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Title: Statutory resolution regarding Disapproval of New Delhi International Arbitration Centre Ordinance, 2019 and passing of the New Delhi International Arbitration Centre Bill, 2019 (Statutory Resolution -Negatived and Government Bill-Passed).

HON. SPEAKER: Hon. Members, we shall now take up Item Nos. 23 and 24 together.

Shri Adhir Ranjan Chowdhury.

SHRI ADHIR RANJAN CHOWDHURY (BAHARAMPUR): Sir, I beg to move:

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

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

“That the Bill 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, be taken into consideration.”

Sir, I hope my friend and distinguished Member, Shri Adhir *Babu*, he listens to me what this whole thing is about. I will explain to him in detail while responding to the debate, I am sure he would not surely press for the Motion to disapproval of the Ordinance.

Our Government is very keen that India should become a big hub of domestic and international arbitration. This New Delhi International Arbitration Centre is basically designed to give the International Arbitration Centre an eminent institution of global importance. I want to just convey to this House that the Government have to spend Rs.30 crore. Since 1995, only 55 arbitrations have taken place. No work was going on. Therefore, the Justice Srikrishna Committee was set up, under an eminent Supreme Court Judge, who had given a recommendation that this Centre must be taken over by the Government to make it an eminent Centre of global arbitration.

16.19 hrs

(Shri N. K. Premachandran *in the Chair*)

They have recommended that other proper other arbitration laws should also be made. With that, we had to fast track and convey a good sentiment to the global community and Indian community. I would like

to say that we are very serious about fast tracking arbitration proceedings. Therefore, we have come before the house. I would urge the hon. Adhir Babu - if he listens to me – that when the debate moves on, he may please explain his point.

I will reply to it. In fact, this is one issue. There should be bipartisan understanding for the sake of India becoming a good hub of arbitration. I would request him not to press for it.

HON. CHAIRPERSON: Motions moved:

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

“That the Bill 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, be taken into consideration.”

SHRI ADHIR RANJAN CHOWDHURY: I do not have any two opinions with you insofar as the contents of the Bill is concerned. So, I am wholeheartedly supporting you because the intention of this legislative document is noble; that I cannot deny. It is commendable in intention but, again, I would like to flag your attention that it appears to me as ambitious in terms of execution.

Litigants experience eternity when they go through courts seeking resolution of disputes and the Law Commission headed by Justice A. P. Shah paved the way for the amendment of the Arbitration and Conciliation Act, 1996....(*Interruptions*)

HON. CHAIRPERSON: Please, the House be in order.

... (*Interruptions*)

SHRI ADHIR RANJAN CHOWDHURY : Sir, India has a long tradition of arbitration. It is not a new practice. In our ancient times also, for dispute resolution, there were various kinds of mechanisms. Even in the ancient text of Narada, it refers to three types of popular courts – Puga, Sreni and Kula. Besides, at the village level, panchayats have also been a prevalent form of alternate dispute resolution. So, what you are proposing here is an alternative dispute resolution.

The Bill, actually, is simply a new incarnation of ICADR. Now, you are going to replace the International Centre for Alternative Dispute Resolution by New Delhi International Arbitration Centre. This is the simple difference. Yes, your intention is that India should become a global hub for arbitration like Singapore, Hong Kong and Japan. We need a modern dispute resolution mechanism and we need modern judicial processes so as to facilitate arbitration because India is now

witnessing an outward and inward FDI. Naturally, many companies are involved in trans-national commercial and business activities.

In order to resolve any dispute, we need a tribunal. But, again, I would like to draw the attention of the hon. Minister that the experience of fast-track courts in our country is dismal. Do we have the requisite infrastructure for the expeditious resolution of disputes? I would suggest that the Government contemplates devising newer methods to allure arbitration cases to Indian soil which is still an on-going exercise. Merely modernising the law and scaling up judicial commitment towards ensuring unbiased and expedient enforcement of arbitral award will not suffice. I must flag your attention on this issue.

Sir, I am quoting these few words from an eminent person, the Registrar and Assistant Registrar, Supreme Court of India.

“The Indian judiciary has a greater responsibility to guard investors’ interests while, at the same time, ensuring that the State policies are economically beneficial for the country and lead to sustainable development. The appropriate State action for expropriating the assets of the foreign investor is a critical issue that needs careful judicial scrutiny. In order to compete with regional and neighbouring arbitration friendly States, India will have to invest internally in strengthening the judiciary by increasing its workforce as well as by promoting highest level of judicial independence free from Executive influence”.

Sir, there is a severe lack of judicial officers in our courts starting from District Courts to the Supreme Court. So, we need to have this infrastructure in place before contemplating to turn India into an

arbitration destination. Yes, it is time to turn India into an arbitration destination specially in contrast to the contemporary institutions which are available across the globe.

I would also suggest that the Government should conceptualise a National Arbitration Policy in line with the National Intellectual Property Rights Policy to foster investor confidence in Indian legal system. This will in turn strengthen Indian judicial institutions in re-orienting themselves and help India emerge as a regional champion of the international dispute resolution regime, and make the centre a model judicial institution especially amongst the Commonwealth sister States.

Ravi Shankar Prasad Ji, you should think over it. You were saying that we are going to oppose the Bill. That is not correct. The way you are resorting to the path of Ordinances simply draws my criticism. Otherwise, we do not have any dispute with you in this regard.

Strengthening of arbitration in the country would have to be coupled with promoting arbitration as a mode of dispute resolution. This should include preventing the tendency of private players to rush to courts without resorting to relevant provisions of arbitration in the contract where the commencement of work was stalled. This can be done to create awareness – I would emphasise this - and to bring a better understanding of commercial matters and an ecosystem wherein the awards are passed by neutral umpires to ensure that it is a win-win situation for all the stakeholders, leaving limited scope for the award being challenged under Section 34 of the Arbitration Act, 1996.

Sir, that is why I suggest that the Government should be careful on the issue of control mechanism. According to the Bill, the Central Government is the appointing authority of members of NDIAC, and a

periodic contributor to its fund. Further, its accounts are proposed to be audited by the C&AG. The Central Government would also have the power to remove members from office.

Investors adopting alternative modes of dispute resolution prefer a neutral decision-making body. This is the moot point. You should provide a body which maintains the sanctity of arbitration. A neutral decision-making body is a must to make it a success. A proactive role played by the Central Government may discourage the contracting parties from referring disputes to the proposed institution NDIAC.

The Bill only addresses the administrative issues relating to NDIAC. It remains to be seen how the procedural framework concerning the settlement of disputes is laid. If you want to compete with the other contemporary international institutions, first of all it must be competitively priced.

Ease of Doing Business has to be established. So, it must be competitively priced, have state-of-the art facilities, and must have precise timelines for the completion of arbitration proceedings. Separately, provisions such as consolidation of arbitrations, emergency arbitrators, immunity to arbitrators, and confidentiality of information that were not envisaged under the ICADR Rules must be incorporated in the NDIAC procedural framework.

That is why we are helping the Minister and the Government to make the institution more robust, more comprehensive, and to be able to compete with contemporary international competitors.

I will simply flag the attention of the hon. Minister not for opposing the contents of the legislative document, but I would like to know

whether The International Arbitration is governed by the UNCITRAL Model Law which has been adopted by the present statute called the Arbitration and Conciliation Act, 1996 and whether it may say that there is no further need to set up a Centre for dispute resolution as all the commercial disputes covered under the Act can be settled under the Act.

In the case of international arbitration, the seat of arbitration is important and after the judgement of the hon. Supreme Court in Indus Mobile Case, in 2017 –the Indus Mobile Case must be remembered – which followed a number of previous Supreme Court pronouncements, the jurisdiction of arbitration is much more streamlined. Here, you are talking about the streamlining of this institution. So, in the wake of Indus Mobile Case, 2017, which followed a number of previous Supreme Court pronouncements, the jurisdiction of arbitration is much more streamlined, which means, already streamlined, and the issue with relation to seat of arbitration and jurisdiction has been already simplified.

There has been a recent amendment in the Arbitration Act of 1996 which has even more simplified the situation as the Fourth, Fifth, Sixth and Seventh Schedules have been incorporated in the Act, making them an integral part of the Act, and any further centre for international arbitration will not suffice the cause and can make it even more cumbersome. So, this kind of apprehension is being expressed by various expert organisations.

The powers of appointment of arbitrators have been vested with the Act under section 11 of the Act and it has undergone a sea change over the past two decades upon pronouncement of various path-breaking judgements of the hon. Supreme Court starting from Patel Roadways

Case and Kaiser Constructions Case decided by the hon. Supreme Court and the Act itself is a complete code for conducting the process of the alternative dispute resolution process. No further centre is required to be added and the Act itself covers all aspects of arbitration. So, yes, some sort of confusion are being arisen. Therefore, I would like to have a clarification from the hon. Minister.

The enforcement of foreign award is done in terms of section 48 onwards if an award is passed outside the Indian territorial jurisdiction and the New York Conventions are applicable to enforcement of the awards which are speedy and efficacious. India is a signatory to the convention and the process is a more revised version of the earlier convention called the Geneva Convention Awards. It is a more plausible and speedy way to deal and dispose off the disputes in hand.

My argument is this. You are exhausting all your resources to project India as an international arbitrational destination. We are supporting it. But does this kind of institution need any kind of Ordinance in order to give it a shape? Do you think that invocation of Ordinance only for replacing a former institution into a new incarnation was an imperative need? That is why I am opposing the way you are resorting to the path of Ordinance. But I do not have any dispute with you in regard to arbitration and for the arbitration mechanism to resolve any kind of commercial dispute or business dispute because, like you, we are also eager to see India as an attractive destination for arbitration and for dispute resolution mechanism. With these words, I am concluding my speech.

Thank you.

SHRIMATI MEENAKASHI LEKHI (NEW DELHI): Thank you, hon. Chairperson, for letting me speak on this subject. I was just listening to Mr. Adhir Ranjan Chowdhury and all that has happened between 1995 and 2019 so far as this particular institution is concerned.

If I may begin with Hindi, हमें तो वायदा पूरा करने की आदत है, चाहे आपका हो या हमारा हो । They promised to set up an institution of international recognition; they promised that they will have Delhi as the centre of arbitration and the litigation burden that this country is faced with, shall be reduced. But all that could not be completed because nobody bothered about the institution after it was set up. All the money that was spent on the land and infrastructure and the salaries of the staff etc. could only bring results in 23 cases in 22 years. This is the achievement of the past Government.

We were faced with handling of this institution. So, when this institution was brought to us and it came to our notice, we tried to study every aspect of litigation and we tried to study every aspect by which it can be corrected. So, to begin with, if I may take the needle back a little bit in time, in 2015 we brought out the legislation which was the Commercial Courts Act, setting up Commercial and Appellate Divisions of High Courts, by which we tried to expedite the settlements of commercial disputes and their litigation processes in an efficacious manner. The second amendment was the amendment to Arbitration and Conciliation Act in 2017, where we brought a series of amendments – if I am not wrong, more than 15 amendments happened in that Act- to again make the process more favourable to the process of arbitration and alternate dispute resolution. What really transpired was to make India the hub of commercial litigation.

It is only a premonition that the Budget Speech gets concluded and this Bill comes up. I see the linkages between the two. The linkages are that if India wants to get FDI, if India wants to progress economically, if India wants to be a global leader, then disputes related to money and finance need to be handled in an efficacious manner. If they are not handled in an efficacious manner, India as a destination for money and as a place where investments can happen will always suffer. It is for this reason that all these amendments in the economic restructuring had to happen. We, as a Government, had already decided our roadmap and one after the other, we are bringing these structural changes. The next structural change was to set up this particular institution.

When we were setting up this institution, Mr. Adhir Ranjan Chowdhury rightly said, “You only change the name”. But what he missed out is that it is not just the re-branding which has happened by virtue of this Bill, but in addition to that, the entire administrative structure has been changed to identify areas where work can take over and it is interesting enough that impediments to the efficacious disposal of commercial cases was judicial overreach at times. There was two-fold overreach. One was that while parties who are not in agreement of arbitration but arbitrations are agreed upon in agreements in their settlement clauses, one of the two will approach the court and by approaching the court, impede the process of arbitration.

The second aspect is, while interim orders need to be granted, those interim orders will suffer because a stay will be granted by one court or the other. To get out of this particular impediment, changes were made in the ACA. By virtue of those changes in the ACA, we are at present in a new set up. Adhocism, which was the currency of the earlier days, was

going on and through ad hoc processes the so-called arbitration mechanism in this country existed.

As per the NITI Aayog Report by Bibek Debroy and Miss Jain, India takes 1420 days and 39.6 per cent of the claim value for dispute resolution. This is a very-very high rate, which is higher than OECD countries and South Asian countries. Globally, we are standing at 178th rank, out of a list of 189 countries in ease of enforcing contracts. We are seeking global investment when we stand at this position. We have improved upon the ease of doing business. We have moved to a big number. But ease of enforcing contracts still remains a dream. To ensure the ease of enforcing contract, this is one such step. With 3.1 crore cases pending before courts, in addition to the commercial litigation, it leads to difficulties in commercial litigation. So, we had to find a solution to speed up the dispute resolution and that comes from this particular Bill.

In this particular Bill, there is a permanent structuring. The International Centre for Alternate Disputes Resolution, which was earlier working in Delhi, was actually ineffective. I have given you the statistics of 23 cases in 22 years, and nobody ever revised that mechanism. It is surprising that when the Government is incurring the huge expenditure, nobody ever revised either the expenditure or the mechanism. The Bill was passed by the Lok Sabha and subsequently the Bill lapsed because of the announcement of elections. The 17th Lok Sabha came in and an Ordinance was brought in.

By replacing the Ordinance and bringing it as a Bill, we are trying to make it a statutory structure. By virtue of making a statutory structure, all the expenses which are incurred on this particular Centre –

we will be making it an international centre of excellence – will be subjected to C&AG and thus auditing will be done by the Comptroller and Auditor General of India. This is a good mechanism by which efficacy can be tested and checked repeatedly. The Parliament also will definitely have a right to get the details.

What was the need or importance of this particular Bill and what is the target that we have set up? I have said it earlier also and I am repeating myself that this is a Government which is working with a plan. The plan is to enhance gross inputs and gross revenues and filling the gaps so that all the leakages stop. If you look at the litigation structure, you will find that for arbitration a lot of business is going to Singapore, London, and Hong Kong. All the five big bodies, including Stockholm, are the ones who are taking away our business. Since they are taking away our business, we need to stop it from going there.

The Government of India is one such body which is itself litigating at many places. In view of the fact that we are litigants in areas outside the country, it was a matter of surprise for me, that the London Court of International Arbitration had its office in Mumbai till 2016.

It was operating out of Mumbai. Then, the International Chambers of Commerce also had its centre in Mumbai, though it is doing only the administrative work. Most of the arbitration proceedings are getting shifted to Singapore. Then, ICC was operating from here. Now all these big chambers are operating here but what is happening to domestic and international arbitration in India? What is happening is that we have ad hocism that somebody approaches the court and seeks an arbitrator to be appointed. Somebody from the panel of local commissioners will be appointed and that ad hoc method will lead to misuse of funds, no

certainty of methodology, rules, etc. The UN court will adopt those rules and somebody will adopt their own rules. So, this ad hoc process had to finish. That is why, this particular Centre is a Centre of great importance to bring in a shift in our thinking process and also the litigating process.

Now business of lawyers need not come out of courts. Business of lawyers can come out of arbitration proceedings. To adopt that methodology, the mindsets need to change, and for changing those mindsets, this particular institution will go a long way. To establish that, we set up a committee to look into all the aspects, all the vulnerable sections, and how and why India was vulnerable. Why were we not able to get adequate inputs into this process? Why were we suffering till 2016-17? Other institutions were getting business out of India.

Finally, the Justice Srikrishna Committee Report came and it suggested many methodologies. It suggested various methodologies and also discussed excessive court interventions. Excessive court interventions were one of the many things which were impeding the process. The judicial interpretations were leading to slowing of the process. As per certain reports, in 2011, Rs.56000 crore was stuck in infrastructure development projects. This money is the money lost. I remember from my experience that the Signature Bridge which was to be completed in Delhi was not getting completed. We have seen Bogibeel bridge in Assam. We have seen Zoji La tunnel. All these projects were not getting completed because there were something or the other which was relating to disputes of contractors, etc.

We have to look at the structure again and see what was available to us and how you deal with those litigations. We have to see time and

money which is going to be consumed from the trial court to the Supreme Court. In commercial litigations, you lose out on money and time. The time is of essence. The alternative dispute redressal mechanism did not exist in the format which is required. It is because it did not exist. There was economic slow down and GDP rate not being there; and job is one issue which they keep talking about. So all these problems are inter-related. To deal with it, we had about 35 institutions working in India. The Srikrishna Committee sent various forms to be signed by people across. What was surprising is that some of the so-called centres which were running dispute resolution mechanism did not even have a proper website and they were not even answering those forms or any of the questionnaires. All the Chambers of Commerce which are based in various cities were the ones which were running massive task of dealing with arbitration process. In the name of national body, we had the International Centre for Alternative Dispute Resolution in Delhi.

There were some branches in Mumbai and in a couple of other places. So, all that has been taken over because this was a society and this society came up as a society which was virtually non-functional in its true nature and was not really leading to the objective it was set up. The previous Government had set up the objective. We are the ones who are trying to achieve those objectives. We are trying to achieve those objectives by working in seriatim by correcting various laws and in that process of correction, the correction is also to the statutory mechanism which has been sought to be brought in.

Sir, so far as this particular aspect of why alternative dispute resolution mechanism is necessary, I remember one of the Chief Justices of Singapore once said that it is not alternative dispute resolution, it is an

appropriate dispute resolution. This is an appropriate dispute resolution because of the amount of money and funding since most of the companies will always have a panel of lawyers and if they owe some money, a few thousand crores to a set of companies, they will refuse to pay that money because they always have a battery of lawyers who are on the payroll and can litigate. A small person suffers in these processes and will never be able to recover the rightful amount. So, dispute resolution is one mechanism by which all sides win. The efficacy is maintained; the cost is less; and alternatively the adversarial methodology which we adopt in the courts is also not there. The adversarial mechanism leads to a lot of bitterness and that bitterness is reduced by this mechanism.

In alternative dispute resolution there are various methodologies – negotiate, mediate, conciliate, and arbitrate. So, arbitration itself is beyond the dispute that has happened. First approach is the preventive approach. In preventive approach the three methodologies can work – you negotiate; you try to conciliate and adopt some methodology so that there is no dispute. But finally if dispute has happened before making it a worst form of dispute that it goes to a litigating side it should be brought before the arbitrator and the arbitrator is a neutral party or a third party which will take a call on how to negotiate between the two parties and bring in a proper mechanism so that no injustice happens and the award is granted and it is settled between the parties and the parties can continue.

In our country we had a number of PSEs. They had their own methodology which they call permanent method of arbitration which is dealing with arbitration. But this permanent body is not actually under SEA and because this body is not under SEA, the award granted or

disputes settled cannot be enforced in the court of law. So, this itself was a big dispute and a big problem. Then we had issues with BIT – Bilateral Investment Treaties – and I remember when the hon. Prime Minister, Shri Narendra Modi ji went to Canada, there was a BIT and there was a dispute regarding the earlier BITs which existed. We tried to alter that aspect and non-negotiations and other things happened. So, this Government has chosen to do the BIT correction as well. We are focussing on multi-lateral treaties also.

This centre will be working as a composite centre dealing with all aspects. When we look at polity, I believe that policy decides on economy; economy decides on society and society, in turn, decides on polity and polity, in turn, decides on policy. This is a cyclic cycle and in this cyclic cycle each side is impacting the other. So, there is a symbiotic relationship among all. If we really want to change the country, if we really want to settle dispute and if really we want *sabka sath, sabka vikas and sabka viswash*, that cannot happen until and unless we have adequate economic worth. That adequate economic worth will not happen until and unless our global positions changed; until and unless our parameters changed and until and unless the way people look at us changes, and for changing all that, we have to change our ways also. This is one way of changing our ways in which we change the way we litigate and the way we litigate is not necessarily through 10 years or 14 years of litigation in the courts but by bringing these centres in the country.

Even the PSUs are in dispute with the Government. So, in most disputes, arbitration mechanism can exist and Government itself can be a body to promote that kind of an arbitration.

I am surprised to know that when big industrialists go for arbitration, they choose London over Delhi, Singapore over Delhi, Stockholm, ICC and Hong Kong over Delhi. And parties are all Indians. On all sides, parties involved are Indians. If parties are Indians, why have they chosen to go to Singapore? I think, we all need to understand that point also. We all need to understand that if there is a litigation between Indian parties, if companies are Indians, if executives are Indians, then why is it that everyone is choosing to go out of the country? Why is business going out of the country? Business is going out of the country because of enforcement aspects. It is because of the impacts it has and clarity methodology. Why is adhocism chosen? It is because there is no clarity to show that this is the time frame, this is the fee structure, this is the place where recordings can happen, this is the place where Google hangout is possible, this is the place where you can have multiple bodies interacting with each other, and this is the place where screen is available. Infrastructure itself is an issue. From infrastructure to qualified arbitrators, to qualified methodologies is an issue.

I was talking with some youngsters and I saw the way they were discussing arbitration. The best thing is that they write papers on arbitration. The country where those papers and magazines are getting published happens to be Singapore or London or Hong Kong. No such magazine of repute or journal of repute is coming out in India publishing them.

When I was growing up, I remember that I participated in one arbitration in early years of my practice. The arbitrator was a criminal lawyer who practised criminal law and the person arguing before him happened to be an engineer because it was an infrastructure

development issue. This was the condition of arbitration in India thirty years ago. Now when I look at the present-day scenario, I find that youngsters are travelling all over, they are writing papers and they are participating in how to improve BITs in India, they are members of those Committees and speaking about arbitration. They say that this is the game changer. So, I go back to the words of Swami Vivekanand who said that youth of character is what he had faith in. I also have the same faith in youth of character and youth which is obedient, knows, follows the rules and will bring processes in a transparent manner and forward direction and change the way we, as a country and an economy, operate. The reason for us to operate as a country and economy is necessary to be mentioned. ...(*Interruptions*)

HON. CHAIRPERSON: The main question is regarding reputed qualified arbitrators.

SHRIMATI MEENAKASHI LEKHI : Sir, I am coming to that point.

Reputed qualified arbitrators is the one which this Bill is providing for. Infrastructure to the cost of litigation which is speedier and cheaper will be taken care of. Ease of doing business will also be taken care of.

I am coming to the aspect as to what it is actually trying to bring out. It is trying to bring out quality of experts in India. That is why I narrated that incident of 30 years ago where arbitrator was a senior criminal lawyer and the arguing counsel before the arbitrator was an engineer. The cost incurred was huge. What is the claim and aim of this particular body, New Delhi International Arbitration Centre? It is providing facilities and administrative assistance for conciliation, mediation, and arbitral proceedings. There is a technical difference between each of the three stages. It maintains panels of accredited

arbitrators, conciliators, and mediators. It maintains a panel which is an authorised body. Then it provides cost effective and timely services for the conduct of arbitrators. It promotes studies in the field of alternative dispute resolution. It is basically like a research body. It cooperates with societies and institutions.

17.00 hrs

There are various bodies like CII, FICCI, and all the commercial bodies which have industrialists on board, and these are the people who will be litigating. So, cooperating with them and choosing arbitrators and all other kinds of facilities is what this is all about. It is going to be a registered society in order to promote resolution of disputes through alternative dispute resolution method.

So, composition is what is very interesting. I have already spoken about finance and audit. Now, composition is that the proposed NDIAC will consist of seven members which will include: (i) a Chairperson who has been a Judge of the Supreme Court or a High Court, or an eminent person with special knowledge and experience in the conduct or administration of arbitration, (ii) two eminent persons having substantial knowledge and experience in institutional arbitration, (iii) three ex-officio members – this is very important because it is including a nominee from the Ministry of Finance and a Chief Executive Officer (responsible for the day-to-day administration of the NDIAC), and (iv) a representative from a recognised body of Commerce and Industry. So, there will also be a representative from the Commerce and Industry body appointed as a part-time member on a rotational basis. So, this is the structure. By having a statutory status, it is also going to have the impact of what a Statutory Body usually will have.

Coming back to the issue, I believe it is about 18 amendments which happened in the ACA to make it at par. Post an award is granted, nobody can go to Court. The Government can look into it in the rules because when the businesses go out of the country, like Singapore, etc., they then cannot be challenged in the local Courts. So, quick and effective prevention mechanism is what needs to be done. To fully embrace the institutional arbitration is what we need to deal with. So, 35 units which existed and the caseload are the issues which are significant. I have already spoken about PSEs, PMAs and ACA not being enforceable in the Courts and this is what is leading to the problem of efficacy and legitimacy.

So, all I can say is that the mission mode in which the Government of India is working and the Prime Minister is also setting target for each one of us including the Ministers, we all need to deliver on our promises and that is how important deliberations need to be made to ameliorate the business environment in the country. Then, the outcomes will be in line with outlays. Otherwise, the outcomes will never be in line with outlays. So, to improve all that, this is a policy move which will change the environment and the eco-system in which commercial litigation and also commercial development happens. For every development, we need economy to be with us. All I can say is this. आज जी तो बहुत चाहता है कि सच बोलें, लेकिन हिम्मत नहीं होती । बाईस साल के अंदर 23 केस करने वाले इंस्टीट्यूशन को किसी ने चेक नहीं किया । उस समय कोई नहीं बोला कि इसको कैसे ठीक करना है । आज किसी ने बोलने की ही नहीं बल्कि ठीक करने की भी हिम्मत की है ।

So, I support the Bill. Thank you very much.

PROF. SOUGATA RAY (DUM DUM): Sir, I rise to speak on the New Delhi International Arbitration Centre Bill, 2019.

I feel highly inadequate to speak on the Bill. I have been preceded by a Lawyer, Meenakashi Lekhiji. Now, I will be succeeded by an eminent Lawyer of the Supreme Court, Pinaki Misraji. In the face of their knowledge, what else can I add? But I always believe that common sense is actually more important than a legal sense. Therefore, I will apply my common sense to speak on this Bill. Ultimately, the answer will be given by Shri Ravi Shankar Prasad, an eminent former Lawyer of Patna High Court and then the Supreme Court.

So, I am sure, all the cobwebs in my mind will be cleared by their learned interventions. This Bill has a chequered history. This Bill was earlier discussed in this Lok Sabha. It was passed in Lok Sabha, then it went to the Rajya Sabha. The Lok Sabha was dissolved. So, the Bill, pending in Rajya Sabha, lapsed. After that, the President promulgated an Ordinance on 2nd March, 2019. This is an important Bill, but this is not an emergent Bill. There is nothing emergent about it. This has been hanging fire for years together. A Committee was appointed; the Committee submitted a report. Why did you come out with the Ordinance? I do not like any Government taking the Ordinance route without coming to Parliament. So, the Minister has a responsibility of answering what was the great urgency of promulgating the Ordinance.

Having said that, I may say that this Ordinance is mainly to take over the assets of an organization for arbitration which is already existing, that too in Delhi. Maybe the Government was afraid, it will clarify, that the Centre for Alternative Dispute Resolution have taken over their assets. You are scared that the assets will go. That is why you did what you did. Arbitration is definitely a better way of dealing with contract disputes because disputes linger on in court. The Indian legal system takes 14-15 years to get disputes resolved. Arbitration is an easier way, where both parties agree to an Arbitrator. The Arbitrator is normally a former retired judge, who has no work. So, they earn a little bit extra in going for arbitration. If both parties agree, then there is no problem. Nowadays, there are a lot of international disputes happening.

Now, India claims to be sixth largest economy. We are proud that we are bigger than economies of small countries like France, England, Germany and Japan. These are small countries, equal to a State of ours. We tom-tom that. Now we are trying to enter the international arena. Many contracts are given to foreign companies. For instance, in all the Metro Railways, contracts are given to foreign companies to do the work. For national highways, you will see companies from Malaysia coming, this and that. For East West Metro in Kolkata, Spanish are supplying the rakes. So, if there is a dispute between the two, the Government and the foreign company, arbitration is called for. They would prefer to go for arbitration abroad. We would like to have the arbitration here, but for that we have to build up confidence in the disputing parties that we have a good system of arbitration. Mr. Prasad's effort to have this arbitration system is a good effort in this regard and especially in Indian context. Alternative Dispute Resolution is a must

because construction work takes a long time and things drag on for very long.

Sir, this Bill has been brought in the House. The Bill has not been brought overnight. There was a Committee appointed with Justice B.N. Srikrishna as Chairman. He normally presides over all Government Committees. He presided over the Mumbai Riots matter; and then, on arbitration also, he is supposed to be an expert. I do not know what law he is an expert on, but anyway, the Government gives him all the committees, which is a good thing for a retired person! ...*(Interruptions)* It is because Judges are supposed to be invaluable.

Now, what are the objectives of the International Arbitration Centre? They are:

To bring targeted reforms to develop itself as a flagship institution for conducting international and domestic arbitration;

To provide facilities and administrative assistance for conciliation, mediation and arbitral proceedings.

To maintain panels of accredited arbitrators, conciliators, mediators, etc. One chamber will be established where panels will be maintained.

To facilitate conducting of international and domestic arbitrations;

To provide cost-effective and timely services for the conduct of arbitrations; and

To promote studies in the field of alternative dispute resolution, cooperate with other societies.

Sir, the Bill also speaks of setting up of an arbitration academy where people will be trained as to how to arbitrate. All these are good

ideas. Ultimately, the arbitration centre will be set up. Arbitrations have become necessary because the Government has not been able to unclog the country's courts. Since this involves hiring lots of new judges as well as building new courts, getting a model arbitration law was necessary.

The Arbitration and Conciliation Law was brought in 1995. The amendment to the Arbitration and Conciliation Law was brought in 2015. Then, we are coming with present Centre. But we can say that despite several years of the lobbying in place, the Alternative Dispute Resolution Mechanism has not really taken off. If that is so, it is due to the Government's obduracy as well as the fact that the initial law had some critical lacunae.

When arbitration awards went against the Government or a PSU, especially those from international tribunals, as we have seen in the Reliance-ONGC award, the Government's first attempt is to challenge it in the court. In this case, since ONGC lost, the Government has said that it will challenge it in an Indian court. Normally, arbitration awards can be challenged on very limited grounds. Otherwise, they would get struck in courts for decades. But this has never stopped the Government. Even in the Tata-Docomo matter where the Government did not have to shell out anything, it challenged the global award against the Tatas. But the Tatas agreed to the arbitration. The Government went to court against the arbitration award.

The situation in domestic arbitration is very bad. Under earlier Indian law, if the losing party challenged the award in a court of law, the award never got implemented. The court, in turn, had to rule on it that 'your challenge was enough'. Many courts were happy to entertain such challenges even though the grounds were not solid enough.

So, arbitration also has had a chequered history. People have gone to court against arbitration awards; and the delay that they feared, has taken place.

This Committee will consist of a Supreme Court Judge and several experts. I do hope that proper persons are appointed to this Committee. Arbitration is the need of the hour. The Government talks so much about ease of doing business. But if the matters get clogged in courts, then what will be there as ease of doing business? The Government talks about calling foreign capital. In fact, the Government has gone to the extent of saying they will borrow money from abroad in dollar terms, which I do not think, is most advisable.

The system must be unclogged for people to really feel attracted to invest in India. So, this is a good step that is taken. I hope that the International Arbitration Centre will act.

With this, I support the efforts of the Minister to unclog the system.

SHRI RAGHU RAMA KRISHNA RAJU (NARSAPURAM): Thank you, Sir, for giving me this opportunity. I am speaking after Meenakashi Lekhi ji and so many eminent lawyers and persons with abundant common sense. I am, in a way, the most experienced person in the field of litigation wherein I had filed many arbitration cases against the companies. So, I am an experienced person. In that sense, I will speak.

Definitely, I wholeheartedly support this step of the Government of India through our hon. Minister.

It is a very welcome step to have this New Delhi International Arbitration Centre in lieu of the International Centre for Alternative Dispute Resolution set up in 1995 under the Societies Act. It is already delayed. Many people were asking: “Why is this Ordinance?” It was already passed by the Lok Sabha. Then, it got stuck in Rajya Sabha because of Elections. There is nothing wrong to come with an Ordinance for a Bill which is already delayed. What I specifically want to emphasise is that it was taking years time. Despite some amendments that had come in 2015 and 2017, there is no change. When we are comparing ourselves with our competitors like Singapore and London – we want to be their competitor – they were doing most of their proceedings by mail. They were finishing their actual proceedings in five days compared to our four to five years of time that we were taking. They were able to complete their entire proceedings including evidences, etc., within five days.

Our hon. Minister has to take so many effective steps for bringing eminent people into the system. Not only jurists but also some technically sound people should be there as a part of this new Centre so that all the disputes can be resolved in time. It should also be cost-effective. We all know how much costly and time-taking it is.

Sougata Ray *ji* has given an example of ONGC and Tata Docomo. I do not want to get into those examples. I have my own example wherein I had gone in an arbitration against GAIL and they preferred to go in for an appeal. That is pending for the last three years. It is only an example that I am giving you. There is no conflict of interest or

anything. I do not have any Tata Docomo example. It is because of that I am only giving this as an example. A majority of litigations are with the public sector undertakings. We will have to see how we will boost the confidence of the investing community. Meenakashi Lekhi ji has made it very clear that after the Finance Bill, this would improve the GDP growth rate and 'ease of doing business'. A majority of litigations are with the public sector undertakings. The Government is taking a major step in setting up this organisation wherein majority of the appointments were made by the Government but sooner or later they should try to move as fast as possible to make it as an autonomous body.

This is very much required to make it as a real international hub. Then we can also have our offices in Singapore and London where we get such type of business. It is because, as Madam said, even for contracts between Indians, we are preferring to have an Arbitration Centre at London or Singapore. We are not able to get good lawyers also because when we request for a particular lawyer, they say that he or she is in London or Singapore. So, in the interest of the Indians, we should have a wonderful International Arbitration Centre and it should be totally autonomous and cost-effective.

Thank you, Sir.

श्री विनायक भाऊराव राऊत (रत्नागिरी-सिंधुदुर्ग) : सभापति महोदय, मैं नई दिल्ली अंतर्राष्ट्रीय माध्यस्थम् केन्द्र विधेयक, 2019 को अनुमोदन देने के लिए खड़ा हुआ हूँ । दिल्ली एक अंतर्राष्ट्रीय शहर है । दिल्ली देश की राजधानी है ।

अगर हम विकास की दृष्टि से देखेंगे तो दिल्ली में कई काम होने की जरूरत है । पिछले कई वर्षों से यह हो रहा है कि कोई भी डेवेलपमेंट का काम हो, कोई भी विकास की योजना हो, जिससे किसी का कुछ संबंध नहीं होता है, ऐसे लोग पीआईएल के माध्यम से विकास कार्यों के बीच में खड़े होते हैं । कोई पीआईएल करता है, कोर्ट में जाता है, उसमें स्टे लाता है । कोई एनजीटी में जाता है, वहां से स्टे लाता है । गवर्नमेंट की चाहे कितनी भी इच्छा हो, लेकिन ऐसे जो स्पीड ब्रेकर्स बीच में आते हैं, उनकी वजह से सही समय पर उस शहर, प्रांत का विकास करने में बाधा आती है ।

इस बिल में श्री रवि शंकर प्रसाद जी ने बहुत अच्छा प्रावधान किया है । जिनके ऊपर अन्याय होता है, वे कोर्ट में जा सकते हैं, उनके लिए कोर्ट के दरवाजे खुले रहते हैं । योजनाओं पर अमल करना हो, लेकिन जिनका उन योजनाओं से कोई संबंध नहीं होता है, ऐसे लोग जब विरोध करने के लिए सामने आते हैं, तब ऐसे सारे मामले आर्बिट्रेटर के पास रख कर, उनका जल्दी से जल्दी समाधान खोजना है । यह अच्छी बात इस बिल के माध्यम से माननीय कानून मंत्री जी लाए हैं, मैं उनको बधाई देता हूं । जैसे यह दिल्ली शहर के लिए है, वैसे ही यह हमारे मुंबई शहर के लिए भी है । मुंबई महाराष्ट्र राज्य की राजधानी है और देश की आर्थिक राजधानी है । वह कम से कम दो करोड़ की आबादी का शहर है । मुंबई महानगरपालिका का बजट 30-35 हजार करोड़ रुपये का है । आज ऐसे मुंबई शहर में दिन में कम से कम 80 लाख लोग लोकल ट्रेन से आना-जाना करते हैं । यह दुनिया की सबसे बड़ी सिटी है । पांच लाख से ज्यादा लोग मेट्रो से आना-जाना करते हैं और लाखों लोग बाय एयर यात्रा करते हैं । मुंबई जैसे शहर में भी रेल के ट्रैक बढ़ाने के लिए जगह है, लेकिन वहां ट्रैक नहीं बढ़ाया जा सकता है, क्योंकि वहां झुग्गी-झोपड़ी खड़ी है । अगर झुग्गी-झोपड़ी को हटाने जाएं तो लोग वहां पीआईएल करके सामने आते हैं । मुंबई के लिए कोस्टल रोड की जरूरत है । पिछले 30 सालों से मुंबई महानगरपालिका का जो कार्यभार है, वहां पर शिवसेना और भाजपा का प्रशासन है, उनके माध्यम से वह बड़ी अच्छी तरह से किया जाता है । कोस्टल रोड के लिए जब ऐलान किया गया तो जिनका

मुंबई से कुछ संबंध नहीं, महाराष्ट्र राज्य से संबंध नहीं, केरल के लोग सामने आए और बोलें कि अभी मैन्ग्रोव्स तोड़ने का काम चालू करें, वे एनजीटी के पास गए । ...**(व्यवधान)** मैंने दिल्ली के साथ-साथ मुंबई का थोड़ा आधार लिया ।... **(व्यवधान)** मुंबई की जो समस्या है ।...**(व्यवधान)**

माननीय सभापति : कृपया आप चेयर को एड्रेस कीजिए ।

श्री विनायक भाऊराव राऊत : सभापति महोदय, ऐसे वे योजना रोकने का काम करते हैं । आज कोर्ट में मामले जाएं तो चार-पांच साल तक काम में रूकावट आती है ।

जैसा पहले सुझाव आया कि जो मामला आर्बिट्रेशन के पास जाए, उस पर सही समय में निर्णय लेना चाहिए, इस बात का प्रोविजन करने की जरूरत है । एक निश्चित समय में दो महीने में, तीन महीने में उस मामले में निर्णय आ जाना चाहिए । टाइम बाउंड निर्णय होना चाहिए । यदि आर्बिट्रेशन में कोई मामला जाता है, तो उसकी प्रोजेक्ट कास्ट बहुत बढ़ जाती है । इससे न तो लोगों को फायदा होता है, न सरकार का फायदा होता है और पीआईएल डालने वाले आराम से बैठे रहते हैं । सुप्रीम कोर्ट और हाई कोर्ट के जजेज के साथ-साथ उस क्षेत्र के जो एक्सपर्ट्स हैं, उनकी भी नियुक्ति करने का प्रयोजन इस बिल के माध्यम से मंत्री जी करने जा रहे हैं, इसमें उन्हें सफलता मिले ।

दिल्ली के एक्सपेंशन के लिए मेरा कहना है कि दिल्ली की आबादी बढ़ती जा रही है । दिल्ली के महत्व को संभालने के लिए ऐसा कानून बनाने की जो जरूरत है, वह आज माननीय मंत्री जी के माध्यम से पूरी हो रही है, इसके लिए मैं उन्हें बधाई देता हूं । धन्यवाद ।

SHRI PINAKI MISRA (PURI): Thank you hon. Chairman Sir, I rise to support this Bill that the Government has brought into this House. I think every like-minded person and every right-minded person is going to support this Bill. There is no question about that. I just want to flag one issue before the Government. The hon. Home Minister is here. So, I should flag it in his presence. The hon. Law Minister is also here. In this Session of Parliament, this is the fifth or sixth Bill that is coming which has been passed by the Lok Sabha and has lapsed because of dissolution of the 16th Lok Sabha. I think the time has come that this kind of criminal waste of public money now must be avoided in future. It is a very simple resolution. Article 107(5) of the Constitution of India states:

“A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall subject to the provisions of Article 108, lapse on a dissolution of the House of the People.”

Article 107(3) says:

“A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.”

Therefore, Article 107(3) can quite easily be replicated, even for the dissolution of the Lok Sabha. It is because I am given to understand – forget the Bill that we have already seen – that the Consumer Protection Act which has come in this Session was passed on 20th December, 2018. Similarly, there is the Triple Talaq Bill, the Aadhar Bill, the SEZ Bill and the J & K Reservation Bill. My friend, Mr. Nishikant Dubey, who is very well-versed in these

matters, informed me that there are 28 Bills which the 16th Lok Sabha had cleared and which lapsed because of the fact that the Rajya Sabha did not clear them. Therefore, I urge upon all sections of this House to seriously consider whether this kind of replication of work, this kind of criminal waste of public money must be allowed. Going forward, should we not put our heads together and think that a simple amendment to the Constitution can avoid this in future? I would request this House to seriously consider this issue.

17.27 hrs

(Hon. Speaker *in the Chair*)

Having said that, hon. Speaker, Sir – I am grateful that the hon. Speaker has given us time on this very important Bill – Para 3 of the Objects and Reasons of this Bill makes a very disconcerting reading. Para 3 says that

“The international Centre for Alternate Dispute 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.”

I think that is the understatement of this year. As Meenakashi Ji has said, 22 years have seen the passage of only 23 cases. This really ranks as a gross-understatement. Something has seriously gone wrong and I think a forensic audit ought to be done to see what went wrong, why it went wrong. They are taking over the assets now in a new institution, which is, of course, a welcome step; the old institution must go. But why this has happened and why did this kind of criminal waste of money took place? How is this passed under their scanner of many of the authorities which in this country otherwise go to town flagging the issue of wastage of public funds and public monies? It is something that

one must also look into very seriously because this is again a criminal waste of public money and public time.

Mr. Speaker, Sir, the fact of the matter is this. I believe since I have been to Singapore, for instance, for an international arbitration, today, SIAC is the pre-eminent place for international arbitrations. I have been there with opposite lawyers who are Indians and retired judges of the Supreme Court who are arbitrators. Why do two Indian parties, which are locked in arbitration, go to Singapore with retired Indian Supreme Court judges and senior Indian advocates? They all go and sit in that beautiful little SIAC chamber. Why does this happen?

It is because the problem is this, and I think the hon. Law Minister will be the first to concede that despite the amendments that we have made to our Indian Arbitration Act, there continues to be too many loopholes. So, anything that you, the hon. Minister, bring in, is not going to plug the system or give inspiration to people to come to India because ultimately situs, as you know is everything. So, if the situs is going to be the Indian law and Indian jurisdiction, then unless you tighten the Indian laws—and the Indian laws, despite the last amendment that we have made, still continue to be so porous that my friend is a भुक्तभोगी , who has gone through an arbitration process himself--this endless fate of litigation will continue.

I am happy to say that the calendars of the retired Indian Supreme Court judges, once they are retired, are so full now that you cannot get a date from them for 6-8 months. I have tried to get an early date from the retired Indian Supreme Court judges. There are a handful of judges who are very popular or a handful of retired High Court Chief Justice or judges. Their dates are choc-a-bloc. They cannot give dates before six

months or eight months in a year. So, the same problem that we have in court that they are not able to give dates, obtains with arbitrators in India.

Now, you plan to bring in expert arbitrators who are obviously in the nature of professional arbitrators. I do not know whether the two systems will therefore coexist. There will be a system which will operate by mutual consent under Section 11 of the Arbitration Act and there will be something which will operate independently here under this particular Act. Therefore, the possibility of a mismatch is very, very apparent and it is very possible. So, I would urge the hon. Law Minister to bring another amendment because Section 15, Section 28 and Section 29 of this Act are really the operating provisions and the rest are all about taking over the assets of this defunct organisation.

Therefore, if these are going to be given teeth, then, perhaps, what is co-terminus with this, you need to bring in a very, very strict amendment to the Indian Arbitration Act to ensure that going forward with this endless process of litigation that we are subjected to under the Indian laws comes to an end.

I commend the Government for making all-out attempts to bring ease of business into India and to make India an attractive hub for arbitration but a lot more needs to be done. I think the hon. Law Minister will be the first to concede that. Hon. Speaker, Sir, I am very grateful to you.

SHRI JAYADEV GALLA (GUNTUR): Sir, I rise to support the Bill since it is a very crucial Bill to build our country into a global hub for arbitration. The Bill also aims to create a new structure in the form of New Delhi International Arbitration Centre by taking over the existing International Centre for Alternative Dispute Resolution.

In spite of having so many positives in this Bill, right from the institutional framework to making this an institution of national importance which gives autonomy to it, there are some ambiguities and drawbacks which I wish to highlight and request the hon. Minister to address them to make it more effective.

The first one is, the Central Government is the appointing authority for the members of the NDIAC and a periodic contributor to its funds. Further, its accounts are proposed to be audited by the Comptroller and Auditor-General of India. Also, the Central Government would have the power to remove members from this office.

But the problem is, investors adopting alternate modes of dispute resolution prefer a neutral decision-making body. The proactive role proposed by the Central Government may discourage contracting parties from referring disputes to the NDIAC for fear that the independence and credibility of the arbitral institution will be compromised, especially in cases where the opposite party is a Public Sector Undertaking.

Even the SAIC, which many hon. Members talked about in Singapore was established with Government aided funding but it has

now become a completely self-sufficient and independent arbitration institution.

The second is, the Bill is dealing only with administrative issues and leaving aside the procedural framework on how to settle disputes, timelines for completion of arbitration proceedings, etc. I am saying this because ICADR failed because of its outdated approach in resolving disputes. So, what I suggest for consideration of the hon. Minister is to include the procedural framework within the Bill and do not leave it to the bureaucracy. Otherwise, NDIAC may meet the same fate as ICADR did.

The third point is that it is not going to be easy sailing for NDIAC. The critical and important issue faced by ICADR is the negligible number of cases before it. Let me give a comparative analysis of ICADR and other international arbitration institutions. The total number of cases taken up by the ICADR since its inception in 1995 till 2016 is just 49. But, at the same time, if you look at SIAC in Singapore, it has handled nearly 350 cases in 2016 alone and ICC in London has handled 966 cases. This clearly indicates whom the NDIAC is up against. So, we have to be doubly cautious in giving a framework to NDIAC.

The next point is that this very House passed the Arbitration and Conciliation Bill last year, the objective of which is to establish the Arbitration Council of India in order to review and give grading to arbitral institutions. But this Bill has lapsed due to the dissolution of Lok Sabha. So, I suggest the hon. Minister to bring this Arbitration and Conciliation Bill without any delay because periodic review and grading will help in promoting the credibility of NDIAC, particularly among foreign investors.

My final point is that there is no mention about setting up of regional centres. Clause 14 simply says that facilities would be set up in India and abroad. Regional centres are very important for the success of NDIAC. I request the hon. Minister to set up one regional centre at Amaravati in Andhra Pradesh to cater to the needs of South India. It is going to be a new modern city and with the support of the State Government hopefully it will soon become a reality.

With these observations and in anticipation that the hon. Minister will reply to these points, I support the Bill. Thank you.

DR. SHASHI THAROOR (THIRUVANANTHAPURAM): Thank you very much, Mr. Speaker. I would like to join my friend and learned party leader Shri Adhir Ranjan Chowdhury in saying that we support the very much objective of the Bill. We want India to be a destination for international arbitration. But we have issue with the content in the text of the Bill.

After all, what is the problem the Bill is trying to address here? They are trying to address the absence of a credible international arbitration centre in India which, therefore, is not attracting foreign companies as many of the eminent Members, who themselves are lawyers have pointed out. We need a credible centre. But it must be one that is attractive enough and interesting enough, so that when foreign companies are concluding contracts, they will want to come here rather than, as Pinaki Mishra was pointing out, taking all their cases involving Indian disputes to Singapore. This is something that we really need to

take very seriously. Therefore, very clearly the new centre has to be better than what we already have which has been rightly criticized by the preceding speakers.

The fact is that if we want companies to come here, it must meet the highest possible standards and this is where the Bill disappoints. After all you are trying to look at institutional arbitration, whereas in our country's culture most arbitration tends to be *ad hoc*, people just agreeing on a contract between themselves to arbitrate in a one-off procedure.

When you are looking at international arbitration, you are certainly looking at institutional arbitration and there we have to overcome the inefficiencies of the past, that everyone has already pointed to. Also, the purpose of arbitration is to cut through the existing inefficiency of the court process which has made ease of doing business such a problem because of the difficulty of enforcing contracts. When obviously contracts are resolved and arbitration moves in a swift manner, then of course the whole process is where companies are encouraged to come here.

Now, the more bureaucratic the nature of the Centre and the more Government control there is, unfortunately, the less attractive it is going to turn out to be to others. We have seen this already with the Chinese Arbitration Centre or CIETEC which is unfortunately very similar to what our Government has come up with. The CIETAC is also an arbitration institution governed by the Government of China. No one considers it to be autonomous of the Government and people do not like going there whereas the Singapore International Arbitration Centre, obviously, attracts all the number of cases we have been hearing about

as does the ICC in London. What is striking is this. Please remember that it is not you and I and the lawyers here who have to be happy; those who will be taking cases to the court are foreign companies for the most part or companies that are concluding contracts between a foreign company and an Indian company. If you do not set up an institution that appeals to them, then all your efforts will go in vain.

Sir, I would like to urge six specific suggestions on the Minister under four broad headings very briefly. One is on autonomy. Clause 11 of the Bill states that the general superintendence, direction, control and management of affairs shall be vested either with the Central Government or with the custodian appointed by the Central Government. This is a mistake. There is no question. Every study on arbitration shows that independence of the arbitration institution is the key when it comes to why companies choose the same institution for arbitration and what is the choice of a forum for dispute settlement. When a foreign investor is coming here, if he does not think that ours is autonomous of the Government, there is going to be a problem. Let us face it that in our country, a lot of disputes involve PSUs, as Prof. Saugata Roy pointed out, Metros and so on. Therefore, the influence or even the perceived influence of the Government over the Arbitration Centre would work against the perception of its autonomy. So, I would have suggested that you ought to leave the authority with the Chairperson of the Committee and not with the Government or the custodian, or you remove the term 'direction and control' from clause 11. So, you do not leave this control in a way that undermines its autonomy.

The second one is flexibility of rules. Clause 32 says that every rule under the Act has to come before Parliament, but the fact is that while

you can say that for rules regarding the constitution, composition and internal functions of the organisation, Arbitration Proceeding Rules have to be amended very, very often. In fact, I was checking and found that the Singapore Centre has amended its rules in 2010, 2013, 2016 and 2017. This is necessary to keep up with the changing speedy perspectives and requirements of the international issues and international users of arbitration. Therefore, for you to lock our Centre into a situation where they cannot amend anything without coming to Parliament puts a burden on them and a burden on us, which I think is not the intention because this will actually reduce the efficiency of this procedure. So, I would suggest to exclude the Arbitration Rules from the set of rules which require parliamentary sanction under the clause and show that you are responsive to the needs of the clients.

Lastly, a broader mandate is needed so that you can actually develop more expertise, create a vibrant arbitration community here by including in the terms of the New Delhi Arbitration Centre education, skill development, awareness in arbitration and to create opportunities for young professionals to develop expertise, which is something that the London Centre, the International Centre of Chamber of Commerce and the Singapore International Centre do. They all have specific programmes targeted for the development of young arbitration practitioners whereas as Prof. Roy pointed out, all that we have is retired judges monopolising our arbitration work. Why do you not include in the mandate of the Centre these things? You can do that under the rules attached to the Bill.

Finally, in reaching the highest standards, statistics must be maintained as all the other prominent arbitration centres do and transparency must be absolutely essential. Sadly, there is very little

reference to transparency in the Bill. So, my suggestion is that while your objectives are very laudable and we must make India an arbitration destination, your Bill does not go far enough. You are going to create a Centre, but do not create one that fails to fulfil the very purpose for which you are creating the Centre, by failing to attract the people you want to attract. My advice would be to either include these additional points and bring back the Bill or if you insist on passing it today, because we do not want to oppose it, let me say at least include these suggestions and points in the arbitration and conciliation law which is also lapsed and which you need to bring back to this House. Reconciling the two would give you a better Centre, one that will fulfil the laudable objectives that the Government says it is seeking to fulfil from this law.

Thank you, Mr. Speaker.

SHRI ASADUDDIN OWAISI (HYDERABAD): When there is a fracture, you do not apply a band-aid. Now, this is what is happening over here. Enforcement of contracts takes six months in Singapore. In our country it takes four years. I would like to request the Government, through you, to simplify litigation by providing fixed timelines for resolution of disputes. Alternative Dispute Resolution mechanism and fast track courts should be promoted. Will they do that? Will they create a cadre of contract practitioners who will play an important role in dispute resolution in tribunals and commercial courts? They should limit adjournments. They should introduce pre-trial conferences as part of

case management techniques for commercial courts. Mediation is very important. Will they introduce financial incentives for parties in commercial cases to attempt mediation?

I would like to quote from *The Economic Survey* 2017-18. It says:

“For smooth contract enforcement, it may be necessary to build capacity in the lower judiciary to deal with economic and commercial cases. This may be done through training of judges and digitization of judiciary.”

The Economic Survey of 2017-18 also talked about injunctions and stays. It said that reliance on injunctions and stays should be reduced. Courts may consider prioritizing stayed cases and impose stricter timelines for deciding cases with temporary injunctions.

What we have now is that if the judiciary is overloaded, we have created NCLT and NCLAT. Then we have consumer dispute forums. For telecom, we have TDSAT. So, what happens is that, even though decision is given, still the appeal is there. So, I want to ask the Government a specific question.

Sir, I want you to come to my rescue. It is about this whole issue of issuing Ordinance. The Government is issuing an Ordinance to satisfy the whims and fancies of World Bank. But why did the Government take so much time to introduce an Ordinance when the Supreme Court overturned the Scheduled Caste and Scheduled Tribe Act? There is an ICADR regional court in Hyderabad and Bengaluru. The grants are given by the respective State Governments. I want to know how the Government is taking over these entities which were set up with the support of the State Governments.

What is the assurance which this Government is giving to the country and to this august House for this ADR to be taken seriously? How impartial is the Government going to be? What is the distance that you are going to maintain from this particular Centre which you are going to establish? I am asking this because for it to be taken seriously, the Government must stay far away. This is why the ICADR was set up as an independent society receiving grants from the Government and the non-Government sources.

These are the important points. I hope the Minister will reply to it and does not run away from it.

SHRI E.T. MOHAMMED BASHEER (PONNANI): I am quite happy to state that the Government's move is in the correct direction and it is a very useful move to establish the Delhi International Arbitration Centre. Once this is established, as envisaged in the Bill and with the proper kind of activities, we can be proud of having an international institution of higher reputation.

India is a fast-developing economy. We are confident that we can make our own International Centre much higher than Institutions established in other countries like Singapore and U.K. The credit for success for this Bill goes to the good home work done by the Committee headed by Justice B.N. Srikrishna. Nobody can have dispute that the Alternative Dispute Settlement mechanism is the need of the hour.

While we are doing this, I am of the firm opinion that we must learn lessons from similar institutions and ground realities, like experiences of countries like Singapore and U.K. Arbitration as a mode of dispute

resolution is getting popularity especially in national and international commercial agreements. Similar mechanisms like mediation and reconciliation are also coming up.

With regard to Indian judiciary approach in this, I would like to say that pro-arbitration approach of Indian judiciary is also praiseworthy. The courts are considering that once it is considered that the matter is covered by arbitration agreement, the courts prefer to make a 'no-interfere' stand.

An important fact that needs to be kept in mind is that the very acceptability of this international centre should be based on two bases, (1) creditability of it and (2) cost and time effectiveness.

Regarding the procedural rules, we have to be careful about it. It should be scientific and faster. Rules should be updated. We all know that the other institutions are doing that. The most important thing is the quality of the arbitrators. We must have a descent pool of potential arbitrators, I mean, the best out of the best.

Chapters 28 and 29 deal with the chamber of arbitrators and academy respectively. When we are appointing the persons, we must be very careful. If that is done, then we will have a bright future. While selecting the persons to the panel, trustworthiness, efficiency and time management expertise are the factors which will have to be considered.

Sir, I would like to say that if we plan the things accordingly, if we do our homework properly, if we have very good infrastructure and

select this kind of capable persons, we can be confident that we can have the best institution in the world. With these few words, I conclude. Thank you very much.

SHRI N. K. PREMACHANDRAN (KOLLAM): Mr. Speaker, Sir, I rise to support the Bill and oppose the Ordinance route of this legislation. It is a disputed legislation relating to redressal mechanism. I fully agree with what Madam Meenakshi Lekh Ji has suggested that on the basis of an international report, it should be an alternate dispute redressal forum; it should be an appropriate forum, International Dispute Redressal Forum. I fully support the suggestion made by the hon. Member. Sir, I would like to urge upon the hon. Law Minister that instead of bringing a piecemeal legislation, let us have a comprehensive legislation on all aspects.

As Shri Pinaki Misra was talking about, we had the experience of 16th Lok Sabha. I fully disagree with him. When the House is dissolved, the Bill also gets lapsed. The wisdom of the previous House is entirely different from that of the wisdom of the present House. It is entirely different. ...(*Interruptions*) We will debate it afterwards. ... (*Interruptions*). Only one third of the Members retire by rotation ... (*Interruptions*). That is a permanent House. This is not a permanent House. The period of this House is only for five years. ...(*Interruptions*) So, Sir, in order to have a full-proof and effective legislation, it should be comprehensive. ...(*Interruptions*)

SHRI PINAKI MISRA (PURI) : ...(*Interruptions*) In 2009, the Rajya Sabha passed the Women's Reservation Bill. I do not think that there were even five members and the Bill is still continuing. How does it continue?

SHRI N. K. PREMACHANDRAN : That is a matter to be debated. I think it will be better to have a discussion on this if the Government comes with an appropriate Motion. Definitely, we will have a discussion. Sir, it is an academic issue.

SHRI S.S. AHLUWALIA (BARDHAMAN-DURGAPUR): Sir, I would like to inform that a Bill introduced in Rajya Sabha never dies. But a Bill introduced in Lok Sabha and passed and then sent to the Rajya Sabha and if the Lok Sabha gets dissolved, the Bill will die. That is the point. ...(*Interruptions*)

SHRI N. K. PREMACHANDRAN : I thank Shri Ahluwalia Ji for supporting my cause. ...(*Interruptions*) Sir, we are having the Arbitration and Conciliation Act, 1996. The sole purpose of this Bill is to have the change in law in tune with the commutable changes. Yes, we do agree that the ease of doing business has drastically changed. We also appreciate that India's position has greatly improved. But, at the same time, I would like to say that the Arbitration and Conciliation Act, 1996 is 23 years old ...(*Interruptions*) So far, no appropriate/dramatic changes have taken place in this Act. So, I urge upon the hon. Law Minister to have a look into the Arbitration and Conciliation Act, 1996 and come with appropriate changes in tune with the changes of the commutable situation which is prevailing in the international scenario. Definitely, we will also support that Bill.

Coming to the contents of the Bill, I could not move the Amendments because the BAC had already decided that the Bills will be taken up only after 17th after passing of the Budget. So, I could not give notice for the Amendments, under that impression. Last time also I had given nine Amendments, and the hon. Law Minister may kindly see that even those Amendments -- for grammatical mistakes that were included in the Bill -- were not being taken into consideration. I am not going into all those things that when we are taking the second Bill or when we are giving a fresh Bill.

The main focus issue is the quality of the arbitrators. What is the quality of the arbitrators? Prof. Sougata has also stated that the quality of the arbitrator is the main issue, and corruption is there in almost all the arbitration proceedings. We all are very well aware about it. It is time consuming, and finally the Government is forced to accept the award of the arbitrator. If you analyse the burden of time and money spent on it, then one will find that most of the time it is becoming fruitless.

Hence, I am supporting this Bill with a suggestion that please come with a comprehensive legislation on the Arbitration and Conciliation Act of 1996. With these suggestions, I support the Bill. Thank you very much, Sir.

माननीय अध्यक्ष : माननीय मंत्री जी, आप बोलें । इससे पहले मैं एक बात कहना चाहता हूँ । माननीय सदस्यों, क्या सदन की सहमति है कि विषय की समाप्ति तक सभा की कार्यवाही को बढ़ा दिया जाए, ताकि बीच में डिस्टर्बेंस पैदा न हो?

अनेक माननीय सदस्य : हां-हां ।

माननीय अध्यक्ष : विषय की समाप्ति तक सदन का समय बढ़ाया जाता है ।

SHRI RAVI SHANKAR PRASAD : Sir, I am really grateful that the debate rose to great heights. We all noticed extraordinary unanimity even by hon. Shri Premachandran. For the first time I am seeing that he is supporting a Bill except the NJAC, which I had noticed in 2014. Good!

Sir, I am not taking the names of all Members. The quality of debate was very good whether *Adhir babu* in his own inimitable style also supported it. I will reply to the issue of Ordinance later on. Shrimati Meenakashi and Shri Pinaki rose to great heights. Prof. Sougata *babu*, with your earthy common-sense you added great value to the debate.

Sir, at the very outset, let me highlight why we had to come with this Bill. India is becoming a big investment centre and the fastest growing economy of the world, and alternative dispute redressal is an important component of this process. There was a Conference where the hon. Chief Justice was present; hon. Prime Minister was present; and as the Law Minister, I was also present and a conscious decision was taken that India must strive to become a global hub of domestic and international arbitration.

I was having this Portfolio then, and I decided that we should not go piecemeal. We need to have a comprehensive review of the entire ecosystem as to what is required to be done. Thereafter, we came with a suggestion of making Justice Srikrishna, a very distinguished retired Judge of Supreme Court, to give us a Report both on the roadmap and the legal architecture, which is required to be improved upon.

We had some of the finest minds of India as part of that Committee including Mr. Venugopal, the Attorney General; some eminent arbitrators were there; lawyers from Mumbai were there; law firms were there; and they had got proper feedback from all over the country. They said two things. Firstly, it was stated to please make this centre as a centre of international eminence. Secondly, to make India a hub of institutional arbitration. I am saying this because I would like to inform this hon. House that globally institutional arbitration has become the order of the day so that parties can grow. Even in India, 35 institutions have started working.

London and Singapore have become important well-known centres, but to become a global hub of institutional arbitration we must have a mechanism in place, which can properly accredit the institutions as to which institutions are doing well or which arbitrators are of good quality. The subsequent part, which was lost and which Mr. Shashi Tharoor talked about contains the entire mechanism that there shall be a proper Arbitration Council of India headed by a retired Supreme Court Chief Justice consisting of eminent people, which shall accredit institutions doing arbitration; arbitrators disposing of cases; they will individually give Report; and their accreditation would be a benchmark for their efficacy for the global clients also to see.

18.00 hrs

Before I come to other points, I want to make one larger observation. Pinaki *Babu*, my good friend, mentioned about his Singapore experience. But of late we are witnessing a new kind of imperialism in arbitration: Queen's Counsel Barristers becoming

arbitrators everywhere, as if with great respect, that they are the last word.

What is happening in bilateral treaty? I attended certain international conferences. South Africa has walked out; we know it very well. Mexico and Brazil have walked out. Why? These arbitration proceedings are imposing heavy damages upon small countries, which they can't afford. For instance, in one case, only 100 million were to be invested; they invested five million. They came with a grievance that the Government is not giving us support; give us damages. They were given about 30-40 per cent damages. All the small countries said that this is too skewed proceedings in favour of big power. I am sorry to say, but I will have to say. None of these bilateral treaty proceedings ever gave any big award against any big American or European companies. I am sorry to say that.

When I studied, I had taken upon myself in the national and international forums, and I have been speaking that this kind of new imperialism in arbitration will not be acceptable. India have very good arbitrators, very good Judges, very good lawyers. That was the larger issue, Saugata *Babu*, which was working in my mind when I wanted India to become a good centre for arbitration disposal mechanism.

I wanted to tell Adhir *Babu* who talked about uni-sectoral model, which is a global model, the UN approved model, whereupon all the countries of the world have remodelled their arbitration laws. But in the light of the Srikrishna Committee recommendations, we need to further reinforce our arbitration proceedings. Kindly wait. That law would also come very soon. I want to assure.

As far as specific concerns in the present proceedings are concerned, let me put the record straight. The Government has given Rs.30 crore to this international arbitration, including land. Just now I asked my staff to tell me the exact number. Since 1995, till last year end, *Adhir Babu*, only 55 cases were referred to them; 44 cases were disposed of; 10 are pending, and only four are of international arbitration. When I was reviewing, I found out that 700 members are there. I found this seminar or that seminar, Delhi to Hyderabad, Hyderabad to Mumbai, train fair, etc. are going on. The core work was missing completely. Shri Misra, you talked about why it could happen? That is a sensitive question. I regret to tell you, if a Law Minister seeks to make it a private property, what will happen? I am sorry to say that.

SHRI RAJIV PRATAP RUDY (SARAN): Open it.

SHRI RAVI SHANKAR PRASAD: No. Let us leave it there. I think, I have given enough indications. I regret to say, in 10 years, some action ought to have been taken. It was not taken. Let us leave it there.

Now, what are we doing? First see the professional part of it. The Government does not have the power. The Government will appoint the head, a retired Supreme Court Judge or a retired High Court Judge, in consultation with the Chief Justice of India. Second is to have two eminent arbitrators, who have experience in that. Third is to have the Law Secretary and someone from Finance. But is this the composition of the body? But I really appreciate what Shrimati Meenakashi Lekhi has pointed out: the crux of the matter of Clause 28. The Centre shall establish a Chamber of Arbitration, which shall empanel an arbitrator, and also scrutinise the application for admission in the panel of reputed arbitrators to maintain a permanent panel of arbitrators.

If you ask me, what is the harm? Let there be Judges; let there be retired Secretary, Ministry of Finance, the Government of India; or let there be a top executive of a good international firm working in India. All this can be kept. Now, I know that handling the IT and Communications portfolio, now serious technical issues would come to the arbitration proceedings.

What is the harm if some top IT giant experts are also a part of the panel? So, this liberty must be given to the arbitration body to keep a panel of eminent arbitrators.

I think the House is completely right that the success of this institution will depend upon the kind of arbitrators they keep. Speaking for myself, I want to give the assurance to this House, our Government's concern is very, very clear and categorical. We really want this Institution to emerge as a global hub of international and domestic arbitration. The autonomy, flexibility, everything would have to be there.

Now, Dr. Tharoor specifically talked about Section 11. I think if you read, you will notice that the direction of the Government is only till the assets are taken over by the custodian, not beyond that because there is a transitory phase. Why have we done like this? We are not touching the society which was running the institution. Let the society remain with itself, we are taking over only the asset part as in the case of Asiatic Society, Auroville Society or Sapru House, as you know, the Indian Council of World Affairs. We have applied the same model whereby we are only taking over the asset to make it more professional.

PROF. SOUGATA RAY (DUM DUM): Why do the Government need to give Rs. 30 crore if they have got a building and land? They will start work from there.

SHRI RAVI SHANKAR PRASAD: This Rs 30 crore has gone since 1995 till now.

डॉ. निशिकांत दुबे (गोड्डा): 300 करोड़ रुपये की सम्पत्ति है ।... (व्यवधान)

SHRI RAVI SHANKAR PRASAD: Nishikant ji put it very rightly. If you value this property today, it would be worth hundreds of crores of rupees. What was it used for? Beyond this, I have already given enough indication. I regret to say, Sir, that this body could have evolved as a beacon of India in arbitration proceedings. I regret to say what happened.

Now, questions were asked what we have done. Yes, I will explain the arbitration part. In enforcing the contract, the biggest problem was Specific Relief Act where damage was the norm, performance of contract was exception. We changed that also. Now, a party, in the wake of any recalcitrant party, can get the contract executed by a third party and recover the amount from them. Now, the damage is the exception.

I would like to talk about the commercial court, Sir, the system giving the Ease of Doing Business benchmark. You have norms for disputes amounting to Rs. 1 crore or Rs. 2 crore. What about small commercial disputes? Now, we have also reduced that to Rs. 3 lakh and we have set up good commercial courts all over the country including in Delhi and Mumbai which are functioning. But what is important, I would like to share that with this House, is that we have come with a very robust mediation law. In commercial court, no one can go to the court straightway unless you need injunction etc. First, you have to go to the mediation and within a defined frame, mediation will have to be decided. If the mediation is not able to give the right result, then your dispute will go to the court. That we have done under the aegis of the

Delhi High Court, Bombay High Court, the hon. Supreme Court and the rules have become very robust.

Now, Sir, some questions were asked: What if the arbitrators also delay? The question is right. Therefore, the subsequent 1996 Amendment which we are going to bring again was passed by this House and lapsed again in the Rajya Sabha because it was kept pending. We are framing a timeframe for disposal of cases by the arbitrator. I am very clear, let me tell this House that when the rules will be framed, I will bring them very soon. When the rules will be framed, I will insist that all the institutions must keep one fact in mind that ये आर्बिट्रेटर साहब ने पिछला फैसला कितने दिन में किया था? उनका यह साइट पर रहना चाहिए, इसलिए आगे से इनको रखने के पहले इनकी इस कुंडली को देख लिया जाए कि ये कितने दिन में फैसला करते हैं । I am very clear about it because if we have to really develop India as a centre of good global or international arbitration, these do's and don'ts will have to be done.

What is the transparency level? This question was raised by Dr. Tharoor. The regulations are very clear that these aspects will have to be covered. Dr. Tharoor, today, I do not know what I should say. At one point you say, “you are bypassing Parliament”, and when we are saying, “the rules and regulations shall be placed before the Parliament”, you have a problem.

The framing will not be done by us; the framing will be done by them. They will be placed here only for parliamentary scrutiny - if you have any question to ask, suggestion to give - so that they can take corrective measures subsequently. ...(*Interruptions*) Most of these are brought. So, you should not make an issue about it.

Today, I have to make one appeal, Sir, when we are considering to make New Delhi a centre of global eminence. What is my vision, the Government's vision, the vision of all of us? India must have a very robust bar of young lawyers who are practising arbitration. It is a great avenue for us. India must have good teachers teaching arbitration and teaching arbitration laws in National Law School and other schools. And most importantly, India must have a robust set of good arbitrators - trusted, honest, transparent and disposing cases with efficiency.

Today, taking the benefit of this great, sacred floor of the Parliament, I would like to appeal to all the arbitrators in India that if India has to emerge as a global centre of eminence, we have to be honest, we have to be expeditious, and we must need to understand the changing profile of India.

Sir, my two friends who have personal experiences have conveyed a concern and that concern I take on board.

सर, अब ओवैसी साहब की परेशानी है कि बाकी कानून में क्या कर रहे हैं, तो बाकी कानून में बदलाव कर रहे हैं। काफी कुछ किया है और करने की जरूरत है, मिलकर करेंगे, लेकिन अगर एक अच्छा काम हो रहा है, उस अच्छे काम को अपनी चिंताओं के कारण रोकने की कोशिश करना सही नहीं है। ओवैसी साहब, हमारी सरकार से आपकी नाइत्तेफ़ाकी मुझे मालूम है, लेकिन कभी-कभी कुछ अच्छाई देख लिया कीजिए तो बड़ी मेहरबानी होगी।... (व्यवधान) मुझे यह बड़ा अजूबा लगा कि पूरा हाउस आज इस बिल के साथ है, यहाँ भी आपकी नाइत्तेफ़ाकी है। कभी ना कभी तो मुस्कुरा दिया कीजिए तो अच्छा रहेगा।...(व्यवधान)

श्री असादुद्दीन ओवैसी : सर, जब तूफान आता है, तो एक ही पेड़ खड़ा रह जाता है।...(व्यवधान)

श्री रवि शंकर प्रसाद : अच्छा, ठीक है । आप बैठ जाइए ।...(व्यवधान)

सर, मैं क्या कहूँ? इस तूफान की आशंका में वे और उनकी सियासत करने वाले कितने सालों से बैठे हुए हैं कि एक तूफान आएगा, हम खड़े रहेंगे और पूरी गंगा हमारे साथ चलती है । सर, अब हम क्या बताएं, इसे छोड़ा जाए ।

Before concluding I would say, Sir, that I am very happy to really compliment all the Members of this House who have so wholeheartedly supported the Bill. Let this House today take a resolve. This Bill is being passed today. I promise Mr. Misra, Mrs. Lekhi, and Mr. Tharoor that I am going to bring the other Bill very soon. Now these two platforms will surely give a big support and strength to India's alternative disposal mechanism system. And surely, the global community of investors, clients, and professionals are also seeing today that India's Parliament, the Lok Sabha, has risen in support of India becoming a centre of arbitration.

Thank you, Sir.

SHRI S.C. UDASI (HAVERI) : Sir, I support the Bill but I need a clarification regarding dispute resolution.

माननीय अध्यक्ष : आपको बोलना नहीं है । मंत्री जी की बात के बाद नहीं बोलते हैं । आपको मंत्री जी से कोई क्लेरिफिकेशन लेना हो तो ले लीजिए ।

...(व्यवधान)

माननीय अध्यक्ष : माननीय सदस्य, अगर आपको बोलना था तो आप पहले बोलते । अगर अब आपको कोई क्लेरिफिकेशन करना हो तो कर लीजिए ।

...(व्यवधान)

माननीय अध्यक्ष : माननीय सदस्य, मैंने आपको बोलने की इजाजत नहीं दी है । शिव कुमार उदासी जी, आप बोलिए ।

SHRI S.C. UDASI: Sir, I support the Bill but I would like to seek a clarification.

Sir, after the verdict of the International Arbitration Centre comes, can that be challenged in the lower court or will it be referred to the High Court? I ask this because all the clients who are going for arbitration say that ultimately in the verdict the Singapore law is applicable. So, every international corporation wants to settle the dispute in Singapore. So, is that clause there that it should not go to the lower court? Let the hon. Minister clarify. Thank you.

SHRI RAVI SHANKAR PRASAD: I want to assure that there must be a provision for appeal. I take your point that it should not go to a lower court. But suppose, a particular arbitrator becomes corrupt or commits a misconduct, there must be a forum for the party. I want to assure you that we should not have any presumption that other systems are completely okay and our system is necessarily bad. Let us not have any presumption. But yes, we need to expedite. I take your concern on board and surely when the Second Arbitration Law Amendment comes about, your concerns will be addressed.

SHRIMATI MEENAKASHI LEKHI : Sir, I have only one clarification. Can we limit the number of appeals after the awards are granted? ...(*Interruptions*)

माननीय अध्यक्ष: माननीय मंत्री जी, एक मिनट रुकिए ।

क्या और कोई माननीय सदस्य बोलना चाहते हैं? सब इस पर क्लैरिफिकेशन ले लें क्योंकि संसद में विधेयक पर खुल कर चर्चा होनी चाहिए । संसद का काम ही विधान बनाना है, इसलिए इसके विधान पर खुल कर चर्चा हो जाए ।

DR. SHASHI THAROOR: I made suggestions about young professional arbitrators and transparency; would you like to introduce it into the Rules after the Bill is passed?

SHRI RAVI SHANKAR PRASAD: Yes, obviously.

माननीय अध्यक्ष: माननीय मंत्री जी, आप एक साथ जवाब दे दीजिएगा ।

...(व्यवधान)

माननीय अध्यक्ष: सौगत दादा, मैं आपसे हाथ जोड़ कर निवेदन करता हूँ । मैं आपको हर बार मौका दूंगा, पर कुर्सी पर बैठे-बैठे न बोलें ।

प्रो. सौगत राय : सर, देखिए कितना अच्छा डिस्कशन हुआ! क्या इसमें किसी ने टोका? अगर डिस्कशन ठीक होगा तो कोई नहीं टोकेगा ।...(व्यवधान)

माननीय अध्यक्ष: आप बहुत वरिष्ठ प्रोफेसर हैं ।

PROF. SOUGATA RAY : Sir, all that I want to ask the hon. Minister is this. He has said that the Arbitration and Conciliation (Amendment) Bill will come very soon. He has assured that. But the matter of greatest worry is how long the arbitration proceedings will take. The main thing is to limit the time for arbitration. You are saying that you will fix it in

the rules, but it would have been better if you had fixed it in the law itself. Rule is subordinate legislation. You bring a law to tighten the Act and fix the maximum limit of arbitration. These endless litigations must stop.

माननीय अध्यक्ष: माननीय मंत्री जी, एक मिनट रुकिए । माननीय पी. पी. चौधरी जी वरिष्ठ अधिवक्ता हैं । ये भी बोल लें । माननीय सदस्य को बोलने का अधिकार है ।

SHRI P. P. CHAUDHARY (PALI) : Sir, this Arbitration Centre, no doubt, is a centre of excellence and it will prove as such. But the question is how to deal with the large pendency of the cases. The Arbitration Act deals with the mediation and conciliation. But so far as the pre-litigation mediation is concerned, that is not prevalent in our country. I would like to know whether the Government is considering that the pre-litigation mediations should also be introduced in the Arbitration Act or not.

माननीय अध्यक्ष: अगर सदन सहमत हो तो माननीय मंत्री जी जवाब दे दें क्योंकि फिर मुझे इन्हें बार-बार उठाना-बिठाना नहीं पड़ेगा ।

माननीय मंत्री जी, पहले आप बोल लें । उसके बाद अधीर रंजन जी बोलेंगे, यह उनका अधिकार है ।

श्री रवि शंकर प्रसाद : सर, मुझसे एक बात छूट गई । मैं आपसे क्षमा चाहता हूँ ।

सर, हम ऑर्डिनैस लेकर क्यों आए, इस बात का मैं उत्तर देना चाहता हूं कि किस कारण से इसकी यह स्थिति बनी। चुनाव के पहले हम लोग चले गए, वहां से पास नहीं हुआ। दुनिया के सामने हम अपना इंटेंशन बताना चाहते हैं कि हम इस कानून को लाने के लिए बहुत ही प्रतिबद्ध हैं। यह हमारा संकेत है, यह हमने करने की कोशिश की और इसका ढाँचा वही था, इसलिए हमने उसको टेक-ओवर करने की कोशिश की है। हम बाकी काम कर रहे हैं। हम कस्टोडियन अपॉयंट कर रहे हैं। इसके पीछे हमारी और कोई मंशा नहीं थी।

सर, मैं सब प्रश्नों का उत्तर दे दूँ। जो मीनाक्षी जी ने कहा है, अभी वर्तमान कानून के 29A में इस बात का प्रावधान है कि आपको इसके रेफरेंस के समय से 12 महीने के अन्दर इसे पूरा करना पड़ेगा। हमने इसे थोड़ा और सुधारने की कोशिश की है। अब जब हम दोबारा बिल लेकर आएंगे तो इसे विस्तार से रखा जाएगा।

सर, हमारे पूर्व राज्य मंत्री माननीय पी. पी. चौधरी ने जो बात कही, अगर आप सेक्शन-29 देखेंगे तो उसमें ऑलरेडी मीडिएशन का प्रोवीजन है। अगर मीडिएशन सफल हो गया तो आप उसका सेटलमेंट उसी तरह से कर सकते हैं।
।...(व्यवधान)

माननीय अध्यक्ष: हमारे माननीय सदस्य अति विद्वान सदस्य हैं।

श्री रवि शंकर प्रसाद: अध्यक्ष महोदय, मैं एक बात अवश्य कहूँगा कि जो बातें सामने आई हैं, अगर इसको फास्ट ट्रैक करने के लिए और तेज करने की जरूरत है, तो मैं जरूर देखूँगा। जैसे अभी 37 में मीनाक्षी जी को मालूम होगा कि there is a whole provision of appealable orders. वहाँ किस-किस तरीके से अपील हो सकती है।

माननीय अध्यक्ष: आज तो सारे वकील यहीं वकालत कर रहे हैं।

...(व्यवधान)

श्री रवि शंकर प्रसाद: सर, मैं आपकी अनुमति से एक बात बोलूँ कि मेरी वकालत तो बंद है, मंत्री बनने के बाद मेरी वकालत बंद है, लेकिन बाकी लोगों की चल रही है । I want to assure this House that if some more consideration is required for fast-tracking, I am open for that.

SHRI ADHIR RANJAN CHOWDHURY : In response to Shrimati Lekhi's clarification, the hon. Minister has replied that a time-frame has been given for expeditious disposal of cases. My question is: if the timeline expires, is there any provision for penalty? Without having punitive measures, law cannot be implemented as desired.

Secondly, I have suggested to the hon. Minister that he should conceptualize a national arbitration policy in line with the National Intellectual Property Rights Policy to foster investors' confidence in the Indian legal system. This will, in turn, also strengthen the Indian judicial institutions in re-orienting themselves and emerging as the regional champions of the international dispute resolution regime and as model judicial institutions, especially among the Commonwealth establishments.

All of us want to see India emerge as a hub of institutional arbitration, both domestic and international. But before doing anything else, what we need is an institution which is free from corruption and which maintains institutional sanctity. That is why I propose for national arbitration policy. We should bring a comprehensive legislation on this subject.

Insofar as the Ordinance is concerned, what you have argued is far from convincing. Even ICADR which is going to be taken over by its

new incarnation, has challenged the Ordinance before the Delhi High Court in a writ petition primarily on the ground that the requirement under article 123 of the Constitution for immediate action has not been met. So, the Ordinance was not a pre-requisite; the Ordinance was not essentially sought after by you only to show us that your intention is noble. I myself, and on behalf of my Party also, wholeheartedly support the contents of the Bill. But the way you are taking recourse to the Ordinance path is really regrettable and reproachable also.

SHRI RAVI SHANKAR PRASAD: As far as the policy part is concerned, the hon. Member should kindly wait for the new law which we are coming up with. It outlines our very pre-eminent policy ecosystem structure and how to take Indian arbitration system forward.

As regards the penalty part, even in the existing law, section 29A clearly says that if an arbitrator completes the proceedings in six months, and if he does not complete it in one year, it will lapse. It can be extended only by the Court order and the Court can levy a penalty of five per cent of his remuneration. Therefore, in the existing architecture itself, there is provision for both the incentive and the penalty. Therefore, Sir, we should not have any problem.

SHRI ADHIR RANJAN CHOWDHURY : Do you have any knowledge about the backlog of the cases?

श्री रवि शंकर प्रसाद: मैं आपसे एक ही बात कहूंगा । एक दिन लॉ पर, जस्टिस सिस्टम पर पूरे दिन डिसकशन करा लें । मैं भी सदन के सामने आना चाहता हूँ । अपनी बात कहूंगा, उनकी बात सुनना चाहता हूँ । आगे का रास्ता क्लियर होगा ।

आर्डिनेंस पर तो मैंने अपनी बात कह दी । चौधरी साहब, कभी-कभी तो हमारी बात मान लिया कीजिए । That is all I have to say.

माननीय अध्यक्ष : अब मैं श्री अधीर रंजन चौधरी जी द्वारा प्रस्तुत सांविधिक संकल्प को सभा के समक्ष मतदान के लिए रखता हूँ ।

प्रश्न यह है :

“कि यह सभा राष्ट्रपति द्वारा 2 मार्च, 2019 को प्रख्यापित नई दिल्ली अंतर्राष्ट्रीय माध्यस्थम् केन्द्र अध्यादेश, 2019 (2019 का संख्यांक 10) का निरनुमोदन करती है ।”

प्रस्ताव अस्वीकृत हुआ ।

माननीय अध्यक्ष : प्रश्न यह है :

“कि सांस्थानिक माध्यस्थम् के लिए एक स्वतंत्र और स्वायत्त व्यवस्था का सृजन करने के लिए नई दिल्ली अंतर्राष्ट्रीय माध्यस्थम् केन्द्र की स्थापना तथा उसका निगमन करने और अंतर्राष्ट्रीय विकल्पी विवाद समाधान केन्द्र के उपक्रमों के अर्जन और अंतरण के लिए तथा माध्यस्थम् के बेहतर प्रबंधन के लिए उपक्रमों को नई दिल्ली अंतर्राष्ट्रीय माध्यस्थम् केन्द्र में निहित करने के प्रयोजनों के लिए जिससे नई दिल्ली अंतर्राष्ट्रीय माध्यस्थम् केन्द्र को संस्थागत माध्यस्थम् का केन्द्र बनाया जा सके और उसे एक राष्ट्रीय महत्ता की संस्था घोषित करने के लिए तथा उससे आनुषंगिक विषयों का उपबंध करने वाले विधेयक पर विचार किया जाए ।”

प्रस्ताव स्वीकृत हुआ ।

माननीय अध्यक्ष : अब सभा विधेयक पर खंडवार विचार करेगी ।

खंड 2 से 5

माननीय अध्यक्ष : प्रश्न यह है:

“ कि खंड 2 से 5 विधेयक का अंग बने ।”

प्रस्ताव स्वीकृत हुआ ।

खंड 2 से 5 विधेयक में जोड़ दिए गए ।

खंड 6

अध्यक्ष और सदस्यों,
आदि की सेवा के
निबंधन और शर्तें

माननीय अध्यक्ष : श्री कोडिकुन्निल सुरेश, क्या आप संशोधन संख्या 1 और 2 प्रस्तुत करना चाहते हैं?

SHRI KODIKUNNIL SURESH (MAVELIKKARA): I beg to move:

Page 3, line 40,-

for “there years”

substitute “two years”. (1)

Page 3, line 41,-

for “shall be eligible for re-appointment”

substitute “shall be eligible for re-appointment based on satisfaction of meeting the selection and re-appointment criteria laid down by an appointment committee duly constituted for the purpose”. (2)

माननीय अध्यक्ष : अब मैं श्री कोडिकुन्निल सुरेश द्वारा खंड 6 में प्रस्तुत संशोधन संख्या 1 और 2 को सभा के समक्ष मतदान के लिए रखता हूं ।

संशोधन मतदान के लिए रखे गए तथा अस्वीकृत हुए ।

माननीय अध्यक्ष : प्रश्न यह है:

“कि खंड 6 विधेयक का अंग बने ।”

प्रस्ताव स्वीकृत हुआ ।

खंड 6 विधेयक में जोड़ दिया गया ।

खंड 7

अंतरण और विहित
होना

माननीय अध्यक्ष : श्री कोडिकुन्निल सुरेश, क्या आप संशोधन संख्या 3 प्रस्तुत करना चाहते हैं?

SHRI KODIKUNNIL SURESH : I beg to move:

Page 4, line 10,-

for “Central Government”

substitute “Government of India”. (3)

माननीय अध्यक्ष : अब मैं श्री कोडिकुन्निल सुरेश द्वारा खंड 7 में प्रस्तुत संशोधन संख्या 3 को सभा के समक्ष मतदान के लिए रखता हूं ।

संशोधन मतदान के लिए रखा गया तथा अस्वीकृत हुआ ।

माननीय अध्यक्ष : प्रश्न यह है:

“कि खंड 7 विधेयक का अंग बने ।”

प्रस्ताव स्वीकृत हुआ ।
खंड 7 विधेयक में जोड़ दिया गया ।
खंड 8 से 13 विधेयक में जोड़ दिए गए ।

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खंड 14 केन्द्र के उद्देश्य

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माननीय अध्यक्ष : श्री कोडिकुन्निल सुरेश, क्या आप संशोधन संख्या 4 और 5 प्रस्तुत करना चाहते हैं?

SHRI KODIKUNNIL SURESH: In Clause 14 it says, “has become physically or cognitively incapable of conducting himself as a Member’. I am moving an amendment as the term ‘mentally incapable’ is no longer appropriate in an important Bill like this. Such terms must be avoided and care must be taken to incorporate a modern term while drafting definition and explanatory terms.

I beg to move:

Page 6, *for* line 7 to 9,-

substitute “to endeavour on academic research and studies, providing teaching and comprehensive training, and conducting policy conclaves, seminars and thematic in-depth international and nation conferences in arbitration, conciliation mediation and other alternative dispute resolution matters;”. (4)

substitute “to establish facilities in India and other countries to promote and expound the stated objectives of the Centre;”. (5)

माननीय अध्यक्ष : अब मैं श्री कोडिकुन्निल सुरेश द्वारा खंड 14 में प्रस्तुत संशोधन संख्या 4 और 5 को सभा के समक्ष मतदान के लिए रखता हूं ।

संशोधन मतदान के लिए रखे गए तथा 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 से 16 विधेयक में जोड़ दिए गए ।

खंड 17

सदस्यों का त्याग-पत्र

माननीय अध्यक्ष : श्री कोडिकुन्निल सुरेश, क्या आप संशोधन संख्या 6 प्रस्तुत करना चाहते हैं?

SHRI KODIKUNNIL SURESH : Sir, I am not moving.

माननीय अध्यक्ष : प्रश्न यह है:

“कि खंड 17 विधेयक का अंग बने ।”

प्रस्ताव स्वीकृत हुआ ।

खंड 17 विधेयक में जोड़ दिया गया ।

खंड 18

सदस्यों द्वारा हटाया
जाना

माननीय अध्यक्ष : श्री कोडिकुन्निल सुरेश, क्या आप संशोधन संख्या 7 प्रस्तुत करना चाहते हैं?

SHRI KODIKUNNIL SURESH : Sir, looking at the unanimity of the House, I am not moving my amendment.

माननीय अध्यक्ष: प्रश्न यह है:

“ कि खंड 18 विधेयक का अंग बने ।”

प्रस्ताव स्वीकृत हुआ ।

खंड 18 विधेयक में जोड़ दिया गया ।

खंड 19 विधेयक में जोड़ दिया गया ।

खंड 20

केंद्र की बैठकें

माननीय अध्यक्ष: कोडिकुन्निल सुरेश जी, क्या आप संशोधन संख्या 8 और 9 प्रस्तुत करना चाहते हैं?

SHRI KODIKUNNIL SURESH : Sir, I am not moving.

माननीय अध्यक्ष: प्रश्न यह है:

“ कि खंड 20 विधेयक का अंग बने ।”

प्रस्ताव स्वीकृत हुआ ।

खंड 20 विधेयक में जोड़ दिया गया ।

खंड 21 से 35 विधेयक में जोड़ दिए गए ।

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

माननीय अध्यक्ष: माननीय मंत्री जी प्रस्ताव करें कि विधेयक पारित किया जाए ।

श्री रवि शंकर प्रसाद: अध्यक्ष महोदय मैं प्रस्ताव करता हूं:

“कि विधेयक पारित किया जाए ।”

माननीय अध्यक्ष: प्रश्न यह है:

“कि विधेयक पारित किया जाए ।”

प्रस्ताव स्वीकृत हुआ ।

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

18.33 hrs

*The Lok Sabha then adjourned till Eleven of the Clock
on Thursday, July 11, 2019/ Ashadha 20, 1941(Saka).*

* The sign + marked above the name of a Member indicates that the Question was actually asked on the floor of the House by that Member.

**English translation of this part of the speech was originally delivered in Marathi.

* English translation of the speech originally delivered in Kannada.

* Not recorded.

* Treated as laid on the Table.

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* English translation of speech originally delivered in Punjabi.

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* English translation of the speech originally laid on the Table in Marathi.

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