India about the provisions in the Companies Act. I suppose it is section 389, which has been now amended, in the Companies Act which now makes the position clear, that is, whether it is a corporation or

an individual, they will be covered by an award which is covered by the present Bill when it is passed, and there will be no doubt about it.

Sir, I commend the Bill for the acceptance of the House.

THE VICE-CHAIRMAN (SHRI NAFISUL HASAN): The question is:

"That the Bill to enable effect to be given to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, on the tenth day of June, 1958, to which India is a party and for purposes connected therewith, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI NAFISUL HASAN): We shall now take up the clause by clause consideration of the Bill. There is no amendment to any of the clauses.

Clauses 2 to 11 and the Schedule were added to the Bill.

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

SHRI N. KANUNGO: Sir, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

THE INDIAN STANDARDS INSTITUTION (CERTIFICATION MARKS) AMENDMENT BILL, 1961

THE MINISTER OF COMMERCE (SHRI N. KANUNGO): Sir, I beg to move:

"That the Bill further to amend the Indian Standards Institution (Certification Marks) Act, 1952, be taken into consideration."

Sir, before I proceed to explain the provisions of the Amendment Bill, I