[Translation]

MR. CHAIRMAN : Today, CTBT would be discussed last of all.

(Interruptions)

MR. CHAIRMAN : It is not listed for now. It is listed at the end.

SHRI GIRDHARI LAL BHARGAVA : It was announced by the Chair that it cannot be taken up at 4.00 p.m. today.

SHRI S. BANGARAPPA (Shimoga) : Madam, while the Deputy-Speaker was in the Chair, he said that the CTBT matter was coming up at 4.00 p.m. today. He announced it in the open House.

[Translation]

MR. CHAIRMAN : As per the information available with me, Item Nos. 19 and 20 will be taken together.

(Interruptions)

SHRI GIRDHARI LAL BHARGAVA : As you please.

16.08 hrs.

STATUTORY RESOLUTION RE: DISAPPROVAL OF ARBITRATION AND CONCILIATION (THIRD) ORDINANCE

AND

ARBITRATION AND CONCILIATION BILL

[English]

JUSTICE GUMAN MAL LODHA (Pali) : Sir, I beg to move:

> "That this House disapproves of the Arbitration and Conciliation (Third) Ordinance, 1996 (No.27 of 1996) promulgated by the President on 21st June, 1996."

Madam, today we are discussing the Arbitration and Conciliation Bill, 1996 and the Ordinance which preceded it. The first question which requires our consideration is that this is yet another example in the series of the misuses of Ordinance making power under the Constitution. Time and again, we have pointed out that the ordinance making power under the Constitution is to be used very sparingly as it is only when some such extraordinary urgency arises when His Excellency, hon. President is intimated that because Parliament is not in session and the situation warrants that some law has to be made immediately without waiting for the Parliament to come into session. Therefore, the Government, the Cabinet, requests the hon. President to use the emergency extraordinary power of Ordinance-making and issues the Ordinance.

Now, this is one of those occasions where again and again three Ordinances have been issued one after the other as is obvious. The reasons which have been given for these Ordinance - first lapsing, then second Ordinance being issued and that also being allowed to lapse and then the third Ordinance being issued - are wholly inadequate, illegal, insufficient and fail to carry any conviction.

The subject which is dealt with in this Ordinance is regarding arbitration. We have got an existing law regarding arbitration since 1940 or even earlier, 1937, and a few other amendments and laws. So, arbitration is not a new concept. In fact, in our country, there is an age old saying '*panch parmeshwar*', that is, a person who commands respect in a village or in a particular area is respected like God; he can administer and deliver justice to all without any legal formalities, technicalities, requirement of litigation, filing of cases, reply, evidence, cross-examination, documents, arguments and prolonging it for years and years together. That concept of '*panch parmeshwar*' is the concept of arbitration, and that arbitration has been existing in this country since 1940 and even earlier. There were various legislations. Therefore, it is not a new phenomenon that is arising overnight for which His Excellency the President of India was required to exercise the extraordinary power. I fail to understand why the Ordinance making power was misused on such a piece of legislation for which there was no urgency.

Then, there is another aspect to which I would draw your attention. In this Arbitration and Conciliation Bill, we find that the provisions which have been made expressly say that so far as its application is concerned, some parts of it would apply to the whole country - India - and some parts of it would apply to India, except Jammu and Kashmir. Now, it is difficult to understand. In matters of arbitration, why should an exception be made for Jammu and Kashmir. We are already suffering on account of such differences and discrimination in making and application of the laws. I may remind the hon. Law Minister that even when the Forty-Second amendment was made to the Constitution and the Preamble to the Constitution was amended, in which 'integrity', 'socialism' and 'sovereignty' words were introduced, at that time -secularism and integrity, these two important pillars of the Preamble were introduced by the Forty-Second amendment, for the first time, in the Constitution - the most surprising thing we find is that when the Adaptation order was passed for application of the Forty-Second Amendment to Jammu and Kashmir, other phrases of the Preamble were applied to them, but secularism and integrity were not applied, as if the idea was...

[Translation]

SHRI P.R. DASMUNSHI : 'Secularism' is there. The word 'integrity' is not there.

[English]

JUSTICE GUMAN MAL LODHA : Please check up the amendment.

SHRI P.R. DASMUNSHI : 'Secularism' was applied; 'integrity' word was not there.

JUSTICE GUMAN MAL LODHA : If you have checked it up just now, then it is all right. But that was my impression and I had checked it up many times. The most important thing is that the general fabric, the foundation, the bedrock of secular parties and secularism - this combination of 13 or 14 or 15 parties who are strange bedfellows with contradicting and paradoxical ideologies, they all talk about the bedrock of secularism - was not applied in respect of Jammu & Kashmir. What is the hon. Law Minister's reply to this? I have raised this many times, but no reply was given to me.

Probably, there is no reply to it. Why is secularism not applied to Jammu and Kashmir? Do they want to be a theocratic State? Do they want it to be a State where the concept of secularism should not be extended? This is a very important thing. But I am surprised that at no point of time either the Prime Minister or the Law Minister or any person on their behalf has explained this important omission. This is an indication that there also we wanted to appease a particular community and in order to make appeasement, they do whatever they like and according to them even this should not come in their way.

We are going to hold elections in Jammu and Kashmir. Suppose, tomorrow the Assembly of Jammu and Kashmir passes a Resolution in which Resolution they say that they want to adopt a particular religion as a State religion, then all these persons sitting here, who have been talking loud of secularism, would become deaf and dumb spectators to this irony of fate. They would have nothing to say because the Preamble is silent, because of Article 378, because there is a different Constitution and because the laws are applied by different order. That is why even in this innocuous law, even in the Arbitration Law, they say that the second part would not apply. Why? Why should the second part of the Conciliation and Arbitration Law would not apply?

What is the difference between a person going for arbitration in Srinagar or Jammu and another person seeking arbitration in Delhi or Amritsar? No difference can be found out. But still they say that this should not apply. I would like to know from the hon. Law Minister the rationale, the reason the logic behind such an illogical step, a suicidal step, a step which is against the basic features of the Constitution, which is against the bedrock of the Constitution and which is against the entire fabric of our Constitution. It is difficult to understand why Jammu and Kashmir has been isolated.

Then, there are other provisions in it. I would like to submit that so far as conciliation is concerned, arbitration is concerned, I am not against it. The basic theme of this Act or Bill is all right. In fact, most of it is there except that it is extending to the international sphere on account of the so-called globalisation or the liberalisation or the international treaties or the Charter of the United Nations or some agreement which we have entered into there, and there is no objection to that. We have got certain reservations about the economic policies, globalisation and liberalisation especially in the field of consumer goods. That is a different matter. That is a matter which has divided us off and on.

We have been saying that in the sphere of cottage industries and consumer goods, the multinational companies should not come. They should not come to the State of Rajasthan, go to Bikaner and collect there the Bikaneri Bhujias, pack them, put their name on the package and sell them. This is a different matter altogether. But then, why should it not apply in the case of arbitration? I submit that the international agreements may be there. But one thing is certain that nothing should be done which is against the public policy, which is against the interests of the country, which is against the State and by implication or by expression, it must be made clear not latently but patiently that all the international arbitrations that need be done would be within the framework of the Indian Constitution. We cannot allow an international jurist or some person sitting as an international arbitrator to sit over our Constitution or to act in clear contravention or flagrant disregard to or violation of the Indian Constitution. The Constitution is sovereign subject to the Constitution making power of Parliament. Therefore, whether an arbitrator is of India or of London or of Moscow, he has to abide by the letter and spirit of the Constitution. That rider must be there now. It can be spelt out. The Law Minister has used some words like 'public policy' somewhere. If that can go to that extent, I will be too happy. But if it cannot go to that extent, then, it must be made patent and explicit so that at no point of time, under the name of international arbitration, we succumb to such companies or some powers just like we are having earlier the arbitration on Enron in Maharashtra.

And many other severe factories were there. I need not take the time of the hon. House for that purpose. I would only say that this precaution should be taken in all cases. With this, I move my Resolution for purposes

of deprecating the Ordinance which has been issued. So far as the main Bill is concerned, I support it in its main thrust. Thank you very much.

THE MINISTER OF STATE OF THE DEPARTMENT OF LEGAL AFFAIRS, LEGISLATIVE DEPARTMENT AND DEPARTMENT OF JUSTICE (SHRI RAMAKANT D. KHALAP) : Madam, I beg to move :

> "That the Bill to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matter connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration."

Madam, the need for reform in the law relating to arbitraton in India has been widely recognised. The Supreme Court in one of its judgments dealing with arbitration under the Arbitration Act, 1940 stated that the way in which proceedings under the Act were conducted and without exception challenged in courts had made "lawyers laugh and legal philosophers weep." In a more recent judgment, the Court had observed that the law of arbitration should be made simple, less technical and more responsive to the actual realities of the situations. The Public Accounts Committee had also commented adversely on the working of the Arbitration Act, 1940. The Law Commission of India in its 76th Report had suggested a number of amendments to the Arbitration Act, 1940.

The Resolution adopted by the Chief Ministers and the Chief Justices on 4th December, 1993 had also stated that courts were not in a position to bear the entire burden of justice system and that a number of disputes lent themselves to resolution by alternative modes such as arbitration, mediation and negotiation. They emphasised the desirability of disputants taking advantage of alternative dispute resolution which provided procedural flexibility, saved valuable time and money and avoided the stress of a conventional trial.

The need for reform in our arbitration law is, therefore, clear and urgent. The question was as to how and on what lines the law should be reformed. There were many models on the subject including the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) and the International Chamber of Commerce Rules on Conciliation and Arbitration.

On a examination of available models and suggestions received from various interests and experts, it was felt that there are definite advantages in repealing the Arbitration Act, 1940 and enacting a new law taking into account the UNCITRAL Model Law. The UNCITRAL Model Law has harmonised the common law and the civil law concepts on arbitration.

There is also an increasing emphasis the world over on conciliation of both international commercial disputes and domestic disputes.

The UNCITRAL had adopted a set of Conciliation Rules in 1980 and the General Assembly of the UN had recommended the use of the said rules by its Member States in the context of international commercial relations. Even in respect of domestic disputes, in many countries, recourse is being taken to conciliation and other less formal modes of settlement.

We believe that the enactment of the new law will go a long way in relieving the mounting pressure on the courts as also in providing a speedier and less expensive alternative to litigation. Alternative Dispute Resolution systems are becoming increasingly popular in other parts of the world. Alternative Dispute Resolution methods like arbitration, conciliation and other forms of non-adversarial methods of dispute resolution can be usefully resorted to in all disputes in respect of which the parties are entitled to conclude a settlement.

The Arbitration and Conciliation Bill, 1996 as passed by Rajya Sabha seeks to consolidate the law relating to arbitration in India presently distributed in three enactments, namely: The Arbitration (Protocol and Convention) Act, 1937 which deals with arbitration clauses and execution of certain arbitration awards rendered abroad; the Foreign Awards (Recognition and Enforcement) Act, 1961 which provides for the recognition and enforcement of foreign arbitral awards; and the Arbitration Act, 1940 which deals with the conduct of arbitrations in India and enforcement of arbitral awards given in India. The Bill while repealing the existing enactments on arbitration, also consolidates and amends the law relating to domestic arbitration and enforcement of foreign arbitral awards. It also defines the law relating to conciliation.

Some of the more important advantages which will flow from the enactment of the Arbitration and Conciliation Bill, 1996 are :

(a) The new law will be a complete code on the law of arbitration and conciliation in India.

(b) The new law will extend to domestic as well as international arbitration and conciliation and thus avoid a dichotomy within our laws.

(c) The new law will also apply to dispute capable of settlement by the parties.

(d) The new law will minimise the role of courts until after an arbitral award is rendered by an arbitral tribunal or the settlement agreement through conciliation is reached by the parties.

(e) The new law will also enable parties to choose arbitral institutions to determine certain issues on their behalf.

(f) In respect of international commercial arbitration, parties will be free to decide on the substantive law applicable to the dispute.

(g) The new law will require the arbitral tribunal to give reasons for its award. This will introduce transparency in decision-making and enhance the faith of the parties in arbitration system.

(h) The arbitral tribunal will be competent to use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement of the dispute.

(i) There will be clear provisions on grant of interest by the arbitral tribunal on the sum adjudged from the date on which such sum becomes due to the date of payment of the amount. This will discourage filing of frivolous objections to the award with a view to delaying its implementation.

(j) The grounds for setting aside an arbitral award will be clear and unambiguous.

(k) When an award is challenged, the court will be competent to give the arbitral tribunal an opportunity to eliminate the grounds for setting aside the award.

(l) There will be no rigid time-limits for making an award. This will help in avoiding most of present litigation which consists in moving courts for extension of arbitrator's time-limits for making the award resulting in indefinite postponement of arbitral proceedings. Under the new law, the parties will be free to fix the time-limit for making the award and to extend the same either before or after the expiration thereof.

(m) Where the time for making an application to set aside the arbitral award has expired or such application having been made it has been refused, the arbitral award will be enforced in the same manner as if it were a decree of the court. This will eliminate avoidable court proceedings for converting the award into a judgment and decree.

(n) The settlement agreement reached as a result of conciliation proceedings will have the same status and effect as if it were an arbitral award.

The Bill was introduced in Rajya Sabha on 16 May, 1995. The Standing Committee on Home Affairs considered the provisions of the Bill in great detail and made suggestions for amendments to some provisions of the Bill. I am deeply indebted to the Chairman and Members of the Committee for their very valuable suggestions. The recommendations made by the Committee have been accepted by Government and necessary amendments have been made in the Bill as passed by Rajya Sabha.

This Bill is part of the ongoing economic reforms. Since the enactment of the new arbitration law is the basis for the development of Alternative Dispute Resolution systems in India and since there was consensus on the provisions of the proposed legislation, it was felt that the law should be enacted immediately through the promulgation of Presidential Ordinance.

Accordingly, the President was pleased to promulgate the Arbitration and Conciliation Ordinance, 1996 on the 16th January, 1996. The Ordinance was brought into force with effect from the 25th January, 1996. Explanatory statements giving reasons for immediate legislation by Ordinance and reasons for repromulgation of the Ordinance twice, first on the 26th March, 1996 and later on the 21st June, 1996 have already been laid on the Table of the House.

While moving the Statutory Resolution, Justice Lodha has referred to the non-applicability of this Bill to Jammu and Kashmir and certain other things. I am sure that some other hon. Members are also going to raise similar issues. I propose to answer them at one time, that is at the end of the debate.

As has already been said by Justice Lodha, this is a very good Bill. He has supported the Bill. I commend this Bill for the consideration of the House.

MR. CHAIRMAN : Motions moved :

> "That this House disapproved of the Arbitration and Conciliation (Third) Ordinance, 1996 (No. 27 of 1996) promulgated by the President on 21 June, 1996."

> "That the Bill to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration."

[Translation]

SHRI BHAGWAN SHANKAR RAWAT (Agra) : Sir, the spirit of the Bill brought forward by Shri Ramamkant D. Khalap is indeed laudable but I would certainly point out the dangers inherent in it. He said with great pride that globalisation of trade is taking place. So far, so good.

The United Nations have also framed model bye-laws by adopting a resolution. There is no harm in our taking the benefit of the knowledge of others but now-a-days, the trouble with the models drawn up at the international level is that if you derive some benefit out of them, a tremendous pressure is put on you to adopt then in full. The same thing had happened in the case of GATT agreement and if there is any such pressure on our Government, I oppose it tooth and nail and warn that we should not do anything that way put the sovereignty of our country into jeopardy. Under the provisions of the International Commercial Agreements, there should not be any pressure on us for working against the provisions of the laws enacted by the Government of India. If the hon. Minister proposes to get the benefit of the wisdom of others only to enhance his own knowledge and capacity, he may do so but certainly not under pressure. This applies not by to the hon. Minister but to the Government of India also.

Due to globalisation, new trade avenues have of course opened and thus it has become necessary to bring similarity and identify in the international laws. This Bill has been brought forward to help facilitate that similarly and identity. If there is a similar law, it will be of great benefit to the people.

The process of getting justice in the international law courts has been very tedius and expensive. This Bill will provide relief from that also.

Secondly, it is better to enact laws in one go. We had three types of provisions which became outmoded. In view of the demands of justice. They tried to enact a consolidated Bill. Multiplicity of laws used to cause a great deal of inconvenience to the people. Now that inconvenience will no longer be there. The hon. Minister quoted an idiom in English That "lawyers laugh and philosophers weep" to illustrate the way in which proceedings under the Act were conducted and challenged in courts. It is doubtless the CMX of the matter, which ought to have been recognised much earlier. Arbitration has been a part of India tradition and system. I do not blame the hon. Minister because the Government he is part of, is still in its infancy. The previous rulers ought to have seen to it that it was the Indian judicial process rooted in Indian Tradition and not the replace of the western model that showed have been followed and encouraged here. But the Britishers, when they came to our country, changed the Indian judicial system and the arbitration that was the major part of the Panchayati system. Earlier, there used to be Panchayats in all the villages and all disputes used to be settled there. No one used to go to the High Court and the Supreme Court. Even the cases of murders used to be decided in the village Panchayats. But now the very definition of the social justice has been changed. The real justice used to be done then. The Governments has not realised the importance of the arbitration as it has seen that there are a large number of cases piled up right from the Supreme Court to courts at Tehsil level. It is said that the one who has won in a civil court has lost and the one who lost has been ruined. I myself come from the legal profession. I know the plight of the litigants in our present judicial system. So, I welcome this Bill as a step in the right direction. The Government has very rightly realised the necessity of introducing the Panchayat system.

I would like to tell the hon. Law Minister, Shri Khalap that he is not confined to this law alone. He should restructure the entire judicial system. It will be a great constitution of his and his name will go down in the annals of history. Till now our judicial system is just a carricatured form of the coestem judicial system. It takes years and years for a case to be decided in our courts Grand father files a suit and his grand-son hears the verdict. This tune-consuming process must change. The verdict should be expedited and hearing should take place without losing time. Efforts should be made to bring about the needed reforms in our judicial set-up. I and my party will fully cooperate with the hon. Minister in this regard, so that the people may get justice speedily. I would like that the provisions of Arbitration should be made appreciable in criminal cases as well. The Lok Sabha have proved a total failure and the people have not been benefited by this system.

I know previously judicial Panchayati system used to be there in Uttar Pradesh. In that system judicial powers had been given to the judicial panchayats. Later on that right was withdrawn. Thus the entire system was made redundant, irrelevant and consigned to the waste paper basket.

Lodhaji said one thing here which I would like to repeat. I know what answer the hon. Minister will give. But I would say that the history of the country and the coming generations will not pardon us. The provisions of this Arbitration should also be made applicable to the people of Jammu & Kashmir, so that the dispute could be resolved by the Panchayats there. I feel but article 311 will not be an impediment in this regard. The peole of Jammu & Kashmir are running themselves in litigation so much so that it is having an adverse effect on their economy and the trade. The foreigners are introducing in their carpet trade. They say that is no need to allow L.C. and the trade can be carried on without L.C. It is being done in the rest of India. A lot of bungling is taking place in it. It will of course be contained in the rest of India. I fail to understand why this integral part of India is being denied this facility. I don't think Article 371 comes in its way. But for this political will is needed. The people of Kashmir do not want that they should be exploited and victimised. They too wish to join the mainstream of the country and the

world. I welcome acceptance of the recommendations of the Standing Committees. Shaading Committees had been formed in the 10th Lok Sabha. Shri Shivraj Patil, who was the Speaker of the Lok Sabha and is present a Member of this House, had made a significant contribution in the formation of these Committees. I am happy that all the recommendations of the Standing Committees have been accepted by you. It helps build the consensus in the legislature. This Bill was discussed threadbare in the Standing Committees before it was brought here. Thus it has become a very useful and desirable piece of legislation. Now even the opposition benches are supporting this Bill because all its lacunae have been removed during discussion in the Standing Committees.

In the end, I once again submit that this Bill be made applicable in J & K State as well. The laws are enacted but the rules thereunder are not framed. These rules should also be framed without losing time. The hon. Minister should give us an assurance in this regard and state the time by which these rules would be framed. There is a mention of enforcement of decrees under the CPC. But there is need to guard against its misuse. If something needs to be done to cut short litigation at that stage, this must be done by proper monitoring so that the Bill could be implemented in its true letter and spirit. With these words, I support this Bill.

[English]

SHRI SRIBALLAV PANIGRAHI (Deogarh) : Madam, I rise to support the Arbitration and Conciliation Bill, 1995, now brought forward before the House to replace the Ordinance. I would like to draw the attention of this august House that the Bill bears the name of Shri H.R. Bhardwaj, former Minister of State in the Ministry of Law Justice and Company Affairs.

There is a difference between this Ordinance and some other Ordinances which have been brought before this House for replacement. This Ordinance was not promulgated as such at the first instance. There was a sincere attempt on the part of the then Government to come before the House and legislate it.

In that way, the Bill was first introduced in the Rajya Sabha on 16th May, 1995 and thus, this is the third Ordinance. These Ordinances were necessitated by sequence of events that took place from time to time.

The Bill was introduced in Rajya Sabha in May, about 14 months before and it was referred to the Departmentally-related Standing Committee on Home Affairs and the Committee, after careful consideration, submitted their report with their suggestions on 28th November. Suggestions were also accepted by the Government *in toto* and the Bill was also before the House for consideration during winter Session. But, as you know, Members of the Tenth Lok Sabha are aware as to what sort of a situation was prevailing in Parliament during the winter Session. No legislative business could be transacted and legislative business is the main work of Parliament. There are other items of work also but because of the turmoil created here over the telecom policy which went to the Supreme Court and you know the outcome - legislative business could not be transacted. So, Parliament loses time on extraneous matters which are sometimes avoidable.

SHRI MADHUKAR SARPOTDAR : What was that turmoil? You said something about turmoil. We do not know about it.

SHRI SRIBALLAV PANIGRAHI : Do you want me to explain it just now?

I would like to say that Ordinances are opposed but good provisions had come in the form of Ordinances. That is really a serious matter and we all expressed concern about it but the House should transact the business in such a way that these occasions do not arise and from our experience, we find that till today, only one Bill relating to the Representation of the People Act.

[Translation]

PROF. RASA SINGH RAWAT : It is our right to oppose the Ordinance and they are saying that time is being wasted.

[English]

SHRI SRIBALLAV PANIGRAHI : Tomorrow, the House will adjourn for about three weeks and what have we done till today during this Session? Except one Bill relating to Representation of the People Act, no other Bill has been passed. So, I would say that at least from now onwards the entire House should address itself to this situation as to how recurrence of such thing will not happen. You always say about misuse of power ...*(Interruptions)*

With these words, I come to other provisions of the Bill. It is already stated that the more we keep away from law courts, the better it is. You know how the law courts are overloaded; lot of pressure is there and lot of delay in administration of justice is there. Of course, all of us know it. In that way, there is a lot of harassment, expenditure and procedural hurdless.

SHRI ANIL BASU : We have no other alternative except the law courts.

SHRI SRIBALLAV PANIGRAHI : Lok Adalat is also an alternative to some extent.

SHRI ANIL BASU : But Lok Adalat is an extension of the courts.

SHRI SRIBALLAV PANIGRAHI : I am sorry for your interpretation. There is a difference between the Lok Adalat and regular courts as far as the time factor and expenditure are concerned.

Sir, the saying goes, justice delayed is justice denied. Justice is invariably delayed in the present system. These Tribunals and Arbitrations deal with matters relating to trade and commerce. Hitherto, our arbitration matters were being dealt with through three legislations. - The arbitration Act, 1940, The Arbitration Protocol Act, 1937 and the Foreign Award and Recognition Enforcement Act, 1961 - and the provisions as contained in all those three legislations have somewhat been integrated in the present Bill. The Public Accounts Committee of the Parliament, the Supreme Court of India, the Law Commission and other representative bodies had adversely commented upon the system of arbitration in our country. It has also been aptly referred to by the hon. Minister that even the United Nations, the Commission on International Trade Law in 1985 had adopted the Model Law on international commercial arbitration. The United Nations has also urged upon its member States to ensure settlement of trade disputes amicably through arbitration. This Model Law could be amended in different forms according to the varying needs and requirements of the countries - this is, after all a model - and we could also have one on those lines in our country.

The provisions as contained in this Bill have been welcomed by all in this House. The whole concept of this Bill is to permit the disputing parties to decide on their forum, place and time to arbitrate upon their disputes. This would help in reducing expenditure and ensure quick disposal of cases. In these respects this is a very welcome Bill and the Government deserves to be congratulated on this score.

MR. CHAIRMAN : Please conclude now.

SHRI SRIBALLAV PANIGRAHI : Yes, Madam. I am concluding.

Madam, India is an ancient country. We have very rich traditions in our country. We have in our traditions, the Panchayat system. In that respect it is an extension of that system also. But today I am at pains when I am reminded of what is appearing in the newspapers these days about some of the decisions of some of the village and caste panchayats. They are passing judgements to hang people; to tie people to a tree and beat them up; stripping the ladies naked - these judgements of the Panchayats appeared very prominently in the newspapers sometimes last week. We do not want this type of Panchayats but Panchayats in its proper spirits would have to be encouraged. Of course, the Civil Procedure Code, the Evidence Act and the Limitation Act are also applicable here except for the execution of awards.

Madam, insofar as the State of Jammu and Kashmir is concerned, certain provisions - part I, III and IV - of the Bill are applicable to this State only in relation to the International Commercial Arbitration and the International Commercial Conciliation. I think, the Government should examine this aspect. It is only a suggestion I am giving to the hon. Minister of Law. It is because of the special status that this Stat enjoys under Article 370 of the Constitution.

Whether this could be legislated in their own Assembly after the Assembly elections are held in Jammu and Kashmir, has to be examined. Certainly this should be applicable now, *in toto*, to Jammu and Kashmir also. Since there is a sea change going on in the world of trade and commerce, particularly after the liberalised economic policy that we had adopted, we have to keep abreast with its pace. Our Arbitration Act is outdated and falls short of our requirements to meet the demands of today. Our Act will have to be made responsive to the the present day demands. What is the purpose of a law? It has to made responsive to the changing times and the changing requirements. From that angle also this Bill is very useful...*(Interruptions)* It was enacted even before the Second World War, in 1939.

I find certain discrepancies in the Bill. The term arbitration has been defined, but 'conciliation' is not defined. That should also be defined in clear terms, otherwise, it may lead to certain complexities. Regarding arbitration also the parties have been given a lot of freedom to choose their arbitrators, the procedure, time etc. I do not know how it will work, but the number could have been fixed, certain procedure could have been spelt out. Of course, this is a new provision. The approach is also new and it should start well. The Government have the powers which they can exercise in framing the necessary rules under Section 84(1). I am sure this will usher in a new type of system for the settlement of disputes.

Madam, I again congratulate this Government and also the previous Government. Actually the credit goes to the previous Government. It is good that the present Government applied its mind and brought this Bill before the House for replacing the Ordinance. It will usher in a new era so far as arbitration system is concerned.

Sometime after this law comes into force the Government should take stock of the situation and correct the lacunae that may crop up in the implementation stage. With these words, I conclude.

16.58 hrs.

SHRI BALAI CHANDRA RAY (Burdwan) : Madam Chairperson, I rise to support the Bill. While supporting the Bill, I cannot but point out certain shortcomings in it.

While the Bill, as the Minister of Law has said, wants to achieve certain definite objectives, the provisions in the Bill may not help in attaining those objectives.

17.00 hrs.

(Mr. Deputy-Speaker *in the Chair*)

It has been rightly observed that an alternative forum and procedure for resolution of disputes is now a well-accepted idea, accepted by every advanced country and also by our country. The reason why alternative forum are devised, and alternative procedures are adopted is that it will eliminate delay in disposing of disputes. It will be cheaper; it will be more expedient, but equally efficacious.

I invite the hon. Minister's attention to Section 9 of the Act. Section 9 of the Act provides that for interim orders, of injunction, sale, security and other similar reliefs, the party can make an application and go to court. Because of that, the court proceedings for interim orders, shall be delayed for indefinite time. We were just saying that we, now, want to avoid court proceedings for the well-known backlogs and delays. But to encourage interim orders to be obtained from courts is just a step intended to defeat the object for which the Act is sought to be promulgated. Now, again, it does not stop there.

There is a provision for appeal under Section 37 against orders passed under Section 9. The result is that a court will pass an interim order in respect of the enumerated items under Section 9 and those are simple things. Any arbitrator can do it. Then against the order, the aggrieved party will have a forum of appeal and that one is a court. These two proceedings will certainly take years. I have 42 years of experience in a High Court. Therefore my experience only suggests that it will take several years to complete the proceedings and the arbitratioin will be stalled in the meantime. How will this be an expeditious proceedings?

Kindly also consider Section 27. Certain evidence on the application of a party and at the discretion of the arbitrator can be obtained from court. It is a procedure which is absolutely not called for. By doing so, again you are stalling the arbitration proceedings, asking the court to collect the evidence and remit the recorded evidence back to the arbitrator so that the arbitrator may act upon it. This circuitous procedure of obtaining evidence is the worst step that could have been taken for any expeditious disposal of dispute. It does not encourage the quality of the arbitration at all. It is true and correct that the application of Evidence Act has been dispensed with, so also the Civil Procedure Code. By disposing, these statistics we have certainly towed the line of the old Arbitration Act. But our experience will certainly invite us to take certain contrary steps.

I hope that the hon. Minister knows that a portion of the Securities Scam involving about Rs. 300 crore pertaining to one or two banks is now under arbitration by one retired Judge of the Supreme Court and a retired Chief Justice of Madras High Court. One witness on the box was being cross-examined for 28 days and even half of it was not finished. It was because the arbitrator had no power like the court under the Evidence Act to stop irrelevant or repitative cross-examination. So, a party can drag on the proceedings. Oral evidence is also permitted under this Act. For an indefinite period, the witness can go and an unscrupulous party can drag on the proceedings for an indefinite period.

So, I would submit, with all humility, that some provisions should be made so that the arbitrator may have some power to stop irrelevant questioning of a witness and introducing irrelevant materials into the proceedings.

I am sorry to point out that the draft is somewhat casual. Anybody can look at the Second Schedule. How casual a draft can be is certainly evident in this Act. Kindly see Second Schedule at page 32 which reads :

> "Protocol on Arbitration clauses :
>
> The undersigned, being duly authorised, declares that they accept on behalf of the countries which they represent the following provisions :..."

There is no undersigned and there cannot be any undersigned.

In an Act of the Parliament, whether Rajya Sabha or Lok Sabha will pass, that to a Schedule there will be an undersigned is inconceivable. Even that was not noticed and that was not deleted.

Well, adoption is something and copying is another. There are complexities in the Act, which will certainly not help expeditious arbitration and will give rise to innumerable disputes and litigations. In various clauses of the Bill, a phrase 'habitually resident of a country' has been used. Who is 'habitually resident'? We are accustomed with the word 'ordinarily resident'. It is very difficult to define 'habitually resident'. If you want to introduce and stick to 'habitually resident', well, it will open the floodgate for fresh litigations.

There is another phrase of doubtful merit. It is well known as to what commercial suits are or what commercial proceedings are or what commercial disputes are. But, unfortunately, in our legal relationship, there is nothing like statutory commercial relationship. There is no statute like the Joint Venture Statute of some modern States. China has adopted a Joint Venture law. Commecial legal relationship has not been defined. Courts quite often say that this is a commercial suit but commercial legal relation is not found anywhere. therefore, that again will make it sbject to interpretation. And subject to interpretation means litigation, which might have been avoided.

Clause 7 (4) says: "a document signed by the parties." Arbitration agreement may be of different types and one of them is a document signed by the parties. Suppose an arbitration agreement is signed by the parties and one of them is dead. the parties or the predecessor, who has signed the agreement. should be binding for an arbitration. That is not provided here.

There is another provisions to which I would like to draw the attention of the hon. Minister and that is, Section 200. Section 20 provides that the parties can not only choose their arbitrator but also can fix the site of the arbitration proceeding. It will lead to an anomaly. Both the parties will drag the arbitrator probably alternately to their drawing rooms. One party will say, 'come to my drawing room in the first sitting' and the other party will say, 'come to my drawing room in the second sitting' and the arbitrator will go on doing it. The arbitrator alone should be given powers with the consent of the parties if possible and if not possible, without their consent, to decide what should be the site or the place of arbitration.

There is a mention of a word 'corruption' in explanation to section 34(1). This is appearing in two other sections also. An award can be set aside on the ground of fraud and also on the ground of corruption. Well, legally, we have no concept of what corruption is so that an enforceable concept like fraud can be introduced. Fraud is either misrepresentation of facts or misrepresentation of law. That means something is known but deliberately distorted of version is given. But corruption is yet legally idea so that are award that ground can be set aside. If something is conceived as corruption, let that be well-defined so that on the ground of corruption, and award can be set aside.

I shall now come to the other part, that is, Part-II. Who are these High Contracting Parties? In the Convention which we have adopted, there is a reference to 'High Contracting Parties'. It is given in the Schedule. I have looked to the Rajya Sabha debate and the Law Minister's answer there was that the Government is a High Contracting Party. Well, if the phrase 'High Contracting Parties' has to be retained, it has to be given a meaning in the body of the Act itself. Otherwise, High Contracting Parties cannot be assumed to be the Government. There are organisations like General Motors, for instance, which have much more funds than the Government has.

I would like to draw the attention of the Minister of Law and Justice to the words' 'foreign award'. If you look at section 44 and compare it with section 53, section 44 talks about a foreign award, which is an agreement which was entered into on 11th October, 1960 or after, whereas section 53 talks about foreign awards and agreements entered into on 24th July, 1924 or thereafter. That means there are two types of foregin awards under this Act, one entered into in October, 1960 onwards and the other on 24th July, 1924 onwards. Now, to refer back to a 24th July, 1924 agreement or to an agreement of 1960, it appears to me, is absolutely unnecessary. Simply because the two Charters, the two protocols - the Geneva Convention and the New York Convention - provide for it, there is no reason why we have just to literally to adopt them. We do not know on 24th July, 1924 what agreement had been entered into. 1924 is more than 70 years now. An agreement into then shall be enforceable now. Under this new law I do not think the retrospectivity that is given by these provisions are permissible at all.

Again, see Article VII of the Geneva Convention. This is appearing at on page 30. May I read that article? It says :

> "The provisions of the present Convention shall not affect the validity of the multilateral or the bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by contracting States, not deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law for the... and the countries where such award is sought to be relied upon."

The result is, the World Trade Organisation's Dispute Settlement Boards are there.

There is multilateral commercial understanding in the World Trade Organisation and we are crying for long that this is against the interest of Indian economy and Indian sovereignty. Now, this clause provides that although an arbitral agreement is entered in the Geneva Convention if there is a multilateral or bilateral agreement which will include the World Trade Organisation's Dispute Settlement Boards, he can avail of that. That means in spite of this agreement, if he say had a patent agreement, he will have to fall back again on the mercy

of W.T.O. If the parties do not agree to abide by this agreement they will still have the opportunity to have it settled by Disputes Settlement Board of World Trade Organisation which is heavily weighted against India and the interest of Indian Trade and commerce.

Then certain things are really strange. Kindly see Section 36. It reads :

> "Where the time for making an application to set aside the arbitral award under award shall be endorsed under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court."

How does it fit in?

SHRI RAMAKANT D. KHALAP : Sir, may I clarify this point? We have issued an erratum. You kindly read it along with this. I will read it out :

> "Where the time for making an application to set aside the arbitral award under Section 34 is expired, the said application having been made, it has been refused then the award shall be endorsed under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court."

This is the correct version.

SHRI BALAI CHANDRA RAY : If it is like this then it is all right.

While certainly I support the Bill, but I do not think that the Bill so far as domestic arbitration is concerned— will have that expedition as was expected it should have.

The deficiency of the present Act which is based on 1931 Act of England which was amended thrice by 1979 Act is that the arbitration proceedings was dragging for long. This Bill should be given a closure look and I am sure the Ministry will certainly have a closure look and eliminate the provision whereby arbitration could be dragged on. First the interim orders by the Courts, then there is application, affidavit in opposition and reply thereto, date of hearing and so on and then the appeal against that. This will drag on for years. Therefore, a closure look with an attempt to correct the error is needed.

There are other paragraphs. Caluse 25(4) reads:

> "This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder."

So, there should be some look into it. The Act is purposeful and its aim and object are quite laudable. I do support the Bill. But I would request that there should be closure re-examination of the Bill and the errors should be corrected.

With these words, I conclude.

[Translation]

SHRI GEORGE FERNANDES (Nalanda) : Mr. Deputy Speaker, Sir, I have certain reservations in regard to this Bill. This Bill starts with preamble. All the Members have supported this Bill. Shri Rawat, while supporting the Bill wholeheartedly, said that is this country we are carrying on with the caricature of the western laws. But a look at the preamble of the Bill will reveal that it is not the caricature but what the western actually laid down is being sought to be followed in its true spirit through this Bill.

The preamble, starts with the following words :-

[English]

> "WHEREAS the United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985;"

Thereafter there are whereas—

[English]

> "AND WHEREAS the General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;"

[Translation]

The next is —

[English]

> "AND WHEREAS the UNCITRAL has adopted the UNCITRAL Cnciliation Rules in 1980;"

[Translation]

Then it is said —

[English]

> "AND WHEREAS the General Assembly of the United Nations has recommended the

use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation;"

[Translation]

Then comes conciliation

[English]

"AND WHEREAS the said Model Law and Rules make significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations;"

[Translation]

And in the end -

[English]

"AND WHEREAS it is expedient to make law respecting arbitration and conciliation, taking into account the aforesaid Model Law and Rules."

[Translation]

It is all embracing. Through this Bill, we are trying to accept the rules and the laws framed by the United Nations for commercial arbitration at international level.

Sir, it is true that many amendments had been made in the law enacted by us in 1940 and the details of the amendments made upto 1988 are available here. In this Bill, it has been stated that that law is being repealed. Its short title reads :-

[English]

"A Bill to consolidate and amend the laws relating to Domestic arbitration..."

[Translation]

On one hand, you say that you are repealing and on the other, you are using the words 'domestic arbitration'. Thus, through this Bill you are deciding to ditto whatever the western countries have decided for themselves.

Someone here rightly pointed and that the previous Government had taken such a decision and had accepted the concept of globalisation and since the present Government's existence is dependent on the support of the people of he previous Government, the present Government has brought forward this Bills.

Sir, First of all, I would like to know from the hon. Minister the number of countries which have so far accepted the model proposals or laws that the United Nations or any of its commissions had framed in 1980 and 1985 also of those countries which modified their laws according to those models. As far as my knowledge goes, 10 big nations accepted these model laws and the U.S.A. is the front runner in International commercial transactions followed by Germany and Japan and other European countries like France, U.K. and Italy. These are the countries which have disputes and arbitrations in all countries of the world. Therefore, I would like to know from the hon. minister whether any of these nations have accepted the model rules and laws of the United Nations for domestic arbitration in their respective countries. The hon. Minister should furnish us complete information in this regard in his reply to the discussion.

Secondly, I would also like to know from the hon. Minister as to whether there are certain countries which have accepted these rules and laws for domestic arbitration. International arbitration is quite different from it. I am talking of models laws and rules framed by UNO which might have been accepted by themfor their domestic arbitration.

The honorable member how spoke before me dwelt at length on certain clauses of the Bill. I would like to draw the attention of the hon. Minister to clause 11 which reads as :

[English]

"A person of any nationality may be an arbitrator, unless otherwise agreed by the parties."

[Translation]

We discussed the problems of people in villages. But I fail to understand as to how a person from the U.S.A. or any other country would come here and become an arbitrator. This law is not for the international trade only. It applies to domestic trade as well. Therefore, we would like to know what clause 11 (i) means. I would like to know whether this provision applies only to international arbitration or it is applicable to domestic arbitration also.

Now I come to clauses : 12 and 13. Clause 12 reads as under :

[English]

12(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality."

12(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him."

Then, please see sub-section (3) which says:

"An arbitrator may be challenged only if-

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties."

[Translation]

Here he has been challenged. In the first instance, I disclosed that I am innocent and have nothing to do with the dispute. I gave in writing that I have no family, friendly or business relationship with any of the relations of the other party. But subsequently it come to light that some relationship was there. It often happens in our country. We say 'no' in the first instance and then when some facts are revealed, we say 'yes, yes'. We see these things daily in all courts. Now see clause 13 which is as under :

[English]

13(1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

13(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal of after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal."

[Translation]

Now read the last sentence. Read clause 3

[English]

Sub-clause (3) says:

"Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge."

[Translation]

Who will decide it—whether the same persons about whom we were subsequently informed that he was related to and in collusion with the other party would decide. Whether the person apprehended and challenged would also decide about his removal from office. Supposing I am the arbitrator and I am in collusion with the other party. When facts come to light, it is only I and not any other authority would decide whether I should continue as arbitrator or not.

[English]

Sub-clause (4) says :

"If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award,"

[Translation]

Then I challenged and you said that you would continue to be the arbitrator and when you decided that then I would be in more trouble because I challenged you and the challenged person cannot go in appeal anywhere since it is a matter of arbitration. As such, the person who challenged did not get justice and he only invited trouble for himself.

Sir, I am not able to understand the inherent meaning of clauses 12 and 13. I do not know where you intend to this country to by introducing have such a law of international standard, in the face of your new economic policy and your Government of 13 parties and a tail...*(Interruptions)*

SHRI GIRDHARI LAL BHARGAVA : Shri Munshiji was telling that the tail...*(Interruptions)*

SHRI GEORGE FERNANDES : Shri P.R. Dasmunshi never had any complaint against us...*(Interruptions)*

[English]

It is not an unparliamentary word. It is a good word.

[Translation]

Mr. Deputy Speaker, sir, now my objection is about clause 17.

[English]

Clause 17(1) says :

Unless otherwise agreed by the parties, the arbitral tribunal mays, at the request of a party, order...

[Translation]

here I am laying special emphasis on "order".

[English]

"a party to take any interim measure of protection as the arbitral tribunal may

consider necessary in respect of the subject matter of the dispute."

[Translation]

Now I demand restriction on a thing or want a thing to remain at a particular place. In this case no hearing will take place and the arbitrator will strainghtaway give the order that much a thing should be done. Here I do not see any need for any hearing. I asked for a thing and you issued the order. Now I draw your attention to clause 9.

[English]

Clause 9 says :

"A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it becomes decree of a court, apply to a court..."

[Translation]

Here the court has been brought in -

[English]

For what?

"...for an interim measure of protection in respect of any of the following mattes and the Court shall have the same power of making orders as it has for the purpose of, and in relation to, any proceedings before it, namely:-

(a) the preservation, Interim custody or sale of any goods which are the subject matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation of inspection..."

[Translation]

etc. etc. It means that when you need an interim decision in respect of any goods, you have created a court under section 9. When you have provided the facility of the court, I fail to understand the right under clause 17. Here you are giving the arbitrator the right to more arbitrarily. You have Rs. 10 lakhs paid to me by the arbitrator today and we shall order that Rs.10 lakhs be paid today. I want to know as to what is the difference between the two and how it has been done. Since I mentioned to section 31 which reads as under :-

[English]

"A sum directed to be paid by an arbitral award shall, unless the award otherwise directs carry interest at the rate of eighteen per cent per annum from the date of the reward to the date of payment."

[Translation]

Sir, the Reserve Bank also has some rules regarding the amount of money. There is also some maximum rate in India. Whenever any Government keeps some money with it, it gives interest on that money. Then how has this 18 percent comes in suddenly? You referred to the issue of the village people. How are things so wrong in India till now and how will the international law bring us out of the mess, how will rural people get justice - all these things are now coming up and you propose to impose an interest of 18 per cent. There is a dispute between two brothers. I fail to understand what all these things mean here. The question is not of the maximum.

[English]

"...unless the award otherwise directs, carry interest..." There is no maximum, Mr. Law Minister. You are trying to mislead me. I am not saying you are misleading the House; you are trying to mislead me. "A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per cent..." There is no maximum. "It shall carry.." It is decided that that shall be the interest that shall be paid unless otherwise directed. The "otherwise" decision could be twenty; it could be twenty-five. It would not be ten. This is the meaning of the clause. There is no maximum. It shall be eighteen per cent unless otherwise decided. An arbitrator like my dear friend Shri P.R. Das Munsi may say that eighteen per cent is too much, I will settle at twelve. On the other hand another arbitrator like my equally dear friend Shri Venkat Swamy may, say the 'no, Twenty-five per cent shall be paid'. It is open. It does not say anywhere that it shall not exceed eighteen per cent. In any case eighteen per cent is a very high amount.

[Translation]

Therefore, we want to know what it is all about we have, through this legislation, accepted the concept of globalisation in full...*(Interruptions)*. You have studied it so well. We are worried...*(Interruptions)* But we did not want to interrupt you when you were speaking.

PROF. RASA SINGH RAWAT : I had not spoken. Our friends had spoken...*(Interruptions)*

SHRI GEORGE FERNANDES : I thought you had spoken...*(Interruptions)*

Mr. Speaker, Sir, the hon. Members who spoke earlier had talked about the New York Convention Award

and Geneva Convention Award at the international level. When I read it, I became anxious to know as to what it all means. Why are we moving bacdwards towards 1924 and 1960? For whom are we making all these arrangements? This question is not secondary. There are certain people who have been having a dispute for the last 40 years with the Government of India or with some big businessmen of India. Before independence, the Britishers were having trade relations with India. East India company had been dismissed but some other companies were operating. There are many cases for which some arrangements are being made through this Bill. I am apprehensive that this may turn out to be an attempt to bring the New York Convention Award and Geneva Convention Award of 1960 and 1924 respectively to the international forum. I am not blaming anybody. This Bill does not deserve all the praise lavished on it. Therefore, this Bill needs to be improved upon. I do not know what lacunae have crept in the legislation of 1940. If you feel that the lawyers and arbitrators are taking more time, as pointed out by Shri P.R. Dasmunshi, then it applies to every case pending before the courts. Should we then close down our courts? Which cases of the workers has not been pending in courts for the last 25 to 30 years? The Railway Board dismisses an employee without any rhyma or reason, only to should some dishonest officer. The poor employee's case is not decided by the court till his death. I have experienced much things as Railway Minister...*(Interruptions)* that is exactly what I am saying. I am saying about the bureaucracy...*(Interruptions)* Our arbitrators are born and brought up in this very country of ours. How will the thinking of an Indian be changed by implementing an arbitration law of international standard here? The man is the same, whether he works under this law or that law. You are unable to change the thinking of the people implementing these laws in the country. The hon. Member who spoke earlier asked as to whom this task would be entrusted and how will be implement this sort of arbitration law? The matter again boils down to the fact that of the persons entrusted with the task of implementing this law stated harassing people, particularly of the rural areas, what is the remedy for it? so, we shall have identify the shortcomings in our judicial, arbitration or conciliation machinery and try to resume then right earnest.

Reports have appeared in today's newspapers that the London court has given its verdict in the case relating to the dispute between Imran Khan and Ian Botham. The case came up before the court only ten days back. Hearing was started immediately and within ten days the case was decided. In India, such a case could have taken 20 years. Imran Khan would have seen the autmn of his life and Botham would have perhaps kicked the bucket without the verdict from the Indian court. In the U.S.A., the renowned boxing champion raped a girl. The investigation in this case was completed within 15 days and within two months, the boxing champion was awarded four years' sentence. After completing his sentence, when he was released from the jail, he again was in some trouble. Speedy disposal of the cases is the responsibility of the courts but then it is for the Government to equip the courts adequately to enable them to discharge their responsibilities. There is a saying in English - throwing the baby with the bath water. Some thing happens in India. Because of some iacunae in our legislation, we are first replacing it with the foreign legislation and that too for international and domestic arbitrations both. I have strong exception to it and, therefore, I cannot support this Bill.

[English]

SHRI V. DHANAJAYA KUMAR (Mangalore) : Mr. Deputy Speaker, Sir, it is very very difficult to speak immediately after Shri George Fernandes. But the sprit behind the Bill will have to be welcomed.

Sir, there has been a marked deviation in the perception of this Bill as I see it. The 1940 Act had a provision only for arbitration. But the new Bill provides for conciliation of some of the disputes also. This is a welcome feature. As the world has grown, trade, commerce and other fulfillment of the social obligations have given rise to the disputes, differences of opinion, conflicting view points, disagreements etc., etc.

Many matters are pending before the law courts. As has been mentioned just a while ago, because of the cumbersome, circuitous and lengthy legal proceedings, the parties can never meet at one point and get their grievances redressed. At the same time, we should take care to see that in the interest of resolving the disputes at the earliest opportunity, we should not jump to wrong conclusions and create more confusion and lead to a situation which is often described as 'confusion worse confounded'.

In this complicated world it is very much necessary that such kinds of disagreements, disputes and conflicting viewpoints will have to be thrashed out by mutual dialogue by trying to bring all the parties concerned to some common points on which they could agree and then get speedy redressal of the grievances.

I would like to lay emphasis on the provision of clause 61 which provides for conciliation of the disputes. A doubt arises in my mind because the provision which contains the conciliatory mechanism is not made mandatory and it is only optional. Unless care is taken by the parties concerned, this provision would probably be redundant. If I read out the wordings, that would be very clear to you:

17.48 hrs

(Shri Chitta Basu *in the Chair*)

"Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

This part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation."

So, my objection is for the second part of clause (ii) that intentionally, one of the parties, who may be mightier than the other, may prevent the initiation of conciliation proceedings whereby the speedy disposal of the dispute could be arrived at. Of course, clause 74 has tried to give a little teeth to this. It has said that the settlement agreement, that would be arrived at after the conclusion of the conciliation proceedings, would have the same status and effect of an arbitrator's award. But again, the other provisions, which were pointed out by Shri George Fernandes, about the challenge that could be posed to the persons who decide upon it as arbitrators, their jurisdiction, the manner in which they have conducted the proceedings and the decision at which they have arrived at, are subjected for challenge before a law court.

So, my submission is that even after enacting a new law - that too, as the preamble says, mostly to fall in line with the world community at the dictates of the decisions of the United Nations and copying or adopting the model law which was dictated by the UNCITRAL - some scope is given for prolonging the issue and to keep it hanging for a long time probably will not augur well for such people who would like to get speedy disposal of the disputes. My submission is that a review of these provisions is necessary so that when this Bill would become and Act, in reality, it would like to get speedy disposal of the disputes. My submission is that a review of these provisions is necessary so that when this Bill would become an Act, in reality, it would be instrumental in the speedy disposal of all such kinds of disputes.

Nowhere have I come across any specific provision in this Bill which has laid the model of an arbitration agreement. It gives ample scope to create confusion and doubts in the minds of the parties. And sometimes the party may be misled under misbelief. He will have to submit himself for arbitration proceedings because the provisions of this Bill say that even a mere dispute, that may arise between the parties, may be subjected to arbitration without giving details of the proceedings that would be initiated at such point of time. He may be compelled to submit himself for arbitration. So, that also requires clarification so that the parties to any transaction are not either misled or are compelled to act under misbelief.

The conciliatory machinery, in my opinion, again requires some elaborate description. Now, I talk about the competence of the proposed conciliator and the number of persons involved in such conciliation proceedings. No doubt the Bill Provides that the conciliatory proceedings will not be bound by the rules contained in the Civil Procedure Code, 1908.

But still the mechanism really should act with all the force at its command. The conciliatory machinery will have to be given a definite status and certain powers should be vested with the conciliatory machinery so that the real intent of this provision could be achieved. Sir, probably, the main aim of this Government is...*(Interruptions)* The Bill was drafted by the earlier regime and the present Government is largely depending upon the support being rendered from outside. This is apparent. They depend upon them solely.

So, without meaning anything, I only pity the Law Minister who had to carry on with the old legacy and now, he is largely depending on the submissions made from their speakers from the Congress party. Shri Sriballav Panigrahi was also trying to tow the line. He was saying that it is a welcome feature, this has to be supported by all of us, etc. As I have said in the beginning, we will have to support and accept the spirit behind the Bill but in reality, if this is to act as a mechanism for speedier disposal of such disputes, then a review of certain provisions is called for which I have pointed out specifically and more emphasis will have to be given for the conciliatory mechanism rather than subjecting the party before the arbitration proceedings which more or less is a replica of the proceedings before a law court. We know about it and we appear before the arbitrators and there again, all the technicalities of the legal proceedings will come in the way like filing statements, counter statements, affidavits, producing and calling for documents, summoning parties.

All these proceedings, etc. will have to be gone into before the arbitrators also. It is no reply for achieving speedier disposal of disputes. So, I would again lay emphasis that the conciliatory machinery which is though of under the new provisions will have to be strengthened and only with that, probably, we could achieve the intended goal. But care must be taken.

With the globalisation of economy, the foreign companies are coming in and they are participating more in our affairs including investment. They are coming in the power sector and even in the consumer goods

sector also. Multinationals are coming in a big way. The provisions contained in this Bill should not give a handle to them to rob the Indians and put us into more and more difficulties. so, care must be taken. Before entering into our country, before coming here with investments, they have already shown us the way for settlement of disputes probably thinking beforehand that their coming here would naturally give rise to certain kind of disputes. So, with this view in my mind, a review of provisions is called for. I emphasise this and would request the hon. Minister to have a careful reading and with reference to the experience, for the last so many years, in working with the earlier Act of 1940, a review is called for.

18.00 hrs.

Let the hon. Minister suggest necessary amendments so that a thorough discussion, on these provisions could be held in this House and we could come out with a proper enactment.

[Translation]

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF TOURISM (SHRI SRIKANTA JENA): Sir, my suggestion is that the time of the House be extended by two hours. As decided in the leaders' meeting, we may extend the time of the House by two hours today and tomorrow and complete discussion on the Bills and the CTBT. Therefore, the time of the House be extended by two hours. After passing this Bill, we may complete discussion on CTBT today itself. This had been decided in the leaders' meeting. I have only this much to say.

SHRI JASWANT SINGH (Chittorgarh) : Sir, I am not disputing that such a decision was not taken in the House amongst leaders. My submission is that the CTBT is an important subject and the discussion has already fractured. This discussion aught to have been done earlier.

SHRI SRIKANTA JENA : At present we have only one Bill.

SHRI JASWANT SINGH : Whether it is one or one and a half, it hardly matters. You can very well judge the conditions here in the House. I need not dwell on that. It is a very important discussion. Two or three Ministers are present here. If they agree, we may start this discussion tomorrow at 2.00 P.M. or 2.30 P.M. as the first items and conclude it by 3.00 P.M.

[English]

To conclude discussion on CTBT as on after thought at the end of the day would not do justice to a very important issue. That is my new.

SHRI MANORANJAN BHAKTA (Andaman and Nicobar Islands) : Sir, let us sit for a little more time.

[Translation]

SHRI SRIKANTA JENA : You may see. Tomorrow at 3.00 P.M. PMB will be taken up. Last weeks Private Members Business will be taken up later, as already decided. It means the ordinances will have to be passed tomorrow itself, otherwise there will be a problem. If we do not discuss CTBT today, then it will have to be taken up tomorrow after the P.M.B. otherwise discussion on CTBT would have to be postponed till 26th. This will not send the right message. That was why I was thinking that after passing the Bill in hand, we will take up CTBT. In the leaders, meetings also, such a decision had been taken. Therefore, my suggestion is that the time of the House be extended by 2 hours and we sit upto 8 P.M. and after passing the Bill, conclude discussion on CTBT. The Minister concerned is present in the House. It is a serious business when Shri Jaswant Singh and Shri George Fernandes start discussion on CTBT, all will come here. There won't be any problem.

[English]

MR. CHAIRMAN : I think, we agreed to sit beyond six o'clock till this Bill is passed.

SHRI V. DHANANJAYA KUMAR : Sir, we could sit subject to the condition that the discussion on CTBT would take place today.

SHRI RAMESH CHENNITHALA : Sir, discussion on CTBT should take place today.

MR. CHAIRMAN : Now, let us agree to sit for two more hours beyond six o'clock.

Yes, Shri Manoranjan Bhakta.

SHRI MANORANJAN BHAKTA : Sir, I have sent the name of Shri I.P. Hazarika.

SHRI ISWAR PRASANNA HAZARIKA : Sir, I stand in support of the Bill under discussion. The Parliament is the supreme body of law-makers in the country. As law-makers we have to keep an open mind and introduce new laws and change old laws for the better. Therefore, we have to eschew the *status-quoist* mentality that any change is bad.

We in this House, believe that any change has got to be for the better. It is not necessary that we should have an allergy to changes, or for that matter allergy to a statute merely because it has been modelled after a format, designed by an august international institution like the UNCITRAL.

A little while ago, 'Swadeshi-Jagaran-Manch' rhetoric has reverberated in this House. But it is not

necessary that anything foreign, anything adopted from abroad is bad and to be spurned. Just because this law happens to be framed on the UNCITRAL model, just because this law happens to be have been initiated the great Congress party in this House, this alone does not vitiate the provisions of the Act. And, here we are in this House to make new laws, change laws responding to the challenges of the times!

Today we are faced with a situation where we have introduced far-reaching economic reforms. We have adopted, a Policy to pursue the path of globalisation of our economy. It is, therefore, necessary and appropriate that the law governing arbitration is changed consistent with the concept of globalisation. This is also a need and indeed the crying need of the times.

I have negotiated many international agreements during my career. I have seen that the foreign parties - not necessarily from the developed world, but also from the underdeveloped world - expressed great skepticism about our legal system, not merely because it takes time, but in many cases they feel that things are confused and not very transparent. In my negotiations, I have seen that if the price of an item is 100 dollars per tonne, and if we coerce the supplier to subject any dispute arising out of the contract to Indian jurisdiction, then we may have to end up paying a dollar or two more. But if we accept the intervention of the International Chamber of Commerce, Paris, for settlement of disputes, or in the case of shipping, if we accept London jurisdiction, Baltic Club Arbitration and all that, then we get better terms from the suppliers. Similarly, in the case of large projects also we have seen time and again that the clause pertaining to settlement of disputes has always created problems because many foreigners - not necessarily from the West, not necessarily from the developed world - always demanded mutually acceptable international mediation of disputes and they settled for ICC, Paris or for London Jurisdiction. We have Seen in the Recent Enron Agreement on the Dabhol Power Project that they also demanded that any dispute should be subject to the jurisdiction of London courts, and at that time we all felt that this is an affront to the country, to our judicial system and indeed to our glorious judicial heritage. But then, reality is reality, and if we want foreign investments to come into the country, we cannot stand on national pride. We have to accept and reconcile ourselves to the realities that prevail in the world today. Let us see for example what is happening in the power sector. In another 15 years' time we have to add 100 thousand megawatts or at least 80,000 to 90,000 megawatts of additional generating capacity in the country. The investment outlay that this should entail would be of the order of Rs.4,00,000 crores. During this given period, it is absolutely absurd to hope and to expect that country can generate this much of internal surplus for investment in the power sector, alone.

Power is as vital as water and food in today's civilisation. We cannot just do without power. Therefore, if we have to have power to survive as a country, then we have to attract foreign investment. If we are to attract foreign investment on reasonable terms, then we have to reconcile ourselves to accepting dispute settlement procedure that would be acceptable to the people advancing the money. We cannot dictate terms to them. Therefore, this is the compulsion of the situation, compulsion of time. Being swayed by misplaced nationalistic chauvinism if we condemn legitimate of foreign investors we are not going to attract investments from abroad.

This Statute Corrects or rectifies and improves many of the features of the present arbitration law. One of the great things that has been done in this Statute is to bring in some legislation to govern conciliation which will make life much easier for the courts in the country. Again take the case of a decree. Earlier, after arbitration, we had to go to the court for getting a decree, executed. That created its own problems. Today under the changed law the award itself would constitute a decree which could be executed directly.

Similarly, earlier, there were many problems about the arbitrators themselves because of their antecedents and things like that. Today, in this legislation, there are Provisions under which we can challenge the independence or impartiality of arbitrators. This is a provision which was not in existence earlier.

There are features in the Bill which amount to definite and positive improvement on the earlier legislation. it repeals the three Acts which together provided the basis for arbitration. All the good features of the existing laws incorporated. The UNCITRAL have done a lot of work going deep into the problems and they have come up with the model. It is good and I compliment the Government - in fact the earlier Government, my party's Government - for having adopted this model and brought in this Ordinance and now this legislation. But there are a number of features of a number of things that require further consideration in order to make further improvement on this Bill.

Take the example of Section 34. It provides for setting aside of arbitral awards on certain specific grounds. This includes arbitration agreement not being valid or the party has not been given proper notice and a number of procedural or technical grounds. But it does not provide for setting aside of an arbitral award if there is a point of law involved. This law has come in response to demands - apart from the U.N. Organisations - from the trading community and

professionals dealing with such disputes. They all feel that there should be some provision for challenging or appealing or setting aside the arbitral award if there is a point of law. It is because under the proposed system, many of the arbitrators are going to be technocrats, going to industrialists, and professionals who many not be lawyers. Therefore, it is quite natural that they might commit errors of law. What they decided may not be fully consistent with the prevailing law or the laws in force. Therefore, there should be some provision for setting aside the arbitral awards where there are points of law involved. I understand that a similar provision is there in the English law of arbitration.

Secondly, in Section 11, powers to appointed arbitrators in certain circumstance have been given in the case of international arbitration to the Chief Justice of the Supreme Court, and in other arbitration of commercial disputes, to the Chief Justices of State High Courts. In many cases, the High Courts have framed their own rules to further delegate these powers to junior or subordinate courts.

Now, this has created problems at times and I do not think, it will be the intention that the powers delegated to the Chief Justice of the Supreme Court or the Chief Justices of the High Courts could be re-delegated by them to the subordinate formations. And in this particular case, we feel that if the Chief Justices do not want to exercise their powers, they could nominate the organisations, the arbitral organisations existing in the country, to do their job on their behalf. There should be some policy of the in this regard and the Government should frame rules for according recognition to some of the organisations like the Indian Council of Arbitration or the Indian Society of Arbitration. A number of such institutions have come up recently in the country. Even the Chamber of Commerce could be considered for giving such powers.

There is another point which is missing in this Statue and that is, the commercial disputes pending in the courts for a very-very long time. There should have been a provision in the Statute whereby those disputes which are pending for a long time could be referred to the arbitral organisations for final settlement of the cases. In that case, the arbitral organisations could resort to this provision of the Statute and could resolve the disputes in a much shorter time because they will not be bogged down by legal procedures under the C.P.C. and the Indian Evidence Act.

So far as conciliation portion is concerned, this is a great step towards cutting down litigation before the courts. But, Section 64(2) provides that the parties may enlist the assistance of suitable institutions or persons in connection with the appointment of a conciliator. And in that case, the party may request such an institution to recommend the name of the suitable individuals to act as a conciliator. Such an institution should be recognised by the Government. If the Government has a policy for recognition of such arbitral organisations, then many reliable and respectable organisations having eminent jurists etc. would be formed up and they will be able considerably to reduce the burden on the courts in the matters of adjudication of commercial disputes.

Finally, I would like to point out one clause under Section 31, which provides for arbitral awards to include interest, cost of litigations, fees and all that. But to discourage frivolous litigation or vindictive litigation even in arbitration, I think, it should include certain provisions whereby penal payments can be imposed on the party raising a dispute on frivolous ground or motivated by ulterior considerations not supported by facts.

Before I conclude, I would like to refer to certain things that have been mentioned by my speakers preceding me about the arbitral Tribunal deciding on the challenge made by a party about the independence and impartiality of a particular arbitrator. It is not that the arbitrator alone is going to decide on hemself. He cannot be both accused and the judge himself. It must not be forgotten that there are two arbitrators and may be an umpire also, appointed by the two parties in the disputes and together they would decide. Therefore, it is not correct to say that the person who is challenged is going to decide in all the cases, references have been made that arbitrators have been given arbitrary powers. As already stated it is not one arbitrator but more than one arbitrator, who would decide on the challenges made about the impartiality and independence of the arbitrator. Therefore, there need be no fear that arbitrary powers have been given to the arbitrators in this regard.

About the interest rate and all that, that is based on the existing practice. Today 18 per cent is the existing practice in most of the commercial disputes.

If you do not lay down a norm, then depending on situations, they increase or decrease the rate and it creates certain misgivings and certain doubts in the minds of the parties involved. Therefore, it is highly commendable that the Bill fixes a definite rate of eighteen per cent for the present. From time to time, this may have to be changed, but I feel that considering the present interest regime, this is a commendable provision in the Bill and I see no difficulty in incorporating the fixed rate of eighteen per cent in the Bill and I see no difficulty in incorporating the fixed rate of eighteen per cent in the Bill itself.

With this, I again express my support to the Bill.

SHRI SURESH PRABHU (Rajapur) : Sir, I have entered this Houses for the first time is this Eleventh Lok Sabha and I have been observing that this Eleventh Lok Sabha's job is to ratify all the Ordinances passed before this Lok Sabha came into being. If the present practice continues, probably we will have to only decide about the various Ordinances passed in the past. There are so many Bills which are now pending and which may not be passed now. So, probably when the Parliament is not in Session, all these Bills will again be passed through Ordinances and again we will have to deliberate on them next time and say that well will have to pass those Ordinances only because they have already been issued.

My good friend, Shri Ramakant Khalap has to tend the babies which are forcibly delivered through these Ordinances and have to take a good parental care, which, I am sure, he is doing. But I think, as Shri George Fernandes has said, it is not just throwing the baby with the bath-water but he has to look after the baby also, which is not his own.

I appreciate the fact that now because of India trying to globalise itself with other powers in the world, there are complex commercial transactions which are taking place which necessitate legislation, which probably could not even contemplate such transactions when it was first passed in 1940. So, obviously, this Bill could be taking care of complex situations. But that does not necessarily mean that when the legislation intends to take care of complex commercial transactions, the Bill itself has to be very complex and beyond comprehension on many counts.

I shall try to be as brief as possible. Firstly, the object for which this ordinance was issued and the Bill is now presented before us, is not specified. The one fundamental thing for which such a Bill should really be introduced, is to reduce the delays in rendering justice. Nowhere is it mentioned, not even in the Object clause, that this is the purpose for which this Ordinance was first issued. If that is not the case, then there was really no need to introduce any new legislation because we have a judical system which really takes care of all types of transactions, may be international or even national. There is no provision in the Object clause, but besides that, in the substantive provisions of the law, nowhere is it mentioned what the time frame is in which any of the disputes referred to arbitration has to be decided. There is a possibility that there will be more delays as a result of this particular law coming into force because there could be a tendency to refer matters to arbitration and again take recourse to the normal judical system. So, there was really a necessity to decide a fixed time-frame in which such disputes should be settled. But there is no such provision to this effect.

In any of such disputes, a dispute is referred, particularly a commercial transaction, because the parties to the transaction cannot really arrive at a particular conclusion. The dispute arising between the parties cannot be settled between thesmelves, so it is referred to arbitration. Each party is going to appoint his own arbitrator and since these arbitrators are really owing their allegiance to the parties who have referred them as an arbitrator, they themselves again cannot differ to the dispute. That is why even in the Arbitration Act of 1940 there was a provision for an umpire.

There is, of course, some mention of a presiding officer but there is no specific provision for an umpire under this particular Act. Under Section 10(1), where we are talking about appointment of arbitrators, they are only mentioning about the presiding officer but not an umpire. In the absence of this, there is a possibility that the disputes will not be solved by the parties and the arbitrators will gain keep on fighting among themselves and will not be able to resolve the very dispute for which such machinery is created.

We have a Histroy. We passed certain laws in the past but we did not make them applicable to Jammu and Kashmir. I fail to understand now in 1996 when there is a thinking that Jammu and Kashmir is turning the table and there are so many new things are happening, why should such a legislation not cover an integral part of the country, *i.e.*, Jammu and Kashmir? As regards, commercial transactions does it mean that we would not like to resolve the disputes in India and the foreign investors who would like to come to this country would feel comfortable when such disputes could be referred to arbitration proceedings? This means that we do not want any foreign investment in Jammu and Kashmir. Does this mean that Jammu and Kashmir should not really be precluded from the application of this provision? It is something on which, I am sure the Minister of Law would enlighten us during the course of his reply.

Sir, one of the important things which has not found a place in this Bill is the qualification for appointment of an arbitrator. Sir, so many powers are vested with the arbitrator. We have such a provision when we appoint a judge in the lowest court, the qualifications are decided. We are now leaving it to the parties of the arbitration to decide about what qualifications are decided. We are now leaving it to the parties of the arbitration to decide about what qualification it should possess. At the same time, we are also asking the Chief Justice to decide the appointment of arbitrator in certain cases. But on what basis the Chief Justice is going to exercise his mind and decide as to who should really qualify to the arbitrator unless it is very specifically mentioned in the

very law? It is stipulated very clearly that who should really be qualified to be an arbitrator. There is also a provision for the appointment of a foreigner as an arbitrator. When a foreigner is likely to the an arbitrator it is really very unlikely that a Chief Justice could really know the qualifications that he possesses. He has to obtain his particulars. So a very specific provision about the qualification is necessary. Then obviously this problem could really be solved.

Sir, there is a provision for payment of fees to a foreign arbitrator. But I really do not know whether this fees could be paid by overriding the provisions of Income Tax Act because there is a provision in the Income Tax Act specifying that any foreign technician employed in the country in what fashion he should be paid, what are the terms and conditions under which such a remuneration could be paid and there are ceilings thereon. Does this mean that a foreign arbitrator is not governed by this particular Act or this Act overrides the provisions of that particular law or we will again bring in some litigation as a result of this.

Sir, there is a provision which says that in the case of selecting an international arbitrator the Chief Justice may decide to appoint an arbitrator from a neutral country. Sir, it is a good provision. We are already adopting it in our cricket. When India and Pakistan play we are appointing umpires from West Indies and England. Sir, it is very important as to how and on what basis the Chief Justice is going to decide the neutral umpires in different countries and what are the modalities for making such appointments which is a very critical matter which this Bill fails to address.

Sir, one point which pertains to a point which has already been raised by the earlier speakers is about payment of interest at the rate of 18 per cast. As of now the 18 per cent is a very reasonable rate considering the market situation now prevailing. It is particularly so when the Government is borrowing at the rate of 13 to 14 per cent. The commercial transactions are taking place at 18 per cent. They would call them wise if the Government is borrowing at 14 per cent. But we definitely feel after listening to the speech of the finance Minister that India is going to see better days ahead and in that case by the time this Bill is passed and assented to by the President I am sure the interest rates would have fallen in the country. In any case the rates now prevailing in the Western countries are not more than four to five per cent. So it would be a good idea not to do a business transaction but enter into a contract and then go in for arbitration and call for damages with 18 per cent interest. It makes a better business sense. So, there is need to index this interest to a particular figure. Maybe it is a good idea to index it to the bank rate. It is a good idea to index it to LIBOR because in any case we are trying to link it to the international transactions.

It has to be indexed because it cannot be 18 per cent. As one of my friends said earlier, there is no need to bring about amendments or Ordinances to bring 18 per cent to 15 per cent or 15 per cent to 13 per cent or to raise 18 per cent to 24 per cent. So, such Ordinance could be avoided, and Shri Khalap would be spared of a trouble of again introducing a fresh Bill to ratify the Ordinance if this 18 per cent interest is indexed to some internationally accepted parameter.

Sir, I understand and appreciate the contribution made by the Britishers as well as the Latin language towards promotion of international law. When we wrote our laws, we had to borrow several phrases from the Latin language because that is how internationally the language was understood. But when we are passing a law now in 1996, I really fail to understand, have we not rally come across an equivalent of phrases which could be used in place of Latin phrases? Is it a failure of our own system? Why have we to use the Latin language? we understand that internationally such phrases are used. We could have used our own phrases and could have said that this was what was equivalent of that or meant like this. But in 1996, we are using the same phraseology. We always say that we are likely to receive better investment because we have got a better judicial system. China has no judicial system, but receives almost twenty times of what india receives as FDI, and definitely China does not have arbitration laws like this. But I am sure, if they make a law like this, they would not be using such phraseology, but certainly use their own indigenous legal language.

Sir, Clause 37 (1) is something about which I really would like to be enlightened on. It says:

> "Appealable orders: An appeal shall lie from the following orders to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-"

Does this mean that we are going to create a special court for hearing this or is it going to be the same court? What is really meant by 'authorised by law'? Is it something about what type of jurisdiction we will have? What is the purpose of mentioning 'the court authorised by law'? What does that specifically mean? Probably, it again needs to be elaborated.

Another very important aspect is in Clause 30(1). It says:

> "The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (8) of section 31,

which it expects will be incurred in respect of the claim submitted to it:"

With regard to the Deposits, our friend referred to the transaction of Debhol Power Corporation. The total amount involved in this is Rs.3,000 crore. Even if the court directs that it deposit only five per cent of it, it will be Rs.150 crore. These particular arbitrators are not really bound by any provisions of the law as such. They are not really responsible for any judical system as such. Who is going to keep this amount of Rs.150 crore? What is the security for this amount of Rs.150 crore? The parties to the agreement may have to go to the court to recover this money from the arbitrator. That type of a situation may arise because we are asking them legally to collect the deposits, and this amount will be collected and kept by them in their judicial capacities. So, what is the guarantee and on what basis such an amount could be kept safely is something which needs to be addressed properly. I am sure, we will be enlightened on this subject.

I will come to two points broadly. One is, this particular legislation, though it is aiming to reduce the delays, may actually result in increasing the delays. The Evidence Act will not apply to the arbitration proceedings. But for collection the evidence, under Section 27, one can go to the court. So, basically, on one side, we are saying that these particular arbitrators could function in a manner in which the parties to the arbitration could decide or the arbitrators themselves could decide. For collecting evidence also, it could be decided by them including the language of the proceedings. On one side, under Section 27, we are saying that they can go to the court on particular points. So, it could again result in delays. Section 14 (2) is also a provision which could really contribute to more delays than any solution to it.

It means that if a controversy remains concerning any of the grounds referred to in Clause (a), that is , if an arbitrator becomes invalid because of the *de facto* reason or *de jure* reason, then he has to resign. But if the controversy remains, what happens? You know, Sir, in India there could be controversy for anything and everything. So, there is a very good possibility that every appointment will lead to a controversy and this particular aspect can be referred to the court again. So, this is something which will again result in serious delays. Therefore, I think that this clause really need to be re-phrased or re-drafted to surely mitigate this problem.

There are certain provisions which are vague in nature. I will mention them very quickly. The first one is Clause 13 (2) in which it has been stated that within 15 days of knowing about the incapacity of a particular arbitrator, the party to the arbitration has to move the court. On what basis should it be done? This is something as a limitation of time. If you move the court on the 16th day, on that very ground itself the appeal could be rejected. So, on what basis should we count the 15 days' period? How about the starting point? There is no definiteness about it. So, there is the possibility of some vagueness which could result in delays.

I just mention one more point which is about Clause 31(8) which says that the cost of arbitration could be awarded by the arbitrators. Now, as we know, there are parties to the arbitration who would also be foreign parties. So, Obviously, the awards given would be payable in foreign currencies also on many occasions. That being so, where are the provisions of the Foreign Exchange Regulation Act Governing repatriation of money abroad? would this Act also apply or would this supersede the provision of that? If not, this would lead to more confusion than actually attempting to solve it.

My last point is about Clause 34(2)(b) which talks about any of the award. If it is against public policy, then it could be repudiated. We are already saying in the objective clause of this Bill that since there is no general law which prevails in the country, we are trying to introduce a Bill of this nature. Something like public policy is debatable. On what basis does it really vitiate the public policy? it cannot be properly understood and it may result in more confusion than solving it.

With these words, I conclude.

SHRI G.M. BANATWALLA (Ponnani) : Mr. Chairman, Sir, this Bill introduce a sea-change in the law of arbitration as obtaining in our country. It both consolidates and amends the law of arbitration as contained in at least three enactments of ours. In the first place, I must take exception of the unreasonable consolidation that is sought by this Bill. The Bill relates and in applicable to both domestic arbitration as also international commercial arbitration. I strongly feel that the two ought to have been kept separate. Otherwise, there are bound to be confusions and hardships created at least in the questions of domestic arbitration.

Look at even the Model Law suggested by the UNCITRAL. Even this Model Law, to which there is a reference in this Bill, talks or restricts the scope to international commercial arbitration.

I invite the attention of the hon. Minister and this House to the very first Article. Article 1 of the Model Law on International Commercial Arbitration which we are trying to copy. And this Article 1 lays down the scope of the application of the law as follow :

> "This law applies to International commercial Arbitration subject to any agreement in force between this State or any other State or States."

Now we are so enamoured by this foreign brand law of arbitration that we want to bring it even in the domestic field. I must say that we are so enamoured with this foreign law that we propose to go even to the villages and tell the villagers, "here is a law - lable 'Made in the United Nations'. "Even the International Model did not suggest to this. I am sorry, I must say that we are trying to be more loyal than, as the phrase goes, the king and in this particular case, more loyal than even the International Model that we have. A lot of complications are bound to come up and it is necessary that the two laws on domestic arbitration and the law on International commercial Arbitration should be treated separately in accordance with the exigencies of the situation.

The International Model wants the law to apply to (i) International Arbitration; (ii) International Commercial Arbitration, and (iii) subject to any agreement in force between the State and between one State and the other. So the International Model that we are talking about, restricts itself not only to an International Arbitration but also to an international Commercial arbitration. We have a big hotch-potch of domestic arbitration, domestic commercial arbitration, domestic non-commercial arbitration, international arbitration, international non-commercial arbitration, international commercial arbitration, all incorporated in this law made or recommended by the United Nations. I must, therefore, say that greater thinking ought to have gone in fixing up the scope of this new Bill that we have, in the name of consolidation of the laws.

There is another point to be considered and that is, with reference to the definition of international Commercial Arbitration and given in Section 1 (f). We are told that it will be an International Commercial Arbitration where an individual is a national or habitually the resident in any country other than India or where a body corporate is incorporated in any country other than India and so on and so forth. So the transaction with an individual, with a Government and with and institution which is foreign comes under the scope of this Bill. I am sorry, such a wide scope ought not to have been given. We should have looked, in the national interest, to the question of reciprocity of the other country and the scope of the Bill ought to have been restricted only to such foreign countries, individuals and institutions in those foreign countries with which we have reciprocal arrangement; or who also adopt almost the same type of arbitration law as we are today trying to place on the statute.

Sir, the Bill is in response to the pressing need consequent to the policy of liberalisation, globalisation and the increasing role of the multinational corporations. Indeed there is a pressing need for alternate dispute redressal systems or methods like arbitration, mediation, conciliation and so on the such pressing has been the need that the law was promulgated through an ordinance. No doubt, the Bill will also relieve the courts of a heavy pressure of litigation. I understand that more than 2.5 crores of cases are pending in the courts in our country. Thirdly, we are told in the preamble of the Bill that the Bill is in response to the recommendations of the United Nations General Assembly that countries need to follow the model law or arbitration on International Commercial Arbitration and Conciliation Rules as adopted by the United Nations Commission on International Trade Law.

The Bill is supposed to be in conformity with the model law as given by the United Nations commission on International Trade Law. Let us try to see whether the Bill is really in conformity with the model law as given by the United Nations Commission on International Trade Law. You find that there are a number of inexplicable deviations also. This is not to say that I am enamoured by that model. I have already made my submission about that. But here I say that even when you say that you are bringing a law in accordance with the model law as given by the United Nations Commission on International Trade law, even there, there are deviations and deviations in serious respects. In view of the constraint of time I will not enumerate all the deviations; one can find them if one makes a comparative study of the provisions of this Bill with the international model about which we are told. I may refer to only a few of them.

Take the question of the number of arbitrators. Clause 19 (2) says: "The number is to be determined by the parties failing which a sole arbitrator..."- only one arbitrator. But then Article 10 of the international model we are talking about says: "Failing the determination of the number of arbitrators by the arbitration agreement, the number of arbitrators shall be three", I do not know why this particular deviation has been made. I must submit that the international law was cautious that the number shall be three. We are rackless to say that the number of arbitrators will be one.

It is a serious deviation and an inexplicable deviation. I must say that we are trying to be more loyal than the King himself. Let us take another serious question, that is the question with respect to the challenge to the appointment of an arbitrator. A party may have a serious challenge with respect to the integrity, independence and impartiality of an arbitrator.

Our Clause 13(4) and (5) say that the challenge has to be made to the same arbitral tribunal. It also goes further to say that if the challenge fails there is no appeal. They continue to hear and give a verdict. Well

and good. Let us seel, what the provisions of the international model law that we are trying to copy are. It is a serious thing. The model law provides for appeal. The model law, Article 13 (3) says that if the challenge made by a party about the arbitrator fails in the arbitral tribunal, then, within thirty days, there party can go an appeal to a court. But here, we have a particular Bill, which closes the door of appeal, deviating even from the international model. We are trying to be more international than the international model by saying, 'Nothing doing; the arbitration will continue and only in the end, if you do not like the award, you may go to the court, making the court to set aside the award on the ground of impartiality or other matters like incapacity of one of the arbitrators'.

Mr. Chairman, Sir, where are we leading to? On the one hand, this House is being told that we are copying the law as given in the model law and as recommended by the United Nations and on the other hand, we are making things very difficult by deviating even from them, though there are various provisions of the international model which are also objectionable.

I may refer to Clause 34 of our Bill, which say that the award can be set aside by the court if it is not in the public policy of India. Well and good. What do you mean by 'public policy'? This is a very wide term which opens the door to litigation. Here, we are not given any guidance whatsoever, except that in the case of international model there is no explanation. Here, unlike that model which we are copying, we have added one explanation and created more complications. We have sought to give notice of an amendment for a second explanation also on this particular question.

We are told that we are framing our law according to the model law. But then, the international model also refers in its Article 36 to the question when courts can refuse enforcement of awards. Compare this Article 36 of the international model with Clause 57(1) and 57(2) and you will find a lot of difference.

I am not here talking about setting aside of the award. I am now talking about a party going to the court in order to get the enforcement of the award in his favour. Here the question of public policy does not arise. The international model talks about public policy of the State. But here in the case of the enforcement of the award, the court cannot *suo motu* raise this particular question. The court can go into the question only when one of the parties seeks to set aside the award and not otherwise.

Sir, I can go on citing a lot of other instances of such serious inexplicable deviations. But then there are constraints of time. As I have said, the Bill repeals the Arbitration Act which is in Force since 1940 and the Arbitration Protocol and Convention Act which is in force since 1937 and Foreign Awards Act which is in force since 1961. Thus, we find that our Arbitration laws have stood the test of time for more than half a century. Today this Bill seeks to change the law drastically. We have to be very cautious in this particular matter so that our laws many not become - to borrow the words of the Supreme Court - 'Laughter from the lawyers and tears from the legal philosophers'. We have to avoid such a situation. But here we are told in Clause 18 of the Bill :

> "The Parties shall be treated with equality and each party shall be given a full opportunity to present his case".

Are the parties really equal? Look at the Bill. Everywhere the supremacy of the arbitration agreement is above every other law. The parties are free to decide about the place of arbitration, they are free to decide on the nationality of the arbitrators in all kinds of arbitration whether it is domestic, commercial, non-commercial or international. The parties are free to decide on the procedure. It is not determined by the arbitration agreement, then the arbitrators may decide on any procedure.

Similarly, the parties may decide in the case of an international commercial arbitration to abide by the law of any country. We are making a wholesale import of laws of all countries. We import laws which are made in that foreign country and look at the latitude that is given. That if the arbitration agreement does not specify which country's law will apply, then the arbitrator may decide to apply the law of any country that he may deem fit and proper.

I think the national interests and the interests of the domestic concerns have been thrown to the winds under duress from these giant multi-national corporations and foreign corporations with whom they may have to deal. The place of arbitration is to be decided by the agreement. If it is not decided, the arbitrators may decide anything. Now, look at the problems. Supposing, a trader in Calcutta or in Mumbai or in any other city in our country has a commercial dealing with a foreign firm, say a firm in New York and if it is decided that the place of arbitration will be New York, will the Reserve Bank India grant the entire foreign exchange to take all the witnesses from India to New York?

19.00 hrs.

There ae constraints of foreign exchange. It may not certainly be possible at a certain stage for all those witnesses to go to New York. But then the Bill makes courts helpless.

Our Supreme Court dealt with the matter. In Michael Golodatz v. Sarajuddin & Co. - AIR, 1963, SC 1044 - the Supreme Court said that there was sufficient cause given under the Arbitration Act of 1940 and not to be found in this particular Bill. But using the advantage of expression 'sufficient cause', the Supreme Court ruled that there is sufficient cause that such a provision of the arbitration agreement cannot prevail because otherwise this trader of Calcutta - from your State - will not be able to take all the witnesses to New York because the RBI does not allow him.

MR. CHAIRMAN : Here I have also got a constraint of time.

SHRI G.M. BANATWALLA : Yes, yes. We are dealing with such a thing which will bring national disaster also. There are the points that have to be considered today. While we are trying to change the laws, we must see to it that the necessary safeguards are also there for our parties. In Japan, Taiwan and Korea, there is institutional guidance even in drafting of arbitration agreements, Here, there is no such thing. And the Government must come forward in order to see that our people are helped in this particular respect.

I will briefly refer to one or two clauses and conclude. Clause 3(1)(a) says that the notice shall be deemed to have been received if sent at that last known address. This is the time when it is difficult to find the other party. Now we have, in our country, a practice not only of sending the notice at the last known address but also advertising in the papers If that is not done, if that condition of advertising in the papers is not there, then, I am afraid, this particular clauses, if enacted, will be exploited and totally misused and abused.

Clause 11(6) says that where a party fails to act in appointment of the arbitrators, the other party may approach the Chief Justice under the agreement on the appointment. When the Chief Justice of a High Court or the Chief Justice of the Supreme Court can be approached, there is no need further to go on to say that he need not be approached for other means as other sources are mentioned in the Bill. It is an affront to national dignity. I hope the hon. Minister will consider and take this seriously.

Now, I understand that you are impatient. I will, therefore, restrict my further comments. Hon. Member, Shri Iswar Prasanna Hazarika, was speaking here. He made an eloquent appeal to the House to consider the exigencies and the realities of the international situation. We have to have trade and commerce with them.

Therefor, such provisions may be necessary. I will only add that such provisions must be subject to safeguarding of our national interest. The Bill, unfortunately, lacks in this particular respect.

[Translation]

SHRI GIRDHARI LAL BHARGAVA (Jaipur) : Mr. Chairman, the hon. Minister quoted from page 2075 of Supreme Court AIR in the case of Government Foundations versus watan Singh the following phrase:

[English]

"Lawyers laugh as legal philosophers weep."

[Translation]

You presented this quotation. But my submission is that the other judges also said that the law that is enacted should be,

[English]

"Very simple, least technical and more responsive to the actual situation."

[Translation]

So, it has also been said. My submission is that then this matter was referred to the Public Accounts Committee etc.

In the past, all disputes whether they retained to land, or property a murder or husband-wife disputes used to be decided by the panchs. That was an culture. But we have forgotten our culture and are adopting western cuture. Now justice would be done by the International commission and by the United Nations and by following international standards and for that purpose, we would have to adhere to their model laws. Now we are moving in the reverse gear. Previously Panchs used to decide disputes and now the United Nations is deciding the disputes. So we have cataputted from the bottom to the top.

George Fernandes Saheb rightly said that the Arbitrator should be Indian. Please tell us if the U.S.A. Germany and Japan have accepted this model law. Even if they have eccepted it, it is not binding on us. If is the person of India who can be appointed as Arbitrator and it is he who will decide things for us. 18 per cent interest and so many other things have been said here.

My submission is that 11 ordinances have been issued. Its ordinance has been issued for the Third time. In the entire country. Parts I, II, III are IV would be in force but in Jammu & Kashmir, parts I, III and IV would be applicable and part II will not be applicable. Why? What is the intention believe it? What is the U.F. Government afraid of?

[English]

It is not like Article 370 about which you should be afraid of.

[Translation]

It is not like Article 370 about which you think that if you agree to what B.J.P. says then all credit will go to B.J.P. If you have any much fear, then it is a differrent matter. Otherwise part II should also be made applicable in J&K State. International Commercial Arbitration is universal model law. But where is it? The copy of this model law should be made available to us. The name is quite good but where is it? If it is on your table or in the library, we can accept it. Then it was said :

[English]

> "If any difficulty arises in giving effect to the provisions of the Ordinance, the Central Government may by an order published in the official gazette makes its provisions not in consistent with the provisions of this Ordinance has appeared to it to be necessary or expedited for removal of these difficulties provided that no such order, unless this section has appeared after expiry of two years from the date of commencement of this Ordinance."

[Translation]

The Government have not yet framed the rules relating to this Bill. So long as related rules are not framed, it would remain a piece of paper. Please also tell us why the Government is not enforcing this law in J&K State.

[English]

> "...to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitrational awards as also to defend the law relating to the conciliation and for matters concerned therewith or incidental thereto."

[Translation]

Please also tell us the names of the countries which have adopted this law.

[English]

They would be cancelled in a court of law.

[Translation]

This Arbitration Act has been enacted in 1940. Since then it has been in force. It is an old Act and has not been annulled. The rules have not been framed thereunder. The Supreme Court has also said the same thing. This Bill is incomplete. So it should be brought forward in a proper manner. Have you come under foreign pressure? If it is then it is a different matter. Its object is all right. Rawatji has also said about it. Why will it not be enforced in Kashmir and why have the rules not been framed? So long as the rules are not framed, it is merely a piece of paper. The hon. Minister is not here. The other Minister is sitting.

MR. CHAIRMAN : He is noting down.

SHRI GIRDHARI LAL BHARGAVA : Then it is all right. The Bill has certain plus points as well. I endorse the views expressed by Bhagwan Shankar Rawat ji in this regard. Lodhaji has also said so many things. He has been the judge of the High Court and the Chief Justice of the High Court in Assam. He had delivered his judgement, treating a mere post-card as the writ. His suggestions should be accepted. I do not fully support the Bill as it has certain lacunae. We should not fall into the trap of the foreigners. When big nations are not accepting it. What is the compulsion for us? I request the hon. Minister to say attention to this fact. I thank you very much for giving me an opportunity to speak.

PROF. RASA SINGH RAWAT (Ajmer) : Mr. Chairman, Sir, I supprt this Bill to some extent. The spirit of this Bill is laudable. Some international complusions have emerged on the surface, giving the international process in the field of trade and commerce a near turn and the world seems to have shrunk so much that we are compelled to talk about globalisation, libralisation, new economic policies, GATT and then international trade conference etc. etc. In this changed context, it because imperative for us to give a sort of international character to our laws. An attempt has been made to incorporate in this Bill our age old Panchayat system for speedy dispensation of justice through arbitration. The hon. Minister, in his reply in the Rajya Sabha, had enunciated its object as :

[English]

> "to decide their own forum, decide their own place, and decide their own time."

[Translation]

The object is all right but in view of the intricacies that have come up in the field of trade in the international market, I would like to know whether the disputes relating to international property right, patent laws and dumping would also come within the purview of this Bill. If any foreign company or any foreign country tries to implicate us in any fraud or indulge in activities against the interests of our country, would this law be able to deal with them effectively? In the international trade market, fluctuations are being experienced and problems of dumping are cropping up. The previous Government was compelled to accept certain laws under "GATT" and "Dunket" even without taking Parliament

into confidence and on that basis, multinational companies were given a free hand in the name of liberalisation.

Of late, a bank of Hongkong and another of England were declared insolvent and thus created problems even in the field of trade and commerce. With the intellectual property rights and patent laws also come within the ambit of this Bill? There is need to pay attention to all these developments.

Secondly, in the Bill, an attempt has been made to define foreign arbitrator under the international commercial arbitration and the consolidated and amended law relating to the enforcement of the Panchayats and the conciliation. But still the Bill suffers from certain shortcomings. In sections 82, 83 and 84 it has been said :-

[English]

> "framing of rules by High Court and removing the difficulties."

[Translation]

It means that under the said sections, the High Court would frame necessary rules and would remove other difficulties arising out of it. But the Government has not yet framed rules in this regard, in the absence of which even a sound law would not prove effective. An attempts is being made to implement various international laws including New York Convention and Geneva Convention. But the rules therefor should also be framed without delay. The hon. Minister should state in his reply as to when these rules would be framed so that the House may get the correct information about these rules. I would also like to know whether the Law Minister would frame these rules in consultation with the High Court and Supreme Court or any other agency would frame these rules.

Under Section 34(2), it has been stated that the arbitral award should not be in conflict with the public policy of India. Obviously, the Government has done so to avoid western influence in our country. But the nudity, vulgarity and obscenity being shown on Star channel and cable channel have no place in Indian culture and civilisation. We have our own limitations, human values and heritage. But these are totally ignored and films are being storm at late night hours. Is it not the violation of the public policy of India? When will these TV operators be brought under such Arbitration and conciliation Act? If foreign companies, foreign newspapers, foreign media, electronic media, print media etc. were allowed to intrude into our country. They will pose a great problem for us. The hon. Minister should clarify the position in this regard. At present about 2.5 crore cases are pending in courts. This problem too should be resolved without delay.

Provisions of punishment is also there in the Bill. I would suggest that the arbitrators should empowered like High Court and Supreme Court so that their decisions are binding on all parties. The facility for appeal should also be there. But it should be remembered that "justice hurried is justice burried" and "justice delayed is justice denied". Therefore, this procedure of arbitration and conciliation is a laudable step and I support it. However, it would be better if the Government removes all the existing short comings in the Bill, as pointed out by Shri Bhagwan Shankar Rawat and Shri George and bring forward a comprehensive and more effective Bill. With these words, I conclude my speech.

[English]

THE MINISTER OF STATE OF THE DEPARTMENT OF LEGAL AFFAIRS, LEGISLATIVE DEPARTMENT AND DEPARTMENT OF JUSTICE (SHRI RAMAKANT D. KHALAP) : Hon. Chairman, Sir, as expected, the debate on this Bill has spilled over to different issues. Some of which are contained in this Bill and some are not.

Justice Guman Mal Lodha has been challenging the Ordinace-making power as often as possible.

I agree with his objection that the Ordinance making powers should not be resorted to in a blatant manner. But in my opening speech I had explained the reasons which led to these-Ordinances. Vaccum had to filled on account of the intervening circumstances and hence it was necessary to issue these Ordinances. Justice Lodha is fully aware of these circumstances.

His other major objection is about the applicability of this Act or rather, in his words non-applicability of this Act to Jammu & Kashmir. In this respect, I would first request Justice Lodha to read with me Clause 1.

Clause 1(2) very clearly says:

> "It extends to the whole of India."

The proviso says :

> "Provided that Parts I, III and IV shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or as the case may be, international commercial conciliation."

Justice Lodha wants me to explain the reasons for such a provision. I am sure, Sir, Justice Lodha is very much aware of the constitutional provisions, on account of which this clause had to be enacted in a manner as it is. I think, he himself, on certain occasions, had referred to Article 370. We must also refer to the Constitution, Jammu and Kashmir Order, which has been amended, in its application to Jammu & Kashmir,

Entry 13 in the Concurrent List. This Entry in the Concurrent List as applicable to Jammu and Kashmir reads:

> "Entry 13: Civil procedure in so far as it relates to administration of oaths in taking of affidavits by diplomatic and councillor officers in any foreign country".

We had to go back to List 1 and again there, Entry No. 13 says :

> "It relates to participation in international coferences, associations and other bodies and implementing of decisions made thereat."

Now, reading these provisions together, it becomes very clear that Parts I, III and IV have been made applicable to Jammu and Kashmir in so far as they relate to international commercial arbitration or as the case may be, to international commercial concilation. We cannot make the other provision regarding domestic arbitration applicable to Jammu and Kashmir in view of the provisions of the Constitution and in view of the provisions of the Constitution, Jammu and Kashmir Order.

Almost all the Members have referred to India's age-old system of resolution of disputes by the so-called *Pancha Parameshwara* method or the Panchayati system. In fact, what is sought to be done in this Arbitration Bill is to import this age-old concept of Indian system into this law. The parties are allowed the freedom to choose the place and to choose their arbitrators and refer their dispute, whatever it may be, to such people. The law says that the award will be passed by, you can call them *Pancha Parameshwara*, if you want because it could be three, could be five, in odd numbers.

If these *Parameshwara* give an award, that award is being sanctified and it can be executed as if it is a decree. So, exactly this concept is incorporated in this Bill.

The other question raised was that if we have this system prevailing in our country, then what is the need to go some other foreign country or go to the United Nations and copy what they have done. Squarely it was objected to, particularly by hon. Shri Banatwalla, that we are trying to copy what the United Nations have laid down. I think that has also the refrain of hon. Shri Fernandes. Both have said: "Is not our own system sufficient to look after arbitration or conciliation that would arise in our own country?" I do not fully disagree with them. We do have our own law - the Arbitration Act of 1940. But as I referred to what the Supreme Court has stated in regard to its implementation, with regard to the experience of the people, I quote it again:

> "The proceedings under the Arbitration Act, 1940 have made lawyers laugh and legal philosophers weep, and the jurists and the judges and so many other people have commented that the time has come for us to resort to simpler laws, simpler procedures, whereby the whole thing could be so simplified that people would be really happy to go to this system of settlement of our disputes."

We had to go to the United Nations arbitration law because a new era has emerged, a new economic atmosphere has dawned in this country and the international investors who are coming to this country need some guarantee that if any dispute arises, we have a forum where they can take their dispute and obtain redressal or obtain resolution of that particular dispute.

Hon. Suresh Prabhu referred to the conditions prevailing in China. I had the occasion to accompany Shri Suresh Prabhu on a trip to China some time back and what he said is to some extent true that the foreign direct investment in China is perhaps twenty to thirty times what it is in India today. But he has not spoken about one thing. China, as per my information, has adopted about 130 different laws to take care of the new emerging situation - the liberalisation of economy that has taken place in China. Have we, in India, resorted to such a procedure? This is the question. In fact, people ask us if they come here with their investments, if they come here with their technologies and companies, are our laws sufficient to take care of the situations which they foresee when they want to come down here.

Another question was raised by hon. Shri Fernandes. He wanted to know point blank how many other countries have adopted this model law of the United Nations. I have tried to make enquiries and I am told that a majority of countries have adopted the model law of the United Nations. They have modified their system according to this accepted model which is before us while we consider this. I also recollect some hon. Member mentioning, if such a model law exists, why has that not been available to the Members. In fact, that model law was made available when this matter was considered by the Committee. This particular Bill is not a new thing.

As has rightly been said, I should not say that the glory or the courage for bringing this Bill goes to me or to my Government. Absolutely it is not so. This Bill has been before the House. The previous Government has brought this Bill. They have utilized the expertise available on account of the model law prepared by the

United Nations and on that basis this has been brought.

Sir, I would once again refer to Justice Lodha who has referred to the question of secularism though, in fact, that does not pertain to this law at all. But one thing I may tell the hon. Member that this issue must have been considered when this Jammu and Kashmir order was being enacted and probably at that particular time this issue was discussed by this House. I am personally not aware of it.

Are we resorting to any international pressure in accepting this law? My humble submission is, no. We are trying to be as modern as possible. We are trying to provide a modern structure, of course, in the context of our age old perceptions of arbitration so that the old and the new could mingle together and our disputes are resolved.

The concept of delay in Justice once again came up for discussion in this House. Once again, I would refer to the hon. Member, Shri Prabhu, who said that the mounting litigation in various courts is because of the procedural tangle in which the litigants and the judges and the advocates find themselves in when they go to the courts of law. He tried to refer to certain provisions of this Act. He also said that similar thing is likely to happen. Whenever an enactment is made, there will be various brains trying to analyse it from different angles. There will be jurists, there will be legal luminaries who will try to challenge this Act in the various courts of law. They would challenge either the law itself or the proceedings under the law. You cannot stop them. But we have tried to keep the procedural aspects out of the purview of arbitration and conciliation. We have tried to keep the Civil Procedure Code out except so far as it relates to execution of awards and so far as it relates to guaranteeing the presence of witnesses if at all that is required. In other respects the procedure has been kept out. I have a fond hope - in fact, the hope behind it is really very fond - that when the parties go there, they go there out of their own wish. There is no compulsion whatsoever on them and they go there knowing fully well that if they go to courts they are going to prolong the litigation and probably they may not get any answer for that.

A reference has rightly been made by Shri George Fernandes to the recent case of Shri Imran Khan and he has also referred to another case of America. We have seen a number of cases in foreign countries where the cases have been decided so expeditiously that in a matter of few months, in a matter of few days or weeks, we have the answer before us. Can we not have such a system in India in our own country? Once again, it is a hope. I hope that it does not remain simply a pious hope. Then as I have referred to while speaking on the Judges Bill and I repeat that while I speak on this Bill that let us not be content by expressing the pious hope that one day we may have a similar system as exists in the foreign countries where a case would go to a court and it will be resolved in a matter of days or matter of weeks or matter of months. Let us act in such a way that we have an alternative dispute redressal system which is so strong and so prevalent throughout our country that it is available to each one of our citizen so that this mounting number of cases, this huge backlog of cases gets wiped.

Probably, we have this beautiful picture wherein a case goes to the court, day-to-day trial is held, and the matter is decided expeditiously. In fact, that is also one of the concepts, one of the aspirations, behind this particular Bill.

Sir, a question about the rules was put. Has the Government made rules? Will the High Court make rules, and if the rules are not there, will it come into force? If we look at the provisions of this particular Bill— I would refer to Part IV where the supplementary provisions are indicated-clause 82 speaks about :

> "The High Court may make rules consistent with this Act as to all proceedings before the Court under this Act."

I would also request the Members to look at clause 83, which speaks about removal of difficulty.

> "If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:"

But once again, a time period of two years has been prescribed under this that no such rule will be made after the expiry of two years from the date of commencement of this Act. So, let us start implementing this law and if at all any difficulty arises, at any time, there is a provision here to take care of it. Let us go further.

> "The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act."

Let us read this with clause 85 which repeals the old laws.

> "The Arbitration (Protocol and Convention) Act, 1937, the Arbitration Act, 1940 and the Foreign Awards (Recognition and Enforcement) Act, 1961 are hereby repealed."

But while repealing, what has been done?

"Notwithstanding such repeal, -

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties..."

Here it answers one more issue raised by one of the hon. Members. It was said, 'What happens to the old laws?' It is taken care of here.

"...unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;"

Then, it says :

"(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act."

So, I think, almost every eventuality has been taken care of under the Part IV Supplementary Provisions. So, I request the hon. Members not to be perturbed by any of these doubts which they have expressed here. The law is quite comprehensive to take care of any situation.

Arbitration, someone said, is defined, but conciliation is not defined. I would say, arbitration also has not been defined. Why arbitration has not been defined? In clause 2(1) (a), it is said,

" 'arbitration' means any arbitration whether or not administered by permanent arbitral institution;"

This is the only definition that is given there. It does not actually define what arbitration is.

SHRI SURESH PRABHU : It is a negative definition.

SHRI RAMAKANT D. KHALAP : You can say that it is an inclusive definition. Therefore, this issue - both arbitration and conciliation - has been left open to the parties. The moment they find that there is a disagreement and feel it is to be resolved, they go to a third party and that person itself is the arbitrator, or they go to a third party and agree between themselves that they should obtain a conciliation agreement. So, that itself is conciliation. This is how we have sought to look at this particular thing.

Some hon. Members said that we do not want courts and some other hon. Members said yet we are going to courts. This cannot be the fact. We cannot totally rule out the intervention of courts in any case. If the court is not required at the initial stages, it will be required at the ultimate stage when the award is given. Then, there are two things. Should the intervention of court be resorted to at the interim stage? We have two types of provisions here. The Arbitrator is given powers to pass interim orders. The court has also been given powers to pass interim orders. The difference between the two is in one case the parties themselves agree that the order for protection of things involved in this may be passed or if there is no agreement, if the parties go to the court, then interim orders have to be obtained. So, I do not think this should make us feel that at some stage, once again, we are bringing in courts to pass interim orders. In fact, it is a provision which is, in my opinion, an enabling provision which helps the parties to look at situations that emerge from time to time.

Then, a point was made about resorting to such interim things. Some Members asked: Will it cause delay? Some delay will definitely be there. But it is not a delay that normally take place as in the normal legal procedure.

A reference has been made to the Geneva Convention and the New York Convention. It was said why the term "High Contracting Parties" has been used. I think, my friend Shri Suresh Prabhu also referred to the Latin phrases. Am I correct? He referred to *ex aequo et bono, amiable compositeur*. I am trying to pronounce the way they pronounce it. I do not think I am good at it...*(Interruptions)* This has also been explained. These phrases sometimes do get used and on account of the use of such phrases, quite often they get mingled into our legal pariance. We do not have to be afraid of any such thing which may come across within our laws. It only means that the principles of equity have to be made applicable or you arrive at a compromise settlement. On this basis, the meaning is understood by the courts and the parties. Nobody has to be afraid of this terminology.

In conciliation, I think somebody raised the question of confidentiality. If conciliation fails, the parties go to the court. It was asked: Will such parties be entitled to make use of the evidence that came before both of them or before the Conciliators during the stage of conciliation? So, there is a bar on that. Confidentiality of proceedings is maintained under Clause 75. Any evidence given in conciliation is made non-admissible under other proceedings.

Some Members asked: If the arbitrators are ordinary citizens and if they are not well-versed with the law upon which they may have to decide or with the type of problem that may come before them, that will happen? Suppose, an arbitrator happens to be a doctor and the issue relates to engineering or *vice versa*, then what happens. So the basic concept here is that in most of

the proceedings that come before the arbitrator, what is required is a robust common sense to decide upon a particular issue. And in case the arbitrators find that a technical issue is involved, they are free to obtain the help of experts. That also has been provided here.

I would take only one point and the rest of the points are just repetitive. Shri Rawat has referred to the disputes arising out of the intellectual property rights, patents bill and so on and so forth. The reply to this is, any dispute which arises between the parties and about which the parties agree that it should be referred to arbitration, is covered. So the scope of this law, therefore, extends from the commonest family dispute to a complicated international dispute. That is the scope of the entire law. And then this scope ...*(Interruptions)*

PROF. RASA SINGH RAWAT : What about high contracting parties?

SHRI RAMAKANT D. KHALAP : The term 'Contracting Party' is referred to the nations. This Geneva Convention or the New York Convention, to which a reference has been made here, in all international treaties, usually the sovereign States, sovereign nations which are parties to this convention, describe themselves as 'high contracting parties', though not always. That is why, that has been accepted.

If at all anybody wants to know about protocol, I say that parts of protocol have been included here verbatim only to show that those aspects which are covered under those protocol, form a part of this Arbitration Bill. Therefore, this is a good piece of legislation which the previous Government brought before the House. And I have the fortune of piloting it in this House. I would not take credit for it. But if at all, I have been made to be a foster father, let me perform my duty to the extent I can and as honestly as possible. I have tried to do it. I request the hon. Members, therefore, to accept this Bill.

[Translation]

SHRI GEORGE FERNANDES (Nalanda) : Mr. Chairman, I want clarification on one or two points. The hon. Minister dwelt on the international aspects of the Bill. We can understand matters concerning international areas but what is his argument for this Bill which is for domestic arbitration? In his reply, he has not clarified this point. In fact, he has not said even a sentence about it. He opened his speech with things international.

When I asked how many nations enacted laws as per the model rules and laws of the United Nations, he replied that majority of the countries did that. I want the precise number of the countries. About 184 or 185 countries are associated with the United Nations...*(Interruptions)* They may be around 200. Majority does not mean majority of nations but it means majority of how many nations. I want to know whether those countries have adopted the model rules of the United Nations only to dispose of international matters or for domestic arbitration also and how many of them have adopted those rules for domestic arbitration.

According to clause 13, if someone challenges the arbitration and considers him unfit for the post, the United Nations has framed the rules for going to the court for such an eventuality the hon. Minister has excluded this provision. He did not say anything in this connection. He is adopting the rules as laws of the United Nations but he is not adopting them where they are needed the most.

Then a foreigner can become an arbitrator in our country for domestic arbitration. The hon. Minister should clarify these points before proceeding further with the Bill.

[English]

MR. CHAIRMAN : There should not be a second debate now.

SHRI GEORGE FERNANDES : I have sought some clarifications.

MR. CHAIRMAN : You have sought specific clarifications on four points.

SHRI RAMAKANT D. KHALAP : The first question is, how many nations have adopted this law. I gave an answer which I know is not a very precise answer. I said a majority of countries have adopted. That is the information that I have. Some of those countries have also applied it to the domestic arbitration.

SHRI GEORGE FERNANDES : You do not still know you how many countries have adopted it because you said a majority of countries have adopted it. I assume that you are briefed that it is a majority of countries because somebody may be committing contempt of the House by giving wrong information. Now 'majority' may be coming down; it is no more 'majority'.

MR. CHAIRMAN : Anyway, a large number of countries.

SHRI RAMAKANT D. KHALAP : I will give the precise answer. I will submit it to the House.

MR. CHAIRMAN : At the present moment you say that a number of countries have adopted it.

SHRI RAMAKANT D. KHALAP : I will give the precise figure.

The second point was whether some of the countries have also adopted it. Again, I am not in a position to give the exact number.

Hon. Member Shri Banatwalla, if I have understood him properly, referred to the public policy issue. That is one of the issues he has raised.

Article 13 is regarding challenging procedure. It says :

> "If a challenge under any procedure agreed upon by the parties or under the procedure of Paragraph 2 of this Article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authorities specified under Article 6 who would decide on the challenge, which decision shall be subject to no appeal. While such a request is pending, the arbitral tribunal, including the challenge arbitrator, may continue the arbitral proceedings and make an arbitral award."

Once again the concept is this. If at this stage itself we allow the matter to go to the court on the ground that we challenge the appointment of the arbitrator himself, what will happen is it will be like a child stillborn.

20.00 hrs.

The moment you challenge him and go to the court, the matter remains there.

SHRI GEORGE FERNANDES : That is not the issue. The issue is that the model and rules provide for it. You are depending so much on the model law and rules. Why have you excluded this provision from that?

SHRI RAMAKANT D. KHALAP : I am trying to explain that very part. We have excluded this provision because our experience with our own legal system is such that the moment we go there it become a cobweb. We go there and get ourselves entangled. Therefore, as far as possible...*(Interruptions)*

SHRI G.M. BANATWALLA : Even the Chairman is not satisfied with your explanation...*(Interruptions)*

SHRI RAMAKANT D. KHALAP : At a later stage, if the award itself is to be challenged, it can be challenged. That challenge is available.

SHRI GEORGE FERNANDES : That challenge is not available.

SHRI RAMAKANT D. KHALAP : It is certainly available.

SHRI GEORGE FERNANDES : Where is it available? Clause 35 on finality of arbitral awards says:

> "Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively."

SHRI RAMAKANT D. KHALAP : No, Sir. It is there in Clause 34(2).

[Translation]

SHRI G.M. BANATWALLA : That comes when the entire arbitration has come to an end and the award has been given. Then the aggrieved party may come beating his chest. Is it the way?

[English]

SHRI GEORGE FERNANDES : It does not take into account most of the aspects of the Bill. If you start reading Clause 34(2), it says, '...set aside by the Court only if the party making the application furnishes proof that the party was under some incapacity or...' and so on. All these are technicalities. It has nothing to do with the merits. It has nothing to do with the case *pur se*.

[Translation]

You read clause 34. These are all technicalities and if there are not fulfilled, it would mean the something.

SHRI RAMAKANT D. KHALAP : The concept is that when arbitration starts and the arbitration is challenged on the ground of capacity or incapacity or for any other reason, then the matter is not taken to a court of law.

SHRI G.M. BANATWALLA : Election process is not stopped. The arbitration process may also continue, whatever be the consequences.

[English]

SHRI RAMAKANT D. KHALAP : Yes. In a way, that is true. If the nomination paper is rejected, we do not go to the Court straightaway; we wait for the election petition to be decided upon.

Here, the whole concept has been to reduce the recourse to Courts as far as possible.

SHRI GEORGE FERNANDES : I accept that point. But my point is that they have provided a certain proviso. There is a proviso which says that I can challenge that. The challenge is provided for, but who will decide whether my challenge is justified or not? It is the man against whom I have made the challenge. He himself will decide that. In other words, the accused will himself be sitting in judgement over the charges levelled against him.

MR. CHAIRMAN : He has sought to explain it now.

SHRI GEORGE FERNANDES : There is no explanation, either legal or moral, that can come on this particular point.

SHRI RAMAKANT D. KHALAP : There is an answer. Let us say that there are three arbitrators and one arbitrator is challenged...*(Interruptions)*

SHRI GEORGE FERNANDES : There is a provision for having only one arbitrator also. It is nowhere provided that there shall be three arbitrators. As defined by Clause (1) (d) '"arbitral tribunal" means a sole arbitrator or a panel of arbitrators'. If I am a sole arbitrator and my bonafides are challenged, I will sit in judgement and say, 'I do not care what you speak about me; I am going ahead'. There is no appeal on that...*(Interruptions)*

SHRI SONTOSH MOHAN DEV : Do you want a panel of arbitrators?

SHRI GEORGE FERNANDES : No, I do not want that. I am only saying that there are flaws in this law, which I want to be corrected. That is all. This Parliament cannot pass a legislation by just saying, 'We are in a hurry. Now, let us finish it off'. Sir, legislation is not passed like that...*(Interruptions)* I do not understand it. I am very sorry.

SHRI RAMAKANT D. KHALAP : In this case, what happens is this. Usually, if parties do not agree upon a sole arbitrator, they can resort to three arbitrators. They can increase the number and go ahead. If one arbitrator is challenged, they can consider that aspect together. It is not that there should all the time be a sole arbitrator. What is provided is, 'a sole arbitrator or a panel of arbitrators'. If there is challenge, that challenge is something which is not going to vitiate ...*(Interruptions)*

[Translation]

SHRI BHAGWAN SHANKAR RAWAT : Sir, I do not agree, what he is saying is not possible. If the sole arbitrator or the panel of arbitrators is not agreed upon once and then the party feels that the arbitrator is adopting dishonest means, ran the panel of arbitrators be agreed upon then?

[English]

SHRI GEORGE FERNANDES : There is no provision for appeal then. The appeal provisions do not come at that time. That is my point.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT : At no point of time before finalisation. The party has the power to ask for the panel.

[English]

SHRI GEORGE FERNANDES : Sir, there are only technicalities.

SHRI SURESH PRABHU : Sir, even this Bill envisages such an eventuality that there could be a challenge at a latter stage. It is not *ab inition*. The Bill itself envisages a situation like that. That is why they are saying that at a later stage also there is a possibility of challenge. Initially, both the parties are agreeing on a single arbitrator, but later a situation emerges which is envisaged by this Bill itself.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT : Please tell us what will happen in that eventuality. If the arbitrator turns out to be dishonest or the party has lost faith in him and wants to change him, he cannot change him and wants to make some addition in the panel of arbitrators, he (party) cannot do it. What will then be his position?

SHRI GEORGE FERNANDES : You read clause 34.

[English]

Let the House know what 34(2) is. It does not provide for any appeal at all. It is only on technicalities.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT : Then it can be challenged on technical aspect. There would be no appeal for it. That sole arbitrator will become an incarnation of God and no action can be taken against him. He may do what he likes.

[English]

SHRI RAMAKANT D. KHALAP : Answer to this is very simple. Arbitration is resorted to by the parties by mutual consent.

[Translation]

Both the parties will choose arbitrators by mutual consent.

[English]

That both the parties agree on so and so. Incapacity is the issue to which challenge is to be made. It does not arise in such a case.

SHRI GEORGE FERNANDES : Sir, it arises. Please read Section 12. Let us say we two have agreed for a particular arbitrator. The arbitrator has to give a statement that he has no personal interest in the case or he is not involved in the case in any way. But on a later, we discover that he is involved. Then, we will have to go only to him and say that you are involved. Here the law says that he would decide whether he should sit in as an arbitrator or not. And if he decides that he would sit in as an arbitrator, there is nothing that we can do. And Section 34 does not provide for that even at the later stage of appeal. He referred to Section 34(2). What does it say?

"(2) An arbitral award may be set aside by the Court only if -

(a) the party making the application furnishes proof that -

(i) a party was under some incapacity"

That does not cover the problem that I am raising. It further states:

(ii) "the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force"

This is also another technicality.

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part;

Sir, where does Clause 13 come into play? How does Clause 13 cover this? You go through Clauses 12 and 13. Then only you can understand the whole procedure.

SHRI RAMAKANT D. KHALAP : Sir, let us read Clause 13 again where challenge procedure is provided for. Let us also go to Clause 12 which speaks about grounds for challenge. The first duty of the arbitrator is this:

"When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality'.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if -

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not posses the qualifications agreed to by the parties."

SHRI GEORGE FERNANDES : Underline both (a) and (b).

SHRI RAMAKANT D. KHALAP : These are the two things.

It further says:

"(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made."

SHRI GEORGE FERNANDES : Correct.

SHRI RAMAKANT D. KHALAP : Then let us go to Clause 13. It reads as follows :

"13 (1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge."

SHRI GEORGE FERNANDES : He decides ...*(Interruptions)*

SHRI RAMAKANT D. KHALAP : It further reads as under :

"(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award."

SHRI BHAGWAN SHANKAR RAWAT : That is the problem.

SHRI RAMAKANT D. KHALAP : There is no problem in this.

SHRI GEORGE FERNANDES : He decides. He gives the award. That is final.

SHRI RAMAKANT D. KHALAP : There is a solution. Let us go to sub-clause 5 of Clause 13. It says:

> "(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34."

You have raised an objection against an arbitrator after he has given an award.

SHRI GEORGE FERNANDES : But section 34 does not include it...*(Interruptions)*

[Translation]

SHRI G.M. BANATWALLA : There is no need for it in section 34....*(Interruptions)*

SHRI RAMAKANT D. KHALAP : The solution to the matter referred to by you is there in section 13.

SHRI GEORGE FERNANDES : It is not there ...*(Interruptions)*

[English]

An arbitral award may be set aside by the court ...*(Interruptions)* It does not take you back to 13(5). Something has gone wrong as under 13(5), it does not say that...*(Interruptions)* It restricts.

SHRI RAMAKANT D. KHALAP : Let us read it again:

> "(5) Where an arbitral award is made under sub-section (4)..."

SHRI SONTOSH MOHAN DEV (Silchar) : You cannot do anything right now.

SHRI RAMAKANT D. KHALAP : No, no; there is no such problem. It takes care of the whole thing. It reads like this:

> "(5) Where an arbitral award is made under sub-section (4) the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34."

[Translation]

Which arbitral award? The arbitral award given by an arbitrator against whom we have an objection?

SHRI BHAGWAN SHANKAR RAWAT : On what grounds?

SHRI RAMAKANT D. KHALAP : Ground is what you said.

[English]

You go back to Clause 12(3). It says:

> "An arbitrator may be challenged only if -
>
> (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
>
> (b) he does not posses the qualification agreed to by the parties."

[Translation]

If you have doubt about his independence and you challenged on that ground and after you challenge. The arbitrator says that he does not accept the challenge and that he would move further and also gives the arbitral award. Then you will have to accept that award whether there is sole arbitrator or there are three arbitrators-some cannot work because you have not to go to the court as that will came further delay.

[English]

We do not contemplate such a thing. Therefore we say that let this arbitrator proceed and give the award.

And if he gives it, there is no finality then. Sir, nothing is lost because sub-section 5 says:

> "Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award..."

SHRI GEORGE FERNANDES : In which case Section 34 is defective because Section 34 deals with recourse to a Court against an arbitral award. It does not refer at all to Section 13. One of the two is defective. We cannot have a law at the time of passing the legislation which itself is full of contradiction.

MR. CHAIRMAN : Kindly explain Section 34.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT : You read section 34 and if there is any provision in it, you tell us...*(Interruptions)*

SHRI RAMAKANT D. KHALAP : It is said here as :

> "application for setting aside such an arbitral award will be made".

How will it be made? It will be made in accordance with Section 34. And what is given in Section 34?

> "Recourse to a Court against an arbitral award may be made only by an application

for setting aside such award in accordance with sub-section (2) and sub-section (3)."

Which are the sub-section 2 and 3?

"That the party making the application furnishes proof that a party was under some incapacity,..."

[Translation]

This incapacity and impartiality comes only here. If there is any doubt about his impartiality, then that is his incapacity.

[English]

Then in (ii) there is the arbitration agreement not valid and all those things...*(Interruptions)* Let me make one statement. Clause 13 will have to be read into Section 34.

SHRI SURESH PRABHU : That is what you have to mention here. The grounds under which Section 34 will be applicable are very clearly defined now. That Section 34 could be invoked only in a given situation which you have very clearly specified in Clause 2 of Section 34.

SHRI SONTOSH MOHAN DEV : You cannot amend just now what Mr. George Fernandes and others are saying but you can add an explanatory note saying what Mr. George Fernandes is saying. Even that will satisfy them because there is a confusion in the language. If the House unanimously adds this explanatory note, it will satisfy all of us. Let us unanimously do it and end the matter. This is no change of rule. What he is saying is that your rule is not specific about Section 34. So, it should be given in an explanatory note.

SHRI SURESH PRABHU : To sub-clause 2(v) of Clause 34, you have to add (vi) to say that what you have specified in Section 13 is right and that also would be available for setting aside an award under Clause 34.

SHRI RAMAKANT D. KHALAP : In my opinion, Sir, it is not required. When you say that a challenge will be made in accordance with Section 34, what does it really mean? It provides the manner in which it is to be challenged and that manner is laid down under Section 34 and the ground is available in Section 13. To utilise that ground available in Section 13, for the purpose of Section 34, an appeal is there and you are setting aside.

SHRI SURESH PRABHU : Supposing what you are saying is made true, then that means Section 34 is only a Section which gives the procedure for challenging and the ground could be invoked under Clause 13. So, basically all these should go under Clause 13.

SHRI RAMAKANT D. KHALAP : What is the meaning of "in accordance with"? Section 13(4) says that one can challenge it in accordance with Section 34. Let us read it again, if it is necessary.

"Recourse to a Court against an arbitral award may be made only by an application for setting aside such award,...

Application part exists both in Sections 13 and 34.

SHRI GEORGE FERNANDES : With great respect to the Law Minister, if we read and re-read Section 13(5) where it is given:

"Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with Section 34."

SHRI RAMAKANT D. KHALAP : The words 'in accordance with' are important.

SHRI GEORGE FERNANDES : In accordance with Section 34. Now, Section 34 is not an omnibus kind of a section that it is free under any relevant or irrelevant clause. It is very specific in what exactly are the conditions in which the arbitration award may be set aside by the Court. It is because Section 34(2) very categorically says, an arbitral award may be set aside by the Court only if - it says that the arbitration may be set aside only if...

MR. CHAIRMAN : Under the following conditions.

SHRI GEORGE FERNANDES : That is right, Sir. Unless Section 13 is brought in here in some form or the other. It would not cover that.

SHRI SURESH PRABHU : Sir, that is why ...*(Interruptions)*

[Translation]

SHRI BHAGWAN SHANKAR RAWAT : If a note is appended to it, what objection does the hon. Minister have? This will make the provision more clear.

[English]

SHRI G.M. BANATWALLA : It is not a matter of prestige. It would invite a national disaster in the Courts and when the partiality of an arbitrator would be challenged, we would have no remedy whatsoever. These things would come up. The entire problem has come up because some deviation from the model law has been made and has been made in order to make our laws stricter. Article 13 of the model law provided for an appeal at that very time and at that very stage. Then the model law also does not provide for one arbitrator. It provides for a minimum of three arbitrators. We have provided for one arbitrator. So,

you have created some confusion. At time we have stuck to the model law and at times we have deviated from it.

Let us not take this as a matter of prestige. Let there be a proper amendment to it or let there be a proper explanation to it.

> There is another Section in this Bill which says,
>
> "If a difficulty is experienced in administering the law then an order can be made and published in the gazette."

I doubt this aspect very much that whether by a mere order this difficulty could be removed. It is because this is not a mere technical matter. It is a matter that goes at the very grassroots of the arbitration. Therefore, let us not stand on any prestige.

SHRI RAMAKANT D. KHALAP : Sir, there is no question of standing on any prestige. I do not consider myself a legal luminary in any way. I am trying to go by the provisions of this Bill itself and trying to respond to the problems raised by the hon. Members. There may still remain a problem. There is a clause in this Bill, viz. clause 83 which says,

> "If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the official gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for the removing the difficulty: Provided that no such order shall be made after expiry of a period of two years from the date of commencement of this Act."

Sir, I have made a reference to this earlier also. This Section is still there.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT : It is inconsistent.

SHRI RAMAKANT D. KHALAP : You tell me what is inconsistent.

SHRI BHAGWAN SHANKAR RAWAT : The provisions of clause 13 and clause 34 contradict each other. If you add one explanatory note to it, everything will be all right.

SHRI RAMAKANT D. KHALAP : You said it is inconsistent. How is it so? How are clause 13 and clause 34 inconsistent?

[English]

SHRI GEORGE FERNANDES : You cannot go beyond the provisions of the law. Provisions as contained in Section 83 provides for making an order and not amending the law, What is clause 83 ?

> "If any difficulty arises in giving effect to the provisions of the Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act."

It only provides for rule making powers. You cannot amend tbe law itself. They cannot say that from now on this would be separated as a law.

SHRI RAMAKANT D. KHALAP : I agree with you on this. By making use of Section 83 you cannot amend the main law. But still the fact remains that Section 13(5), says about arbitrator's award made under sub-section 4. Now, sub-section 4 says.

> "If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award".

[Translation]

If there is an objection about the arbitration

[English]

and if that challenge is not successful then arbitration will proceed. Objection is only here. Now, I have called an arbitrator incapable of giving any award to me, how do I subject myself to it.

This appears to be the basic definition. We need not carried away by this argument. Why should we not? Because, basically, where we first appoint him, there is a consent about his appointment. He is called upon to disclose the grounds for his incapacity. He is supposed to give it in writing. Even after that if it does happen, and the parties challenge the appointment of the arbitrator and this challenge - it can be accepted, it may not be accepted - it is accepted, he withdraws, if not he continues his arbitrations till the award. But then the things do not end here because that itself gives a ground to the party to challenge it under sub-section 5 and that ground has to be taken under Section 34.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT : It cannot be challenged on that ground. This we are saying repeatedly.

SHRI RAMAKANT D. KHALAP : How can it not be challenged?

[English]

Among various points, this itself becomes a ground to challenge the award.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT : The hon. Minister should bring in writing what he is saying because whatever has been written will be there. Mere saying a thing will not help.

[English]

JUSTICE GUMAN MAL LODHA (Pali) : The hon. Minister has a problem. The objection which has been raised is valid because the interpretation is to be done on the basis of the wording of the law.

Section 13, as it stands today, certainly gives powers to the tribunal only to decide whether a defect which has been pointed out is there or not. That means they have the veto power. The arbitrator can say, "you are saying, that you are not interested, and you have got no relationship; so I reject your application."

Now, it can be the wisdom of the legislature to provide the appeal or remedy. The legislature is competent to do so but the in the ordinary law, in the Arbitration Act which we had since 1940, it used to be a misconduct. If an arbitrator is interested on account of relationship, or on account of any office which he is holding with a party or any type of thing of this nature, then any award given by him would be vitiated on the ground of misconduct and that can be challenged on the ground of misconduct in the High Court. This is the position as per the Arbitration Act which stands at the moment. That is my impression. If I am wrong, the learned Minister of Law can correct me.

SHRI GEORGE FERNANDES : You are absolutely right.

JUSTICE GUMAN MAL LODHA : Now, are we going to give veto power against the spirit of the original law? Is that progress or dynamism? Is that the rule of law which we are going to adopt?

As I have said, it is the wisdom of the legislature. If you say, "we want to give to the arbitrator the sole right, we want to give him the veto power", you reject it. No further demur or protest, no challenge, no appeal, no application is there. Then it is possible for you to say so. But it would be against the spirit of the entire arbitration legislation which had been in force, and which is there in the international court also. Therefore, I would say that it is not possible to give veto power to the arbitrator. If that is so, then the second question, which has been raised, arises whether this can be raised under Section 34. Now, the answer, depending upon the reading of Section 34 and simple grammatical interpretation, is that Section 34 nowhere contemplates that an award given by an arbitrator can be set aside on the ground that the arbitrator was interested or having some defect which was contemplated by Section 13, and is wrongly rejected. That is the discretion of the arbitrator to accept the objection or to reject it. It cannot be challenged under Section 34.

Now an argument is given that because it has been said here in sub-Clause 5" that order given under Section 4 can be challenged under Section 34" therefore, it must be assumed that by way of legal fiction, in addition to the grounds mentioned in Section 34 (1,2,3,4) this is also a ground. This is probably the argument coming from the hon. Law Minister. That could have been valid if Section 34 would not have put a further rider. The problem with which the hon. Law Minister is confronted is that when we have to go by Section 34, then Section 34 is to be applied, it says :

> "Recourse to a court against an arbitral award may be made only by an application for setting aside such awards in accordance with..."

Now, up to this is all right. So Sub-Section 2 and Sub-Section 3 are riders. It is not unbriddled. It is a limited right to challenge as spelt out by Sub-Clause 2 and Sub-Clause 3: Sub-Clause 2 or wordings of it nowhere contemplates that it has got a cross reference to Section 13. But if it is said "misconduct, wrongful rejection of the application under Sub-Clause 4 of Section 13", then, it would have been all right. Therefore, Sir, a Jurist had said that "Law is nothing but an uncodified common sense and a codified non-sense." So, when they codify it, they can put anything but when we legislators say here, we are not here just to say "yes" to "non-sense", we have to apply our mind and say if it is a non-sense we would make a sense.

SHRI SONTOSH MOHAN DEV : You suggest a remedy.

JUSTICE GUMAN MAL LODHA : The remedy you have suggested is right. It can be by way of explanation. It can be by way of an addition under Section 34, If under Section 34 one more Sub-Clause is added, then it is all right. As you have said, if under Section 34, Sub-Clause 2 (1,2,3,4,5) and after '5', if you add one more Sub-Clause, that would be all right. Or else, you can put an explanation. It is because explanation is also an addition. But the power which the hon. Law Minister is pointing out of removing difficulties by way of clarification by the Government, is not a legislative power but is a subordinate legislative power. That cannot be applied to fill up the lacuna here or to make some inconsistent situation which is not contemplated by the parent Act, the parent Act would prevail. Therefore, I would submit that he cannot use that power. If he uses it, it would be struck down by the High Court or by the Supreme Court because that is not a legislative power.

That is a power of subordinate legilsation, of delegated legislation and a delegated legislation or a subordinate legislation can never make something inconsistent with the original Act.

Therefore, the best thing for the hon. Minister is to keep it for tommorrow, and consider it calmly and quietly. We are not in hurry. It is because now the whole debate is over. We will not go for any more debate. You can calmly and quietly, along with your Law Officers, consider this matter tomorrow. You can sit with your Law Officers. You can sit calmly and coolly without making it a matter of prestige between this side and that side. It is not a matter of this side or that side. We are making a law for 80 crore people of India. It is not only an Indian law but it is an international law. It is for the whole world.

MR. CHAIRMAN : Shri Lodha, the hon. Minister is responding to your point.

SHRI RAMAKANT D. KHALAP : Before answering this point, I will revert to the question raised by the hon. Member, Shri George Fernandes, regarding the number of countries which have adopted this. I made a statement that majority of the countries have adopted this. Let me stand corrected. The information which I got now is that 40 countries have adopted for the international arbitration and for domestic conciliation and arbitration. Sweden and the Netherlands...*(Interruptions)*

SHRI GEORGE FERNANDES : There you are. My entire case against this law stands vindicated. Only two countries in the world had similar legislation for international and domestic reasons. Every country cares for its sovereignty. Every country is concerned about its own laws, which suits its character, its nature and its problems. We are now providing leadership to the world in globalisation of our laws and our legal practices also. Sir, I strongly oppose this point...*(Interruptions)* I only said: "I am not supporting it." Now, I am very strongly opposing it...*(Interruptions)*

SHRI RAMAKANT D. KHALAP : Shri George Fernandes is a Golaith I cannot reply to every point raised by him. With my limitation I will answer. I will definitely say that there is nothing wrong if we are going to give leadership to the world ...*(Interruptions)*

SHRI SURESH PRABHU : Let us do it in some other areas also...*(Interruptions)*

SHRI RAMAKANT D. KHALAP : The existing law takes care of both the domestic conciliation and the international conciliation. If the principles of the Arbitration Act, 1940 are incorporated into this, I will not be able to say in what way it is going to affect our sovereignty. This is my humble submission ...*(Interruptions)*

JUSTICE GUMAN MAL LODHA : It is not your child. It was already there before you came...*(Interruptions)*

SHRI RAMAKANT D. KHALAP : Since it is my adopted child,...*(Interruptions)*

JUSTICE GUMAN MAL LODHA : You can disown it. It is the child of the Congress...*(Interruptions)*

SHRI RAMAKANT D. KHALAP : Responding to the observations of the hon. Member, Shri Lodha, I once again reaterate. I am convinced that Clause 13(5), which provides for challenging the award in accordance with Section 34. Is a remedy good enough to take into consideration a situation emerging out of a case where a party before the arbitrator challenging the arbitrator ...*(Interruptions)*

JUSTICE GUMAN MAL LODHA : What about the riders of the sub-clauses (2) and (3)?...*(Interruptions)*

SHRI RAMAKANT D. KHALAP : It does not affect at all, in my opinion. There is no rider as such. There is no limitation as such...*(Interruptions)*

JUSTICE GUMAN MAL LODHA : We can do one thing. The Attorney-General can be called. There is a provision under the Constitution which says that the Attorney-General can be called to give his opinion ...*(Interruptions)*

SHRI RAMAKANT D. KHALAP : Finally, I would like to say one thing if at all such a question does remain in the minds of somebody. Article 226 of the Constitution will come to his rescue. That is the end of it ...*(Interruptions)*

SHRI SURESH PRABHU : What is important in any legislation is also the intention of the legislature. So, if the intention is so clear, why not make it amply clear by codifying it?...*(Interruptions)*

[Translation]

SHRI GEORGE FERNANDES : What is the harm in accepting what Shri Sontosh Mohan Dev ji has said ...*(Interruptions)*

[English]

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF TOURISM (SHRI SRIKANTA JENA): Not necessary...*(Interruptions)*

SHRI GEORGE FERNANDES : After all, they are the originators of the law...*(Interruptions)* Why is the foster father supporting it when the real father is opposing it?...*(Interruptions)*

JUSTICE GUMAN MAL LODHA : The Attorney-General has got a right of audience and the Attorney-General can clarify it...*(Interruptions)*

SHRI SONTOSH MOHAN DEV : Sir, the hon. Member has raised some points and the hon. Minister also has

replied to them. This Bill has been passed by Rajya Sabha. What I appeal to this august House it that the hon. Minister has heard the views of the hon. Members. The hon. Minister should give an assurance that after passing of this Bill he will get the points raised by them re-examined. That should be assurance. The hon. Minister can come back afterwards to the House with an amendment if he thinks that the points raised by them are valid. Let this Bill be passed today ...*(Interruptions)*

SHRI SRIKANTA JENA : Never a law is final ...*(Interruptions)*

JUSTICE GUMAN MAL LODHA : What objection does the Minister have in calling the Attorney-General to give his opinion? What for has the Constitution provided this?...*(Interruptions)* What for is the Attorney-General meant?...*(Interruptions)* Let him come and clarify...*(Interruptions)*

SHRI SRIKANTA JENA : No law is a final thing. We have been amending the laws and if there will be any difficulty, this House has every right to amend this law also. The Government will come before the House. So, this is not the end of the road.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT : It is becoming clear and you are going to enact a law...*(Interruptions)* This will give rise to litigation and a great injustice will be done to the people...*(Interruptions)*

[English]

SHRI SONTOSH MOHAN DEV : Sir, will the hon. Minister kindly give an assurance that if there is a need for further re-examination, it will be done? ...*(Interruptions)*

SHRI RAMAKANT D. KHALAP : Sir, the hon. Minister for Parliamentary Affairs has stated that so far as the House is concerned, we are sovereign and supreme. We can always amend the laws and this has been always happening. It has happened on a number of occasions. In the case of electoral reforms also, we have said that a comprehensive Bill will be brought. In this case also, since Justice Lodha is pointing out certain lacunae according to him - and I respectfully disagree - and as Shri Sontosh Mohan Dev also has said. If at all such a necessity does arise, I do not think we should be ashamed of coming before the House again ...*(Interruptions)*

JUSTICE GUMAN MAL LODHA : But, Sir, heavens will not fall by tomorrow. Let them ask for the Attorney General's opinion. If the Attorney General says that he is of this opinion, we will abide by it ...*(Interruptions)*

SHRI G.M. BANATWALLA : Sir, there is a very casual attitude towards the making of this law ...*(Interruptions)*

SHRI RAMAKANT D. KHALAP : Therefore, Sir, I would request hon. Lodhaji to withdraw his Statutory Resolution.

MR. CHAIRMAN : Lodhaji, I think the Minister has replied. Now you have the right to reply.

JUSTICE GUMAN MAL LODHA : Sir, our problem is that it is not a question of somehow, by hook or crook, finishing it in a minute or two. We have debated it at length and certain matters have come to light. Probably nobody initially thought so seriously, about it. But once certain very serious constitutional legal matters have come to light and if by conviction we feel that they are such, then I want to say in my rejoinder as a reply that we are making this law not only for India, not only for all sundry - a small villager, a small businessman and the biggest one - but for the whole world. and while doing so, if the hon. Minister is convinced at this stage that certain principles of natural justice are being violated while making the law, that certain unfairness is being committed in the sense that we are giving a veto power to an arbitrator to decide about his own bias and then no remedy, then to say that one can go to the court under article 226 of the Constitution is not a matter where a remedy is there. It is just avoiding the issue. With due respect to the hon. Law Minister, I would submit that we should not avoid the issue. We should face it squarely. And if we face it squarely, then the Constitution provides a remedy in ticklish law matters where interpretations are difficult or two interpretations are possible. The hon. Members of Parliament want to be enlightened. I recollect and I would remind the House that when there was a matter regarding cow slaughter prohibition law and Pandit Jawaharlal Nehru was the Prime Minsiter, a question arose as to whether it is a State subject or a Central subject. The entire debate had proceeded and the debate had shown that the people were of the view that that law must be made although no division was made.

Pt. Jawaharlal Nehru at that time said that as this is a ticklish matter whether cow slaughter prohibition law is in List I or List II. i.e., the State List or the Concurrent List let us call the Attorney-General. The Attorney-General was called and he gave an opinion that it is a State Subject and on that basis the House dropped that matter. Now, I am saying so,because during the entire debate which has taken place so far, we have observed that Members cutting across party lines - there are persons sitting on that side who are supporting the Government - have seen the reason and a logic in the submission which has been made regarding this one point. We could leave aside the other points as that

may be a matter of political thinking. But on this point regarding the interpretation of Section 34 read with Section 13 it is obvious that section 13 cannot provide additional provisions under Section 34. This small point I submit to the goodsense of the hon. Minister of Law - a Minister of Law of a country which has the biggest democracy, which has got a written Constitution and again which is the largest in the whole world and we also talk about the rule of law and natural justice every day - that he must examine this point. I do not say that we stand by prestige.

SHRI RAMAKANT D. KHALAP : Sir, may I intervene for a moment on this issue? Sir, the whole hullabaloo now is regarding the challenge to the arbitrator and his power to carry with the arbitration proceedings.

Now, let us go to the international Rules of Arbitration and Conciliation on which this Bill is based. Hon. Banatwalla has stated that in article 13 of the model rules, there is a provision that if at all a challenge is made to the arbitrator then within 30 days after having received notice of the decision rejecting the challenge, the court or other parties specified in this article would decide on the challenge which decision has been subject to no appeal. That means it was stated here that it could go to the court. But the same article (3) of article 13 further says that while such a request it pending the arbitral tribunal - including the challenged arbitrator - may continue the arbitral proceedings and make the award.

SHRI GEORGE FERNANDES : You just include that. We will have no problem.

[Translation]

Mr. Chairman, we want only this thing and nothing else.

[English]

You include it we have no quarrel.

[Translation]

Otherwise I am unable to understand it. I do not want to start a discussion in it over and over again. But I will not be able to sit here to support this law. If this matter is to end have like this, then we walk out of the House...*(Interruptions)* you ask the paty to go in for appeal under section 34. The arbitration continues for three years, which involves time and money in the part of the party and then you ask him to go in for appeal when, to my mind the right of appeal is not there. Therefore, you add it in it, though I do not fully agree to it. But if you include it, that would provide some relief. At present there is no relief. Therefore, you include it in it.

[English]

SHRI SURESH PRABHU : What you have said is absolutely right and another thing is that you have incorporated the model law into this Act also. What you have mentioned is that the arbitration will continue depite the fact that there is a challenge pending. When the challenge is pending the award is given. But how could that award be initiated? How could it be set aside? That is why the Section 34 needs to be more properly defined. There has to be inclusion after Section 34(2) (vi). That is all.

JUSTICE GUMAN MAL LODHA : Sir, I am on my legs. He has taken my permission to intervene ...*(Interruptions)*

SHRI RAMAKANT D. KHALAP : Hon. Members, the whole thing now boils down to a very small issue.

SHRI G.M. BANATWALLA (Ponnani) : It is not a small issue.

SHRI RAMAKANT D. KHALAP : In my opinion, it is a small issue, in the sense, it relates to procedure. I do not say that it is small in terms of its importance. I am only saying that it is small in terms of the procedures to be adopted. What has been written in this is that you can challenge the arbitrator and, yet, subject yourself to this arbitration before the same person. So, in the international Model Law, they accept this principle. While giving them the power to challenge, the person who challenges the arbitrator shall continue to go before him and subject himself before the arbitrator. Not only that, the arbitrator will also be entitled to pass an award. So, that will happen ultimately is that the challenge to this arbitrator merges with the final award.

SHRI SONTOSH MOHAN DEV : The hon. Law Minister has put a very strong argument, but at the same time, the counter-argument is equally strong.

JUSTICE GUMAN MAL LODHA : I am on my legs.

SHRI SONTOSH MOHAN DEV : I request the hon. Minister to kindly keep this pending for tonight and to call tomorrow early morning a meeting either with his Secretary or, as suggested, with some legal luminaries to take an honest opinion on this. You can find out whether an explanation needs to be added or whether they are satisfied and feel that you have done well. Let us adjourn the House for the day. You may get their opinion, and we shall pass this Bill tomorrow.

SHRI RAMAKANT D. KHALAP : In that case, I have one small request to make to hon. Banatwalla. He has moved an amendment and his question was that we have not defined the 'public policy'. That was the only ground for moving this amendment. I will just give a small explanation on that and then request hon. Banatwalla to withdraw this amendment.

SHRI G.M. BANATWALLA : We have not yet come to that stage. It is premature.

MR. CHAIRMAN : The House now stands adjourned till Eleven of the clock on Friday, August 2, 1996.

20.53 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Friday, August 2, 1996/Sravana 11, 1918 (Saka).