

SHRI RAVI SHANKAR PRASAD: Sir, let us extend it till 6 o'clock ...*(Interruptions)*... If need be, at 6 o'clock, we will decide ...*(Interruptions)*...

SHRI JAIRAM RAMESH (Karnataka):.. What happened in the past and what is happening now; but there was no Bill of major significance that did not go through the Standing Committee process during 2004 to 2009 and 2009 to 2014 ...*(Interruptions)*... I challenge the Minister who has just made a statement to give the example of any important Bill which did not go through the process of scrutiny ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: The Statutory Resolution and the New Delhi International Arbitration Centre Bill, 2019 to be discussed together. Shri D. Raja—not present. Shri Binoy Viswam—not present. Shri Elamaram Kareem. Do you want to speak?

SHRI ELAMARAM KAREEM (Kerala): Yes, Sir.

श्रीमती जया बच्चन (उत्तर प्रदेश): सर, शुरू करने के पहले ही आप 'brief' बोल देते हैं। ऐसा बोलने की जरूरत ही क्या है?

श्री उपसभापति: मैडम, आगे उनके पास फिर बोलने का मौका है। Please take your seat. Both the Bills will be taken up together.

STATUTORY RESOLUTION AND GOVERNMENT BILLS

Disapproving the New Delhi International Arbitration Centre Ordinance, 2019 (No. 10 of 2019);

(i) The New Delhi International Arbitration Centre Bill, 2019; and

(ii) The Arbitration and Conciliation (Amendment) Bill, 2019

SHRI ELAMARAM KAREEM (Kerala): Sir, I move the following Resolution:—

“That this House disapproves the New Delhi International Arbitration Centre Ordinance, 2019 (No.10 of 2019) promulgated by the President of India on 2nd March, 2019.”

Sir, I am not opposing the Bill but only opposing the route of Ordinance. What was the extraordinary situation to promulgate an Ordinance on 2nd March, 2019, just before the declaration of General Elections? As our leaders point out here, the Committee scrutiny is not taking place. Only the debate in this House is taking place. This is an important Bill. There would be so many implications. It has to be

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discussed and debated in the Committee and the House. We have to discuss with the stakeholders also. The opportunity is lost when an Ordinance is issued. So, I oppose the Ordinance.

THE MINISTER OF LAW AND JUSTICE; THE MINISTER OF COMMUNICATIONS; AND THE MINISTER OF ELECTRONICS AND INFORMATION TECHNOLOGY (SHRI RAVI SHANKAR PRASAD): Sir, I move:—

“That the Bill further to provide for the establishment and incorporation of the New Delhi International Arbitration Centre for the purpose of creating an independent and autonomous regime for institutionalised arbitration and for acquisition and transfer of the undertakings of the International Centre for Alternative Dispute Resolution and to vest such undertakings in the New Delhi International Arbitration Centre for the better management of arbitration so as to make it a hub for institutional arbitration and to declare the New Delhi International Arbitration Centre to be an institution of national importance and for matters connected therewith or incidental thereto, as passed by Lok Sabha, be taken into consideration.”

Sir, I also move:

“That the Bill further to amend the Arbitration and Conciliation Act, 1996, be taken into consideration.”

Sir, very briefly, may I just share with this House what the two Bills are about? I will surely be guided by the wise counsel and interventions by the hon. Members present here. Our Government is very keen that India must become a hub of domestic and international arbitration. Globally, institutional arbitration is the order of the day. There was a conference with the Chief Justice of India. The Prime Minister was there, other functionaries were there. There was a consensus that we must try to make India a hub of arbitration because dispute resolution should be faster. Thereafter, I was handling this portfolio. We set up a committee headed by a very distinguished retired Supreme Court Judge, Justice Srikrishna. The other members in the committee were Justice Ravindran, retired Supreme Court Judge, a very distinguished judge in the field of arbitration; then, Shri K.K. Venugopal, the Attorney General of India; Shrimati Indu Malhotra, presently an hon. Judge in the Supreme Court—as a senior advocate, she has written books on arbitration; Shri Narasimha was the Additional Solicitor General of India; then we had Shri Arghya Sengupta, a very good academic mind in this field; and, we had representatives of FICCI and CII, the two trade bodies.

Sir, close to a year, they had the widest consultations with the stakeholders. Shri Ravindra Bhat of the Delhi High Court is now Chief Justice of Rajasthan High Court and he was also there; he is another very well informed judge in the field of arbitration. They took feedback from all over the country. They consulted the stakeholders including the arbitration institution. Thereafter, they gave recommendations.

Sir, the two Bills contain the substance of their recommendations. I would first convey to this House what the main Bill is about, the Amendment of Arbitration Act. The recommendation is that to promote institutional arbitration in the country, there must be a body to accredit proper institutions. Therefore, the Amendment law, basically, establishes an Arbitration Council of India which shall accredit proper institutional arbitrators for domestic and international arbitration. This Arbitration Council of India, Sir, shall be headed by the retired Supreme Court Judge including the CJI, or a High Court Chief Justice or a Judge or an eminent academician in the field of arbitration. There shall be Law Secretary, there shall be someone from the Ministry of Expenditure, and then there would be representatives of the trade bodies. What will they do? They will grade the institutional arbitration centres, institutions dealing with arbitration, whether they are okay, whether they are meeting the standards, what is the quality of arbitrators. All these things they will do and once proper accredited arbitral institutions are there, the High Court and the Supreme Court will designate them. The High Court will designate them in the case of domestic arbitration and the Supreme Court will do so in the case of international arbitration. Now, what is the benefit of this? Presently, as Sukhendu Babu and Mr. Navaneethakrishnan would be aware, you have to go to the court to get the arbitrators. Now, you need not go to the court. There are properly designated arbitration institutions. You can straightaway approach the institution to get arbitration proceeding comments and select the arbitrators. The first major thing has been done and they have been allowed to credit arbitrators. For instance, Sir, one of the reasons as to why arbitration has failed in India is because time schedule has not been adhered to. That is, institution can also grade arbitrators like, "He is too lazy. बहुत देर करते हैं ये We will not grade him well." Therefore, some degree of benign regulation will be there by the statutory body upon the performance of arbitrators. The second thing is, and I personally took interest in that, India's arbitration eco-system is changing. Therefore, I was very keen that judges are all right, but we must have good arbitrators from diversified fields. Sir, for handling the telecom and IT portfolio, we need bigger dispute centres in these areas. There must be proper technical experts, IT giants, CEOs, who can work as arbitrators, decide on, say, Intellectual property, law of patent, etc. Therefore, experts in these fields should also be there. Secondly, Sir, I also felt that we have very good

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civil servants, who have been finance secretaries, who have been banking secretaries. Why can't their services be taken into account to facilitate India as a good hub of arbitration? That is the eco-system which we have sought to amend in this. The second is, time-frame has been indicated. You must complete the claim and defence within six months and the arbitrator must complete the proceedings in twelve months. Sir, under 29A, another provision is there that if an arbitrator does not complete within that time, he will also be penalised in his fee, and in the event if he does before the time prescribed, he will be given incentive in his fee. That scenario is already there. Lastly, Sir, this whole training of lawyers, quality of arbitrators, training of arbitrators are all issues which the Arbitration Council of India must also consider. Sir, the whole idea was that arbitration in India must get proper encouragement. Sir, a question arose when I was framing this law that about 36 institutions are there in India, but there are areas also when there is no institution of arbitration. How to go about that? We have made a provision that in areas where there is no institution delivering arbitration proceeding, then the Chief Justice of the High Court will keep a panel of arbitrators from which you can choose. They will be like institutions which will keep on changing from time to time depending on performance unless the institution also comes there. This is, Sir, by and large the eco-system as far as the first particular part is concerned. There was one provision about Section 26A of the Amendment Act. It will come retrospectively or prospectively! There was a dispute in law. We have clarified that. It shall now only be prospectively. Old law shall be covered by the old law of arbitration before the 2015 Amendment. This is the eco-system of the main Amendment. If more issues are raised, I will reply to that in my reply subsequently. What is the second one? This is ICADR (Indian Council for Alternative Dispute Resolution). Sir, it is a very sorry state of affairs which I wish to share with this House. The Government of India had given ₹ 30 crores, including land. This body, which has 700 members, did only 55 arbitrations in 27 years and that too not all of them completed. In the last three years, two or three arbitrations were going on, but yes, lots of jet-setting was happening in seminars etc. Beyond this, I have nothing more to say. Therefore, we want that body – not the body, Sir, the Centre, because the body remains the Society, nothing to do about that – to develop as the New Delhi Centre of Arbitration, as an institution of national eminence, because Srikrishna Committee Report has said that this centre should be promoted as a centre of national eminence. Therefore, we are very keen that the New Delhi Centre of Arbitration should develop as a proper centre of national eminence because the centres are being watched globally as to what their performance is. Therefore, to make this body professionally competent, what we are

doing here is this. Here, it is to be headed either by a retired Supreme Court Judge or a retired High Court Judge or an eminent arbitration professional. And, then, you will have representatives from law, finance, etc. Again, this body will set up, will make a catalogue of arbitrators, give them training to make the NCDAR a properly professional body. I am very keen – and we will have a very expert CEO also – because, of late, Sukhendu babu and my other friends who are dealing with law will know it that a lot of Indian arbitration is happening in Singapore, a lot of this is happening in London. I have no objection to anyone going outside. But, what is important is, Sir, India has got some of the finest judges, some of the finest legal minds. So, why should the cases of India go outside? It is a matter of great surprise. The problem was lack of good institutional arbitration. And, my vision is, I am sure the House will appreciate, the sheer quality and stent of arbitration proceeding in India is so overpowering that if they are able to develop a good eco system, we will have a new bar of arbitrators; we will have new teachers, teaching arbitration, in India in a more focussed manner. And, this whole thing would develop as a very powerful instrument of alternative dispute resolution mechanism. These are the basic nuances that we have taken, based upon the recommendation of a very high-powered committee. I am sure the House will appreciate this. And, I am willing to hear their views as elaborately as possible. But, surely, these two legislations are the order of the day to take India forward.

Thank you.

The questions were proposed.

SHRI ANAND SHARMA (Himachal Pradesh): Sir, the two Bills – the New Delhi International Arbitration Centre Bill, 2019, and the Arbitration and Conciliation (Amendment) Bill, 2019 – are being discussed together. ...*(Interruptions)*...

Sir, the hon. Minister has already explained the purpose and the objectives. And, that's there in the memorandum also, which is a part of the Bill that has been moved. There cannot be two views when it comes to improving arbitration, infrastructure, and the entire eco system in our country. Being one of the largest economies – the sixth largest or the seventh largest, to be precise – it is important for India to create that eco system to re-assure the foreign investors, domestic investors and all those who are engaged in the commercial exercise for the expeditious settlement of the commercial disputes. The efforts, which have been made for over decades by the Governments, corporations, and legal profession, trying for improving the entire system ...*(Interruptions)*... Sir, if there is so much of noise right in front of me, it will be impossible to speak. There has to be some order, please. But, all these

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efforts have met with failure. The Minister, I am sure, is conscious of it. Why? Is it because of the inadequate infrastructure facilities for arbitration, the uncertainty of laws, unconscionable delays and ambiguous judgments? That is a fact. Various Governments have tried it. It is not a question of the present Government bringing forward these Bills. In the past also, efforts were made to improve the laws, but the desired results were never achieved. ...*(Interruptions)*...

श्री उपसभापति: सुखेन्दु बाबू, कृपया बहस चलने दें। ...*(व्यवधान)*... बात बाद में हो सकती है। ...*(व्यवधान)*...

SHRI ANAND SHARMA: Sir, I think, you should resolve if they have some issue.

SHRI SUKHENDU SEKHAR RAY (West Bengal): Sir, I am walking out of the House.

(At this stage the hon. Member left the Chamber)

SHRI ANAND SHARMA: No; this issue should be resolved. If he has some issue, that issue must be resolved. ...*(Interruptions)*.. There is some dispute somewhere.

MR. DEPUTY CHAIRMAN: I think it is regarding some time mechanism. They are correcting it.

SHRI A. NAVANEETHAKRISHNAN (Tamil Nadu): Here also, arbitration required! ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Anandji, please.

SHRI ANAND SHARMA: You have brought forward the New Delhi International Arbitration Centre Bill, 2019. The Minister has explained the reasons as to why the alternative centre has not succeeded. The Alternative Dispute Resolution Mechanism has been there for decades or a number of years, as the hon. Minister has said. Well, there are many observations on that, in addition to the observations made by the hon. Minister, that it, actually, did not take off due to the Government's obduracy as well as the fact that the initial law had some lacunae; I will concede to that. But when it comes to the arbitration award, there is a real issue here, that the Government is the biggest litigator. What has happened, Sir? It is a matter of fact that whenever the arbitration awards go against the Government or a PSU – in recent memory, they have been big ones – whether it is the ONGC-Reliance or Tata-DOCOMO, it is the Government which then litigates and goes to the court. So, one has to be very fair and objective when it comes to the reasons or the factors that have led to the situation, or the failure even of the Alternative Dispute Resolution Mechanism. Internationally, the Governments keep away when it comes to arbitration. It is a good intention

that you want India to be the international hub and why not. The Minister referred to London and Singapore. Yes! even our own entities, our PSUs or our corporates, then, finally have to go there or it is in-built in the Memoranda of Understanding or the Agreements or the Investors' Agreements as to which the place of arbitration will be. Now, that is again an issue, which I want to draw hon. Minister's attention to, because this is not something which has been addressed in the Bill, which you have brought. You are referring to 'place.' Now, there are many judgments even of our own Supreme Court and many judgments of courts of other countries, on this particular matter. Even Singapore has realized; that is why they are moving away from it. That, once you used the word 'place', then, it is the application of the laws of that country. So, whether it should be 'place' or the 'seat of arbitration', that is what is being internationally discussed and debated for long. And, if you are going to bring about a qualitative change and improvement, you need to address this issue so that what you give actually is better or equivalent to what is being offered by the International Arbitration Centre which the hon. Minister referred to. I am afraid, it is found wanting there. The Minister referred to the Srikrishna Report. I would like to ask what prevented the Government to accept the recommendations in full. You have accepted, Sir, but there are some important recommendations that you have excluded. There is an undefined scope, and that is a bad law. The scope of the powers of the Arbitration Council of India, you have not at all defined. Who will make? And the words which are used are that the ACI will make policies. Policies are not made by the Arbitration Council. You had to define the scope. Rules can be framed thereafter but the scope cannot be left undefined and this may pose, I am afraid, practical problems and defeat the very purpose of the Bill. It also does not address the real possibility of delays in completing the arbitration since it proposes a 'twelve-month' period would now begin from the completion of the proceedings and not from the date of reference. So, it is after the completion of the pleadings, which may take time; and there has to be a time-limit. That time-limit is there. Earlier it was not there. We will support whatsoever is the positive thing. But is that 'twelve month' upon the completion of pleadings 'good time'? It is because delays are something which investors, Governments, corporates and any institution which is engaged would avoid but that will add to delays. What is equally intriguing is that the international arbitration has been excluded from the time-limit. Why? The Minister needs to educate the House about that because most of the arbitrations, not all which involve the Government of India or the PSUs, concerning Indian corporate entities or the foreign investors happen to be international in nature, in character. So, if you want to become an attractive hub, as a country, for these dispute resolutions or arbitration, then why not have some kind of a defined time-frame?

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Sir, there are many issues which we have when it comes to the arbitration in this country. There is no reservoir of professionals, trained professionals in the art of arbitration in India. Now the Bill says that they will create an academy, they will try to train people but, as of now, there is a dearth and that is why the choice falls on retired Judges, as the Minister himself said, and the fact is, with due respect, that when it comes to the Alternate Dispute Resolution Centre, the hon. Supreme Court has itself been very keen and rightly so, but, at the same time, there are certain observations there that you have no other choice but retired Judges or retired Civil Servants. Once you have trained professionals, you will inspire more trust and confidence of the investors. The Supreme Court itself has made, in fact, a negative observation on engaging Judges. It is interesting. The Supreme Court has said that it is costly. This is not my observation. They have also said that when you appoint them — whether it was a serving Judge unhappy with someone, I have no knowledge of that — they have a tendency to drag.

Sir, it is important for arbitration to follow certain principles. To my mind, the first is that it should be time-bound, result-oriented and disciplined for India to become a hub of international arbitration. I have already commented and shared my views that you should call it a seat, and not a place, because of the international litigations that take place. The second is, respecting the sanctity of the contracts and honouring the awards which are vital to becoming an arbitration hub. For that the mindset has to be one of compliance. We do not have that mindset of compliance. Once the arbitration award comes, the litigation process starts, and given the pendency of cases in the hon. Courts, there are more delays. Now, you cannot bind the hon. Courts, whether it is the Supreme Court or the High Courts, and say that they have to arbitrate in a time-bound manner. We have now put a time-limit. The proceedings are time-bound and they have said here that that shall happen. The Minister needs to explain that because we have a long history of Governments challenging the awards. It is the biggest litigator. The Government would happily say that it should be time-bound, but then the Government would also become the litigator and challenge every possible award which goes against it. That mindset will take a while to change. The third issue is independent and expert arbitrators. They are much needed. And there has to be stability, commercial certainty and also upholding the sanctity of the awards that are made.

Sir, as I said right in the beginning, the Government should, at least, assure all concerned stakeholders that there would not be too much controlling or interfering when it comes to such dispute resolution arbitration. Does this Bill do that? I am

afraid, it does not. The hon. Minister referred to Clause 26, which is about the operation, and which says that it would not apply to past cases. Sir, there is a reason, and we would be grateful if the Minister explains that. Is it that many PSUs heavily lost in arbitration awards and thereafter, this issue was taken up, on the petitions, by the Government, to bring in a new clause? There are certain observations of the Bombay High Court on that that you exclude past cases, those cases on which there have been serious challenges made. Now, since they are observations of the High Court which have not been overruled, particularly about this clause, that it would not apply to the old arbitration, I would say that unless and until this is clarified today, it would make a mockery of the arbitration process. It would also deny the Indian industry tens of thousands of crores that they have won in arbitration awards. So, is there any justification or would the Government do a re-think on this? The third is, you have a Chairperson who is again a Government appointee. This is a problem. You create a mechanism; you want to be an international hub; you want everybody to come to you for arbitration, but you have a totally Government-controlled and dominated Arbitration Council of India which is being set up. Who are all these? Yes, we understand that hon. Judges will be there because you don't have the trained people. The Arbitration Council consists of 'a person, who has been a Judge of the Supreme Court or Chief Justice of a High Court or a Judge of a High Court or an eminent person having special knowledge'. Fine! 'An eminent arbitration practitioner having substantial knowledge', we have no objection to that. 'An eminent academician having experience', good luck! It is a positive thinking and I would support that. But then, Sir, it goes on and brings in three Secretaries to the Government of India, that is, Secretary to the Government of India in the Department of Legal Affairs, Secretary to the Government of India in the Department of Expenditure and the Chief Executive Officer who will be a Member-Secretary, *ex officio*. So, there are three serving Government Secretaries which you bring in. How would you reassure the international community, commercial entities and professionals about the fairness of your processes where the Government of India being the biggest litigator will have hands-off approach when it comes to arbitration proceedings? If you pack it with the Government nominees — I am not talking or referring to the retired Judges or Chief Justice or experts alone — you need to have a re-think there and no purpose is going to be served by merely having this Bill, bringing in changes or amendments. The last Amendment Bill was in 2015. While supporting the Bill in principle, I would tell the Government and the hon. Minister that there is always space and scope for improvement. If it is a step forward, then, do it in a manner that sends a message which resonates with the stakeholders and not otherwise. Thank you.

SHRI ASHWINI VAISHNAW (Odisha): Hon. Deputy Chairman, Sir, I rise to support the two Bills. The first Bill is on amending the Arbitration and Conciliation Act, 1996 and the second is on setting up a new centre called the New Delhi International Arbitration Centre. Sir, these are two great steps. These are exactly in line with our Prime Minister's vision of simplifying the whole legal system and strengthening the institutions and, wherever there are no institutions, creating the institutions. Sir, the first Bill to amend the Act of 1996 is a very welcome step in which an institutional framework is getting created. As hon. Minister said, an ecosystem is getting created. I would like to strengthen that point and say that 'yes', it is an institutional framework. I thank my senior colleague, Shri Anand Sharma, for very pertinent points he has raised and I am sure that hon. Minister would like to address those points. What I would like to speak in this House is based on my personal experience. I had the fortunate privilege of working on very complex international contracts having multiple jurisdictions and having multiple challenges of different countries. For example, today's economy has become very, very complex. Let's take the simple case of an aircraft door. A simple aircraft door — which looks like a door; which is opened — has as many as 500 parts. Where do these parts come from? Certain things will come from Taiwan, some of the things will come from the US, some will come from China, etc. It is a very, very complex international commercial scenario. Such international and such a complex scenario in which there are multiple stakeholders, definitely requires a mechanism which is very flexible. Our courts and our entire legal system is bound by a particular law, bound by a particular tradition, which does not have the flexibility which is required in commercial disputes. I am glad that everybody agrees that in principle, there is absolutely no disagreement on the way forward. Yes, we need arbitration; we need a very strong framework for arbitration. This particular Bill is a very good step; it is a very welcome step and there would be many more steps I hope in the process of strengthening this ecosystem. Sir, one of the most prominent Arbitration Centres was set up in London way back in 1892. It is evolved in a way where we can learn a lot from the international best practices. All the other subsequent Arbitration Centres like the Singapore Centre, the Tokyo Centre, the Shanghai Centre, the New York Centre, the Zurich Centre, have basically followed what was learnt in the London Centre. What are these international best practices? What I would like to submit, Sir, is that many of these points have actually been included in this new Bill. That is the welcome step. First and foremost is the setting up of an independent body which will basically regulate, which would create the whole framework. That is the purpose of setting up the Arbitration Council of India. It is a self-regulating

body; it is an independent body. This body will be looking at who should be the arbitrators. This body will look at what should be the regulations; what should be the process followed. This is a very, very welcome step. I would recommend to the hon. Minister, Sir, take this to the next level. This is a great first step, second step, make it totally independent. I echo Mr. Sharma's point that definitely they should not have any Government officer serving in it. This should be the next step which we should take forward. This should be totally independent. Then only the international investors or even the domestic investors will have the real confidence in this body. Sir, the second and most important point is, who should be the arbitrators. Internationally, if you look at it, the arbitration community basically comes from domain experts. This is a norm which is followed everywhere. Today, if you ask the chair of the arbitration seat, what is the difference between MMBTU and MMSCFD; if you would have explained that, then I don't think that the judgment or the award would ever be really in line with what the dispute needs. That is why, getting the domain experts who understand this subject deeply and who understand the commercial aspect of this subject, is a very important thing. This Act addresses that point and creates a panel of arbitrators, who would be impartial, who would have experience and knowledge. The third thing I would like to recommend to the hon. Minister is that they should be willing to devote time. It is not a question of setting up a legal bar at a point of time. It is more important that we should have people who are willing to devote time to the subject. Today, for example, if I understand a couple of subjects and if I have to be an arbitrator in those subjects, I should be willing to put enough time and effort in that particular solving subject, the commercial dispute, to be able to do justice to it. So, that is, internationally the three criteria, which are used are domain knowledge, impartiality and willingness; actually, written willingness is taken, 'Yes, I am willing to devote 72 hours per week, per month on this particular subject'. That kind of...

SHRI TIRUCHI SIVA (Tamil Nadu): Sir, time and name of Member is not reflecting on the screen.

MR. DEPUTY CHAIRMAN: He is a new Member. स्क्रीन पर इसलिए reflect नहीं कर रहा है, क्योंकि वे नए सदस्य हैं और अभी बहुत सारे नए सदस्यों के नाम सूची में नहीं आए हैं।

DR. K. KESHAVA RAO (Andhra Pradesh): He is not a new Member. He spoke very well the other day. His name should be reflected on the screen.

MR. DEPUTY CHAIRMAN: Yes, I know. Hon. Member, please continue.

SHRI ASHWINI VAISHNAW: The second important point which has been brought in this Bill is accreditation of arbitrators. That is a very, very important fact. Today, Sir, if we go by this system, why has this system failed? This system has failed because we had to actually file an application in the High Court or the Supreme Court to set up the panel of arbitrators. That is not the way the world works. All over the world, the basic clause regarding arbitration is kept in the contract itself. So, that is one more recommendation I would like to make to the hon. Minister that we need to amend the Indian Contract Act. That is the Contract Act of more than 100 years legacy. One way to see it is that yes, it has stood the test of time. The second way to see it is that it has really fallen behind the way the world has moved. So, in that way, we need to amend the Indian Contract Act and have the institutional framework of arbitration within that Act itself.

Sir, one very important aspect, which I would like to highlight before all the hon. Members, through you, is the confidentiality of the commercial contracts. Today, if you look at the global scenario, Tokyo is a very important arbitration centre, but it has practically failed. Why has it failed? It has failed because they put every arbitration award in the public domain, whereas in case of any commercial contract, people would like to keep it very, very confidential. There are technical aspects, there are IP rights aspects, there are pricing aspects which people don't want to disclose, and which is very fair. That is the way the world commerce works. So, I am thankful to the hon. Minister that he has brought in this clause of confidentiality in this Bill. This is definitely going to be a defining factor in making our arbitration successful.

There is a very important point about having electronic depository. This is very important today in the global commerce. In fact, at one point of time, in my team, there were people from five nationalities, speaking five different languages. So, it is very difficult to manage to bring everybody on the same page. So, having an electronic depository is a very welcome step. This must be supported and this should be augmented by bringing in video conferencing as a very established mode of arbitration process. That would be another recommendation that I would like to make to the hon. Minister.

Sir, today, Mumbai is a well-established centre of international arbitration, and with this Act coming into force, Delhi will also become a very important centre. Today, Sir, the way Indian economy is growing, 2.7 trillion dollars, our commercial complexity requires arbitration centres in many more cities. In Chennai, Bengaluru, Hyderabad, Bhubaneswar, in all the cities, we really need smaller arbitration centres which should be self-governed and self-funded. I frankly don't feel that the Government

of India should spend even one rupee on any arbitration centre. It should be and it can be, and internationally, it is a self-funded and self-governed body. Today, there must be about 40-45 lakh commercial disputes in the country, which are of large sums. Even if we charge a small fee of ₹ 4 or 5 lakh per arbitration, it can really fund the entire arbitration process.

Sir, I would like to conclude thanking the Government for this excellent initiative. I would just like to touch one more point that Mr. Anand Sharma mentioned regarding the seat of arbitration and the governing law. It is a very complex matter. There are arbitration centres which have actually been able to resolve it in a very nice way. I have a personal experience of actually having one arbitration matter in which the seat was Singapore, but the laws were the laws of England. So, that kind of a system is available in the world, and if we can just replicate those best practices, it would be a great thing that will help because today, in the contracts, we actually define which governing laws would be there defining the contract. It need not be the laws of India, or it need not be the laws of one particular place. We can today define the laws of Japan, or laws of any particular country as the governing laws. So, this is a very important point. We should definitely take it as the next iteration.

I would now like to conclude. This is a great step forward and definitely, this is going to ease the way we do our commercial transactions. This will definitely reduce the load on the courts, which is badly needed. We have more than three crore cases pending in the courts. This will be a great welcome step and I request the House to unanimously support this step and definitely take this Bill forward. Thank you, Sir.

श्री उपसभापति: माननीय सदस्यगण, कुछ नए सदस्य आए हैं, उनके sitting arrangement has to come from the parties. वे सारे नहीं आए हैं, इसलिए उनके नाम reflect नहीं हो रहे हैं। Now, Shri A. Navaneethakrishnan.

SHRI A. NAVANEETHAKRISHNAN: Sir, the hon. Law Minister has moved two very important Bills. I welcome both the Bills. But, 'modern God is success', every Indian is loving the litigation. Sir, whether it is a good case or a bad case, it is immaterial. To my limited experience as a practising lawyer, the common thinking is that we must win the case.

SHRI RAVI SHANKAR PRASAD: We have appeared together in many cases in the Madras High Court and in the hon. Supreme Court.

SHRI A. NAVANEETHAKRISHNAN: Our hon. Law Minister has helped me and taught me the law. I must acknowledge this fact. He is very brilliant and also magnanimous. He has accommodated to the extent maximum possible.

Sir, 'modern God is success'. In the Indian context, every litigant wants to win the case. This is the whole problem. But arbitration process is defined as consensual, neutral, binding, pervade and enforceable and also faster and less expensive. Another method of disposal of disputes is called alternative dispute resolution, namely, arbitration. Now, arbitration is not possible in sensitive issues. I do not want to say as to what a sensitive issue is. Even the hon. Supreme Court has appointed well-known arbitration professionals, but the result is yet to come. Sir, that is why, I am telling that in Indian context, sensitive issues cannot be settled by way of arbitration or conciliation or any other method, but only by way of adjudication. A new kind of arbitration called the investment arbitration is now very, very popular because our economy is depending upon investment from abroad, subject to correction. In investment arbitration, the foreign investors exploit the State Governments to accept an arbitration. It is rightly pointed out by our senior Member, Mr. Anand Sharma that in Tata Docomo case and in other cases, this has happened. But, according to my understanding, kindly correct me, if I am wrong, the foreign companies are exploiting India legally or otherwise. We are being exploited not only by East India Company but also by the latest new companies. Sir, apart from 'the Fourth Estate', 'the Fifth Estate' has also come in place. A book is also published. Sir, the technological giants are taking over the democracy also. So, now my humble submission would be that the process of arbitration is good, provided both parties must agree to it and also it is a welcome feature because there is going to be a selection of the arbitrators. If we talk about domain knowledge, as our new Member has said about domain expertise, a person who is well-versed in a particular field can be nominated as an arbitrator, and expected to discharge his duties independently, without any bias. Sir, now everywhere is bias. The recent example is the Jadhav case, where Pakistan member dissented. After all, we all are human beings. But, the welcome features in these two Bills are that the Arbitration Council is a must. Then, only we can develop this dispute resolving process. Another Member also mentioned some issue. I would like to draw attention to this aspect. I thank the hon. Law Minister because there is a provision in Clause 4(2) which states, "The head office of the Centre shall be at New Delhi and it may with the previous approval of the Central Government, establish branches at other places in India and abroad." So, the Central Government can establish the International Arbitration Centre in Chennai, Kolkata or Mumbai and also in Singapore or anywhere. There is a provision to that effect, for which I thank the Law Minister. There are many good features in this Bill. There may be one or two shortcomings which, over a period of time, can be rectified in due course.

In the end, I welcome the Bill and I thank the hon. Law Minister for bringing these two Bills. Thank you.

SHRI SUKHENDU SEKHAR RAY: Sir, first of all, I condemn the way both these Bills have been brought before the House without the scrutiny of the Standing Committee or the Select Committee of the Parliament. Sir, the Government is repeatedly bulldozing the Parliamentary practices so far maintained by this House and the other House.

Secondly, Sir, I oppose both the Bills because according to me, both the Bills are draconian Bills as there is no reasonable nexus between the objectives of the Bill which have been mentioned here and the provisions of the Bill. That way, it is totally draconian.

In the morning, I requested the hon. Chairman that some time should be extended because these are crucial Bills. For those who do not understand arbitration, this is Alternative Dispute Redressal Mechanism, and, it is not a coffee machine that someone will push the button and coffee will come; it is something more than that.

I was given to understand that time will be extended. I requested again at 2'o clock. One Member, Shri Bhupender Yadav from the Ruling Party, agreed for extending the time. From the main Opposition, Shri Anand Sharma also agreed but, unfortunately, the Minister objected.

SHRI RAVI SHANKAR PRASAD: No, I did not.

SHRI SUKHENDU SEKHAR RAY: Anyway, he has the right to object. *...(Interruptions)...* 'Later' means what? After 6 o'clock, it will be considered! That way, those who will be speaking before 6 o'clock, their cases will not be considered, and, those who will be speaking after 6 o'clock, their cases will be considered. That is the outcome. Anyway, admitted, accepted. But both the Bills are draconian.

Let me first talk about the New Delhi International Arbitration Centre. What does the objective of Bill mentions? It says, "to provide for the establishment and incorporation of New Delhi International Arbitration Centre for the purpose of creating an independent and autonomous regime for institutionalised arbitration" but nothing in this Bill reflects that it will be independent and autonomous. I am coming to that. But before that, let me tell you the short background of this Bill as to why this Bill has been brought.

On 2nd March, 2019, the Government of India promulgated Ordinance for setting up the New Delhi Arbitration Centre, and, on the same day, Joint Secretary and Legal

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Advisor of the Law Ministry was appointed the custodian of the International Centre for Alternative Dispute Resolution, in short, ICADR, which was taken over by the Government, even without any consultation with the Chief Justice of India, who was the Chairman of the ICADR, on the same day, the day Ordinance was promulgated. My question is: why are you in a hurry? The Ordinance was challenged before the High Court and the appointment of the custodian was stayed. The Government, thereafter, filed the Review Petition and the stay, which was earlier granted, was vacated on the 16th May. The case is listed for further hearing on 25th July, which is yet to come, and, the Government has no patience to wait for the outcome of the judicial proceedings. This Government has no respect for the judiciary, and, it has been established again. This is the hurry. What will the court say, they do not know but they are in a hurry. There is another angle.

The learned counsel appearing on behalf of the Government contended before the Court that we have committed before the World Bank that by 19th May, we shall come out with some positive results. It was regarding Ease of Doing Business which includes arbitral institution. So, this Government is dictated upon by the World Bank. That is the main reason, and that is the reason for hurry. The Government speaks about Srikrishna Committee. The Minister was telling us so many things about Srikrishna Committee. But so far as the New Delhi International Arbitration Centre Bill is concerned, two eminent Members of that Srikrishna Committee, Justice S. Ravindra Bhat, former Judge of the Delhi High Court, and Mr. K.K. Venugopal, Attorney General of India, disassociated themselves from this part of the Report when this New Delhi International Arbitration Centre Report was being finalized. They disassociated themselves from it. I want to know the reasons for their disassociation. The Government must speak out.

I now come to Clause 5 of the Bill. It says that the Centre shall consist of the following Members:- (a) a person, who has been a Judge of the Supreme Court or a Judge of a High Court or an eminent person, having special knowledge and experience in the conduct or administration of arbitration; (b) two eminent persons having substantial knowledge and experience in institutional arbitration; (c) one representative from commerce and industry; (d) Secretary, Department of Legal Affairs; and (e) one Financial Adviser nominated by the Department of Expenditure. And all of them will be appointed by the Government. Will they be independent? Will they be neutral? This is the question. The investors, from inside or outside, who prefer arbitration proceedings whether they will prefer this New Delhi Arbitration Centre or London Arbitral Tribunal or Hong Kong or for that matter Singapore or even

Stockholm. They will not come to New Delhi. This is an eyewash. It is just to fulfill the commitment before the World Bank and to grab the property and infrastructure of the ICADR which is led by the hon. Chief Justice of India. That has been taken over. It is essentially a Government of India Arbitration Centre. Better than naming it New Delhi International Arbitration Centre, you can call it a Government of India Arbitration Centre. There will not be any ambiguity left thereafter because it will be totally manned, managed and controlled by the Government. Where is the investor-friendly procedural framework? Where is the transparent process for appointment and removal of the Members? If the Bill in the present form is passed, the independence and credibility of the institution shall be compromised once and for all.

Sir, now I come to the second Bill. I will abide by your direction and time. The Srikrishna Committee recommended constitution of an independent body, which is in the objective but not in the provisions, which will provide recommendations and guidelines for growth of institutional arbitration in India. I am talking about the second Bill. The key concern is that it is not independent. That is the major concern. The Arbitration Council of India as proposed under the Bill consists of only individuals nominated by the Central Government or *ex officio* Members. The Government is the biggest litigator in India. What was the suggestion of the Srikrishna Committee? All the time you refer to Srikrishna Committee as a High Power Committee. What was its suggestion? Let us look at the recommendations of the Srikrishna Committee. The Srikrishna Committee provided that a retired Judge of the Supreme Court of India or a High Court, who has substantial experience dealing with arbitration matters or has acted as an arbitrator, nominated by the Chief Justice of India, will be a member of the Governing Body of the Arbitration Council. That is the first recommendation of the Srikrishna Committee. Second one was an 'eminent counsel', not eminent persons of Government's choice or Minister's choice, having substantial knowledge and experience in institutional arbitration, both international and domestic, nominated by the Central Government. That means, Government could nominate only an experienced eminent counsel having special knowledge in domestic and international arbitration. But, what does this Bill say? This Bill says that the Council shall consist of following members. A retired Judge of the Supreme Court or High Court is all right. Then, it says, 'an eminent person'. 'An eminent counsel' has been replaced by the Government with 'an eminent person'. An eminent person with special knowledge will be there. So, the Government has not accepted the recommendation of the Srikrishna Committee. It is a total departure from the recommendations of the Srikrishna Committee. The very first provision says

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that. It is crystal clear. Nobody can deny that. Then, clause 43C(1)(b) provides for 'an eminent arbitration practitioner'. But, in the first one, the Bill has provided that.

Now, there is a provision that the Secretary to the Government of India will be the *ex officio* member. Okay, all right. There is no problem. But, proviso to clause 43C(2) says, "Provided that no Chairperson or Member, other than *ex officio* Member, shall hold office as such after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Member." So, *ex officio* member can continue up to 70 years and others up to 67 years. And who is the *ex officio* member? *Ex officio* member is the Secretary. He can also be the Chairperson. It is not that he will continue as a member. He can also be the Chairperson because in the definition clause, member includes the Chairperson. So, we have been befooled. We have been befooled because all the time the Srikrishna Committee is mentioned.

Sir, now, my point is, a Government body that regulates arbitrators and arbitration is antithetical to the very concept of arbitration. Is it a fact or not? Once upon a time, I was a legal practitioner, not nowadays. Sitting under a banyan tree, I used to practise, not like the hon. Law Minister or other senior Members, who are lawyers. So, a Government body that regulates arbitrators and arbitration is antithetical to the very concept of arbitration and, for that reason, has no precedent in any arbitration-friendly jurisdiction. India will be the only exception if this Bill is passed. Further, in a country where the Government is the biggest litigant, it cannot act as a supervisor over the very arbitrators who are hearing cases against the Government. There is a clear conflict of interest where an arbitrator is hearing a dispute involving the Government if a body appointed by the Government will also proceed to review grading of the arbitrators, as has been envisaged in this Bill. Therefore, Sir, I strongly oppose this Bill.

Sir, the date of completion of pleadings is not clearly an identifiable date in all circumstances. For instance, where there is need for preliminary order on jurisdiction or where proceedings are bifurcated for other reasons or where a counter-claim is filed or where a party amends its pleadings, there is uncertainty. Second, an exemption for international commercial arbitration; there is a time-limit for the domestic arbitration but for the international arbitration, there is no time-limit. So, that will be an arbitration unto death. So far as international arbitration is concerned, that will be the arbitration unto death but so far as domestic arbitration is concerned, there is a time-limit. That too is very unpractical.

Sir, finally, the Bill wishes to define the proceedings to which the amendments

introduced on 23rd October, 2015 will apply. In doing so, the Bill seeks to overturn a recent decision of the Supreme Court, that is, in the case of BCCI vs. Kochi Cricket Private Limited. We expected that following the Supreme Court ruling, the Government will pay a serious attention to the judgement and accordingly the Bill will be changed. It has not been done.

Again, I say that this Government has uncanny respect for the Supreme Court or the High Court or the judiciary as a whole and this Bill, according to me, is a draconian Bill. In protest against the way the Bill has been brought in this House without a scrutiny of the Parliamentary Committee, we stage a walk-out.

(At this stage some Hon. Members left the Chamber.)

श्री रवि प्रकाश वर्मा (उत्तर प्रदेश) : उपसभापति जी, आपका बहुत-बहुत धन्यवाद। मैं आपका आभारी हूँ कि आपने मुझे एक बहुत ही महत्वपूर्ण मुद्दे पर बोलने का अवसर दिया है।

महोदय, सरकार यह कानूनी बिल लेकर आई है कि यहाँ दिल्ली में एक International Arbitration Centre खड़ा हो, ताकि arbitration के लिए institutional redressal system को organized way में किया जा सके, जिससे कि फर्क पड़े। सर, अभी हमारे पूर्व वक्ताओं ने कुछ सवाल उठाए हैं, उनको देखते हुए मैं कहूँगा कि भारतवर्ष की अदालतों में मुकदमों की जो संख्या है और उनका जो disposal rate, conviction rate है, उसकी बड़ी चिंताजनक परिस्थिति है। अभी कुछ समय पहले जस्टिस काटजू ने और जस्टिस मनु बरवाला जी ने इस बात का जिक्र किया था कि हिंदुस्तान का जो judicial system है, वह इस बोझ से चरमरा रहा है। अगर इसे redress नहीं किया गया, तो हिंदुस्तान की जनता पूरी न्यायिक प्रणाली से अपना विश्वास खो बैठेगी।

महोदय, पूरी दुनिया में, जहाँ कहीं भी इस प्रकार की परिस्थितियाँ सामने आई हैं कि अदालतों पर मुकदमों का बोझ बढ़ा है, वहाँ उन्होंने जो महत्वपूर्ण कदम उठाए हैं, उनमें से एक कदम यह है कि arbitration के माध्यम से मुकदमों की तादाद को कम किया जाए और उन्हें सुलझाया जाए।

सर, मैं यहाँ पर यह उल्लेख करना चाहता हूँ कि भारतवर्ष में यह सिस्टम अंग्रेजों के आने से पहले भी था कि आपस में लेन-देन होते थे। यदि आपसी विवाद होते थे, खास तौर पर आर्थिक विवाद, तो उनको संभालने के लिए एक *ad hoc* किस्म का सिस्टम काम करता था, जिसके माध्यम से सामाजिक स्तर पर लोगों के मामले सुलझाए जाते थे। इसकी जो सबसे महत्वपूर्ण बात है, वह यह है कि जो निर्णय होते थे, वे लोगों पर बाध्यकारी होते थे।

महोदय, हम लोगों ने देखा है कि हमारे यहाँ पर कई समुदाय हैं। मैंने विशेष तौर पर जाटों के यहाँ देखा है कि उनके यहाँ जब भी पंचायती फैसले होते हैं, उनके यहाँ आर्थिक मामलों की पंचायतें भी होती हैं, उन फैसलों का अनुपालन कराने के लिए उनके पास अपने mechanism होते हैं। यहाँ इसमें दिक्कत यह है कि जब हमारे यहाँ पर मुकदमों के फैसले होते हैं, तो उनका अनुपालन कराने के लिए जो हमारी मशीनरी है, कार्यपालिका है — चूंकि judiciary इसको अपने आप नहीं कर सकती, उसको कार्यपालिका के माध्यम से ही जो भी डिस्मिजन्स होते हैं, उनको

[श्री रवि प्रकाश वर्मा]

फॉलो कराना होता है, उसमें उनके सामने बहुत दिक्कतें होती हैं। हमारी जो प्रणाली है, जो उन जजमेंट्स को रिज़ल्ट्स के लिए डिलिवर करती है, उसमें भी बहुत सवाल हैं।

महोदय, जस्टिस श्रीकृष्ण जी का कमीशन बैठाया गया था। इसके बारे में अभी हमारे पूर्व वक्ता कह रहे थे कि उन्होंने जो recommendations दी, उन recommendations को as such गवर्नमेंट ने पता नहीं क्यों follow नहीं किया है? ऐसे ही कुछ कारण रहे होंगे कि उसके जो सहयोगी जजेज थे, उन्होंने अपने आपको उससे अलग कर लिया। लेकिन यह भी उतना ही बड़ा तथ्य है कि institutional arbitration को एक न्यायिक समाधान के तौर पर विकसित किए जाने की आवश्यकता है, इसमें कोई शंका नहीं है।

सर, हम लोगों ने देखा है कि कोर्ट्स में जजेज भी कम हैं, छोटे-मोटे नहीं, हजारों की तादाद में। कुछ दिन पहले इस पर भी सदन में चर्चा चल रही थी कि सरकार को विशेष संज्ञान लेकर इनको भरना चाहिए। मुकदमे के निस्तारण की जो गति है, इस पूरी प्रक्रिया को आगे बढ़ाने में जितनी भी agencies involved होती हैं, उनकी जो efficiency है, उनका जो काम करने का तरीका है, मुझे लगता है कि उसको भी बहुत गौर से देखा जाना चाहिए।

सर, हिन्दुस्तान में एक नई अर्थव्यवस्था रूप ले रही है, लोगों की आमदनियाँ बढ़ रही हैं। मुझे कभी-कभी शंका होती है, हालाँकि यहाँ arbitration के systems चल रहे थे, कोर्ट्स के अन्दर भी मुकदमे जा रहे थे, लेकिन जनसामान्य के स्तर पर मैंने देखा है कि व्यापार करने वालों का जब कहीं कोई पैसा फँसता है, तो सामान्यतया वे कोर्ट में arbitration में नहीं जाते हैं, वे इलाके के किसी दबंग आदमी के पास जाते हैं, उसके पैर छूते हैं और कहते हैं कि दादा, हमारा फैसला करा दीजिए। अक्सर वह दबंग आदमी अगर समझदार हुआ, तो समझदारी की बात कर देता है और अगर वह smart हुआ, तो वह deal आधे में खरीद लेता है और बाद में गुंडई से उसको achieve कर लेता है। यह कारोबार चल निकला है। मुझे लगता है कि एक बार जब हम institutional तरीके से इन समस्याओं के समाधान की दिशा में जा रहे हैं, तो स्थानीय स्तर पर ये जो परंपराएँ चल रही हैं, हमें इस बात को देखना होगा। वहाँ पर जिस टाइप का quantum of money, जो पैसा involved होता है, वह ज्यादा बड़ा नहीं होता है, 2-4-10 लाख, 20 लाख, 50 लाख जितना होता है। हम जो redressal system खड़ा करने जा रहे हैं, वह तो बड़ी deals को handle करता है, लेकिन जो छोटी-छोटी deals होती हैं, 10-20-50 लाख की, जिनमें धोखाधड़ी होने की संभावनाएँ रहती हैं, जिनमें लोग mediator के तौर पर या तो दारोगा जी को ढूँढ़ते हैं या इलाके के दबंग आदमियों को ढूँढ़ते हैं, इस चीज ने पूरे सिस्टम को नए तरीके से re-define करने का काम कर दिया है। हमें इसको भी थोड़ा सा address करना पड़ेगा। एक विश्वसनीय प्रणाली, एक आदर्श व्यवस्था, जो investment-related issues को हर स्तर पर redress कर सके, इसको हमें देखना पड़ेगा।

(उपसभाध्यक्ष, श्री तिरुची शिवा पीठासीन हुए)

सर, इस बात का भी जिक्र किया जा रहा था कि Ease of Doing Business के तहत जो बाहर की कंपनियाँ हिन्दुस्तान में आ रही हैं, अभी यहाँ जिक्र आया कि World Bank का commitment

भी था कि हमें Ease of Doing Business की rating improve करने के लिए एक redressal system बनाना है, चूंकि पूरी दुनिया के जो पूंजीपति हैं, यह उनकी जरूरत है। सर, सवाल यह है कि हमारी अपनी भी तो जरूरतें हैं। यह काम दरअसल बहुत पहले हो जाना चाहिए था। मुझे लगता है कि इसके अभाव में हिन्दुस्तान की अर्थव्यवस्था का जो विकास है, उसकी गुणात्मकता को बड़ा धक्का लगा है, चूंकि जब आदमी कहीं पैसा invest करता है और उसको पैसा वापस नहीं मिलता है, तो उसमें हताशा पैदा होती है और जो लोग इसे देखते हैं, उनको और दिक्कत होती है। आज लोगों की जो personal savings हैं, उनको उन्होंने बैंकों में रखा हुआ है, कई ने कहीं किन्हीं कंपनियों में लगाया हुआ है। सर, मेरा अपना अनुभव है, मुझे मुम्बई में कुछ बुजुर्ग लोग मिले थे, जिन्होंने कुछ खास कंपनियों में पैसा लगाया था। उन कंपनियों ने अपने commitment को honour नहीं किया, वे कंपनियाँ गायब हो गईं और SEBI, एक regulatory authority के तौर पर भी उनको उनका पैसा नहीं दिला पाई। यह उनका बहुत मेहनत का पैसा था, उनके जीवन भर की कमाई थी। अब इस टाइप के जो disputes हैं, उनको भी देखना पड़ेगा।

सर, आप जो infrastructure create करने जा रहे हैं, पूरी दुनिया में इस प्रकार का infrastructure है, मुझे लगता है कि यह एक महत्वपूर्ण कदम है और इससे हिन्दुस्तान को एक गौरवपूर्ण स्थिति प्राप्त होगी। सिंगापुर, इंग्लैंड या दूसरी countries में जहाँ कहीं भी ये बने हुए हैं, ताकि जितनी भी disputed parties हैं, उनको facilitate करने के लिए कि वे आ सकें, रुक सकें और उनको facilitate किया जा सके। और एक set up बने। वहाँ पर जो professionals available हों, कम से कम वे ऐसे लोग हों, जो अनुभवी हों और जो अपने क्षेत्र की जानकारी रखते हों। इसके साथ ही जो disputed areas हैं, वे उन domains की जानकारी भी रखते हों और बड़ी तादाद में available हों।

सर, मुझे अफसोस लगता है, शायद अभी हमारे यहाँ उतनी बड़ी तादाद में trained professionals available नहीं हैं, क्योंकि हमारे जो Law Trainina Institutes हैं या जो Law Colleges हैं, अभी तक उनमें विशेष तौर पर specialized and super-specialized arbitrators को generate करने का कोई सिस्टम नहीं है। Arbitration के लिए लोगों को कोर्ट में जाना पड़ता था और उसके बाद कोर्ट तय करता था कि फलां फलां लोग, जिनके पास तजुर्बा है, experience है, they may be retired judges or some other people, they were appointed as arbitrators. उनके साथ arbitration के काम चलते थे। दिल्ली, मुम्बई और कोलकाता जैसी कई जगहों पर Arbitration Centres खड़े हुए, लेकिन उनकी कामयाबी अभी उस स्तर तक नहीं पहुंची है, जिसको हम recommend कर सकें कि हां, ये बहुत बढ़िया हैं।

सर, मुझे लगता है कि यह जो नया कदम आप उठाने जा रहे हैं, इससे वाकई में फर्क पड़ेगा, लेकिन यह फर्क तब पड़ेगा, जब आप genuinely एक ऐसा international centre खड़ा करेंगे, जिसके ऊपर दुनिया भर के लोग और investors भरोसा कर पाएंगे।

सर, अभी इस बात का सवाल उठाया जा रहा था, अगर उसके अंदर सरकारी नियंत्रण रहेगा या कहीं से influence कर पाने की स्थिति रहेगी, तब स्थिति वैसी नहीं बन पाएगी, जैसी होनी चाहिए। अक्सर ऐसा देखा गया है कि जो arbitration centres होते हैं, उनकी मदद करने

[श्री रवि प्रकाश वर्मा]

के instruments के तौर पर, कुछ corporate sharks खड़े हो जाते हैं। आज की तारीख में जो कारोबार चल रहा है, वह यह चल रहा है कि कुछ बड़ी कंपनियां, जो शांतिर किस्म की कंपनियां हैं, वे अपने आप को बिजनेस के सहारे कम आगे बढ़ाती हैं, छोटी कंपनियों को swallow करके, निगल करके अपनी पूंजी को ज्यादा बढ़ाती हैं। यह amalgamation का जो सिस्टम चल रहा है, इसमें कहीं न कहीं जो judicial process है या negotiation में arbitration का जो process है, वह tool बन जाता है। यह अच्छी स्थिति नहीं है। मुझे लगता है कि arbitration की जो spirit है, वह यह बतलाती है कि जो मध्यस्थ हों, उनका एक credential होना चाहिए, क्षमता होनी चाहिए। न्यायिक चरित्र वाले मध्यस्थ कम ही मिल पाते हैं।

सर, मैं आपको एक बात बता दूं, ब्रिटिश गवर्नमेंट ने इस बात का जिक्र किया था कि हिन्दुस्तान के अंदर जो न्याय व्यवस्था है, उसमें न्यायिक चरित्र के लोगों को जगह मिलनी चाहिए। ऐसे लोग, जो पक्षपात करने के आदि हैं, उनको इससे दूर रखना चाहिए। अब फिर हमारे सामने वही समस्या पैदा होगी, इसलिए बहुत बड़े पैमाने पर arbitration professionals की जरूरत है।

सर, एक चीज़ और भी है। Arbitration में ऊँची अदालतों का हस्तक्षेप कब होता है? तब होता है, जब कहीं न कहीं arbitration में न्याय नहीं होता या दोनों पार्टियां संतुष्ट नहीं होतीं। अगर हमारी Arbitration Council बनने के बाद भी(समय की घंटी)... I'm just finishing, Sir. Only two points more. हमारी arbitration Council बनने के बाद भी लोग कोर्ट में मूव करके जाएंगे, वह सही स्थिति नहीं होगी। ऐसा नहीं होना चाहिए। इसका जिक्र अभी हमारे पूर्व वक्ता के द्वारा भी किया गया है। वहां एक judicious माहौल बनना चाहिए, ताकि जो कुछ भी हो रहा है, आदमी उसे स्वीकार करे। यह तभी होगा, जब arbitrators जिम्मेदार होंगे, जिनकी एक reputation होगी। जब आपके arbitrators की विश्वसनीयता होगी, तो हिन्दुस्तान के अंदर के ही नहीं, बाहर के arbitrators और पार्टियां भी आपके बीच आएंगी। इसलिए पूरी प्रक्रिया की जो विश्वसनीयता है, वह कायम रहनी चाहिए। इसकी speed, cost and secrecy, ये बहुत महत्वपूर्ण चीज़ें हैं। सबसे important चीज़ यह है कि time limits के साथ judicious approach भी होनी चाहिए। सर, जो सरकारी संस्थान litigant हैं, जिन्होंने मामले दायर कर रखे हैं, वहां पर नौकरशाही का जो नज़रिया है, जिसका जिक्र अभी किया जा रहा था, वह बहुत ...(व्यवधान)..

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Please conclude.

SHRI RAVI PRAKASH VERMA: Sir, I am just closing. Last one point. सर, नौकरशाही का जो नज़रिया है, उसको देखने की जरूरत है। अगर कहीं, हमारी जो महान नौकरशाही है, वह अपने तौर-तरीकों से ही litigant बनी रही, तो वह award को follow नहीं करवा पाएगी। जो कंपनियां खुद stakeholders हैं, वे वहां पर अपील करने के लिए जाएंगी और चूंकि नौकरशाही को अपनी जान बचानी है, अपनी नौकरी बचानी है और सरकार को जवाब देना है, तो वहां सही निर्णय नहीं हो पाएगा। सरकार के तौर पर उसकी जो credibility है, वह यह है कि जो award होते हैं, सरकार उनको follow कराए। Government की जो executive capacity है, उसे भी बढ़ाना होगा। जो स्थानीय पार्टियां हैं या जो विदेशी पार्टियां हैं, जब उनके disputes

के issues आएंगे, उसके बाद जब उनको award हो जाएगा, तो उन awards का अनुपालन कराने के लिए भी आपको, जहां के वे लोग हैं, वहां की Governments के साथ special agreements करने की जरूरत भी पड़ेगी। इन्हीं शब्दों के साथ मैं अपनी बात समाप्त करता हूँ, धन्यवाद।

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Now, Shri Prashanta Nanda.

SHRI PRASHANTA NANDA (Odisha): Thank you, Sir, for giving me this opportunity to speak on this Bill. First of all, I must thank the hon. Minister for bringing these much-needed Bills, and before going into the details, I would just like to ask the hon. Minister, through you, Sir, one thing. Why were Justice Srikrishna's recommendations not accepted *in toto*? What are the recommendations that the Government chose not to include? Sir, if India wants to progress economically, if India wants to be a global leader, the disputes related to money and finance, need to be handled in a proper manner. It is for this reason that all amendments in the economic restructuring had have to happen, and it has happened today. We are seeking global investments when we stand at this position. Sir, improvement is evident upon 'ease of doing business'. But 'ease of enforcing contracts' still has not improved. By replacing the Ordinance and bringing it as a Bill, the Government is definitely attempting to make it a statutory structure. By virtue of making it a statutory structure, it would make pathway for making it as an international centre of excellence.

Sir, para 3 of the Objects and Reasons of this Bill says that, 'the International Centre for Alternative Disputes Resolution, which was set up in the year 1995, with Government funds, to promote alternate dispute resolution mechanism, has, however, not been able to achieve the objectives.' Something has gone seriously wrong. What went wrong? Where did it go wrong? Why have Indians to go to Singapore, to London, to other places, for an international arbitration? It is because despite the amendments that we have made to the Indian Arbitration Act, there continues to be too many lacunae, which the hon. Minister has already mentioned in his speech.

Sir, I commend the Government for making all-out attempts to bring 'ease of doing business' into India, and to make India an attractive hub for arbitration. But a lot more needs to be done. We are making amendments, and we are bringing laws. While practising, we are seeing that some more amendments are required to be done. So, the Bill which comes today, will become a thesis tomorrow; and the anti-thesis will come, and then, synthesis. For synthesis, you have to bring another amendment. So, the beginning is good, and the beginning is absolutely needed, and it has been done at a time when India wants to be a global power, or, it is going towards becoming a global leader. Sir, this is a policy move which will change the

[Shri Prashanta Nanda]

environment and the eco system, in which commercial litigations, and commercial developments, take place. I think, the hon. Minister, in his reply, will definitely say about Justice Srikrishna's recommendations. I support this Bill, and I think, this will definitely attract people from outside, and we will have our own position as London, as Singapore, and this will definitely take us to a newer height. Thank you.

श्री राम चन्द्र प्रसाद सिंह (बिहार): माननीय उपसभाध्यक्ष महोदय, मैं सदन में प्रस्तुत दोनों बिलों का समर्थन करने के लिए खड़ा हुआ हूँ। मैं माननीय मंत्री जी को बहुत-बहुत धन्यवाद देता हूँ कि दोनों बिल लाकर, हिन्दुस्तान में हमारे यहां Alternative Dispute Resolution mechanism की जो प्रक्रिया है, उसे मजबूत करने का प्रयास किया जा रहा है, इसकी शुरुआत की जा रही है, जिसके लिए मैं उन्हें बधाई देता हूँ। Disputes तो चलते ही रहते हैं। किसी dispute का resolution अपने आपमें - judicial और nonjudicial दोनों होता है। Judicial side में आज आप देखें तो बहुत टाइम लगता है, बहुत कॉस्ट लगती है। सबसे बड़ी बात यह है कि उसमें एक पक्ष जीतता है और दूसरा हारता है। कभी उसमें finality नहीं होती। उसमें वर्षों का समय लगता है। वर्तमान बिल में arbitration and mediation की जो प्रक्रिया है, उसमें कम समय लगेगा। अब दोनों पक्षों के बीच understanding के आधार पर resolution होगा। इसमें जो भी award होगा, वह बिल्कुल final होगा। दोनों पक्षों के बीच में win-win situation होगी। किसी भी पार्टी को ऐसा नहीं लगेगा कि हम हारे या जीते। जो एक्ट इस बिल के माध्यम से बनेगा, उससे अपने देश में ऐसी व्यवस्था होगी कि जितने भी यहां commercial disputes हैं, जैसा अभी हमारे एक मित्र, वैष्णव जी बता रहे थे, आप देखें कि जितने भी contracts होते हैं, मैं यहां रोड्स की बात लेता हूँ, देश में बहुत सी बड़े-बड़े रोड्स हैं, जहां काम बंद रहते हैं। उनके contract में लिखा होता है कि यदि पार्टीज़ के बीच कोई dispute पैदा होता है तो उसका निपटारा civil court में होगा। उसमें कहीं arbitration का प्रावधान नहीं होता। उसका result यह होता है कि contractors कई कारणों से कोर्ट में चले जाते हैं और मामले वर्षों तक लम्बित रहते हैं। उनका निस्तारण न होने के कारण हमारा विकास प्रभावित होता है। आगे चलकर cost भी बढ़ जाती है। नई प्रक्रिया लागू होने से निश्चित रूप से resolution के काम में बढ़ावा मिलेगा, विकास में भी फायदा होगा और सबसे बड़ी बात, जिसे सब लोग जानते हैं कि जो Ease of doing business है, जिसमें आज हम लोग 77वें स्थान पर हैं, अगर इसमें सुधार आएगा तो निश्चित रूप से हमारी तरक्की होगी। इसलिए जरूरी है, जैसा माननीय मंत्री जी कह रहे थे कि सबसे पहला काम है कि जो हमारा culture है, जो administration का eco system है, उसके जो हमारे तीन विंग हैं — Legislature, Executive and Judiciary — तीनों का अहम रोल होता है। यह एक्ट 1995 में बना, 2015 में उसमें एक amendment आया और अब फिर amendment आ रहा है। इस मामले में हमें हमेशा सतर्क रहना पड़ेगा कि जब भी इसे और better बनाने की जरूरत पड़े, तो हमें किसी भी प्रकार का amendment लाने में हिचकना नहीं चाहिए। हम ऐसा framework बनाना चाहते हैं, जो बिल्कुल robust हो, reliable हो और लोग समझें कि इसमें अच्छी व्यवस्था की गई है। इसमें जो Legislature का रोल है, उसमें भी हम पीछे न रहें। Executive के बारे में आप सब जानते हैं कि उसने व्यवस्था करनी होती है। सबसे बड़ा रोल इसमें Judiciary का है। इसमें

Judiciary का जो motto होना चाहिए — minimum उनका intervention रहे और maximum execution रहे। यह सबसे जरूरी है और हमें इस पर ध्यान देना है। जैसे कोई award हो गया, जिसकी अभी चर्चा की गई कि ऐसा हमारा mindset बने। अपने यहां mindset compliance का नहीं, बल्कि यह रहता है कि कैसे हम इसे bypass करें, इसलिए हमारा mindset बदले। कानून से आप mindset नहीं बदल सकते, इसलिए जरूरी है कि चर्चा हो। जितने इसमें stakeholders हैं, दूसरे लोग हैं, उनमें बराबर चर्चा होती रहनी चाहिए, जिससे लोगों को प्रतीत हो कि हमारे देश में जितने commercial disputes हैं, यदि उनका permanent resolution करना है तो हमारे मन में यह बात आनी चाहिए कि जो भी contracts हैं, हम सबको उसकी sanctity को मानना पड़ेगा। अगर कोई award होता है तो उसे लागू करना पड़ेगा। इस एक्ट के माध्यम से जो व्यवस्था की जा रही है कि जितने हमारे competent domain experts हैं, उनकी पूरी की पूरी body होगी। इसमें एक अच्छी बात यह है कि उन्हें training भी दी जाएगी, प्रशिक्षण दिया जाएगा। इससे जितने अपने देश के और बाहर के contracts होंगे, आप देखें कि आज हमारी economy काफी बढ़ रही है। आज चारों तरफ बहुत तरह की activities हो रही हैं और अपने देश में सब तरह के domain experts हैं। अभी हमारे साथी कह रहे थे कि हमारे यहां उसकी कमी है, ऐसी बात नहीं है। कोई भी फील्ड ले लीजिए, अभी नया-नया स्पेस का फील्ड है, हम लोग एक नया पीएसयू बनाने जा रहे हैं, न्यू इंडिया स्पेस लिमिटेड। आज हम उस क्षेत्र में भी जा रहे हैं, तो वहां भी हमारे पास experts की कमी है। कोई भी फील्ड हो, सबमें है, लेकिन आगे इसकी जरूरत पड़ेगी। मैं मंत्री जी को बधाई देना चाहूंगा कि उन्होंने इसमें ट्रेनिंग की व्यवस्था की है, इसलिए इसमें खास करके बहुत जगह रीजनल सेंटर्स खोले जाएंगे। हम सब लोगों का यह लक्ष्य है कि हमारा हिन्दुस्तान, जो आज की तारीख में आर्थिक क्षेत्र में बहुत मजबूती के साथ बढ़ रहा है और आगे चल कर हम दुनिया की एक अच्छी economic power बनें, इसके लिए जरूरी है कि हमारे यहां dispute resolution का जो mechanism हो, वह बहुत ही सशक्त हो। इसके लिए यह बहुत ही सार्थक प्रयास किया गया है। इसके साथ ही इसमें यह एक अच्छी व्यवस्था की गई है कि जो भी लोग arbitration में जाएंगे, उसमें confidentiality को maintain किया जाएगा। साथ ही साथ इसमें यह भी है कि जो भी amendment हो, वह time-bound हो, यह जरूरी है। अगर ऐसा नहीं होगा, तो जैसे सिविल कोर्ट में होता है कि दादा मुकदमा दायर करते हैं और पोता अभी तक मुकदमा लड़ रहा है, वही स्थिति हो जाएगी। यहां पर वह व्यवस्था नहीं चल पाएगी, क्योंकि अगर हमें commercial disputes में decision लेने हैं, तो time frame बहुत जरूरी है। इस बिल में यह प्रावधान किया गया है कि 6 महीने के अंदर आपको उसको देना है, इससे निश्चित रूप से समय पर commercial disputes को निपटाने में मदद मिलेगी।

मैं माननीय मंत्री जी से अनुरोध करना चाहूंगा, चूंकि पटना से वे आते हैं और मैं भी राजगीर से आता हूँ, इसलिए जब सब जगह सेंटर खोले जाएं, तो निश्चित रूप से पाटलिपुत्र में भी खुलना चाहिए, क्योंकि शुरु से ही वह seat of power और seat of learning रहा है। निश्चित रूप से वहां पर arbitration का काम बहुत अच्छे ढंग से होगा, बहुत-बहुत धन्यवाद।

SHRI K. SOMAPRASAD (Kerala): Sir, I support both the Bills. The New Delhi International Arbitration Centre Bill is for the establishment of a centre of alternate dispute resolution mechanism. It is very essential and high time to bring such an

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effective institution. India, especially, is having a fast growing economy. We should have different types of establishments to solve disputes within the time limit. Our economy has, already, fully opened to the international community and as a policy the Government is promoting FDI in every corner of our economy. In this changed situation, there is ample scope for arbitration and conciliation process. Moreover, India becomes an international arbitration hub. It is a very good idea. The ICADR which was established in 1995 was a failure. The aims and objectives could not be fulfilled by this establishment. Why, Sir? A detailed examination is necessary in this matter. It had conducted 55 arbitrations within 27 years since it was set up. The need of an effective centre is the call of the day. I think the New Delhi International Arbitration Centre can fulfil the necessity of the present day. But, I would like to comment on certain Clauses in this Bill, Sir. Chapter II, Clause 5 deals with the qualification of the chairperson and members of the Centre. As per this Clause, "a person, who has been a judge of Supreme Court or a Judge of High Court or an eminent person, having a special knowledge and experience in conduct or administration of arbitration" could be appointed as chairperson. Having Supreme Court or High Court judges are very good proposals. But under the category of eminent person, anybody can be appointed as Chairman. Sir, it is very vague and not specific. Sir, it should not be a political post or political appointment. So the Chairperson post should be reserved for Supreme Court or High Court judges. The provision for the eminent person may be deleted. In order to maintain the standard and reliability of the Centre it is necessary. Another point is related to the proviso of Clause 6. The proviso deals with the upper age limit of the chairperson and members. Now, as per the proviso, the upper age limit is 70 years for the Chairman and 67 for members. It is too much. The retirement age of Supreme Court judge is 65 years. I think, here also, it should be limited to 65 years. Thank you.

DR. K. KESHAVA RAO (Andhra Pradesh): Thank you very much, Sir, for including my name. As a matter of fact, I was not a part of it. I just got up only when I saw people criticising here. I want to support the Bill, I need not repeat, because that is already there and you have already spoken about that.

I agree with Ashwiniji when he spoke about domain and a few other things. It is a very rare occasion when I am totally agreeing with a Bill of the Government.

Here, my good friend, Mr. Anand Sharma, raised a few issues. One, about the corpus of trained arbitrators not being available. The Bill talks about preparing them. All the issues, which Anandji raised, are the one that the Bill addresses. The Bill

realizes that these things are not in place, so let them be brought together. That's the Bill.

Now, let me go into a few things. Arbitration is not a new thing for us. Traditionally, we know about this. Our society knows about this since time immemorial. We have been doing arbitration right from the village level to the highest level.

Certain objections were raised here. There is a habit with us, the Opposition, when something suits us, we will say why the report of a particular committee has not been accepted. Well, another angle could be, why should it be accepted. There are always two parties to any issue. An expert comes and tells you certain things. An expert committee of a Government makes certain recommendations – I may be differing here, but you have to have a clear understanding of this – but a particular recommendation may not be feasible or useful or not acceptable. And, you have every right to reject that. Only because I have rejected a particular recommendation of an expert committee, I can't be held responsible for some wrong doing. It is the same case with the Supreme Court also. If the Supreme Court gives orders in adjudication, it is a good thing. But if it recommends a particular thing, we have every right to say 'no'. Even if they decide something, we have a right to come forward with a legislation.

My friend, Sukhendu Ray, has raised certain issues. But, before that, the hon. Minister must know this. You are trying to factor in international disputes also. In such a case, they look for a truly independent body. Government is essentially a litigant, the biggest litigant. The Government is the biggest litigant. What they expect is a body that is free of Governmental influence, Governmental control, and Governmental culture. This is what any industry or any company is bound to think. And, they are free to think so. But you have brought in the members, like the Secretaries – if they are retired, it's another matter – but the sitting or working Secretaries are brought in the international arbitration, we might be in some kind of a disadvantage in convincing others that we are independent. Except that, I have no objection. As Mr. Navaneethakrishnan said, you can create arbitration, but nonetheless it is between two parties and unless they agree, there cannot be a solution.

Therefore, I have a suggestion to make here. You should have conceptualised a National Arbitration Policy. And, this is what you are actually trying to do now. The only thing is, you have given us little details. But, this exactly was the need of the hour and you have responded to it so well. Generally, arbitration in a country would have to be coupled with promoting arbitration as a mode of dispute resolution, which is also factored in. This should include preventing the tendency of private players

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to rush to court without resorting to relevant provisions of the arbitration. What is happening today is this? Once the arbitration award comes in, failing party rushes to the court. The moment you go to court, everything is stayed. The entire work is stayed. Now, in this new Bill, you have brought in an amendment that it is not stayed, but it continues. You have answered that particular question also. To my mind, I have tried to intervene with the help of the Chairman, I could say what I feel.

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): With the permission of the Chair, not with the help of the Chair.

DR. K. KESHAVA RAO: With the permission of the Chair, I have done it. But, the Bill is really good. There are two aspects which need to be looked into. One is the place. But even the place is not a problem. Just because 'place' is said, it does not mean, we get into same adjudication. Place the agreement that we have, makes it very clear as to the judication and to which place. So, that is also very clear. That is not importantly cobbled up. But, what exactly is objectionable; independence of the Arbitration Council or the arbitrator that you would try to pick up, accredited arbitrator, for international disputes. Winning their confidence is important and that confidence comes when we are able to tell than that it is truly independent body. Thank you very much.

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Thank you, Dr. Rao. Now, Shri Vijayasai Reddy.

SHRI V. VIJAYASAI REDDY (Andhra Pradesh): Mr. Vice-Chairman, Sir, smaller parties like us are extremely happy with the Vice-Chairmen because they are liberal and sympathetic in giving time to smaller parties. Sir, we are very happy to support the Bill. I expected a smile from the hon. Law Minister, but I am not finding it. *..(Interruptions)..* The benefits of the Bill are much more than, probably, one or two infirmities, which I would like to bring to the notice of the hon. Law Minister. Sir, first of all, if the Bill becomes a law — because it consists of expert arbitrators — the quality of expertise will, obviously, go up. This is a plus point.

Sir, my second point is about the cost of arbitration. Since I also faced some arbitration earlier, according to me, it is prohibitively high. Now, with this, there is every possibility of the cost of arbitration coming down and I expect the hon. Law Minister to consider framing rules in this regard.

Sir, thirdly, this Bill will facilitate India becoming a hub for international and institutional arbitration. I expect international companies to come here. As it is in

the case of London and Singapore, they should choose India also as a hub of the arbitration.

Sir, the last benefit is burden on the court. As has rightly been pointed out by the hon. Law Minister, when we want arbitrators to be appointed, we need to approach the court and the court decides, with the mutual consent of the parties, the arbitrators. It will reduce the time of the courts and the burden on the courts will also come down. Sir, there are two infirmities which I would like to bring to the notice of the hon. Law Minister. The composition of the Board is like this. The total number including the Chairman and members is seven. The Chairman is a retired judge and there are seven other members. Three are *ex-officios*, two are experts in the field of arbitration, and others are industry and all. Who appoints this Board? It is again the Government. I really don't know why the hon. Law Minister would like to have a control over the constitution of the Board. It could have been independent, as it is in the case of London and Singapore. Sir, what I find in the Bill is that it is not only financially self-sustaining, but eventually, I expect that it will make money and give it to the Government. Now, I am coming to the next Bill, the Arbitration and Reconciliation (Amendment) Bill, 2019. Only two minutes.

Sir, again it is, Government empowers to nominate — individuals nominated by the Central Government only, the same point what I have elaborated. There, it is seven; I think, here it is only one. Arbitration Council has been introduced as a Regulator and has been given broad powers to frame the regulation. This goes against the basic tenets of the arbitration because if I am a litigant and with the other party, both the litigants, they decide on the arbitrators. They sit and decide on the arbitrators. If they come to some sort of understanding, they go to the court and then file a petition and the court will ratify it. So, in this case, it is slightly different. 'The party decides the procedures which are comfortable to them'; that objective is lost here.

Sir, I draw the attention of the hon. Law Minister to Section 42(A) regarding the confidentiality clause. Sir, parties are to maintain confidentiality of arbitral proceedings except during the award implementation and enforcement. My question is, what about the enforcement of interim orders and their implementation?

Finally, Sir, arbitral tribunals to make award in 12 months is the law that is in force. I really don't understand why the hon. Law Minister has excluded the international commercial arbitration from the time period. Thank you very much, Sir.

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Thank you. Mr. Reddy, you confined to the time, not that I was liberal. Mr. Shwait Malik.

4.00 p.m.

श्री श्वेत मलिक (पंजाब): महोदय, यह जो Arbitration and Reconciliation (Amendment) Bill है और इसके साथ New Delhi International Arbitration Center Ordinance है, तो उस ऑर्डिनेन्स को लाने के लिए मैं माननीय प्रधान मंत्री जी और माननीय विधि मंत्री, श्री रवि शंकर प्रसाद जी का आभार प्रकट करता हूँ। इसके बारे में बहुत चर्चा हुई कि यह क्यों लाया गया। मैं इसकी शुरुआत करूँगा कि यह एक नई लहर है, इस देश को सर्वव्यापी और सर्वस्पर्शी बनाने के लिए। यह पहली बार हो रहा है और हमारी सरकार, मोदी जी की सरकार कई revolutionary changes लेकर आई और उनके मंत्री लेकर आए, यह पहली बार हुआ, चाहे जी.एस.टी. हो, चाहे डिफेंस में जो रिसर्च हो रही है, Make in India, Made in India, चाहे Space Science में गवर्नमेंट की जो visionary approach है, टेक्नोलॉजी में, एग्रीकल्चर में या conceptual, जो social security में हो रहा है, social reforms... आज 70 वर्ष के बाद ये reforms हो रहे हैं। यह जो एक्ट है, if it is in London, if it is in Tokyo and if it is in Singapore, why not in India, जो इतना बड़ा देश है। आज जो यह revolutionary change आ रहा है, यह अब आ रहा है, क्योंकि गवर्नमेंट की और मोदी जी की मानसिकता यह है कि यह देश सर्वोच्च होना चाहिए। यह कितनी बड़ी समस्या थी कि बिजनेस के disputes के लिए इंटरनेशनल लेवल पर जो विकसित राष्ट्र थे, उनके लिए इतनी समस्या नहीं थी, जो विकासशील राष्ट्र हैं, developing countries के लिए बहुत बड़ी समस्या है, उनके लिए धन की समस्या भी है। वहां के उद्यमी, व्यापार करने वाले, इंडस्ट्री में जाने वाले लोगों के लिए इतना खर्चा वहन करना भी बड़ा मुश्किल है और इतनी लम्बी कानूनी प्रक्रिया... मैंने सिंगापुर में देखा है कि maximum number of cases are pending in Singapore Arbitration Centre. उसके बाद गवर्नमेंट ने सोचा कि हमारे पास इतना टैलेंट है। मुझे कष्ट हुआ, जब आनन्द जी ने कहा कि मुझे संशय है... उनको इस बारे में विश्वास नहीं है कि यह वह देश है, जहां तक्षशिला थी, यह वह देश है, जहां नालन्दा थी, यह विश्वगुरु देश था और आज इनको शक है कि यहां टैलेंट भी मिलेगा या नहीं मिलेगा। यह मानसिकता का फर्क है हमारे विपक्ष के दोस्त और मोदी सरकार का। हमें अभी तक अपने में ही आत्मविश्वास नहीं है कि हमारे पास... हमारा टैलेंट तो सारे वर्ल्ड में जाकर काम कर रहा है। अगर बेस्ट ब्रेन किसी को माना गया है तो वह भारत का माना गया है। आज यह विश्वास न करना कि इसको हम चला भी पाएंगे... इसी संशय में 70 वर्ष बीत गए और हम कुछ नहीं कर पाए। आज सरकार ने उद्योग के लिए जो सोचा कि हमें 5 ट्रिलियन डॉलर्स की इकोनॉमी बनना है, यह कोई स्वप्न नहीं है। पांच वर्ष पहले परिहास होता था, आज परिहास नहीं होता है। पांच वर्ष में आसमान धरती पर आया है। अगर देश ऐसे स्वप्न ले रहा है कि यह 5 लाख करोड़ डॉलर की इकोनॉमी बनेगा, तो बनेगा। आज जीएसटी, जो स्वप्न लगता था, पूरा नहीं हो रहा था, वह आज इम्प्लिमेंट हुआ है। जीएसटी काम कर रहा है। आज 'आधार' को ले लीजिए। 'आधार' को आज असली आधार मिला है - सही मायने में identification के लिए आधार बना है। गवर्नमेंट का सिंगल विंडो सिस्टम था, जो Ease of doing business है, हर चीज़ आसान हो। इतने लंबे समय के बाद Ease of doing business में हमारा 142वां स्थान था, वह जंप करता हुआ नीचे आ रहा है और हम 77वें स्थान पर हम आ गए हैं और मोदी जी कहते हैं कि बहुत जल्द हम 50 के अंदर आने वाले हैं। यह सोच है। आर्बिट्रेशन का जो इंटरनेशनल सेंटर बनने

जा रहा है, उसके अंदर जो व्यापारियों के मामले, उद्योगपतियों के मामले लंबे समय तक कोर्ट्स में लंबित रहते थे, जिनका फैसला नहीं होता था, उनके लिए छोटा और टाइम बाउंड सिस्टम आया है कि 12 महीने में निपटारा होगा और सबसे बड़ी बात रोजगार की है, जिसके ऊपर हमें सोचना पड़ेगा कि जो आर्बिट्रेटर्स होंगे — मैं माननीय विधि मंत्री जी से निवेदन करूंगा कि इनकी education के लिए भी हमें काम करना होगा। यह एक नया फील्ड आ रहा है। जहां taxation lawyers हैं, जहां criminal lawyers हैं, जहां IT professionals हैं, Telecom Professionals हैं, different professionals हैं, intellectuals हैं, वहां पर आर्बिट्रेटर्स एक बहुत बड़ा प्रोफेशन बन कर आएगा और जोधन विदेशों में चला जाता था, अब विदेशों का वह धन हमारे देश में आएगा। यह सोच का फर्क है। अब चन्द्रमा दूर नहीं है। यह सोच है। मेरा यह कहना है कि वास्तव में आज बहुत कुछ होने वाला है और मैं आनन्द शर्मा जी से निवेदन करूंगा कि इस पर वे संशय न करें। भारतीय जैसे बेहतरीन ब्रेन और intellectuals कहीं पर भी नहीं हैं। आज स्किल इंडिया है, स्टार्ट-अप इंडिया है। यह सोच पहली बार आई है कि युवा को आज हम इतना प्रशिक्षित करें कि वह ...(व्यवधान)... मैं आर्बिट्रेशन पर ही बोल रहा हूं ...(व्यवधान)... कि वह बिजनेस में आए। अब आर्बिट्रेशन किसके लिए है? आर्बिट्रेशन की असली परिभाषा अगर आप देखिए यह जो होने जा रहा है, यह ease of doing business के लिए होने जा रहा है। मैंने ये सारे विषय ease of doing business के ऊपर ही रखे हैं। अब जो बॉडी बनी है, उसमें जहां पूर्व न्यायाधीश हैं, वहां पर पब्लिक रिप्रेजेंटेटिव भी हैं, जो आर्बिट्रेशन के फील्ड से आएंगे। मैं निवेदन करूंगा कि समय के साथ जो पब्लिक रिप्रेजेंटेटिव हैं, उनका रिप्रेजेंटेशन बढ़ना चाहिए, ताकि ट्रांसपेरेंट लॉ हो। मिनिमम गवर्नमेंट का उसमें यह लाभ होगा कि हरेक को इस सिस्टम पर विश्वास होगा। मैं समझता हूं कि सर्वसम्मति से देश में ये जो revolutionary changes आ रहे हैं, हमें उनका स्वागत करना होगा और मैं यह दावे के साथ कह सकता हूं कि यह जो आर्बिट्रेशन का सिस्टम बनेगा, वह विश्व का बेहतरीन सिस्टम बनेगा, इसका मुझे पूरा विश्वास है।

DR. ABHISHEK MANU SINGHVI (West Bengal): Thank you, Mr. Vice-Chairman, Sir. I rise in respect of two bills, both dealing with arbitration, and let me deal with each separately, though they are, in a sense, connected. The first, you may call the 'Centre Bill' for convenience. Now, basically, it is a one-point, unifocal Bill, a take-over Bill. It should have been called the 'Take-over Bill', and, as my friend rightly pointed out, an extremely hostile, directly hostile, take-over, without any of the SEBI take-over code provisions applying. Anyway, we are using mild words. There are two or three things which, I must warn the hon. Minister, are an invitation to disaster even if you want to take over. You know, if you want to do something wrong, do it the right way. You are taking over in the most brazen manner. Before the ink is dry on the Act which this Parliament passes, the Court will strike it down. Why do I say so? I say it with great humility, but it is true. If you see Clauses 7 to 13 — I will not take time on individual Sections of this Amendment — one says, I take over everything, that is, rights, claims, money, non-money, all things; another says, all the liabilities prior to the date of takeover will remain yours. The third one says

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that you will not deal with any of the assets; you will hand over everything to me and you will have no claims of any kind against me plus the new entity which takes over will have the right to recover all your old claims also. So, this is the length, width and depth of Clauses 7 to 13. No problem! You give lots of lands; the so-called earlier Rouse Avenue Road is full of institutional allotments and this is another institutional allotment. So, it is nothing new if you did for this Centre. But, remember, apart from land which you give institutionally to this Society, this Centre has not taken a single penny in terms of running cost or running the thing. Whatever it has earned by seminars, promotion, education, this, that and the other, it has used for the Society, and there is no allegation – and this is important – of irregularity, malfeasance, siphoning, etc. The basic purpose of the Srikrishna Committee, which you set up and on the basis of which this Bill has come, is very important. Srikrishna Committee's main recommendation was – of course, there are other recommendations – declaration of ICADR as an institution of national importance; take over for national importance. It was not generally to take over. National importance designations can be given without takeover in this brazen manner. Now why this brazen manner is likely to be struck down is because there is a delightful para here in the Preamble to this Bill. On the one hand you take over, and on the other, you added insult to injury. It says in the Preamble that without affecting the Society at all, we are taking over. This is a delightful sentence. 'Without interfering with its activities and without adversely affecting its character or the Society', is the last para of the Preamble. So, what you are doing is, you are making Denmark without Hamlet. Prince of Denmark is here, but he has no empire. King has nothing; he is a hollow king, but you say we have not touched you. You have taken away everything which was around you, but we have not touched you. So, Society is an empty shell; it has nothing. Sir, there used to be an Article in the Constitution in the old days called Article 19(1)(f), Right to Property and for lots of reasons we deleted it. But we forget that Right to Property is still a constitutional right; it is not a statutory Right. There are various levels of rights, the highest is basic structure, next highest is Fundamental Rights, the third highest is constitutional right and then, below that is statutory right, below that, is rules and regulations. When we took away Article 19(1)(f), later on, we took care to enact Article 300A which says you cannot take away my property without authority of law. Now what does law mean? Law doesn't mean a paper law. Please see your Clause 27 in the amending Act. You have provided for a takeover and, to add insult to injury, you have said, "To be assessed by any agency authorised by the CAG in such manner as may be specified and any payment on a claim to be made shall be settled between the

Society and the Central Government under the auspices of the CAG." Now, Sir, when you takeover, takeover is not *per se* illegal, you normally have an independent machinery, an outside Commission, a retired Judge. By the evidence led, you have an assessment of the compensation. What you are saying is, Society and Government will agree and the CAG will supervise and you will pay in some pennies and then get lost. This is bound to be struck down as an expropriation, as a takeover without due process of law, as a non-compensatory, without any procedure, arbitrary, takeover. Therefore, please amend it to save your own Act. You will get it through the House, but, you will not get it through the Courts. The rest of the Act is really not necessary because the rest of the Act is about building and all that. The heart of the Act is this. The rest of the point, I want to make is that I wish we were lucky as the previous speaker, that we take over a building and we will make India the golden paradise for arbitrations. You are trying to create a hub, Sir. In India, you have to address the larger issues, which you have not addressed. Why is India languishing for years and decades, not as an arbitration hub? I talk of India; I am talking as constructive as possible; I am not talking this or that Government. Why? For example, there are three best known institutions like, ICC Paris. Do you know, Sir, ICC Paris handles 135 country's disputes. Look at the diversity that is involved! The total aggregate value of all pending disputes before the ICC was 203 billion dollar; 'B' for Bombay, as of now. Annually they are getting 36 billion - again a 'B' - US dollars, not rupees. The next best known is our neighbour, as is called 'Johnny-come-lately; Singapore. It was not there seven, eight or ten years ago. It has done remarkably well and it is almost outstripping one of the London's Chambers of Commerce Arbitration. Singapore, if you take small numbers, it has increased more than 300 per cent in the last 15 years. Other Chambers have increased by 80 to 120 per cent. And, similarly, the third one, London Court of Arbitration has huge figures of revenue cases, matters of importance. We have not been able to do it. The question is, Why? Now, let me give you three or four quick reasons which were not addressed in the second bill. If you address it by take over of buildings, you are not going to have arbitration in India. And, buildings also, mind you, there are many Indias in one. You are making a building in Delhi, which is already overstaffed and has the best of everything. You have a Vigyan Bhavan; you have a new thing on Janpath; and you will have this new building also. But, it is the Coimbatore's, the Jalandhar's, the Bellary's, which by the way have more Mercedes and Bentley than Delhi, which need an arbitration centre. They need an arbitration culture. Kanpur's, that is where the disputes are decided. So, you are focussing on Delhi and one building in Delhi. Let me give you very quickly, this is a little technical, some of the reasons why the arbitration has not and will never succeed

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on current paradigms. You can pass all such Acts. You have to address these issues. Number one, you have to address the fact that we are a federal country with complete diversity. How a Kerala Civil Judge approaches arbitration, is very different from how a Delhi High Court Judge approaches arbitration. His interference level is very different. Or how a Sikkim and a Guwahati Judge does it; there are Civil Judges, Lower Court Judges here; in Delhi and Mumbai, there are High Court Judges. The approach and interference is very different. So, the biggest problem is no uniform ethic. Uniform ethic has to be developed. Less interference, less judicial review; it is completely not uniform. Second, there are Judges — I am talking about Judges who are making mistakes, I am not talking about you — Judgments come which throw a spanner in the law by excessive interference. One Supreme Court's Judgment which is wrong takes years and decades to be corrected by the Supreme Court itself. Meanwhile, it creates a progeny of hundreds of cases of the different High Courts which follow the wrong Supreme Court's Judgment. An excellent example is 'Saw Pipes'. 'Saw Pipes', Sir, took 12 years to get corrected because the Supreme Court made a blunder which was acknowledged repeatedly as a blunder, but, it took 12 years. Why could we not bring the Act earlier?

SHRI RAVI SHANKAR PRASAD: I would just like to ask my very good friend in getting this spanner, how much role he has played in the Court.

DR. ABHISHEK MANU SINGHVI: We do our duty as lawyers there; and as parliamentarians here. The error lies in the Judges. If they accept a wrong argument of mine, I am not to blame. As you know well, Mr. Prasad, you belong to the same tribe. Second, 'Saw Pipes' is an outstanding example. Even now, and this is absolutely, I would say it is a joke — it took us 13 years. There is another very interesting provision regarding arbitration awards. If I get an arbitration award against Mr. Jairam Ramesh, he can challenge it under Section 34. This is there for years. I understood, five or eight years back, that if anybody has lost an arbitration against me, he will file it under Section 34. His mere act of filing in Court will stay the award. So, if I have got an award against him of hundred rupees, I cannot recover. He will get auto stay. We used to call it auto stay. Your Government, in 2015, brought in an Amendment to correct this obvious fallacy because this is an invitation to file an appeal to stay the award. It was so badly drafted. I would say with humility and respect that it took three years to decide whether the Amendment you brought in 2015 would apply to pending cases, would apply to awards already passed, or would apply to awards yet to be passed. In 2018, finally, a Bench of Supreme Court clarified that. Meanwhile, you had ten cases in High Courts, three

taking one view, seven taking the other view. So, there was utter confusion. This is directly a result of sloppy drafting in 2015 Act, which made it clear that there was no auto stay. Year 2015 amendment corrected the error, but it did not say that it would apply from which date for which category of the cases.

Thirdly, Sir, I will talk about 'seat', 'venue', or 'place'. There is a consistent line of case law that 'seat', 'venue', or 'place' is what broadly may be used by any name. You may use 'seat' sometimes, 'venue' sometimes, or 'place' sometimes. And, there is a line of judgements. I don't want to bore the House with technicality, but *Reliance 1*, *Reliance 2*, *BG*, and there are a lot of judgements of Supreme Court. Six months ago, a judgement has come - *Hardy* - which has changed the entire jurisprudence of seat, venue and place. So, you can decide it because once you decide a venue for an arbitration, the law of that venue applies. So, seat or venue is very important. Law of Timbuktu may apply as against the law of India. Now, these are the issues which should have brought clarity in the Amendment. This is all that I am saying. Today, the so-called *Hardy* judgement is going to be like another *Saw Pipes* judgement till Parliament has time to amend it. I don't find any of these Amendments in this. You have amended Section 29(A), which states that time-limits are put. Now, there are three points that I want to make very quickly on this. One, previously, time-limit was one year flat, but one year was counted from the date when the arbitrators entered into the reference. Then, there was one extension of six months allowed with the consent of the parties. And, then, there was a catch-all trap, which you have still not plugged. After one year, plus the consent of the parties for six months further, you could approach the court for extension. No time limit was put there. Now, you have changed that one year to be six months first for completion of pleadings and then one year. So, actually, you have given more time. You have not tightened it; you have loosened it. Second, most importantly, you have not plugged the loophole of approaching the court. Do you know that an extension of six months for arbitration may take one year to decide in the court? This is what your system is because we have got 33 per cent vacancies in the High Courts, 25 per cent vacancies in the trial courts all over India put together. So, if you apply for a three-month extension, you may take eight months or six months in the court to decide whether a three-month extension may be given or not. Now, you have still not put a plug on Section 29(A) on the court's time-limit. Section 29(a)(v) allows extension, and this is not a new provision. Even earlier also, you should have put a plug on this.

Sir, my sixth point is that the most famous institutions are ICC, Singapore, LCIA (London), and a few others are trying to pick up. Sir, I don't find any of

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them to be *sarkari*. Here, you have made this grand Council of seven people, five of whom are *sarkari*, four are *sarkari* and one is semi-*sarkari* because that one is a representative of an industry association. So, it is 4+1+2. Now, I would like to understand from you if you really want to make India a hub where people are attracted, domestic and foreign, I have never heard such a thing, and this was also the problem earlier. I am not criticizing *sarkaripana*, but for international arbitrations and domestic arbitrations, the approach is all wrong. A bureaucratic approach will never work. This is nothing but another *sarkari* Council. It has become a sinecure for favourites. It will also become a very big jamboree for other things. But, no other model, which you are trying to copy, has done it. Singapore is the best example, which has seen a 300 per cent increase and it was born hardly 15 years ago. It is doing very well. It is even capturing ICC, Paris, arbitrations. Nobody comes to India from Paris. They go to Singapore. Therefore, you have to replace *sarkari* not only overtly, but also covertly and in every way in which it is *sarkari*, not even a camouflage of *sarkari* flavor. I don't think it is bureaucrats' job. If you are talking of 'Ease of Doing Business', if you are repeatedly using the famous Modi's slogan which states, 'the business of Government is not to be in business', then it should not be the business of Government to be in arbitration also. Sir, the next point is about a very interesting provision, *i.e.*, 42A. I think, you should check with your Finance Ministry on this provision. Sir, 42B is a very important provision. It gives protection to arbitrators deciding in good faith. If there is a dispute between Mr. Jairam Ramesh and me, the arbitrators decide and give an award. Did you know Mr. Law Minister that the IT Department under the Ministry of Finance has some cases now, thankfully a few, where they wanted to go after an assessee, sometimes for ulterior motives. They go and attack the arbitrator virtually search or raid him on an award, I am giving you an actual case. An award given 12 years ago affirmed by reasoned order of the High Court. The man who lost the award went to the High Court, and the High Court gives a further reasoned order. Please read 42B. What is the point of saying these nice things, if your IT Department does not know how to behave? Sir, which self-respecting arbitrator will want to take up arbitrations? Fortunately, this has not become a disease yet. Sir, very quickly, I will end, you were very kind with the time, Mr. Vice Chairman, Sir. There are two more things. One thing is 'Accreditation'. There is a very interesting provision which says that you have the right to grade the arbitrators. The word is 'Grade'. The actual word is 'review the grading of'. Now, I am personally of the view that we should go away from this hypnotic hold of having retired judges as arbitrators. Sir, no other country is so fond of retired judges as our country is to do arbitrations. But, so long as,

you have this mesmeric hold of retired judges on arbitration, and so long as 80 per cent of the arbitration, at least, the non-technical ones are run by such judges, then, I want to understand, I am supporting you on this, do you have the guts to grade them? You have a provision there and that grading list should be made available. Please grade them. Do not say that there is an exemption for judges.

THE VICE CHAIRMAN (SHRI TIRUCHI SIVA): There are two more speakers.

DR. ABHISHEK MANU SINGHVI: Sir, I would also add that we must move away from this judge-centric thinking. Sir, one more minute, and I am done. Lastly, and most importantly, we have to provide for India as a hub and not for Delhi as a hub. Hubs are not created by taking over a fantastic five star property near the Delhi Airport. Nothing is being done for creative hub. As I said, in the beginning, this is the heart and soul of what we should all be trying; otherwise you would not achieve the figures of a fraction of ICC or Singapore. The hub is made by decentralizing and by recognising that there are many Indias in one. A,B,C,D of arbitration stands for access, backlog, cost and delay of normal litigation. Even, the 'A' is not reached in the Coimbatore, the Jalandhars, the Belaris, the Kanpurs which are extremely rich and vibrant cities having big industries. That is where your efforts must go, and I, therefore, exhort you, Sir, 'A' to plug the loopholes, and 'B' to move in that direction. Thank you so much, Sir.

SHRI JAIRAM RAMESH: Sir, this Government is known by mergers and acquisitions in this House. Now, it is resorting to hostile takeover.

SHRI S. R. BALASUBRAMONIYAN (Tamil Nadu): Mr. Vice Chairman, Sir, I rise to speak on the Arbitration and Conciliation (Amendment) Bill, 2019. The previous Speaker, Dr. Singhvi, who is a senior advocate, and a senior Member, said that it is a take away Bill. I do not know how it is a take away Bill and all that. But, as far as, I know, arbitration has been defined as a procedure in which a dispute is submitted by agreement of the parties to one or more arbitrators who make a binding decision on the issue. In choosing for arbitration, the parties are up for a private dispute resolution procedure instead of going to court. The dictionary says that the official process of settling an argument or disagreement by the one who is not involved in both sides in the dispute have agreed to go to the arbitration. Even now, we have arbitration and conciliation institutions. Sir, what is happening today is that if people go to these institutions for arbitration, and an award is given, the man who is aggrieved goes to the District Court. In a capital city, where there is a High Court, they go to the High Court. When a District Court gives a decision, they don't stop there. They go to the High Court. After going to the High Court,

[Shri S.R. Balasubramoniyam]

from the Single Judge Bench, they go to the Division Bench. They are not satisfied with the arbitration. That is what we can take it now. It is not that an individual is doing that. Most of the people are doing it the same way.

As I mentioned earlier, the Arbitration and Conciliation Act does not satisfy anyone. I am not talking about this Act. Even the previous Act did not satisfy anyone, and, people go on dragging the matters from the arbitration to the courts, from the District Courts to the High Court, from the High Courts to the above. That is the position.

Sir, let me mention what the Amendment Bill says. In sub-section (5), the following shall be substituted, namely, "The appointment shall be made on an application of the party in accordance with the provisions contained in sub-section 4." Further, in sub-section (6), in the long line, for the portion beginning with "party may request" and ending with "designated by such Court" the following shall be substituted, namely, - "the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be." Of course, this is now being replaced by another definition.

In sub-section (9), for the words, "the Supreme Court or the person or the institution designated by that Court", the words, "the arbitral institution designated by the Supreme Court" shall be substituted.

Now, this long Section has been nullified by sub-section 14, which says, "The arbitral institutions shall determine the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal subject to the rates specified in the Fourth Schedule". Explanation given is - "For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) where parties have agreed for determination of fees as per the rules of an arbitral institution."

Sir, I feel that it is a good amendment but, still, I have my own doubt as to how far this amendment is going to help the parties who go in for arbitration and conciliation. Sir, we are in support of this Bill and this Bill will also get passed, and, I hope the Minister will make efforts to correct all these lacunae. Once they come to an arbitration and conciliation institution, they must be in a position to get them satisfied, and, that must be binding. That is my appeal to the Government and the hon. Minister. I think, the suggestions will be duly considered.

SHRI ELAMARAM KAREEM (Kerala): Sir, according to the hon. Minister, the Arbitration and Conciliation (Amendment) Bill seeks to strengthen and institutionalize the matter. This Bill seeks to establish an independent body called Arbitration Council of India for the promotion of arbitration, mediation and conciliation and other alternative dispute redressal mechanism. This is as per the recommendation made by the Committee under the chairmanship of Justice Srikrishna. Sir, it is purely a technical Bill. Most of the parliamentarians hardly deal with these issues. So this should have been referred to a Select Committee for a thorough scrutiny.

In the Clause, which mentions the general norms applicable to arbitrators, you are saying that the arbitrator must be impartial and neutral and avoid entering into any financial business. Why should there be the word 'avoid'? There should be 'should not' or 'must not'. Also, I request the Government that the State Governments should be consulted before appointing Members to the ACI. Under the 1996 Act, parties were free to appoint arbitrators. Under this Bill, the Supreme Court and High Courts may now designate arbitral institutions. For international disputes, the Supreme Court has to recommend the arbitrator.

Arbitration word is usually written as a part of the MoU or contract. So far, in India there is a legal status for arbitration as per the Act. You are going to give more teeth to it so that it becomes more independent in status. While going for arbitration, people seek immediate redressal of their cases. The dispute resolution in case of commercial transaction or contract negotiation is very common in the case of civil contracts. You know that in civil contracts, a lot of arbitration is there with the Railways and the NBCC. So, arbitration is very essential. I would like to ask hon. Minister this question. What is the inbuilt mechanism in order to prevent the parties from going beyond arbitration? You should give independent legal status for the arbitration. Then only people will not be enthused to go beyond arbitration. Otherwise, arbitration will continue to go on. Lakhs and crores of rupees are locked up. I would also like to know this from hon. Minister, through you, Sir. What is the amount of money locked up in post-arbitration awards? So many arbitration awards were given by arbitrators. There is another system called 'Independent External Monitoring System' to resolve the disputes.

As far as the appointment of the Chairman and other Members of the ACI is concerned, you are saying that they should be eminent persons. It should not dilute the spirit of an independent body. That is my last point. I conclude, Sir.

SHRI KANAKAMEDALA RAVINDRA KUMAR (Andhra Pradesh): Sir, I thank you for having given me this opportunity to participate in this debate.

[Shri Kanakamedala Ravindra Kumar]

First, I would like to deal with the New Delhi International Arbitration Centre Bill. The Object of the Bill is very inviting. On provisions relating to the New Delhi International Arbitration Centre Bill, we need a credible Centre of Arbitration. We have to maintain highest possible standards to make it an International Arbitration Centre. Kindly look at Clause 5, Clause 11 and Clause 13 of the Bill. In all the Clauses, the power vests with the Central Government. In major arbitral proceedings, the Government is the major litigant. Some of the awards have not been implemented despite those being awarded by the arbitrator. The Government preferred an appeal and opted for not implementing the award. So, impartiality is not there. The entire control over the Arbitration Centre lies with the Government. As per the Clause, the appointing authority is the Government. The power of appointing authority vests with the Government. How will the foreign companies accept the invitation to place the disputes before the Indian arbitration? Sir, this creates a doubt in respect of the companies about the functioning of the Arbitration Centre. That has to be dealt with first. The Central Government's control has to be taken; the authority has to be given the powers. Another clause, clause 32, provides for rule-making power. It is vested with the Parliament as per the Bill. In the Singapore International Arbitration Centre, the authority has got the power to amend the rules. They have amended the rules four times from 2010 to 2019. But, here, if the rules are to be amended and the power is vested with the Parliament, then, it regulates the business of the Arbitration Centre. If it lies with the Parliament, it is not possible to conduct and dispose of arbitration by the authority in a speedy manner. Another aspect is, in India, most of the retired Judges are chosen as arbitrators. That is quite unfortunate. Now, there are so many young professionals and experts. I can see in the other bill, in the Eighth Schedule, advocates and chartered accounts are also eligible for appointment as arbitrator. That is the most inviting aspect which can be considered. I appreciate it to the extent of appointment of arbitrators. It is high time to reduce the strength of retired Judges to be chosen as arbitrators. There is a provision for an appeal against the arbitral award notwithstanding anything contained in any other law. That is in Section 37 of the Act. There is every possibility of following the procedure under the Civil Procedure Code. The courts are already burdened with heavy litigation. Appeals are preferred before the High Courts or the Supreme Court. It is not possible to dispose it of in a speedy manner. That point is also there. Some time-limit with regard to disposal of appeals preferred against the award passed by arbitrators also needs to be fixed in the Bill.

The other aspect is, there is a scope to pass interim orders by arbitrators. Arbitral

tribunal has to be given power if interim orders are to be implemented. Executing powers also need be given, like, execution courts for speedy implementation of interim orders passed by arbitration centres. There are regional centres. If regional centres are to be made, several regional centres have to be started not only in New Delhi but also in other cities including Amravati.

Ultimately, on both Bills, there is a need to take into consideration the apprehensions and also to clarify the doubts about the control of the Central Government in respect of the functioning of the Arbitration Centre. Thank you, Sir.

श्री महेश पोदार (झारखंड): सर, यह एक ऐसा विषय है, जो सारे छोटे-मोटे और बड़े उद्योग-व्यापार, सब पर असर डालता है। इसका असर सिर्फ देश के अंदर होने वाले व्यापार पर ही नहीं, देश के बाहर से होने वाले व्यापार पर भी पड़ता है। आज जब भारत की प्रतिष्ठा हर क्षेत्र में बढ़ रही है, विशेषकर व्यापार के क्षेत्र में तो काफी बढ़ रही है, तो मैं यह कहूंगा कि 'देर आए, दुरुस्त आए'। इसके लिए मैं माननीय मंत्री महोदय को धन्यवाद देना चाहूंगा, साथ ही इन दोनों बिलों को अपना समर्थन देना चाहूंगा। अब हमें लगता है कि हां, हम इस दिशा में सही रास्ते पर बढ़ रहे हैं।

महोदय, जब से सृष्टि का आरम्भ हुआ है, सामूहिक और सभ्य मानव जीवन का आरम्भ हुआ है, तभी से विवाद और झगड़े भी शुरू हुए हैं। They are part of humanity. उस काल में ही ग्रामसभा और पंचायत जैसी व्यवस्था शुरू हुई, जिसके ज़रिए समाज के प्रबुद्ध लोगों ने मध्यस्थता की व्यवस्था बना करके झगड़ों के निपटारों की प्रणाली को स्वीकार किया।

महोदय, मैं खुद भुक्तभोगी हूँ। मेरे अपने परिवार में First World War के पहले पारिवारिक विवाद शुरू हुआ और Second World War के बाद वह विवाद खत्म हुआ। वह विवाद तब खत्म हुआ, जब एक वृद्ध व्यक्ति, हमारे एक बुजुर्ग का देहान्त हो गया, सारे लोग शमशान में जमा हुए और वहीं पर लोगों ने आपस में ही सहमति करके और कुछ अन्य दूसरे बुजुर्गों के साथ राय-मशविरा करके वहीं पर शमशान में ही उस मामले का निपटारा किया। महोदय, जब मैं जज के पास गया, तब उसने कहा कि two World Wars are over but this family dispute could not be resolved in the court but the power of mediation is so strong that it could be resolved in hours in the *Shamshaan Ghat*. This is the beauty of power of mediation.

महोदय, जब हम विकास क्रम में आगे बढ़े, तो सुलह और मध्यस्थता ने संस्थागत रूप भी लिया। व्यवस्थित राजतंत्र अस्तित्व में आया और सुलह तथा मध्यस्थता राजदरबार की कार्य प्रणाली का एक हिस्सा बन गया। इसके लिए एक नीति निर्धारण की भी जरूरत पड़ी, क्योंकि जैसे-जैसे institutionalize हुआ, वैसे-वैसे it has to be governed by the law. नीतियाँ निर्धारित भी हुईं और देश, काल और समाज के हिसाब से उनमें समय-समय पर संशोधन भी हुए।

बात नीतियों की करें, तो भारतीय समाज में चाणक्य नीति को सबसे ज्यादा महत्व दिया जाता रहा है और आज भी इसकी स्वीकार्यता कम नहीं हुई है। चाणक्य नीति के चार सिद्धांतों का आजकल भरपूर उपयोग किया जा रहा है। साम अर्थात् समझाना-बुझाना, जिसे आप तकनीकी

[श्री महेश पोद्दार]

तौर पर मध्यस्थता कह सकते हैं, दाम अर्थात् धन देकर संतुष्ट करना, दंड अर्थात् बल प्रयोग और युद्ध तथा भेद अर्थात् फूट डालना। कौटिल्य के अनुसार साम दाम से, दाम भेद से और भेद दंड से श्रेयस्कर है। दूसरे शब्दों में सुलह अथवा मध्यस्थता बहुत अच्छी चीज़ है और यह विवादों के समाधान की सबसे अच्छी नीति है। चाणक्य कहते हैं कि दंड का उपयोग अन्तिम उपाय के रूप में किया जाना चाहिए। हम भी देखते हैं कि जहाँ दंड की प्रक्रिया अगर सक्षम होती है और बहुत सक्षम होती है, तो बहुत सारे विवाद स्वतः ही खत्म हो जाते हैं। महोदय, विवादों के निराकरण की वैकल्पिक प्रक्रिया में मध्यस्थता बहुत महत्वपूर्ण है। यह एक ऐसा माध्यम है, जिसमें दोनों पक्षों की जीत होती है, किसी की हार नहीं होती, यदि वे मानसिक तौर पर उसको स्वीकार करें तो।

महोदय, मैं झारखंड से आता हूँ, जहाँ जनजातीय समुदाय बहुलता में है। मैंने देखा है कि हर जनजातीय समुदाय में मध्यस्थता के ज़रिए विवादों के निपटारे का प्रचलन है। हमारे साथी राम विचार जी भी पड़ोसी राज्य छत्तीसगढ़ से हैं। वहाँ पर भी आदिवासी समाज के द्वारा अधिकांशतः कोशिश यह की जाती है कि वह मध्यस्थता के माध्यम से गाँव में ही झगड़ों का निपटारा कर लें। कोर्ट-कचहरी के माध्यम को वे पाप मानते हैं और उसका बहिष्कार करने की प्रवृत्ति उनमें है। यह एक बहुत बड़ी चीज़ है, जो कि हमें विरासत में मिली हुई है। मैं समझता हूँ कि हम लोग आज जिस विषय पर बात कर रहे हैं, यह उसी का एक बड़ा स्वरूप और मॉडर्न स्वरूप है, जिसके बारे में मैं बात कर रहा हूँ।

महोदय, हमारी विभिन्न जनजातियों में जिन्हें मांझी, परगनैत, मानकी, मुंडा आदि की संज्ञा दी गयी है, इन्हें सामाजिक, सांस्कृतिक, आर्थिक और पारिवारिक मामलों में भी मध्यस्थता का अधिकार दिया गया है। संथालों में ग्राम प्रधान, जिसे 'जोग मांझी' भी कहते हैं, वह मध्यस्थ की भूमिका निभाता है। महोदय, मैं यह कहूँ कि हमारी ये जो परम्परागत व्यवस्थाएँ हैं, ये हमारी मॉडर्न व्यवस्थाओं से ज्यादा मॉडर्न हैं और ज्यादा कारगर हैं, प्रभावी हैं।

महोदय, अभी राष्ट्रीय स्तर से लेकर जिला स्तर तक के विविध सेवा प्राधिकरण, लोक अदालत तथा इस प्रकार के अन्य उपकरण सुलह और मध्यस्थता के ज़रिए न सिर्फ लोगों को सुलभ न्याय दे रहे हैं, बल्कि सरकार के राजस्व का पोषण भी कर रहे हैं और अदालतों का बोझ भी कम कर रहे हैं। मैंने इसका प्रत्यक्ष अनुभव भी किया है।

महोदय, इसी सदन में मुझे बताया गया कि निर्वाचित पंचायती राज संस्थाओं के अधीन कार्यरत ग्राम न्यायालयों ने सुलह और मध्यस्थता के ज़रिए विवादों को सुलझाने में महत्वपूर्ण भूमिका निभायी है। मैंने इस क्रम में झारखंड सहित उन राज्यों में भी ग्राम न्यायालयों की स्थापना का आग्रह किया, जहाँ अभी तक इसका गठन नहीं हो पाया है। महोदय, एक गरीब आदमी जब अदालतों के चक्कर में उलझता है, तो उसकी जिन्दगी बरबाद हो जाती है और वह काफी दुखी हो जाता है, हर तरह से टूट जाता है। न्याय मिले न मिले, वह तो बाद का प्रश्न है, लेकिन यह बात तय है कि वह और गरीब हो जाता है। महोदय, इसलिए ग्राम न्यायालयों की स्थापना बहुत आवश्यक है और मानकी, मुंडा पंचायतों के ज़रिए जो सुलहनामा करने की व्यवस्था है, उस व्यवस्था पर ज्यादा जोर देना चाहिए। हो सकता है कि तत्कालीन विषय, जिस पर हम बात कर रहे हैं, उसके लिए वह उतना कारगर नहीं हो, लेकिन हम तत्कालीन विषय, alternative mechanism

of resolution of dispute के बारे में बात कर रहे हैं। अगर मसले राष्ट्रीय या अंतर्राष्ट्रीय स्तर के हों, पक्षकार अधिक समर्थ हों या विवादों का कानूनी पहलू ज्यादा जटिल हो, तो ऐसे मामले सीमित प्राधिकार और क्षमता वाले मध्यस्थता केन्द्रों के बस के नहीं होते। यही वजह है कि राष्ट्रीय स्तर पर इसके लिए कानून बने। इसीलिए उस कानून के आधार पर गठित संस्था की जरूरत महसूस की गई है। इसके लिए मैं फिर से सरकार को धन्यवाद देना चाहूंगा कि सही समय पर, जब हमारा देश तेजी से आगे बढ़ रहा है, समय की मांग को देखते हुए, ये संशोधन लाए गए हैं, कानून में संशोधन किए जा रहे हैं। मैं फिर कहूंगा कि 'देर आए, लेकिन दुरुस्त आए'।

इसी कड़ी में, देश की राजधानी को वाणिज्यिक मामलों की मध्यस्थता का केन्द्र बनाने के मकसद से लाए गए — नई दिल्ली अन्तर्राष्ट्रीय माध्यस्थता केन्द्र विधेयक, 2019 — को लोक सभा ने मंजूरी प्रदान कर दी है। यहां बात हो रही थी कि जो take over हुआ है, वह illegal है, नाजायज है, वगैरह वगैरह। माननीय सिंघवी जी से एक चीज मैंने सीखी, बतौर वकील उन्होंने बहुत अच्छी बात कही कि — "If they accept wrong argument of mine, it is the mistake of a Judge and not mine". यह सही है लेकिन मुझे इतना विश्वास है कि हमारे मंत्री जी भी सक्षम वकील हैं। वे समझते हैं कि क्या सही है और क्या गलत। उसी के आधार पर वे निर्णय लेंगे। इसमें कोई गलती उनसे नहीं होगी, चाहे arguments कुछ भी हों। Government will take its own decision. अगर कहीं takeover गलत हुआ है, तो मैं sure हूँ कि इस देश की न्यायपालिका इतनी सक्षम है कि उसमें सुधार करके रहेगी। हमारी सरकार भी इतनी ईमानदार है और न्यायालय के निर्णय को अक्षरशः, उसकी भावना के अनुरूप पालन करेगी। इस विधेयक के पारित होने के बाद नई दिल्ली में वाणिज्यिक मामलों की मध्यस्थता का राष्ट्रीय केन्द्र बनेगा। हमारा देश कई मामलों में काफी आगे है। यदि देश IT के मामले में world capital हो सकता है, हम अन्य मामलों में दुनिया को represent कर सकते हैं, वैसे ही लीगल मामलों में we can be at the top of the world. इसमें मुझे कोई संकोच या संशय नहीं है। यह समय बताएगा — Just wait for five years and I can tell you that within five years, we will be among the top five litigation centres, resolution centres in the world. I am confident about this. बस हमें कुछ समय दीजिए, इतनी ही मेरी गुजारिश है।

महोदय, इसके प्रस्तावों में — standard तय करने, arbitration process को पक्षकारों के लिए सहज बनाने के अलावा अन्य कई सुधार किए गए हैं, जो समय के हिसाब से आवश्यक थे। ACI के बारे में ...(व्यवधान)...

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Time to you or to the Government!

SHRI MAHESH PODDAR: Yes, Sir.

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): You asked for some time. Time to you or to the Government!

श्री महेश पोद्दार: महोदय, ACI के गठन के बारे में हमारे विद्वान साथियों के मन में कुछ संशय था। उन्होंने कुछ पढ़कर भी बताया। मैं सोच रहा था कि ऐसा कैसे संभव है कि सरकार ही

[श्री महेश पोद्दार]

उसका चेयरमैन appoint करेगी। So I read that portion. उसमें मैंने पाया कि सिर्फ दो शब्दों का जादू था। उन्होंने कहा कि सरकार उनका appointment करेगी जबकि इसमें प्रावधान है कि चेयरमैन का appointment सरकार Chief Justice of India की सलाह से करेगी। इन दोनों में बहुत बड़ा अंतर है। उन्होंने कहा कि Central Government appointment करेगी, लेकिन Chief Justice of India की सलाह से करेगी — यह तथ्य हाउस में नहीं रखा गया — इसीलिए मैं इसे repeat करना चाहता हूं। अभी कुछ माननीय सदस्यों ने कहा कि एक-एक सब्जेक्ट पर, मान लीजिए कुछ ऐसे मामले होते हैं, जिनमें किसी eminent person or scientist की ज़रूरत है, उनका appointment या उन्हें कमेटी अथवा Tribunal में लेने का प्रावधान किया गया है, जो यह अच्छी बात है। Chamber of Commerce के व्यापारियों को भी इसमें लेने की व्यवस्था की गई है, जो बहुत प्रशंसनीय कदम है, क्योंकि ultimately व्यापारियों की intricacies को वही लोग समझ सकते हैं।

जहां तक arbitration proceedings को confidential रखने का प्रश्न है, यहां कहा गया है कि अपवादों को छोड़कर या उसके implementation को ध्यान में रखते हुए, मामले confidential रखे जाएंगे। लेकिन arbitration अवार्ड को electronic depository में रखने का प्रावधान किया गया है। इस संशोधन बिल में एक स्वतंत्र संस्था Arbitration Council of India का प्रावधान है। पता नहीं क्यों, ये लोग इसको स्वतंत्र नहीं मानते हैं, इसको autonomous नहीं मानते हैं? Once the Committee is made, then it is on their own. Now, the appointment and all that, मुझे पता नहीं कि सिंगापुर वगैरह में कैसे हो रहा है।

महोदय, मैं कुछ सुझाव देना चाहूंगा, लेकिन उसके पहले I would like to mention some practical experiences. मैं मंत्री महोदय के ध्यान में लाना चाहूंगा कि आज के दिन arbitration के जो मामले होते हैं, उसमें पहला dispute यह शुरू होता है कि एग्रीमेंट arbitration agreement है या नहीं है? वह बाध्य है या नहीं है? अगर बाध्य है, तो कैसे बाध्य है, किस बात पर बाध्य है? यहीं से विवाद शुरू होता है। दूसरा, who is the arbitrator? Arbitrator बनाने या नहीं बनाने की पावर किसको है? उसकी क्वालिफिकेशन क्या है? वह मान्य है या नहीं है? वह क्वालिफाइड है या नहीं है? सब कुछ होने के बाद जब अवार्ड मिल जाता है, तो implementation of the award...

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Thank you, please conclude.

SHRI MAHESH PODDAR: One minute, Sir. Implementation of award is again a big issue, which must be addressed very, very seriously and somehow I find it missing कि अवार्ड implementation में जो delay होता है, वह कैसे होगा? अंत में मैं यह कहना चाहूंगा कि अगर arbitrator पर प्रश्नचिह्न लगता है, if the integrity of the arbitrator is questioned, that should be tackled on top priority basis because if you don't address that, that may lead to further disputes. उसके बाद सारी प्रक्रिया, सारे time-bound, सब कुछ ध्वस्त हो जाते हैं।

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Now, make your final point.

SHRI MAHESH PODDAR: One second, Sir. सर, छोटे-मोटे झगड़ों के लिए भी there should be an alternative mechanism of resolution चूंकि पड़ोसियों का झगड़ा भी कोर्ट में पहुंचता है। सर, एक स्पेशल एक्ट है जैसे MSME Act, in that there is a provision for some tribunals. There are many Acts like that. What will happen to those special tribunals which will be formed because of some special Acts? इस पर clarification होना चाहिए। अंत में मैं यह कहना चाहता हूं कि अपने देश में चैम्बर ऑफ कॉमर्स के माध्यम से a lot of resolutions are taking place. That should be recognized and I think, they should find a little better place while framing the rules. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Now, Shri P. Chidambaram.

SHRI P. CHIDAMBARAM (Maharashtra): Sir, I am grateful to you for giving me a few minutes to speak on the subject. I know that the subject has been extensively covered by my colleague, but I wish to make just a few points not with the intent to oppose this Bill, but, to ask the Government whether our understanding over their doing is right or do they have a different understanding, which should be the correct understanding. Firstly, Sir, let me take the New Delhi International Arbitration Centre Bill. The intent is good. The intent to take over the existing society is good. The intent to promote arbitration, promote research, maintain a panel of accredited arbitrators, all that is good. But who is going to run the Centre? The Centre consists of a Chairperson appointed by the Central Government, in consultation with the Chief Justice. Full-time or Part-time Members, two eminent persons appointed by the Central Government. So no consultation with anyone. One representative of a recognized body of commerce chosen by the Central Government; Secretary, Department of Legal Affairs, which is the Central Government; Financial Advisor, which is the Central Government. This is a *sarkari* management committee. The Centre has great objectives. But the appointment powers are entirely controlled by the Central Government. This will inspire no confidence among litigants. I hope, nobody says that I have a conflict of interest. Speaking from my experience as a legal practitioner, this will inspire no confidence at all. It is doubly so in India because, to half the major arbitrations, the Government is a party. The claims are against the Government. And, therefore, while the intention of the Bill is good to take over the existing centre and constitute a rejuvenated New Delhi International Arbitration Centre, it should not be construed as the Government of India's Capital International Arbitration Centre. It will be seen as a *Sarkari* Centre, and I am afraid, the intention with which this Centre is being established, will be lost.

One other point; maybe a minor point, but, I think, it is important. The Clause says that, "the centre may constitute such committees, as may be considered necessary,

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to administer various aspects of its functions." This is Clause 19. Centre means, the chairman, and full-time member or the part-time member. The composition and functions of the Committee may be prescribed. Now, who will prescribe the composition and functions? The Central Government will prescribe the composition and functions of the Committee. If you are appointing somebody, as eminent as a judge of the Supreme Court, or, a judge of the High Court, and an eminent jurist, to form the committee, why can't that management committee decide the composition and functions of the sub-committees? Sir, I think, these two grave defects must be corrected. The Central Government must not appoint the chairman and the members. The Central Government should constitute a collegium, and then, leave it to the collegium to make these appointments, and whatever the Central Government wants to do under these two Clauses, must be done by a collegium. It will be in the larger interest of this country. It will inspire confidence, if the Central Government maintains as much distance as possible from the centre. On the contrary, what this Bill does is, bring the Central Government so close to the centre, it will be seen as a *Sarkari* Arbitration Centre.

In the other Bill, there is an attempt to clean up some provisions of the current Arbitration and Conciliation Act, which we welcome. The power to appoint arbitrator under Section 11 was now with the Supreme Court of India and the High Courts. That power is now being given to an arbitral institution recognised by the Supreme Court and by the High Court. I am not sure this is a very satisfactory resolution. But, if the intention is to avoid applications under Section 11 to the Supreme Court and to the High Courts, and leave it to the parties to apply to the arbitral institutions, I have no quarrel. But one has to wait to see, which are the institutions that will be recognised as the arbitral institutions? Unless truly independent, truly professional institutions of arbitration are recognised as the arbitral institutions under this Act, to take the powers away from the Supreme Court and the High Courts and vest in those arbitral institutions might backfire. But I am not trying to be a pessimist. I sincerely hope that the Supreme Court and the High Courts will designate only suitable institutions, highly qualified institutions, highly reputed institutions, as the arbitral institutions.

There is another Section where, I think, the Government is trying to clean up a matter. But, I wish the Minister clarifies because the Minister's statement on the floor of the House will be a guide to interpretation, should a challenge arise. Sir, as the Minister certainly knows, and many in this House will know, that the Arbitration and Conciliation Act was amended in 2015, and the Amending Act had Section 26.

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made a distinction between arbitrary proceedings commenced before the Amending Act came into force — that is, 23.10.2015 — and the date after the Amending Act came into force. The question was: What is the impact of this Section 26 upon Section 36 regarding whether there will be automatic stay of the award when an award is challenged in the High Court? I am sorry that I am getting into the technical language, but I will try to simplify it. When an award is challenged before a court, under Section 36, the earlier provision was that there was an automatic stay. But the Amendment made in 2015 did away with the automatic stay. By virtue of Section 26 of the Amending Act, a question arose whether a distinction is deliberately sought to be made between proceedings commenced before the Amending Act and proceedings commenced after the Amending Act. Ten High Courts took a certain view. It took three years for the Supreme Court to finally settle the law. I think, it overruled the ten High Courts and affirmed the remaining High Courts.

What this present Act does is to omit that famous Section 26 but omitted from 23.10.2015! As far as my very learned friend, Abhishek Singhvi, and I are able to understand, the idea is that as if Section 26 was never made part of the Statute Book. If Section 26 was as if never made part of the Statute Book, is our understanding correct that in all challenges to all awards before a High Court, whether the arbitral proceedings commenced before or after that famous date, in all matters there is no automatic stay? If that is the provision, we welcome it. It cleans up. It should have been cleaned up. Of course, it gave a lot of pleasure for us to argue these cases before the courts. But, it took us three years to clarify that matter. It should have been done much earlier. The original Section 26 was very clumsy in 2015. Whoever is responsible does not matter. But, if you attempt to clean it up, we welcome that. But, please make the statement in the House so that the records could show that in all proceedings where an arbitral award is challenged in a High Court, there is no automatic stay unless the court grants a specific stay.

Sir, the only other point is, while the Amending Act sets up a Council of Arbitration to promote arbitration, the New Delhi Act also has similar functions by promoting arbitration, promoting research in arbitration. There is some overlap. I am not worried about the overlap because India is a very large country. There is no harm if there is an overlap between the functions that would be performed by the New Delhi Arbitration Centre and the functions that would be performed by the Council of Arbitration. We must promote arbitration.

Finally, why is arbitration not so popular in India? I think, it is a very important point. Arbitrations are not popular in India because the Government is a relentless

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litigant. It litigates at every stage. There are cases where three eminent retired engineers who have served the railways or other departments of Government are arbitrators, they gave a unanimous award, and the Government challenged it! They challenged it before the High Court. They then challenged it before a Division Bench. They challenged it before the Supreme Court. So, the Government is simply a relentless litigant which fights every case to the last point. The reason is very simple. We all know this. No officer wants to take the responsibility to say, 'Let us not file an appeal in this case.' What he gets is an opinion from the law officer, who will say, 'Fit case for appeal.' Four words and every officer will sign that. Unfortunately, the only one, if he has the courage to overrule that and say, 'no appeal should be filed', is the Minister. No officer will say, 'let an appeal not be filed.' Now, unfortunately, if a Minister overrules his officers, immediately you point a finger at the Minister and say, 'Aha! Something is wrong here. Something is cooking here.' All these officers wanted to file an appeal and the Minister is overruled. So, what does the poor Minister do? The Minister says, 'Fine, if all the officers have said, let us file an appeal, then, let us file an appeal.' The result is, litigation never ends in this country. Now, Sir, the Srikrishna Committee made a salutary recommendation. The Srikrishna Committee said, 'Create specialist arbitration benches before various courts.' The Bill is silent on that. Second, it said, 'if an award is challenged, the judgement debtor must mandatorily deposit 75 per cent of the sum awarded.' If this recommendation is accepted, the losing side would have to deposit 75 per cent of the award. In the meanwhile, the NITI Aayog issued a circular, accepting this recommendation that 75 per cent of the amount should be deposited and the NITI Aayog issued a circular and I congratulate the Prime Minister for that. The NITI Aayog said, "This was considered at the highest level." The Prime Minister convened a meeting and the Prime Minister said, "This is how awards must be respected. Seventy-five per cent must be deposited." The NITI Aayog circular was sent to all the Ministries. I request hon. Ministers to please check with their Secretaries. It was sent to all the Ministries and it was stated, 'this is the decision taken at the highest level by a meeting chaired by the Prime Minister and therefore, everybody must abide by it.' Every Ministry opposed that circular. No Ministry was willing to implement that circular. They found reason A, reason B to say that this does not apply to us, that this only applies to construction contracts, or this only applies to highway contracts. All kinds of excuses were found to scuttle that circular. The net result is, that circular is not applicable today, which means, a decision taken by the hon. Prime Minister — and I once again commend the Prime Minister for taking that decision — more honoured in the breach than in the observance. I want the hon.

Minister to say, 'We stand by what the hon. Prime Minister decided. If the NITI Aayog circular has been treated with scant respect by Ministries in litigations, we will reiterate the circular by ensuring that not the NITI Aayog, but the Department of Personnel and Administrative Reforms or the Ministry of Finance or the Ministry of Law would issue a circular reiterating the wholesome decision taken by the hon. Prime Minister that when an award is challenged, you must deposit 75 per cent of the amount of the award so that litigation can be quickened and shortened. So, these are my comments. We support this Bill, but we urge the hon. Minister to take note of what we observed.

श्री अशोक सिद्धार्थ (उत्तर प्रदेश): माननीय उपसभापति महोदय, धन्यवाद। मान्यवर, मैं अपनी पार्टी की राष्ट्रीय अध्यक्ष आदरणीय बहन जी का हृदय से आभार व्यक्त करता हूँ कि उन्होंने मुझे इस महत्वपूर्ण बिल पर बोलने के लिए अधिकृत किया है।

मान्यवर, भारत में प्राचीन समय से ही विवादों के निपटारों को मध्यस्थता के माध्यम से निपटाने की परम्परा रही है, ग्राम पंचायतों से लेकर खाप पंचायतों तक में जो निपटारे किए जाते थे, उनकी प्रकृति, मध्यस्थता की ही प्रकृति थी। उपसभापति महोदय, भारत में संस्थागत मध्यस्थता की स्थिति बेहतर नहीं है, कई मध्यस्थ संस्थानों के अस्तित्व के बावजूद भारत में संस्थागत मध्यस्थता एक नवजात चीज़ बनी हुई है, इसका कारण, भारत में अपर्याप्त बुनियादी सुविधाएं, कानूनी अनिश्चितता, अंतहीन देरी, अस्पष्ट न्यायिक प्रक्रिया आदि प्रथमदृष्टया दिखने वाली इन समस्याओं के कारण भारत मध्यस्थता के केन्द्र के रूप में अपनी पहचान बनाने में असफल रहा है। वहीं दूसरी तरफ सिंगापुर इंटरनेशनल आर्बिट्रेशन सेंटर, हॉंगकांग इंटरनेशनल आर्बिट्रेशन सेंटर, इंटरनेशनल चैम्बर ऑफ कॉमर्स और लंदन कोर्ट ऑफ आर्बिट्रेशन सेंटर जैसे माध्यस्थ संस्थानों ने अपने आधुनिक नियमों, कार्य की संगठित संरचना, उत्कृष्ट प्रशासनिक सहायता और बुनियादी ढांचे के माध्यम से पार्टियों के बीच में विश्वास प्राप्त करने का काम किया है। इसके अलावा पार्टियां अपने फायदों को अच्छी तरह जानती हैं।

(श्री उपसभापति पीठासीन हुए)

जैसे माध्यस्थों के अपने पैनलों पर निपुणता निर्धारण की संरचनाएं और मध्यस्थता की कार्यवाही के आयोजन और समय पर आचरण, लगभग सभी संस्थानों को विभिन्न स्तरों पर सरकारी सहायता से लाभ मिलता है और स्वस्थ प्रतियोगिताओं के माध्यम से धीरे-धीरे विकसित किया जाता है।

मान्यवर, न्यायालयों की अपनी सफलता को देखते हुए भारत में संस्था की मध्यस्थता को बढ़ावा देने का यह उचित समय है। सभी विकसित देश निजी विवाद संसाधन तंत्र अपना रहे हैं और 95 प्रतिशत नागरिक एवं वाणिज्यिक विवादों को विश्व स्तर पर मध्यस्थता के माध्यम से सुलझाया जाता है। भारत में भी देश में वाणिज्यिक नागरिक विवादों के निपटारे के लिए एक पसंदीदा तरीका मध्यस्थता को अपनाने पर ज़ोर देने का काम किया है। अंतर्राष्ट्रीय वाणिज्यिक विवादों की मध्यस्थता के लिए भारत को एक आकर्षक गन्तव्य बनाने का एक अच्छा प्रयास इस बिल के माध्यम से किया गया है।

[श्री अशोक सिद्धार्थ]

मान्यवर, अगर हम प्राथमिकता के आधार पर देखें और संस्था की मध्यस्थता के एक जीवंत पारिस्थितिक तंत्र का निर्माण किया जाए, तो यह न सिर्फ निवेशकों के आराम के स्तर को बढ़ाएगा, बल्कि अदालतों का बोझ भी कम करेगा। इसलिए विश्व स्तर पर एक मध्यस्थता केंद्र के रूप में, भारत को बढ़ावा देने की इस पहल का स्वागत होना चाहिए। इसमें संदेह नहीं है कि त्वरित न्याय के लिए आर्बिट्रेशन एक कारगर तरीका सिद्ध होगा।

मान्यवर, मैं माननीय मंत्री जी से निवेदन करूंगा कि इस बिल में नियुक्ति के संबंध में जो प्रावधान किया गया है और जो रचना इस विधेयक की है कि एनडीआईएसी में जो सात सदस्य शामिल होंगे, उनमें से एक सदस्य उच्चतम न्यायालय या उच्च न्यायालय का न्यायाधीश हो सकता है या मध्यस्थता के आचरण और प्रशासन में विशेष ज्ञान और अनुभव वाला एक प्रतिष्ठित व्यक्ति हो सकता है, संस्थागत मध्यस्थता में पर्याप्त ज्ञान और अनुभव रखने वाले दो प्रतिष्ठित व्यक्ति हैं, जो तीसरा है — तीन पदेन सदस्य वित्त मंत्रालय से नामित होंगे — इससे एक संदेह प्रकट होता है। चूंकि वे गवर्नमेंट के द्वारा नामित होंगे और जब गवर्नमेंट के द्वारा नामित होंगे, तो गवर्नमेंट के विरोध के साथ जो विवाद होगा, उसमें इनकी पारदर्शिता पर डाउट होगा। इसलिए आर्बिट्रेटर के चयन और नियुक्ति के रूप में अधिक से अधिक पारदर्शिता पर ध्यान दिया जाए।

दूसरा, माननीय मंत्री जी अपने उत्तर के समय ये स्पष्ट कर देंगे, तो बड़ी कृपा होगी कि वर्तमान में मध्यस्थता से संबंधित कितने मामले भारत में लंबित हैं? क्या मध्यस्थता केंद्र को सूचना के अधिकार के दायरे में लाया जाएगा? तीसरा, प्रस्तावक विधेयक ने सैद्धांतिक पहलुओं को बनाया है, फिर भी जो श्रीकृष्णा कमिटी रिपोर्ट के बारे में इस बिल में चर्चा की गई है, उस रिपोर्ट को पूर्ण तरीके से लागू क्यों नहीं किया गया है? मान्यवर, चूंकि यह विधेयक भारत की साख को बढ़ाने के लिए, खास तौर से माध्यस्थों के लिए टूरिज्म को बढ़ावा दिलाने में यह बिल अहम् सिद्ध होगा, इसलिए मैं अपनी पार्टी की ओर से इस बिल का समर्थन करते हुए अपनी बात समाप्त करता हूं।

श्री शिव प्रताप शुक्ल (उत्तर प्रदेश): मान्यवर, मैं माननीय विधि मंत्री द्वारा सदन में प्रस्तुत दोनों विधेयकों का समर्थन करता हूं। श्रीमन्, यहां पर बहुत अच्छी बहस हुई और सभी लोगों ने लगभग तथ्यगत बातें कहीं और बिल का समर्थन भी किया। कुछ बातें, जिन पर आशंकाएं व्यक्त हुईं, स्वाभाविक हैं कि पक्ष और प्रतिपक्ष का होने के नाते वे विषय आते हैं। मुझे लगता है कि हम लोगों को वहां जाना चाहिए, जब इस देश के माननीय प्रधान मंत्री श्री नरेन्द्र मोदी जी ने यह कहा था कि अंतर्राष्ट्रीय कारोबारी विवादों के निस्तारण में मध्यस्थता का वैश्विक केन्द्र बनाने की बात करनी चाहिए, और भारत को करनी चाहिए। हम सभी लोगों को ध्यान होगा — समाचार पत्रों में भी आया था — कि अमेरिका के विदेश मंत्री ने भी एक मीटिंग के अंतर्गत इस बात को कहा था कि "मोदी है, तो मुमकिन है।" उन्होंने ऐसा क्यों कहा? उन्होंने ऐसा इस नाते कहा कि भारत आज पूरे विश्व में आगे बढ़ रहा है, वह भले ही विकासशील देश रहा हो, लेकिन आज वह विकसित देश बनने की तरफ पूरी क्षमता के साथ आगे बढ़ रहा है, उसमें कहीं भी रुकावट नहीं है। मंत्री जी इस बिल को लाए हैं मध्यस्थता प्रक्रिया को सहज बनाने, लागत सक्षम बनाने और मामले के शीघ्र निष्पादन और मध्यस्थता करने वाले की तटस्थता सुनिश्चित करने के लिए

मध्यस्थता और सुलह अधिनियम, जो 1996 में बना था, सन् 2015 में उसका संशोधन हुआ। आज मैं यह कह सकता हूं, जैसे जब महेश पोद्दार जी बोल रहे थे तो हमारे देश में प्रचलित संस्थानों के द्वारा जो न्याय व्यवस्था की स्थिति रही, उसके बारे में उन्होंने कई ऐसी बातें कहीं।

महोदय, यहां पर कई विषय उठे - यहां पर नाम लेना उचित नहीं हैं, बहुत सीनियर लोग हैं जिनका नाम मेरे जैसे छोटे व्यक्ति के द्वारा लेना उचित नहीं होगा, लेकिन मैं एक बात जरूर कहना चाहता हूं कि अगर income tax की स्थिति को देखा जाए तो तीन स्तरों पर जो appeal होती है, उसमें सरकारी अधिकारी ही रहते हैं। उसके बाद में tribunal की स्थिति आती है। आज जो यह संशोधन विधेयक आया है, वह इस आधार पर ही तो आया है कि उसमें देरी की प्रक्रिया होती है। इस पर तो सुप्रीम कोर्ट ने already अपना स्पष्ट निर्णय दिया है और यह कहा है कि कभी-कभी ऐसी स्थिति होती है या अधिकांशतः यह स्थिति होती है कि सेवानिवृत्त जजेज अधिक समय ले लेते हैं और कभी-कभी तो पूरा का पूरा एक सत्र जो दिया जाता है, वह केवल तारीख लेने में खत्म हो जाता है। इस नाते से यह समय-सीमा तय की गयी कि एक वर्ष के अंदर निश्चित रूप से यह होना चाहिए, अधिक-से-अधिक 6 महीने के लिए उसे बढ़ाया जाए।

महोदय, आज भारत एक बढ़ती हुई अर्थव्यवस्था है, यह कहा गया कि हम विश्व में छठी अर्थव्यवस्था के रूप में हैं और पांचवीं की तरफ आगे बढ़ रहे हैं और इससे भी आगे बढ़ेंगे, Ease of doing business में 142 में से 77वें स्थान पर आ गए हैं तो हर दृष्टि से भारत को आगे बढ़कर उसका श्रेय लेना चाहिए। मैं एक दृष्टांत रखना चाहता हूं। इस देश में भोपाल गैस कांड हुआ था। उसकी पचासवीं बरसी निकल गयी, हर बरसी पर लोग जाकर मोमबत्ती जलाते रहे। अमेरिका में अदालत होने के नाते यहां के लोगों को न्याय नहीं मिल पाया, मुआवजा नहीं मिल पाया - पीढ़ी की पीढ़ी जाती रही लेकिन वह केवल और केवल मोमबत्ती जलाती रही। आज की स्थिति में अगर हम अपने देश में अपने उन विवादों को, जो बिजनेस से जुड़े हुए हैं, पूरी तरह से सुलझाने के लिए, समझाने के लिए, इस प्रकार की संस्था को एक रोल देते हैं, तो यह भारत सरकार का एक अच्छा कदम होगा, जो माननीय मंत्री जी लाए हैं। अभी यह विषय आया कि खर्चा कितना होता है? जब यह बात यहां पर हो रही थी कि कितने डॉलर सिंगापुर के लोग कमाते हैं, कितनी वहां की संस्था कमाती है, कितनी पेरिस की कमाती है, तो मान्यवर, भारत में ही एक उच्च न्यायालय को निर्णय देना पड़ा, इस नाते कि एक जज को अपॉइन्ट किया गया था और उस जज ने एक मध्यस्थता में 75 लाख रुपये लेने की बात कही, तो उसको रद्द करना पड़ा था। राजस्थान हाई कोर्ट का ही एक निर्णय है, जिसको उन्होंने रद्द किया था। यह जो प्रक्रिया चल रही है, यह प्रक्रिया तो सुलभ और सरल बनाने की चल रही है। मान्यवर, माननीय प्रधान मंत्री जी ने जब आर्थिक सुधारों की प्रक्रिया शुरू की, तो स्वाभाविक रूप से अगर हम हर कानूनी प्रक्रिया को ठीक से नहीं लेंगे, तो उन आर्थिक सुधारों की प्रक्रिया को आगे नहीं बढ़ा पाएंगे। इस नाते इस बात को पूरी तरह से कहा जा सकता है कि ये जो दोनों विधेयक हैं, ये साफ-साफ दर्शाते हैं कि जो भी बिजनेस सेन्टर से जुड़ा हुआ है, वह ADR के क्षेत्र में, यहां कहा गया है कि कहां से लोग मिलेंगे, जिनसे हम न्याय कराएंगे, जिनसे पंचायत करा सकेंगे ? उसके संदर्भ में भी माननीय मंत्री जी ने जो अपने विधेयक में दर्शाया है, उसके आधार पर प्रैक्टिकल ट्रेनिंग भी दे रहे हैं। उनको प्रैक्टिकल ट्रेनिंग देकर train करेंगे और train करने के बाद, निश्चित रूप से वे इस प्रकार से सक्षम हो जाएंगे कि वे मध्यस्थता की प्रक्रिया में पूरी तरह से न्याय कर सकेंगे।

[श्री अशोक सिद्धार्थ]

मान्यवर, देरी की बात नहीं है, इसमें कोई ऐसी देरी नहीं है। जो लोग भी बिज़नेस से जुड़े रहे हैं, सिंगापुर की संस्थाओं पर तब ध्यान देते थे, जब उनको यह लगता था कि भारत में न्याय नहीं मिलेगा। था यहां भी, लेकिन नहीं मिलता था। मैं छोटी-छोटी बातें कहूंगा। जो बिज़नेस सेंटर से जुड़े हुए लोग हैं, वे NCLT में जाते हैं, उनको NCLT में भी न्याय नहीं मिल पाता है। मैं बताना चाहता हूं कि बैंकिंग में किस प्रकार की स्थिति आई। इस देश के बैंक क्यों defunct हुए? क्यों इस प्रकार से NPA की स्थिति आई? कभी इस बारे में विचार किया गया कि इस देश में NPA क्यों इतना बढ़ा? जो लोग NCLT में गए, उनको अपना घर-बार बेच देना पड़ा। उसके बावजूद भी उनकी पीढ़ी दर पीढ़ी उसी में घिसती रही। मेरे सामने एक दृष्टांत आया था कि हरियाणा की एक महिला जिसका घर बिकने की स्थिति में आ गया था, मैं बड़ी मुश्किल से बात करके किसी तरह से उसका घर रखवा पाया और वह उसका घर बच गया था। मैंने वित्त राज्य मंत्री के पद पर रहते हुए देखा था कि किस तरह से लोगों ने इस प्रकार की स्थिति अपनाई है। आज जब प्रधान मंत्री जी के नेतृत्व में इतना बड़ा फैसला लिया गया है, तो फिर इस पर सवाल खड़ा कर दिया जाता है। अगर सुप्रीम कोर्ट इस बात को कह सकता है कि मंहगा न्याय नहीं मिलना चाहिए, अगर वे लोग आते हैं, जो सुप्रीम कोर्ट के रिटायर्ड जज हों, हाई कोर्ट के रिटायर्ड जज हों, वे आएंगे तो, आने के बाद कोई ऐसा विषय पैदा कर देंगे कि जिससे कि वह खिंचता जाएगा और एक-एक सत्र, पूरा का पूरा, केवल तारीख लेने में बीत जाएगा। तब तो माननीय मंत्री जी जो विधेयक लाए हैं, उसका कोई मतलब ही नहीं रह जाएगा। मैं यह मानकर चलता हूं कि यह त्वरित दृष्टि से मध्यस्थता को सुलभ और सरल बनाने के लिए लिया गया है। मान्यवर, मैं बहुत साफ शब्दों में कहूँ, तो ...(समय की घंटी)...

श्री उपसभापति: माननीय शुक्ल जी, 10 मिनट हो गए हैं, अब आप बात समाप्त करें।

श्री शिव प्रताप शुक्ल: सर, मैं अपनी बात को तुरन्त समाप्त कर दूंगा। आपकी घंटी मुझे प्रेरित करती है।

श्री उपसभापति: यह मेरी घंटी नहीं है, यह सदन की घंटी है, जो कि सदन के नियम के अनुसार है।

श्री शिव प्रताप शुक्ल: सर, एक मिनट। इसमें एक नया सैक्शन 42 (A) जोड़ा है। इस बिल में 42 (A) को जोड़ने का प्रस्ताव है कि किसी माध्यस्थम् करार से संबंधित मध्यस्थ, माध्यस्थम् संस्था और पक्षकार, सभी माध्यस्थम् कार्यवाहियों की गोपनीयता बनाए रखेंगे, सिवाय पंचाट के और उस समय जहां उनका प्रकटन पंचाट के कार्यान्वयन और प्रवर्तन के प्रयोजन के लिए आवश्यक हो।

सर, यहां पर एक बात आई थी कि कहीं और लोगों के केस न खुल जाएं। ऐसा कुछ भी नहीं होने वाला है, बल्कि मैं यहां स्पष्ट कर सकता हूँ कि इस सदन में बहुत सकारात्मक चर्चा आज हुई है। ...(समय की घंटी)... हम यह जरूर माननीय मंत्री जी से कहना चाहेंगे कि अगर उसमें कोई कमी रह गई हो, तो उन विद्वान लोगों से भी, उनके बिंदुओं को लेकर, जोड़ कर इस बिल को पूरा करना हो, तो जरूर करें। लेकिन भारत अगर आगे बढ़ रहा है, तो बढ़ते हुए भारत को गति देने की आवश्यकता है। इस नाते से मैं पूरे सदन से कहूंगा कि वह इस बिल को पास करे, धन्यवाद।

MR. DEPUTY CHAIRMAN: Shri Binoy Viswam; not present. Shri Narain Dass Gupta.

SHRI NARAIN DASS GUPTA (NCT of Delhi): Thank you very much, Sir, for giving me this opportunity. This is my maiden speech, I should say, after more than one year, and I hope you would give me 15 minutes to speak on these Bills, if possible.

Sir, I would start, as Shri Anand Sharma had done, with both the Bills. Although I support both the Bills, I would still like to make a few submissions. We have been hearing for the past one year that the Bills presented in this House were not being referred to the Standing Committee. And when this issue is raised by our friends from this side or from the other side, we get a reply that in the past too similar things have happened. Even a figure has been given as to the number of times that happened. This cannot be a justification. We should place it on record and we should know, because we are new Members, as to which Bills are referred to the Standing Committee and which are not, and what is the criteria for that. This cannot be the reply. I feel this is a game being played between two sides. When they are on this side and they raise the issue, they say that this had been happening in the past. Now, when they are on that side, they say the same thing. This cannot be a justification. The second justification that was given was that the last time the House was disturbed and that is why we have followed the legacy and not referred the Bill to a Committee. This is something that we have been hearing for the past so many years, as to why a Bill was not referred to the Standing Committee. I don't know which Bills should be referred and which should not be referred to the Standing Committee or the Select Committee. We should know the criteria.

With these words, I express my thanks to you, Sir, for giving me this opportunity, and I would express my thanks to my leader, Shri Arvind Kejriwal, who has nominated me to this House. A number of things have been said here about the two Bills, the Arbitration and Conciliation (Amendment) Bill and the New Delhi International Arbitration Centre Bill. As I have said, I support both the Bills, but I would like to make some observations. I heard Shri Shukla's reasons as to why a Government Officer should be appointed here. And then there was a view expressed from this side by some Members that this system of arbitration would lose its independence. I would just share a story. सर, दो बिल्लियां थीं, वे एक गली में जा रही थीं और रास्ते में एक रोटी पड़ी थी, दोनों ने उसको लेने के लिए पंजा बढ़ाया और दोनों में झगड़ा हो गया कि यह रोटी किसकी है। फाइनली, दोनों में सहमति हुई कि आधी-आधी रोटी बांट लेते हैं, परंतु आधी-आधी बांटने पर झगड़ा हो गया कि कैसे बांटी जाए? आप बांटोगी, तो आप ज्यादा हिस्सा

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ले लोगी। उन्होंने एक arbitrator, बंदर को पकड़ लिया और बंदर को कहा कि आप हमारी रोटी को आधी-आधी बांट दो। That was the arbitrator. मध्यस्थता करने के लिए, उसने रोटी के दो टुकड़े किए, उसमें से एक टुकड़ा बड़ा कर लिया और एक टुकड़ा छोटा कर लिया। उसने कहा कि टुकड़े बराबर नहीं हुए हैं, उसने रोटी के बड़े टुकड़े को खाना शुरू कर दिया और कहा कि मैं इसको बराबर कर देता हूँ। उस टुकड़े को खाते-खाते उसने छोटा कर दिया। अब रोटी का दूसरा टुकड़ा बड़ा हो गया, तो कहने लगा कि अब मैं इसे खाकर बराबर-बराबर कर देता हूँ। इस प्रोसेस में वह रोटी के दोनों टुकड़े खा गया। यह जो independence है, एक बड़ा अच्छा प्रावधान इस Amendment Bill बिल में आया है कि arbitrator को ग्रेडिड करेंगे। उन्होंने Income Tax के बारे में बताया कि वहां गवर्नमेंट के तीन ऑफिसर्स हैं, जो फैसला करते हैं, ऐसा नहीं है। वहां पर ज्यूडिशियरी सिस्टम है। जब अपील में जाते हैं और डिपार्टमेंट की जो अपील होती है, उसमें डिपार्टमेंट का DR appear होता है। इस प्रकार वहां भी independence है। जो जज होता है, वह इंडिपेंडेंट होता है, other than the Government Officer. वह ज्यूडिशियल सिस्टम के थ्रू आता है, तो we cannot compare two situations. Sir, I have some points for suggestions. Already there are a number of things which have been said here. With the objective to create an independent and autonomous body, it seems that the Central Government has retained unreasonable power to appoint the members of the centre as mentioned in Chapter 2, Clause 5. This will lead to the conflict of interest as many arbitrations involve PSUs. Thus, objective will be lost in this process. I will suggest that we should make an independent body. Then there is a clause where it is mentioned, the composition and functions of the committee referred to in sub-section 1 shall be such as may be prescribed. Why will we leave it to future? Why shouldn't we prescribe here itself as to what will be the composition and functions of the committee as we have done in the second Bill before us, that is, Arbitration and Conciliation (Amendment) Bill? There, in this Bill, we have constituted an Arbitration Council and the function has been given, that is, an autonomous and independent body. We should create here a similar type of situation just to have the complete independence and we should not leave it for the future course of action; we should not leave it 'to be prescribed'. Secondly, there is Clause 31 which says that the power has been given to make rules and to place it before Parliament. Why are you coming with this Amendment? Bill has been brought so as to not delay the proceedings. But here, if you give the power to frame rules and then to place them before Parliament, it will take time. As we have seen how much time this Bill has taken. The Bill was introduced here in March and now, in the month of July, we are taking it up. Similarly, it is applicable for the rules. If we give the power to frame rules to the body which is going to be constituted or we should have a separate council which may frame rules and regulate the system, it is good;

we should not place them before the Parliament. This is regarding the framing of the rules. This is what I have said that we should have an independent body. This is regarding New Delhi International Arbitration Centre.

Regarding Arbitration and Conciliation (Amendment) Bill, I have to say a few words. I appreciate that the Arbitration Council is being constituted. This will be an autonomous and independent body. It will regulate independently and it will not delay the proceedings. Time-bound process is a good suggestion. I appreciate the provision of confidentiality. There are some suggestions that I have to make. I suggest to make arbitration process speedy, cost-effective and minimum court interference. I also suggest one representative of the registered body like commerce and industry chosen on a rotational basis. What I will suggest is that when you take people from commerce and industry, we should take one person from the professional body, that is, the Institute of Chartered Accountant, Cost Accountant and Company Secretary, because they also act as arbitrators in a number of cases. So, we should add it here and when we give the opportunity to the people from commerce and industry, at the same time, we must add one person from any of the three professional institutes on rotational basis. Then, Sir, I have a small suggestion to make regarding Eighth Schedule. It says, "A person shall not be qualified to be an arbitrator unless he is a chartered accountant within the meaning of the Chartered Accountants Act having ten years of practice experience." Sir, I would suggest that we should start with a word that 'he must be a practising Chartered Accountant. In the last, where we have added this practice, there we should have only 10 years experience. This is only a small change because this is exactly provided under Section 2 of the CA Act, 1949. That is there. There is a definition given as to whether who is a member in practice and who is a member not in practice. It would be better if we add it here like this.

Then, Sir, Clauses 6 and 7 under the Eighth Schedule. There we have said, an officer with law degree, having 10 years of experience in the legal matters of the Government, autonomous bodies, public sector undertakings or at a senior managerial position in a private company or self-employed. How you will decide the threshold limit for the private body or the self-employed because this is a grey area where it will be very difficult that although we have said that he must be a senior level managerial position, but he can be from a private or a self-regulated body. But, what is the size of that private or self-regulated body? That needs to be clear. Sir, as I have said, I support both the Bills, but, I would like to make certain observations — here my friend Mr. Malik has mentioned about 'Make in India' 'Ease of doing business' and '5 trillion dollar economy' a number of times — about this 5 trillion dollar economy and what it is because when this Government took over in the year

[Shri Narain Dass Gupta]

2014, it was at 1.85 trillion dollar. During the last five years, what has been added is 0.85 trillion dollars. It means each year, 0.17 has been added. Now, on 31st March, 2019, it is 2.70. Now, we are claiming that by the end of March, 2020, it will become 3 trillion dollar economy. We will add another 0.30 trillion dollar. And, in the rest of the 4 years, it will become 5 trillion dollar economy. It means we have claimed and we have said that each year, we will be adding 0.50 trillion. Now, the question is, what is the roadmap? Only the numbers have been given. But no roadmap has been given. How will it be achieved? If we go through the trade deficit, our export is decreasing every year. It is coming down and import is increasing. There is a trade deficit. Then, to meet the deficit, what we are proposing in the Finance Bill, 2019, is that during the five years, we will have 3.25 lakh crores of rupees through disinvestment. सर, हमने गांव में सुना है कि जब घाटे में चले जाते थे, तो ladies की jewellery लेकर बेच आते थे। These PSUs are the jewels of the country and we are proposing that to meet the deficit, this five lakh crores of rupees, we will have. Then we will raise foreign bonds. There is no explanation given. If the rupee depreciates, which is depreciating from year to year, how we will meet those commitments? Now, on the one side, we are claiming that the economy is booming and on the other side, we are going with deficit whether it is trade deficit, fiscal deficit. To meet it out, either we approach the RBI that it should give ₹ 3 lakh crore or we are taking the steps through disinvestment and creating refund of 3.25 lakh crore rupees. This is the way we are going. In Make in India, we are not able to provide substitutes to our import. Import is increasing. Sir, I know, in Delhi we have about 30,000 small industries. Each and every industry is just doing the assembly work, but all the materials and ingredients, they are using, are coming from China. So, how are we achieving the objective of 'Make in India'? Similarly, it is happening everywhere. Same is the condition with 'Ease of Doing Business', 'Skill India' and other concepts. Now, I will talk about Delhi. Although Delhi contributes, by way of income-tax, about ₹ 91,000 crores to the Exchequer, but the Delhi Government gets only ₹ 325 crores a year. This is a step-motherly treatment that is being given to Delhi. In spite of this fact, our Chief Minister's Office was raided. About 200-300 files were taken away. After that, nothing wrong was found in these files. The CBI should come out with a statement that they had raided the Chief Minister's Office, they had raided the Chief Minister's house, but nothing wrong was found out, and a certificate should be given in this regard. In spite of all these difficulties, whatever work has been done in Delhi should also go on record. As far as education sector is concerned, the Finance Minister of Delhi presented a Budget of ₹ 60,000 crores in the House. Out of this amount, 28 per cent has been allocated to the education

sector, and we have a plan to add 11,000 rooms in the schools. The standard of education in Delhi has gone up. The results for the year 2019 ...(Time bell rings)... Sir, I will just take five minutes.

MR. DEPUTY CHAIRMAN: You have already taken 15 minutes. It is your maiden speech. That is why, we have given time.

SHRI NARAIN DASS GUPTA: Sir, as far as education is concerned...

MR. DEPUTY CHAIRMAN: Please speak on these Bills. बजट पर हम लोग बात कर चुके हैं, फाइनेंस बिल पर आपको फिर मौका मिलेगा। आप इसको conclude करिए, 15 मिनट हो चुके हैं।

SHRI NARAIN DASS GUPTA: Sir, I have already said that I support both these Bills. With these words, I conclude. Thank you, Sir.

SHRI SAMBHAJI CHHATRAPATI (Nominated): Mr. Deputy Chairman, Sir, considering active involvement of many Indian companies in the country with multinational companies based abroad, the instances of institutional disputes on various aspects are increasing day-by-day. So far, individual efforts involving the practising lawyers were the only avenues available with the Indian entrepreneurs. In many cases, the lawyers engaged by the Indian companies may or may not have the adequate knowledge of international arbitration laws. Hence, in certain cases, the interest of the Indian entrepreneurs was not protected. It was a long-felt necessity to develop the expertise in international arbitration so that the view of the Indian entrepreneurs is protected. The Centre would be able to promote and support research and development of expertise in institutional arbitration at international level so that in due course of time, India could be the hub of such activities. The Government has very rightly thought of granting the proposed institution an autonomous status to have freedom in taking decisions and enlarging the scope of activities, of course, well within the overall ambit of the Bill.

The Centre would be the first of its kind in the country and hence would open immense opportunities for the professionals and institutions to develop expertise in international arbitrations. In due course, the possibility of establishment of many institutions on international arbitration or adding up a separate department on international arbitration and the existing law institutions cannot be ruled out. The Government deserves to be applauded that every effort has been made to keep the proposed Centre free from the dominance of administrators. This will help the Centre to take independent decisions in the interest of the specialized subject.

[Shri Sambhaji Chhatrapati]

I have two suggestions to make. I request the Government, through you, to provide a little flexibility in increasing the strength of the members of the Centre depending upon the workload. My second suggestion would be that one arbitration centre should be situated in Delhi and the second should be in Mumbai to decentralize this. Sir, experience with arbitration proceedings till date has shown that a large number of cases still go back to the normal courts thus denying the very intent of using an alternate redressal mechanism. Further, there are many complaints regarding the time of arbitration proceedings to especially by the international organisations which cite the tardy legal mechanism for not wanting to either come in or deepen the involvement in various initiatives. I am sure that once this Centre is established in India, there will be quality improvement to all the dimensions of arbitration proceedings including the various steps and processes. I am sure it will pave the way for many of the cases languishing in various courts of the country to opt for arbitration, as a means to arrive at a suitable redressal, thus reducing the backlog. Sir, I would not take much of the time of the House today, and I would like to conclude by saying to have a conducive and healthy atmosphere, the hon. Minister has rightly stated that for India to be an international hub centre, the dispute resolution should come under the New Delhi Arbitration Centre, and that is why, I stand to support the Bill. Thank you, Sir.

SHRI TIRUCHI SIVA (Tamil Nadu): Hon. Deputy Chairman. Sir, changing situations warrant change in approach for resolving issues. Sir, the change in the economic activity demands expeditious settlement of the disputes. Of course, the resolution of disputes has a very great impact on the economy of the country as well as on doing business. So, an alternative mechanism is required. Sir, when litigants resort to the judicial process of an adjudication for their litigations, it is always one side winning and another side losing. But, in the process of arbitration, it is a win-win situation. Sir, for this arbitration, our litigants have to go to Singapore, Hong kong, London and other places. So, I think the Government's initiative to constitute an arbitration centre in India is to be welcomed. Sir, for this, Srikrishna Committee was appointed, and everyone has mentioned about it. That Committee has given some recommendations, and someone asked why the recommendations have not been accepted in toto. Any Committee's recommendations cannot be accepted in toto, but whichever recommendation is necessary, it is accepted. It should be welcomed. Sir, one among their recommendation is that as the International Centre for alternative dispute resolution, which was set up in the year 1995, with the Government's fund to promote alternative dispute resolution mechanism, has,

however, not been able to achieve the target, so, the Committee recommended that the International Centre for alternative dispute resolution should be taken over with complete revamp of its governance structure to include only experts of repute who can lend credibility and respectability to the institution and be rebranded as a centre of national importance to highlight in character as a flagship arbitral institution. Sir, hon. Minister in his introductory remarks has said that the Government has given ₹ 30 crores, 700 Members were there, and settled a litigation within 100 or so and they were indulging in other activities. So, it was considered to be a sixth finger. So, I think, the recommendations of the Committee have been rightly taken and it is being taken over. But, how it is taken over was the question raised by the learned senior colleague, Mr. Chidambaram and Mr. Singhvi. When it is taken over, the constitution of the new Council is, the Chairman and the eminent persons who are all appointed by the Central Government. So, the suspicion or the doubt comes when the litigant becomes the Government, what will be the mindset of the other person? That question arises, and, I think, the Minister has to assuage the apprehension, whichever may arise in the minds of not only the Members but in the minds of the litigants also. Sir, this question was repeatedly asked and we have to accept that Caesar's wife must be above suspicion. When a person is approaching a Court of Law or an arbitral centre for his resolution of disputes, and when he has a doubt that it will not give him the desired results, I think, that has to be addressed by the Government and by the Minister. So, I think, this is the main situation. Sir, there is another amendment Bill. Many hon. Members have spoken, and, I think, nothing much needs to be told. Of course, we need the international centre. As Mr. Ashwini pointed out, in due course of time, as the economic activities increase, there will be more requirement of arbitration, and, then, we will need more centres. Will that also be called as New Delhi International Arbitration Centre? That is a big question. Why can't it be called as an Indian Arbitration Centre? ...*(Interruptions)*... Sir, we have one Supreme Court. We have been asking for a Bench of the Supreme Court in South India because litigants have to come all the way to Delhi. So, in future, some Centres will have to be created. So, what will be the name of those Centres? It is my small question. ...*(Interruptions)*... It may be at Chennai, Mumbai or wherever the litigation is more. What will be the name of that Centre? ...*(Interruptions)*... So, I think, you can think about the nomenclature. ...*(Interruptions)*... It is one of our suggestions. That is all. ...*(Interruptions)*...

With these words, I welcome and support this Bill. Sir, it has become very necessary today for doing business very easily in this country. Also, keeping in view the developing economic activities, it is very much required. Thank you.

श्री वीर सिंह (उत्तर प्रदेश): उपसभापति महोदय, मैं माननीय मंत्री जी का स्वागत करता हूँ कि उन्होंने बहुत अच्छी पहल की है और वे एक बहुत अच्छा संशोधन विधेयक लेकर आये हैं, जिससे लोगों को राहत मिलेगी।

महोदय, प्रस्तावित विधेयक विवादों के निपटारे के लिए संस्थागत मध्यस्थता को प्रोत्साहित करता है और देश को वैकल्पिक विवाद समाधान तंत्र प्रदान करता है। यह 1996 के अधिनियम में संशोधन मानकों को निर्धारित करने के लिए एक स्वतंत्र निकाय स्थापित करके संस्थागत मध्यस्थता में सुधार के लक्ष्य हासिल करने, मध्यस्थता प्रक्रिया को अधिक अनुकूल बनाने, लागत प्रभावी बनाने और मध्यस्थता के मामलों के समय पर निपटान करने में मददगार होगा।

महोदय, अदालतों में जिस तरह मुकदमों का अम्बार लगता जा रहा है और उन्हें जल्द से जल्द निपटाने की तमाम कोशिशों के बावजूद करोड़ों वाद अभी भी विभिन्न न्यायालयों में विचाराधीन हैं, इसलिए न्यायपालिका को त्वरित न्याय के वैकल्पिक उपाय तलाशने के लिए प्रेरित किया है, जैसे लोक अदालतों के जरिए राजीनामा कराना, मुकदमों की संख्या कम करने का एक अहम उपाय सिद्ध हुआ है। उसी प्रकार वैकल्पिक न्याय का एक अन्य उपाय है- मध्यस्थता, जिसमें मध्यस्थ की नियुक्ति के साथ प्रक्रिया शुरू होती है, जोकि बहुधा सेवानिवृत्त न्यायाधीश होते हैं। इसमें मुकदमे के पक्षकारों को नोटिस देकर उनकी उपस्थिति धारा 12 एवं धारा 19 के अंतर्गत प्रक्रिया लेखबद्ध करने के साथ ही प्रक्रिया शुरू होती है।

महोदय, यह अधिनियम मध्यस्थता की प्रक्रिया को सुसंगत बनाने के साथ-साथ प्रक्रिया की अवधि तय करने और उन्हें तेजी से निपटाने में भी मददगार होगा। इस सम्बन्ध में अदालत के बिना सुप्रीम कोर्ट या उच्च न्यायालय द्वारा नामित मध्यस्थ संस्थानों के माध्यम से मध्यस्थों की त्वरित नियुक्ति की सुविधा की गयी है, जहाँ पार्टियाँ अंतर्राष्ट्रीय, वाणिज्यिक मध्यस्थता के लिए नामित मध्यस्थता संस्थानों और अन्य मामलों में सीधे सम्पर्क कर सकती हैं। साथ ही, मध्यस्थता परिषद् का निर्माण प्रशंसनीय है, जो कि मध्यस्थता ग्रेड तय करेगा और मानदंडों को निर्धारित करके मध्यस्थों को श्रेय देगा तथा मध्यस्थता और समझौते को बढ़ावा देने और प्रोत्साहित करने के लिए आवश्यक सभी कदम उठायेगा।

मैं माननीय मंत्री जी से जानना चाहूँगा कि इस कानून के तहत एक मध्यस्थता पंचाट आवश्यक है, जिसके पास अदालत के समान अधिकार होंगे। वह 12 माह में अपना निर्णय देगा। इस अवधि को 6 माह तक बढ़ाया जा सकता है। यह अवधि जितनी कम रखी जायेगी, शुल्क उतना ही ज्यादा होगा और अगर देरी होती है, तो हर महीने के साथ शुल्क 5 फीसदी कम किया जायेगा। यह व्यवस्था भी है कि इसके तहत दिये गये किसी भी निर्णय के खिलाफ अदालत का रुख किया जाता है, तो उसे एक साल में निपटाना होगा, परन्तु इस अवधि में देरी होने पर किसी जुर्माने की बात नहीं कही गयी है। मैं जानना चाहूँगा कि एक वर्ष की समय-सीमा, मामलों को मध्यस्थता द्वारा निपटाने हेतु कितनी तर्कसंगत है? क्या इसका समुचित पालन हो पायेगा या विभिन्न पक्षों को मध्यस्थता काम निपटाने के लिए अवधि विस्तार के लिए अदालत ही जाना होगा? अभी मध्यस्थता के कितने मामले हैं और वे कब से लम्बित हैं, मंत्री जी यह बताने का कष्ट करेंगे।

महोदय, यह विधेयक देश को मध्यस्थता के केन्द्र के रूप में आकर्षक बनाता है, परन्तु मैं यह कहना चाहूँगा कि मंत्री जी, मध्यस्थों के चयन में पारदर्शिता रहनी चाहिए और अफसरशाहों तथा अधिकारियों को अनिवार्य रूप से अपने मामलों में मध्यस्थ नहीं बनाना चाहिए, क्योंकि यह मुद्दा पहली बाधा बनता है और विभिन्न पक्ष मध्यस्थ के चुनाव को लेकर उलझ जाते हैं तथा इससे उसकी स्वायत्तता और निष्पक्षता को लेकर प्रश्न खड़े हो जाते हैं। मैं चाहूँगा कि मध्यस्थता के मामलों में सरकारी संस्थान आपस में न उलझें, इसे रोकने का समुचित प्रबंध करें और विधेयक के क्रियान्वयन के स्तर पर मौजूद समस्याओं, जैसे अपर्याप्त बुनियादी सुविधाएं, कानूनी अनिश्चितता, अंतहीन देरी और अस्पष्ट न्यायिक प्रक्रिया आदि का हल निकालें, तभी यह विधेयक अदालतों के बाहर विवादों के निस्तारण की दिशा में मील का पत्थर साबित होगा, अन्यथा नहीं। इन शब्दों के साथ, बिल का समर्थन करते हुए, मैं अपनी बात समाप्त करता हूँ, बहुत-बहुत धन्यवाद।

डा. अशोक बाजपेयी (उत्तर प्रदेश): मान्यवर, हमारे देश में न्याय-प्रक्रिया वैदिक काल से बहुत ही विश्वसनीय और विश्वस्तरीय रही है। बड़े-बड़े फैसले हमारे यहां पंचायतों में कर लिए जाते थे। बड़े-बड़े विवाद हमारे यहां स्थानीय पंचायतें निपटा लिया करती थीं। हमारे यहां पंच को पंचपरमेश्वर' कहते थे। कहा जाता था कि जो पंच पंचायत में बैठता है, उसमें ईश्वर का अंश वास करता है। वह जो भी फैसला देगा, वह पूरी तरह से न्यायसंगत होता है। इसीलिए कहा गया — 'पांच पंच मिल कीजै काजा, हारे जीते होए न लाजा।' पांच लोग मिलकर जो फैसला कर देंगे, उससे किसी को भी मायूसी नहीं होगी, हार-जीत की लज्जा नहीं होगी और उसे सब सहर्ष स्वीकार कर लेंगे। ऐसी हमारी वैदिक परम्पराएं रही हैं। यहीं से दुनिया ने न्याय प्रक्रिया को सीखा, जो समय के अंतराल में विकसित हुई।

हमारे लिए यह अधिनियम कोई नया नहीं है। हम अनादि-काल से यही करते आ रहे हैं। आज के वैज्ञानिक युग में, आर्थिक युग में यह आवश्यकता महसूस की गई कि ऐसा अधिनियम बनाकर हम अपने देश को सुसंगत नियमों से सुसज्जित करके, जो हमारी अर्थव्यवस्था मजबूत बनने जा रही है, उसके लिए तैयार करें। हमारे सामने एक लक्ष्य है। बजट पारित करते समय चर्चा हुई कि 5 trillion Dollar की अर्थव्यवस्था 2024 तक बनाना हमारा लक्ष्य है। उसी लक्ष्य को पाने के लिए हमारा उद्देश्य होना चाहिए कि हम तमाम विदेशी निवेश प्राप्त करें, FDI के माध्यम से बड़ा निवेश हमारे देश में आए। देश में नए उद्योग-धंधे लगे। लोगों को रोजगार मिले। यहां बार-बार इसकी चर्चा होती है कि देश में बेरोजगारों की संख्या बढ़ रही है। इसके लिए आवश्यक है कि हमारे देश में विदेशी निवेश आए। विदेशी निवेश आने के लिए आवश्यक है कि यहां जितने विवाद हैं, वे आसानी से सुलझाए जा सकें; लम्बी न्यायिक प्रक्रिया से उन्हें न गुजरना पड़े और विवादों को आपस में बैठकर सुलह-समझौते से उनका निपटारा हो — यदि ऐसी हमारी सोच होगी तो निश्चित रूप से हमारा Ease of Doing Business बढ़ेगा।

मान्यवर, आज हमारा देश विश्व में, Ease of Doing Business के मामले में 70वें नम्बर पर है। हमें इस स्थिति में सुधार करना है ताकि दुनिया को महसूस हो सके कि भारतवर्ष में व्यापार करना सबसे आसान है, सबसे सुलभ है। इसी उद्देश्य से यह विधेयक आज माननीय कानून मंत्री जी सदन में लाए हैं। मैं उन्हें बधाई देना चाहता हूँ। इसकी जरूरत और पहले थी। फिर भी आज जिस तेज़ी के साथ देश की अर्थव्यवस्था आगे बढ़ रही है, ऐसे समय में हमें देश में विदेशी मुद्रा आकर्षित करने के लिए, देश में तमाम विवादों को सुलझाने के लिए, राष्ट्रीय और अंतर्राष्ट्रीय

[श्री वीर सिंह]

6.00 P.M.

विवादों को सुलझाने के लिए, यह आवश्यकता महसूस की गई कि हम ऐसी प्रक्रिया को अपनाएं, जिससे सारे ऐसे मामले आपसी सुलह-समझौते से निपटा सकें, विशेष तौर से, ऐसे litigation जो उद्योग से जुड़े हैं, व्यापार से जुड़े हैं, व्यवसाय से जुड़े हैं, उन विवादों का निपटारा आसानी से किया जा सके।

मान्यवर, वैसे ही हमारी न्यायपालिका पर बड़ा बोझ है। तीन करोड़ से ज्यादा मुकदमे देश के विभिन्न न्यायालयों में लम्बित हैं। इसके अतिरिक्त लगभग 4,000 न्यायाधीशों के पद रिक्त हैं। इस कारण हमारी न्याय-प्रक्रिया पर वैसे ही बहुत बड़ा बोझ है। जो economic offences या इसी तरह के विवाद हैं — चाहे वे आर्थिक विवाद हैं, व्यावसायिक विवाद हैं या औद्योगिक विवाद हैं — उनका शीघ्र निस्तारण हमारी अदालतों के माध्यम से संभव नहीं हो सकता। इसलिए माननीय मंत्री जी ने यह कदम उठाया है। इससे पहले मुम्बई में ऐसी व्यवस्था की गई थी। वहां वर्ष 2016 में Mumbai Centre for International Arbitration की स्थापना की गई और वह सेंटर बहुत सफलतापूर्वक चल रहा है। लेकिन New Delhi International Arbitration Centre देश में राष्ट्रीय पैमाने पर स्थापित किया जा रहा है। यह काम बहुत सुविचारित ढंग से हो रहा है। हमारे विपक्ष के मित्रों ने इस संबंध में कई आशंकाएं व्यक्त की, लेकिन इस अधिनियम को बनाने से पहले अनेक विद्वानों ने बैठकर इस पर गम्भीर चर्चा की, एक कमेटी बनाई गई। उस समिति ने अपने सुझाव दिए। माननीय उच्च न्यायालय ने भी इसका परीक्षण किया। इन सबके बाद यह विधेयक सदन में लाया गया। ...**(व्यवधान)**...

श्री उपसभापति: 6 बज गए हैं, आप कहें।

THE MINISTER OF STATE IN THE MINISTRY OF EXTERNAL AFFAIRS; AND THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI V. MURALEEDHARAN): Sir, we are discussing two important legislations and a few Members are yet to speak.

MR. DEPUTY CHAIRMAN: He is the last speaker and then, the Minister will reply.

SHRI V. MURALEEDHARAN: So, I propose that till the Minister's reply and the passing of the legislations are over, and the Special Mentions are taken up, the time of the House may be extended.

श्री उपसभापति: मुझे लगता है कि इस पर आम सहमति पहले से ही हो गई थी। कृपया आप अपनी बात पूरा करें। आप अंतिम वक्ता हैं, इसके बाद माननीय मंत्री जी जवाब देंगे।

डा. अशोक बाजपेयी: महोदय, आप जैसा कहें, मुझे कोई जल्दी नहीं है।

श्री उपसभापति: अगर आप अपनी बात जल्दी समाप्त कर सकते हैं, तो करें, उसके बाद माननीय मंत्री जी का जवाब सुनें।

डा. अशोक बाजपेयी: मान्यवर, इस अधिनियम के पास होने से ऐसे विवादों के समाधान की प्रक्रिया का अर्थव्यवस्था और कारोबार करने वालों पर बहुत व्यापक प्रभाव पड़ेगा। जो लोग व्यापार करते हैं और जो इस तरीके से अर्थव्यवस्था को सुदृढ़ करने वाले लोग हैं, इस अधिनियम के बनने से ऐसे विवादों को निपटाने का उन पर काफी असर होगा। तेजी से आर्थिक क्रियाकलाप बढ़ रहे हैं, ऐसे में वादों के शीघ्र निस्तारण हेतु institutional arbitration की महती आवश्यकता है। ऐसे समय में institutional arbitration की बहुत बड़ी आवश्यकता है। अंतर्राष्ट्रीय arbitration को बढ़ावा देने के लिए इस अधिनियम का बनाना बहुत आवश्यक है।

मान्यवर, अंतर्राष्ट्रीय मध्यस्थता केन्द्र की अध्यक्षता सर्वोच्च न्यायालय के रिटायर्ड जज या हाई कोर्ट के रिटायर्ड मुख्य न्यायाधीश करेंगे, इसलिए इस पर कोई संदेह की आवश्यकता नहीं है और इनकी भी नियुक्ति सुप्रीम कोर्ट के माननीय चीफ जस्टिस की सहमति से होगी, इसलिए इस पर संदेह करने की कोई गुंजाइश नहीं है। घरेलू और अंतर्राष्ट्रीय, दोनों तरह के अनुभवी और पर्याप्त ज्ञान रखने वाले लोगों को इसमें arbitrators के रूप में नियुक्त किया जाएगा। इसमें वाणिज्य और उद्योग जगत के भी प्रतिनिधि होंगे। कानून, वित्त, न्याय विभागों के और आर्थिक मामलों के भी सलाहकार इस समिति के सदस्य होंगे। ऐसे योग्य एवं सक्षम व्यक्तियों की यह arbitration committee होगी, जो इसमें काम करेंगे। इसलिए किसी को भी इनके न्याय और इनके निर्णय पर संदेह नहीं होना चाहिए, न होगा। 130 करोड़ आबादी का देश है। मान्यवर, हमारे ही अपने इतने विवाद हैं, बहुत सारे विवाद हैं, आज देश के तमाम जो पीएसयूज हैं, उनको लेकर बहुत सारे विवाद हैं। आप तमाम प्राइवेट सेक्टर में देखें, आज गवर्नमेंट लेवल पर ही देखें, चाहे Reliance versus ONGC हो, चाहे Antrix Devas case हो, चाहे Vodafone versus Union of India हो, तमाम केसेज में सरकार स्वयं एक बहुत बड़ी बाध्यकारी है। इसलिए इन विवादों को सुलझाने के लिए इस arbitration center से बहुत लाभ होगा और हम इन सारी चीजों में speedy न्याय दिला सकेंगे। इस तरह हिन्दुस्तान एक तरह से arbitral hub बनेगा, दुनिया के तमाम देशों के इस तरह के विवाद हमारे यहां आएंगे और हमारे देश में उनको न्याय मिल सकेगा। जब इस तरह से दुनिया के तमाम दूसरे बड़े देशों के लोगों के इस तरह के वाद, इस तरह के litigation हिन्दुस्तान में सुलझाए जाएंगे, तो इससे और तमाम सारी चीजों में हिन्दुस्तान का विकास होगा, विकास की गति बढ़ेगी। इसलिए मैं इसकी सामयिकता के बारे में कहना चाहता हूँ। यह बिल इतना सामयिक है कि मैं समझता हूँ कि इससे देश की प्रगति में तेजी से गति मिलेगी। हमें इस बिल को सर्वसम्मति से पास करने की आवश्यकता है।

मान्यवर, केवल इतना ही नहीं, Arbitration Chamber की स्थापना की जाएगी और इसमें दुनिया के जो अच्छे-अच्छे arbitrators हैं, उनको ला करके हम वहां प्रशिक्षण का भी कार्य कराएंगे। उसके माध्यम से नए-नए arbitrators तैयार किए जाएंगे। Arbitrators Chamber की स्थापना होगी, Arbitrators Academy की स्थापना होगी, जहां पर surveyor, valuer आदि का प्रशिक्षण होगा। जो इस तरह के लोग हैं, जैसे umpiring officers हैं, इन सबका भी प्रशिक्षण होगा और इसके माध्यम से लोगों को रोजगार भी मिलेगा। संस्थागत मध्यस्थता के लिए भारत एक बड़ी हब बनेगा और मैंने जैसा कहा सर्वेयर और जांचकर्ताओं के लिए भी इससे रोजगार के रास्ते खुलेंगे। Arbitrators Chamber और Arbitrator Academy की स्थापना होने से हमारे तमाम सारे नौजवानों को भी आगे काम करने का अवसर मिलेगा और उनको arbitration का पर्याप्त अनुभव प्राप्त हो सकेगा।

[डा. अशोक बाजपेयी]

मान्यवर, मैं कहना चाहता हूँ कि माननीय मंत्री जी एक सामयिक और बहुत आवश्यक विधेयक लाए हैं। मैं समझता हूँ कि इस देश को इसकी सबसे ज्यादा आवश्यकता थी। ...**(व्यवधान)**...

DR. T. SUBBARAMI REDDY: Sir, I have just one question.

MR. DEPUTY CHAIRMAN: Please let him speak.

डा. अशोक बाजपेयी: आज छोटे-छोटे देशों में, सिंगापुर, हाँगकाँग जैसे देशों में ऐसे विवादों की तमाम मध्यस्थता और सुलह-समझौते होते हैं। सर, हम 130 करोड़ लोगों के देश में अभी तक इसकी स्थापना नहीं कर सके थे। मैं सरकार को बधाई देना चाहूँगा कि उन्होंने इस Arbitration Centre की स्थापना की है। इससे देश प्रगति करेगा, देश में arbitration hub बनेगा, यहाँ बड़े-बड़े अंतर्राष्ट्रीय विवादों का समाधान हो सकेगा और देश को एक नई गति मिलेगी, इसलिए मैं माननीय मंत्री जी द्वारा लाए गए इस विधेयक का पुरजोर समर्थन करता हूँ।

MR. DEPUTY CHAIRMAN: Now, mover of the Resolution. ...*(Interruptions)*...

DR. T. SUBBARAMI REDDY: Sir, I have just one question. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Let him speak. Then, you can ask in the last. ...*(Interruptions)*... First listen to the Minister. ...*(Interruptions)*... The mover of the Resolution, Shri Elamaram Kareem, not present. ...*(Interruptions)*... Now, the Minister will reply. ...*(Interruptions)*...

DR. T. SUBBARAMI REDDY: Sir, I just want to know this from the hon. Minister. As of today, in the country, arbitrations between the Government and private sector; the contract specifies that one by Government, one by private sector and two will have the... ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Thank you, Dr. Subbarami Reddy. ...*(Interruptions)*...

DR. T. SUBBARAMI REDDY: Here I would like to know this. ...*(Interruptions)*... What is the role of....*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Now, the Minister will reply. ...*(Interruptions)*... It will not go on record now. ...*(Interruptions)*...

DR. T. SUBBARAMI REDDY: *

MR. DEPUTY CHAIRMAN: No, please. ...*(Interruptions)*... Please. ...*(Interruptions)*... It will not go on record.

श्री रविशंकर प्रसाद: सर, मुझे इस बात की बहुत प्रसन्नता है कि इन दो महत्वपूर्ण बिलों पर

सदन में एक प्रकार से सर्वानुमति से समर्थन है, लेकिन इस पर कुछ सदस्यों ने आपत्ति उठाई है। मैं सभी माननीय सदस्यों का अभिनंदन करता हूँ।

सर, इस बिल पर 23 सदस्य बोले, बहुत विस्तार से चर्चा हुई। आनन्द शर्मा जी हैं या नहीं, मुझे पता नहीं है। इस बिल पर डा. अभिषेक मनु सिंघवी, सुखेन्दु शेखर राय जी, श्री पी. चिदम्बरम, राम चन्द्र प्रसाद सिंह जी, डा. के. केशव राव जी, श्री तिरुची शिवा, महेश पोद्दार जी, श्वेत मलिक जी, रवि प्रकाश वर्मा जी, डा. अशोक बाजपेयी, संभाजी छत्रपति जी, एस.आर. बालासुब्रमण्यम, वि. विजयसाई रेड्डी जी, प्रशांत नन्दा जी, के. सोमप्रसाद जी और बाकी लोगों ने अपनी बात कही। मैं सभी का धन्यवाद करता हूँ। सर, इस पूरे बिल के व्यापक संदर्भ को समझना बहुत जरूरी है। अगर आपको देश में पूँजी चाहिए, देश में सड़कें बनें, बिजली आए, स्वास्थ्य आए, विकास हो, ढाँचागत विकास हो, infrastructure का विकास हो, तो इसके लिए देश में पूँजी चाहिए। पूँजी देश की होगी, पूँजी विदेश की होगी। जब पूँजी आएगी, तब दो-तीन चीजें बहुत जरूरी होती हैं। पहला, एक जवाबदेह सरकार होनी चाहिए, नीतियाँ स्पष्ट होनी चाहिए, ईमानदारी से काम होना चाहिए, और विवादों के निपटारे का ईमानदार प्लेटफॉर्म होना चाहिए। Today, Sir, the good governance is important component of development. We need to understand that. सर, दुनिया भर में institutional arbitration को प्रमोट किया जा रहा है। मुझे इस बात का संतोष है कि सभी माननीय सदस्यों ने इस विचार का समर्थन किया है। मैं इसका विस्तार से उत्तर दूंगा। मैं लगभग तीन-चार घंटे से इस बहस को सुन रहा हूँ। मुझे एक बात सुनकर कुछ पीड़ा हुई है। मैं इस देश की प्रतिनिधि संस्था राज्य सभा में बोल रहा हूँ और लोक सभा भी इधर है। इस सरकार पर इतना अधिक संशय क्यों है कि सरकार खराब ही काम करेगी, सरकारी तंत्र बनेगा? देश की 130 करोड़ जनता लोगों को देश चलाने के लिए चुनती है, तब कोई अविश्वास नहीं होता है कि ये देश ठीक से चलाएंगे या नहीं चलाएंगे? देश की जनता देश को सुरक्षित रखने के लिए वोट देकर सरकार चुनती है। देश के प्रधानमंत्री को सब अधिकार हैं, उसके पास एटम बम का बटन भी होता है। जब वह कहेगा, वह तब चलेगा। जब देश की जनता इतना स्वीकार कर सकती है, तो सरकार arbitration में गड़बड़ काम ही करेगी, यह सोचने का आधार क्या है? I am not able to understand this whole logic with great respect to all those who are commenting. If the elected people will not run the country, will regulators run the country or will the retired Supreme Court Judges and High Court Judges run the country? We are accountable to the House, to the people of India, to the Committees of Parliament. Therefore, this lurking distrust in the impartiality of decision-making process is something where I thought I need to comment. सरकारी काम होगा, तो गड़बड़ ही होगा, सरकार बनाएगी, तो गड़बड़ ही बनाएगी, ऐसा सोचने का कोई अधिकार नहीं है। देखिए, मैंने सबको चार घंटे बड़ी शांति से सुना है। ...**(व्यवधान)**...

SHRI ANAND SHARMA: Government is the biggest litigant. That is what you must answer.

SHRI RAVI SHANKAR PRASAD: I will answer that. I will answer everything. Now, Sir, why do I say that? Kindly try to understand one thing. We changed a

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lot of laws. Take the case of the Specific Relief Act. Earlier, damage was the norm and now, enforcement of contract has become the norm. If a party is not willing to comply with that contract, the third party can do so, and money shall be recovered. We repealed about 1500 old laws. Bankruptcy Code was brought. A whole range of laws were changed. I need not recall that here. This whole arbitration eco-system, as I said, is being sought to be built in the context of the larger narrative to make India a good place for doing business, for investment and also for dispute redressal. यह समझना बहुत जरूरी है। सर, यहां बार-बार यह बात कही गई कि सरकार आएगी, तो कैसे चलेगा? मैं अपने सामने श्रीकृष्णा कमिटी रिपोर्ट लेकर बैठा हूँ। मैं इसके दो page पढ़ूंगा, तो मेरे माननीय कई मित्रों ने जो अपनी आशंका जताई है, उसके ऊपर मैं कहूंगा। सर, मैं page 80 पढ़ रहा हूँ। "Role of the Government and the Legislature in Promoting Institutional Arbitration: A study of successful arbitral institutions across the world shows how the Governments and the Legislatures in the jurisdictions they are located in have played a significant role in helping them flourish. This has been through governmental and legislative efforts in promoting such jurisdictions as arbitration hubs." सर, इसके बाद आगे देखते हैं। "The Committee notes that a similar initiative has been established in Hong Kong, in Singapore and the Committee is of the view that the Government can incentivise institutional arbitration by providing incentives for developing physical infrastructure for arbitration and so on and so forth." सर, अब मैं page 39 पढ़ रहा हूँ। Support from Governments: मैं यह श्रीकृष्णा कमिटी की रिपोर्ट पढ़ रहा हूँ। "Two out of the top five arbitral institutions, namely the SIAC and the HKIAC, have benefited significantly from the support they enjoyed from their respective Governments. The SIAC was established as a part of the Singapore Government's efforts to create an arbitration industry in Singapore. It was set up by the Government with two governmental agencies, the Economic Development Board and the Trade Development Board as its shareholders, and operated for many years under their aegis." सर, इसके पूरे पांच-छः pages गवर्नमेंट की भूमिका पर हैं। अगर सिंगापुर और हॉंगकांग में सरकार की भूमिका पर आपत्ति नहीं है, जहाँ सरकार ने ही establish किया, तो इस आशंका का कारण क्या है कि हिन्दुस्तान में सरकार के मात्र सहयोग से वह ठीक नहीं चलने वाला है? मुझे इसका कोई आधार दिखाई नहीं पड़ता है। Therefore, empirical evidence of the success of Singapore eco-system and Hong Kong eco-system where the Government has played a crucial role in establishment of those bodies is enough proof to show that if we promote institutional arbitration in India by laying down the norms, creating facilitation, surely it is bound to succeed. यह बात मैं कहना चाहता हूँ। ...(व्यवधान)...

श्री आनन्द शर्मा: सर, ...(व्यवधान)...

श्री रवि शंकर प्रसाद: मैं yield नहीं कर रहा हूँ, प्लीज़। ...(व्यवधान)...

श्री आनन्द शर्मा: आप सुन लीजिए। ...(व्यवधान)...

श्री रवि शंकर प्रसाद: मैं yield नहीं कर रहा हूँ। ...(व्यवधान)...

श्री उपसभापति: आनन्द जी, ये yield नहीं कर रहे हैं।

श्री आनन्द शर्मा: मैं ज्ञानवर्धन के लिए आपसे कह रहा हूँ। Since he just mentioned about Singapore and Hong Kong, could you also please tell the House that whether the Government there – and what percentage – are the biggest litigant in arbitration? Could you please tell about Singapore and Hong Kong when compared to the Government of India?

श्री उपसभापति: माननीय आनन्द जी, अब हो गया। वे yield नहीं कर रहे हैं।

SHRI ANAND SHARMA: No, Sir, I have asked. Thank you.

श्री रवि शंकर प्रसाद: सर, अब मैं बिन्दुवार उत्तर दूंगा, क्योंकि कई लोगों ने एक ही बात दोहराई है। Sir, we have two Bills today. First is the Amendment to the Arbitration Act and the second is The New Delhi International Arbitration Centre. Let me take the Amendment to the Arbitration Act. What are we suggesting? Sir, let me dispel this assumption also. We have nearly implemented all the key recommendations of Justice Srikrishna Committee. They are some of the finest minds of India, as I said. Mr. Venugopal, Attorney-General was there; Mr. Raveendran was there, ex-Supreme Court Judge; Mr. Ravindra Bhat was there; Indu Malhotra, the senior advocate and author of Arbitration Law was there, Mr. Narasimha was there and other eminent people were there. A mention was made as to why Mr. Venugopal disassociated from the recommendation for New Delhi Arbitration Centre. I found out, earlier, he was a Member of the Executive Committee. Therefore, he thought, "Since, at one point of time, I was a Member of the Executive Committee of this body, I should remain out." That was a very valid reason that he took. Now, what was the recommendation made? And I will take some time to address this concern. They have come with the idea that like in other countries, institutional arbitrations need to be promoted. Let us not confuse the second New Delhi Centre with the first Bill. The first Bill is creating the larger narrative of promotion of institutional arbitration in India. There are only 36 institutions presently. Go to Mumbai, go to Chennai, go to Ahmedabad, go to Baroda, go to Delhi; they are doing very well. They need to expand further. Sir, I would like to read the particular qualification which they have insisted and the grading process, which we have indicated, which says very clearly, the objectivity, the impartiality, the understanding, the training, all these shall be taken into account because we have put it in the statute itself. And I would like to read it because this question has been repeatedly asked. We have added Eighth

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Schedule in the statute. General norms applicable to arbitrator: The arbitrator shall be a person of general reputation of fairness, integrity, and capable to apply objectivity in arriving at settlement of disputes. He must be impartial and neutral. Ten qualities are there. These are statutory qualities mentioned in the law itself, not individual. And who can be the arbitrator? That I have already said while introducing the Bill. Mr. Singhvi is not here. I am also not a great favourite of hon. Judges becoming arbitrators. India has a great pool of professionals in IT, in technology, in telecom, in intellectual property, retired Finance Secretary, retired Banking Secretary. Why not? They should become arbitrators. I would say, 'a very eminent public man', and let me take another issue. Suppose, a politician, who has been a Minister for ten years, has withdrawn from political life. Why he should not be? He understands the norms of Government and also the decision-making process. This is the larger ecosystem we have sought to create. One thing we need to understand. Now I come to what they are going to do. Now, there shall be the Arbitration Council of India, which will grade. The Council may frame policies governing the grading of arbitral institutions, recognise professional institute, providing accreditation, review the grading of arbitral institutions and arbitrators, hold training, workshop, etc., and other things that they are going to do. Why grading is important? This is very important. Once they grade or accredit, whatever you call it, the High Court, in the case of domestic arbitration and the Supreme Court, in the case of international arbitration, will designate them. And, naturally, there are two levels of scrutiny, one by the Arbitration Council of India and the other by the Supreme Court or High Courts, as the case may be, at the time of designation. Therefore, whether the arbitration is right or wrong, man of integrity, impartiality, unbiased, all shall be filtered. Therefore, we have given these two proper legal shelters so that the institutions have good arbitrators. Sir, we need to understand one more thing. सर, हमारे देश में एक बात है कि ईमानदारी की बात छिपती नहीं है और बेईमानी की बात भी छिपती नहीं है। There are Judges, I will not take names, Sir, but I know for sure that there are Judges in India, who are sought because the clients know that he is honest, he will give a fair judgment and people seek them. I know there are Judges, who are begging for arbitration, but they do not get cases, because the record has been very poor. I think all my legal friends present here know, what I am trying to convey. In the similar way, the reputation of the arbitrator, the credibility of the institution, the working record, the timeframe within which he disposes of the matter, are all to have a bearing on the accreditation of the institution.

Peoples' understanding should be trusted. Therefore, I don't think there is any need to have any problem on that score.

Now, Sir, coming to the appointment part of it, it says, "The Council shall be headed by a retired judge of the Supreme Court or Chief Justice of the High Court or a judge." There is no dispute on that. Others shall be appointed, but, the first one shall be by the Government, in consultation with the Chief Justice of India. And, the second, 'others will be appointed by the Government.' Now, they are just a chairman and personnel to man the Arbitration Council of India. They are not going to undertake the arbitration. They will accredit, grade the arbitral institutions, who will do the arbitration. Therefore, as I said earlier, in the grading of the institutions, or, designation by the Supreme Court or the High Court, as the case may be, the reputation of the arbitrator is of importance. Therefore, this has to be understood. And, the credibility of this institution will also depend as to what वे ऐसे लोगों को ग्रेड करते हैं और किस प्रकार से ग्रेड करते हैं। सर, सुखेन्दु शेखर राय जी ने कहा कि आईएसएस सेक्रेटरी 70 साल तक रहेंगे। He is not here, I think. I need to remind him. Sukhendu Babu is here, Sir. IAS officers and Secretaries retire at the age of 60. Therefore, whether he is the Law Secretary, or, whether he is the Expenditure Secretary, they will retire at the age of 60. Therefore, to say that they will continue up to 70 years, does not make any sense. But, Sir, Mr. Chidambaram is right. Opinions are reluctant to be frankly given. With my third term as the Law Minister of India, I see that problem..(Interruptions).. Why it happens? I personally monitored it. They say, why should they take the responsibility? Naturally, the file comes to the Minister. I also say, there is also a contrary view. They have taken a call. The case should not be filed. And when I go through myself, with my legal mind, I find the case must be filed. And there have been cases where the opinion was that case should not be filed, has been set aside by the Supreme Court. Yes, Ministers take decisions. They need to be objective, fair. Therefore, there are Ministers, and there are Ministers. Let us not make a benchmark of it. But, the hard fact which Mr. Chidambaram said is the fact that officers do not take responsibility. Sir, we should not blame them because there are many other institutions in India. In Parliament, I will not name them. I hope, you understand what I am trying to convey. They say, आपने ऊपर चैलेंज क्यों नहीं किया? And there is paragraph and paragraph after that. Who is to suffer for that paragraph? All those things ultimately work. Therefore, by this arbitration, we have tried to have this kind of architecture, that the Arbitration Council of India, we just grade, accredit, review, but, the actual work of arbitration shall be done by those who are the arbitral institutions, graded by the Council and also designated by the High Court and the Supreme Court. If that is the system, I don't think there is any need to have any apprehension that they will not be fair. If they are not fair, they will lose the market. It is as simple as that. They can be unfair in one case, but the reputation travels very fast. But, today, while I am moving this Bill, Sir, let

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me appeal to all the arbitrators of India that we are seeking to change India through these two legislations, and they must rise to the occasion, be fair, be honest, and take decisions in timeframe to make India a hub. That is all I can say, Sir. If they don't perform well, surely, सर, केस नहीं मिलेगा, यह हम जानते हैं। एक बार सफल हो जाएंगे, आगे सफल नहीं होंगे। Therefore, institutional arbitration is not only linked to the individual arbitrator, the individual arbitrator is into the institution. Now, why institutional arbitration is important, the second point I need to clarify because, you have a pool of talented arbitrators. If you come to the institution, you have an issue of Telecom, you have an issue of IT, you have an issue of contract, you have an issue of energy issue. Then, you have expert arbitrators with the experience of all these things. That is how the institution will try to work out, and the client will ultimately have the right to say, 'yes, I will like him as an arbitrator.' That the two can decide. He should be a person who has knowledge of it, apart from general knowledge of law. Therefore, all the apprehensions with respect to all the hon. Members who have raised that it will become a *sarkari* issue, with great respect, are misplaced because Arbitration Council of India is only a body to accredit, to grade and to review and are subject to designation by the High Courts or the Supreme Court of India.

Sir, certain issues were raised about the time-frame. We have fixed the time-frame because there was an ambiguity, as Mr. Singhvi rightly pointed out that in courts, ultimately, it gets tagged unnecessarily. What have they said? Six months is for claim. Thereafter, twelve months is fair. In terms of Section 29B of the 2015 Amendment, we have made a provision. If an arbitrator decides the dispute before twelve months, he will be given an incentive. If he decides later, he will be imposed a penalty from his fee. These two provisions are there. Certain arbitrators have said, 'Before a decision is taken to cut my fee in terms of penalty, I must be given a hearing.' Therefore, we have given for the hearing part of it.

Mr. Chidambaram has a point in saying, 'Why are you standing before the courts?' If we completely injunct the court, then there is a problem. The court will say, 'You have completely ousted us!' But, when I am moving this Bill, again I would like to appeal to the High Courts and the Supreme Court that this novel legislative exercise designed to make India a hub of domestic and international arbitration must be given a good try and should not be allowed to become a centre of unnecessary dispute.

Now, Sir, I will ask that question to Mr. Abhishek Manu Singhvi for a legitimate reason. We, lawyers, also create confusions by our 'forensic abilities'! I am also of

that breed and, therefore, I will have to acknowledge that. But, today, it is very important that when new legislative initiatives are undertaken, designed to reform India, designed to make India a hub of investment, the courts should also understand that they are equally a part of good governance. Therefore, if something is patently wrong, surely they should intervene. But, we as lawmakers, should not be cagey about making law only because कोर्ट क्या कहेगा? माननीय उपसभापति जी, मैंने पहले भी कहा था कि हम संसद हैं, हमारा काम कानून बनाना है, अपनी power को हम समझें। तो बार-बार कोर्ट की आशंकाओं से हम बिल पास करना बंद कर दें, मेरे ख्याल से वह ठीक नहीं होगा। But, yes, to the best of our endeavours, the Srikrishna Committee Report, had the finest legal minds of India with Justice Srikrishna, as I said earlier; Mr. Venugopal, Mr. Ravindran, Mr. Ravindra Bhat, Mrs. Indu Malhotra, earlier senior advocate and now hon. Judge of the Supreme Court, Mr. Narasimha, Additional Solicitor General, the finest legal minds were there and they have followed those recommendations. I don't think the courts will take lightly these recommendations and the law which is going to be passed today.

Sir, Mr. Chidambaram had a very valid point when he said about Section 36. I need to clarify. I need to own it up, Mr. Deputy Chairman, Sir. Mr. Chidambaram is right in saying that there was some ambiguity in the old Section 26. Therefore, we have clarified today that Section 26 shall be deemed to have come into effect only and only from October, 2015. In that view of that matter, there is no automatic stay under Section 36 unless the court orders a stay upon hearing the parties. Therefore, that clarification I must make.

Sir, now this question is being asked as to why the Government is a litigant. Sir, this argument is far-fetched. How much of money do we give for Supreme Court, High Courts and district courts? All the money, ultimately, is charged upon the Consolidated Fund of India but cleared by the Government. Then, should we presume that just because we are giving the money, the courts will not be fair? We need to understand that India is a robust democracy, governed by the rule of law with the accountability mechanism. Only because the Government is appointing some people, 'the Government may have an arbitration case of some PSU, therefore, the fairness would be lost' is not fair. It is akin to arguing that because the Government gives funds to the High Court and the Supreme Court as an IT Minister--the entire IT eco-system is managed by team — the fairness would be lost. Then, should we presume that because the entire digitisation of the courts is done by the IT Minister and NIC, they will not be fair? With great respect, I would say that these apprehensions at best are needed to be avoided. Let us trust, after 70 years, the robust character of Indian democracy and rule of law. That is what I would like to

[श्री रवि शंकर प्रसाद]

highlight. I think, Sir, on the main Bill, I have disposed of all the points. Now I come to the New Delhi Centre. Sir, no one opposed that is ought not to have been taken. सर, कोई institution हो, जिसको सरकार ने जमीन दी हो और 30 करोड़ रुपये दिए हों कि domestic और international arbitration को प्रमोट करेंगे और वे अगर 1995 से आज तक सिर्फ 55 arbitration करते हैं और 40 decide करते हैं, जिसमें 4-5 international arbitration होते हैं, तो सोचना पड़ेगा कि वह arbitration का काम हो रहा था या सेमिनार में हवाई जहाज से घूमने का काम हो रहा था। सर, मैं यह इसलिए कहना चाहता हूँ क्योंकि यह बात उठाई गई है। सर, यहां पर draconian और भी क्या-क्या कहा गया है। सर, इनके Financial Year 2017-18 में, इनकी कमाई 5.70 करोड़ थी, उसमें rental income from building 4.38 करोड़ थी, तो ये 78 परसेंट बिल्डिंग बनाकर वहां किराए पर लगाते हैं। बाकी ये Department-related Parliamentary Standing Committee का है कि.... ICDAR instead of leasing its building to other departments and earning rental income should utilise its premises to expand its activities. सर, इसको लेने की जरूरत नहीं पड़ती, बल्कि हम तो इनके लिए ढपली बजाते हैं कि भारत में एक ऐसा institution है। सर, क्या हमने जानने की कोशिश की कि सोसाइटी के कितने मेम्बर्स हैं ? उसके 700 मेम्बर्स हैं और लोग appoint होते चले जा रहे हैं। Secretary-General, Emeritus, ऐसे-ऐसे शब्द designation में निकल रहे थे कि मुझे भी dictionary खोलनी पड़ रही थी कि इनको क्या बनाया है और कितनी तनखाह दे रहे हैं। It was, I am sorry to say, Sir, blatant incompetent body trying to work in the name of arbitration, but no substantial work of arbitration. तो सर, इसमें क्या किया जाए ? यह कहा गया कि आपने उनकी property ले ली है। अभी डा. अभिषेक मनु सिंघवी यहां पर नहीं हैं, I need to remind him, Sir, that there are three cases of Supreme Court of India. One is the Auroville case takeover, the second is the Asia Society takeover and the third is the Sapru House, India International Centre takeover on Barakhamba Road. In all these bodies, a similar situation was there. ...*(Interruptions)*... In the same type of society, few people running the show for 25-30 years and the productivity is nil. Therefore, we said, आपकी सोसाइटी आपको मुबारक, आप उसे अपने पास रखिए। हम इसको लेंगे, इसको अच्छा बनाएंगे और आज देखिए यह बदला है and all have been upheld by the courts of India. The same model which we have adopted today has been the model which has been paraded by the court. of repute, at national and international level and persons having wide experience in the area of alternative dispute resolution and reconciliation." There is a statutory obligation as to what kind of arbitrator shall be from the panel of arbitrators. Sir, there are many other safeguards also. मैं rules and regulations के बारे में clarify करूंगा। The Centre will make the notification by rules as in the case in all the laws, but as far as regulation is concerned, the Centre may, with the previous approval of the Central Government, by notification, make regulations. Regulation power is all with the New Delhi Arbitration Centre. ...*(Interruptions)*... आनन्द जी, मुझे बोलने दीजिए, आप क्यों disturb कर रहे हैं...*(व्यवधान)*...

श्री उपसभापति: कृपया बैठ कर मत बोलिए। माननीय मंत्री जी को बोलने दीजिए।
...(व्यवधान)...

श्री रवि शंकर प्रसाद: केशव राव जी, आप भी जानते हैं कि आनन्द शर्मा जैसे दिग्गज सांसद को जवाब देने में अंदर से कितना साहस लगाना पड़ता है, यह तो आपको पता ही है। उनका अनुभव इतना व्यापक है कि उनकी बुद्धिमत्ता भरे प्रश्नों का उत्तर देने के लिए मुझे अपने अनुभव का बहुत इस्तेमाल करना पड़ता है। Sir, the point I am trying to highlight is, I thank the entire House for the manner in which they have supported the Bill. It is a rare occasion in the Rajya Sabha, but a very refreshing occasion. I know in particular, Mr. Siva, the kind of language he uses; I also know in particular Dr. Keshava Rao. Anand Sharmaji also supported with a lot of caveats. I thank him.

श्री आनन्द शर्मा: सर, Caveat नहीं, clarification.

SHRI RAVI SHANKAR PRASAD: I don't know where is Sukhendu *babu*. I thought, after my reply ...*(Interruptions)*...

SHRI ANAND SHARMA: He has walked out. You are having all the blessings of your colleague, Mr. Athawale, from behind. ...*(Interruptions)*...

SHRI RAVI SHANKAR PRASAD: Sir, I have tried to clarify all the questions, all the apprehensions, all the doubts, all the ambiguities. But, what my last request is, it is a momentous initiative in the quest of Alternative Dispute Redressal Mechanism. We are going to the new area. And, my idea is, even Coimbatore and Bellari should have institution of arbitration. And, in India, I have seen, people, whether in Patna or Kolkata or Raipur, if they get the opportunity, they will surely rise, Sir. And, I would see even a small dispute being decided.

With these words, I appeal to this House to kindly pass this Bill.

MR. DEPUTY CHAIRMAN: I shall now put the Resolution, moved by Shri Elamaram Kareem, to vote.

The question is:

"That this House disapproves the New Delhi International Arbitration Centre Ordinance, 2019 (No.10 of 2019) promulgated by the President of India on 2nd March, 2019."

The motion was negatived.

MR. DEPUTY CHAIRMAN: I shall now put the motion, moved by Shri Ravi Shankar Prasad, to vote.

[Mr. Deputy Chairman]

The question is:

"That the Bill further to provide for the establishment and incorporation of the New Delhi International Arbitration Centre for the purpose of creating an independent and autonomous regime for institutionalised arbitration and for acquisition and transfer of the undertakings of the International Centre for Alternative Dispute Resolution and to vest such undertakings in the New Delhi International Arbitration Centre for the better management of arbitration so as to make it a hub for institutional arbitration and to declare the New Delhi International Arbitration Centre to be an institution of national importance and for matters connected therewith or incidental thereto, as passed by Lok Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: Now, we shall take up Clause-by-Clause consideration of the Bill.

Clauses 2 to 4 were added to the Bill.

MR. DEPUTY CHAIRMAN: Now, Clause 5. There are five Amendments; Amendments (Nos. 1 and 2) by Dr. T. Subbarami Reddy. Are you moving the Amendments?

DR. T. SUBBARAMI REDDY: Before I decide that, I would say something briefly and, then, I will decide.

There are two amendments, I have given in this Clause. In the first Amendment, I am suggesting for an eminent person who has special knowledge and experience in the conduct of both domestic and international arbitration. Since this is international arbitration, I have focussed on this.

About the second Amendment, in the New Delhi International Arbitration Centre, the Government has not provided any permanent member, except the Chairperson. In the case of members, they have mentioned full-time members or part-time members. I am suggesting that those two members should be full-time members.

I am not moving my Amendments.

MR. DEPUTY CHAIRMAN: Amendment (No. 14) is by Shri Elamaram Kareem. Hon. Member is not present. Amendment (No. 16) is by Shri K. Somaprasad. Are you moving it?

SHRI K. SOMAPRASAD: I am not moving it, Sir.

MR. DEPUTY CHAIRMAN: Amendment (No. 18) is by Shri Binoy Viswam. Hon. Member is not present.

Clause 5 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now, Clause 6. There are four Amendments. Amendments (Nos. 3 and 4) are by Dr. T. Subbarami Reddy. Are you moving the Amendments?

DR. T. SUBBARAMI REDDY: Before I decide that, I would say something briefly. Otherwise, I shall move and may ask for division also.

In Clause 6 also, I have given two Amendments. There is a provision for re-appointment of Chairperson and members when they complete three-year term. Through my amendment, I am suggesting that it should be based on the satisfaction of their performance and meeting the criteria.

In the second Amendment, for the upper age limit of members, I am suggesting 68 years, instead of 67 years, it is because for Chairman, the Government has allowed up to 70 years.

I am not moving my Amendments.

MR. DEPUTY CHAIRMAN: Amendment (No. 15) is by Shri Elamaram Kareem. The hon. Member is not present. Amendment (No. 17) is by Shri K. Somaprasad. Are you moving it?

SHRI K. SOMAPRASAD: No, Sir, I am not moving.

Clause 6 was added to the Bill.

Clauses 7 to 13 were added to the Bill.

MR. DEPUTY CHAIRMAN: Now Clause 14. There are two Amendments (Nos. 5 & 6) by Dr. T. Subbarami Reddy. Are you moving?

DR. K. KESHAVA RAO: Sir, I have a point of objection. These Amendments are with us. If he is withdrawing it later, then why all this? We have already read these Amendments.

MR. DEPUTY CHAIRMAN: Please allow him.

DR. T. SUBBARAMI REDDY: Sir, I have suggested that it will be an institution for conducting international and domestic arbitration and conciliation. I am not moving my Amendments?

Clause 14 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now Clause 15. There is one Amendment (No.7) by Dr. T. Subbarami Reddy. Are you moving?

DR. T. SUBBARAMI REDDY: Sir, before that, I would like to say that through this Amendment, I have suggested that the Arbitration Centre would cooperate with other societies and institutions for promoting alternative dispute resolution and related matters. Sir, I am not moving.

Clause 15 was added to the Bill.

Clauses 16 to 17 were added to the Bill.

MR. DEPUTY CHAIRMAN: Now Clause 18. There is one Amendment (No.8) by Dr. T. Subbarami Reddy. Are you moving it?

DR. T. SUBBARAMI REDDY: Sir, by this Amendment, I have re-worded the provision to say that...

MR. DEPUTY CHAIRMAN: Please tell specifically whether you are moving or not.

DR. T. SUBBARAMI REDDY: ...if a person has become physically or mentally incapacitated to act himself as a member, he loses his membership. Sir, I am not moving it.

Clause 18 was added to the Bill.

Clause 19 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now Clause 20. There are two Amendments (Nos.9 & 10) by Dr. T. Subbarami Reddy. Are you moving your Amendments?

DR. T. SUBBARAMI REDDY: Sir, before my decision, I would like to say that in the first one, I have suggested that the meeting of the Centre should be held at least six times a year. *...(Interruptions)...* In the second Amendment, I have suggested that *...(Interruptions)...* If anybody disturbs, I will go for division. Then, it will go till midnight. I have suggested that any point that comes for consideration before the Arbitration Centre should be disposed of ordinarily within a period of sixty days. Sir, I am not moving the Amendments. *...(Interruptions)...*

सामाजिक न्याय और अधिकारिता मंत्रालय में राज्य मंत्री (श्री रामदास अठावले): उपसभापति महोदय, मेरा प्वाइंट ऑफ ऑर्डर है। *...(व्यवधान)...*

Clause 20 was added to the Bill.

Clauses 21 and 22 were added to the Bill.

MR. DEPUTY CHAIRMAN: Now, Clause 23. There are two Amendments (Nos.11 & 12) by Dr. T. Subbarami Reddy. Are you moving your Amendments?

DR. T. SUBBARAMI REDDY: Before my decision, I am suggesting that the Secretariat to the Arbitration Centre shall supervise and manage the activities of the Arbitration Centre. ...(Interruptions)..

श्री उपसभापति: माननीय सदस्य, आप बैठ जाइए। आपकी कोई भी बात रिकॉर्ड पर नहीं जा रही है। ...(व्यवधान)... माननीय मंत्री जी, आप भी कृपया बैठ जाएं। ...(व्यवधान)...

DR. T. SUBBARAMI REDDY: About Amendment No.12, they have not made in the Bill any provision for salary and allowances for the Registrar and other officers and employees, I am not moving my amendment.

श्री उपसभापति: माननीय सदस्य, आप कृपया बैठ जाइए। आपकी कोई भी बात रिकॉर्ड पर नहीं जा रही है। ...(व्यवधान)...

Clause 23 was added to the Bill.

Clauses 24 to 27 were added to the Bill.

MR. DEPUTY CHAIRMAN: Now Clause 28. There is one Amendment (No.13) by Dr. T. Subbarami Reddy. Are you moving it?

DR. T. SUBBARAMI REDDY: I am not moving, Sir.

Clause 28 was added to the Bill.

Clauses 29 to 35 were added to the Bill.

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

SHRI RAVI SHANKAR PRASAD: Sir, I move:

That the Bill be passed.

The question was put and the motion was adopted.

MR. DEPUTY CHAIRMAN: Now, I shall take up The Arbitration and Conciliation (Amendment) Bill, 2019. The question is:

"That the Bill further to amend the Arbitration and Conciliation Act, 1996, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clause 2 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now, Clause 3. There is one Amendment (No.1) by Dr. T. Subbarami Reddy. Are you moving it?

DR. T. SUBBARAMI REDDY: Sir, I am not moving it. ...*(Interruptions)*...

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now, Clause 5. There is one Amendment (No.2) by Dr. T. Subbarami Reddy. Are you moving it?

DR. T. SUBBARAMI REDDY: Sir, I am not moving it. ...*(Interruptions)*...

Clause 5 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now, Clause 6. There is one Amendment (No.3) by Dr. T. Subbarami Reddy. Are you moving it?

DR. T. SUBBARAMI REDDY: Sir, I am not moving it.

Clause 6 was added to the Bill.

Clauses 7 and 8 were added to the Bill.

MR. DEPUTY CHAIRMAN: Now, Clause 9. There is one Amendment (No.4) by Dr. T. Subbarami Reddy. Are you moving it?

DR. T. SUBBARAMI REDDY: Sir, I am not moving it.

Clause 9 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now, Clause 10. There are five Amendments (Nos. 5 to 9) by Dr. T. Subbarami Reddy. Are you moving these Amendments?

DR. T. SUBBARAMI REDDY: Sir, Amendment (No. 5) says that eminent person...

MR. DEPUTY CHAIRMAN: Are you moving it? ...*(Interruptions)*...

DR. T. SUBBARAMI REDDY: Sir, I have a right to speak before taking my decision.

Amendment (No. 5) says that eminent person who would be appointed as Chairperson should have a minimum of three years' experience. This is my suggestion to Mr. Ravi Shankar Prasad.

In Amendment (No. 6), I have suggested that any eminent academician to be appointed as a member should have sufficient experience in research and teaching also.

My Amendment (No. 7) says that the Arbitration Council shall promote and encourage institutional arbitration by strengthening arbitral institutions.

Amendments (Nos. 8 and 9) deal with same matters.

I am not moving these Amendments.

Clause 10 was added to the Bill.

Clauses 11 to 13 were added to the Bill.

MR. DEPUTY CHAIRMAN: Now, Clause 14. There is one Amendment (No.10) by Dr. T. Subbarami Reddy. Are you moving it?

DR. T. SUBBARAMI REDDY: Sir, this is a very important Amendment.

MR. DEPUTY CHAIRMAN: Are you moving it? ...*(Interruptions)*...

DR. T. SUBBARAMI REDDY: Before taking my decision, I will say something. ...*(Interruptions)*...

This is an important Amendment which says that for an officer of Indian Legal Service, the qualification and experience of arbitrator would be, he should have a minimum of seven years' experience. Because for advocates, you are mentioning 10 years, for CAs, you are mentioning 10 years. Then, for officer also, there should be experience. I am not moving my Amendment.

Clause 14 was added to the Bill.

Clauses 15 and 16 were added to the Bill.

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

SHRI RAVI SHANKAR PRASAD: Sir, I move:

That the Bill be passed.

The question was put and the motion was adopted.
