Seventeenth Loksabha

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Title: Motion for consideration of the Arbitration and Conciliation (Amendment) Bill , 2019 as passed by Rajya Sabha.

माननीय अध्यक्ष: आइटम नम्बर 3, माननीय मंत्री जी ।

विधि और न्याय मंत्री; संचार मंत्री तथा इलेक्ट्रोनिकी और सूचना प्रौद्योगिकी मंत्री (श्री रवि शंकर प्रसाद): महोदय, मैं प्रस्ताव करता हूं:

> "कि माध्यस्थम और सुलह अधिनियम, 1996 का और संशोधन करने वाले विधेयक, राज्य सभा द्वारा यथापारित, पर विचार किया जाए ।"

माननीय अध्यक्ष: सभी माननीय सदस्य संक्षिप्त में बोलेंगे ।

श्री रवि शंकर प्रसाद: मैं बहुत संक्षेप में बोलूंगा । मैंने एक संशोधन प्रस्तावित किया था, उसे मैं प्रेस नहीं करूंगा, जैसे राज्य सभा से पारित हुआ है वैसे ही पारित होगा ।

सर, हमारी सरकार की कोशिश है कि भारत की अर्थव्यवस्था बढ़ रही है तो भारत में आर्बिट्रेशन का एक बड़ा सेन्टर बनना चाहिए । सदन ने न्यू दिल्ली इंटरनेशनल आर्बिट्रेशन बिल पारित किया । जस्टिस श्रीकृष्णा, जो सुप्रीम कोर्ट के प्रसिद्ध न्यायाधीश थे ।...(व्यवधान)

माननीय अध्यक्ष: माननीय मंत्री जी एक मिनट रुकिए । माननीय सदस्यगण, जिन्हें जाना है वे चले जाएं । माननीय मंत्री जी बोल रहे हैं ।

श्री रवि शंकर प्रसाद: सर, जस्टिस श्रीकृष्णा कमेटी की रिपोर्ट आई, उसमें एटॉर्नी जनरल वेणुगोपाल जी एवं कई विद्वान लोग सदस्य थे । उन्होंने कहा कि दुनिया में आजकल इंस्टीट्यूशनल आर्बिट्रेशन बहुत महत्वपूर्ण है, तो अगर भारत को बढ़ना है तो हम इंस्टीट्यूशनल आर्बिट्रेशन को प्रमोट करें । ऐसी लगभग 35 संस्थाएं भारत में हैं, लेकिन इसके लिए उन इंस्टीट्यूशन्स की ग्रेडिंग होनी चाहिए कि वे कैसा काम कर रही हैं, कैसे आर्बिट्रेटर्स वहां पर हैं । इसलिए एक आर्बिट्रेशन काउंसिल बननी चाहिए । हम इस कानून में एक आर्बिट्रेशन काउंसिल बना रहे हैं, जिसके अध्यक्ष सुप्रीम कोर्ट के रिटायर्ड जज, हाई कोर्ट के चीफ जस्टिस या जज होंगे या बाकी लोग होंगे और बाकी मेंबर्स होंगे । इसमें व्यापारिक संस्थाओं से भी लोगों को लेंगे ।

सर, यह संस्था क्या काम करेगी? यह संस्था भारत के सारे इंस्टीट्यूशनल आर्बिट्रेशन को ग्रेड करेगी, एक्क्रेडिट करेगी कि how they are working, the Arbitrators are good or not, their performance is good or not and they have completed their work within time frame or not. जो उनको एक्क्रेडिट करेगी तो इंटरनेशनल आर्बिट्रेशन के मामले में सुप्रीम कोर्ट और स्टेट आर्बिट्रेशन के मामले में हाई कोर्ट उनको डेजिग्नेट करेंगे । अब किसी को आर्बिट्रेशन के लिए हाई कोर्ट या सुप्रीम कोर्ट नहीं जाना है, सुप्रीम कोर्ट और हाई कोर्ट ने जिस संस्था को डेजिग्नेट किया है, उसी संस्था के पास जाना है । क्लॉज 43ए में यह प्रावधान किया गया है कि भारत सरकार से कंसल्टेशन करके, रेगुलेशन बना करके कि कैसे आर्बिट्रेटर्स होंगे, उनका स्तर क्या होगा, उनकी क्वालिटी क्या होगी, यह सारा कुछ वे विस्तार से तय करेंगे । इसलिए मैं उस संशोधन को प्रेस नहीं कर रहा हूं ।

सर, मैं एक अन्य महत्वपूर्ण बात बताना चाहता हूं कि जो आर्बिट्रेशन काउंसिल ऑफ इंडिया है, देश में आर्बिट्रेशन बार बने, इसकी ट्रेनिंग हो, इसकी स्किलिंग हो, पूरे देश में आर्बिट्रेशन का सिस्टम डेवलप हो, जिससे भारत दुनिया में आर्बिट्रेशन का एक बड़ा केन्द्र बने, इसका एक पूरा स्ट्रक्चर यह विधेयक डेवलप करता है । It has been formulated

after recommendation of a high-powered Committee headed by the eminent Supreme Court Judge, Justice Srikrishna. मैं उम्मीद करूंगा कि भारत सिंगापुर और लंदन के साथ बढ़ता हुआ एक बड़ा सेंटर बने ।

सर, मैं इस बारे में एक आग्रह करना चाहता हूं । हम जानते हैं कि भारत में योग्य वकील हैं, योग्य जज हैं, बाकी क्षेत्रों में अनुभवी लोग हैं, कोई रिटायर्ड फाइनेंस सेक्रेटरी हो, रिटायर्ड आईटी प्रोफेशनल हो, कोई वैज्ञानिक हो, उन सभी को हम आर्बिट्रेशन में लाना चाहते हैं कि तकनीक की दुनिया में जज भी हों, वकील भी हों, अन्य क्षेत्रों से जुड़े लोग भी आर्बिट्रेटर के रूप में उपलब्ध हों । यह सारी पूरी प्रक्रिया इसमें है और उसी दिशा में हम यह विधेयक लेकर आए हैं । मुझे लगता है कि यह पूरा सदन से सर्वानुमति से इसे पास करेगा ।

माननीय अध्यक्ष: प्रस्ताव प्रस्तुत हुआ:

> "कि माध्यस्थम और सुलह अधिनियम, 1996 का और संशोधन करने वाले विधेयक, राज्य सभा द्वारा यथापारित, पर विचार किया जाए ।"

SHRI N. K. PREMACHANDRAN (KOLLAM) : Sir, I would like to seek one clarification. Amendments have been circulated. I would like to know whether it has been passed by the Rajya Sabha or not.

SHRI RAVI SHANKAR PRASAD: Sir, I must clarify it. It has not been passed by the Rajya Sabha. The Council has enormous powers under Section 43(j) whereby depending upon the need, time and the quality of the Arbitrator, they can themselves name them. Therefore, we are not pressing it here.

This Bill has been passed by the Rajya Sabha and I wish this Bill may be passed by this House as well.

SHRI KODIKUNNIL SURESH (MAVELIKKARA): Sir, I thank you for giving me this opportunity to speak on the Arbitration and Conciliation (Amendment) Bill, 2019.

The new age business needs and demands swift and efficient solutions. For that arbitration and reconciliation conducted in a professional and legal way of settling disputes is conducive for the easy conduct of business without losing the most critical element, which is 'time'.

According to a report by E&Y, it is seen that the arbitration clause constitutes almost 95 per cent of agreements between parties. Inclusion of the arbitration clause in the contract is high in the construction, infrastructure, oil and gas sectors.

19.25 hrs (Shri Rajendra Agrawal *in the Chair*)

The increase in the number of arbitration and reconciliation cases in businesses are sure indicators of emerging trends of modernisation of businesses and optimal utilisation of time and effort. However, there is a need to draft clear provisions for checking the independence and impartiality of arbitrators appointed and the Government must bring detailed guidelines aided by legislation to ensure impartial and unbiased arbitration in the country, as even a single resolution that is alleged of bias can bring down the reputation of the country as a favourable destination for international arbitration and in the process lose millions in foreign exchange.

Technical and domain experts, including accountants, engineers, architects, scientists, doctors etc. are increasingly being considered indispensable by arbitral tribunals in matters requiring expertise and technical knowhow. Definitive provisioning of ethical clarity and probity are mandatory.

Hon. Chairperson, Sir, I would now refer to some of the salient features of this Bill. I must say that the Bill fails to consider the crucial aspects in its totality. Clause 43(C) of the Bill states that the Council shall consist of the following Members, namely, 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 and experience in the conduct or administration of arbitration, to be appointed by the Central Government in consultation with the Chief Justice of India. There is no clarity on what constitutes his/her eminence. It is vague and unclear. I suggest that a separate clause be added to define in detail the qualifications and pre-requisites and eligibility criteria for the `eminent member' as it is required beyond any doubt since we need to maintain integrity in matters of business reconciliation.

Sir, in clause 43C (f) it is stated that one representative of a recognised body of commerce and industry chosen on rotational basis by the Central Government who would be a part-time member. Here again the same problem will arise as the qualifications and eligibility criteria are not detailed in the Bill and such an ambiguity will give way to unethical and influenced inclusions thereby affecting the purpose of the process. I suggest that a detailed criterion be added as an amendment to ensure ethical probity.

In order to defend the probity for international arbitration, one cites the case of article V(2)(b) of the New York Convention and article 36 of the UNCITRAL Model Law as enshrined in the public policy of the forum based on which arbitral awards may be refused enforcement by the courts. They provide that recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that the recognition or enforcement of the award would be contrary to the public policy of that country.

Sir, I would like to urge upon the Government that ethical probity must be the cardinal content and principle of arbitration and the Bill must not be vague or unclear about this as international arbitration is an area where even a single omission of honesty will be damaging the integrity of the country and its standing.

The Bill does not adhere to certain recommendations of the Srikrishna Report such as creation of specialist arbitration benches before various courts and recommendations on introducing the International Bar Association Rules on taking of evidence which would have brought uniformity in rules for recording evidence in arbitration as per the international standards. The Report had also suggested that time limit to challenge an award under the Amendment Act be reduced with a mandatory deposit of 75 per cent of the sum awarded. These recommendations of the High-Level Committee are not adhered to in this Bill. I would request the hon. Minister to consider these recommendations in a strong manner and only then, this Bill will be useful to the country.

श्रीमती मीनाक्षी लेखी (नई दिल्ली): अध्यक्ष जी, आपने मुझे इतने महत्वपूर्ण बिल पर बोलने का मौका दिया, इसके लिए मैं आपको धन्यवाद देती हूं । मैं इस बिल पर बोलने से पहले प्रधान मंत्री श्री नरेन्द्र मोदी जी को, माननीय मंत्री जी को और अपनी सरकार को धन्यवाद देना चाहती हूं कि यह माहौल बदलने की कोशिश है, संस्थाओं को ठीक करने की कोशिश है और जिन-जिन चीजों से सारा देश इतने लम्बे समय से सफर कर रहा था, उन सभी में सुधार की कोशिश है । आर्बिट्रेशन और कंसिलिएशन एक्ट उसी प्रथा का एक स्वरूप है, जिसमें सरकार ने कानून की व्यवस्था को सुधारने की कोशिश करने का प्रयत्न किया है ।

इसका दूसरा पक्ष है कि जो इंटरनेशनल आर्बिट्रेशंस हैं, जिनमें बहुत सारी लिटिगेशन्स में भारत पार्टी है सरकार के रूप में भी और बहुत सारी बायलेट्रल इंवेस्टमेंट ट्रीटीज हैं, बहुत सारी और चीजें भी हैं । इसके अलावा भारतीय मूल की कम्पनियां और भारतीय लोग आर्बिट्रेशन में उलझे हुए लोग हैं और वह सारी आर्बिट्रेशन देश के बाहर हो रही है । यदि मैं कहूं तो इम्पीरियलिस्टिक माहौल है कि आपको आर्बिट्रेशन करनी है तो आप सिंगापुर जाएंगे, हाँगकाँग जाएंगे, लंदन जाएंगे, स्टॉकहोम पहुंच जाएंगे । दोनों कम्पनीज जिनके बीच में आर्बिट्रेशन है, वे दोनों हिंदुस्तानी हैं । जो आर्बिट्रेटर है, वह भी हिंदुस्तानी है और जो वकील वहां पेश हो रहे हैं, वे भी हिंदुस्तानी हैं और सिर्फ कहीं-कहीं जगह को बदल दिया । मुझे लगता है कि उस माहौल को भी ठीक करने की इस बिल के माध्यम से कोशिश है । इसलिए मैं अपनी सरकार का,

माननीय मंत्री जी का और आपके माध्यम से सभी का धन्यवाद देना चाहती हूं कि ये सभी बदलाव लाने की कोशिश की गई है ।

Now, I come to the merits of this particular legislation. In the words of former Chief Justice of Singapore who, by name, is a person of Indian origin, Justice Sundaresh Menon, Alternate Dispute Resolution should be renamed as Appropriate Dispute Resolution which means there is a paradigm shift in the manner of litigation, there is a paradigm shift in the resolution of problems and there is a paradigm shift in the thought process which leads to dispute resolution. For efficient and comprehensive dispute resolution, it has been sought that these mechanisms are the best mechanisms which means arbitration, conciliation and mediation. These are three or four processes. Unfortunately, there have been many problems while we are a country which thrived on panchayati raj. We are a country which believed in conciliation processes across and we are the originators of conciliatory mechanisms and even *nyaya prakriya*. If we go to ancient philosophy, you my find that there were different schools of thought in which we had laws where reformative things and dispute resolution happened.

'Panchayat' means five elders who will solve the problems. That is how the word 'Panchayat' originally originated. So, we are basically the founders of conciliatory and arbitral mechanisms in the world. But unfortunately, over a period of time, we lost these processes, and the kind of Government support, the kind of legislative support, the kind of public approval, the kind of institutionalisation which was needed to build this mechanism was lacking, and it is in this rightness and this earnestness that this law is one such change which the Government has sought to bring.

Now, before this, the Commercial courts, Commercial Division, and Commercial Appellate Divisions were formed so that there is an expeditious disposal of commercial disputes. At the end of the day, time is money. If, in litigation, multiple crores of rupees are going to get stuck, nobody is a gainer and economy will suffer. So, for that reason, arbitration is an expeditious methodology.

Sometimes, you just need to make people understand. There could be two sides to the coin. You just need to make the two sides understand, mediate between them, and pass an order but that order should be binding. So, if both the sides agree on a certain order or a certain mechanism, you can have *ad-hoc* arbitration. लेकिन जहां दोनों पक्ष एक-दूसरे की बात नहीं मानते हैं तो आर्बिट्रेशन उसका एक अच्छा मैकेनिज़्म है । जहां पक्ष एक-दूसरे की बात मानते हैं, वहां एडहॉक मैकेनिज़्म चलेगा । जैसे किसी ने कहा कि फलां को हमने पंच बनाया और वह जो तय करेगा, वह हमारे लिए मान्य होगा, लेकिन जहां पर दोनों पक्ष यह मानने के लिए राज़ी नहीं हैं और उनके बीच आपसी झगड़ा है तो उस झगड़े को तय करने के लिए या तो आप गवाही का कोई सिस्टम, पूरा कोर्ट प्रोसेस या स्यूट डालो, डिसप्यूट रिज़ॉल्व करो और अपील में जाओ और उसके बाद सैकेंड अपील में जाओ ।

इसके अलावा दूसरा तरीका है कि इंडिपेंडेंट ट्रांसपेरेंट मैकेनिज़्म से एक आर्बिट्रेटर अपॉइंट हो, क्योंकि वहां भी कई तरीके के पक्षपात की बू आती थी कि कहीं कोई किसी से कनेक्टेड है तो उसका आर्बिट्रेटर बना दिया । किस तरीके के लोग आर्बिट्रेटर होंगे, इसका कोई तरीका नहीं था । इन सब चीज़ों को सुधारने की ज़रूरत थी और उस मैकेनिज़्म को बेहतर करने की ज़रूरत थी । मुझे इस बात की खुशी है कि the Arbitration and Conciliation Act itself, apart from the New Delhi International Arbitration Centre Bill, 2019 which we brought in this Session itself and about 20 such amendments which we brought earlier in the Arbitration and Conciliation Act, and which have already come, is basically a dynamic area in which a regular improvement is going on, and as a part of the regular improvement, these changes have been brought in. What these changes are trying to do is this. As the hon. Minister himself said, there are 35 institutions, and in addition to these 35 institutions, there are Public Sector Undertakings and PSEs who have their own mechanisms. When they are in dispute or conflict with the Government of India, they follow a mechanism but that particular mechanism is not applicable for the simple reason that ACA was not applicable.

In addition to this, there are certain Chambers of Commerce like FICCI, and so on and so forth who are also doubling up as arbitral centres. Then, there are certain other merchant bodies which are working as Dispute Resolution Centres with the result that there is a certain type of *ad-hocism*, and on the basis of that *ad-hocism*, the commerce and trade cannot operate. Commerce and trade needs certain amount of certainty, and that certainty will come when you have defined rules, when arbitrators are credible, and institutions are credible. There is a certain class associated with the entire mechanism, and that class will come only when you have some kind of established criteria. For establishing that criteria, for establishing those rules, for

establishing those institutions, all these changes are being brought in, and these changes are basically determining that which kind of disputes go where, how the mechanisms will operate, and how formalisation of the processes need to happen.

Formal institutional mechanisms establishment is what this particular Act is trying to establish. All I need to say is that the twin objective of all these Acts put together has been: efficient disposal of commercial disputes, and international and national disputes which happen. Some kind of legislation and legal mechanism need to be given.

Ultimately, this is also a business. It is as much part of business as it is important for 'Ease of Doing Business' as litigation itself is a business. Especially, as a lawyer I can say that this is very much a part of certain class of profession, and we cannot have certain classes within a class. Like, lawyers by themselves are a class. Now, within this class of lawyers, you make segregation -- Queen's Counsel, Stockholm based lawyers, London based lawyers. You cannot have all that. I think, lawyers across board are qualified and they all are capable of handling litigation along with arbitration. A certain change in thought process is what is needed from a kind of aggressive litigation to resolution based processes. Certainty of time is needed that within this time, all these resolutions will happen.

So, what this Act is particularly trying to do is make the whole thing more efficient, bring justice at the doorsteps and help people resolve their commercial disputes. So, grading of arbitral institution is one such mechanism, which this Act is doing apart from accreditation of arbitrators themselves. It is also trying to keep abreast with international practices in arbitration. I for one believe that lawyers in India are as good, as qualified as you can get anywhere else in the world. These lawyers can bring on the table, what any lawyer anywhere else can, propagate a theory or fight a case either way.

But then the question is: 'Why is our business getting shifted to other centres; and if it is getting shifted to other centres, why can't the same class of comfort in terms of assistance, in terms of legal provisions, in terms of legislative assistance, in terms of Governmental assistance, quality of people, transparency in appointments, be brought in?' Once all those parts of ecosystems are built, India itself -- with the kind of economy we support, with the kind of number of lawyers that we have, with the kind of brainpower this country has – can be the hub of arbitration in the world. For that purpose, the Governmental support and the legislative support, which is needed, is being given to them.

We have plenty of institutions. There were a couple of problems. One problem was excessive courts' interpretation. It was a major issue. It is because whenever the court's interpretation comes in, there is a delay in the process, and money gets stuck.

Then, the other part is, judicial excessive courts' involvement in the whole process. Now, the Supreme and the High Courts are already overworked. There are some three crores odd cases, which are pending disposal. With all that, efficiency of the system needs to be built; and this is one methodology.

So, what this Act itself is trying to do is: efficient and effective resolution of commercial disputes, fairness in the process. I have also pointed out earlier that for everything, you do not have to approach the High Court or the Supreme Court. But their involvement in the process has to be there. So, appointment of arbitrators needs to be done in a very transparent manner. जो भाई-भतीजावाद बाकी जगह चलता है, कम से कम आर्बिट्रेटर के अप्वाइंटमेंट में नहीं चलना चाहिए कि आप फलां के बेटे हैं तो आप आर्बिट्रेटर बनेंगे और आपके पिताजी ही कोर्ट में केस डिसाइड करेंगे । ऐसा नहीं होना चाहिए । आर्बिट्रेल प्रॉसेज ज्यादा ट्रांसपैरेंट होनी चाहिए ।

Then comes the point of authorised arbitral institution. अभी कौन सा चैंबर कहां पर है? आर्बिट्रल इंस्टीट्यूशन है या नहीं है? I have already said that there are 35 institutions already in work. PSUs are there. Several chambers are also there. Now, which is an authorised arbitral institution, will be designated by the Supreme Court and the High Courts. Now, with this, a certain amount of distinction within the institute must exist before a High Court or a Supreme Court. They can actually designate a particular institute as an arbitral institute. So, it will bring quality to the table and offer easy solution and responsibility towards the process itself.

As far as fairness in the process is concerned, I talked about appointing of arbitrators through several other methodologies. About confidentiality clause, many a times, the settlement between the companies happens, some give and take happens and some buttering happens. That confidentiality clause is very important.

Sometimes, some newspapers, which have commercial interest of all kinds, somebody is a shareholder, somebody is giving advertisement and a particular award has been assigned against that particular group, the confidentiality clause becomes very important because you may just want a closure there. Therefore, the confidentiality clause is a very important clause.

Now, I am coming to the Arbitration Council of India. This was basically Justice B.N. Srikrishna's Report. Our Government has only assigned him this task: "The objective is to make India as an arbitration hub. Keeping in view the kind of problem we are dealing with; you please give us your suggestions." So, Justice B.N. Srikrishna, along with several others on board, gave a Report to the Government of India in which one suggestion was about establishing the Arbitration Council of India. So, this, particular, enactment is trying to set up an Arbitration Council of India. The constitution of Arbitration Council of India will involve all that this Act brings and that is: "Constitution of ACI consists of experienced Judges of the Supreme Court and the High Courts including eminent persons having the expertise in administration of arbitration and eminent arbitration practitioners with experience in research and teaching in the field of arbitration. Such an eminent constitution enhances basically, the quality of work which needs to be delivered by the Council."

Then, we come to the duties. I talked about the professional institutes providing accreditation to the arbitrators themselves. These are part of the duties and functions of the ACI.

Now, we talk about enforceability. Whenever the arbitration award is granted, the kind of litigation we have seen in the courts is terrible. Thus, further strengthening the enforceability of decision of the arbitration award is necessary and that enforceability needs to be taken care of by the system.

Then comes the track of arbitral awards. Many a time, we did not have a depository. We did not know what kind of past awards against a particular company have been given. What is the accreditation of that particular company? What kind of litigation has happened in the past? Who the arbitrators were? So, the Council has to maintain an electronic depository of the awards being granted which also forms part of this particular amendment which the Government is seeking to bring. I think, the law is about having faith. When the communities have faith, the system works very well. Today also, whenever we are discussing about institutions, the Judicial institution is one. Its reputation has gone down and gone up but faith of people in Judiciary is immense. That is one institution which people respect across board. Since people have so much faith in that Institution; arbitration connected with that also causes that faith.

I have already talked about transparency mechanism. So, I am not going to lay much emphasis. There is only one point. Like I said, suppose, father is listening to the matter in the court and son is an arbitrator, it will not work. If a son is appearing before an arbitral bench where father is an arbitrator, that kind of fairness mechanism and transparency of processes is very important. This is what this Act choses to give.

As far as fast-tracking of entire litigation is concerned, the time limit of 12 months has been prescribed and that is very important. I have already spoken on 'why arbitration'. I will not speak much except that injustice is, particularly, egregious in commercial disputes. According to one survey of 2011, Rs. 54,000 odd crore was stuck only in infrastructure development projects like roads, transport projects, etc. A large sum of money is stuck which can easily be sorted by arbitration. This is one such process. There are several judgements like Oil India Limited versus S.R., Union of India versus Niko, etc., where, basically, there has been a nudge by the Court to all the arbitrators and where the Court has ordered to decide the matter expeditiously and within a reasonable time.

This is what has been the demand of the courts and this is what this Act is about, that is, setting up a time limit and easy disposal. Repeating myself, time is money. If we do not want to lose money, we need to expedite the timely disposal. This is what this particular Act chooses to do.

I have just one simple suggestion to make to the hon. Minister. In our country, we have several regimes about arbitration operating right now. We have pre-BALCO era; we have post-BALCO era; we have 2012 era; then we have 2015 era. This Act itself is saying, this Act will be applicable to 2015. My suggestion to the hon. Minister is this. If in the rules or somewhere, this can be introduced that if both the sides consent to applicability of 2015 enactment even if the dispute is pre-2015 era, pre-BALCO, pre-whatever, we will find easy resolution and both the conflicting sides can opt to come under this particular enactment. That is my suggestion.

Thank you very much. I support the Bill and completely agree with the enactment.

SHRI A. RAJA (NILGIRIS): Thank you, Sir, for calling me to give my views on this Bill. I am having no hesitation to appreciate the Minister's initiative to bring the Bill before the House. I think, a lot of labour has been done by the Minister.

When there is a commercial dispute, in that dispute, one party has to succeed and the other has to lose. In that sense, arbitration is having a vital role to play under which no person can be defeated and, as such, a win-win situation can be offered to both the parties. So, arbitration is a must for harmony in business. Even, on the other hand, institutional arbitration is the need of the hour, since we are lagging behind for more than 20-30 years in the arena.

I think, the Government is very keen in this regard. I carefully watched the television and listened to the detailed speech that was delivered by the hon. Minister when he introduced the Bill and, after the discussion, when he gave the reply. I think, the intention of the Government is to create an arbitration hub in the country. There is no doubt that the intention is good and the aim of the Bill is good. But, why are we lagging behind for more than 25 years or 30 years?

See, what is happening in the other countries of the world. In the year 1992, one of the prominent arbitration centres was set up in London. Thereafter, arbitration centres were established in Singapore, Paris, Tokyo, New York, Zurich and so on. Time has come now to see how we are going to match up or equate ourselves with them in the course of time. It is because it is having a very big business. I came to know through newspapers that ICC Paris handles arbitration cases from 135 countries and the value of the arbitration is more than US$ 200 billion. In that sense, I am having my own worries. I think, the initiatives taken by the Minister or by the Government will address the problem in due course of time.

While appreciating the Minister and the Government, I have my own doubts, apprehensions and claims. The entire exercise was done on the basis of the Report of Justice Srikrishna Committee. My only question is this. You appointed the Committee. There were legal luminaries in the Committee and they gave the Report. Why are there certain departures which are all little bit worrisome? One of the recommendations made by the Committee is this.

I am coming to the composition of Arbitration and Conciliation body. The recommendation is that a retired Judge of the Supreme Court of India or of a High Court who have substantial experience dealing with arbitration matters or has acted as an arbitrator nominated by the Chief Justice to be appointed. Nominated by the Chief Justice means that it is well within the ambit and scope of the exclusive jurisdiction of the Chief Justice of India of the Supreme Court. You brought the Bill. Section 43C(1)(a) states:-

> "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 and experience in the conduct or administration of arbitration, to be appointed by the Central Government in consultation with the Chief Justice of India -Chairperson;"

The role of the judiciary has been mitigated and diluted by putting a simple phrase "in consultation with the Supreme Court". What is the intention of the Government? I do not know. Let the Minister address this.

My second point is about Section 43C (1)(b). The recommendation is, "eminent Counsel having substantial knowledge". But here you are brilliantly putting an eminent arbitration practitioner having substantial knowledge. What is the difference between the arbitration practitioner and counsel? I think that there is a gulf between these two things. Inspite of that, I think the intention of the Minister is good. I have no hesitation. I want to know the causes for these deviations and departures. I feel, as a student of law, that these departures have to be considered very seriously.

There is a recommendation for the nominee from the Ministry of Law and Justice. But what has been done in Section 43C (1)(d). It states:-

> "Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary – Member, *ex officio;* "

You are introducing a new person. The recommendation is that one representative of Commerce and Industry who will be chosen on rotational basis.

But as per Section 43C(1)(e), you are bringing one more person.

> "Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary- Member, *ex officio;* "

This is a new addition. All these departures trigger some doubts. What is the intention of the Government? Whether the entire structure of the Council is going to be mitigated or diluted or in course of time, it may not work.

I will come to another thing. This is about the functions and powers of the Arbitration Council of India. For the purpose of performing the duties and discharging the functions under this Act, the Council may review the grading of arbitration institutions. This is the recommendation. But Section 43D(2)(c) says:-

"review the grading of arbitral institutions and arbitrators;"

So, you are going to regulate both arbitrator and the arbitration. The recommendation is for arbitrator institutions only. But you are regulating not only the institutions but also the individuals. What does this mean? You are going to regulate both at the same time which is antithetical. This is going to kill the very purpose of the Act or it will defeat the very purpose of the Act. That is my apprehension.

Sir, disregarding specific warning of the Committee, Arbitration Council of India has been introduced as a regulator. It has been given broad powers and they also frame regulations. Why is there a specific warning by the recommendation? Why has that been introduced in the new clause? I am not able to understand that.

Sir, coming to the timeline, the Bill excludes international commercial arbitrations from the purview of the timeline whereas I think for domestic arbitration, it is applicable.

Sir, international arbitration is having a heavy impact. The Minister may correct me if I am incorrect. This Government, under the instruction of the Prime Minister, gave a good solution in order to minimise the time to finish the arbitration because those persons who feel aggrieved by the arbitration, they may feel that this has to be prolonged. What is the problem in India? After the arbitration, you can go to the High Court. As the Minister, I had served in various Ministries. Even in the Ministry, if any case is succeeded by the other party against the Government, the note will be sent to the Department. Nobody will say that on the merit, the case is correct when the Government gets defeated. Everybody will say let us go for appeal because they do not want to take risk. Tomorrow, some CBI may come or tomorrow, somebody will inquire whether you did any favour to the company. That is why, you are not filing an appeal.

20.00 hrs

So, every officer will say, yes, go for appeal. Then, we will go to the Division Bench. Ultimately, we will go to the Supreme Court.

HON. CHAIRPERSON : Please try to conclude.

SHRI A. RAJA : Sir, please give me three minutes more.

So, this is the problem with the Government. When we have full knowledge about the mindset of the officers -- and sometimes even of the Ministers -- after having signed by the Joint Secretary, after having signed by the Additional Secretary and after having signed by the Secretary, the Minister will be hesitant to take the risk. The Minister will ask, "Why should I take the risk? If at all I am taking the risk, tomorrow, the CBI will come; tomorrow, the C&AG will come; and they will give some report." So, this is the problem wherein the arbitration is going to be diluted. So, we must have a time limit so that within a stipulated time it has to be done.

Coming to trained professionals, we really wanted to have an arbitration hub in the country. We are only depending upon the former judges of the High Courts and Supreme Court. They are being appointed as arbitrators. I think we have not created a separate and an exclusive manpower, professional power, to talk and do the arbitration. It is a very big lacuna in the system. An assurance has been given by the Minister through this Bill that they are going to create an academy. We started the Arbitration Council. When the Council was started, it should have been simultaneously initiated to create the professionals to talk. That is very important and that has to be taken care of.

Finally, I am a little bit confused because with regard to the 2014 amendment, section 26 made a distinction between the arbitrary proceedings commenced before the Act came into force, that is, on 23.10.2015, and after the amending Act came into existence. Whether it is applicable before the commencement or after the commencement is the distinction which was made in section 26. What is the impact of section 26 on section 36? Section 36 talks about automatic stay of the award. A person files the appeal. Automatically, the arbitration in the lower court will be stayed. Does it not have a direct impact on sections 26 and 36? As a student of law, I am not able to understand this but let the Minister clarify this.

With these points on which we want clarifications, let me say that we are having no hesitation to support the Bill. Thank you.

SHRI KALYAN BANERJEE (SREERAMPUR): Sir, in respect of the Arbitration and Conciliation (Amendment) Bill, 2019, I do not find any reason to disagree with any of the sections of this Bill. Rather, as far as Clause (3) of the Bill is concerned, I would say, through you, Sir, to the hon. Law Minister that I would have been happier to see that Clause (3) is substituted by section 11 itself. The system of choosing the arbitrator by the parties themselves -- a third man will be appointed by the High Court or the district court or whatever it may be – should be abolished and a permanent Arbitral Tribunal should be established. So, a party should not choose its own arbitrator, that means, its own person. The other party also should not choose any other person. It creates a division. Ultimately, it turns into a personal equation. In practical sense, it is a personal equation. I would have been happier to see that all the arbitrations are sent to the arbitral institution. You think about my suggestion for the future.

I have only a few suggestions to make. So long as it is there, every arbitrator should be treated as a public servant within the meaning of the Indian Penal Code, as far as the arbitration proceedings are concerned, because the arbitrator, who is being appointed under section 11(1)(2)(3) of the principal Act, does not have any accountability.

Even if someone has committed something wrong but has done the arbitrator some favour, his award can be set aside. You cannot catch him. You cannot give him any punishment. Therefore, every arbitrator appointed under the Act should be treated as a public servant and he should disclose his assets. It is my suggestion.

Now, I share my practical experience. The arbitration proceeding is only a Saturday-Sunday job. The lawyers work in Courts, the High Court or the Supreme Court, from Monday to Friday and on the rest two days they do arbitration work. Some exceptions can be there in certain cases. But normally it is a Saturday-Sunday job. If this work of arbitration is also made a regular work, that is, from Monday to Friday, one has to either go to the Court or take the arbitration route. One cannot have everything – bread, cake, butter, milk and everything. Therefore, it should be changed.

Hon. Chairperson, Sir, through you, I would request the hon. Law Minister to kindly bring in a provision that whenever an arbitrator is appointed, he should not take arbitration in more than 5 or 7 or 8 cases. In Delhi

itself, probably you would be aware, that a number of retired judges are overburdened with the arbitration work. They do not have time. After hearing one matter in an arbitration proceeding, they give another date almost five or six months later. Therefore, they are very much overloaded. The hon. Minster may fix the limit himself. I am just sharing the idea that they should not take more than this. After finishing one, they should take another. Otherwise, it will not be an arbitration proceeding.

I give you an example of an arbitration case. I would not go into detail of that case on the floor of this House. One arbitration case is pending before an ex-Chief Justice of India for seven years. He is so overburdened that he could not give time for hearing it even though the evidence has already been completed for almost two years. So, the entire objective of the Act has failed. So far as time limit is concerned, there is a fixed limit of six months. But it is extended for another six months by submission of an application. Then, again it can be extended for another six months. But what is happening? All are suffering. This is also one point on which we are very practical. Through you, Chairman, Sir, I invite the attention of the hon. Law Minister towards this issue.

Sir, when the Government is a party to any arbitration proceeding, whether it is the Central Government, or the State Government or a Public Sector Undertaking, they cannot pursue the arbitrator in other ways. It is not possible for the Government to do. But the other parties are doing it. I myself have come across such cases where arbitrator is sitting in some hotels or restaurants with the party, which has nominated him. Therefore, the role of the arbitrator needs to be examined.

Then, please refer to Part I(A) regarding Arbitration Council of India. I request the hon. Minister to clarify this part. Now, let me come to Clause 43B (1). It says:

> "The Central Government shall, by notification in the Official Gazette, establish, for the purposes of this Act, a Council to be known as the Arbitration Council of India to perform the duties and discharge the functions under this Act."

The term 'functions under this Act' covers the whole Act, but Section 43(D)(ii) says "For the purposes of performing the duties and discharging the functions under this Act, the Council may—". It is followed by other sub-clauses. The question is that if it is written here 'to perform the duties and discharge the functions under the Act', it will cover the whole Act. I can also read about Arbitral Council. Arbitral Council can also discharge its functions. They can be appointed under Section 11. Therefore, kindly clarify this part. Only a confusion has been created. If it is written that 'discharge the functions under the Chapter', then it would have resolved the problem. Then, there would have been no confusion, but it seems that it covers the whole Act. Therefore, Sir, through you, I request the hon. Minister that it is needed.

I will again, at the cost of repetition, say that you remove Section 11 totally and make it like Section 11(3). You substitute that. In the entire India, Arbitral Tribunals should be there. It should be a full-time job and they should be treated as public servants.

These are all the points which I would like to put forth. Thank you.

SHRI RAGHU RAMA KRISHNA RAJU (NARSAPURAM): Sir, knowing the importance of quicker arbitration, I will also not take much time. So, I will try to finish my speech in the shortest possible time as I wish that the arbitration should also be settled within the time.

Coming to the formation of Arbitration Council of India, only the Chairman is being nominated along with the Supreme Court judge while all other members are being directly nominated by the Government. Nowhere in the world, to my limited knowledge, if at all there is any Arbitration Council, it is appointed by

the Government. In an arbitration are involved mostly two private parties having a dispute. In India, most of the litigations, fortunately or unfortunately, involve the Government. When a litigation is there with the Government and the Government nominates almost all the members, without consultation with the Supreme Court of India except in the case of Chairman, what kind of confidence the other people would have? Regarding nominee in arbitration procedure under Section 9 or Section 11, when we go to the court, it is the court which has to decide whether the claim made by him or the arbitration is maintainable or not. In this case, except one judge, there may not be any judicial people. If the litigation is with the Government and the Government is a party, they may not even say that arbitration is maintainable. So, this would give lot of discomfort to the people who wanted to come for the arbitration and that too, when we want to compete with Singapore, London and so on. Here, the members are being totally nominated by the Government. I would request the Government that just like they are nominating the Chairman, you involve a Supreme Court judge or Chief Justice in the selection process of other members also.

Under Section 23, six-month timeframe has been given to file the claim. There is some confusion as to whether one-year time period, that is given for the arbitration to be completed, starts after these six months or also includes this period of six months. Otherwise, the purpose for which the time that has been fixed for quicker settlement of the arbitration would not be served.

The last point is this. An amendment has been brought in section 26. According to that, this will not apply to arbitral proceedings commenced before 23rd October, 2015. Earlier whoever had gone to the court, even if there is no stay, used to get it prolonged somehow or other without paying the claim. Suppose the claim is settled by the arbitrator, they simply go for appeal. As one of our learned colleagues has said, out of fear for agencies like the CBI, they are going for repeated appeals. Once the appeal is filed in the court, then there is no chance for settlement and they are kept pending. A lot of Government litigations are there, which are cases filed before 2015. The cases filed before 23rd October, 2015 do not come under this Bill's purview. That is the amendment that has been brought under section 26. It may not be appropriate. The intention may be good. But it would appear that this has been brought in just for the sake of Government companies. This is what people outside are saying. Anyhow the Bill will be passed. We are also supporting the Bill. If the Government feels that this suggestion is appropriate, I would request the hon. Minister to consider it, whichever way he feels. Thank you.

श्री कौशलेन्द्र कुमार (नालंदा): माननीय सभापति जी, आपने मुझे माध्यस्थम और सुलह (संशोधन) विधेयक, 2019 पर चर्चा में भाग लेने का मौका दिया, इसके लिए बहुत धन्यवाद । आज वैश्विक युग में जैसे-जैसे व्यापार में वृद्धि हो रही है, व्यापारिक विवाद से संबंधित मामले काफी बढ़े हैं । न्यायालयों में व्यापारिक मामले और अब जो बैंक एनपीए हो रहा है, इससे भी काफी मामले सामने आए हैं । अब इन कंपनियों को बचाने की प्रक्रिया भी सरकार कर रही है । इन मामलों में मुकदमेबाजी बढ़ी है, जिसके कारण इनके निपटारे में काफी विलंब होता है, अधिक धन भी खर्च होता है और प्रक्रिया भी जटिल होती जाती है । विदेशी निवेशक भी यहां निवेश करने से घबराते हैं । इन्हीं सब प्रश्नों को ध्यान में रखते हुए और विधि आयोग की रिपोर्ट के अनुसार सरकार द्वारा माध्यस्थम और सुलह कानून, 1996 में संशोधन के प्रस्ताव को चर्चा के लिए लाया गया है । इसमें कानून की धारा 11ए, 23 एवं 26 का संशोधन करने का प्रस्ताव है । इसके साथ ही नया खंड 42ए, 42बी और खंड 78 को जोड़ने का प्रस्ताव है । सरकार का यह अच्छा प्रयास है ।

सभापति जी, किसी भी व्यापारिक विवाद के निपटारे के लिए संस्थागत मध्यस्थता को प्रोत्साहित करने की दिशा में यह सही कदम होगा । मैं इसके लिए माननीय मंत्री जी को भी बधाई देना चाहता हूं । मध्यस्थता द्वारा अगर कोई मामला सुलझ जाता है तो इससे समय के साथ-साथ आर्थिक हानि भी नहीं होगी, मामलों का त्वरित निपटारा होगा और न्यायालयों में मुकदमों का बोझ कम होगा । इसके द्वारा घरेलू और अंतर्राष्ट्रीय विवादों को पहले आर्बिट्रेशन के द्वारा सुलझाने की भी कोशिश होगी ।

इस कानून के बनने से मध्यस्थता प्रक्रिया सुलभ, सस्ती और शीघ्र निपटाने का मार्ग प्रशस्त करेगी । साथ ही न्यायालों का हस्तक्षेप भी कम होगा और निष्पक्षता भी सुनिश्चित होगी । ऐसा नहीं है कि अभी कोई कानून नहीं है, मध्यस्थता का कानून मौजूद है किंतु वह पूरी तरह कारगर नहीं होने के कारण पक्षकार इसे मानने के लिए तैयार नहीं होते एवं इसे लंबे

मुकदमेबाजी में ले जाने के लिए विवश हो जाते हैं । अंतर्राष्ट्रीय मामलों में देश में मध्यस्थता को न मानकर विदेश में मध्यस्थता पर ज्यादा विश्वास किया जाता है । अब इस कानून द्वारा भारत को घरेलू और अंतर्राष्ट्रीय स्तर पर संस्थागत मध्यस्थता का उत्तम केंद्र बनाने के लिए योजना में सहायता मिलेगी । किसी भी तरह की मध्यस्थता का मतलब लोग मान लेते हैं कि यह स्वैच्छिक है, कानूनन बाध्य नहीं है । यही कारण है कि मध्यस्थता को लोग जल्दी स्वीकार नहीं करते और निष्पक्षता पर सवाल खड़ा कर दिया जाता है ।

किन्तु इस कानून को बनाने में न्यायालयों के कुछ फैसले काफी सहायक हुए हैं । कोर्ट ने मध्यस्थता के विरुद्ध मामले लेने और दखल देने से इन्कार कर दिया है । इससे आर्बिट्रेशन व्यवस्था में विश्वास बढ़ा और पक्षकारों का झुकाव भी हुआ है । सरकार का यह कदम भारत को अंतर्राष्ट्रीय आर्बिट्रेशन का हब बनाने की दिशा में काफी महत्वपूर्ण होने वाला है । ऐसा इस विषय के जानकारों का मानना है ।

विदेशी संस्था, जो मध्यस्थता के लिए लंदन, पेरिस, जिनेवा, सिंगापुर, न्यूयार्क के अंतर्राष्ट्रीय आर्बिट्रेटर के पास जाते थे, अब वे भारत का रुख करेंगे । इसमें नीति आयोग का भी अहम योगदान है, इसलिए उसकी भी सराहना होनी चाहिए ।

मैं एक सुझाव देना चाहता हूं कि अगर किसी भी प्रकार का असंवैधानिक निर्णय नहीं है तो इस कानून में सिविल कोर्ट्स के हस्तक्षेप और दखल को पूरी तरह से समाप्त किया जाए । दूसरा, मध्यस्थता को एवार्ड के क्रियान्वयन और एग्जीक्यूशन प्रोसीडिंग करने का अधिकार हो तथा सभी संबंधित सरकारी एजेंसी उसको पालन करने के लिए बाध्य हों, तभी कानून पूरी तरह से सक्षम होगा ।

इन्हीं शब्दों के साथ मैं आपनी पार्टी जदयू की ओर से इस बिल का समर्थन करता हूं । धन्यवाद ।

20.21 hrs

MESSAGES FROM RAJYA SABHA

AND

BILL AS PASSED BY RAJYA SABHA …Contd.*

HON. CHAIRPERSON : Secretary-General.

SECRETARY-GENERAL: Sir, I have to report following message received from the Secretary-General of Rajya Sabha:-

'I am directed to inform the Lok Sabha that the Motor Vehicles (Amendment) Bill, 2019 which was passed by the Lok Sabha at its sitting held on the 23rd July, 2019, has been passed by the Rajya Sabha at its sitting held on the 31st July, 2019, with the following amendments:-

CLAUSE 30

That at page 11, line 25, ***for*** the word "consultation", the word "concurrence" be ***substituted***.

CLAUSE 34

That at page 14, line 2, ***for*** the word "consult", the words "seek concurrence of" be ***substituted***.

CLAUSE 77

That at page 37, line 24, ***for*** the word, bracket and figure "subsection (4)", the word, bracket and figure " sub-section (1)" be ***substituted***.

I am, therefore, to return herewith the said Bill in accordance with the provisions of rule 128 of the Rules of Procedure and Conduct of Business in the Rajya Sabha with the request that the concurrence of the Lok Sabha to the said amendments be communicated to this House.'.

Sir, I lay on the Table the Motor Vehicles (Amendment) Bill, 2019, as passed by Lok Sabha and returned by Rajya Sabha with amendments.

20.22 hrs

ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2019 -- contd.

HON. CHAIRPERSON: The next speaker is Shri Pinaki Misra.

SHRI PINAKI MISRA (PURI): Thank you, hon. Chairperson.

The Arbitration Act, 1996 was amended by the Act of 2015 to make the arbitration process cost-effective, speedy and with minimum court intervention. It just shows what a tangled web now our Indian arbitration system is that it did not obviously work. Therefore, the Government, in its wisdom, had this High-Level Committee instituted in order to identify the roadblocks in the development of arbitration institutions, and I am glad that they did it because a large number of very significant observations and recommendations have been made, as a result of which, now we have the Bill of 2019.

Nearly, 2-3 observations and a couple of queries is all that I will trouble the hon. Minister with. Obviously, the Arbitration Council is a very good idea, but this Act says that : "The Council shall be a body corporate". Does that mean that it is going to be a company? I am asking this because that is the normal nomenclature. A 'body corporate' means that it will be a company registered under the Companies Act. If

that is so, then it does not seem to give the contours of how this 'body corporate' will be formed. Will it be by shareholders? Who will be the shareholders I cannot understand? So, why is it called a 'body corporate'?

I think, the fact that the Chairperson can also be an eminent person is a very good idea. I think that the time has come when we should rely less and less on retired Supreme Court and High Court Judges. I think thus far too much reliance has been placed on retired Judges. There are a large number of very eminent people in this country who would be able to discharge these functions with much greater promptitude, may I say. I do agree with one of my earlier speakers who said that some of the Judges are so overburdened that they do not have dates to give for the next 4-6-8 months. Therefore, it is important that we draw up on a much larger talent pool since we have it in this country.

Now, a couple of queries to the hon. Minister. In the Eighth Schedule, which has qualifications and experience of an Arbitrator, the first eight provisions seem to be indicating that only Indians can be part of it, but the ninth provision is something where even a foreigner can be part of it. In principle, may I say that if a number of international companies are going to choose India as a destination for international commercial arbitrations, then they would like foreign nationals also to be able to become arbitrators in this country. This can possibly be another amendment, which can come in the future. Therefore, in principle, I do not believe although there will be a very large body of lawyers and other professionals who will object to it as the hon. Law Minister well knows.

Hon. Minister knows about this. I believe that if we want to make India a hub for international arbitration, we will have to open the doors for international persons to also become arbitrators. Towards that, the Schedule IX seems to suggest that foreigners can also be arbitrators. If foreigners can be arbitrators, then, there is no reason why eminent counsel, lawyers, and professionals from abroad cannot become arbitrators in India, particularly in international arbitration. Perhaps, the Law Minister might consider limiting it where there is an international arbitration; there can be foreigners of whatever persuasion, who can become arbitrators in this country. I think, that will have a much greater impact in terms of confidence building as far as international companies are concerned.

A number of significant measures have been brought in. It is unfortunate that in India we have to bring this. For instance, there is no corresponding provisions of Section 29(a) in either the U.K., Hong Kong or Singapore, but we had to bring it in India. Unfortunately in terms of timelines, in terms of cost reductions, peculiar to Indian conditions, it is said that our institutions have not grown enough, not to be able to do away with these kinds of provisions. But I would say that these were important, and therefore, they were brought in. Of course, the High Level Committee has noted that the international arbitral institutions have strongly criticised the setting of timelines for conducting international commercial arbitrations in India. But I am afraid that looking at the Indian conditions, there was no other way. Therefore, the Law Minister was right in bringing these provisions in.

The only thing I would like to say is that the whole crux of arbitration is the parties have the abilities to choose their arbitrators, and that is sacrosanct. Subject to the fact that there should no conflict of interests, parties could decide whoever they want as the arbitrator. That is the whole idea of arbitration. This seems to circumscribe because the qualifications and norms that have been imposed here have very high degree of restraints. Therefore, this seems to be circumscribed to a large extent. I am not sure that this may not have to be loosened or relaxed going forward in the future. But my congratulations to the Law Minister.

Obviously, we support a Bill like this. There certainly is a need to institutionalise the entire arbitration set up in India. The Arbitration Council, the arbitration institutions that are conceived under this, the strict timelines that are envisaged, all of them need have salutary provisions. I wholeheartedly support the Bill. I do believe though going forward this Act to be ironed yet further in order to ensure that the desired objectives are met. I support the Bill in its entirety. Thank you.

SHRI NAMA NAGESWARA RAO (KHAMMAM): Thank you, Mr. Chairman, Sir. I congratulate the hon. Minister for bringing this amendment considering the requirement in the field of arbitration.

In this regard, my opinion is that already certain contracts were signed between parties. In that context, there was no mention of Arbitration Act. What would happen to such type of contracts? Contract itself has already been signed. Different types of contracts are signed with the Government or private parties where there is a mention of courts, etc. Would these contracts too come under the Arbitration Act?

Dispute is between two parties. Both parties choose their own arbitrators. In turn, these arbitrators choose who would preside over the arbitration. It is good to know that the entire thing is changed.

You have made some changes…(*Interruptions*). Okay, if he is not doing it. At page 2, serial no. 3, Section 11, the amendment is giving powers to the High Court and the hon. Supreme Court, but why not to the district courts? Small disputes are there in the district courts and they also have to go to the Supreme Court. My request is that we should think of district courts also.

Coming to the provision of six months' period, in my opinion, whatever I have gone through, this is total one year including six months. The hon. Minister has to clarify it. Why I am saying this is because अगर आप सब्मिशन ऑफ क्लेम्स और डिफेंस, दोनों को छ: के महीने के अंदर करने के लिए कहेंगे, and if it is within one year, then you are giving six months for pleading. इसमें सबसे इम्पोर्टेंट यह है कि सब्मिशन ऑफ क्लेम्स, डिफेंस, रिज्वाइंडर और एडमिशन के लिए छ: महीने का टाइम फ्रेम करना है । If both parties agree on admission, then there is no problem. Otherwise, arbitration takes time. You have simply given six months. अगर उसको भी दो-दो महीने का टाइम दें, तब भी यह ईजी हो जाएगा ।

उसके साथ-साथ, अगर मान लीजिए पैनल ऑफ आर्बिट्रेटर्स ने अवार्ड दे दिया, उसके बाद फिर कोर्ट को एप्रोच करने का प्रॉविजन नहीं होना चाहिए । यह बात मैं इसलिए बोल रहा हूं कि जल शक्ति के बारे में ट्रिब्यूनल में डिस्प्यूट्स को जिस तरह से हम लोगों ने कंट्रोल किया है, otherwise, you start from the court once again. If the panel of the arbitrators agrees completely and it has given the arbitration award, then it should not be allowed in the court. कल जल शक्ति मंत्रालय के बारे में भी यह बात हुई थी, उसको भी थोड़ा देखना होगा । With these words, I am supporting this Bill.

SHRIMATI SUPRIYA SADANAND SULE (BARAMATI): I stand here on behalf of my Party to support the Bill. After hearing so many illustrious Members here, it is actually intimidating to speak on something that I have not studied and when so many eminent lawyers have spoken today. Whatever little that I have read about it is, 'arbitration is justice blended with charity'. That is what the lawyers say. But there are just quick and short questions that I would like to ask the hon. Minister.

In the Bill, on the composition of the Council, I slightly disagree with Mr. Pinaki Misra. He said that the person would be a High Court Judge. I appreciate that they are already overworked, but the word 'eminent person' Mr. Pinaki Misra thought was very apt. I appreciate that you have a Government right now who you probably are allied with but 'eminent person' is something which is so vague. Could the hon. Minister kindly clarify it? 'Eminent person' is a very relative term. What you may find eminent, I may not and what I find eminent, you may not. But I think we could cover something to make sure that there is no ambiguity ever and there is no misuse of it.

The other part is the norms of accreditation in 43J…(*Interruptions*). Yes, but eminent is Lokpal. Then there is a lot of importance of the Government. I would like to read out to you 43J – the qualification, experience and norms of accreditation of arbitrators shall be such as specified in the Eighth Schedule: Provided that the Central Government may, after consultation with the Council, by notification in the Official Gazette, amend the Eighth Schedule and thereupon, the Eighth Schedule shall be deemed to have been amended accordingly.

So, whatever little I understand from this is that Parliament really has no role once you change it. The hon. Minister should explain it to us because, otherwise, the Government will have all the power to do it and it is surprising that I found a quote, "Do I believe in arbitration? I do. But not in arbitration between the lion and the lamb, in which the lamb is in the morning found inside the lion" – Samuel Gompers, American Labour Union leader. So, when I read this, I sort of thought to myself that I hope any of this is not happening.

There are two small questions. During the debate on the New Delhi International Arbitration Centre Bill, I think Shri Shiv Kumar Udasi pointed out a concern to the hon. Minister that after an award is passed, the

final order in Singapore and London is never challenged while in India it could be. I think even Raja Ji made that point in his speech. So, I would like the hon. Minister to clarify that so that it can come on record.

Meenakashi Lekhi Ji said that once this comes in, it is going to substantially reduce the burden. But there are 3,28,000 cases pending in arbitration. This could reduce litigation to a large extent. But pre-litigation mediation is prevalent in the US and several other countries also do this. So, do we also have an opening to simplify, to make everybody's life easier and have an effective thing. If you do want to do this for ease of business, I think in a country like us we need it.

I come from a State which for decades has had foreign investments. We have had challenges even probably 30 years ago when we had foreign companies coming in, and we have had litigations. They have gone to foreign land and India is not in a position to grapple with it. We are just bleeding because our States cannot afford making payments in dollars. I think this is a great intervention.

If the hon. Minister could give these two-three clarifications, it will just make us understand the Bill better. I support the Bill. Thank you.

SHRI RAM MOHAN NAIDU KINJARAPU (SRIKAKULAM): Sir, I stand in support of the Arbitration and Conciliation (Amendment) Bill, 2019 and this support also emanates from the intention of the Government. The Government's intention is very clear that in terms of arbitration it wants to make India the global hub. We have seen this while the New Delhi International Arbitration Centre Bill was being discussed and passed in this House. During the discussion on that Bill, it was also stated that there has to be a proper grading of arbitral institutions and accreditation to arbitrators should be given. This Bill serves that purpose also, Sir.

The most important aspect of this Bill is setting up of the Arbitration Council of India. The recommendations to this effect had come from Justice Srikrishna Committee. We in Andhra Pradesh have our own experience with another Committee chaired by Justice Srikrishna which was appointed for the purpose of reorganisation of the State of Andhra Pradesh. Many of the recommendations of that Committee were not given effect to by the Government of the day and we are facing problems because of that.

Justice Srikrishna Committee recommended that the Chairperson of the ACI should be a judge of the Supreme Court or the Chief Justice of a High Court with substantial experience in dealing with arbitration matters or has acted as an arbiter and has been nominated by the Chief Justice of India. This is what the Committee recommends.

However, now we see that the Government of India is making the appointment. Why should the Government of India come in here? I would like to know from the hon. Minister as to why the Government of India has to be included in that clause which says that they have to appoint the Chairperson in consultation with the Chief Justice of India.

My previous speaker Supriya Ji has also mentioned about inclusion of an 'eminent person'. The term 'inclusion of an eminent person' itself is a little vague. Even though it says, 'having special knowledge and experience in the conduct and administration of arbitration', the limits are not very clear. He is going to be the Chairperson. An eminent person maybe equal to a Judge of the Supreme Court or the Chief Justice of a High Court. So, what is that eminent stature which would differentiate him from the others? There has to be some boundary, some limitation on the qualification of people from among whom that eminent person can be picked up.

Clause 43(1)(c) of the Bill says, 'an eminent academician having experience in research and teaching'. I would like to know how inclusion of a research person or a teaching person is going to add value to the Council. Is it a recommendation made by someone? What is the theory behind the inclusion of this?

Completion of pleadings within six months is also proposed in this Bill. It is definitely a shorter period than what is there in the earlier proposal but our target should be to get the gap down to three months. Maybe the Government would definitely look at this also in the future.

Sir, the fourth point which I would like to make is that once the award is given, it should be made binding on all parties and they should not be given further chance of litigation in other legal forums, either on the pretext of not being satisfied, or on the pretext of technicalities or other various reasons. So, I want to have clarity from the hon. Minister in this regard.

Clause 9 of the Bill has a very important provision saying that providing immunity to arbitrators against suits or other legal proceedings for anything which is done in good faith or intended to be done under this legislation. This is a very important clause. I appreciate the hon. Minister for putting this clause because this is to respect the international traditions of arbitration. For example, Singapore arbitrators are not held liable for negligence in the capacity of an arbitrator or any mistaken law, or mistaken fact, or a mistaken procedure. So, definitely, there is the intention of going global in terms of arbitration and creating a nice arbitration hub in India also.

With these words, I would like to reassure the Government that we support this Bill. I hope the hon. Minister would be kind enough to throw some clarity on the suggestions that we have proposed.

श्री अजय मिश्र टेनी (खीरी): सभापति जी, मैं माध्यस्थम और सुलह (संशोधन) विधेयक, 2019 का समर्थन करने के लिए खड़ा हुआ हूं । इस विधेयक का उद्देश्य जहां सिविल व कमर्शियल, ऐसे विवाद जो न्यायालय के बाहर निपट सकें, उनके लिए समर्थ और निष्पक्ष न्यायिक प्रणाली उपलब्ध कराना है । हमारा देश व्यवसाय की दृष्टि से इस समय पूरी दुनिया में न केवल अपना बेहतर स्थान बना रहा है, बल्कि देश और दुनिया के बहुत सारे व्यवसायियों को निवेश हेतु आकर्षित भी कर रहा है और उसका कारण है कि भारत एक बड़ा बाजार है और देश में व्यवसाय संबंधी कठिनाइयां भी कम हुई हैं । देश की अर्थव्यवस्था स्थिर गति से बहुत तेजी से बढ़ रही है, इसलिए ये आकर्षण का केंद्र बना है और जिसके कारण सामूहिक व सतत विकास जो धीरे-धीरे हो रहा था, उसकी वजह से विकासशील और विकसित देशों के बीच जो अंतर था, वह भी धीरे-धीरे समाप्त हो रहा है । इन स्थितियों को देखते हुए आधुनिक विवाद समाधान कानून की जरूरत है ।

महोदय, त्वरित न्याय के लिए आर्बिट्रेशन एक वैकल्पिक व सफल तरीका है । हमारी प्रतिबद्धता वर्ष 2014 में हमारी सरकार बनते ही स्पष्ट थी कि हम सिविल और वाणिज्यिक विवादों के निपटारे के लिए एक बेहतर प्रणाली दें और उसके लिए हमारी सरकार ने उस समय ही प्रयास प्रारम्भ कर दिए थे । वर्ष 2015 में ही एक संशोधन विधेयक 1996 के लिए लेकर आए थे और उसके माध्यम से हमने कुछ संशोधन भी दिए थे । जैसा कि पूरी दुनिया में इस समय जो विकसित देश हैं, उनके 95 प्रतिशत ऐसे नागरिक और व्यावसायिक मामले मध्यस्थता के द्वारा ही सुलझाए जा रहे हैं । हमारे माननीय प्रधान मंत्री जी और कानून मंत्री जी ने जहां प्रतिबद्धता के साथ देश के अंदर ऐसे सिविल और व्यावसायिक प्रवृत्ति के मुकदमों को विधि से निपटाने के साथ अंतर्राष्ट्रीय कारोबारी विवादों के निस्तारण में भारत को मध्यस्थता का एक वैश्विक केंद्र हम बना सकें, इसके लिए एक बेहतर प्रयास किया है ।

महोदय, मध्यस्थता व समझौता अधिनियम, 1996 को अनुकूल बनाने के लिए हमारी सरकार ने वर्ष 2015 में ही प्रयास किया था और उसके तत्काल बाद जैसा माननीय मंत्री जी बता चुके हैं, उन्होंने सर्वोच्च न्यायालय के एक न्यायधीश के निर्देशन में एक उच्च स्तरीय समिति गठित की थी । मैं यही कहना चाहता हूं कि उस समिति के द्वारा मध्यस्थता संस्थानों के कामकाज के प्रदर्शन व प्रभाव का अध्ययन किया गया । भारत में संस्थागत मध्यस्थता सिस्टम को आगे बढ़ाने के लिए योजना बनाई गई और वाणिज्यिक विवाद समाधान के लिए एक प्रभावी व कुशल मध्यस्थता प्रणाली व कानून बने, इसके लिए उन्होंने अपने जो सुझाव दिए हैं, उन्हें हमारी सरकार ने ध्यान में रखते हुए उच्च स्तरीय समिति, जिसकी रिपोर्ट वर्ष 2018 में प्राप्त हो गई थी, उसके तहत एक विधेयक लेकर आए थे और चूंकि तब 16वीं लोक सभा का कार्यकाल समाप्त हो गया, इसलिए आज इस विधेयक को लेकर आए हैं । इस विधेयक का वास्तविक उद्देश्य यह है कि मध्यस्थतों की नियुक्ति, पैनल बनाना ताकि भारतीय मध्यस्थता परिषद की एक स्वतंत्र निकाय के रूप में स्थापना कर सकें । उसके क्रियान्वयन, दावे व प्रतिरक्षा तथा कार्रवाई संबंधी कई संशोधन हैं, जिनका मैं समय के अभाव के कारण जिक्र नहीं करूंगा, लेकिन कई धाराओं में संशोधन लाए गए हैं ।

हमारी सरकार ने यह भी कहा था, जैसा कि अभी माननीय मंत्री जी ने भी कहा, कि भारत में योग्य पेशेवर लोग मानव संसाधन के रूप में किफायत में उपलब्ध हैं । यह हमारे लिए अंतर्राष्ट्रीय मामलों के निस्तारण के लिए एक अतिरिक्त

अवसर है । इस अधिनियम में हमने प्रक्रिया को सुसंगत बनाने के लिए, प्रक्रिया की अवधि को तय करने के लिए, तेजी से वादों का निपटारा हो, इसके तहत दिए किसी निर्णय के खिलाफ अदालत में भी जाने पर समाधान के लिए एक वर्ष का समय निश्चित किया गया है । हम इसे इस विधेयक में यह अधिनियम बड़े महत्वपूर्ण रूप से लेकर आए हैं । सभापति महोदय, देश की अदालतों में लंबित मामलों के बारे में अभी माननीय मीनाक्षी लेखी जी ने चर्चा की थी कि उनको देखते हुए ऐसे कानूनों की ज़रूरत है, जैसा कि उन्होंने तीन करोड़ से ज्यादा केसेज़ का ज़िक्र किया था । मैं इस विषय पर माननीय मंत्री जी का ध्यान आकर्षित करते हुए यह कहना चाहूंगा कि इन तीन करोड़ मामलों में लगभग 46 प्रतिशत ऐसे मामले हैं, जिनमें सरकारी विभाग और सरकारी निगम ही आपस में अदालतों में मुकदमे लड़ रहे हैं ।

महोदय, मैं समझता हूं कि इस कानून के बनने के बाद सरकार इस पर विशेष ध्यान देगी । सरकार के मध्य जो ऐसे 46 प्रतिशत मुकदमे चल रहे हैं, यदि हम उनको निपटाने में सफल हो जाएंगे तो उन मुकदमों की संख्या तीन करोड़ से सीधे डेढ़ करोड़ पर पहुंच जाएगी । अभी माननीय मंत्री जी ने हमारे सामने लंदन और सिंगापुर में वाणिज्यिक मामलों का ज़िक्र किया । उनके जो अंतर्राष्ट्रीय मध्यस्थता संस्थान हैं, वे हमारे सामने एक बड़ी चुनौती हैं । इसमें सबसे बड़ी बात, जिसका उन्होंने ज़िक्र भी किया, मैं उसमें बहुत विस्तार से नहीं जाऊंगा, यह है कि वहां निर्णय के लिए लंबित वादों में से ज़्यादातर भारतीय ही हैं । जैसा कि उन्होंने ज़िक्र किया था कि दोनों वकील पक्ष भारतीय ही हैं ।

अत: इस कारण यह ज़रूरी हो गया है कि हम कम से कम अंतर्राष्ट्रीय स्तर पर इस तरह का मानक बनाकर मध्यस्थता की ऐसी न्यायिक प्रणाली दें, जिससे हमारे देश में ही हम लंदन और सिंगापुर की अपेक्षा अच्छा प्रदर्शन करते हुए इस अधिनियम का लाभ अपने देश में दे सकें । आज हमारा देश विकास की तरफ बहुत तेज़ी से बढ़ रहा है, उसमें यह विधेयक बहुत ही आवश्यक है ।

माननीय सभापति जी, अभी हाल ही में एक अध्ययन आया है, जिसमें यह जानकारी आई है कि हमारी बहुत सारी विकास की, इन्फ्रास्ट्रक्चर की ऐसी सरकारी योजनाएं हैं, जो दोनों विभागों के आपसी मुकदमे की वजह से सिरे नहीं चढ़ पा रही हैं, उन पर काम नहीं हो पा रहा है । इस अधिनियम से निश्चित ही मध्यस्थता का एक ऐसा ढांचा निर्मित होगा, जिससे अदालतों पर निर्भरता कम होने के साथ मतभेद कम होंगे और व्यापार व विकास के अनुकूल वातावरण बनेगा, ऐसी इस विधेयक की संभावनाएं हैं । विवादों का समयबद्ध निपटारा, मध्यस्थों की नियुक्ति व उनकी जवाबदेही तय करना इस अधिनियम का उद्देश्य है । संस्थागत मध्यस्थता को बल देना, भारतीय मध्यस्थता परिषद बनाने के साथ-साथ भारतीय मध्यस्तता परिषद को संबंधित इकाइयों को मान्यता और ग्रेडिंग देने की भी शक्ति इस अधिनियम द्वारा दी गई है ।

सभापति महोदय, मैं समझता हूं कि इन प्रभावों के कारण यह अधिनियम एक मील का पत्थर साबित होगा, जिससे देश के अंदर तथा देश के अंतर्राष्ट्रीय विवादों का निस्तारण होगा । इससे भारत एक वैश्विक केन्द्र बनेगा, इसकी पूरी संभावनाएं हैं । मैं मानता हूं कि इससे भारत इस क्षेत्र में प्रतिष्ठा अर्जित करेगा ।

सभापति महोदय, मैं माननीय प्रधान मंत्री जी व माननीय कानून मंत्री जी को पुन: धन्यवाद देते हुए इस बिल का समर्थन करता हूं । आपका बहुत बहुत धन्यवाद ।

SHRI N. K. PREMACHANDRAN (KOLLAM): Hon. Chairperson, Sir, I will be very brief. All the Members are in a mood to adjourn the House. The Bill is further to amend the Arbitration and Conciliation Act of 1996. My point is that a series of amendments have come these days, especially in the Companies Act, the Insolvency and Bankruptcy Act and now in the Arbitration and Conciliation Act.

This piecemeal legislation is not good for a healthy Parliamentary practice. It is not good for law making process also. Law making should always be comprehensive. The hon. Minister may suggest that it is on the basis of the experience that he is rectifying the defects by means of amendments. I agree to that. But it should be comprehensive.

How can a Bill be more comprehensive? The only way is the micro-level scrutiny of the provisions of the Bill. How is the micro-level scrutiny of the provisions of the Bill possible? It can be only through the scrutiny by the Parliamentary Standing Committees. Most of the Bills are not being scrutinized by the Parliamentary Standing Committees. That is the reason why one amendment after another is coming and the

time and money of the Parliament are being spent for this purpose. So, I urge upon the hon. Minister and the Government to not undermine the powers, authority and significance of the Parliamentary Standing Committees. That is my first appeal to the hon. Minister.

The Bill is institutionalising the arbitration proceedings in the country. I fully agree and support the contents of the Bill moved by the hon. Minister. This is a part of the recommendations of a High Level Committee headed by Justice B.N. Srikrishna. It is quite unfortunate to note that the recommendations of this Committee are not fully complied with. It has already been elucidated by my learned friends, so, I am not going into it.

I directly come to Clause 14 of the Bill, by which a new Schedule, Schedule No.8, is being incorporated, in which the qualifications and experience of arbitrators are well narrated one-by-one. I have given notices of amendments to Clause 14, as well as Clause 10 and Clause 3. I will not be speaking at the time of moving the amendments. I am very happy, with pleasure, to note that the hon. Minister, Shri Ravi Shankar Prasad has circulated amendment nos. 14 to 17 before this House. I fully support the amendment nos. 14, 15, 16 and 17, proposed by the hon. Minister, Shri Ravi Shankar Prasad. These amendments are not on record but they have already been circulated. It vindicates my case. The hon. Minister's notice of amendments, though they are not moved, vindicates the case of an hon. Member who has already given notices of amendments, which are more or less equal to that of the proposed amendments by the hon. Minister. With these words, I support the Bill. Thank you very much.

SHRI RAVI SHANKAR PRASAD: Sir, I am extremely grateful to all the distinguished Members who have given very enlightened suggestions and have supported the Bill, except Shri N.K. Premachandran whose conventional caveat is there.

I will go point-by-point. I think no one could have placed it better than Meenakashi ji. In her inevitable Hindi, she said, संस्थाओं को ठीक करने और माहौल को बदलने का प्रयास । This is exactly what this Bill is about. I will go issue-wise and very quickly I will respond to all the issues. The Arbitration Council of India will not do arbitration itself. It is a body which will grade the institutions of arbitration. Therefore, there should be no confusion on that score. The Chairperson is very much there. The Government in consultation with the Chief Justice will make the appointment.

I may indicate to hon. Supriya Sule ji that the eminent member must be from the field of arbitration. The law very clearly says that. It is not ambiguous at all.

I would like to clarify one issue which many Members have raised. सर, यह सोचने का कारण कहां से है कि सरकार जब भी अप्वाइंट करेगी तो गलत ही करेगी । Why this apprehension is there? I have said it earlier also and I would like to say it again that we run the country and we are accountable to the House. We make some of the biggest appointments in the country. There is no presumption that the Government's appointments would be bad. On the contrary, I think Kalyan *Babu* and Shri Misra would bear me out, many a time the collegium's appointment has not been found to be correct. So, why should we talk only about the appointment of Chief Justice? There are so many judges. So, let us not talk about that concept at all.

Shri A. Raja has asked, why the Expenditure Secretary is involved. You are very right. Expenditure Secretary and Law Secretary are designed to give this Council a proper administrative support, so that it functions properly, in terms of expenditure and in terms of infrastructure. The question then would be, will it work well. They are going to grade the institutions. They are not going to do arbitration themselves. What is the principle of grading? I would gently like to highlight the important section, 43 (i), which says that the Council shall make grading of arbitral institutions on the basis of criteria relating to infrastructure, quality, calibre of arbitrator, performance, and compliance of time limits.

अगर कोई इंस्टीट्यूशन अच्छा काम कर रहा है, समय पर काम कर रहा है, ईमानदार आर्बिट्रेटर्स हैं, टाइमफ्रेम में करते हैं, तो वहां पर लोग जाएंगे । अगर कोई इंस्टीट्यूशन ठीक तरह से काम नहीं कर रहा है, तो यह बात काउंसिल में भी आएगी कि आपने इसको कैसे ग्रेड किया है । So, the second thing that I would like the House to know is that grading by itself is not complete. After the grading or accreditation is done, there is a designation by the hon.

High Court in case of domestic arbitration and designation by the hon. Supreme Court in case of international arbitration.

Therefore, there is a second-grade filtration also. Surely, if the ACI does the grading to a body which is not of a desirable standard, Mr. Raja, the hon. Supreme Court and the hon. High Court will take a contrary view. It will also impinge. Therefore, while drafting it, apart from the guidance of Justice Srikrishna Committee, I personally applied my mind that it must work in a proper and healthy manner, with balance and accountability both.

My good friend, Shri N.K. Premachandran, has raised an issue as to why withdraw this. There was the reason for it. Shri Pinaki Misra said that there must be some international arbitration. You are very right. Yesterday, I was thinking about it while preparing for it that in the first flush, we should also not give an indication that we are ousting the foreign arbitrators completely. We are also not ousting the arbitrators of Indian-origin completely. Then, I thought over it. If you kindly go with me to one particular Clause, whereby the Council has got the power and I would just like to read it. In 43J, the qualifications, experience and norms for accreditation of arbitrators shall be such as it is specified in the Eight Schedule and the Central Government may change it after consultation with the Council. Suppose the Council decides that India requires these types of arbitrators. Let the Council take a call, come up with a proposal and the Government will include, it will be a part of the Eight Schedule. But what we have done is very important, which I would like to highlight here.

The arbitrator shall be a person of reputation of fairness, integrity and objectivity. The arbitrator must be impartial and neutral. We have mentioned all these things. But the quality of arbitrator depends upon the needs, business and the environment. Let the Council takes call.

I think, hon. Members, Shri. Kalyan Babu and Shri Pinaki Misra raised a very fundamental point that as to why Judges should always be the arbitrator. India is changing. We can use the services of the finest minds who are handling the IT and communication portfolios to settle disputes relating to IT. So, we can also take the finest minds of India from banking and infrastructure. Take the case of a former Banking Secretary. They can be used. I am repeating what I have said earlier. Suppose there is a public representative of great reputation as the Minister of Finance, Minister of Home and Minister of Public Affairs, but has withdrawn from politics, so why can we not use his services as an arbitrator in the event a particular institution needs him? Therefore, in order to have a robust arbitration institution, we must have these criteria. I am very clear about it.

I would like to flag one thing which the hon. Member, Shrimati Meenakashi Lekhi has mentioned. I hope she is here. आजकल दुनिया में एक नए प्रकार का इम्पीरीलिज्म चल रहा है । Shri Pinaki Misra, Section 11 is very clear. An arbitrator can be of any nationality. There is no bar on that. एक नई बात क्या चल रही है that only the Queen's Counsels or Barristers can be the best arbitrators – London, Singapore or whatever she has said. I have been a fighter against imperialism and I want to make it very clear on the floor of this House that India should not accept any imperialism in the field of arbitration.

Our country has got some of the finest lawyers; some of the finest judges; and some of the finest experts. I would like India to emerge. For me, the best day would be when Indian arbitrators are sought globally and when Indian institutions are sought globally.

Therefore, for that purpose, it is important that our institutions must be fair and good. Why are we doing it?

21.00 hrs (Hon. Speaker *in the Chair*)

We are doing it in line with the larger issue of 'Ease of Doing Business'. We have changed the commercial laws. We have changed the specific relief Act. So, we have done a range of legal activities. They are all designed to attract investment and make India a good place for development. But disposal of dispute is equally important for good governance.

Kalyan Babu has given me a lot of suggestions and food for thought. He said that there must be public servants. Hon. Kalyan Babu has said that the Arbitrator must be accountable. As regards, he may be public servant or not is an issue, let the Arbitration Council decide, but today I would take the benefit of the floor of this Parliament. There is a collective voice of this Parliament that India should become a big centre of arbitration and let the Arbitrators know that they must be fair; they must be intelligent; they must be accountable; and they must decide within time.

As regards time frame for a decision, provision is already there which says that it has to be done within six months then there could be six months more. Clause 29(a) clearly provides that if you do not complete within time limit, then your mandate will go unless the court extends it. आपकी फी भी कटेगी, अगर आप लेट करते हैं ।

So, we have given all these things. We are charting a new course and I think with the good wishes of this House as also the collective and unanimous voice of this House, surely India will become a good hub. It will send a good message for the world and we will surely ensure that India will become a hub. I am grateful to all.

माननीय अध्यक्ष : इसमें तो आप सभी सहमत होंगे ।

श्री कल्याण बनर्जी ।

SHRI KALYAN BANERJEE (SREERAMPUR): I said that arbitral tribunal is a good thing. I have also suggested to think about future. You delete Section 11(1) and (2). You bring arbitral tribunal and forget about arbitration by the parties. Let there be fixed arbitration tribunal. That was my suggestion to you.

SHRI PINAKI MISRA : What is the council of body corporate, I have not understood.

SHRI RAVI SHANKAR PRASAD: Let me clarify on the floor of this House that there is no shareholding at all. The Arbitration Council of India must be a juristic person with proper accountability.

Kalyan Babu, just to clarify your issue, today we have got 35 to 36 institutions of Arbitration in the country. I want their number to be 3000. I will be the happiest person if in Midnapore and in Malda, there are arbitration institutions. That is my vision. In the beginning, let that process continue but so long as that is not there, there has to be an interim arrangement.

I think I have clarified all the points.

SHRI A. RAJA (NILGIRIS): Section 26 (amendment of 2015) and Section 36 are overlapping and creating confusion.

SHRI RAVI SHANKAR PRASAD: There is complete clarity after Sridharan judgement. Some High Courts were saying that it is prospective and some were saying that it is retrospective. The Supreme Court took one view and to obviate any confusion, it said that it shall not apply. As Meenakashi Ji has said, if the parties, by consent, agree to be covered by the new law, that flexibility should be given.

Sir, I have a last appeal to the judiciary because this appeal I can make only on the floor of this House. Judiciary should also be consistent in their pronouncements as far as arbitration is concerned. Kalyan Babu and Pinaki Babu both are smiling and so is Meenakashi Ji, I suppose. There was a Patel's case. First, there was a two-judge bench, then a five-judge bench, then a three-judge bench and then they again differed and went to a seven-judge bench. There must be stability in law.

माननीय अध्यक्ष : प्रश्न यह है:

"कि माध्यस्थम और सुलह अधिनियम, 1996 का और संशोधन करने वाले विधेयक, राज्य सभा द्वारा यथापारित, पर विचार किया जाए ।"

प्रस्ताव स्वीकृत हुआ ।

माननीय अध्यक्ष : अब सभा विधेयक पर खंडवार विचार करेगी ।

Clause 2 ***Amendment of section 2***

माननीय अध्यक्ष : प्रश्न यह है :

"कि खंड 2 विधेयक का अंग बने ।"

प्रस्ताव स्वीकृत हुआ ।

खंड 2 विधेयक में जोड़ दिया गया ।

Clause 3 ***Amendment of section 11***

माननीय अध्यक्ष: श्री एन.के. प्रेमचन्द्रन, क्या आप संशोधन संख्या 1 से 5 प्रस्तुत करना चाहते हैं?

SHRI N.K. PREMACHANDRAN : Sir, I beg to move:

Page 2, line 16, --

after "section"

insert "for an interim period of one year from the date of commencement of this Act". (1)

Page 2, *omit* lines 19 and 20 (2)

Page 2, line 25,--

After "Supreme Court"

Insert "with the prior approval of the Supreme Court". (3)

Page 2, line 26,--

after "High Court,"

insert "with the prior approval of the High Court". (4)

Page 3, line 6,--

after "to appoint"

insert "after obtaining prior permission from the Supreme Court or the High Court, as the case may be". (5)

माननीय अध्यक्ष: अब मैं श्री एन.के. प्रेमचन्द्रन द्वारा खंड 3 में प्रस्तुत संशोधन संख्या 1 से 5 को सभा के समक्ष मतदान के लिए रखता हूं ।

संशोधन मतदान के लिए रखे गए और अस्वीकृत हुए ।

माननीय अध्यक्ष: प्रश्न यह है :

"कि खंड 3 विधेयक का अंग बने ।"

प्रस्ताव स्वीकृत हुआ ।

खंड 3 विधेयक में जोड़ दिया गया ।

खंड 4 से 9 विधेयक में जोड़ दिए गए ।

Clause 10 ***Insertion of new part***

माननीय अध्यक्ष: श्री एन.के. प्रेमचन्द्रन, क्या आप संशोधन संख्या 6 से 9 प्रस्तुत करना चाहते हैं?

SHRI N.K. PREMACHANDRAN: Sir, I beg to move:

Page 4, lines 33 and 34,--

omit "or an eminent person, having special knowledge and experience in the conduct or administration of arbitration". (6)

Page 5, line 4,--

after "industry"

insert "having special knowledge and experience in general administration and in conduct of administration of arbitration". (7)

Page 5, line 7,--

omit ",other than *ex-officio* Members,". (8)

Page 5, line 10,--

omit ",other than *ex-officio* Member,". (9)

माननीय अध्यक्ष: अब मैं श्री एन.के. प्रेमचन्द्रन द्वारा खंड 10 में प्रस्तुत संशोधन संख्या 6 से 9 को सभा के समक्ष मतदान के लिए रखता हूं ।

संशोधन मतदान के लिए रखे गए और अस्वीकृत हुए ।

माननीय अध्यक्ष: प्रश्न यह है :

"कि खंड 10 विधेयक का अंग बने ।"

प्रस्ताव स्वीकृत हुआ ।

खंड 10 विधेयक में जोड़ दिया गया ।

खंड 11 से 13 विधेयक में जोड़ दिए गए ।

Clause 14 ***Insertion of new schedule***

माननीय अध्यक्ष: श्री एन.के. प्रेमचन्द्रन, क्या आप संशोधन संख्या 10 से 13 प्रस्तुत करना चाहते हैं?

SHRI N.K. PREMACHANDRAN : Sir, I beg to move:

Page 8, *for* line 5,--

substitute "(v) has been an officer of State Legal Service or Law Department not below the rank of Deputy Secretary with an experience of ten years". (10)

Page 8, lines 10 and 11,--

omit "Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector or self-employed". (11)

Page 8, lines 13 to 15,--

omit "or having experience of senior level management of a Public Sector Undertaking or a Government company or a private company of repute". (12)

Page 8, lines 19 and 20,--

omit "Autonomous Body, Public Sector Undertaking or a senior level managerial position in a private sector". (13)

माननीय अध्यक्ष: अब मैं श्री एन.के. प्रेमचन्द्रन द्वारा खंड 14 में प्रस्तुत संशोधन संख्या 10 से 13 को सभा के समक्ष मतदान के लिए रखता हूं ।

संशोधन मतदान के लिए रखे गए और अस्वीकृत हुए ।

माननीय अध्यक्ष: प्रश्न यह है :

"कि खंड 14 विधेयक का अंग बने ।"

प्रस्ताव स्वीकृत हुआ ।

खंड 14 विधेयक में जोड़ दिया गया ।

खंड 15 और 16 विधेयक में जोड़ दिए गए ।

खंड 1, अधिनियमन सूत्र और विधेयक का पूरा नाम विधेयक में जोड़ दिए गए ।

माननीय अध्यक्ष: अब मंत्री जी प्रस्ताव करें कि राज्य सभा द्वारा यथा पारित विधेयक को पारित किया जाए ।

श्री रवि शंकर प्रसाद: सर, मैं प्रस्ताव करता हूं:

"कि विधेयक, राज्य सभा द्वारा यथापारित, पारित किया जाए ।"

माननीय अध्यक्ष: प्रश्न यह है :

"कि विधेयक, राज्य सभा द्वारा यथापारित, पारित किया जाए ।"

प्रस्ताव स्वीकृत हुआ ।

माननीय अध्यक्ष: मैं सभी माननीय सदस्यों को और मंत्रिमंडल के सभी सदस्यों को बहुत-बहुत धन्यवाद देता हूं कि इस सदन में आज आप सब के सहयोग से तीन विधेयक पारित किए गए ।

माननीय संसदीय कार्य मंत्री ।

THE MINISTER OF PARLIAMENTARY AFFAIRS, MINISTER OF COAL AND MINISTER OF MINES (SHRI PRALHAD JOSHI) : Hon. Speaker Sir, I congratulate you for taking such an initiative in passing these three Bills and also all the hon. Members and all the staff.

माननीय अध्यक्ष: कल भी तीन विधेयक हैं ।

श्री प्रहलाद जोशी: सर, कल भी तीन विधेयक हैं, कल भी इन्हें पारित करवाएं ।

माननीय अध्यक्ष: सभा की कार्यवाही कल दिनांक 2 अगस्त, 2019 को सुबह 11 बजे तक के लिए स्थगित की जाती है ।

21.09 hrs

The Lok Sabha then adjourned till Eleven of the Clock

on Friday, August 2, 2019/Shravana 11, 1941 (Saka).

* Not recorded

* Not recorded.

* English translation of the speech originally delivered in Tamil.

* English translation of the speech originally delivered in Malayalam

* English translation of the speech originally delivered in Tamil.

* Not recorded.

* Not recorded

* Not recorded.

* Laid on the Table.