Seventeenth Loksabha

>

Title: Combined discussion on Statutory Resolution regarding Disapproval of the Arbitration and Conciliation (Amendment) Ordinance, 2020 and Arbitration and Conciliation (Amendment) Bill, 2021 (Statutory resolution negatived and bill passed).

SHRI ADHIR RANJAN CHOWDHURY (BAHARAMPUR): Sir,

I rise to move the following Resolution:

> ""That this House disapproves of the Arbitration and Conciliation (Amendment) Ordinance, 2020 (Ordinance No. 14 of 2020) promulgated by the President on 4 November, 2020."

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

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

माननीय अध्यक्ष: प्रस्ताव प्रस्तुत हुआ:

> "कि यह सभा राष्ट्रपति द्वारा 4 नवम्बर, 2020 को प्रख्यापित माध्यस्थम् और सुलह (संशोधन) अध्यादेश, 2020 (2020 का अध्यादेश संख्यांक 14) का निरनुमोदन करती है।"

> "कि माध्यस्थम् और सुलह अधिनियम, 1996 का और संशोधन करने वाले विधेयक पर विचार किया जाए। "

श्री रवि शंकर प्रसाद: अध्यक्ष महोदय, मैं आपकी अनुमति से थोड़ा खड़े होकर बोलना चाहता हूँ।

अध्यक्ष महोदय, यह बिल हम क्यों लाएं, यह पहले ऑर्डिनेंस था, मैं बहुत सरल भाषा में बता देता हूँ। इस मामले में आपका स्वयं का बहुत अनुभव है।

माननीय अधीर रंजन जी, भारत के आर्बिट्रेशन एक्ट में इस बात का प्रावधान है कि अगर कोई आर्बिट्रेशन अवार्ड हो गया तो सेक्शन 34 में उसको हम सेटेसाइड के लिए अप्लीकेशन देते हैं। उसमें एक प्रोविजन है कि if it is in conflict with public policy, which means, the arbitration agreement or the award is induced by fraud or corruption, that is, in substance of public policy.

अगर अवार्ड को चैलेंज करना है तो यह ग्राउंड हमारे पास है, लेकिन सेक्शन 36 में स्टे का भी प्रावधान है। For a stay, you do not get automatic stay. You get a stay when you file an application for a stay. But there was no ground. Specifically speaking, even if the arbitration award is vitiated by fraud or by corruption, you could not get a stay because there was no specific provision for that. Adhir Babu, you are a Parliamentarian of long standing, with your experience of governance also. Can we deny that many times arbitration awards agreement are vitiated by fraud? People get a lot of benefits and then they start enforcing the award. When you go a little deeper, you find a lot of layers and layers of corruption.

Hon. Chairperson, without naming any party, we know of cases where the CBI is investigating and how the natural resources were awarded in complete violation of law without auction. Now they are filing one claim in America and one in England and everything is vitiated by fraud, by patent illegality, and also inducement by corruption.

17.45 hrs (Shrimati Meenakashi Lekhi *in the Chair*)

We have done a very limited modification in this and that is that, if the court is *prima facie* satisfied that the agreement and the award is vitiated by fraud or corruption, it will stay it. That is all. This will be

stayed till the decision under Section 34 is taken to set aside the award so that tax-payers money is not bartered away by these fly-by-night operators, who procure awards based upon collusive agreements, get benefits from the Government resources, bring some money, and thereafter start making all the tall claims. That is all very limited that we are doing.

We had come with the Ordinance. I think it is a pure public policy. I know some of the hon. Members have experience in the judicial affairs. We are very clear that this will be only limited to a stay till a decision is taken upon the setting of the award under Section 34. If the award is satisfied, it goes; if it is not satisfied, the interim order goes also. That is one thing.

The second amendment is, hon. Chairperson, that we had changed the arbitration ecosystem in the light of the Srikrishna Commission Report. We had got a schedule of the qualification of the arbitrators to be appointed by the institutions. A view was taken by an eminent member from the judiciary and other arbitration community that since you are promoting institutional arbitration, let the Arbitration Council of India by regulation decide who the arbitrator will be and what their qualification shall be. I think it is a very fair feedback that we got. Therefore, instead of having sheer loot, by regulations the Arbitration Council of India will frame the eligibility etc. of arbitrator. That is all.

So, these are the two very simple amendments which we are bringing in. We had to bring in the Ordinance because of the compelling reasons. I seek the kind approval and support of the House to approve this amendment. Thank you.

SHRI ADHIR RANJAN CHOWDHURY: Madam, Ravi Shankar Prasad ji is a legal luminary. He is well-adept in elucidating the pros and cons of the amendments. There is no doubt about it. But I move the Statutory Resolution to disapprove the ordinance mechanism because Ordinance could be resorted only in extraordinary and emergency situations when it was felt that it was absolutely necessary. These are the issues that have long been debated in the Parliament. Even Shri Mavalankar, the former Speaker of this House, once exhorted that the issue of an Ordinance is undemocratic and cannot be justified except in extreme urgency or emergency. I do not find any cogent argument. The fact is that even after he ferreted out the rationality behind the promulgation of the Ordinance, I have failed to subscribe to the view of hon. Minister that had warranted the promulgation of the Ordinance.

Yes, a legal luminary like Ravi Shankar Prasad ji must have smart and disingenuous sophistry at his arsenal to convince us that this is the path which needs to be pursued.

श्री रवि शंकर प्रसाद: मैडम, आज अधीर बाबू बहुत कड़ी-कड़ी अंग्रेजी बोल रहे हैं।

SHRI ADHIR RANJAN CHOWDHURY: But the fact is that the Arbitration and Conciliation Amendment Ordinance, 2020, as has been stated, was promulgated by the President of India on November 4, 2020 to amend the Arbitration and Conciliation Act, 1996 with an aim to ensure that all stakeholders enjoy the opportunity to ask for an unconditional stay in case the arbitration agreement or arbitral awards are attempted by fraud or corruption. This is the basic and fundamental aspect of this legislation.

I would like to allude to three features of this legislation. First, it is intended to allow stay on enforcement of award. The power of the court

stems from Section 34, as you have rightly pointed out, of the parent Act which empowers the court to set aside the arbitral award. The second feature of this legislative documents lies in the retrospective application. It has inherited retrospective application from October 23, 2015 onwards. The third aspect of this legislation is qualification of arbitrators. Section 43 of the Act has been substituted to provide that the qualifications, experience and norms for accreditation of arbitrators shall be such as may be prescribed by the regulations. The newly amended Section 43, accordingly, omits the Eighth Schedule of the Arbitration Act which laid down eligibility requirements for arbitrators. My point is that already our Judiciary has been burdened with a heap of litigations and other cases in terms of fraud, corruption, etc. I would like to ask whether it will not further exacerbate the burden of our Judiciary. People used to like arbitration instead of going to court because of time and space dimension because any solution through a court is always time-consuming. So, people used to prefer arbitration and conciliation.

I agree that we are developing and we are striving hard to make ourselves a developed nation. In a developed nation, certainly, we must have some ambitions. One ambition could be that we should have international arbitration facilities, institutional arbitration facilities. We should strive for turning more and more institutional facilities into the service of common people.

Hon. Minister, I am simply drawing your attention to one thing that the Bill, through amendment to Section 36, may open up floodgates for an exponential growth of frivolous litigation and attempts by parties to stall the operation of an award because in India, there is no dearth of unscrupulous elements. So, they may exploit this door in order to hide their intention. It may further cause wastage of time in the court.

Secondly, it is a superfluous amendment. Why am I saying it? The objective of the Bill is unnecessary considering that relevant pre-existing remedies already exist under the parent Act. The amendment merely specifies what has always been inherent in the parent act and is superfluous. Section 34, sub-section 1(*b*) already provides that any arbitration award induced by fraud or corruption – that very term is used by the hon. Minister – would be against the public policy of India. It has already been enshrined in the parent Act.

Under Section 36, sub-section 3, parties to an arbitration award already have the right to appeal for an unconditional stay on grounds under section 34. The amendment, therefore, creates an additional entitlement to an unconditional stay. Section 36, sub-section 3 also inherently grants the courts with the power to issue unconditional stays as it may deem fit. So, it is like carrying coals to Newcastle.

The third issue is that the Bill is directly at loggerheads with the 2015 amendment which aimed at improving the arbitration land scheme by cutting down on frivolous litigation and implementing investor friendly measures. आप क्या कर रहे हैं? दोबारा इसे कॉम्पलीकेटिड कर रहे हैं। आप एक तरफ चाहते हैं कि आप यूजर्स फ्रैंडली बनें, इन्वेस्टर फ्रैंडली बनें, लेकिन दूसरी तरफ आप बारगेन करने की दिशा में आगे निकल रहे हैं।

Coming to setting up of Arbitration Council of India (ACI), the changes made to section 43 are pointless without the establishment of ACI, the body tasked with drafting regulations under the parent Act. The operability of the proposed amendment is virtually redundant unless the relevant rules to set up the ACI are notified by the Ministry of Law and Justice for which comments are invited in March 2020 but no further action has been taken. You have not set up ACI. You are talking about accreditation policy as if you are counting chickens before the eggs are

hatched. There lies the problem. I do not know why you were in so much haste in promulgating the Ordinance without preparing yourself adroitly. There lies the crux of the problem.

I am also drawing your attention that in September 2020, the Government informed the Lok Sabha that it did not maintain data on arbitration matters. It stated that however in order to address the issue of non-availability of data in arbitration matters, the Arbitration and Conciliation (Amendment) Act, 2019 had inserted section 43K which mandates Arbitration Council of India to maintain depository of arbitral awards made in India. Further, data on pending arbitration matters in courts State-wise is being collected and will be laid on the Table of the House.

So, my question is, if the Government does not even maintain data on arbitration, how can it realistically enhance the adoption of arbitration as a preferred mode of dispute resolution? The Eighth Schedule is being omitted through the Ordinance which lays down qualification for arbitrators in India.

18.00 hrs

Given that the schedule was not in force, what was the need for bring out about an Ordinance? I want to point out some aspirations of our youth. Besides, the Eighth Schedule introduced by the Amendment Act, 2019 had given a ray of hope to the professionals working in different domains, like Advocates, Chartered Accountants, Company Secretaries, Cost Accounts, etc. to have a chance of becoming an arbitrator. This became a reason for celebration for such professionals and for their institutions as well. As I am told, some of these institutions even had started courses on Alternative Dispute Resolution to make these

professionals capable of accepting the challenge, if they were appointed as arbitrators.

This move was also appreciated and welcomed by the domestic/international arbitral fraternity considering that it might have brought a phenomenal change in Indian arbitration where prominently arbitrators are appointed from retired judges leaving virtually no scope for other professionals to develop as arbitrators.

However, it appears that their joy was short lived. There is a general guesstimate that the Eighth Schedule was acting as a barrier in the way of appointment of foreign nationals as arbitrators and as such met this untimely fate. If it is the precise reason, it could have been achieved by a minor amendment in the Schedule instead of omitting it. The omission of Eighth Schedule in its entirety is highly disappointing for all professionals and experts who were fit to be appointed as an arbitrator as per the parameters set therein.

Undoubtedly, the move to make the arbitration friendly atmosphere amongst the litigants and the professionals has got a set back by omission of the Eighth Schedule.

I know that you might have got some compulsions to promulgate this Ordinance. But I am insisting and imploring that you should re-consider this matter afresh so that the loopholes, if any, could be plugged.

There are a number of issues to which I need to draw your attention to. One such issue is arbitrability of cases of oppression and mismanagement. The Bill lacks provision to address the cases of oppression and mismanagement, especially the cases of mismanagement, which cannot be left to the arbitral awards. Instead, the judiciary must handle it.

Our country has witnessed a lot of wilful default of the highest order. These can be manipulated as the cases of mere mismanagement which could be brought under the purview of the arbitrator so as to evade the court. This is the apprehension expressed by me.

If there is a shortage of time, during my right to reply I will come up with the rest of the issues.

Ravi Shankar ji, you are well aware in our country there is an existence of Competition Commission. I would like to know whether the objective intended by this legislation could not be served by our Competition Commission. If not, why? I would like to know whether we are not able to equip our Competition Commission, which has already earned the credibility and credentials in dealing with the cases that could not be further consolidated and buttressed so as to make them more friendly to the investors, more friendly to the arbitration and conciliation. These are to be responded by you. During my right to reply, I will again try to draw your attention further.

श्री सुभाष चन्द्र बहेड़िया (भीलवाड़ा) : सभापति महोदया, आपने मुझे माध्यस्थम् और सुलह (संशोधन) विधेयक, 2021 पर बोलने का मौका दिया है, उसके लिए मैं आपको धन्यवाद देता हूं। महोदया, आर्बिट्रेशन अपने देश में पुरानी मान्यता के हिसाब से ही था। पहले गांवों मे कोई दिक्कत होती थी, कोई डिस्प्यूट होता था या कोई सिविल डिस्प्यूट होता था, तो अदालतें नहीं थीं, गांवों के पंच बैठते थें, दोनों पक्षों की बात सुनते थे और वे जो भी निर्णय करते थे, वह मान्य होता था। लेकिन

जैसे-जैसे ग्लोबलाइज़ेशन बढ़ा, क्षेत्र बढ़ा और आर्बिट्रेशन को कानूनी जामा पहनाने का काम शुरू हुआ। सबसे पहले आर्बिट्रेशन की जरूरत क्यों पड़ी? क्योंकि जो अदालतों की स्थिति है, अदालतों में जो पेंडिंग केसेज़ हैं, सुप्रीम कोर्ट में 66,000 से ज्यादा केसेज़ पेंडिंग हैं, हाई कोर्ट में 56 लाख से ज्यादा केसेज़, डिस्ट्रिक्ट्स और उसके नीचे के कोर्ट्स में 3 करोड़ 73 लाख केसेज़ पेंडिंग चल रहे हैं। ऐसे काफी केसेज़ हैं, जो आर्बिट्रेशन में जा सकते हैं। इसीलिए आर्बिट्रेशन की शुरुआत हुई थी। वर्ष 1937, 1938, 1940 और उन अधिनियमों के तहत जो आर्बिट्रेशन में अवार्ड होते थे, कैसे उनको लागू किया जाए, इसके लिए उनके प्रावधान थे, क्योंकि कोर्ट्स की जो स्थिति है, वर्ल्ड बैंक की Doing Business for parameter of Enforcing Contracts रिपोर्ट 2020 में जो आई थी, उसमें इंडिया का रैंक 163वें नंबर पर था। यानी कोई एग्रीमेंट हुआ और वह लागू नहीं हुआ, तो उसको लागू करने के लिए जो इंडिया का स्टेटस है, वह 163वां है। उसके साथ कोई भी एग्रीमेंट लागू करने के लिए, किसी ने कॉन्ट्रैक्ट किया और उसने लागू नहीं किया, तो उसका डिसिज़न होने में लगभग चार साल लग जाते हैं। उसका जितना क्लेम बनता है या टोटल अमाउंट होता है, उसकी कॉस्ट करीबन 30 से 35 प्रतिशत आ जाती है। इसलिए अदालतों पर इतने ज्यादा लोड को देखते हुए आर्बिट्रेशन शुरू हुआ है। वर्ष 1996 में पुराने तीनों एक्टों को शामिल करते हुए एक नया एक्ट बनाया गया था। उसमें जो प्रावधान किए गए थे, उसी हिसाब से काम चल रहा था। इसमें एक प्रावधान था कि किसी को आर्बिट्रेशन का अवार्ड हो गया, लेकिन उसमें स्टे नहीं मिलता था, तो वर्ष 2015 में एक प्रावधान किया गया था। मान लीजिए कि जो भी आर्बिट्रेशन की पार्टियां हैं, उनमें किसी को दिक्कत है कि गलत अवार्ड हुआ है या कुछ और हुआ है, तो उसके लिए स्टे की एप्लीकेशन लगाने का प्रावधान वर्ष 2015 में किया गया था। लेकिन उसमें अनकंडीनशल स्टे नहीं था, भले ही वह बेईमानी से बनाया गया हो, भ्रष्टाचार से बनाया गया हो या अन्य दूसरे कारणों से बनाया गया हो, लेकिन वर्ष 2015 के प्रावधान में अनकंडीशनल स्टे नहीं होता था। उसमें कोर्ट को यह देना पड़ता था कि इस कारण से स्टे की यह कंडीशन रहेगी और यह कंडीशन उस हिसाब से रहेगी, तो यह दिक्कत थी।

जैसा अभी कांग्रेस पार्टी के माननीय नेता बता रहे थे कि अनकंडीशनल स्टे वर्ष 2015 में नहीं था। यह अनकंडीशनल स्टे का प्रावधान अभी वाले अमेंडमेंड की वजह से आया है और यह जरूरी था। अगर किसी फ्रॉड या करप्शन के कारण कोई भी निर्णय प्रभावित हुआ है, तो उसके कारण जो एग्रीव्ड पार्टी है, उस अवार्ड को लागू करने के लिए जो पार्टी जीती है, वह चाहेगी की जल्दी से जल्दी से करे। लेकिन जो एग्रीव्ड पार्टी है, वह कहेगी की नहीं, यह फ्रॉड करके बनाया है, भ्रष्टाचार से अवार्ड हुआ है, तो अभी इसको लागू न किया जाए। जैसा अभी माननीय मंत्री जी ने कहा है कि वह तो स्टे है। जैसे ही अंत में उसका डिसिज़न हो जाएगा, तो उस डिसिज़न के हिसाब से अगर वह अवार्ड स्टैंड रहता है, तो स्टे अपने आप खारिज हो जाएगा और अवार्ड नहीं होता है, तो किसी को कुछ दिक्कत नहीं आएगी।

आज हो यह रहा है कि अगर किसी ने आर्बिट्रेशन का अवार्ड दे दिया, उस अवार्ड को लागू करने के लिए दूसरा चला गया, भले ही वह गलत हो। चूँकि उसके पास कोई स्टेक नहीं है, इसलिए वह उसे लागू करवाने के लिए जो भी कानूनी प्रावधान हैं, उसे लागू करता रहेगा। कोर्ट की स्थिति के बारे में जैसा बताया गया है कि चार-चार साल लग रहे हैं। उस हिसाब से जो अमेंडमेंट लाया गया है, वह बहुत जरूरी था।

दूसरा, माननीय सभापति महोदया, आर्बिट्रेशन एण्ड कॉन्सिलिएशन अमेंडमेंट एक्ट वर्ष 2019 में लाया गया था। चूँकि अभी भारत में इंस्टीट्यूशनल आर्बिट्रेशन की कमी है। अभी भारत में एडहॉक है। दोनों पार्टियां कहती हैं कि ठीक है, एक क्वॉलीफाइड आदमी को बैठा दिया और उसने दोनों की सुनी। उस हिसाब से कोई कॉन्स्टीट्यूशनल नहीं है। उनका तो एडहॉक की तरह हो गया, लेकिन इसको रेगुलेराइज़ करने के लिए आर्बिट्रेशन काउंसिल ऑफ इंडिया का निर्माण किया गया। इसके साथ ही वर्ष 2019 में शेड्यूल बना कि इसमें ये-ये हो सकते हैं। इसमें आर्बिट्रेटर हैं, इंस्टीट्यूशनल हैं, चार्टेड अकाउंटेंट हैं, एडवोकेट हैं, कोस्ट अकाउंटेंट हैं, कम्पनी सेक्रेट्रीज़ हैं। आर्बिट्रेशन काउंसिल के जो मैम्बर्स हैं, वे सब अनुभवी हैं। भले ही वे व्यवसाय में हों, शिक्षाविद् हों, इसके अध्यक्ष हाईकोर्ट

जज के रैंक के बराबर के व्यक्ति हैं। इस कारण से आर्बिट्रेशन के रूल्स एण्ड रेगुलेशन्स बनाने के लिए आर्बिट्रेशन काउंसिल ऑफ इंडिया का निर्माण वर्ष 2019 में किया गया। इसके साथ-साथ अभी जो अमेंडमेंट आया है, यह ज्यादा बड़ा नहीं है। इसमें केवल पाँच क्लॉज हैं और मेन दो ही पॉइंट्स हैं। एक तो यह है कि अगर आर्बिट्रेशन का अवार्ड किसी फ्रॉड की वजह से, किसी करप्शन की वजह से या लेनदेन की वजह से प्रभावित हुआ हो और उस वजह से वह अवार्ड आया हो तो कोर्ट उसमें इमिडियेट स्टे दे दे। यह अमेंडमेंट अभी माननीय मंत्री जी ने प्रस्तुत किया। यह आज की आवश्यकता है। वे बैक डेट, बैक डेट बोल रहे थे। ऐसा कुछ नहीं है। अब कोर्ट में जितने भी केसेज चल रहे हैं, यह सभी पर लागू होगा। वर्ष 2015 के बाद जो भी केस लगा है, उस पर यह लागू हो सकता है।

दूसरा, जो आठवीं अनुसूची है, उसकी जगह आर्बिट्रेटर नियुक्त करने का जो नया प्रावधान आया है, वह यह है कि आर्बिट्रेशन काउंसिल ऑफ इंडिया यह तय करेगी कि आर्बिट्रेटर की क्या क्वॉलिफिकेशन होनी चाहिए। उसके रूल्स रेगुलेशन्स क्या होंगे, क्योंकि जैसे चार्टेड अकाउंटेंट के लिए स्टेट ऑफ चार्टेड अकाउंटेंट तय करता है कि उसके क्या रूल्स और नॉर्म्स होने चाहिए, मैम्बर्स के क्या होने चाहिए, उसी हिसाब से आर्बिट्रेशन काउंसिल ऑफ इंडिया, गवर्नमेंट को यह सलाह देगी कि ये आर्बिट्रेटर हो सकते हैं। इसका सबसे बड़ा कारण यह है कि भारत में एक सबसे बड़ा आर्बिट्रेशन का हब बन जाएगा। यहाँ पर आर्बिट्रेशन के लिए काफी बड़े-बड़े नाम हैं। एक्स सुप्रीम कोर्ट जज, हाई कोर्ट जज आर्बिट्रेटर बनकर बड़े-बड़े केसेज़ को डील कर रहे हैं। अभी तक इंस्टीट्यूशनल न होने की वजह से, अपना कोई रूल्स-रेगुलेशन्स का फ्रेमवर्क न होने की वजह से यह नहीं चल रहा था। इसलिए यह एक आगे का कदम है ताकि भारत में एडहॉक जो ज्यादा चल रहा है, उसकी जगह अगर यह इंस्टीट्यूशनल होगा तो उससे उसमें विश्वास बढ़ेगा। सभी को यह लगेगा कि ये सही करने वाले हैं, क्योंकि काउंसिल के मैम्बर्स काफी अनुभवी हैं। उस हिसाब से यह जो लिस्ट है, उसमें चार्टेड अकाउंटेंट, कोस्ट अकाउंटेंट लिख दिया, लेकिन उसकी एबिलिटी आर्बिट्रेशन काउंसिल ऑफ इंडिया तय करेगी कि इस हिसाब से आर्बिट्रेटर की

क्वालिफिकेशन होनी चाहिए, यह अनुभव होना चाहिए। इस तरह से यह एक अच्छा कदम है। मैं इस बिल का समर्थन करता हूँ। आपने बोलने के लिए मौका दिया, उसके लिए बहुत-बहुत धन्यवाद।

SHRI DHANUSH M. KUMAR (TENKASI): Madam, thank you for allowing me to speak on the Arbitration and Conciliation (Amendment) Bill, 2021. It seeks to amend the Arbitration and Conciliation Act, 1996. The Act contains provisions to deal with domestic and international arbitration, and defines the law for conducting conciliation proceedings. The Bill replaces an Ordinance with the same provisions promulgated on November 4, 2020.

The 1996 Act allowed a party to file an application to set aside an arbitral award. Courts had interpreted this provision to mean that an automatic stay on an arbitral award would be granted the moment an application for setting aside an arbitral award was made before a court. In 2015, the Act was amended to state that an arbitral award would not be automatically stayed merely because an application is made to a court to set aside the arbitral award.

The Act specified certain qualifications, experience, and accreditation norms for arbitrators in a separate schedule. The requirements under the schedule include that the arbitrator must be: (i) an advocate under the Advocates Act, 1961 with 10 years of experience, or (ii) an officer of the Indian Legal Service, among others. Further, the general norms applicable to arbitrators include that they must be conversant with the

Constitution of India. The process aids in speedy, quick and efficient resolution of disputes or conflicts.

Parties have freedom to choose an arbitrator with expert and specific knowledge on the subject matter of the dispute. Parties are also free to choose the number of arbitrators who will be on the panel. Parties can choose their preferred date of hearing as well as trial and this furthers the speedy resolution of cases.

The arbitrators must pronounce an award within 12 months of constitution of the tribunal ensures that the process is quick. At the same time, the main disadvantages are – even though interference by the court has been considerably reduced by the 2019 amendment with the establishment of the Arbitration Council of India - there are still situations when judicial intervention is permitted, and this can cause a delay in proceedings because of judicial burden and backlog of cases. Lack of proper transcription facilities in India is resulting in hearings taking significantly longer than they should. This significantly increases the cost and time efficiencies of arbitration.

Hon. Madam Chairperson, the Union Government is showing so much concern and interest in bringing such legislative amendments for smooth and swift resolution of problems being faced by big institutions and industrialists. On behalf of my DMK party, I request you that similar concern and interest should also be shown for providing solutions to the problems being faced by farmers through suitable amendments. Thank you.

PROF. SOUGATA RAY (DUM DUM): Madam, I wish to speak on the Arbitration and Conciliation (Amendment) Bill, 2021. Shri Adhir Ranjan Chowdhury has spoken at length on the need of not having brought the Ordinance. There is absolutely no reason, when you look at the small amendment that has been brought. What was the tearing hurry of the Ministry in bringing the Ordinance is not at all clear to us? The Ordinance was promulgated by the President on 4th November 2020. This is only four months since then. What have you gained in these four months? You have destroyed, harmed a legislative procedure and taken recourse to Article 123(2) of the Constitution.

So, to start with, I oppose the bringing of this Ordinance on this very trivial Bill. Now, what does this Bill do? The Bill says that it inserts a new clause that where an arbitration agreement or making of the award is induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge, and the other one is 'qualification, experience and norms for accreditation of arbitrators shall be as may be specified by regulations'. Instead of including the qualification as was in the Eighth Schedule, it will be through regulations now.

Madam, I am speaking with trepidation in front of you, a legal luminary in the Chair, another legal luminary, Shri Ravi Shankar Prasad is also in front of me and there is one more legal luminary, Shri Pinaki Misra behind me. So, I am surrounded by luminaries. It is a 'Bermuda Triangle'. So, you would pardon if my presentation lacks the legality that you might normally give to all arguments.

What is this Amendment all about? If I read the history, in 1996, the Arbitration and Conciliation Act consolidating the law and domestic arbitration, international commercial arbitration, enforcement of foreign

arbitral award and the law relating to conciliation, this Act was based when the model law was adopted by the United Nations Commission on International Trade Law in 1985. After eleven years, we made the law. In its effort to make India a hub of international commercial arbitration and making arbitration process user friendly, cost effective and expeditious inter-alia taking into account the recommendations submitted by the Law Commission in its 246th Report, supplementary reports and suggestions, the Amendment Act was brought in 2015 during Ravi Shankar ji's tenure. Subsequently, some practical difficulties in the Amendment Act were pointed out. Then again, the Act was amended in 2019 which was enforced with effect from 30th August, 2019. So, after you brought the Act, there was one Amendment in 2015 and one more Amendment in 2019.

Now, there were some court rulings in order to address the issue of corrupt practices in securing contracts or arbitral awards. The Bill has given the power to grant unconditional stay on enforcement of arbitral awards where the underlying arbitration agreement, contract or arbitral award is induced by fraud or corruption. That is fine to omit the Eighth Schedule which had the qualifications of the people concerned. Now, Lenin said, "one step forward, two steps backward". This is 'one step forward, several steps backward. Why do I say this? As somebody had commented, the Ordinance has reversed the effect of 2015 Amendments to the Act which had done away with the automatic stay on enforcement of arbitral awards upon a challenge being made under Section 34 of the Act – most certainly, a regressive step. The Ordinance has inserted a further proviso to Section 36(3) of the Act by which an award shall be unconditionally stayed pending disposal of the challenge under Section 34.

This is a regressive step, if I may say so. The Ordinance reverses the effect of 2015 which did away with the automatic stake. When you say that something is influenced by fraud or corrupt practice, it is very easy to allege the same. Then what happens? The arbitration has to wait till the court disposes of the application under Section 34. All court cases will arise and this will set back the process.

Madam, arbitration basically, you know better than me, is for two parties in a contract agreeing to arbitration in case there is a dispute. Or the court may order an arbitration if they feel that the litigation is too long. Arbitration is to cut short the legal process. This amendment will lengthen the legal process. So, while omitting the Schedule is a progressive step, putting in this amendment is a regressive step.

It has been said that we are trying to make India a hub of international arbitration. It is the fond hope of our Law Minister and rightly so. He wants to make India a hub of international arbitration which is why he has removed all qualifications so that even the former Lord Chancellor can come and arbitrate. His fee is very high. I remember, when Siddhartha Shankar Ray was alive, he did an arbitration for McDermott and Company, an American oil company. That arbitration went on for days together and it took place in a five-star hotel, all costs paid. So, arbitration can be a very costly process.

Arbitration is mainly resorted to in engineering contracts. You see this Chamoli accident. Here, there will be arbitration going on for years because NTPC will not want to pay the contractor and the contractor will go in for arbitration, and that clause will be there in the contract.

Madam, the Minister brought the Ordinance and introduced this Bill when the Lok Sabha was in a din. People would think that this is very

vital. But I can say that instead of this amendment making India a hub, it will mar India's name. No international body will want to come to India. The first amendment will shoot us in the foot. This is a phrase I borrow from my friend Pinaki Misra. What is the definition of fraud? Anybody can claim that there is a fraud, there is a corrupt practice, and you prolong the process of arbitration.

Madam, this will not ease the arbitration process nor shorten the quickness of settlement for all non-enforcement of contracts. I will still request Mr. Ravi Shankar Prasad, the eminent lawyer that he is, to do away with Clause 36(3). Let him keep the other part and do away with this. Let us hold India's image high. We have got top-notch lawyers. Harish Salve is practising in London only. Our lawyers are receiving recognition internationally. Why should we do something that will shoot us in the foot, as my friend Pinaki Misra quoted?

With these words, I conclude.

संसदीय कार्य मंत्रालय में राज्य मंत्री तथा भारी उद्योग और लोक उद्यम मंत्रालय में राज्य मंत्री (श्री अर्जुन राम मेघवाल): माननीय सभापति जी, मैं आपसे अनुरोध करना चाहता हूँ कि शाम के 6:30 बजे से प्राइवेट मेम्बर्स रिजोल्यूशन लगा हुआ है, इसलिए मैं आपसे अनुरोध करता हूँ कि अगर सभा सहमत हो, तो इस बिल के पास होने तक प्राइवेट मेम्बर्स बिल का समय आगे बढ़ा दिया जाए। इसके बाद प्राइवेट मेम्बर्स बिल ले लिया जाए।

HON. CHAIRPERSON: Does the House agree with it?

SEVERAL MEMBERS: We agree, Madam.

HON. CHAIRPERSON: We are extending the time for Private Members' Bills till we finish with this Bill.

Shri Pinaki Misra.

SHRI PINAKI MISRA (PURI): Hon. Chairperson, it is in the fitness of things that a legal luminary like you is in the Chair while another illustrious legal luminary has brought this Bill to this House. Madam, my predecessor speaker Prof. Sougata Ray has described it as a mixed bag. It truly is a mixed bag. The World Bank has ranked India rather lowly 163 out of 190 countries when it comes to enforcement of contracts. It is a very low position in the world today for enforcement of contracts. It shows the kind of confidence people have in the Indian legal system for enforcement of contracts. I know this Government sometimes boldly says that we are not bothered by what rating agencies say about us in the world fora. But, by us saying we are not bothered, it does not change the factual metrics.

Doing away with the Eighth Schedule is a promising step towards enhancing the party autonomy which is central to arbitration. I remember speaking on this very subject in this House and the same hon. Law Minister was here. He nodded in appreciation then, he nods in appreciation today because this was actually a regressive step. We have now come in line with the world position which is that it cannot be totally India-centric that unless your qualifications are India-centric, you will not be qualified as an arbitrator. It is a good step and I commend that the Law Minister has done away with this and made this much more flexible and international arbitration-friendly. But in the same breath, the hon. Law Minister in his opening preface mentioned awards being passed in US, awards being passed in London, and awards being tainted by fraudulent contracts. I do not know what my learned friend meant. He did not amplify on it. I want to make it clear that I do not hold a brief for any client in this House. I only hold a brief for the image of the Government

of India, the image of the Union of India as a litigant and as a contracting partner. If my learned friend Shri Ravi Shankar Prasad's allusion is to very celebrated arbitration award which has gone against this country and which we seem to be determined to fight to bitter end and which has caused some consternation in international circles, then he is actually against his party's own lines. I remember late Shri Arun Jaitley in this very House saying that the retrospective taxation was one of the most regressive pieces of legislation that India had ever seen and that this party and this Government would never ever would resort to it again. So, one of the arbitration awards is a direct consequence of that piece of legislation. So, I do not understand why the Government of India is hell-bent on fighting this to the bitter end. That is what my learned friend was alluding to. I leave it to his wisdom how far that was warranted.

What I find myself unable to be persuaded to agree with is the amendment to section 36(3). Section 34, as certain other hon. Members have mentioned, has already covered arbitration awards which are induced by fraud or corruption, that is, section 34(2)(b) Explanation 1(i). It is only our Parliament's drafting which can give this kind of convoluted drafting. Where else in the world will you have section 34(2)(b) Explanation 1(i)? I do not believe this kind of drafting does anybody any credit but this Parliament has passed it. But the fact of the matter is that the arbitral awards induced by fraud or corruption are already covered.

Therefore, the circumstances under which this Bill, namely the arbitration agreement or award being induced by a fraud or corruption, having been squarely covered by the earlier existing law, I do not know why you need a second tier at the stage of Section 36 again since Section 34 already covers this.

The 2015 law, as Sougata *da* rightly says, was the salutary, the good law because it said that CPC order 41, Rule 5 (1) where mere filing of an appeal does not give you automatic stay. But the court has that sufficient leeway to ensure that there should be some kind of security in a money decree that must be furnished before a stay is granted. We are aware that it is not just a Section 34 proceeding. That will again go into an appeal. That will then go to the hon. Supreme Court by way of Article 136. So, you are looking at, at least, after the award, three more steps of appeals which can take years. Therefore, if a decree holder under an award is going to be sitting outside knocking on Indian doors, you know, for enforcement of his award, I can only understand just what trepidation international contracting parties will have with regard to Indian arbitration law and to enter into a contract where India becomes the seat of arbitration.

Why do they like London to be the seat of arbitration? Why do they like Singapore to be the seat of arbitration? It is because there the English courts have the inherent power of the courts. We understand that the English courts can be trusted with that power. Why cannot our courts be trusted with that power? Why do we want to give this law? It should be enshrined in law that a court would be *prima facie* satisfied. That is an inherent power of the court to be *prima facie* satisfied before it grants a stay. Therefore, I believe that this is a regressive law. I believe that fraud and corruption are but only two of the several grounds on which an arbitral award can be set aside under Section 34. Why have you, therefore, created this extra, illogical hierarchy now by which you have allowed the award debtors to seek an unconditional stay of enforcement by alleging fraud and corruption to the exclusion of other Section 34 grounds? So, you have suddenly raised this to a different level. Is this being done because certain awards have come to light? I do not know.

The hon. Law Minister can take this House into confidence and tell us if that is so. But I would be vastly surprised if that is the case. In any case, if one or two cases are going to immediately have the Government bring a major amendment to this House, then that in any case is not a good practice, I believe. Therefore, I would urge the hon. Law Minister that he must take a very close look at this. If you ask the experts anywhere, they are going to frown upon this kind of a stay being granted. It is because fraud is alleged in almost every case. The arbitration agreement tainted by a fraud in any case will be a part of the remit of the arbitrators. So, they would have already looked at it. There is no way that at an appeal stage, at a stay stage that a second relook of that should again be undertaken and that too sanctioned by a law. It is because the moment this Parliament passes this law, then it becomes enshrined in law. Then, it is like an overhanging cloud over the courts that oh, 'Parliament has passed this, so I must be extra-careful in looking at this *prima facie* aspect'. Therefore, the courts are bound to lean in favour of a prima facie aspect and look at this. Therefore, I have no doubt that more and more arbitral awards are going to be stayed on these grounds. It is because every court will say that it feels *prima facie* that this can be done and it will take a look at it at the merit stage. So, I would seriously urge the hon. Law Minister to take a revisit and a relook at this. It, I believe, goes against the UNCITRAL Model Law, provision of Section 36(2) as well. It is because there is no provision there as well for courts to grant unconditional stay.

With these words, Madam Chairperson, while I commend the omission of the Eighth Schedule, that is a salutary provision, I believe the amendment to Section 36(3) is something that the hon. Law Minister needs to take this House into much greater confidence for us to have confidence that this amendment warrants the affirmation by this House.

I am very grateful to the hon. Chairperson for giving me an opportunity this time. Thank you very much.

डॉ. आलोक कुमार सुमन (गोपालगंज): सभापति महोदया, आपने मुझे आर्बिट्रेशन एंड कॉंसिलिएशन अमेंडमेंट बिल-2021 पर अपनी बात रखने का मौका दिया, इसके लिए मैं आपका धन्यवाद करता हूं। जैसा कि हम सब जानते हैं कि आर्बिट्रेशन एंड कॉंसिलिएशन एक्ट 1996 जो कि प्रिंसिपल एक्ट है और यह मॉडल लॉ अडॉप्टेड बाय द यूनाइटेड नेशन्स, कमीशन ऑन इंटरनेशनल ट्रेड लॉ पर बेस्ड है। यूनाइटेड नेशन्स ने अपने मॉडल लॉ को वर्ष 1985 में अडॉप्ट किया था। समय के साथ बदलती हुए परिस्थितियों को ध्यान में रखते हुए आर्बिट्रेशन एंड कॉंसिलिएशन एक्ट 1996 में अमेंडमेंट जरूरी था, जिसके लिए हमारी सरकार ने आर्बिट्रेशन एंड कॉंसिलिएशन अमेंडमेंट ऑर्डिनेंस 2020 को लाया। This Ordinance has omitted the Eighth Schedule of the Arbitration and Conciliation Act, 1996, जो कि क्वॉलिफिकेशन, एक्सपीरिएंस और एक्रेडिटेशन के नॉर्म्स से संबंधित है कि किस तरह से आर्बिट्रेटर्स एक्रेडिटेड होंगे। इस विधेयक के अमेंडमेंट से एमिनेंट आर्बिट्रेटर्स को पूरे भारतवर्ष में आर्बिट्रेशन करने में सुविधा होगी, जो कि आर्बिट्रेशन काउंसिल ऑफ इंडिया की देखरेख में होगा।

महोदया, हमारी ज्यूडीशियरी ने लॉक डाउन शुरू होने के बाद डिस्ट्रिक्ट लेवेल पर 45 लाख 73 हजार 159 केसेज को सुना। हाई कोर्ट ने 20 लाख 7 हजार 318 केसेज को सुना। वही माननीय उच्चतम न्यायालय ने 32 हजार केसेज को सुना। हमारे परम आदरणीय माननीय मुख्य मंत्री श्री नीतीश कुमार जी ने सब-ऑर्डिनेट ज्यूडीशियरी के सुधार हेतु अनेक कदम उठाए हैं और उन्होंने सब-ऑर्डिनेट ज्यूडीशियरी को कम्प्यूटराइजेशन में महत्वपूर्ण पहल की। कोर्ट्स में

अधिक से अधिक स्पेस और माननीय जजों के आवास व इन्फ्रास्ट्रक्चर्स के लिए कदम उठाए जा रहे हैं ताकि सबको न्याय मिल सके।

महोदया, इस बिल के आने से इन्फोर्समेंट ऑफ कॉंट्रैक्ट रिजीम मजबूत होगा और डोमेस्टिक व इन्टरनेशनल इन्वेस्टर्स अपने-अपने डिस्प्यूट्स को निस्तारित करने के लिए इंडिया को पसंद करेंगे। This Bill *inter alia* has amended Section 36 of the Act relating to enforcement of arbitral award. This provision comes into picture only after the arbitral proceedings are concluded and the award is rendered.

महोदया, इस तरह से हम कह सकते हैं कि सैक्शन 36 कहीं से भी ओवरलैप नहीं कर रहा है, जब तक कि आर्बिट्रल प्रोसीडिंग्स का कन्क्लूजन न हो। इस बिल के सैक्शन-36 में अमेंडमेंट इसलिए किए गए हैं कि यदि कोर्ट को प्राइमा-फेसी लगता है कि फ्रॉड हुआ है तो करप्ट प्रैक्टिसेज से कॉंट्रैक्ट या अवार्ड को अनकंडीशनल स्टे दिया जाए। आज देश में ई-लॉकडाउन और ऑल्टरनेटिव डिस्प्यूट रिजोल्यूशन्स बहुत ही फास्टर, ट्रांसपेरेंट और एक्सेसिबल ऑप्शन है। देश के करीब 23 राज्यों में 8 लाख केसेज को सुना गया, जिसमें से 4 लाख 7 हजार केसेज को डिस्पोज ऑफ किया गया।

महोदया, आर्बिट्रेशन एंड कॉंसिलिएशन एक्ट-1996 को पूर्व में वर्ष 2015 एवं 2019 में भी अमेंड किया गया, ताकि नियमों को सुगम बनाया जाए एवं इंटरनेशनल ट्रेंड्स को भी हम अपने देश में बरकरार रखें, जो कि यूजर फ्रेंडली और कॉस्ट अफेक्टिव हो। वर्ष 2017 में सरकार ने institutionalisation of arbitration mechanism के लिए एक हाई लेवेल कमेटी ऑनरेबल जस्टिस श्री बीएन श्रीकृष्ण जी की अध्यक्षता में बनाई थी, जिसने काफी महत्वपूर्ण सुझाव दिए थे। आज सुधार का ही परिणाम है कि देश में 15 हजार 818 कोर्ट हाउस थे, जो जनवरी, 2020 में बढ़कर 19 हजार 632 हो गए। वर्ष 2014 में रेजीडेंशियल यूनिट्स 10,211 थीं, जो जनवरी, 2020 में बढ़कर 17 हजार 412 हो गईं। यह सब हमारे माननीय प्रधान मंत्री श्री नरेंद्र मोदी जी द्वारा किए गए सुधार का ही परिणाम

है। वर्तमान में 2,713 कोर्ट हॉल्स और 1,893 रेजीडेंशियल यूनिट्स का निर्माण अंतिम चरण में है, जो कि एडीशनल कॉंस्ट्रक्शन में आता है।

महोदया, आज हमारा देश माननीय प्रधान मंत्री जी एवं बिहार के मुख्य मंत्री श्री नीतीश कुमार जी के नेतृत्व में विकास के पथ पर आगे बढ़ रहा है। इसी क्रम में यह बिल इस देश के लिए बहुत आवश्यक है, जिसका मैं समर्थन करते हुए अपनी बात को समाप्त करता हूं। धन्यवाद।

श्री रितेश पाण्डेय (अम्बेडकर नगर): सभापति महोदया, आपने बहुजन समाज पार्टी व बहन कुमारी मायावती जी का पक्ष रखने के लिए मुझे समय दिया, इसके लिए मैं आपका आभारी हूं। अभी मुझे एक जानकारी आदरणीय मिश्रा जी के वक्तव्य से मिली कि वर्ल्ड बैंक की रैंकिंग के अनुसार दुनिया की आर्बिट्रेशन रैंकिंग में 190 देशों में से भारत 163वें स्थान पर है। यह अत्यन्त चिंता का विषय है। सरकार का यह व्यू है कि देश में आर्बिट्रेशन प्रमुखता से एक स्थान के रूप में उभरकर आए, जहां आर्बिट्रेशन का काम मजबूती से हो। इस तरह की रैंकिंग से कहीं न कहीं हम सभी के मन में एक अविश्वास की स्थिति पैदा होती है कि ऐसी रैंकिंग होने पर हमारा देश आगे कैसे बढ़ सकता है। हालांकि इस बिल में कुछ ऐसे मुद्दे हैं, जिन पर सहमति जताई जा सकती है। खासतौर पर जो क्वॉलिफिकेशन के मापदंड हैं, उनको ओपन किया जाए, ताकि बाहरी लोग भी इसमें आकर अपने पक्ष को रख सकें और उनके लिए भी इसको खोलने का काम किया गया है। यह एक सराहनीय काम है। उसी के साथ-साथ इस एक्ट में सैक्शन-36(3) ऑफ द आर्बिट्रेशन ऐक्ट, जिसमें ये अमेंडमेंट्स किए गए हैं और बताया गया है कि-

> "The court shall grant an unconditional stay of an award if it is prima facie satisfied that: (i) the arbitration agreement, (ii) the contract which is the basis of award, or (iii) the making of the award was induced or effected by fraud or corruption."

यह कहीं न कहीं इस चीज को दर्शाता है कि बहुत सारी चीजें कोर्ट के ऊपर ही छोड़ दी गई हैं और उनको इस पर कोई प्रीसिडेंट लेकर आना पड़ेगा। इसकी कोई डेफिनिशन यहां पर नहीं दी गई है। आगे चलकर भी यह देखना होगा कि किस तरह के इसमें केसेज आते हैं और क्या प्रीसिडेंट्स सेट होते हैं, जिस पर ऐक्शन लिया जा सके। इसी के साथ-साथ मेरा दूसरा अत्यंत महत्वपूर्ण इश्यू है, जिस पर मैं प्रकाश डालना चाहता हूं, which I feel that the Government has not dealt with properly is that whether an arbitration agreement or a contract is effected by fraud or corruption is a matter of fact and ought to have been debated by the parties during the arbitration proceedings. The tribunal's reasoning the evidence would be contrary to the Proviso to Section 34(2A) of the Act, which states that:

> "An award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence"

महोदया, कहीं न कहीं जो अमेंडमेंट्स आए हैं, वह पहले दिए गए अमेंडमेंट्स को चुनौती देने का काम करते हैं।

अंत में, मैं इस पर बहुत ज्यादा नहीं बोलूंगा, लेकिन वर्ष 2019 में जो अमेंडमेंट आया है, जो पहले फॉरेनर्स को डिस्क्वालिफाई करता था, उसको बदलकर अब फॉरेन रजिस्टर्ड लॉयर्स को लाने का काम भी इस बिल के माध्यम से किया जा रहा है, जो कि एक सराहनीय कदम है। हम लोग और बहुजन समाज पार्टी भी इन अमेंडमेंट्स का स्वागत करती है, लेकिन उसी के साथ-साथ मैं यह कहना चाहता हूं कि वह केवल आर्बिट्रेटर्स के लिए ही लाया गया है, and not as a lawyers. हम एक प्रकार से उसकी सराहना करते हैं और इसी के साथ-साथ सैक्शन-36 को लेकर जो एक-आध मुद्दे हैं, उन पर भी सरकार को पुनर्विचार करके तब्दीली करनी चाहिए। आपका बहुत-बहुत धन्यवाद।

SHRIMATI SUPRIYA SADANAND SULE (BARAMATI): Madam Chairperson, I must say that I stand here slightly confused. As Professor Ray has said that he is not a lawyer and we are surrounded by such able lawyers around us. I would just like to ask a couple of questions. Actually, Pinaki Misra Ji and Mahtab Ji have left very little for us to say.

I think that the most important point of concern that he has raised is: why 2015? When we are looking at it retrospectively, which even Pinaki Misra Ji has said, is there a reason? It is sort of sounding really strange. Is it made for a reason, and why is there a cut-off? In terms of cut-off, why not 13, 14, 16 or 17? Normally, this Government keeps talking about ease of doing business.

So, you have to make progressive legislations. This word 'retrospective' takes you back to the past. Why are we looking at that? What Pinaki Ji said is absolutely right. What we discussed is remembering late Arun Jaitlely Ji. He gave the economy and people of India such confidence during his tenure saying that they are really here to make a difference - whether things were right or wrong. I am not going to get into judging what happened in the past. Let us leave that. Let history judge that. But do we really need to do this? Unfortunately, what has happened? We have made a lot of changes. We have always supported this. If you are bringing in some good progressive legislation, whether you brought it or we brought it, it does not matter; then that is in the larger interests of the nation. So, why are you constantly bringing these changes? They are brought in an ad-hoc manner. I mean sometimes I really worry what really Parliament's role is. Retrospective is a big thing but what I really feel as a Member of Parliament, I would like to bring 2-3 things to your notice.

I do not want to get into Sections 34 and 36. I think all of you have mentioned it extensively. As a Member of Parliament, I would just like to bring one thing to everybody's notice and to this august House. I think we should all put our minds together and there are so many wise people here and a larger wisdom of this group are here. Article 121 of the Constitution, Article 122 of the Constitution and Article 368 of the Constitution are very important.

If you remember Madam, yesterday Shri Premchandran Ji also raised it that constantly, we unfortunately see a conflict between Parliament and the courts. I think the Parliament's entire role is about making good progressive legislation. We do not have to be at war with the Supreme Court. Sometime we do make changes. Then, it is struck down at the hon. Court's level. So, really, where does it leave our credibility? A lot of wisdom is there in this room. I really would like to ask the hon. Law Minister of India what his thinking is. It clearly says that courts have not to inquire into proceedings of Parliament and the validity of proceedings. You know all these laws. So, I really want to know why every time we are making some rules there are very small changes being made. Do we really need to bring Ordinances for such changes? Then, the court has a view on it. So, somebody like me who is really not an expert in law will be really at a loss. I would definitely like to quote the Government of Maharashtra's line. This happened in 2016. With the permission of the Chair, I would like to quote that the Government of Maharashtra has had a Maharashtra Arbitration Policy. All State Governments against which contract with the value of over rupees five crore shall contain an arbitration clause.

In simpler words, to explain it, for the Government agencies such as MHADA, MMRDA, which make large infrastructure contracts, it is going

to make much easier for both the sides to arbitrate. It says that earlier in the case of dispute, the Government agencies used to appoint its own officials to arbitrate, a practice that was criticised by both domestic and foreign investors. Such proceedings stretch for years and final awards were eventually challenged in court by the investors. So, we now have an independent international arbitrary institution and a Government that is willing to adhere to it. We are now on par with London and Singapore where we say that if a dispute will arise, the institution appoints a neutral arbitrator that will be fixed and there would be a fee schedule and a fixed timeline for the resolution. This is the Government of Maharashtra's line. This was done in 2016. We were not in power. So, this is something good done in the past. I think governance is about continuity. So, something that has happened, we must flag it. So, I really feel that this Government even in the Budget has talked about a lot of very good infrastructure projects which are going to come in. It is very important if we are going to make so much investments in our infrastructure projects. I would like to quote Shri Gadkari Ji also. He says a lot of good projects get held up because things are stuck in arbitration and then they go to court, they get a stay. It is like a rigmarole. You are chasing your own tail and nothing really comes out of it. It happens in national highways; and it happens in many infrastructure projects. If you are really committed to such large infrastructure projects, it is very important that we have a very good healthy arbitration system, not make those several changes, and give confidence. You keep claiming that in 'Ease of Doing Business', the Government has gone up in the ladder which is a very good thing if it is a factual situation. So, I humbly request the Government to please clarify to us about '2015'. It sounds a little bit strange and odd. I would not say the word 'fishy' because we are in Parliament. But I think we really need to

introspect for a good and a robust system where everybody's interests are protected in the larger interest of the nation. Thank you.

SHRI NAMA NAGESWARA RAO (KHAMMAM): Hon. Chairperson, Sir, thank you for giving me this opportunity to speak on this Arbitration and Conciliation (Amendment) Bill. There are two modes of arbitration. One, institutional arbitration where specified institutions take on the process of arbitration. Two, ad-*hoc* arbitration – arbitrators appointed by both the parties. Currently, in our country, arbitration is being conducted through the *ad-hoc* mode. If we compare ourselves with the top arbitration hubs in the world, like Singapore, Hong Kong, London, Paris, Geneva, we are lagging behind. Institutional arbitration in India has not taken off mainly because of the following factors, namely, lack of credible arbitration institutes; misconception about the relation of the institutional arbitrations; lack of governmental support for the institutional arbitration; lack of legislative support for institutional arbitration and lastly attitude of the Judiciary towards arbitration in general.

The main Arbitration Act of 1996 allowed a party to file an application to set aside the arbitrational award. The Judiciary had interpreted this provision to mean an automatic `stay' and an arbitration award was granted the moment the application for the `set aside' arbitration case was filed before the court. So, in 2015, the Act was amended to state that the arbitration award could not be automatically stayed. The present Bill seeks to amend Section 36 of the main Act by which the court can stay enforcement of the arbitration award

unconditionally till the application for the `set aside' of the arbitration award was filed under Section 34 of the Arbitration Act was pending and provided the applicant was able to show *prima facie* the arbitration agreement or the contract which is based on the award influenced by fraud or corruption. I would like to know from the hon. Minister, this is very important, how would the Government ensure that the `stay' provision made is not misused by the parties. There are chances of the `stay' being misused. I would like to get some clarification from the hon. Minister about some issues which may come up due to the enforcement of this proposed amendment. I would like to know from the Government whether allegation of fraud itself could be made a subject matter of arbitration. I would like to know whether there is any provision either in the main Act or in this Bill which will clarify this position.

The provisions of this Bill clearly do not specify whether the courts can take on record additional documents which are behind the generic record of the Arbitrational Tribunal to suspend the allegation of fraud or corruption. I would also like to know from the hon. Minister whether the courts can set aside the arbitrational award under Section 34 if it is not in line with the public policy of India, without going into the merits of the case, and if *prima facie* the arbitration agreement or award was affected by fraud or any kind of corruption. When there is a contract between two parties to mutually settle their disputes through arbitration, and when an award is given by the Tribunal for the same, I would like to know, whether the Government agencies can interfere with the operation of the award. It would be good if this point is clarified by the hon. Minister.

The hon. Minister has clarified in the opening remarks about the removal of Schedule VIII of the parent Act. This Schedule provided the criteria for appointment of arbitrators. But now it will be specified by the

regulations made by the Arbitration Council of India in consultation with the Central Government.

19.00 hrs

There is no clarity on what would come out in the regulations. Qualified professionals of our country like advocates, chartered accountants, company secretaries, cost accountants, engineers, etc. had a chance of becoming arbitrators due to the presence of Schedule 8.

On the one hand, this would have gainfully utilized a large number of skilled manpower available in the country and on the other hand, it would have brought a phenomenal change in the arbitration psyche.

I would request the Government to bring out the regulations at the earliest and in line with the spirit of the Eighth Schedule. The hon. Minister, in his opening remarks, while specifying about the need for bringing out these amendments, made a very clear remark about the practice of procurement of Arbitration Award by contracting parties. He pointed out that huge layers of corruption are involved in procuring favorable Arbitral Awards. This statement by the hon. Minister puts a huge question mark on the sanctity of the arbitration process in our country. Definitely, experts at the international level will think over this point.

Once again, I am asking the hon. Minister one question. Actually, are we having any evidence in this regard? If you are having such an evidence, why can you not come up with one or two examples?

With these suggestions and clarifications, I am supporting this Bill.

SHRI JAYADEV GALLA (GUNTUR): Madam, I thank you for giving me this opportunity to speak on this piece of legislation which proposes to specify conditions under which a court can stay an arbitral award. Inducement, corruption and fraud are some of the reasons given for this.

While this seems to be very reasonable and correct to narrow down the reasons on why somebody can appeal to a court, the comments given by
Shri Pinaki Misra also need to be taken into consideration and I would request the hon. Minister to please do so.

The second objective is relating to the removal of the 8th Schedule of the Act which deals with qualification for accreditation of arbitrators. This is, probably, because the Government does not want to come to Parliament merely to change qualification for arbitrators. This will also help the Government to invite foreign arbitrators to take part in arbitration proceedings in the country. I think, it seems to be reasonable. So, these are the two proposals brought before the House by the Government which I welcome.

Taking advantage of this opportunity, I wish to make a few quick points for the consideration of the hon. Minister.

Madam, I hope this Bill would facilitate and help this country to better our 63rd rank in Ease of Doing Business but the main problem or dispute between parties is when there is a problem in execution or enforcement of a contract. If you look at India's rank in enforcing contracts, as many Members have mentioned before me, which is one of the constituents of Ease of Doing Business, it is not so encouraging. We are lagging far behind at 163rd position out of 190 countries and time taken for resolving a dispute here is even 1500 days.

So, I suggest for the consideration of the hon. Minister to address issues related to this area. One such issue which needs to be addressed is the state of judiciary in enforcing contracts. I do not know to what extent this Bill will help in addressing that issue. There is no doubt that we are getting little success through Tribunals and alternative dispute resolution mechanism under the Arbitration Act but it is not sufficient because the problems seem to lie still with the judiciary. In other jurisdictions, there is maximum deference and minimum interference by the judiciary in the awards passed through arbitration.

So, I suggest for the consideration of the hon. Minister to create a mechanism and see that there is minimum judicial interference which will help us.

The second point is that there also seems to be a problem of incongruous and flawed interpretation of various laws by various courts.

There is no consistency. So, I suggest for the consideration of the hon. Minister to give Government's interpretation of what such provisions mean so that they cannot be interpreted otherwise. This, I think, will help courts and the arbitrators while interpreting the provisions.

Madam, I will give only one suggestion. My final point is: can we also think of mandating a clause in the agreement itself that parties should go to a specific institution that will conduct the arbitral proceedings if anything goes wrong? This will help to avoid showing partisanship or partiality towards arbiters appointed after the dispute arises.

One suggestion that I want to make and the Minister also, being the Minister of IT and Communications, I think, should seriously consider is that Artificial Intelligence is not being tested even in the judiciary. I am

aware of some courts where experiment is being done in the State of Wisconsin in USA where they are using AI to actually produce the sentencing after the judgement is made.

So, with India's IT progress, can we also start developing Artificial Intelligence in arbitration proceedings? I think the issue of inducement, corruption, fraud, and all these things that we are trying to address here, could easily be addressed. Except for some very complicated cases, many of the simpler cases should possibly be able to be done by Artificial Intelligence also. Thank You.

HON. CHAIRPERSON: I cannot speak from here. Otherwise, I would have intervened right now. Shri Lavu Sri Krishnaji.

SHRI LAVU SRIKRISHNA DEVARAYALU (NARASARAOPET): Thank you, Madam, for giving me the opportunity to speak on the Arbitration and Conciliation (Amendment) Bill, 2021.

There are a few suggestions to be made and a few clarifications are required from the hon. Minister. First, I will start with the clarifications. This is the second amendment being done to the Arbitration Act in two years. In 2019, the Act was amended to create the Arbitration Council of India. However, till today, this Council has not been created. So, I would like to know from the hon. Minister how serious we are.

Secondly, there is an ambiguity in the Amendment Bill. The Bill says under Section 36 that a court can stay an arbitration award if the contract or the arbitration award was influenced by fraud or corruption. However,

the Bill does not define fraud or corruption. There is a lot of ambiguity in this. So, I hope the hon. Minister should clear this ambiguity.

Thirdly, even after an arbitration award is given, the losing party goes to the court under Section 34 or 36 of Arbitration Act for setting aside or staying the award. This adds to the burden of the court and increases its time for dispute resolution. It defeats the logic of the arbitration process itself because you want to reduce the time to come to the conclusion. So, can we suggest that a time limit should be set on arbitration awards referred to the court? This is similar to the time limit of 12 months for arbitration award itself. Can we do that? Can we set some time limit for the court?

Coming to suggestions, because of Corona, our courts went virtual. In 2020, around 66 lakh cases were heard virtually by District, High and Supreme Courts. The Ministry has done it fantastically. I welcome the Ministry's effort to make 14,443 courts video conference enabled as well.

In this time, Online Dispute Resolution has also emerged as a growing sector. I request the Ministry to amend the Act which can enable Online Dispute Resolution to grow. There is a need to expand arbitrations horizontally as well as vertically across the country. This means more people should use arbitration for more types of cases. I am sure when the Act was brought in the Parliament, most of the Members must have spoken about this. But I want to convey the message again.

Regarding horizontal expansion, we need to make arbitration accessible by common man because currently it is being used largely by corporates for high value cases. Only 2.5 per cent of total cases disposed in 2020 were arbitrations and only 0.7 per cent of the pending cases are in arbitration. So, it is very low in percentage. To take arbitrations to every

citizen, we may think – that is a suggestion, Sir – of 337 Permanent Lok Adalats across the country. Can they be transformed into arbitration hubs?

Today, these Permanent Lok Adalats are being used as rubber stamps and deal with only cases of public utilities like power, water, railways, insurance and telecom.

We support the Government's intent of making India an International Arbitration Hub. But we have a long way to go, because a lot of these cases, as mentioned by Shri Pinaki Mishra and others, are going to international arbitration. Even big companies do not have confidence on India. The cases like Future Group *versus* Amazon and GMR *versus* Maldives Airport went to Singapore.

As regards vertical expansion, more kinds of cases need to be brought under arbitration. In Vidya Drolia *versus* Durga Trading Corporation case, the Supreme Court said that tenancy disputes also can be arbitrated. So, maybe we should think in that direction and we should bring consumer disputes, banking disputes, and land disputes under arbitration. Asking the citizens and companies to use arbitration is one thing. But the main litigator here is the Government. The push for arbitration must come from the Government because the Government is the biggest litigant. Arbitration clauses should be added to Government and PSU contracts. Shrimati Supriya Sule has just mentioned about it. She said that the Government of Maharashtra is trying to do it.

Arbitration should be used to ensure that payments to contractors and MSMEs do not get stuck in courts and tribunals. I would like to underline the importance of strengthening Alternative Dispute Resolution mechanisms, including arbitrations in our country. If all these things are to happen, the allocation for the Law Ministry has to be increased. The

budget allocation for the Law Ministry for the coming year is only Rs. 1,500 crore which is less than half of the actual expenditure in 2019-20. So, I believe the Government is not giving enough money to actually deliver justice to the people. I believe that only 0.08 per cent of the GDP is spent on this. We speak in Parliament that six per cent of GDP should be allocated for education. But nobody is asking for increased budget allocation for the Law Ministry. So, I am trying to ask for increased allocation on behalf of the Law Minister.

If we have to expand arbitration, then we need more fiscal resources for capacity building. I hope the Government will consider my suggestions, particularly for removing the ambiguity in Section 2 of the Bill and setting up Arbitration Council for implementation of Section 3 of the Bill.

With this hope, I would like to say that YSR Congress Party supports the Bill.

SHRI HASNAIN MASOODI (ANANTNAG): Madam Chairperson, I thank you for giving me this opportunity to speak on the Arbitration and Conciliation (Amendment) Bill, 2021.

Madam, alarming pendency of cases in courts, increasing litigation costs and long delays call for a swift ADR mechanism. Arbitration and Conciliation are important components of ADR mechanism and, therefore, every effort to hone up and strengthen the mechanism is a welcome step. I believe this is also a step towards strengthening the ADR system because arbitration is a very important component of the system.

Shri Pinaki Misra gave a dispassionate analysis of the amendment. After that, I do not think much is required to be said. But I have some apprehensions and I would request the hon. Minister to look into them. I would like to say that there can be no major disagreements with the intent and content of the Bill.

First of all, are courts not already well equipped with a mechanism to take cognisance of fraud and corruption wherever they come across at the initial stage when the agreement is sought to be implemented by appointment of an arbitrator or at the appellate stage? So, why should we go in for one more mechanism?

Secondly, what is good about arbitration, and for that matter, any other component of ADR system, is that it is efficient, more efficient than the run-of-the-mill court proceedings. So, we will be caught in procedural wrangles. Every time at the initial stage or later stage, when the question of fraud and corruption, which are now open-ended concepts, are being agitated, will we not be caught up in procedural wrangles and end up with more and more appeals? As has been rightly pointed about by Shri Pinaki Mishra, it will go all the way for many appeals like first appeal, second appeal, OWP, and other litigations. So, I would request the hon. Minister to come up with some suggestion so that we curtail this right, because otherwise this will go on and it will be self-defeating and it will defeat the very purpose of ADR system.

It is because, then it will become run-of-the-mill with procedural wrangles of a law case or lawsuit in a court of law.

Secondly, expedient and affordable justice, as I said earlier, is the end game of our arbitration. But this will not make it possible, or this may, at least, frustrate that objective.

Thirdly, why should it be done retrospectively? Then, that may face a legal challenge. It is true that for a procedural, law you can go in retrospective, but here some important rights could be taken away. That also is to be considered. But our Law Minister is a legal luminary; he knows it well. This may have some kind of a challenge because we know that this is not the end word. It will have a judicial scrutiny at the level of a constitutional court.

Fourthly, day in and day out, we say that we should make it a hub of investment. When they say that they would allow 75 per cent disinvestment in the insurance sector and other sectors, all those new players expect an efficient justice delivery system. That is one of the key factors that persuades them to come and invest. But if they find that the justice delivery system that is proposed to be given is such that even after they sign an arbitration agreement, it will land up in controversy, that may stop the investment or that may have negative impact or fallout on this investment area. So, all these areas need to be looked into.

There was a suggestion made: "Why not ask the parties to go to an institution?" That cannot be done because that will kill the very spirit of the arbitration. Arbitration means that you have a participatory role and you decide as to whom you ask for arbitration. If you say that there is already a fixed institution, that takes away the very spirit of the arbitration.

So, with these words, I expect the hon. Law Minister to just give some kind of an attention to these suggestions so that all the concerns are addressed.

Thank you.

SHRI N. K. PREMACHANDRAN (KOLLAM): I am thankful to you, Madam Chairperson, for giving me this opportunity to speak.

I rise to oppose this Bill as well as the Ordinance, as it is a clear case of abuse of the legislative process.

There have been continuous amendments to the Arbitration and Conciliation (Amendment) Act. The parent Act of 1996 was comprehensively amended. It was repealed. Then, a comprehensive law came into existence in the year 2015. After having long deliberations in this House, this legislation was passed in 2015. ‘

Subsequently, in the year 2019, it was again amended. Then, in the year 2020, again they came with a piecemeal legislation to have two amendments in the original Act of 2015.

Madam, my first submission is that this piecemeal legislation is not good for a healthy legislative process. That means, the Law Ministry or the concerned Department is not putting their wisdom as to the impact of a provision which is being incorporated in the Bill. This point has not been taken care of. So, it is an absolute failure or callous attitude of the Law Ministry in drafting this Bill without having known the impact of the Bill. Does the Government know as to what would be its consequences?

That is why, I am saying that bringing of the continuous and recurrent amendments to the Arbitration and Conciliation Act of 2015 is not a good signal for a healthy legislative process. That is my first point, which I would like to make.

SHRI PINAKI MISRA: Similarly, in the IBC and Companies Act, there have been recurrent amendments.

SHRI N. K. PREMACHANDRAN: Yes, similarly, in the Insolvency and Bankruptcy Code, there were continuous and recurrent amendments. It is giving a bad impression. People may think that it has been amended for a particular company or an individual.

Here, in this Bill also, such an apprehension is there. I am not going to mention anything about it. But because they are coming with two amendments, I would like to know the purpose of bringing them. For whom are they bringing it? They have to think about it.

This is the Parliament. It has the legislative wisdom. We are legislating a matter; we are amending this Bill. But for whom? To safeguard whose interests, is it being brought? I would come to it later on.

Madam, while coming to my second point, I would like to know the urgency in promulgation of the Ordinance. I have full regards for our hon. Law Minister.

Please explain that emergency. What is the urgency? What was the extraordinary situation prevailing in the country during the COVID-19 period so as to promulgate an Ordinance on 4th November 2020? I would like to know whether the provisions under Article 123 are being complied with in this case of Ordinance promulgation. What was the exigency? What is the main purpose to get an unconditional stay? What is the main purpose to reclassify or redetermine the norms of accreditation of arbitrators and to re-evaluate the qualifications and experience of the arbitrators? These are the two proposed amendments put forth through this Amendment Bill. There is no emergency or exigency. What persuaded the Government or what forced the Government to bring such an Ordinance during the lockdown period or during the COVID-19

pandemic? The executive legislation by His Excellency, the President, is also an abuse of the Article 123(1). By promulgating an Ordinance to help somebody, I do not know who he is, but, definitely, it is giving a clear message that this Ordinance promulgation is not in any public interest. No such emergency or exigency is there. That is the second point. That is why, I am saying that it is an abuse of legislative functions.

The third point, Madam, is about the intent of the Bill. What was the purpose of the consolidation of the Arbitration and Conciliation (Amendment) Bill 2015? Three purposes were mentioned – user friendly, cost effective, speedy disposal as well as neutrality of the arbitrator. These are the three principal aims by which a comprehensive legislation of 2015, the Amendment Act has come into existence. My simple question to the hon. Minister is whether these purposes are being served by these amendments. No, they will never be served because it is having a negative impact. I will come to that point later.

As far as speedy disposal of cases is concerned, I would like to know whether this is giving unconditional stay to the proceedings or to the awardees a speedy implementation of this. So, the intent of the Bill itself is in doubt.

Now, I am coming to the amendments. The first one is regarding the unconditional stay. My learned friend Pinaki Misra has well-clarified the point. So, I need not to repeat it. But, Section 36 is very clear about it. I would like to quote Section 36(3): "Upon filing of an application for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay…" Suppose, there is a fraud, if there is a coercion or there is an undue influence or if there is corruption, definitely, the Court is having the absolute authority to grant a stay of the operation of such awards for reasons to be recorded in writing. What else

is the Government required to have a stay? Where does it say 'unconditional stay'? To my limited knowledge of law, order of a stay itself is a discretion of the Court. How can you describe that unconditionally you have to provide a stay? If prima facie case of corruption and fraud is there, unconditional stay has to be granted. That is the provision by which you are going to amend Section 36 Clause 3. My point is that Section 36(3) is sufficient to grant a stay on the operation of an award. Why should you come with an unconditional stay? That is why, I am, again and again, raising the doubt or apprehension about the intent of the legislation. It is not for any public interest because the discretion of the Court is still there. Madam, you are well-eloquent and a legal luminary. You are also a practicing lawyer. What is the meaning of 'as the Court may deem fit'? Suppose, this amendment is carried out, let it comes to the Court, definitely, there also, whether it is a fraud, corruption, undue influence and coercion, the Court has to be satisfied that this case is deem fit for granting a stay. That is why, I am, again and again, asking what is the purpose of this amendment.

The second point, Madam, is regarding the retrospective effects. Mahtab ji is here. I could not oppose the introduction of the Bill because of the turbulence in the House.

He had made a very valid point that day. I have gone through the records in which he says that that was lacking logic and reasoning. These are the absolute words he said. The Bill lacks logic and reasoning. These two things are missing in the Bill. It provides it with retrospective effect from 2015 onwards. An explanation is given to Section 36 (3). It is very clear that the intent of the amendment and the Ordinance is just to meet some other purpose. How can you give it with retrospective effect? It means that all the cases, in which awards were already passed and appeal

is pending, are going to be affected because of this particular stipulation. You are always talking about the credibility of our arbitration proceedings. We have to be the hub of the international arbitration; we want to make India the hub of the arbitration. How will the businessmen and investors come? …(*Interruptions*) Madam, I am just concluding. I would just ask how this retrospective effect can be given to all these proceedings. That is why, I have also given a notice of amendment.

Madam, now, I come to the last amendment. The second amendment is regarding the omission of Eighth Schedule in which I differ with Shri Pinaki Misra. Kindly see the Eighth Schedule by virtue of Section 43 (j). The Eighth Schedule is very clear. What are the qualifications and experience of an arbitrator? It is well-established and general norms are applicable to the arbitrator. Now, what the Government wants is this. This is the usual and regular practice in Parliament nowadays that everything is being vested with the Executives, with the Government. It is as may be prescribed by the Government through the regulations. So, here the Parliament has the right to prescribe the qualifications of an arbitrator; the Parliament has the right to prescribe the norms by which accreditation can be done. This is being taken away. The Parliament is the right forum to describe what the qualification should be, what the experience should be, and what the norms for accreditation should be, as an arbitrator. But unfortunately, this right is being taken away from the Parliament, and it will be decided by the Executive through regulations. So, Madam, these unnecessary amendments are being brought into the House. The Ordinance promulgation as well as the Bill is lacking clarity, lacking logic, and lacking reasoning. Hence, I strongly oppose both the Ordinance as well as the Bill. With these words, I conclude. Thank you very much.

श्री गोपाल शेट्टी (मुम्बई उत्तर): माननीय सभापति जी, आपने मुझे माध्यस्थम और सुलह (संशोधन) विधेयक, 2021 पर बोलने का मौका दिया, इसके लिए मैं आपका आभारी हूं। मैं इस बिल का समर्थन करने के लिए खड़ा हुआ हूं।

मैं माननीय लॉ मिनिस्टर रवि शंकर प्रसाद जी का अभिनंदन करता हूं। सरकार की संवेदना किस प्रकार की है, यह इससे पता चलता है कि वर्ष 2015 में आर्बिट्रेशन बिल में संशोधन किया। इसके बाद वर्ष 2019 में संशोधन किया। नवंबर 2020 में ऑर्डिनेंस लाए और अब वर्ष 2021 में अमेंडमेंट बिल पर चर्चा कर रहे हैं।

आर्बिट्रेशन के जो मामले वर्ष 2000 से पहले हमारे देश में थे, पांच-सात साल का समय कम से कम एक आर्बिट्रेशन का निपटारा होने में लगता था। सरकार इसका संज्ञान लेते हुए और इसकी गंभीरता को देखते हुए इस प्रकार का अमेंडमेंट लाई कि एक साल में इसका निपटारा हो जाए। इसके बाद अगर फिर कोर्ट को कुछ लगे तो इसके लिए छ: महीने एक्सटैंशन का प्रोविजन किया गया है। हमने इसके बाद बहुत से केसिस के फैसले होते हुए देखे हैं।

सरकार के संज्ञान में यह भी आया कि फ्रॉड और करप्शन से गलत ऑर्डर आर्बिट्रेशन के माध्यम से लिए जाते हैं। सरकार एक बार फिर जागरूकता दिखाते हुए अमेंडमेंट लाई। इसमें परमानेंट स्टे की बात हुई है। मैं मानता हूं कि इस अमेंडमेंट के माध्यम से बहुत बड़ा और अच्छा निर्णय हो रहा है। इसमें सही व्यक्ति, सही प्लेयर को न्याय देने की बात हो रही है। किस प्रकार के गलत पेपर बनाए जाते हैं, गलत ऑर्डर होते हैं, यह हम सब लोगों के लिए जानना नई बात नहीं है। इसका रास्ता निकालना आवश्यक था।

माननीय नरेन्द्र मोदी की सरकार कहती है – सबका साथ, सबका विकास और सबका विश्वास। हर व्यक्ति का विश्वास जीतना सरकार की प्रियारिटी है। मैं मानता हूं इसलिए इस प्रकार का अमेंडमेंट करने का प्रयास हो रहा है।

सरकार बिल में दो बदलाव ला रही है। एक - परमानेंट स्टे की बात हुई है और आर्बिट्रेशन काउंसिल ऑफ इंडिया के माध्यम से 8वें शैड्यूल को ओमिट करके रैगुलेशन करने की बात हुई है।

एक विकासशील देश में जहां बुद्धिमान लोग काम करते हैं, अपना देश इतना बड़ा है, इन दिनों हम वर्ल्ड के साथ कम्पीट कर रहे हैं, ऐसे समय में जो कमियां और खामियां हैं, उसको दुरुस्त करना इस सरकार का काम है। मैं मानता हूं कि यह हुआ है। इसका हम सब लोगों को मिलकर स्वागत करना चाहिए। ऑर्डिनेंस के बारे में जब विरोध होता है, तो मैं कभी-कभी चिंता करता हूं और दुख भी व्यक्त करता हूं। किसी भी ऑर्डिनेंस में, अगर एक पक्ष को लाभ होता है और दूसरे पक्ष को नुकसान होता है, तो उसके बारे में विपक्ष को अवाज उठाने की आवश्यकता है। इसमें कोई दो मत नहीं है। लोकशाही का यह अधिकार होता है। लेकिन, गलत करने वालों को रोकने के लिए भी जब सरकार ऑर्डिनेंस लाती है और जब उसके ऊपर भी जब टिप्पणी होती है, तो निश्चित रूप से हम जैसे सांसदों को यहां पर वेदना होती है। यह भी कहा गया कि लॉकडाउन के समय ऑर्डिनेंस लाने की क्या आवश्यकता थी? 4 नवम्बर को यह ऑर्डिनेंस आया था। लॉकडाउन कब खत्म होगा, कोरोना किस प्रकार का रूप धारण करेगा? वर्तमान पत्र के माध्यम से और मीडिया के माध्यम से हम लोग सुनते थे कि एक और वेव आ सकता है। वगैरह-वगैरह बातें सुनते थे। सरकार को गलत काम को रोकने वालों के लिए इस प्रकार का ऑर्डिनेंस लाने की आावश्यकता थी और सरकार सही ऑर्डिनेंस लायी है, ऐसा मैं मानता हूं। इसलिए, विरोधी पक्ष के लोगों द्वारा हर ऑर्डिनेंस का विरोध करना कहां तक उचित है, यह मेरे समझ में नहीं आता है।

इस बिल से हटकर मैं एक और बात करना चाहूंगा। मैंने प्रधान मंत्री जी को इस बारे में चिट्ठी लिखी है। मेरे पूर्व वक्तओं ने कहा कि बहुत सारे केसेज पेंडिंग हैं। रवि शंकर प्रसाद जी तो इससे वाकिफ हैं। उन्हें इन-आउट सारी बातों की जानकारी हैं। मैं बताना हूं कि प्रधान मंत्री जी की बात को मानने वाले लोगों की संख्या अपने देश में बहुत ज्यादा है और एक लॉ मिनिस्टर के नाते आपने भी विश्वास कायम किया है। सत्ता पक्ष में हों या विपक्ष में हों, आप जैसे लोग, अगर देश

से अपील करेंगे, क्योंकि अनवांटेड केसेज बहुत सारे लोगों ने किए हैं, सभी लोगों ने केसेज न्याय पाने के लिए किया है, कम-से-कम ऐसा मैं नहीं मानता हूं। पैसे के जोर पर, जैसे करप्शन के माध्यम से, जो बातें इस बिल में हो रही हैं, पैसे के जोर से किसी को पेरशान करने के लिए भी बहुत सारे लोगों ने केसेज किए हैं। स्वाभाविक है, यह ह्युमेन नेचर है कि कभी किसी को गुस्सा आता है, तो वह केस कर देता है, लेकिन बाद में उसे भी लगता है कि गलत केस किया है और बाद में विड्रा कर लेता है। लेकिन, उसको कोई कहने वाला नहीं है, कोई प्रोविजन नहीं है, वह लम्बे समय तक चलता रहता है और ये केसेज इतने बड़े पैमाने पर कोर्ट में पेंडिग हैं। मैं मानता हूं कि हमारे देश में जो लोक अदालत का प्रोविजन है। हम लोगों को लोक अदालत को ज्यादा अहमियत देना चाहिए। कुछ राज्यों में दो शिफ्टों में कोर्ट चलते हैं। पूरे देश में इसी प्रकार का एक प्रयास होना चाहिए। सरकार को आगे बढ़कर लोक अदालत के माध्यम से सारे केसेज का निपटारा कैसे हो, इसका एक प्रयास करना चाहिए।

मैं एक और छोटी बात कहना चाहूंगा, जिसके बारे में प्रधान मंत्री जी ने भी अपने 'मन की बात में' बताया था। रवि शंकर प्रसाद जी लॉ के जो बिल ड्राफ्ट होते हैं, यह बात आपको और सरकार को भी पता है, क्योंकि किसी भी बिल की शरुआत में आप उसको पार्लियामेंट में समझाने का प्रयास करते हैं। यह बात सही है कि बिल में जो ड्राफ्टिंग लैंग्वेज होती है, वह बहुत अच्छे-अच्छे लोगों को समझ में नहीं आती है। कोई कहता नहीं है, यह बात अलग है। इसलिए, प्रधान मंत्री जी ने इस बात का जिक्र किया है कि लॉ के बिल का ड्राफ्टिंग इतना आसान होना चाहिए, ताकि सामान्य व्यक्ति भी उसको पढ सके और समझ सके। उसको वकील के पास जाने की आवश्यकता न पड़े। यदि, वह जाता भी है तो कोई वकील उसको गुमराह न करे, इस बात को हमें बहुत जल्दी संज्ञान में लेना चाहिए। जब अंग्रेज देश में थे, तो उनकी मंशा यही थी कि हिन्दुस्तान के लोगों को कायदा-कानून के बारे में पता न चले और वे हैरान-परेशान हों। जब हमारा देश 70 साल का पीरियड क्रॉस करके आगे जा रहा है, तो ऐसे में लॉ की ड्राफ्टिंग बहुत सिम्पल होनी चाहिए, ये मरी मांग है। मैं चाहूंगा कि इसके बारे में आप टिप्पणी करें। मैं एक

बार फिर माध्यस्थम् और सुलह (संशोधन) विधेयक, 2021 का समर्थन करते हुए अपनी बात को समाप्त करता हूं। मैं चाहूंगा कि रवि शंकर प्रसाद जी लोक अदालत और बिल ड्राफ्टिंग की लैंग्वेज के बारे में अपनी टिप्पणी अंतिम चरण में देंगे। बहुत-बहुत धन्यवाद।

SHRI S. R. PARTHIBAN (SALEM): Madam, I thank you for allowing me to speak on the Arbitration and Conciliation (Amendment) Bill, 2021 which seeks to further amend the Arbitration and Conciliation Act, 1996. The Arbitration and Conciliation Act, 1996 consolidates the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and conciliation. The Act is based on the model law adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985.

Further, the Central Government had amended this Act in 2015. Subsequently, some practical difficulties in the applicability of the Amendment Act were pointed out. To address these difficulties and to promote institutional arbitration in the country, the Act was once again amended in 2019.

Meanwhile, keeping in view the court rulings and in order to address the issue of corrupt practices in securing contracts or arbitral awards, a need was felt to ensure that all the stakeholder parties get an opportunity to seek unconditional stay of enforcement of arbitral awards, where the underlying arbitration agreement or contract or making of the arbitral award is induced by fraud or corruption. Also, to promote India as a hub of international commercial arbitration by attracting eminent arbitrators to the country, it was felt necessary to omit the Eighth Schedule of the Act.

Now, the Government brings some amendments - a second proviso to sub-section (3) of section 36 to facilitate unconditional stay by courts; to amend section 43J; and omit the Eighth Schedule - with a view to empowering the Arbitration Council of India to lay down norms and qualifications by way of regulations for the purpose of accreditation of arbitrators.

There are still some points which I would request the hon. Minister to consider. There is small scope of appeal in the arbitration award. If there is a problem with the award, there would be no scope of appeal or correction. There are a number of institutions providing the facility of arbitration; it becomes very difficult to choose among the organizations. This makes it difficult to ascertain the applicability of the laws relating to international arbitration.

One of the major issues faced during arbitration is the cross-cultural language barrier. There is always a discrepancy in the language and culture of the two regions. It becomes very difficult to bridge the gap and come to a unified solution. If the matter is complicated but the amount of money involved is modest, then the arbitrator's fees may make arbitration uneconomical. There is no opportunity to cross-examine the testimony of the witness as well. The standards used by an arbitrator are not clear. With the recent amendment adding Schedule VII – Measuring Impartiality of Arbitrators – there is very less chance for the corporates and companies.

The Government has to establish commercial courts in all States to deal with the arbitration appeal and execution proceedings. The award NJS stamp duty has to be increased. Levy of Stamp duty increases the revenue of the States.

During award execution proceedings, the court fee has to be increased nominally. It can reduce the unnecessary execution proceedings before the court.

Arbitration proceedings have to be extended to the motor accident claim proceedings also. The victims can get their compensation in a very short period.

The Government has to encourage the establishment of district-wise private arbitration institutions. The banking institutions have to resolve their claim through arbitration.

As the Minister is present here, I would like to remind him of the long-standing demand to set up a regional branch of the Supreme Court in Chennai for the benefit of people of Tamil Nadu and other southern States. The Supreme Court has equal and sometimes even more power than the Government. So, it should be accessible to the common citizens. So many cases do not go to the Supreme Court because of a number of barriers, namely, it is inaccessible; it requires traveling to Delhi and back which is quite expensive and time consuming; there is also the issue of language etc. It is high time that we had a regional Supreme Court in Chennai.

Moreover, I request hon. Minister, through you Madam, to set up a Chennai High Court branch in Salem. Salem is located in the middle of Dharmapuri, Krishnagiri, Erode, Coimbatore, Karur, Namkkal and Kallakurichi districts of west zone in Tamil Nadu. During the British rule, these districts were called Salem Jilla. These areas' people need to travel more than 350 kilometres to get justice. Hence, I request you to set up a Chennai High Court branch in Salem.Thank you.

SHRI KODIKUNNIL SURESH (MAVELIKKARA): Madam, I would like to thank you for giving me an opportunity to participate in the debate on this Bill.

Madam, as stated several times earlier, any Bill that takes the route of Ordinance brings democracy one step down in its authority and I oppose the Bill primarily for the same reason.

While introducing the Bill, the hon. Minister had said that the Bill seeks to facilitate speedy appointment of arbitrators through designated arbitral institutions. There are two issues in this statement made by the hon. Minister – speedy appointment and designated arbitral institutions. What are the designated arbitral institutions in India? As per my knowledge, they are Delhi International Arbitration Centre, New Delhi; Indian Council of Arbitration, New Delhi; Construction Industry Arbitration Council, New Delhi; LCIA India, New Delhi; International Centre for Alternative Dispute Resolution, New Delhi; and ICC Council of Arbitration, Kolkata.

It can be seen that all these institutions have framed their own rules of arbitration which would be applicable to arbitral proceedings conducted by these institutions.

Madam Chairperson, therein lies the problem. Where is the role and regulatory authority of the Indian Government lying in this set of companies that have set their own set of rules and what are the guarantees of a fair arbitration in such institutions? The Indian Council of Arbitration, as the apex body in arbitration matters in the country has handled the largest number of international cases in India.

My point is, when you observe the composition of the Indian Council of Arbitration, you will not see a single person representing the

Government. The list of panel of arbitrators as seen on their website as on 21st January, 2021 is composed of former judges, advocates, engineers, chartered accountants, executives, maritime experts, businessmen, and foreign nationals. At the time when the corporate world is getting more and more greedy and profit minded, handling of arbitration must not be allowed to circumvent the presence of Government through a serving representative. The panel of arbitrators must have sufficient representation of the Government than being limited to five council representatives. Madam, I am not going into all the details because of the time. You have allotted only two minutes. I am not taking more time.

The Government in the first place amended the arbitration law to ensure that all stakeholders get an opportunity to seek unconditional stay on enforcement of arbitral awards where the agreement or contract is induced by fraud or corruption.

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

Hon. Speaker, Sir, I am concluding. I am not going into the details. I would like to ask the hon. Minister, through you, Sir, what are the mechanisms to precisely determine whether any agreement is based on fraud or corruption. How could a person's right to approach the court to impose a stay on an agreement be enforced if he is wronged?

These questions must be answered by the hon. Minister. Thank you.

माननीय अध्यक्ष : विनायक जी, क्या आप बोलना चाहते हैं? आप मंत्री जी के बोलने के बाद स्पष्टीकरण कर लेना। आप मंत्री जी के बोलने के बाद में बोल लेना। हम क्लेरिफिकेशन करवा देंगे।

श्री रवि शंकर प्रसाद: माननीय अध्यक्ष जी, मैंने सोचा कि छोटा बिल है इसलिए शायद छोटी चर्चा होगी।

माननीय अध्यक्ष : हाँ, आप छोटी चर्चा कर लीजिए। आप छोटा उत्तर दे दीजिए।

श्री रवि शंकर प्रसाद : मुझे एक बात की बहुत प्रसन्नता है कि मेरे विषय में, चाहे हमारे दादा हों या बाकी मित्र हों, उन्होंने वकीलों की बात की है। मैंने आज इतनी विद्वतापूर्वक टिप्पणियां देखीं, उसके लिए मैं सभी मैम्बर्स का अभिनंदन करूंगा। I want to commend the knowledge and understanding of arbitration proceedings of all the non-lawyer Members also, and I am placing on record my deep appreciation the way all of you have conducted. Due to paucity of time, I am not going into details of all the names.

सर, मैं पहले कुछ जनरल बातें कहना चाहता हूँ। इस पर काफी चर्चा की गई है। I will speak both in English and Hindi languages. It was said that what are we doing, India's ranking in the Ease of Doing Business, etc., etc. मैं इस हाउस को दो-तीन बातें बहुत ही विनम्रता के साथ कहना चाहता हूँ कि नरेन्द्र मोदी जी की सरकार भारत को ईमानदारी से आर्बिट्रेशन का एक हब बनाना चाहती है और हम बनाएंगे भी। We will make India a big hub of international and domestic arbitration, and all these exercises are basically designed for that purpose. अगर इस लॉ के इम्प्लीमेंटेशन में कुछ कमियां महसूस हुईं तो हमें लगा कि इसे ठीक करना चाहिए। But just to recall value, Sir, मैं आते ही विभाग को देख रहा था। We set up a big Committee headed by Justice Srikrishna, former Supreme Court Judge. Many other retired judges were there to give recommendations.

What did he recommend? Shri Galla said that India needs to have a big fillip for institutional arbitration. I want to convey to this House that I have got all this list. Today, India has got 36 institutional arbitrations. I

want India to have 500 institutional arbitrations. I want India to have district level institutional arbitration. सर, जब मैं यह बिल बना रहा था, मैंने अपने विभाग को कहा कि जरा मुझे मैप पर दिखाओ कि कहां-कहां ऐसे इंस्टीट्यूशन्स हैं। To my utter shock and surprise, whole of North India except Delhi, whole of Eastern India except Kolkata, including your State and my State, had no institutional arbitration. मैंने कहा कि ऐसा काम नहीं चलेगा। Then we created a proper Arbitration Council of India, which shall grade institutions. अब बार-बार लोग कह रहे हैं कि डिले होता है। एक अच्छे ग्रेडेड इंस्टीट्युशन का एक प्रिंसिपल यह भी होगा कि इनके यहां आर्बिट्रेशन का फैसला कितने दिन में होता है। And the institution which delivers it fast will have greater clientele and greater acceptability. An institution where decisions are taken on merit and integrity, and not on corruption will have greater acceptability. An institution where the arbitrators are more qualified and diverse will have greater acceptability.

Shri Galla, I wish to tell you that when I was making this Bill, I said that technology is a very extraordinary subject. Everything cannot be done by judges only. Can we have eminent people of technology to decide technological disputes? We must have that flexibility. Therefore, the first thing which we did today is removing the Eighth Schedule. I must compliment as the idea came from your suggestion that we must give the flexibility to the Arbitration Council of India to lay down the norms of eligibility of the arbitrators.

I want to make it very clear that foreign arbitrators are welcome in India. I am not saying this just today. Please see Section 11. I would like to read that. I thought that I must clarify this confusion from the floor of this House itself. It clearly says, “A person of any nationality may be made an arbitrator”. भारत क्या, दुनिया में कहीं से भी आर्बिट्रेटर्स आ जाएं, उसके लिए इसमें कोई बदलाव करना जरूरी है। We have a very open mind

regarding that. India welcomes arbitrators of any nationality. As the Law Minister, I am making this statement very clearly on the floor of the House. If you want to make a hub of this, then we must give autonomy to the institutions, and, therefore, we are promoting institutional arbitration in India, both for international and domestic arbitration. Therefore, that is the scheme of the Act.

Certain issues were raised. You can see why we are bringing in the amendment. Shri Premachandran, you have a problem. I always appreciate your great perseverance in opposing with such eloquence from 2014 when we have been drafting so many laws. I salute that. But I would take a contrary view that if there is any hiccup in the implementation of the law, an open Government must do the correction so that the law works in a very flawless manner instead of allowing more and more confusion in the courts. I see it in that way and that is why we have done that. सर, बहुत लोगों ने बात की कि इसका कांट्रैक्ट में क्या स्थान है, क्या नहीं? मैं सदन के सामने एक बात कहना चाहता हूं। India's overall ranking in the ease of doing business in 2015 was 142. Now, in 2022 it is 63. Just see in five years' time how much growth we have done in the ease of doing business. In terms of enforcement of contract, Shri Pinaki Misra, we were ranked at 186 in 2015 and now we are at 163. We have jumped more than 20 ranks. Of course, we need to jump more. अपना रास्ता ठीक है, यह मैं बड़े अदब से आपसे कहना चाहता हूं। दुनिया यह भी देखेगी कि नरेन्द्र मोदी जी के आने के बाद भारत का रास्ता सही है और आगे जा रहा है और हम जाएंगे, यह बड़े अदब से मैं आपको कहना चाहता हूं।

We have also changed the performance of contract. उसमें पहले ऐसा था कि अगर कांट्रैक्ट नहीं हुआ तो खाली डैमेज लाओ और घर जाओ। हमने इसे अमेंड किया कि नहीं, enforcement of contract is the primary pre-condition.

अगर आप नहीं कर सकते हैं तो दूसरी पार्टी से कराकर उससे डैमेज वसूल करेंगे। We have taken a lot of steps in pursuit of ease of doing business and we shall continue to do that. सर, बहुत सारी बातें की गई हैं कि भारत में लोग क्यों आएंगे। भारत में लोग इसलिए आएंगे कि भारत में बिज़नेस करने का अच्छा अवसर है, भारत में इसलिए आएंगे कि भारत में टेलेंटेड लोग हैं, भारत में इसलिए आएंगे कि भारत में human resource is very competent in the field of technology, in the field of law. मैं आज बड़े अदब से एक बात कहना चाहता हूं और यह बात मैंने दुनिया के फोरम पर भी कही है। India has some of the finest lawyers in the world; India has some of the finest judges in the world, but I see a new kind of monopoly happening in arbitration proceedings. Why? I am staring at you. Why? …(*Interruptions*). इससे ज्यादा नहीं बोलूंगा, आप लॉ मिनिस्टर को कोई संकेत न बोलने दीजिए, आप समझ गए। …(व्यवधान) आज मुझसे बहुत सवाल पूछे गए हैं। मैं चाहता हूं कि भारत के जज़ेज को भी दुनिया में उस तरह से इज्जत मिले, जिसके वे लायक हैं and I am very clear, my good friend. Any kind of new imperialism in the arbitration adjudication is not acceptable to me. India is a rising power and therefore, India's judges, India's lawyers should also be given due respect globally. सर, एक बात और आती है कि आपने किया क्यों है? मैं आर्डिनेंस पर बाद में आऊंगा। दुनिया का दस्तूर क्या बन रहा है, इस विषय पर मैंने दुनिया में देखा, मैं लंदन गया, बाकी जगहों पर गया, दुनिया में जिस तरह से इन्वेस्टमेंट ट्रीटी है, उसको लेकर बड़ी मशक्कत है। There is a great sense of unease, globally speaking, on the manner in which Bilateral Investment Treaty arbitration adjudication has been conducted. Why? सर, कहानी क्या है। आपने कहा कि हम आपके यहां सौ मिलियन रुपये इन्वेस्ट करेंगे। आपने 10 मिलियन या 15 मिलियन इन्वेस्ट किया, मैं सिर्फ एक एग्जाम्पल दे रहा हूं, अब इस देश में आपके अनुसार बात नहीं हुई, आपने इण्टरनेशनल आर्बिट्रेशन कर दिया। I want 100 million damages because my time is spent on such and such things. सर, क्षमा करिए, मैं बड़े अदब से कहना चाहता हूं कि कई छोटे-छोटे देशों

ने कहा कि हम तो टूट जाएंगे। जिस तरह से बाइलेट्रल इन्वेस्टमेंट ट्रीटी इतने छोटे-छोटे देशों के खिलाफ चल रही है। When I started, I was amazed myself why is it that in Bilateral Investment Treaties, we do not see punitive damages against big countries like Europe and America. Why? Today, be it South Africa, be it Russia, all of them are having a great sense of unease that they do not want to join this international architecture of Bilateral Investment Treaties. ये सब भारत की ओर देखते हैं कि भारत क्या कर रहा है? भारत का जो पूरा आर्किटेक्चर हमने कहा है कि दुनिया को हमें एक रास्ता दिखाना पड़ेगा कि हम ईमानदारी से विदेश के लोगों को यहां लाना चाहते हैं। विदेशी आर्बिट्रेटर्स भी आएं, विदेशी कंपनियां भी आएं, उनको हम पूरी सहूलियत देंगे। We will give all the facilities to have a complete, good and friendly arbitration regime for quick adjudication of the disputes. मैं इसको देखता हूं और आज कई सवाल किए गए हैं, इसलिए मुझे इसको व्यापकता में बताना पड़ा। मैंने इसलिए कहा कि भारत में एक बार यह पूरा सिस्टम एक्टिव हो जाएगा तो ऐसे कई इंस्टीट्यूशंस अपने आप डेवलप करेंगे कि एक सिंगापुर ही नहीं, हमारी कोशिश है कि भारत में कई सिंगापुर बनें। ऐसे इंस्टीट्यूशंस आज मुंबई में हैं और बाकी जगहों पर हैं। They can develop. वे उसमें काम करना चाहेंगे। अब बात आती है कि हम लाए क्यों। मैंने पहले भी कहा था कि सेक्शन 34 में एक बात का प्रावधान है कि अगर करप्शन और फ्रॉड से कोई एग्रीमेंट है तो पब्लिक पॉलिसी के दायरे में आएगा और उसके आधार पर भी आर्बिट्रेशन को आप एग्जामिन कर सकते हैं कि कैसे डिसाइड किया जाए। एक बात जो नई देखी जाती है, वह बात हम बहुत विनम्रता से कहना चाहेंगे कि हम लोगों ने लॉ में इसी सदन में पारित किया है और वह बहुत ही सुंदर शब्द है, आप मेरिट पर नहीं देखेंगे तो क्विक होना चाहिए, लेकिन उसमें एक बात और कही है,

"The award is in conflict with the public policy of India only if it was induced by fraud or corruption or it is in conflict with the most basic notions of morality or justice."

नैतिकता और न्याय की बड़ी प्रारंभिक मान्यताओं से भी वह निर्णय मेल नहीं खाता है, तो यह भी विचार हो सकता है। मुझसे बहुत सवाल पूछे गए हैं। सर, मैं आपसे एक सवाल पूछता हूं कि एक अवार्ड हो गया और एक एग्रीमेंट हो गया। एग्रीमेंट और अवार्ड होने के बाद ऐसा पाया गया कि इसमें भारी फ्रॉड हुआ है। इसमें अधिकारियों ने घूस लिया है और इसमें ठेकेदार ने घूस दिया है। सर, क्या किया जाए? कहीं सीबीआई इंक्वायरी की बात चल रही है, कहीं एफआईआर हो रहा है। चूंकि अवार्ड हो गया, इसलिए स्टे नहीं होना चाहिए। कानून को इतना मिनी नहीं होना चाहिए।

Yes, they have a point that : "Why you have to make it when it is already there in Section 34? It is because we had said that there shall be no automatic stay. Therefore, from that automatic stay we are giving this window that if the court is *prima facie* satisfied, सर, आपको बहुत ज्यादा अनुभव है। *Prima facie* satisfaction का एक आधार होता है। क्या एफआईआर फाइल करने से ही कॉग्निजेन्स होता है, यह नहीं होता है। इंक्वायरी होती है, पुलिस रिपोर्ट देती है, मजिस्ट्रेट अप्लाई करता है, तो कहता है – cognisance, because *prima facie*. सिर्फ आरोप लगाने से स्टे नहीं होगा। वकील साहब और मुवक्किल को *prima facie* एविडेंस पर सटिस्फाई करना होगा कि ये 10 कारण हैं, जिनके कारण फ्रॉड हुआ है, तब कोर्ट मान सकता है। दूसरी बात यह कही गई है कि you will promote more litigation. यह क्या तर्क है? अगर स्टे में किसी को शिकायत है, तो ऊपर जाकर इसे डिसाइड करा देगा। स्टे केवल फाइनल 34 के फैसले तक है। The stay is not unlimited. The day the decision on Section 34 is decided, the objection is rejected and the stay goes. लेकिन हमें यह बताएं कि अगर फ्रॉड से कोई कॉन्ट्रैक्ट करके पैसे ले लिए गए और किसी प्रदेश या देश को फॉरेन ट्रिब्यूनल 10 हजार करोड़ या 5 हजार करोड़ रुपये देने के लिए कह रहा है। I would request Supriya ji to please do not confuse this with the issue of retrospectivity of other award that you have in mind. No, India respects the authenticity and sanctity of awards, which have been there.

This particular law operates in the limited field of fraud and corruption through which it has been obtained. Retrospectivity is a different ball game altogether. I thought that I must clarify this issue. सर, आपको यह मालूम है कि कई चीजें गवर्नैंस की होती हैं, तो हर चीज को यहां बोलना उचित नहीं है और होना भी नहीं चाहिए।

मैं सदन को बड़ी विनम्रता से एक उदाहरण दे रहा हूं कि अगर भारत सरकार या प्रदेश सरकार के खिलाफ 5 हजार करोड़ रुपए या 10 हजार करोड़ रुपए का अवार्ड पारित कर दिया गया और कोई फॉरेन इंवेस्टर उसको बाहर एनफोर्स करने की कोशिश कर रहा है। ये टैक्स पेयर्स के पैसे हैं। यह हमारे और आपके नहीं हैं, ये गरीबों के पैसे हैं। भारत सरकार को ऐसे भ्रष्ट फ्रॉड से प्रभावित एग्रीमेंट पर बने हुए अवार्ड को, क्या टैक्स पेयर्स के पैसे लुटाए जाएं, नहीं। उसका एक बार एग्जामिनेशन सेक्शन 34 में हो जाने दीजिए। जब तक वह नहीं होगा, तब तक हम स्टे करेंगे।

Mr. Pinaki Misra, I do not know whether you are more eminent or others are more eminent. I am not as eminent as you are, as a lawyer. I acknowledge this very clearly. …(*Interruptions*) I am asking a simple question to you from your professional experience. Is it not a fact that the winner of an award keeps on running from court to court to get the award in force?

सर, कभी बहस होगी तो मैं इस हाउस में बताऊंगा कि दुनिया में कितनी जगह आर्बिट्रेशन को एनफोर्स करने के लिए क्या-क्या कार्रवाई चल रही है और ईमानदारी से चल ही है, हम यह नहीं कह सकते हैं। भारत ईमानदार प्रक्रिया का स्वागत करता है और करता रहेगा। भारत ईमानदारी से प्रोक्योर आर्बिट्रेशन प्रोसीडिंग का सम्मान करेगा और निश्चित रूप से करेगा। India would like India to become a good hub of arbitration. Why not? If that involves quick conclusion of the entire proceedings, then it is very good. इसलिए मैं सदन को आश्वस्त करना चाहता हूं। कुछ ने यह पूछा है कि आप जल्दी क्यों नहीं कर रहे

हैं। मैंने स्पष्ट रूप से कहा है कि I wish to give complete autonomy to the Arbitration Council of India and even the new Arbitration Centre, which we are setting up in Delhi for which the law has been passed. They must have good autonomy in selection of arbitrators and in overseeing quick disposal of arbitration disputes, etc.

-

-

20.00hrs

That includes quality of arbitrators. Complete autonomy is given whether it is the New Delhi Centre or the Arbitration Council of India. I am again saying when the entire fast-tracking of good institutional arbitration will be done, one institution would be delivering time-bound award, the quality of arbitration would be good; where they are men of integrity, we would see a different professionalism rising in the country.

Yes, Mr. Galla, you are right, to help that happen, we had to delete Schedule VIII. Schedule VIII was putting some curbs. For everything we have to come to Parliament. Now, that power has gone to the Arbitration Council of India. They will decide. If they feel, for instance, IT professionals need more clout, go ahead. We have delegated that power. It is not excessive delegation; it is a rational delegation for the speedy delivery of arbitration proceedings in the country. …(*Interruptions*) Let us see the worldview on Vodafone *dada.* There is a big world of Vodafone.

Now, I come to the issue of – why this Ordinance? Why not the Ordinance? Should we barter the Government of India's money? Should we barter taxpayer's money? When there is a collusive attempt to seek the benefit of an award, tainted with corruption, the answer is no, an emphatic no. Therefore, there is a compelling circumstance due to which the Cabinet passed a resolution, and the President has agreed to it. Enough.

Obviously, there is a certainty of Corona. When will Parliament meet? All these were there. It was not a case of abuse of power. I would say, in the instant case, it was a completely appropriate exercise of power under compelling circumstances for invoking Article 23 of the proceedings, Sir.

सर, बहुत-से मेम्बर्स ने कुछ स्पेशिफिक सवाल पूछे हैं। श्री गोपाल शेट्टी जी ने बहुत ही अच्छा कहा। …(व्यवधान) There he is sitting. उन्होंने तो सबसे पहले भाषण दिया था और बहुत ही अच्छा भाषण था। आज मैं फिर कहूँगा कि आज मैंने अपने एमपीज की नयी क्षमता को देखा है, मैं उन सभी का अभिनन्दन करता हूँ। I would like more discussion of this sort on issues like this so that the hidden wisdom of Members of Parliament become more patent.

सर, श्री गोपाल शेट्टी ने जो बात कही, वह बहुत अच्छी बात है कि हम लोग अपील करें कि आप केस विदड्रॉ कर लीजिए। उस अपील में कितना दम होगा, यह तो मैं नहीं कह सकता हूँ, लेकिन एक अपील तो कानून मंत्री कर ही सकता है। आजकल देश में पीआईएल फाइल करने की होड़ लगी हुई है। है न? सुबह अखबार देखा, तो किसी को पानी नहीं मिला, कहीं पर धरना है, तो पीआईएल फाइल हो जाती है। यह सुप्रीम कोर्ट में भी फाइल होती है और हाई कोर्ट में भी फाइल होती है।

Today, I want to take the freedom of this House to appeal to the Judiciary that please be a little more objective, and I would say, take into account your own decision as to under what circumstances a PIL can be filed. I have been a great supporter of PIL. Some of my friends from Bihar know that I have argued - some of the tectonic, swift changing political cases in Bihar. The Fodder Scam, the Bitumen Scam, the entire PIL cases were argued by me. I was also a lawyer of Ram *Lalla.* I am the lawyer of Advani *ji.* I have no problem. …(*Interruptions*) Yes, Sir. You never engaged me, that is the problem with you. सुबह अखबार देखा, हेडिंग तैयार हुई, पेटिशन तैयार है और पीआईएल फाइल हो गई। किसी के पीआईएल फाइल करने पर मेरी कोई आपत्ति नहीं है। लेकिन मैं बहुत विनम्रता से न्यायालयों

से अपील करूँगा कि जो जेन्यून पीआईएल हैं, जैसे मजदूरों को तनख्वाह नहीं मिलती है, एंवायरमेंटल इश्यूज हैं, रैंक करप्शन के इश्यूज हैं, तो जरूर पीआईएल फाइल कीजिए। लेकिन इससे कितना लोड बढ़ता है, यह थोड़ा समझ लीजिए।

माननीय स्पीकर साहब, मैं आपकी बड़ी इज्ज़त करता हूँ। आज आपकी उपस्थिति में, मैं एक बात अवश्य कहूँगा। सभी कहते हैं कि इंडिपेंडेंस ऑफ जूडिशियरी एक बेसिक स्ट्रक्चर है। हम इसका सम्मान करते हैं। लेकिन एक और बेसिक स्ट्रक्चर है- सेपरेशन ऑफ पॉवर्स। यह भी ध्यान रखने की जरूरत है कि वह भी एक बेसिक स्ट्रक्चर है और उसका मतलब यह होता है कि – governance should be left to those elected by the people of India as they have to be accountable to this House.

Law making must be left to those elected by the people of India to make laws and accountable to this House. That is the norm of governance. …(व्यवधान) वे मेरे बड़े अच्छे मित्र हैं, वे मुझसे कभी असहमत नहीं होते हैं। … (व्यवधान)

Sir, I think I have practically addressed all the concerns of all my friends who have come. Supriya ji talked about infrastructure project. We are very keen that infrastructure projects should be cleared, the payments should be cleared at the Government level. There is a direction that fast tracking of payment should be done but, yes, with a caveat – India should not become the centre of procuring award through corrupt and fraud means. Under the Government of Narendra Modi ji, we are acting in an honest and transparent manner. We are determined to make India a hub of arbitration. But remember one thing, India will become a hub of arbitration only and only when the world also trusts the integrity of the system, the governance and the award delivery. That is what this Bill supports.

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

प्रश्न यह है:

"कि यह सभा राष्ट्रपति द्वारा 4 नवम्बर, 2020 को प्रख्यापित माध्यस्थम् और सुलह (संशोधन) अध्यादेश, 2020 (2020 का अध्यादेश संख्यांक 14) का निरनुमोदन करती है।"

प्रस्ताव अस्वीकृत हुआ।

माननीय अध्यक्ष: प्रश्न यह है:

"कि माध्यस्थम् और सुलह अधिनियम, 1996 का और संशोधन करने वाले विधेयक पर विचार किया जाए"

प्रस्ताव स्वीकृत हुआ।

माननीय अध्यक्ष: अब सभा विधेयक पर खंडवार विचार करेगी।

Clause 2 Amendment of section 36

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

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

Page 1, line 13,-

for "the making of the award"

substitute "the institution of the award". (1)

Page 2, *for* line 1-

substitute "was instituted by inducement or fraudulent means, it shall stay the award unconditionally pending". (2)

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

संशोधन मतदान के लिए रखे गए तथा अस्वीकृत हुए।

माननीय अध्यक्ष: श्री एन. के. प्रेमचन्द्रन जी, क्या आप संशोधन संख्या 4 और 5 प्रस्तुत करना चाहते हैं?

SHRI N. K. PREMACHANDRAN (KOLLAM): Sir, my amendment is that without giving it a retrospective effect, let it be prospective from the date of promulgation of the Ordinance. I beg to move:

Page 1, line 8,-

for "23rd day of October, 2015"

substitute "4th day of November, 2020" (4)

Page 2, line 1-

for "unconditionally"

substitute ", after giving reasonable opportunity for hearing to the other party,". (5)

माननीय अध्यक्ष: अब मैं श्री एन. के. प्रेमचन्द्रन द्वारा खंड 2 में प्रस्तुत संशोधन संख्या 4 और 5 को सभा के समक्ष मतदान के लिए रखता हूं।

संशोधन मतदान के लिए रखे गए तथा अस्वीकृत हुए।

माननीय अध्यक्ष: प्रश्न यह है:

"कि खंड 2 विधेयक का अंग बने।"

प्रस्ताव स्वीकृत हुआ।

खंड 2 विधेयक में जोड़ दिया गया।

Clause 3 Substitution of new section for section 43J

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

SHRI KODIKUNNIL SURESH : Sir, I beg to move:

Page 2, *for* lines 9 and 10,-

substitute "43J. The mandatory qualifications, experience and other determining norms essential towards approving the accreditation norms of arbitrators shall be such as may be specified by the regulations from time to time.". (3)

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

संशोधन मतदान के लिए रखा गया तथा अस्वीकृत हुआ।

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

SHRI N. K. PREMACHANDRAN: Sir, my amendment is regarding arbitrator's qualifications and experience who are coming from outside,

let it be by the regulation and let the other thing be retained. I beg to move:

Page 2, line 9,-

after "arbitrators"

insert "from outside India". (6)

माननीय अध्यक्ष: अब मैं श्री एन. के. प्रेमचन्द्रन द्वारा खंड 3 में प्रस्तुत संशोधन संख्या 6 को सभा के समक्ष मतदान के लिए रखता हूं।

संशोधन मतदान के लिए रखा गया तथा अस्वीकृत हुआ।

माननीय अध्यक्ष: प्रश्न यह है:

"कि खंड 3 विधेयक का अंग बने।"

प्रस्ताव स्वीकृत हुआ।

खंड 3 विधेयक में जोड़ दिया गया।

Clause 4 Omission of Eighth Schedule

माननीय अध्यक्ष: श्री एन. के. प्रेमचन्द्रन जी, क्या आप संशोधन संख्या 7 प्रस्तुत करना चाहते हैं?

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

Page, line 11,-

for "be omitted"

substitute "not be applicable to arbitrators from outside India"

(7)

माननीय अध्यक्ष: अब मैं श्री एन. के. प्रेमचन्द्रन द्वारा खंड 4 में प्रस्तुत संशोधन संख्या 7 को सभा के समक्ष मतदान के लिए रखता हूं।

संशोधन मतदान के लिए रखा गया तथा अस्वीकृत हुआ।

माननीय अध्यक्ष: प्रश्न यह है:

"कि खंड 4 विधेयक का अंग बने।"

प्रस्ताव स्वीकृत हुआ।

खंड 4 विधेयक में जोड़ दिया गया।

खंड 5 विधेयक में जोड़ दिया गया।

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

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

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

"कि विधेयक पारित किया जाए।"

माननीय अध्यक्ष: प्रश्न यह है:

"कि विधेयक पारित किया जाए।"

प्रस्ताव स्वीकृत हुआ।

माननीय अध्यक्ष : अब प्राइवेट मेंबर बिजनेस ले रहे हैं। उसके बाद शून्यकाल लेंगे।

प्राइवेट मेंबर बिजनेस, आइटम नम्बर, 25, आंगनवाड़ी कार्यकर्ताओं और आंगनवाड़ी सहायिकाओं हेतु कल्याणकारी उपाय।

मेरा आग्रह है कि अभी 8 बज गए हैं, आज इस प्राइवेट मेंबर रेजोल्यूशन को हम 9 बजे तक लेंगे। इसे फिर आगे ले लेंगे। 9 बजे के बाद कुछ जीरो ऑवर लेंगे। संजय जी, उसके पहले आप अपना विषय रख देना।

डॉ. निशिकांत दुबे - उपस्थित नहीं।

श्री अजय मिश्रा।

20.11 hrs

PRIVATE MEMBERS' RESOLUTION