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Further discussion on statutory resolution regarding Disapproval of Arbitration and Conciliation (Amendment) Ordinance and Arbitration and Conciliation (Amendment) Bill, 2015 .

HON. DEPUTY SPEAKER: Now we are taking up Item Nos. 14 and 15 together.

Motions moved:

"That this House disapproves of the Arbitration and Conciliation (Amendment) Ordinance, 2015 (No. 9 of 2015) promulgated by the President on 23 October, 2015".

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

Shri B. Senguttuvan to speak.

SHRI B. SENGUTTUVAN (VELLORE): Hon. Deputy Speaker, Sir, I thank you for affording me this opportunity to participate in the crucial debate on the important subject of Arbitration and Conciliation (Amendment) Bill, 2015.

This Amendment Bill introduced by the hon. Minister for Law and Justice seeks extensively to amend the existing provisions of the Arbitration and Conciliation Act, 1996 so as to make the Arbitration and Conciliation law one of the most effective instruments of alternate dispute resolution.

Whilst the Bill was pending in the Parliament, the hon. Law Minister introduced certain more amendments to the Amendment Bill as well as to the Principal Act. The Amendment Bill is perhaps one of the preparatory steps to welcome foreign investors to India to do business in a very conducive climate. Originally the Law of Arbitration was found in the three enactments, namely, the Arbitration Act 1940, the Arbitration (Protocol and Convention) Act 1937, and the Foreign Awards (Recognition and Enforcement) Act, 1961. The law of Arbitration, as it stood under these enactments was rather incipient and underdeveloped. Perhaps, with the liberalization of the Indian economy, the need to having a more responsive law on arbitration was felt. Therefore, the Arbitration and Conciliation Act, 1996 came to be enacted.

The Arbitration and Conciliation Act of 1996 is actually a model law framed by the United Nations Commission on International Trade Law (UNCITRAL). The United Nations Commission on International Trade Law adopted in 1985 a model law on international commercial arbitration. The General Assembly of the United Nations also recommended that the member countries do give due consideration to the said model law. The single most important feature of the UNCITRAL model law and rules was that they harmonized concepts on arbitration and conciliation found in various legal jurisdictions all over the world and thus they contained provisions which are designed for universal application. Therefore the enactment of the Arbitration and Conciliation Act, 1996 was actually a welcome measure as it enabled the parties to easily resolve their disputes by having recourse to arbitration rather than try it by any other mode or in any other forum. I am talking about the 1996 Act.

It was modelled on the United Nations Commission on International Trade and Trade Law. It had universality of application. However, in the course of its practical implementation, we came to experience that the law is far from perfection and that there are several hiccups and shortcomings in the working of the provisions of the Act. Therefore, the present amendments are being brought about. The Law Commission of India, in its Report no. 246, also suggested that these amendments be carried out to the 1996 Act.

Sir, there are a number of crucial amendments brought about by the Amendment Bill. The first amendment relates to the definition of court in Section 2 of Clause 'e' of the Principal Act. According to the Amendment, the court of jurisdiction in a case of an international commercial arbitration is that of the High Court.â€¦ (*Interruptions*)

HON. DEPUTY SPEAKER: Mr. Senguttuvan, hon. Minister would like to say something. You can continue your speech after him.

THE MINISTER OF URBAN DEVELOPMENT, MINISTER OF HOUSING AND URBAN POVERTY ALLEVIATION AND MINISTER OF PARLIAMENTARY AFFAIRS (SHRI M. VENKAIAH NAIDU): Deputy Speaker Sir, I am told that certain remarks have been made against the Governor and also what is happening in Arunachal Pradesh. On behalf of the Government, I have to put the record straight. I do not want to join issue with them in detail. But let me make it very clear that the Governor, as per the Articles 174, 175, 181 of the Constitution, has acted within his rights and from time to time he has been informing the hon. President of India. The legislators, who are in the Ruling Party, they broke away from that Party for whatever reasons know to them, gave a No-Confidence Motion against the Speaker. Then, the Governor has asked the Speaker to face the House and take this No-Confidence Motion. They did not immediately respond to that. So, the Governor has summoned the Assembly and fixed the date of 16th yesterday for deciding the No-Confidence Motion on the Floor of the House. Then, the Speaker surprisingly disqualified 14 MLAs. He is facing No-Confidence Motion and he disqualified 14 MLAs. It is really a shame and a challenge to the system. Later, some of the ministers led by the Chief Minister went to Governor on the pretext of discussing something. Instead of discussing, they accused, abused and threatened the Governor. It is really bringing a shame to the system and democracy. If you have majority, you must rule the State. If you do not have majority, you must quit. If you have any doubt then the trial of strength must be taken in the Assembly. They have locked the Assembly. Deputy Speaker has to convene the meeting outside the Assembly Hall. So, surprising things are happening. I am not justifying this party or that party. Earlier also we have seen there, wholesale people coming from that side to this side and wholesale people going from this side to that side. लोकतंत्र में यह कोई शोभा नहीं देता, लेकिन सिस्टम ऐसा है कि हम क्या करें। मेरा यही कहना है कि इसमें केन्द्र सरकार का कोई हस्तक्षेप नहीं है। There is no role for the Central Government. बार-बार प्रधान मंत्री जी का नाम लेना, बार-बार केन्द्र सरकार को एक्यूज़ करना, आलोचना करना और आरोप लगाकर चले जाना, यह उचित नहीं है।

Sir, lastly, I would like to conclude by saying that in the morning when this issue was to be raised, even the petroleum prices, I stood up and offered by saying: "After the Question Hour the Government will be willing to respond." The Speaker said: "You cannot decide what is to be admitted." Yes, Speaker is right. The Speaker has to admit. I said: "Only if the Speaker admits then I am ready." They did not care for that. They created *hungama* for one hour. They did not allow the Question Hour. They have taken the rights of all the members of the House. Later, they went back to their seats and started demanding: "We should be given an opportunity." Then, Mr. Deputy Speaker Sir, they were giving slogans, लोकतंत्र की हत्या हो रही है। खुद एक घंटे हत्या की और बाद में सदन से नारे लगाते हुए चले गए। This is becoming a regular practice. This cannot be accepted at all. Everyday the Adjournment Motion is given. I would like to take the entire country into confidence here. One of the Adjournment Motions is to discuss about 'Tourism in Bihar'. They want the adjournment of the House on this issue. You can understand the seriousness of this issue. Let us follow the rules. Let us go by the Chair. Let us respect the Chair. Then, whatever Chair decides, that is final.

With regard to Governor, there is a clear Ruling by the Chair in the Lok Sabha saying: "You cannot discuss the conduct of the Governor except issues on which he has acted in his discretionary power."

Here also you can discus the discretionary power in the House and at the end of the day, the ruling says very clearly that the decision of the Governor cannot be questioned. That is the ruling of the Chair. That is the position of the Constitution.

If they have any grievance, they should approach the court. Instead of doing that, coming here, accusing the Government and abusing the Governor is not acceptable. Any reference to Governor or his action or any reference to the Arunachal Pradesh Assembly, if they have gone into record, I would urge upon the hon. Deputy Speaker to please remove them from the record.

HON. DEPUTY SPEAKER: Already I gave the ruling that whatever they have raised regarding the Governor's action cannot go into the record. That is expunged. I already gave that ruling. Therefore, that question does not arise.

Now, Shri Senguttuvan, you please continue.

SHRI B. SENGUTTUVAN: Thank you, hon. Deputy Speaker.

The amendment to Section 2 and Clause (e) of the Principal Act runs as follows: "The court of jurisdiction in a case of an international commercial arbitration is that of the High Court and in any other case, the principal Civil Court of the District."

Clause (f) of Section 2 is also amended whereby a new proviso is incorporated. Section 7 of the principal Act is also amended.

Section 8 in the principal Act which deals with the power of a judicial authority to refer the Parties to arbitration where there is an arbitration agreement.

This amendment seeks to substitute the entire sub-section (1) of Section 8 of the principal Act and adds a proviso to the existing sub-section (2). The purport of the amending exercise is to refer the parties to arbitration and the only limitation to this power of referral is that there is *prima facie* no valid arbitration agreement.

Section 9 of the Arbitration and Conciliation Act is a crucial provision, and this provision also undergoes an amendment in the Amendment Bill. Section 9 deals with the power of the court to pass interim orders pending arbitration proceedings. Whilst the existing provision becomes sub-section (1), new sub-sections 2 and 3 are now added by way of this Amendment Bill. Where the court has passed an interim order of protection under Section 9, prior to the commencement of the arbitral proceedings, then it becomes mandatory as per this amendment to commence the arbitral proceedings within 90 days. This is to do way with the inconvenience caused by interim *ex parte* orders passed in original applications. Hence, the amendment requiring commencement of arbitral proceedings within a period of 90 days of obtaining interim order from the court is certainly a welcome measure. The Court is also under an obligation not to grant such a relief as one that would be denied by the arbitral tribunal in the circumstances of the case.

Section 11 of the Principal Act which deals with appointment of arbitrator, is also extensively amended by Clause 6 of the Amending Bill, 2015. Section 11A has been inserted by Clause 7 of this Amending Bill.

Section 12 deals with the neutrality of the arbitrator. Section 12 of the principal Act is amended under Clause 8 of the Amending Bill. The entire sub-section (1) of Section 8 is substituted with a new sub-section. The arbitrator whilst entering upon arbitration is required to make certain disclosures that may raise justifiable doubts as to his neutrality. He is ineligible to arbitrate when found to have bias in favour of either of the parties.

It may be noticed here that to ensure neutrality of arbitrators, the amended Section 12 of the principal Act provides that when a person is approached in connection with possible appointment of arbitrator, he shall disclose in writing about the existence of any relationship or interest of any kind, which is likely to give rise to justifiable doubts about his neutrality; and the circumstances that are likely to affect his ability to devote sufficient time to complete the arbitration within the stipulated period of 12 months. Further, Sir, if a person is having specified relationship, he shall be ineligible to be appointed as an arbitrator.

Explanation one of the Bills provides that the first Schedule in the Bill guides the grounds giving rise to justifiable doubts about the independence or impartiality of the arbitrator. As per Explanation two which is also being inserted by this amendment, the disclosure shall be made in the form specified in Schedule 6. Schedule 7 sets out the circumstances which affect the ability of the Arbitrator to conclude the Arbitration

proceedings within twelve months. Schedules 4 to 7 are new additions under the Amendment Bill.

These are very important provisions. These provisions ensure that the neutrality of the arbitrator is maintained at all costs.

Sir, it is noticed that a new provision of Section 29A inserted by this Amendment provides that the Arbitral Tribunal shall make its award within a period of twelve months. Parties may by consent extend such period up to six months. Thereafter, the mandate of the arbitrator will terminate unless it is extended by the Court, on sufficient cause being shown. The Court while extending the period may also order reduction of fees of arbitrators not exceeding five per cent for each month's delay, if the court finds that the proceedings have been delayed for reasons attributable to the arbitral tribunal. If the award is made within a period of six months, arbitrator may get additional fees if the parties agree.

The newly inserted section 29B, makes for fast track procedure for conducting arbitration. Under this section, the parties to the dispute may agree to their dispute being resolved through fast track procedure by excluding oral evidence. Award in such cases may be given within a period of six months.

But, Sir, we have our own reservations with reference to the efficacy of this limitation of twelve months period. In the Indian context, it would not be possible to wrap up the entire arbitral proceedings in a period of just twelve months. Arbitration is just not restricted to pleadings alone; but may involve reception of oral/documentary evidence. On occasions, the documentary evidence to be adduced in the arbitration proceedings may not be available immediately and the procuration of which may take considerable time. Therefore, to expect the arbitrator to conclude the proceedings in twelve months is simply not possible given the circumstances prevailing in India.

Sir, we are apprehensive that this requirement of having to complete the arbitration proceedings in a matter of just twelve months, extendable by court by another six months is a counter-productive measure. Since it is feared that it is not possible to wind up proceedings in twelve months and if no agreement is reached for extension, the matter would be taken to court. Years may elapse before a verdict is reached. That is why, it is considered appropriate to provide the time limit of 24 months to conclude the arbitral proceedings. In this connection, I have moved an amendment to sub-section (1) of section 29A to the effect that the "award shall be made within a period of 24 months".

I apprehend that the new provisions by which the fees of the arbitrators are docked by five per cent for the delay which is attributable to him and the provision that his fees may be hiked by consent for quick disposal appear to be opposed to public policy or established judicial principles.

This kind of carrot and stick policy towards the arbitrator is not the right approach. An arbitrator should function with a free and fair mind; and he should give an award based on principles of fairness and established laws of the land. He should not be goaded either by the sense of fear of losing his fees or by the motive of aggrandisement which will not be in public interest. I think it is best that the Government removes this carrot and stick clause from the purview of these amendments.

It is further noticed that the whole of Section 17 of the principal Act has been substituted by a new Section. The new provisions of Section 17 empower the arbitral tribunal with power and discretion to grant extensive interim relief.

It is noticed again that provisions of Section 23, 24 and 25 have also been amended and new Sections 25A, 29A and 29B have been inserted by the amending Bill. By these provisions, the Arbitral Award is to be made within a period of 12 months; and if the parties agree, they may fast-track the procedure to conclude the arbitration in six months. Section 31 has also been amended. A new Section 31A has been incorporated by this amending Bill.

Very importantly, Section 34 has been amended. Section 34 in the principal Act relates to the application to set aside the Arbitral Award. One of the grounds for setting aside the Arbitral Award is that the Arbitral Award is opposed to "public policy". Experience shows that many an Award, the products of years of arbitral wrangling, have been simply got set aside on the ground that it was opposed to the amorphous concept of 'public policy". This amendment has been necessitated by the fact that the Supreme Court of India in the cases of ONGC Ltd. Vs. Western Geco International Ltd., and Associate Builders Vs. Delhi Development Authority interpreted the definition of "public policy" rather expansively according to the Law Commission.

These judgments of the Supreme Court introduced a justifiable fear that every award could be set aside on the ground of its being opposed to public policy. That is why, the present amendment seeks to introduce a new Explanation to Section 34 restricting the grounds on which an award can be set aside on the ground of its being opposed to public policy.

The amendment Bill further amends Sections 36, 37, 47, 48, 56 and 57 and adds Schedules IV to VII.

In conclusion, we welcome these amendments subject to our reservation on one aspect relating to the period of limitation provided for concluding the arbitration, regarding which I have already said that I am moving an amendment.

Sir, there was some doubt with regard to the prospective and retrospective nature of the amendments. There is a Constitutional prohibition against *ex post facto* criminal laws. All laws would have prospective application unless the intention is very clear that they have retrospective operation. Usually amendments affecting substantive laws will have prospective application and only procedural laws could have retrospective application. However, pending the Amendment Bill, an amendment to the principal Act by way of a new provision of Section 25A has been introduced by the hon. Minister as per which the amendments are prospective in nature as they would not affect the pending proceedings unless the parties otherwise agree.

Barring the reservation to Section 29A, we welcome the legislation as they are intended to speed up the arbitral proceedings and confer jurisdiction on the Indian courts to pass interim orders even where the seat of arbitration is in a foreign country. These amendments consolidate and strengthen the Indian law of arbitration and conciliation. Arbitration and conciliation are two different but very effective modes of Alternative Dispute Resolution Mechanism.In Tamil Nadu, the Government under our hon. Chief Minister, Dr. Puratchi Thalaivi Amma has provided the courts with the facility of mediation centres, whereby the process of conciliation dispute-resolution is usually reached.

While welcoming this amendment Bill I feel obliged to state that the legal professionals of London, which was the preferred destination for international arbitration, have been able to earn for the country nearly Rs.3 lakh crore per annum by way of arbitration. I fervently wish that India would likewise be a preferred destination for international arbitration and our legal profession would rise up to the challenge. I thank you for this opportunity.

श्री जगदम्बिका पाल (डुमरियागंज): उपाध्यक्ष महोदय, मैं आपका अत्यन्त आभारी हूं कि आपने एक महत्वपूर्ण बिल 'दि आर्बीट्रेशन एण्ड कंसीलिएशन एमेंडमेंट बिल, 2015' पर आपने मुझे बोलने का अवसर दिया है।

आज सम्मानित सदन इस बात का गवाह है, आज क्वथन ऑवर में पूरा सदन इस बात से चिन्तित था कि देश में, चाहे वे सबोंडिनेट कोर्ट्स हों, लोअर कोर्ट्स हों, हाई कोर्ट्स हों, सुप्रीम कोर्ट हो, आज पूरे हिन्दुस्तान में जो वादकारियों के हित हैं और जो मुकदमों की पेंडेंसी है, वह 3,06,11,879 है तो स्वाभाविक है कि जस्टिस डिलेड, जस्टिस डिनाइड और इस बात पर माननीय मंत्री जी ने काफी विस्तार से कहा है कि जो देश में केसेज़ की पेंडेंसी है, उन केसेज़ को कम करने के लिए या लोगों को जस्टिस मिल सके, उस दिशा में हमारी सरकार प्रयास कर रही है और निश्चित तौर से हम सरकार को बधाई भी देंगे, क्योंकि पेंडेंसी तो लगातार पिछले वर्षों से चली आ रही है, चाहे वे सबोर्डिनेट कोर्ट्स हों, चाहे होई कोर्ट्स हैं, चाहे सुप्रीम कोर्ट हो, लेकिन उस दिशा में इस सदन में चिन्ता व्यक्त होती है, अदालतों में चिन्ता होती है, वादकारियों के हितों की बात और उनके हक-हुकूक की हिफाजत की बात होती है, लेकिन उस दिशा में कोई कदम नहीं उठाये गये।

मुझे इस बात की खुशी है और मैं निश्चित तौर से अपनी सरकार को बधाई दूंगा कि आज इस पेंडेंसी को कम करने के लिए केवल एक दिशा में नहीं, कई कदम एक साथ उठाये गये हैं। जैसे निगोशिएबल इंस्ट्रूमेंट एक्ट, 1981 को एमेंड करने का काम किया गया है। निगोसिएशन में लोगों के बीच में डिस्प्यूट्स वर्षों बरस चलते हैं, उससे कम से कम लोगों को सुविधा हो या यह 1940 का ओरिजिनल हमारा आर्बीट्रेशन एण्ड कंसीलिएशन एक्ट है, उसको 1996 में एमेंड किया गया, आज उसको हम एमेंड करने की दिशा में इस सम्मानित सदन के समक्ष खड़े हैं या कल ही जिस तरीके से कॉमर्शियल अपीलेट डिवीज़न के कोर्ट्स या कॉमर्शियल डिवीजन के और हाई कोर्ट के लेवल पर भी एक डिवीजन बनाने की बात हुई है, जिससे कि आज जो तमाम कॉमर्शियल डिस्प्यूट्स हैं, वर्षों तक जिनका निस्तारण नहीं होता था और जिससे विकास भी अवरुद्ध होता है, क्योंकि आज कहीं भी कोई डिस्प्यूट हो, कल एम.ओ.यू. हो जाये, किसी के बीच में, दो पार्टियों में एग्रीमेंट हो, गवर्नमेंट और प्राइवेट पार्टी में एग्रीमेंट हो और किसी बात पर कोई डिस्प्यूट उत्पन्न हो जाये तो निश्चित तौर से उस कोर्ट में जाने के बाद सिविल ज्यूरिस्डिक्शन में वर्षों तक उसका कोई निस्तारण नहीं होता और फिर हाई कोर्ट, सुप्रीम कोर्ट तक जाते थे। कोई टाइम बाउंड उसका कोई निस्तारण नहीं होता था, लेकिन आज कम से कम इस सरकार ने इस बात का प्रयास किया है कि अब इस तरह से जो विकास में या कहीं भी कोई भी एग्रीमेंट हो, प्राइवेट पार्टीज़ में आपस में या गवर्नमेंट के साथ, पी.एस.यूज़. के साथ कोई डिस्प्यूट होगा तो उस डिस्प्यूट को भी हम लोअर लेवल पर सबोर्डिनेट कोर्ट्स में और हाई कोर्ट में एक टाइम बाउंड ढंग से उसको निस्तारित करने का काम करेंगे। आने वाले दिनों में निश्चित तौर से इन केसेज़ की पेंडेंसी भी कम होगी और इस देश में विकास भी बढ़ेगा। जहां तक आज इस एक्ट की बात है, आर्बीट्रेशन एक्ट के एमेंडमेंट को लेकर के माननीय मंत्री जी आये हैं तो इसमें निश्चित तौर से अभी तक जो स्थिति थी कि हमारे यहां आर्बीट्रेशन जो आउट ऑफ कोर्ट डोमैस्टिक इश्यूज़ में होता था, या तो वह मामला कोर्ट में लम्बित हो और दोनों पार्टी इस बाते के लिए एग्रीड हैं कि हम आर्बीट्रेशन के लिए तैयार हैं तो कोर्ट निश्चित तौर से उनको एक मौका देती है कि आउट ऑफ कोर्ट दोनों आर्बीट्रेशन कर सकें, लेकिन आज पूरी दुनिया में बड़े पैमाने पर जब भी कहीं इण्टरनेशनल कोई एग्रीमेंट होता है, किसी के साथ कोई व्यापार होता है, कोई ट्रेड होता है तो उसमें एक क्लाज़ अब आर्बीट्रेशन का भी है। लेकिन, पहले हमारे यहां इंटरनेशनल आर्बिट्रेशन के लिए कोई इफेक्टिव या कोई टाइम-बाउण्ड एक्ट नहीं था। आज इसे प्रभावी ढंग से लागूकरने के लिए हमने 1996 के एक्ट में अमेंडमेंट किया है। इसके दो बड़े महत्वपूर्ण पार्ट्स हैं। इसमें पार्ट-वन में है - any arbitration conducted in India. यह उसके इंफोर्समेंट के लिए है। जो दूसरा पार्ट-टू है, उसमें enforcement of foreign awards है। इसमें साफ दिया गया है कि अगर कोई डोमेस्टिक अवार्ड होगा, वह पार्ट-वन के माध्यम से गवर्न होगा और अगर कोई इंटरनेशनल अवार्ड होगा, वह पार्ट-टू से गवर्न होगा। इंटरनेशनल अवार्ड पर न्यूयार्क कंवेंशन और जेनेवा कंवेंशन एप्लाई करेगा और यह पार्ट-टू से गवर्न होगा। वर्ष 1996 के एक्ट में जो दो अन-युजुअल फीचर्स थे, उसमें एक लॉ था, उस लॉ को भी हमने अपने इंटरनेशनल कॉमर्शियल आर्बिट्रेशन के साथ किया है। इस संबंध में माननीय मंत्री जी बड़े स्पष्ट तौर पर अपना अमेंडमेंट लेकर आए हैं।

इस अमेंडमेंट का मूल उद्देश्य दो-तीन चीज़ें हैं। एक तो यह कि अभी तक ज्युरिस्डिक्शन तय नहीं था कि अगर हमारा डोमेस्टिक आर्बिट्रेटर होगा, वह किस लेवल पर जाएगा? वे अब सिविल के जो ऑरिजिनल ज्युरिस्डिक्शन कोर्ट होंगे, उसमें जाएंगे। अगर कोई इंटरनेशनल डिस्प्यूट होगा, उसके लिए केवल हाई कोर्ट के लेवल पर ही जा सकते हैं। पहले आर्बिट्रेटर की जो नियुक्ति की बात थी, वह कितने दिनों में होगी, यह निश्चित नहीं थी। आर्बिट्रेशन की बात हो जाने के बाद भी आर्बिट्रेटर की नियुक्ति नहीं होती थी। आर्बिट्रेशन भी अब टाइम बाउण्ड हो जाएगा। इस प्रकार, आर्बिट्रेशन के पीछे की जो मंशा थी कि अगर दो पार्टियों के बीच कोई डिस्प्यूट है, तो उस डिस्प्यूट को आउट-ऑफ-कोर्ट सुलझाने के लिए एक समयबद्ध ढंग से काम कर सकें, तो उस दिशा में इस एक्ट के आने के बाद से करोड़ों-अरबों रुपए के जो डिस्प्यूट्स आज भी कई अदालतों में पड़े हुए हैं, उनका आज एक ज्युरिस्डिक्शन भी तय हो जाएगा कि डोमेस्टिक और इंटरनेशनल आर्बिट्रेशन के लिए क्या होगा?

जैसा हमारे अन्य माननीय सदस्यों ने भी कहा है, from the date of service on the opposite party, ऑपोजीट पार्टी को नोटिस हो जाने के 60 दिनों के भीतर इसकी नियुक्ति करना एकदम निश्चित तौर से जरूरी हो जाएगा। इसी तरीके से इसमें कहा गया है - The award shall be made within 12 months. इसके लिए भी 12 महीने का समय दिया गया है। इसके लिए फास्ट ट्रैक प्रोसीजर होगा।

It is clearly mentioned in clause 2(1) of the Bill :

"(e) "Court" meansâ€"

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;"

अब इससे स्पष्ट हो गया कि अगर कोई डोमेस्टिक आर्बिट्रेशन होगा, वह इस कोर्ट में ही होगा। It further reads:

"(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;';"

कम से कम अभी तक हमारे देश जुरिस्डिक्शन तय नहीं था कि हम किसी आर्बिट्रेशन को किस लेवल के कोर्ट पर लेकर जाएंगे, सिविल कोर्ट्स के सबआर्डिनेट कोर्ट में ले जाएंगे या हाई कोर्ट के लेवल पर ले जाएंगे। इस अमेंडमेंट के लिए मैं माननीय मंत्री जी को बधाई दूंगा। आज देश में हजारों, लाखों, करोड़ों डिस्प्यूट्स हैं और आर्बिट्रेशन की बात होती है, तो उससे कम से कम एक स्पष्ट जुरिस्डिक्शन हो जाएगा। इसी तरह से सेक्शन 12बी है और उसके 13 में जो अमेंडमेंट हुआ है,

"(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case may be, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."

कम से कम जो अभी तक विसंगतियां थीं, अभी तक जो दुविधा थी कि कितने दिन में मुकर्रर होगा, तो वह इसमें साफ हो गया है कि अगर अपोजिट पार्टी को एक नोटिस मिल गया तो 60 डेज में जो भी प्रेसक्राइब्ड हाई कोर्ट हो, सुप्रीम कोर्ट हो, इसके अंतर्गत उसकी नियुक्ति हो जाएगी। इसी तरीके से साफ है, जो सेक्शन 15 है,

"After section 29 of the principal Act, the following new sections shall be inserted, namely:â€" "29A. (1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference."

इसमें भी साफ है कि आज कम से कम जो एम्बिग्विटी थी कि कोई टाइम लिमिट नहीं थी, तो अब कम से कम इस 29ए और 29बी के जो न्यू सेक्शंस को इनसर्ट किया जा रहा है, इससे कम से कम आर्बिट्रियल अवार्ड में टाइम लिमिट होगी कि इसमें 12 महीने से ज्यादा नहीं लगेंगे। निश्चित तौर से लोगों को एक सुरक्षा मिलेगी। वादकारियों के हितों के लिए पहले एक आर्बिट्रेशन मुकर्रर हो जाता था, उसके बाद कोर्ट समझती थी कि हमने एक आर्बिट्रेटर मुकर्रर कर दिया या नियुक्त कर दिया, लेकिन उस आर्बिट्रेटर के लिए कोई टाइम लिमिट नहीं होती थी, तो जो परपज होता था, वह परपज भी डिफीट हो जाता था। 29बी में भी है कि इसको हम टाइम बाउंड करें और इसके साथ ही जो प्रोसीजर हो वह फास्ट ट्रैक हो।

"29B. (1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3)."

मैं समझता हूं कि 29बी इनसर्ट करने के बाद, इस अमेंडमेंट के बाद अब जो कार्रवाई होगी, इससे फास्ट ट्रैक प्रोसीजर होगा। मुझे लगता है कि आज सदन कम से कम माननीय मंत्री जी और हमारी सरकार को इस बात के लिए बधाई देगा कि चाहे वह कामर्शियल डिस्प्यूट्स हों, चाहे आर्बिट्रेशन की बात हो या चाहे निगोसिएशन एक्ट हो, आज हर तरफ जिस तरीके के अमेंडमेंट ला रहे हैं, उसे लाने का एक ही उद्देश्य है, एक ही परपज है कि देश के गांव, गरीब, खेत-खलिहान में बैठे हुए लोगों को भी सस्ता और सुलभ न्याय मिल सके, उस दिशा में यह सरकार प्रयास कर रही है। हम इसके लिए माननीय मंत्री जी को बधाई देना चाहते हैं और सरकार को बधाई देना चाहते हैं कि आने वाले दिनों में जो हम लोगों को वादकारियों के हितों की चिंता थी, जिस तरीके से पेंडेंसी थी, उस पेंडेंसी को कम करने की दिशा में अग्रसर होंगे।

अभी तक सिविल नेचर के जो केसेज होते थे या जो आईपीसी, सीआरपीसी के केसेज होते थे, उसी की चिंता होती थी कि उसके निपटारे हों, लेकिन दूसरी तरफ जो इकानॉमिक आफेंसेज, इकॉनामिक डिस्प्यूट्स या इकॉनामिक इस तरीके की विसंगतियां थीं, उसके संबंध में अभी तक सरकारों ने कोई कार्रवाई नहीं की थी। अब सरकार उस डिस्प्यूट के संबंध में एक समयबद्ध फास्ट ट्रैक प्रोसीजर के साथ जूरिस्डिक्शन स्पष्ट करते हुए इसे करने जा रही है, तो निश्चित तौर से इस देश को और लोगों को आने वाले दिनों में लाभ मिलेगा।

महोदय, आपने समय दिया इसके लिए मैं धन्यवाद देते हुए इस बिल का सपोर्ट करता हूं।

श्रीमती अर्पिता घोष (बालूरघाट): सर, मैं आपका और अपनी पार्टी का बहुत आभारी हूं कि मुझे Arbitration and Conciliation (Amendment) Bill, 2015 पर बोलने का मौका दिया गया है। यह सबको पता होगा कि यह बिल राज्य सभा में वर्ष 2003 में आया था, उसके बाद में यह पार्लियमेंट्री स्टैंडिंग कमेटी में गया। वर्ष 2005 में कमेटी की रिपोर्ट सब्मिट हुयी। उसके बाद 10 सालों तक इसके ऊपर कोई काम नहीं हुआ। We really welcome it and we thank the Minister for expediting it. वह उस को एक्सपीडाइट किये हैं और इस बिल को सदन में चर्चा के लिए प्रस्तुत किया है, जो बहुत जरूरी था। यह दस साल से पड़ा हुआ था। यह टाइम बाउंड होना बहुत जरूरी था। India is ranking 178 among 189 nations on enforcing contracts. We welcome it. यह यूजर्स फ्रेंडली है, यह कॉस्ट इफेक्टिव होगा, इससे केस का जल्दी डिस्पोजल होगा। यह हमारे लिए बहुत जरूरी था। हमने देखा है कि लिटिगेशन बहुत सालों तक चलता रहा। अभी जो बिल आया है, उसमें मुझे यह अच्छा लगा है कि इसमें टाइम बाउंड लिमिटेशन कर दी गयी है कि यह बारह महीने में खत्म होगा, जब जरूरत पड़ेगी या कोर्ट के पास यह आयेगा कि इसके लिए थोड़ा समय बढ़ाया जाये तो इसका समय छः महीना और बढ़ाया जा सकता है, उसके लिए कोर्ट सोचेगी। कोर्ट सोचेगी कि 18 महीने के बाद इसे कैसे क्या किया जाये तभी यह काम ठीक-ठाक हो सकता है। फीस के बारे में भी हम देख रहे हैं कि इसे जल्दी खत्म किया जाये, छः महीने के अंदर इसे खत्म किया जाये, उसके लिए पार्टीज सहमत होते हैं तो उसके लिए एडीशनल फी की परमिशन दी जा रही है, मतलब कोई प्राइस देने की सोच रहे हैं। आप किसी को कोई भी काम के लिए प्राइज देते हैं तो उसके अंदर यह भावना पैदा होती है कि काम का निपटारा जल्दी से किया जाये। मिनिस्टर साहब ने यह सोचा है, उसके लिए हम बहुत आभारी हैं। उनकी सोच बहुत अच्छी है कि जल्दी काम कैसे किया जाये। इंडिया में बहुत फॉरेन इंवेस्टमेंट की जरूरत है और वे आ भी रहे हैं। वर्तमान समय में ये सब चीजें सामने नहीं आयेंगी तो हमारे भविष्य के लिए अच्छा नहीं होगा। हमें लगता है कि यह बिल सदन से पास होकर जल्दी लागू होना बहुत ही जरूरी है। एप्वाइंटमेंट ऑफ आर्बिट्रेटर्स के विषय में जो कहा गया है, जो इम्पार्शियल पार्ट है, यह भी बहुत महत्वपूर्ण है। बहुत क्लॉजेज आये हैं कि इम्पार्शियल पार्ट होना बहुत जरूरी है। किसी को कहीं पर कोई भी कनेक्शन रहा तो उसको नही लिया जाये, या उसके लिए कोर्ट विचार करे, उसके लिए जो इसमें क्लॉजेज दिए गये हैं, वे बहुत महत्वपूर्ण हैं। यह कनेक्शन होने से हमने देखा है कि काम ठीक से निपटाया नहीं जाता। इसके बारे में भी मिनिस्टर साहब ने बहुत बढ़िया सोच रखा है और क्लॉजेज बहुत अच्छे रखे हैं। Under the Appointment of Arbitrators, cases may be disposed of expeditiously and endeavour should be made to dispose of the matter within a matter of sixty days. यह भी बहुत जरूरी था, नहीं तो यह देखा गया है कि आगे चल कर डिफॉल्टर बहुत होते हैं। ज्यादातर देखा गया है कि सेन्ट्रल गवर्नमेंट सबसे ज्यादा डिफॉल्टर रही है। मिनिस्टर साहब इसके बारे में सोचेंगे कि इसको कैसे हैंडल किया जाये?

मैं दूसरी बात कहना चाहती हूं कि अभी जो आर्बिट्रेटर्स नियुक्त किये जाते हैं या पैनल ऑफ आर्बिट्रेटर्स हैं, वे ज्यादतर सुप्रीम कोर्ट या हाई कोर्ट के रिटायर्ड जज होते हैं। अगर नॉन-लीगल एक्सपर्ट्स लिए जायें, जैसे इंटरनेशनल आर्बिट्रेटर सेन्टर्स हैं, वैसे नॉन-लीगल कुछ पर्सन्स इस पैनल में आ जायें तो बेहतर होगा। रिटायर्ड जजेज को छोड़ कर रेलगुलराइज लीगल एक्सपर्ट्स का आना बहुत जरूरी होगा। कुछ नये आर्बिट्रेशन सेन्टर्स खोलने की जरूरत है, ट्रेनिंग सेन्टर्स बढ़ाने की जरूरत है, इन्जिस्टिंग ट्रेनिंग सेन्टर्स को मॉडिफिकेशन की जरूरत है क्योंकि आर्बिट्रेशन केसेज जितनी जल्दी निपटाया जायेगा, हमारे देश के लिए उतना अच्छा होगा। मुझे आशा है कि इन सब के बारे में गवर्नमेंट सोचेगी कि कैसे इसे जल्दी किया जाये, उनके अप्वाइंटमेंट के बारे में और ज्यादातर लोग आर्बिट्रेशन के क्षेत्र में आयें और जो मॉड्यूल बनता है। जब लीगल पढ़ाया जाता है तो इसे स्पेशल मॉड्यूल बनाकर आर्बिटेशन में लाना चाहिए तभी बेहतर होगा। मुझे आशा है कि आगे चलकर सेन्ट्रल गवर्नमेंट इस बारे में सोचेगी। जो स्टेप्स सरकार ले रही है, मुझे लगता है कि यह स्टेट के लिए बहुत ही अच्छा रहेगा। We really welcome this once again. लेकिन ये स्टेप्स 10 साल बाद आए हैं, इसे जल्दी किया जाना चाहिए Implementation is the most important part. हमलोग लॉ बना लेते हैं, इम्पलिमेन्टेशन के लिए हमको ठीक तरह से सोचना चाहिए, आगे चलकर यह हमारे लिए फायदेमंद होगा। Thank you very much.

SHRI TATHAGATA SATPATHY (DHENKANAL): Sir, namaskar. I rise to speak on the Arbitration and Conciliation (Amendment) Bill, 2015.

As you know, it is a well-established fact that unfortunately both the Central Government and most of the State Governments invariably lose cases when it comes to arbitration. It is also a fact that for the past 15 years or so, maybe a little longer from 1992 onwards when that so-called liberalization took place, our legal system, our Government have more or less been run from the shadows by foreign consultants and mega Indian

corporates.

It is true that arbitration and conciliation are both necessary components for creating a proper environment for conducting business between any two parties. But this also gives me a peep into the governance angle vis-Ã -vis the legal side of this country. If the Government can so bravely go ahead and pass an Amendment Bill stating that a certain timeframe is set by which time a particular arbitration has to be completed, why cannot the hon. Minister think that a similar timeframe should be set for civil and criminal cases of different magnitudes? Maybe we can have different timings. A murder case could take shorter time, a rape case could take even shorter time and other cases could take slightly longer.

But it is not only justice delayed is justice denied. That is too oft repeated and it makes no sense. The other part that is actually taking place in this country is people are losing faith in our judicial system because they feel that there is no justice, it never comes, when it comes also it has no significance. All these plethora or slew of regulations that are being brought to Parliament – yesterday there was that commercial courts Bill as you are aware and today this Arbitration and Conciliation (Amendment) Bill – show the Government's eagerness for strengthening the mindset of ease of doing business. And this Bill professes to create an alternative dispute resolution mechanism.

Here the assumption is that the arbitrator will be unbiased. It is in Section 12. And it is up to the magnanimity of the arbitrator to be honest or not and come out clean with her or his connections with either of the concerned parties. Government here should also consider setting up an institute like the ones you have for training the IPS and the IAS officers. Like that you can have a training institute where you create a bunch of arbitrators who are trained professionally. We should not take retired people because it is time our mindset moved beyond retired people. We should employ younger people who can put in longer hours. Give them proper salaries, check their background and train them to be arbitrators.

I will give an example of how arbitration takes place currently. In the Krishna-Godavari Basin gas field, the bid was put up in 1999.

15.00 hours

Interestingly, ONGC and Reliance were two bidders and both of them took 10 years, from 1999 when they got the bid, to start the work. In 2009, they started the work. ONGC, which is a Government company funded by taxpayers' money is supposed to be doing good for the country. In 2013, ONGC claimed that Reliance had siphoned off Rs 11,000 crore worth of gas from ONGC blocks. That means they had dug in, made a pipeline and siphoned off gas from ONGC blocks.

I am happy that my colleagues are interested that Reliance should be investigated. I for one have always been saying that our mega corporates have not become mega by inventing something. They are not Microsoft, they are not Apple, they are not Ford. They have become rich, super rich and maybe one of the richest in the country simply by looting the national resources. These people have managed to corner our coal, our petroleum, our gas, our land through bureaucratic grip, through bureaucratic strength and they have become rich. We have yet to see an Indian company make a mark in the world theatre by creating something. We have not seen that as yet.

Going back to Krishna-Godavari basin case, Reliance India Limited did not even bother to reply. Then the Directorate General of Hydrocarbons set up an independent study by a US-based consultant DeGolyer and MacNaughton. The consultant submitted that ONGC's claims were valid. ONGC filed a case in Delhi High Court in May, 2015 against Reliance Industries Limited. Reliance India Limited is already contesting three arbitration suites in connection with its KG basin operations. Reliance Industries Limited ignored the national interest.

Similarly, it is very surprising in the case of Vodafone. I am not sitting here and judging whether Vodafone is right or wrong. But Vodafone has been slapped with a huge income tax claim by the Ministry of Finance of the Government of India. It is through a process of law and who has passed that law? This very House, these hon. Members have passed that law. Basing on that law, taking strength from that law, Vodafone was slapped with an income tax amount to be paid. Unfortunately, our system is such that Vodafone has not even bothered to go in appeal and it has not asked for arbitration. Yet, it is there all over this country and the Government sits quiet. We do not have the teeth to implement our own Government's orders.

You have brought in an amendment to Section 25 (a) saying that this Act will not be retrospective. When the Bill for judges' pension and salary could be retrospective, why can you not amend it with retrospective effect so that ONGC-RIL case could be brought under this Act and let it be adjudicated as early as possible within 18 months and let the people of this country get some justice some time. Let us be fair to them.

Sir, we have very big legal luminaries in this Government who we know are going through bad times. I am not mentioning DDCA; that is not my concern. You were there in the earlier House also. You have seen how those same lawyers managed to destroy and pull down that Government and destroyed the country in the process. So, we know the acumen and the ability of our lawyers. They are great people. Nobody can challenge their intelligence. But as far as matters of governance go, I do not think or I do not agree that they are actually good at it.

This section 24 says that there will be hearings on a daily basis without adjournments. I mentioned the point that if you can actually legislate like that and complete cases within a specific time, please consider whether this could be done for other cases also.

I would like to give one small example. When we have this law in force, let us say, suppose a company like Adani goes for arbitration with an arbitration case to the Orissa High Court – it has not gone, I am just giving an example. I do not know who Adani is. It goes to the Orissa High Court and asks for an arbitration and the High Court sets up an arbitration desk or court and they file a case regarding a port that they own in the State, let us assume. It could be Chennai. One day you will be happy or you will be surprised to know that the Chennai Port also belongs to Adani. It is not impossible. ...(*Interruptions*)

SHRI NISHIKANT DUBEY (GODDA): Who is Adani? ...(*Interruptions*)

SHRI TATHAGATA SATPATHY : I do not know. It could be Nishikantji also. ...(*Interruptions*) I am not saying anything. Nishikant Dubeyji is present in the House; so, I can take his name. Now, I am scared. I am looking around. I am seeing whoever is around because I can take only their names. Otherwise, it seems, you cannot take the name of John F. Kennedy because he is not present in the House. How do we know? His ghost might be here. ...(*Interruptions*)

Anyway, I am coming back to arbitration. They have placed this Adani agent in the Paradip Port Trust now. This gentleman is busy damaging the port and making it grind to a halt. They are in the process of completely destroying Paradip Port. When you can do that, is it possible that in this arbitration thing, unless you have a professional team of arbitrators, the Government will set up arbitrators who will seem suitable to say, Mukeshji. ...(*Interruptions*) No, he is not in the House. I was talking about that Hindi film singer. Is it possible that there can be spot fixing or match fiction? I would like clarity of vision in this case.

I would also request this in the end. Have you worked out any process for the common citizen owning a small business establishment who gets involved in a litigation of a small amount to get justice faster? Or, will this only be a country of corporates? Ease of doing multi-billion dollar business may become our national slogan instead of Satyameva Jayate.

Thank you, Sir.

श्री श्रीरंग आप्पा बारणे (मावल): महोदय, मैं मध्यस्थता और सुलह अधिनियम, 2015 के समर्थन में बोलने के लिए खड़ा हुआ हूं। हालांकि मध्यस्थता और विवाद निस्तारण का तेज और सस्ता विकल्प माना जाता है लेकिन सर्वोच्च न्यायालय ने हाल ही में एक फैसले में कहा है कि यह तरीका निहायत महंगा और समय खपाऊ है। यह बात सर्वोच्च न्यायालय ने अपनी एक सुनवाई के दौरान कही है। यह भी कहा है कि इसी प्रक्रिया को निर्विवाद रूप से अदालत में चुनौती दी जाती है।

मध्यस्थता और सुलह अधिनियम के कुछ प्रावधान ऐसे हैं जो इस पूरे क्षेत्र को ही इस विषय पर अधिवक्ताओं के लिए जोरदार बना देते हैं। वर्ष 1996 का यह अधिनियम संयुक्त राष्ट्र के अंतर्राष्ट्रीय व्यापार कानून अथवा यू.एन.सी.आई.टी.आर.एल. के अनुकरण में बनाया गया है। अगर हम उच्च न्यायालय तथा उच्चतम न्यायालय के दिए गए फैसलों को देखें तो यह मामला अब गहरी कानूनी अव्यवस्था का रूप ले चुका है। हाल ही में सर्वोच्च न्यायालय ने एक फैसला दिया,जिसमें विवाद की शुरूआत सन् 1995 के आसपास हुई थी जबकि फैसला सन् 2005 में सुनाया गया। दिल्ली उच्च न्यायालय की एकल पीठ के समक्ष पहली चुनौती का निस्तारण वर्ष 2006 में हुआ और इसी न्यायालय के समक्ष अपील का निस्तारण वर्ष 2012 में हुआ। इसके उपरांत भी ऐसा नहीं लगता है कि ये मामले यहीं पर खत्म हो जाते हैं बल्कि गलतियों में सुधार के लिए समीक्षा याचिका और उपचारात्मक याचिका के रूप में अलग-अलग तरह से न्यायालय का दरवाजा खटखटाया जाता है।

यह अधिनियम अपील की गुंजाइश को सीमित करता है। बहरहाल उस शाब्दिक प्रावधान ने अपीलों के लिए कोई चुनौती पेश नहीं की और एसोसिएटेड बिल्डर्स मामले में दिए गए फैसले में कम से कम 20 नजीरों का उल्लेख है। किसी भी मामले में दिए गए फैसले को तब चुनौती दी जा सकती है, जब वह भारतीय कानून अथवा देशहित या फिर न्याय और नैतिकिता के प्रतिकूल हो। ये लचीले वाक्यांश हैं और विभिन्न मामलों में उनको अलग-अलग तरीके से परिभाषित किया जा सकता है। अदालती हस्तक्षेप की रोक के बावजूद सर्वोच्च न्यायालय मध्यस्थता के मामलों में हर साल बड़ी संख्या मं सुनवाई करता है और फैसले सुनाता है। उच्च न्यायालय के पास अपनी समस्याएं हैं। मध्यस्थों की नियुक्ति ही पहला और सबसे विवादास्पद मसला है। अनेक मामलों में सर्वोच्च न्यायालय के एक लंबे फैसले की झिकिचाहट के बाद वापस लेना पड़ा क्योंकि न्यायाधीशों ने कुछ तथ्यों की अनदेखी कर दी थी।

एक सवाल अक्सर उठाया जाता है कि अनुबंध में मध्यस्थता का प्रावधान है या नहीं। यहां तक कि सर्वश्रेष्ठ मसौदाकार भी गलतियां करने से बच नहीं पाता। एक और मुद्दा जिस पर बार-बार असहमति पैदा होती है कि मध्यस्थता पंचाट का क्षेत्राधिकार क्या हो? कुछ अन्य मसले जो अदालती आदेश तक मध्यस्थता के मामलों को ठिठकाए रखते हैं, वे हैं मध्यस्थ का आचरण, अंतर्राष्ट्रीय अनुबंधों में प्रशासनिक कानून और विदेशी मामलों में दिए गए फैसलों को पूर्वतन आदि।

विधि आयोग ने अपनी 246वीं रिपोर्ट, जिसका संबंध मौजूदा कानून में संशोधन से है, ने कई सुझाव दिए हैं। इसमें तयशुदा शुल्क ढांचा भी शामिल है। यह सिफारिश इसलिए की है ताकि मध्यस्थता के बढ़ते खर्च को सीमित किया जा सके। आदर्श शुल्क का प्रस्तावित ढांचा उतना ही अव्यावहारिक होगा जितना कि सर्वोच्च न्यायालय के अधिवक्ताओं के लिए तय प्रस्ताव। सन् 1996 के अधिनियम में सुधार के 100 से अधिक प्रस्ताव लम्बित हैं। इससे पहले भी कानून को सुधारने का प्रयास किया जा चुका है।

महोदय, मैं आपके ध्यान में लाना चाहता हूं कि देश की विभिन्न अदालतों में लगभग तीन करोड़ से अधिक केस सुनवाई के लिए पेंडिंग पड़े हैं, जिस पर माननीय सुप्रीम कोर्ट ने भी चिन्ता व्यक्त की है। जिला अदालतों में 2 करोड़ 92 हजार से अधिक केस पेंडिंग हैं, जिनमें से 10.40 प्रतिशत केस दस साल से अधिक और 18.02 प्रतिशत केस पांच से दस साल से पेंडिंग हैं। इनमें से 41.64 प्रतिशत केस पिछले दो साल और 29.94 प्रतिशत केस पिछले दो से पांच साल से पेडिंग पड़े हैं। लगभग 40 लाख से अधिक केस देश के उच्च न्यायालयों में पेंडिंग हैं, लगभग 58,906 से अधिक केस सुप्रीम कोर्ट में पेंडिंग हैं। 56 वर्ष से महाराष्ट्र-कर्नाटक सीमा विवाद सुप्रीम कोर्ट में पेंडिंग है।

इससे पहले भी इस कानून को सुधारने का प्रयास हो चुका है, विधि आयोग की 176वीं रिपोर्ट पर आधारित यह कोशिश इसलिए विफल रही क्योंकि राज्य सभा ने वर्ष 2003 में ही संशोधन पारित कर दिया था, लेकिन स्थायी समिति विधेयक में सुधार करना चाहती थी, लेकिन वह स्वतः समाप्त हो गया। अब एक और मौका है, जिसके जरिए मध्यस्थता में विश्वास बहाल किया जा सकता है।

अतः मैं सरकार द्वारा लाए गए इस विधेयक का पुरजोर समर्थन करता हूं। लेकिन वह स्वतः समाप्त हो गया। अब यह मौका है जिसके माध्यम से विश्वास बहाल किया जा सकता है। मैं अंत में सरकार द्वारा लाए गए इस विधेयक का समर्थन करते हुए अपनी बात समाप्त करता हूं।

SHRI A.P. JITHENDER REDDY (MAHABUBNAGAR): Thank you very much, Sir, for giving me this opportunity.

The basic premise behind Alternative Dispute Resolution (ADR) is to provide parties a cheaper, quicker and more flexible alternative to the rigid Court dispute-redressal process. This Amendment Ordinance is a well-intended initiative by the Government to improve the arbitration process, and I welcome the move. However, there are still a few key structural deficiencies with the Ordinance that needs to be addressed immediately. I have also moved an amendment on this.

It is unclear whether the amended provisions shall apply to pending arbitration proceedings. The Law Commission of India, in its 246th Report, which recommended amendments to the Arbitration & Conciliation Act, 1996, had proposed to insert a new Section 85-A to the Act, which would clarify the scope of

operation to each amendment with respect to pending arbitration proceedings.

However, this specific recommendation has not been incorporated into the Ordinance. One of the reasons for bringing about this ordinance is to instil a sense of confidence in foreign investors in our judicial process, with regard to certainty of implementation in practice and ease of doing business. Therefore, it is strongly urged to incorporate Section 85A as proposed by the 46th Report of the law Commission of India, where it clearly states the scope of operation of the amended provisions.

As regards Clause 15 of this Ordinance, which inserts Section 29A - time limit for Arbitral Award is a serious obstacle which creates more problems than it solves. Section 29A sub - section (1) "The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon reference".

This provision sets a 12 month time limit for completion of the arbitration proceedings, failing which, parties can agree for only six months extension. Yes, I do appreciate that it is with good intentions to speed up the process of an arbitration process but, at what cost? This time limit is quite unreasonable as well as unrealistic in practical terms.

As per Section 29A sub-section (4), failing to complete the arbitration proceeding within 12 - 18 month period will result in the termination of the arbitration, if the Court has not extended the period. And, if the Court does grant an extension, it is only after deducting up to 5 per cent fees from arbitrators for the delay each month. Not only we are creating additional burden for the parties to an arbitration, but we are also burdening the courts. It goes against the objective for bringing in this Ordinance, as an increase in judicial intervention in arbitration matters will only lessen foreign investor confidence in the Indian judicial system. It could also potentially threaten the quality of the final arbitral award as a result of the impractical time limit prescribed. It is problematic for us to determine the time-period for completion of proceedings under Arbitration, as it primarily depends on the case. While a simple contract dispute involving little or no witness evidence might be resolved within 12 months, but what about a complicated construction dispute involving multiple parties (and possibly multiple contracts), tens of complex claims and counterclaims requiring factual and expert evidence, and involving millions or billions of dollars in dispute? Would it not this take substantially longer? Let us not create a restrictive environment even in the world of Alternative Dispute Resolutions which is founded on principles of limited regulation. This specific amendment is based on a faulty premise that one-size fits all approach will work in India irrespective of the nature, complexity and stakes involved in the different disputes.

The London Court of International Arbitration had suggested that the median duration for arbitration was 16 months. However, its website also highlights that "there is no such thing as an "average" arbitration. Sums in issue, and technical and legal complexity may vary greatly between one case and another, as may the volume of evidence, oral and written, that may be required to determine the dispute. We should not intervene and prescribe a time limit for finalizing a dispute, which is fundamentally a judicial function, and not necessarily a legislative requirement. Therefore, I would strongly urge the Government to address this rigidity in the Amendment Bill and consider either removing this clause which inserts Section 29A from the Bill altogether, or to at least changing the time limit from 12 months to a more realistic 24 months instead. My case has already taken 18 months. The hon. Minister has not solved it yet. You know my arbitration and this arbitration will go for a long time. So, I request that some period should be given otherwise the confidence of the companies will be taken away.

Thank you.

SHRI KESINENI SRINIVAS (VIJAYAWADA): Hon. Deputy-Speaker, Sir, thank you for giving me this opportunity.

The judicial system in India continued to evolve through the reigns of the Maurays, the Mughals and the British. The present system has held India in good stead. However in the significant increase in the role of international trade, the economic development of nations over the last few decades has been accompanied by a considerable increase in the number of commercial disputes as well.

In India too, rapid globalization of the economy and the resultant increase in the competition has led to an increase in commercial disputes. At the same time, however the growth of industrial growth, modernization and improvement of socio economic conditions, in many instances has out-paced the growth of dispute resolution mechanisms. In many parts of India rapid development meant increased case loads of already over-burdened courts further leading to notorious slow adjudication of commercial disputes. As a result alternative dispute resolution mechanism including arbitration has become more crucial for businesses operating in India as well as for those doing business with Indian firms.

In sum, a huge influx of overseas commercial transactions spurred by the growth of Indian economy has resulted in a significant increase of commercial disputes and arbitration practices lagged behind. The present arbitration system in India is still plagued by many loopholes and shortcomings. The quality of arbitration has not qualitatively developed as a quick and cost effective mechanism for resolution of commercial disputes. According to the World Bank's `Ease of doing Business' Report for the year 2015, India has been ranked 178 of the 189 nations in the world in contract enforcement. The World Bank's `Ease of doing Business' rankings analysed the whole business eco system in the country. The rankings include parameters like starting a business, dealing with construction permits, getting electricity, access to credit and enforcing contracts amongst a total of ten parameters.

Sir, India has shown a significant jump of nine places in starting a business parameter and 29 places in getting electricity in the 2016 rankings as compared to 2015. However, there is a drop in the ranking by six places on access to credit and the country's rank on enforcing contracts has remained unchanged at the 178th position.

The contract enforcement rankings factor in quality of judicial processes. On a scale of 0 to 8, India's index of judicial processes is at 7.5. In the field of case management, India scores as low as 0.5 out of 6. With commercial disputes piling up and investors and business men looking up to foreign jurisdictions to settle disputes, India is losing a valuable opportunity for growth.

India is at a juncture where massive investment is needed to create infrastructure to spur economic growth and improve the living standards of the people. This is not possible solely through Government investment. For instance, urban development and rejuvenation alone require about two trillion US dollars upto 2030. It is imperative that we create an atmosphere where businesses are encouraged to invest in creation of public infrastructure.

Until 1996, the law governing arbitration in India consisted mainly of three statutes. They are the Arbitration (Protocol and Convention) Act, 1937, the Indian Arbitration Act, 1940 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The Government enacted the Arbitration and Conciliation Act, 1996 in an effort to modernise the outdated 1940 Act. The 1996 Act is a comprehensive piece of legislation modelled on the lines of the United Nations Commission on International Trade Law's Model Law.

The primary purpose of 1996 legislation was to encourage arbitration as a cost-effective and quick mechanism for the settlement of commercial disputes. The 1996 Act covers both domestic arbitration and international commercial arbitration. But the current ground realities indicate that these goals are yet to be achieved.

There is a growing recognition that arbitration is becoming a costly affair which is a departure from the intent of the 1996 Act. This is particularly true in ad-hoc arbitration where the fees of the arbitrators are not regulated but decided by the Arbitral Tribunal with the consent of the parties. Some of the Arbitral Tribunals consisting of high profile arbitrators such as the retired Supreme Court and the High Court judges charge high arbitration fees. Further, it is an emerging trend amongst large corporations involved in high stake commercial disputes – including Government Undertakings – to hold ad-hoc arbitrations in five star hotels and other costly venues.

There is a culture of delays where proceedings are frequently adjourned. Arbitration is more cost effective than litigation only if the number of arbitration proceedings is limited.

The prevalent procedure before the arbitrators is as follows: At the first hearing, the claimant is directed to file his claim statement and documents in support thereof. At the second hearing, the opposing parties are directed to file their reply and documents and at the third hearing, the claimant files his rejoinder. At each of these stages, there are usually at least two or three adjournments. The first occasion for considering any question of jurisdiction does not normally arise until the Arbitral Tribunal has issued at least six adjournments. If the respondent is the State or a public sector undertaking, the number of adjournments is higher as it takes more time for these parties in internally finalizing pleadings and documents that are to be filed before the Arbitral Tribunal. Parties pay a fee to the arbitrators for each hearing and thus spend a substantial amount of money. This is in addition to the other costs involved.

To remedy this situation, the Bill stipulates a period of 12 months for the Arbitral Tribunal to make its award.

According to a survey conducted by the Construction Industry Development Council, the amount of capital blocked in construction sector disputes is over 5,40,000 millions. Given the tardy pace of justice and recurring delays in the judicial system, it is essential that we reform the system to make it more cost effective and less time-consuming.

The Bill moves the country in that direction and would definitely encourage investments and help India become a centre of arbitration. This has been the Government's sincere effort and with this I welcome the Bill and support its passing. Thank you.

SHRI MEKAPATI RAJA MOHAN REDDY (NELLORE): Mr. Deputy-Speaker, Sir, thank you for giving me this opportunity. I welcome and support this Arbitration and Conciliation (Amendment) Ordinance, 2015.

This amends the 1996 Act by providing time limits both for awards and for the time of disposal of appeals by courts. We welcome these amendments as they bring respectability and credibility to alternate dispute resolution mechanism in the country.

One of the main reasons for India's inability to attract FDIs to its potential is the inordinate time taken for legal dispute resolution. Domestic investors too are increasingly becoming wary of this situation. Even arbitration, as per the 1996 Act, has been getting inordinately delayed negating the very objective of quick resolution to disputes. Unless we do something urgently, there will be no prospect of our attracting huge investments that are essential for our economic growth.

The delay of time in arbitral proceedings was not the only malady plaguing arbitration of India, another equally daunting challenge was courts' interference in arbitration under Section 9 and awards being set aside by courts.

It is shocking that arbitration cases, which are supposed for resolution, have remained unresolved for over a number of years. It looks like the present Bill does not bring within its fold the existing cases where the arbitrator is already appointed. In my opinion, even the existing cases should be brought within the purview of this Bill. I would request the Government to include this in the Bill.

The amendments, if passed by us, would be a major game changer and enhance the faith of foreign investors towards arbitration in India. This would signal the start of a new era in the Indian arbitration regime.

It is in this context that the present Bill proposing time limit of one year is highly welcome. It is provided that additional fees shall be provided to the Tribunal if an award is made within six months. If the parties give consent to an extension, it shall be made for a further period up to six months. Similarly, the Bill sets time limit of one year for disposal of cases by the courts and this will go a long way in addressing the major concerns.

As per the Bill, the only ground on which courts can set aside an award is when it is, (i) affected by fraud or corruption, (ii) in contravention with the fundamental policy of Indian law; or (iii) conflict with the notions of morality or justice.

A new sub-section in Section 11 is to be added to the effect that an application for appointment of an arbitrator shall be disposed of by the High Court or the Supreme Court as expeditiously as possible and an endeavour should be made to dispose of the matter within sixty days.

The Ordinance also permits parties to choose to conduct arbitration proceedings in a fast track manner. The award would be granted within six months.

A new Section 31 A is to be added for providing comprehensive provisions for cost regime. It is applicable both to arbitrators as well as to related litigation in court. It will avoid frivolous and meritless litigation or arbitration.

Section 17 is to be amended for empowering the Arbitral Tribunal to grant all kinds of interim measures which the court is empowered to grant, under Section 9 and such order shall be 'enforceable in the same manner as if it is an order of the court'.

We support the Bill in its entirety and also urge the Government to bring even the existing arbitration cases within the ambit of the present Bill.

With these words, I conclude and I support the Bill. Thank you.

ADV. JOICE GEORGE (IDUKKI): I would thank you, hon. Deputy-Speaker, Sir, for letting me to discuss the Arbitration and Conciliation (Amendment) Bill, 2015.

Sir, we are all discussing how to facilitate the ease of doing business in our country. In fact, we are discussing a very lucrative business of Arbitration and Conciliation not in the domestic arena but in the international sphere also. Nowadays, arbitration and conciliation has become a very lucrative business. In this context, we are looking at this Bill.

Sir, in this Bill, we are trying to reduce the involvement of the court in an arbitration proceedings. For that, we have incorporated certain provisions to restrict the courts from passing interim orders after constitution of an Arbitration Tribunal. We have also reduced the scope of judicial interference in an award by introducing a new section by way of Clause 18. In Clause 18 of the Amendment Bill, an explanation is given to public policy. It says: "For avoiding any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--

" it is in contravention with the fundamental policy of Indian law and it is in conflict with the most basic notions of morality or justice. "

My humble question to the hon. Minister is whether there can be any distinction among the morality. Is it the basic notion of morality or high grade of morality or the second grade of morality? Is there any differentiation between the standards of morality in our judicial system? If that be the situation, we will also be in predicament. When we come to Section 57, it is said that in order to foreign award may be enforced under this Chapter it shall be necessary that the enforcement of the Award is not contrary to the public policy or the law of India. In this context, I may refer to the decision of the hon. Supreme Court of India in ONGC versus Saw Pipes. In that case, the Supreme Court elaborated the scope of public policy by interpreting that violation of the statutory provisions of Indian law is also against the violation of public policy. If that be the situation, how can we enforce a foreign arbitral award in view of Section 57 where there is a very specific stipulation that if it is against the public policy, it cannot be enforceable. How can it be enforced? On the one hand, we are reducing the scope of the public policy. More over, in our Constitution, there is a restriction for making law against the public policy and the fundamental feature of our Constitution. So, we are permitting the international forum or the Indian arbitrators to pass an award against the public policy and the notions of morality. Can it not be termed as basic notion of morality? Morality is only one. Therefore, I urge upon the Minister to clarify as to whether there are two standards of morality and that can be possible in our judicial system and justice dispensation system.

Yet another issue is about Section 28A, an arbitral award arising out of arbitration other than international commercial arbitration may also be set aside by the court if the court finds that the award is vitiated by patent illegality appearing on the face of that award. So, we are encouraging international arbitrators to pass orders against our law also. There are provisions in this Act restricting the fee structure. But, as far as the international arbitrations are concerned, the arbitration by the arbitrator sitting outside the nation, there is no bar at all. But even if an international award is passed, that cannot be subject to be challenged on the basis of the illegality appearing on the face of the award in Indian courts. That may lead to another legal lacuna. It may be subjected for challenge before the Supreme Court. Ultimately, this will also create problems because we are now trying to get over the decisions of the Supreme court in the ONGC versus Saw Pipes and the other case.

The other case is the Army Welfare Organisation *Versus* Sumangal Service Private Limited reported in AIR 2014 SC 1344. In this case, there may be issues regarding the judicial interferences, though we are trying to limit the interferences of the Judiciary.

Regarding the time limit prescribed in this enactment, we have fixed certain time limit for passing the award, for concluding the arbitration proceedings. In our experience, we have a lot of enactments prescribing the time limit for concluding the judicial process but in none of the cases, there is compliance at all. No court is passing the verdict or concluding the proceedings within the time limit prescribed in the enactment. Here also, though we have specified certain time limit for concluding the case and giving the award, we are also giving some grace period of six months over and above the one year prescribed. My apprehension is regarding the specification in the Act to the effect that arbitral tribunals are not going to conclude the proceedings within the time limit prescribed.

The Report of the Standing Committee on the Arbitration and Conciliation (Amendment) Bill, 2013 which was submitted in this House in July,

2015. The Committee had specifically recommended that there should also be some penal provisions incorporated in the Act, including the blacklisting of the arbitrators those who are failing to comply with the time limit prescribed or other standards to be met by them in accordance with the provisions of the Act.

Yet another issue is regarding the institutional arbitration. As I mentioned earlier, the arbitration has become more or less a business. Arbitration Hubs are being developed in all the nations including Singapore. But unfortunately, we cannot attract any litigants or prospective parties in our land for conducting arbitration in our nation because of lack of infrastructure or because of the ambiguities in the prevailing laws. In this context, I may invite the attention of the hon. Minister to the recommendations made by the Standing Committee as regards the institutional arbitration. For institutional arbitration, we should have a specific policy. If such a conducive atmosphere is created in India, international parties would opt for India as a venue for arbitration, and India shall become a major player in the field of international arbitration. If we can introduce such system here, we can avoid huge money that we are spending for international arbitration especially in our Government enterprises. For that, we should have certain measures to be adopted.

First of all, we have to set up centre for excellence for international arbitration. For that, it may be an accredited international centre for excellence. It may set up its own parameters and shall be independent of Government control. It shall have a statutory apex body with the Chief Justice of India as Chairperson, one or two representatives of the Government and professionals, from the institutions of Chartered Accountants, engineers and lawyers shall be Members. Inclusion of an expert is essential while dealing with specialised cases like maritime insurance, technology, transfer of insurance, building contracts, etc. It shall frame its own rules which will govern the appointments, preparation of panel, fixing of fees, conduct of arbitration as well as that of the arbitration proceedings. Such rules shall be made public. This would provide familiarity not only to the international community who have to look out for a proper arbitration avenue for resolution but would also instil confidence in the minds of public that this is a transparent and reliable institution. This will also ensure accountability of the arbitrators. By this way only, we can ensure the credibility of our arbitration system and thereby attract persons from abroad for conducting arbitration cases in our land.

The awards made by the arbitration shall also be scrutinised by this apex body for the purpose of ensuring more transparency and professionalism. Professional bodies like the Bar Council of India, the Institute of Chartered Accountants, etc. should create arbitration wings. They may be granted affiliation to the main arbitration institution. By this way, we can improve our institution of arbitration system. By virtue of Section 11 of the Act, the Supreme Court and High Courts are entrusted with the responsibility to appoint arbitrators. But the unfortunate thing is, the Supreme Court and High Courts are not discharging the duty up to the expectations of the law making body, that is, the Parliament. In a query put under the RTI Act to the Supreme Court as well as High Courts, it is found that none of the High Courts, except two, are keeping the list of competent arbitrators. The arbitrators are being appointed according to the whims and fancies of the judges and there is no transparency at all. This is also a matter which has to be looked into by this House and there should be some checks and balances to demarcate the powers of the designated courts and designated judges to appoint arbitrators.

Sir, now we are talking about arbitration, international arbitration, international awards and enforceability of international awards in our country. In this context, I would like to invite the attention of the hon. Minister to yet another issue which is having some connection with this issue. We are signing a lot of international treaties every year. We go on negotiating and we are signing many international treaties. But unfortunately we are not having a separate department for international law under the Ministry of Law and Justice. All these international treaties are being vetted and they are then finalised by bureaucrats. The signing of international treaties has become, more or less, a bureaucratic function. Unfortunately, in our Constitution, there is no provision for getting all these international treaties ratified by the Parliament before their implementation. In the Constitution of USA and in other countries, where there is a federal structure of governance, they are having a provision in their Constitution that unless and until an international treaty gets the nod of the Parliament, it cannot be enforced there. Unfortunately we do not have such a provision in our Constitution. Once we enter into an international treaty, it is binding on us and we will have to follow the regulations or rather the restrictions put on us by that international treaty. So, my humble request to the Minister is that there should be some mechanism in the Ministry of Law and Justice to, at least, see what is exactly happening and what are the treaties which are going to be signed by various Ministries and they should be vetted by the Law Ministry.

In addition to that, I would like to make another point. In the case of rubber and cardamom which are grown in Kerala, we are facing a lot of problems. I am not going to narrate the agonies of the poor farmers there. The issue is that we entered into ASEAN Agreement, WTO Agreement and so many other trade agreements. But when those agreements were signed, at that time there were no consultations held with the stake holders including the States which are having higher stakes in such matters. It was a unilateral exercise carried out by the Central Government and we have signed all these agreements. But due to these agreements, rubber and some other commodities are being imported into our country without any restriction and the poor farmers are suffering. Though there is a renegotiation clause in the treaties, it cannot be invoked by the State Governments; it can only be done by the Central Government and that too only after completing a cumbersome process. So, in these circumstances, we should have a mechanism that even before entering into an international treaty, there should be consultations with all the stake holders and State Governments so as to ensure the protection of the interest of all the stake holders.

Sir, the intention behind this Amendment is laudable. But there are certain pitfalls in this Amendment as I pointed out earlier. If we are having a foolproof system to dispense justice in a speedy and user friendly manner, it would be better. The features of the 1996 Act are party autonomy, minimum judicial intervention and maximum judicial support. If we want to foster all these features of the 1996 Act, there should be some rethinking on the issue specially that the proposed amendments as regards the scope of challenge of the awards passed by international arbitral tribunals as well as our domestic arbitral tribunals specially on the ground of the violation of public policy and the awards passed against the laws prevailing in our land. It is because, we will have to uphold the majesty of the law of our nation, our land. Though there is compulsion on the part of the international community by way of international treaties and conventions, even then we will have to uphold the majesty of our law and our legal system.

With these words, I may conclude. Thank you, Sir.

15.51 hours (Shri Anandrao Adsul *in the Chair*)

श्री रत्न लाल कटारिया (अम्बाला) : उपाध्यक्ष महोदय, आदरणीय मंत्री जी को बधाई देना चाहूंगा कि हिन्दुस्तान की उन्नति के लिए एक बहुत ही महत्वपूर्ण बिल आज इस सदन में चर्चा के लिए आया है। कल भी आदरणीय मंत्री जी एक बहुत ही महत्वपूर्ण बिल, कॉमर्शियल कोर्ट से संबंधित बिल सदन में लाये थे, जिसे इस महान सदन ने पास किया। सदन के नेता हमारे लोकप्रिय प्रधानमंत्री, आदरणीय नरेन्द्र मोदी जी ने सारे विश्व का दौरा करके हिन्दुस्तान की छवि को जिस तरह से दुनिया में चमकाया है, यह उसी का ही फल आज देखने को मिल रहा है कि हिन्दुस्तान 'इज ऑफ डूइंग' बिजनेस में पिछड़ रहा था, वह अब धीरे-धीरे आगे बढ़ रहा है। जिस तरह से आज इंवेस्टर भारत की ओर आकर्षित हो रहे हैं, उनसे हमें लगता है कि हमारा जो संकल्प है कि हम हिन्दुस्तान को चाइना और अमेरिका से भी शक्तिशाली राष्ट्र बनायेंगे, जिस तरह से धड़ा-धड़ एक के बाद एक प्रगतिशील कानून इस महान सदन के माध्यम से पास हो रहे हैं, उसी दिशा में आज यह आर्बिट्रेशन एंड कॉन्शिलिएशन अमेंडमेंट बिल आया है।

डिप्टी स्पीकर सर, यद्यपि इससे पहले भी भारत में वर्ष 1996 का आर्बिट्रेशन एक्ट काम कर रहा था, लेकिन वक्त के साथ चलते हुए जब वर्ष 1991 के बाद उदारीकरण का युग शुरू हुआ, उसके बाद से हम देख रहे हैं कि दुनिया किस प्रकार एक छोटी-सी गेंद की तरह सिमट कर रह गयी है। अभी पेरिस में जलवायु परिवर्तन पर एक बहुत बड़ी मिनिस्ट्रियल कॉफ्रेंस हुई। उसमें देखने में आया कि किस प्रकार हमारे देश ने भी एक-एक छोटे-छोटे क्लॉज़ के लिए वहां संघर्ष किया। आज भी केन्या के नैरोबी में डब्ल्यू.टी.ओ. को लेकर एक महत्वपूर्ण और मिनिस्ट्रियल कॉफ्रेंस चल रही है। उसके अंदर भी भारत के हितों के बारे में एक-एक प्वायंट के ऊपर लड़ाई लड़ी जाएगी। इन सब चीज़ों को देखते हुए हिन्दुस्तान के अंदर भी वक्त के साथ चलने के लिए, दुनिया के साथ चलने के लिए इस प्रकार के महत्वपूर्ण बिलों का पास होना अति आवश्यक है।

महोदय, इतिहास लिखा जायेगा कि जब भारत मां का लाल नरेन्द्र मोदी हिन्दुस्तान को आगे बढ़ाने के लिए इस महान सदन में चर्चा करा रहे थे, बिलों के ऊपर बातचीत हो रही थी, वहीं पर अपने-आपको हिन्दुस्तान का निर्माता कहने वाली कांग्रेस पार्टी के सीट्स सामने खाली-खाली नजर आ रहे थे।

आज विदेशों में विकास की चर्चा होती है तो न जाने क्यों हमारे सामने बैठे मित्रों के पेट में क्यों दर्द होने लगता है। हमारी सरकार की डेढ़ साल के कार्यकाल को देखने से यह बात सामने आ रही है कि इनसे हिन्दुस्तान की तरक्की हजम नहीं हो रही है। जिस व्यक्ति को ये लोग जहरीला इंसान कहते थे, मौत का सौदागर कहते थे, आज उस व्यक्ति की सारी दुनिया में चर्चा हो रही है। ओबामा जी हमारे प्रधानमंत्री जी को मैन ऑफ एक्शन कहते हैं, चाहे जापान हो या आस्ट्रेलिया हो चाहे रूस हो, सभी देशों के प्रमुख एक के बाद एक प्रधानमंत्री जी की विजनरी सोच के कायल हो गए हैं। मैं जब अतीत की ओर देखता हूं तो सोचता हूं कि जिस व्यक्ति को महारानी कांग्रेस पार्टी मौत का सौदागर कहती थी, अभी हाल ही में हेडली ने खुलासा किया है कि इशरत जहां मानव बम थी, हमारे नेता को पिछले 10-15 सालों में उड़ाने की कोशिश की गई, आतंकवादियों द्वारा उन पर मौत का साया हमेशा मंडराता रहा। अगर वह कांग्रेस पार्टी द्वारा फैलाए जा रहे जहरीले प्रचार का शिकार हो जाते, आज भारत अपना इतिहास बन रहा है, यह वही नरेन्द्र मोदी हैं जिसको मौत का सौदागर कहा जाता था जिसकी आज दुनिया के नेता कायल हो गए हैं। आज दुनिया इस व्यक्तित्व को चाह रही है, सरकार एक से एक क्रांतिकारी कानून पास कर रही है, इस बिल के पीछे यही मंशा काम कर रही है। हिन्दुस्तान भी इंगलैंड और सिंगापुर की तरह आर्बिट्रेशन का हब बने, जहां पर डिसीजन होने में देर नहीं लगती। इससे पहले हम वर्ष 1940 के आर्बिट्रेशन एक्ट से संचालित होते थे, जो केवल हिन्दुस्तान के अंदर होने वाले आर्बिट्रेशन को ही कवर करता था। लेकिन वक्त के साथ यूनाइटेड नेशन्स के अंतर्गत 1921 में कमीशन ऑन इंटरनेशनल ट्रेड बना, उसके आधार पर वर्ष 1996 में एक बिल लाया गया, उसमें हम आर्बिट्रेटर और कॉन्सिलेशन के बारे में कानून लेकर आए लेकिन वक्त के साथ उस कानून में इतनी कमियां दिखने लगी कि फैसला करने में सालों साल लगने लगे। फीस को लेकर भी कई बार आर्बिट्रेटर की दुविधाएं खड़ी होने लगी। आर्बिट्रेशन फीस के जो मामले लाखों में निपट जाने चाहिए थे वह करोड़ों में जाने लगे, इस तरह के मामले 15-20 सीटिंग में तय हो जाने चाहिए थे, उन मामलों को तय करने के लिए 100-100 सीटिंग होने लगी। न्यूट्रिलिटी को बढ़ावा देने के लिए इस बिल में संशोधन किया गया है। किसी व्यक्ति को आर्बिट्रेटर नियुक्त करने से पहले इन सब चीजों की जांच पड़ताल की जाएगी कि क्या आर्बिट्रेटर दूसरे पक्ष को जानता है क्या इसके भी संदिग्ध होने की संभावना है। इस बिल के अंदर एक टाइम फ्रेम में रिजल्ट देने की बात कही गई है, हमारे देश में वर्षों से मुकद्में लंबित पड़े रहते हैं, आज आर्बिट्रेशन के अंदर फैसले लेने की बात क्यों आई?

16.00 hours

हालांकि कल आदरणीय मंत्री जी ने यह बताया है कि जब से एनडीए सरकार वर्ष 2014 से आयी है तब से चाहे सुप्रीम कोर्ट, हाई कोर्ट या डिस्ट्रिक्ट कोर्ट हो, वहां पर लाखों की संख्या में मुकदमे निपटाये गये हैं और पैंडेंसी घटी है। लेकिन फिर भी आज जनसंख्या के हिसाब से इतने बड़े देश में मामले निपटाने के लिए एक बहुत बड़ा इफ्रास्ट्रक्चर खड़ा करने की आवश्यकता है। ...(व्यवधान)

सभापति महोदय, अभी तो...* होने लगा है। ...(व्यवधान)

माननीय सभापति : आपने दूसरी बातें ज्यादा बतायी हैं।

â€¦(व्यवधान)

माननीय सभापति : आप अपनी बात एक-दो मिनट में खत्म कीजिए।

â€¦(व्यवधान)

श्री रत्न लाल कटारिया : सभापति महोदय, आज इसलिए कहा जाता है कि प्राइवेट सैक्टर और पब्लिक सैक्टर में लिटिगेशन्स के दायरे को बढ़ाया जाये। जब पब्लिक सैक्टर में लगने लगा कि यहां पर मुकदमों की भरमार है तब यह सोच उत्पन्न हुई कि आर्बिट्रेटर के माध्यम से कुछ सक्षम लोग, कुछ एक्सपर्ट लोग जो समयबद्ध तरीके से मामलों का निर्धारण कर सकें, उन्हें इस काम में लगाया जाये। दुनिया के देश भी भारत को लेकर अशांकित थे कि भारत में जो इज ऑफ डूइंग बिजनेस की प्रक्रिया है, वह बड़ी धीमी है। यहां पर मामले सालों-साल लटके रहते हैं और महंगे भी होते हैं। इन सब चीजों पर पार पाने के लिए यह बिल इस महान सदन में लाया गया है। इसमें इस बात की व्यवस्था की गयी है कि अगर कोई आर्बिट्रेटर समयबद्ध तरीके सेसमय पर फैसला नहीं देगा, तो उसकी फीस में कटौती हो सकती है। इसमें इस बात का प्रावधान किया गया है कि जो टाइम से पहले जजमैंट देगा, उसे प्रोत्साहन राशि दी जा सकती है। इतना ही नहीं, अगर आर्बिट्रेशन के तहत जो मामले सुलझाये गये हैं, वहां कहीं करप्शन की बू आती है और ऐसा लगता है कि रूल ऑफ लॉ की कसौटी पर आर्बिट्रेटर की वह जजमैंट खरी नहीं उतरती तब इस कानून में हाई कोर्ट और सुप्रीम कोर्ट को पूरा-पूरा अख्तियार दिया गया है कि वह उन फैसलों को रिव्यू करे और कहीं गलती पायी जाती है तो उसका सुधार करे। ...(व्यवधान) ये इस बिल में प्रावधान किये गये हैं।

माननीय सभापति : आपकी सारी बातें आ गयी हैं, इसलिए आप अब अपना भाषण समाप्त कीजिए।

श्री रत्न लाल कटारिया: सभापति महोदय, अंत में, मैं इस क्रान्तिकारी और बहुत महत्वपूर्ण बिल का समर्थन करता हूं और आदरणीय मंत्री जी को बहुत-बहुत बधाई देना चाहता हूं कि वे एक के बाद एक बहुत ही महत्वपूर्ण बिल सदन में लाये हैं। धन्यवाद।

डॉ. अरुण कुमार (जहानाबाद) : सभापति महोदय, आर्बिट्रेशन और कॉन्सिलेशन बिल, 2015 पर चर्चा पर बोलने के लिए आपने अनुमति दी, उसके लिए मैं आपके प्रति आभार व्यक्त करता हूं। ...(व्यवधान) सरकार के संकल्प का एक हिस्सा है -- न्याय का सरलीकरण। इसी क्रम में कल भी एक कमर्शियल ऐपीलेट कोर्ट से संबंधित बिल लाया गया और आज भी यह बड़ा महत्वपूर्ण बिल है, जिससे न्याय प्रक्रिया सरलीकृत हो।

महोदय, इसमें जो प्रावधान किये गये हैं, निश्चित तौर पर अभी आर्बिट्रेशन और विवाद के संबंध में जिस तरीके से मामले निपटाये जाते थे, उसमें जो त्रुटि रह गयी है, उन त्रुटियों को ध्यान में रखते हुए इस पर विस्तार से मनन करके बिल लाया गया है।

महोदय, वर्ष 2003 से यह राज्य सभा में लंबित रहा, उसके बाद स्टैंडिंग कमेटी में गया और एक लम्बी प्रक्रिया से गुजरा है। सरकार ने यह महसूस किया कि यह महत्वपूर्ण बिल कई कारणों से लंबित था, निश्चित तौर से क्रियान्वित कराया जाए। इसमें समय सीमा का भी प्रोविजन किया गया है। आर्बेट्रेटर की मनमानी को भी इसमें अड्रेस करने की कोशिश की गयी है। मैं इस बिल का समर्थन करता हूं साथ ही मेरा मंत्री महोदय से निवेदन है कि इसी तरह का प्रावधान हम फौजदारी मुकदमों के लिए भी करने की व्यवस्था करें। यदि आर्बिट्रेशन की कॉस्ट में कमी आए तो छोटे दीवानी मुकदमे निचली अदालतों में मध्यस्थता के माध्यम से समाप्त किए जा सकते हैं। जिन विवादों का मध्यस्थता के माध्यम से दो करोड़ से ऊपर पैंडिंग मुकदमों के लिए भी किया जाए। कई बार ऐसा होता है कि हम गुस्से में केस कर देते हैं और बाद में यह महसूस होता है कि जिस पर केस किया गया है, वह निर्दोष है। इस तरीके से मध्यस्थता का माध्यम अख्तियार करने का एक तरीका कमर्शियल वायब्रेंसी को ध्यान में रखकर और राष्ट्रीय ग्रोथ को ध्यान में रखकर किया गया है। निश्चित तौर से सामाजिक सौहार्द को भी दिमाग में रखकर ऐसे आर्बिट्रेशन के तरीके को लागू किया जाए तो यह एक कारगर कदम साबित हो सकता है। सरकार उन सारी चीजों को अपने परव्यु में ला रही है, जिससे हमारा देश विकसित हो और न्याय प्रक्रिया का सरलीकरण हो। मेरा सुझाव है कि उस पर ध्यान देने का कष्ट करें। इन्हीं शब्दों के साथ मैं इस बिल का समर्थन करता हूं।

श्री कौशलेन्द्र कुमार (नालंदा) : महोदय, आपने मुझे मध्यस्थम और सुलह (संशोधन) विधेयक, 2015 पर अपना विचार रखने का अवसर प्रदान किया है, इसके लिए आपको धन्यवाद देता हूं।

सरकार इस अध्यादेश को डब्ल्यूटीओ के संदर्भ में संशोधन करने का काम कर रही है और विशेÂषकर अंतर्राÂट्रीय व्यापार में हो रहे मुकदमों में जटिलता को ध्यान में रखकर अन्तर्राष्Â ट्रीय व्यापार विधि आयोग की सिफारिशों को कानूनी रूप दिया जा रहा है। मैं भी मानता हूं और आशा करता हूं कि कानून के बनने से मुकदमे कम होंगे और सरलता से सुलझाने में मदद मिलेगी। वैसे भी अदालतों में मुकदमा लम्बा चलता है और दोनों पक्ष परेशान होते रहते हैं। व्यर्थ के खर्च होते हैं जैसे अदालती फीस, वकीलों पर खर्च, आने-जाने पर खर्च, समय की बर्बादी और मानसिक परेशानियां आदि। इस कानून में संशोधन होने से अब व्यापारिक मुकदमों पर खर्च और समय बचने के अलावा न्यायालय के बाहर मामलों का सौहार्दपूर्ण निपटारा भी होगा और सबसे अहम बात है कि यह तय सीमा में संभव हो सकेगा। वैसे यह वैकल्पिक व्यवस्था है, किन्तु मेरा मानना है कि यह अनिवार्य भी होना चाहिए, जिससे इसका महत्व बढ़ेगा। जहां तक मध्यस्थों की फीस तय करने की बात है, यह भी स्पÂट और पारदर्शी एवं न्यायोचित होना चाहिए। दोनों पक्षों की मध्यस्थों के चुनाव में भागीदारी हो, जिससे दोनों पक्ष उन पर पूर्ण विश्वास कर मामलों को सुलझा सकें।

महोदय, फीस मुख्य बिन्दु है क्योंकि एक-एक सिटिंग के 40 लाख रुपये तक फीस ली जा रही है। यह उच्च न्यायालय की टिप्पणी है। एक केस में तो मध्यस्थों ने एक ही दिन में मध्यस्थों ने दो-दो सिटिंग करके दस-दस लाख रुपये फीस लेकर, अपनी फीस को एक ही दिन में 20 लाख रुपये कर दी। यह भी बात उच्च न्यायाल में आई है। अतः फीस पर पारदर्शिता लानी होगी और फीस नॉमिनल करनी होगी।

मेरा मानना है कि इस कानून को और सख्त बनाया जा सकता है। यदि मध्यस्थों ने समय सीमा के अंतर्गत मामलों का निपटारा नहीं किया तो उनकी फीस से पांच प्रतिशत प्रति महीने कि हिसाब से फीस में कटौती होगी, ऐसा प्रस्ताव है। अतः पूर्णरूपेण देरी होने की स्थिति में फीस नहीं मिले, यह भी व्यवस्था होनी चाहिए। इस तरह मामले अवश्य ही तय समय सीमा में सुलझ सकते हैं क्योंकि उनके ऊपर फीस न मिलने का दबाव हमेशा बना रहेगा। विधि आयोग की सिफारिश थी कि कोई भी मामला छः महीने के अंदर सुलझा लिया जाना चाहिए, वह ठीक रहता, किन्तु सरकार ने समय सीमा को एक वर्ष किया है। यह उचित नहीं है, इसे छः महीना ही होना चाहिए, जिससे मुकदमों का बोझ कम होगा और जल्द मामले सुलझेंगे।

जहां तक मध्यस्थों की नियुक्ति की व्यवस्था का प्रश्न है, यह भी साफ होना चाहिए कि केवल सेवानिवृत न्यायाधीशों को ही मध्यस्थता के लिए चुना जाएगा या समाज के प्रबुद्ध वर्ग और व्यापार से संबंधित विशेष जानकारी रखने वालों को भी मध्यस्थ बनाया जा सकता है। इसका कार्यकाल क्या होगा? क्या एक पैनल बनाया जाएगा या कोई सूची बनाई जाएगी। क्योंकि देखा जाता है कि अगर सेवानिवृत न्यायाधीश अपने पुराने ढर्रे पर चलेंगे तो शायद इस कानून की विशेषता को प्राप्त नहीं किया जा सकेगा। आशा है कि व्यापारिक मुकदमों में त्वरित न्याय मिलने की दिशा में यह एक महत्वपूर्ण कदम है। धन्यवाद।

श्री भोला सिंह (बुलंदशहर) : सभापति महोदय, आपने मुझे महत्वपूर्ण बिल पर बोलने के लिए अवसर दिया है। मध्यस्थम और सुलह संशोधन अध्यादेश, 2015 का समर्थन करते हुए माननीय मंत्री जी को धन्यवाद देता हूं।

देश में कोर्ट्स में पेंडिंग मुकदमों में होने वाले न्यायिक विलम्ब को कम करने के लिए आर्बिट्रेशन कानून लागू किया गया था, लेकिन न्यायिक प्रक्रिया की जटिलता के कारण विलम्ब हुआ। इस कानून के बदलाव की मांग 1999 से चली आ रही है, लेकिन माननीय मंत्री जी ने इस संशोधन अध्यादेश को पुनः पुरःस्थापित किया है, जिसके लिए मैं मंत्री जी के प्रति आभार व्यक्त करता हूं।

आज हमारे देश में बहुत से लोग आर्बिट्रेशन के माध्यम से लड़ रहे हैं, उनमें काफी विलम्ब होता है, काफी समय लग जाता है। इसमें जो कानूनी प्रक्रिया है, न्यायपालिका का हस्तक्षेप है, उससे इसको दूर रखना चाहिए। इसके लिए अलग से कोई ट्रिब्यूनल या बॉडी बनाकर, उनके माध्यम से आर्बिट्रेशन केसेज को सुनना चाहिए क्योंकि आर्बिट्रेटर एप्वाइंट करने में कोर्ट का हस्तक्षेप होता है, जिसमें काफी समय लगता है। उसके बाद केस चलते-चलते आर्बिट्रेशन के माध्यम से केस भी डिसाइड हो जाता है, उसके बाद दोनों पार्टीज में से कोई पार्टी हाई कोर्ट में अपील के लिए जाती है और अपील में जाने के बाद उसको डिसाइड करने में कोर्ट में बहुत लम्बा समय लग जाता है। इसलिए मेरा मंत्री जी से आग्रह है कि आर्बिट्रेटर की नियुक्ति की प्रक्रिया में हमें ध्यान रखना चाहिए कि जो आर्बिट्रेटर हम नियुक्त कर रहे हैं,वह ऐसा व्यक्ति होना चाहिए जिसको टेक्नीकल और लीगल नॉलेज हो ताकि कोर्ट और उसके बीच विलम्ब न हो। आर्बिट्रेशन केसेज में जिस तरह से कोर्ट का हस्तक्षेप हो रहा है, उसके लिए अलग से कानून बनना चाहिए। जो केस डिसाइड होना है, उसके लिए कोई ट्रिब्यूनल या ज्यूरी लेकर आना चाहिए। यह मेरा आग्रह है। जो विलम्ब होता है, ज्यादा कोर्ट्स की वजह से होता है।

इसमें अलग से व्यवस्था करके कार्यवाही करनी चाहिए। इसलिए इसमें बदलाव करके इसे रखना चाहिए। जो भी समिति या ट्रिब्यूनल बने, उसके लिए समयसीमा अवश्य निर्धारित हो ताकि जो लोग वर्षों से न्याय के इंतजार में रहते हैं, उन्हें इसका लाभ मिल सके। हमने देखा है कि कई केसेज़ तो वर्षों तक चलते रहते हैं, यहां तक कि मुकदमा लड़ने वाले की मृत्यु भी हो जाती है, लेकिन उसके परिवार को कोई लाभ नहीं मिल पाता है। इसलिए इसे सरल करके अलग से कोई समिति या ट्रिब्यूनल की व्यवस्था होनी चाहिए।

श्री जय प्रकाश नारायण यादव (बाँका) : सभापति जी, मैं मध्यस्थम और सुलभ संशोधन विधेयक पर अपनी बात कहने के लिए खड़ा हुआ हूं। यह सही है कि कानून सुलभ और जनता की सुविधा के लिए तथा सस्ता होना चाहिए। न्यायिक प्रक्रियाओं को जितना हम सरल बनाएंगे, उतना ही बेहतर होगा। हमारा देश एक गरीब देश है इसलिए यहां के लोगों को कई परेशानियों और चुनौतियों का सामना करते हुए मुकदमें लड़ने पड़ते हैं, जो वर्षों तक चलते रहते हैं। उसका नतीजा यह होता है कि समय और धन दोनों की बर्बादी होती है। कई जगह तो हिंसा भी होती है इसलिए समझौते का या विश्वास का रास्ता कहीं न कहीं तलाशना चाहिए।

पहले समय में गांव की पंचायतों में ही छोटे-मोटे झगड़े सुलझा लिए जाते थे। पंचायतों के लोग बैठते थे और सामाजिक एकता का निर्माण करते थे। वे लोग अपने तरीके से अपने विवाद सुलझा लिया करते थे। धीरे-धीरे विकास होता गया, कई तरह की चुनौतियां आती गई, गांवों में अब भी पंचायतें हैं, अब भी बात करके चीजों का निपटारा होता है, लेकिन उसका स्वरूप कम हो गया है। अब भी कुछ जगह पंचायतों के जरिए ही छोट-मोटे विवाद निपटा दिए जाते हैं। अगर कहीं कोई बड़ी घटना हो जाए तो पंचायतों द्वारा बातचीत से उनका भी रास्ता निकाल लिया जाता है।

मैं यह कहना चाहता हूं कि न्याय का सरलीकरण होना चाहिए। आपसी विवादों को समझौते से या अन्य तरीके से हल करने का रास्ता तलाशना चाहिए। हमारे देश में कई राष्ट्रीय और अंतरराष्ट्रीय सवाल भी पैदा होते हैं और व्यापार सम्बन्धी मामले भी फंस जाते हैं, जो 20-30 साल तक चलते रहते हैं। इस वजह से न तो बड़े उद्योग लग पाते हैं और न ही छोटे उद्योग लग पाते हैं, क्योंकि समझौता नहीं हो पाता है। इसके अलावा ऐसे विवादों के चलते रहने से खर्च भी काफी होता है। कई बार तो असत्य मुकदमों में लोगों को, खासकर गरीबों को फंसा दिया दिया जाता है, जिससे वे मुकदमों में ही उलझकर आर्थिक रूप से टूट जाते हैं और बर्बाद हो जाते हैं।

इन सब बातों को ध्यान में रखते हुए मंत्री जी ने जो बिल पेश किया है, वह एक अच्छा कदम है। हम इस बिल का स्वागत करते हैं, क्योंकि यह बिल आना चाहिए और पास होना चाहिए। इसके साथ ही हमारा यह भी कहना है कि किसी भी व्यक्ति को, खासकर गरीब को असत्य मुकदमे में नहीं फंसाया जाए। क्योंकि हमने कई बार देखा है कि चालाक लोग या पुलिस वाले, सामन्तवादी या ज़मीनदार इन लोगों पर असत्य मुकदमा दायर कर देते हैं। इसलिए इस पर ध्यान देने की जरूरत है।

कई बार क्या होता है कि देश के विकास से सम्बन्धित बड़ी-बड़ी परियोजनाएं 30-40 सालों तक फंसी रहती हैं, उनके लिए भी कोई न कोई रास्ता निकालना चाहिए। कई बार सरकार पुल, रोड या रेल लाइन बनाती है या किसी उद्योग की स्थापना करना चाहती है तो वह परियोजना विवाद में फंस जाती है। इसलिए कोई न कोई रास्ता निकालकर इसका भी समाधान होना जरूरी है।

सभापति जी, हम इस बिल का समर्थन करते हैं, क्योंकि यह एक अच्छा बिल है और यह जरूर पास होना चाहिए। समय की बर्बादी न हो, न्याय सुलभ, सहज और सस्ता हो, खासकर गरीबों के पक्ष में हो। इसके अलावा वह वातावरण खराब करने वाला न हो, तनाव वाला न हो, आपसी समझौते वाला हो और देशी मिट्टी-मिट्टी में रहने वाले लोगों के अनुकूल हो।

SHRI VARAPRASAD RAO VELAGAPALLI (TIRUPATI): Sir, I thank the Chair for this great opportunity and I also congratulate the hon. Minister. He is very sober and dynamic for bringing out the Commercial Courts Bill yesterday and today the Arbitration and Conciliation Bill. It is extremely relevant for the present day as far as India is concerned. We also appreciate the Law Commission for bringing out this after thorough examination, that is, to bring out the alternative dispute resolution mechanism, which the country badly needs in view of the number of cases mounting in all the courts running into crores of cases and lots of vacancies that are there. As a result, justice delayed is justice denied.

One or two points that I would like to mention here is that it should be user-friendly. A common man should also have the facility here. So, the hon. Minister may kindly consider as to how this could be made user-friendly. Secondly, cost-effective is a very relative term here because if we try to minimize the cost, then we may not have quality arbitration. Therefore, a compromise formula has to be evolved if you want to make it quality arbitration, which is really required because lots of foreign investors are involved and the corporates are involved, which is their hard-earned money, etc. Therefore, instead of insisting on cost-effectiveness, we may consider quality arbitration, which is extremely important.

Further, the speedy disposal is also extremely important here. Therefore, whatever timeframe has been fixed of 12 months and another 6 months for the arbitrator, beyond that should not be given. The hon. Minister should also really look into the selection of the arbiter, which is extremely crucial here. It would be extremely difficult for the people to work with this system unless a proper fool-proof mechanism is evolved.

We all know and yesterday also we have thoroughly discussed as to how it is going to help investment, economy, ease of doing business, etc. Therefore, it is very relevant. But one thing where we are really lagging behind is the enforcement of contracts, which is extremely poor in the country. Yesterday, we all have expressed our displeasure because we stand lowest in the queue. I am saying this because as against 200 countries we stand somewhere at 186th position. So, we really want to improve that and for that we need to consider that aspect as well. The enforcement of the contracts is extremely important to either see the essence of the law or the intense of the law. This is very important.

Yesterday, the hon. Minister has also found that we have not got a platform to address certain social and economic issues except a case like this, that is, in the debates on the Bills. Therefore, if slight deviation is there, then the hon. Minister may kindly excuse us because the reason is that this is the only platform where we get the real presence of the hon. Minister and we could express our views. Yesterday, I did mention that and today also I want to mention that this is a socio-economic issue and we have wonderful, free, legal-aid mechanism in India as far as money is concerned. In all States the mechanism is there, but the effectiveness system is extremely poor for various reasons either the money that we are paying to the advocates is so poor as a result that under-trials in the country are remaining as under-trials for decades together. A survey may be conducted by the Government. The reason I am saying this is that whosoever is extremely poor like dalits, minorities and the tribal people are languishing in the courts without trial.

This deviation from the subject is there because the hon. Minister is extremely kind. Therefore, we would really request that the legal-aid system, which is available in the country, which has been created only for the poor, has to come up and that has to be streamlined. As regards the lawyers and all that, even if the cost involved is a little more, more efficient lawyers who have name in society and who have commitment and if need be community-wise also the lawyers have to be picked-up. This is one of the points that I want to mention.

With this, I once again thank the Chair, and I congratulate the hon. Minister for bringing these two Acts, namely the Commercial Courts and this one and making the country more investment-friendly. Thank you very much, Sir. (ends)

श्री गोपाल शेट्टी (मुम्बई उत्तर) : सभापति महोदय, आपने मुझे इस विधेयक पर बोलने का अवसर दिया, इसके लिए मैं आपका धन्यवाद करता हूँ। कल ही हमने कमर्शियल कोर्ट का बिल पास किया, यह बिल उसका सपोर्टिंग है, ऐसा मैं मानता हूँ कि यह बिल पास होने से कोर्ट में जो बहुत सारे कमर्शियल व्यापारियों से संबंधित चाहे वे जमीन जायदाद के हों, मूवेबल प्रोपर्टीज़ के हों, इंमूवेबल प्रोपर्टीज़ के हों, ऐसे बहुत सारे मसले कोर्ट में पेंडिंग होने से जो बिजनस है, वह डाउन होता जा रहा है। मेरा यह विश्वास है कि सरकार का यह जो प्रयत्न है कि कमर्शियल कोर्ट बिल हो, आर्बिट्रेशन बिल हो,

ईज़ ऑफ डूइंग बिज़नस हो, ई-गवर्नेंस, कोऑपरेटिव फेडरलिज्म, जीएसटी, ये सारा अगर इंप्लिमेंट होता है, जैसा हम सोचते हैं, वैसा होता है, तो मेरा यह विश्वास है कि जितना हम सोचते हैं, जीडीपी को उतना आगे ले जाने में हमें आने वाले दिनों में लाभ मिलेगा।

महोदया, जैसा पॉलिटिकल फील्ड का विश्वास देश में लोगों के मन में अलग सा होता जा रहा है, उसी तरह से कोर्ट के बारे में बहुत अच्छी स्थिति हो, ऐसा कम से कम मैं मानने के लिए तैयार नहीं हूँ। इसमें से बाहर निकलने के लिए ये सारे जो बिल हम इन दिनों पास कर रहे हैं, उसका एक बहुत बड़ा लाभ होगा। कोर्ट का मतलब ही यह है कि हम वहां न्याय मांगने के लिए जाएं। लेकिन बाय एण्ड लार्ज कोर्ट में अन्याय करने वाले लोगों की संख्या बहुत ज्यादा बढ़ी है। क्योंकि बिजनस में पैसे का फिगर इतना बड़ा होता गया, फिर अनवांटेड लोग कोर्ट में केस कर देते हैं, और फिर दो अच्छे लोगों के बीच में तीसरा एक व्यक्ति घुस कर दोनों को हैरान, परेशान करने का काम भी बहुत बड़े पैमाने पर चल रहा है। यह सिर्फ सैटलमेंट के लिए लोग करते हैं। हमारे सिस्टम में ऐसा कुछ नहीं है कि अगर कोई फेक केस करता है तो उसको दण्डित करें, उनको हम दोषी बनाएं, इस प्रकार की व्यवस्था वर्तमान कामकाज़ प्रणाली में नहीं है। लेकिन मैं मानता हूँ कि आने वाले दिनों में हमें इसके बारे में सोचना पड़ेगा क्योंकि बहुत बड़ा वर्ग आरटीआई के माध्यम से हो या फिर कोर्ट में अननैसेसरी केसिज़ दायर करना हो, यह बहुत बड़ा एक व्यवसाय करने वाले लोगों को भी हैरान परेशान और सरकार को भी घाटा पहुंचाने का काम करते हैं। इस बिल के माध्यम से मंत्री महोदय को बहुत धन्यवाद देना चाहूंगा कि सन् 1940 के एक्ट को हमने सन् 1996 में एक बार अमेंड किया और फिर एक बार हम अमेंड करने की तरफ जा रहे हैं। इस अमेंडमेंट में हमने आर्बिट्रेशन को समय दे दिया कि 12 महीने में आर्बिट्रेशन पूरा करना चाहिए। फिर छह महीने में कोर्ट को भी उसका निबटारा करना चाहिए। इसका संकेत यह होता है कि आर्बिट्रेटर अगर अच्छा हो तो अगर दो-तीन महीने में अगर आर्बिट्रेशन पूरा करता है तो फिर कोर्ट में जाते हैं तो कोर्ट में भी इसका जल्दी से निबटारा हो सकता है। बहुत सारे केसेज़ में यह देखने को मिलता है कि आर्बिट्रेशन में जाने के बाद भी जो सक्षम होता है, वह मैनेज कर के वहां पर भी किस तरह डिले कर सकते हों, इसके लिए बहुत सारी कोशिश होती है। मुझे लगता है कि यदि सरकार जागरूक हो, इस प्रकार के बिल अगर हम लाते हैं, तो इस प्रकार की जो जमात है, इस प्रकार की जो टोली है, इनके ऊपर बहुत बड़ा कंट्रोल आने वाले दिनों में आ सकता है। फिर सरकार नाम की भी कोई चीज़ है, कायदा कानून नाम की भी कोई चीज़ है, न्याय प्रणाली भी न्याय के लिए बंधी हुई है, इस प्रकार का एक मैसेज, इस प्रकार की एक मानसिकता अगर देश में विकसित होती है तो मुझे लगता है कि बिज़नस सर्कल में बहुत बड़ा वातावरण निर्मित होगा और जो लोग देश छोड़ कर बाहर चले जाते हैं या तो फिर देश में रहने के बाद भी व्यवसाय करने से वंचित होते हैं, फिर ये वाइना या अन्य कहीं जगह से उत्पाद ला कर सिर्फ इण्डिया में बेच कर अपना नफा कमाने का जो प्रयास करते हैं, इन सभी की वजह से हमारे देश के लोगों का जो रोज़गार है, वह सारा का सारा चला गया है।

आप तो कोऑपरेटिव मूवमेंट में बहुत बड़ा काम करते हो, इन सारी चीजों से वाकिफ हैं। इसलिए मुझे लगता है कि हमें सरकार के माध्यम से आने वाले दिनों में एक चैक एण्ड बैलेंस की भी कोई न कोई व्यवस्था खड़ी करनी चाहिए। कोर्ट में अननैसेसरीली केसेज़ करने वाले लोगों की भी झाड़ी तैयार कर के जैसे कॉन्ट्रैक्टरों को हम ब्लैकलिस्ट करते हैं, ऐसे लोगों को अगर ब्लैकलिस्ट कर के या तो कोई नया कायदा बना कर ऐसे लोगों को दंडित करने का प्रावधान हम करते हैं तो मुझे लगता है कि 50औ केसेज़ सॉल्व हो सकते हैं और आने वाले दिनों में कोर्ट में लोड कम होगा और जो सच्चे केस चलाना चाहते हैं, उन लोगों को न्या मिलेगा। वर्तमान प्रणाली में भी हम इस प्रकार की व्यवस्था कर सकते हैं। मंत्री महोदय ने कल एक बिल पेश किया और आज एक बिल पेश कर रहे हैं। इन दो बिलों के माध्यम से आने वाले दिनों में लोगों को बहुत बड़ा समाधान मिलेगा। इसके लिए मैं मंत्री जी को धन्यावाद देना चाहूंगा और मैं मंत्री महोदय से इस बात का निवेदन करना चाहूंगा कि इसके जो रूल्स वगैरह जो भी हैं, वह जितना हो सके, जल्दी से जल्दी करना चाहिए। आने वाले दिनों में हमें लोक सभा में भी इस प्रकार की व्यवस्था करनी चाहिए कि गत बार लोक सभा में जितने बिल पास हुए, उसमें से कितने इंप्लिमेंट हुए। अगर इसका लेखा जोखा और अकाउंटेबल सिस्टम अगली लोक सभा में देने का सिस्टम करें तो हमारा जो एक ब्यूरोक्रेटिक सिस्टम है, जो वर्किंग क्लास है, उनके ऊपर भी एक बंधन आ जाएगा। नहीं तो हम लोक सभा में पास करेंगे, राज्य सभा में पास करेंगे, राष्ट्रपति महोदय उसके ऊपर साइन भी कर देंगे, लेकिन बहुत सारे बिल इंप्लिमेंटेशन स्टेज पर आने के बाद बहुत समय लगता है। सभापति महोदय, अगर मैं खुल कर कहूं तो राष्ट्रपति के साइन करने के बाद भी बिल को स्टॉल करने का, बिल को रोकने का प्रयास करने वाली भी एक जमात अपने ही देश में है। ये सारे लोग एक्टिविटी करते हैं। जो अच्छा काम करने वाले हम जैसे लोग हैं या फिर सरकार की जो व्यवस्था है, उसके माध्यम से तो काम होता है, लेकिन एक अदर बहुत बड़ा वर्ग है, जो इस सारे काम को रोकने का प्रयास करता है और इन दिनों उनका दबदबा है। वे चैलेंज करते हैं कि ठीक है कितने भी बिल बना लो, कितने भी कायदे बना लो, इम्प्लीमेंट क्या करना है और क्या नहीं करना है, यह तो हमारे हाथ में है। इस प्रकार का भी एक बहुत बड़ा वर्ग पूरे देश भर में कार्यरत है।

मैं इस बिल के माध्यम से मंत्री महोदय से यह आग्रह करूँगा कि इम्प्लीमेंटेशन स्टेज पर जाने के बाद में इसका रिजल्ट कितना आया है, अगर यह भी लोक सभा के पटल पर रखने की व्यवस्था करेंगे तो मुझे लगता है कि आने वाले दिनों में एक बहुत बड़ा लाभ देश के लोगों को मिलेगा।

महोदय, आपने मुझे इस बिल के ऊपर बोलने का अवसर दिया, इसके लिए मैं आपका आभार प्रकट करता हूँ। बहुत-बहुत धन्यवाद।

SHRI B. VINOD KUMAR (KARIMNAGAR): Mr. Chairman, Sir, I rise to speak on the Arbitration and Conciliation (Amendment) Bill, 2015. Through this Bill, we are replacing the ninth Ordinance issued by the Government in the year 2015 and the 17th under the NDA Government.

The Bill is introduced in the House to strengthen and refine the arbitration process in India for both domestic as well as international arbitration cases. This Bill makes provisions for interim relief by courts and arbitration tribunals. Deadlines for the completion of arbitration process are specified. Eligibility for arbitrators and the fee that can be levied by arbitrators as per case value are also mentioned in the clauses of the Bill.

As all of us know, in 1996 a law was enacted after 56 years of the original Arbitration Act of 1940. Even after Independence we followed that old Act till the Arbitration and Conciliation Act of 1996 was enacted. For the last nearly 20 years, the experience of the Arbitration and Conciliation Act 1996 is also on the lines of the earlier Act of 1940. With great aspirations we thought that this Act will resolve many issues pending before many courts in our country. But ultimately the experience of this Act of 1996 paved way for introduction of this Bill. Through this Bill we are proposing to amend the parent Act of 1996.

There are 26 clauses in this Bill all of which I have gone through. The Standing Committee in Rajya Sabha, after hearing from many persons from different quarters of life like legal experts, tax experts, gave its report on this. Based on that report and the 246th Report of the Law Commission, these clauses were introduced in the Bill. I support this Bill with one or two suggestions. Let us hope that through this amendment the parent Act of 1996 will serve the purpose for many people.

16.34 hours (Hon. Deputy-Speaker *in the Chair*)

Mr. Deputy-Speaker, Sir, the Indian arbitration, it is said, is time-consuming, expensive and that many cases are being stalled because of court proceedings. Indian companies themselves prefer arbitration abroad. The domestic arbitration bodies such as Indian Council of Arbitration and the International Centre for Alternate Dispute Resolution are no match to the foreign bodies such as International Chamber of Commerce, the London Court of International Arbitration, and the Singapore International Arbitration Centre.

Let us take the experience of these international bodies also into account. I hope that through this amendment, the parent Act will serve the purpose.

I have moved a small amendment. I hope that the Law Minister will go through it. It is nothing but a small amendment.

HON. DEPUTY SPEAKER: You may speak about it at the time of amendment.

SHRI B. VINOD KUMAR (KARIMNAGAR): Sir, let the hon. Minister hear it and I hope that the hon. Minister will move it as an official amendment also. In the section 12, the present clauses mention that the arbitrators should give an affidavit saying that they should disclose about any relationship with the dispute. I think in the event they give some false information, they should be punished. That is what the small clause is that I am trying to get inserted in section 12 of the Bill.

In clause 13, there is no need for two lines. Clause 13 says:

"An application made under this section for appointment of arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such court, as the case may be, as expeditiously as possible and an endevaour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.'

Sir, 'within sixty days' would be fine instead of the unnecessary sentence which says that 'as expeditiously as possible' and 'an endevaour shall be made to dispose of the matter'. Thank you.

श्री भैरों प्रसाद मिश्र (बांदा) : उपाध्यक्ष महोदय, माननीय मंत्री जी द्वारा जो आर्बीट्रेशन एण्ट कंसीलिएशन एमेंडमेंट बिल सदन में लाया गया है, मैं उसके समर्थन में बोलने के लिए खड़ा हुआ हूं। आज देश में निचली अदालतों से लेकर उच्चतम न्यायालयों तक जो लम्बित मुकदमों की संख्या है, उसे देखते हुए मध्यस्तता के द्वारा मुकदमों को सुलझाने हेतु जो प्रयास किये जा रहे हैं, वे सराहनीय हैं और यह स्वागतयोग्य कदम है। इससे मुकदमों की संख्या में तो कमी आएगी ही, मुकदमों में जो लगने वाला समय है, उसकी भी बचत होगी और वादी पर जो आर्थिक भार होता है, उसमें भी कमी आएगी और उसको शीघ्र न्याय मिल सकेगा।

मैं मंत्री जी से एक निवेदन करना चाहता हूं कि ऐसी अदालतों में यह देखने में आया है कि जैसे एक बार कोई इसमें मध्यस्तता के लिए एक पक्ष प्रस्तुत नहीं हुआ, उसको नोटिस जाता है तो फिर दोबारा उसको सुनवाई का अवसर नहीं दिया जाता है। फिर सीधे उसको हाई कोर्ट तक अपील में जाना पड़ता है। उससे वादी को परेशानी होती है। मेरा अनुरोध है कि इसमें ऐसी व्यवस्था होनी चाहिए कि दूसरे पक्षों को, इसमें जो मध्यस्थ नियुक्त है, या तो वह ठीक से प्रयास नहीं कर रहा, दोनों पक्षों को ठीक से बुला नहीं रहा है और कभी-कभी देखने में आया है, मैंने चण्डीगढ़ में एक उदाहरण देखा था कि वहां पर एक व्यापारिक लेन-देन का मामला था, वह इस कोर्ट में चल रहा था तो एक पक्ष को उन्होंने बाहर जाकर के केवल नोटिस भेज दिया और वह प्रस्तुत नहीं हुआ तो उस मुकदमे का एकपक्षीय फैसला कर दिया गया, जिससे उसको हाई कोर्ट में जाना पड़ा। इससे मैं समझता हूं कि इसमें जो मध्यस्थ नियुक्त है, उसमें उसकी कमी है, उसको ठीक से अवसर देना चाहिए, यह मेरा अनुरोध है।

दूसरा, माननीय मंत्री जी से मैं कहना चाहता हूं कि जैसे पहले हमारे गांवों में ग्राम पंचायतें थीं, ग्राम अदालतें थी, जो सरपंच व्यवस्था थी, वह भी गांव के मामले को वहीं पर गांव में दोनों पक्षों को सुन करके, दोनों पक्षों की बातों को जान करके उसको निपटाने का काम किया करते थे, जिससे मुकदमों की संख्या में कमी आती थी और वे निचली कोर्ट से ऊपरी कोर्ट तक नहीं पहुंचते थे। सभी जानते हैं कि जो माल के, राजस्व के मुकदमे होते हैं, जैसे गांव में लोगों के जमीन के मामले होते हैं तो वे कम से कम 2-2, 3-3 पीढ़ी तक चलते हैं और उससे किसान तबाह हो जाता है। मेरे बुन्देलखण्ड क्षेत्र में तो और बुरी हालत है, वहां किसान की हालत खराब है, उसको अगर कहीं कोर्ट में जाना पड़ता है, 10-10 साल, 20-20 साल, 25-25 साल तक उसका फैसला नहीं होता, कहीं-कहीं तो पीढ़ियां तक बीत जाती हैं तो मेरा अनुरोध है कि इसमें एक विचार होना चाहिए और कम से कम जो ग्राम अदालतें थीं, जो कभी सुलह के आधार पर ऐसे मामलों को निपटाया करती थीं, उस पर भी सरकार विचार करे और उन्हें पुनः स्थापित करने का काम करे। इससे भी मुकदमों की संख्या में कमी आएगी। यही सुझाव देते हुए, इस बिल का समर्थन करते हुए मैं अपनी बात को विराम देता हूं।

बहुत-बहुत धन्यवाद।

SHRI THOTA NARASIMHAM (KAKINADA): Thank you very much, Deputy Speaker, Sir, for giving me an opportunity to speak a few words on the Arbitration and Conciliation (Amendment) Bill, 2015. We congratulate the Government and the Law Minister Shri Sadananda Gowda on introducing this Bill.

This Amendments Bill is based on the Law Commission's recommendations and suggestions received from stakeholders. The Law Commission of India in its 246th Report had recommended various amendments in the Arbitration and Conciliation Act, 1996 in order to pave way for India to become a hub of international commercial arbitration.

Coming to the important aspects of this Bill, it envisages time-bound disposal of matters, the imposition of a verdict based fee structure as opposed to the prevalent hearing-based one, and a cap on the overall fee, perhaps to incentivise speedy disposal of matters.

The amendments seek to make disposal of commercial disputes more user-friendly and cost effective, which, in turn, will lead to expeditious disposal of cases. The key provisions of the Bill make it mandatory for arbitrators to settle disputes within 12 months. This period could be extended by six months only by a court on a sufficient cause. It also envisages a cut in the fees of arbitrators if the court finds that the delay has been caused

due to arbitrators. It rewards arbitrators with extra fees in case a matter is disposed of within six months and the parties agree to pay more. It empowers arbitration tribunals to grant all kinds of interim measures that courts provide

I believe that the Government's aim for the amendments to the Arbitration Act is for this law to function in conjunction with other legislations and policies, namely, a national litigation policy focusing on transparency and the setting up of specialised commercial courts and benches. However, both of these are still just proposed by the Law Minister; the policy is yet to be formulated.

The Bill states that in the case of international arbitration the relevant court would only be the High Court having original ordinary jurisdiction. The Ordinance permits parties to choose to conduct proceedings in a fast-track manner. The award would be granted within six months.

I think, the motivation of the Government in amending the Arbitration Act and in bringing adjacent changes thereto is to make India a more attractive destination for commercial arbitration as well as to compete with the likes of Singapore and London as international commercial hubs. I congratulate the Law Minister on introducing such a useful Bill.

With these few words, I conclude my speech and I wholeheartedly support this Bill from my party.

श्री अजय मिश्रा टेनी (खीरी) : माननीय उपाध्यक्ष जी, मैं माध्यस्थम और सुलह (संशोधन) अध्यादेश, 2015 का समर्थन करने के लिए खड़ा हुआ हूं। वास्तव में यह अध्यादेश बहुत दिनों से लंबित था और इसकी बहुत आवश्यकता थी कि जो निर्णय मध्यस्थों के माध्यम से होते हैं, उनमें लोगों को न्याय मिल सके। हमारी सरकार इस अध्यादेश को लाई है और इसमें संशोधन करने के लिए इसे लगभग पूरे सदन का समर्थन प्राप्त है। मैं भी इस अध्यादेश का समर्थन करता हूं।

महोदय, इसमें मुख्य बातें हैं, उनमें यह है कि मध्यस्थ ऐसे चुने जाएं, जो तटस्थ हों, जिनकी स्वीकार्यता हो और वे ऐसे निर्णय कर सकें, जो दोनों पक्षों को मान्य हों। इसमें जो समय की सीमा निर्धारित की गयी है, वह एक बेहतर कदम है। इसमें बारह महीने का समय दिया गया है और बाद में दोनों पक्षों की सहमति से छः महीने तक बढ़ाने का समय दिया गया है। न्यायालय को पुनः यह अधिकार दिया गया है कि यदि आवश्यकता हो, तो हम इसके बाद भी इसका समय बढ़ा सकें। मेरे कहने का तात्पर्य है कि इस अध्यादेश में उन सारी बातों का समावेश कर दिया गया है। पहले इसमें जो कठिनाइयां आती थीं, उन कठिनाइयों को दूर करने का प्रयास किया गया है। वास्तव में कोई भी कानून बनाया जाता है, वह लोगों की सुविधा के लिए होता है। जब उसमें कोई असुविधा आए, तो उसे दूर करने की जिम्मेदारी सरकार की होती है और सरकार ने उस जिम्मेदारी का बहुत ठीक ढंग से निर्वहन किया है।

महोदय, इस बिल का समर्थन करते हुए इसमें अपनी तरफ से मैं दो-तीन बातें जोड़ना चाहता हूं। मैं माननीय मंत्री जी से कहना चाहता हूं कि हमारे यहां जो न्यायालयीय व्यवस्था है, उसमें अधीनस्थ न्यायालय से लेकर उच्चतम न्यायालय तक मुकदमों की बहुत बड़ी संख्या है, जिनके वाद का वर्षों से निर्णय नहीं हो पा रहा है। मैं समझता हूं कि इसमें दो-तीन चीजों प्रमुख होती हैं, जिनके कारण ऐसी व्यवस्था है। पहली इसमें जो समस्या आती है, वह प्रक्रिया संबंधी है। मुकदमों में प्रक्रिया ऐसी है कि लगातार तारीखें होते-होते इतने लंबे समय तक खिंच जाते हैं कि समय पर उनका निर्णय नहीं होता है।

दूसरा, जो छोटे-छोटे मामले हैं, उसमें भी अपील का इतना सीमित अधिकार है कि कोई भी व्यक्ति एक बार एक कोर्ट से हारता है, दूसरे कोर्ट में चला जाता है, खासकर दीवानी के मामलों में ऐसा होता है। लोग गांवों में बात करते हैं कि दीवानी दीवाना कर देती है। तीस-चालीस साल तक मुकदमे हल नहीं हो पाते हैं। इसके साथ ही एक सबसे बड़ी समस्या आती है कि जो प्रभावशाली लोग हैं, अगर उनके खिलाफ कोई मुकदमा चल रहा है और जिसमें निश्चित रूप से यह मालूम होता है कि उनको सजा होने वाली है, वे विभिन्न प्रकार के नए-नए वाद दायर करके उस प्रक्रिया को इतना लंबा कर देते हैं कि जो मुख्य मुकदमा होता है, वह पीछे छूट जाता है।

मैं माननीय मंत्री जी से यह अनुरोध करना चाहता हूं कि जो भी लंबित मामले हैं, उनमें से 80 प्रतिशत से अधिक मामले ऐसे हैं, जो सामान्य श्रेणी के हैं। उन मुकदमों को श्रेणीबद्ध किया जाए और अपीलीय अधिकार को सीमित किया जाए, खत्म न किया जाए, लेकिन एक-दो अपील करने के बाद उस निर्णय को पूरी तरीके से मान लिया जाए। जो प्रभावशाली लोग हैं, जो मुकदमों को लंबित करने के लिए विभिन्न तरीके के उपाय अपनाने के साथ-साथ मुकदमे लगातार दायर करते हैं, उनके लिए यह करें कि अगर दो पक्ष समान हैं और समान मुद्दा है, तो सारी फाइलें एक ही जगह कलेक्ट करके एक ही कोर्ट में उसका निर्णय किया जाए तो उनको लंबित करने का और बार-बार तारीखें लेने का अवसर नहीं प्राप्त होगा।

राजस्व न्यायालय से संबंधित मामला हमारे दूसरे मित्रों ने भी उठाया है। राजस्व के जो न्यायालय हैं, वे गांवों के लिए बहुत आवश्यक हैं। छोटे-छोटे मेड़, चकबंदी ऐसे जो भी मामले होते हैं, वे वर्षों तक खिंचते हैं और किसान उसमें लगातार तारीखें लेते हैं। इसमें उनका धन और समय दोनों खराब होते हैं।

मेरा आपके माध्यम से माननीय मंत्री जी से अनुरोध है कि राजस्व प्रकरणों के लिए अलग न्यायालयों की स्थापना की जाए। आज आपने मुझे अवसर दिया, उसके लिए मैं बहुत धन्यवाद देता हूं। इस सत्र में कांग्रेस वाले वैसे अवसर लेने नहीं दे रहे थे, आपकी बहुत कृपा रही कि मुझे अवसर मिला, बहुत-बहुत धन्यवाद।

THE MINISTER OF LAW AND JUSTICE (SHRI D.V. SADANANDA GOWDA): I thank all the hon. Members who have supported this Bill from the bottom of their heart. This is one of the finest Bills. It will certainly give a new dimension to the legal system and dispute resolution mechanism in our country. This is the dream of the hon. Prime Minister, Narendra Modi ji also. Ease of doing business and ranking in the World Bank should be geared up and India should be a centre for international arbitration hub.

After elaborate discussions with various stakeholders, after getting suggestions from jurists and after going in detail with the Law Commission's Report I have come up with this Bill before the Parliament. Practically we have to encourage the ADR mechanism for settlement of disputes. In order to improve the World Bank ranking also we should do it. To encourage investors and to make our country an investor friendly country, certainly we should take up such initiatives wherein they should feel that they can invest in India. The Developmental activities are going so fast in India the investors should feel that by investing in India they will not face any trouble during the course of their transaction of business. Especially, the intention of this Bill includes making settlement of disputes more user-friendly, most cost effective and expeditious disposal of the cases.

The Bill was introduced as early as in 2003 during the regime of NDA. Subsequently the matter was referred to the Standing Committee. Standing Committee after holding elaborate discussion submitted its Report in 2005. In fact, while bringing this Bill the suggestions given in the said Report were also taken into consideration. Almost all the suggestions given in that report were also taken into consideration.

The matter was referred back to the Law Commission which held detailed study in the matter. That has also been taken into consideration. Three important aspects have been taken care of which were really hampering the whole process of disposal of disputes under arbitration. One is

inordinate delay in disposing of the cases. Second is the too much interference by the courts. The court itself used to take years together. The persons who went for arbitration could not settle the matter. Thirdly, exorbitant fee charged by the arbitrators. Just now, one of my friends said that they used to charge Rs.5 lakh to Rs.10 lakh for a sitting in the morning and another sitting in the evening. As a whole, the image of our country was tarnished because of all these interferences by the courts, inordinate delay as well as high fee charged by the arbitrators. We have taken all these aspects into consideration and we went ahead.

A number of stringent measures have been taken in the amendment Bill. We have said that the arbitration should be disposed of within a period of 12 months. If the parties agree, it can be extended for a period of six months. So, there is no chance of further extension. If anybody goes to the court under extraordinary circumstances and if the courts feel that it should be extended, then only it can be extended. We have provided for a fast track disposal also. If both the parties agree that it should be tried in the fast track court, within six months it can be disposed of.

For the first time in the history, we have provided for some incentives if the cases are disposed of within six months as also some disincentives if it goes beyond 12 months. This is one area wherein we can see that the arbitration cases can be disposed of speedily.

As far as fee structure is concerned, exorbitant fee was charged earlier. Now we have provided the fee structure in the Fourth Schedule. So nobody can charge beyond that and nobody can demand more fees. So there is much clarity as far as fee structure is concerned.

As regards appointment of arbitrators, we have specifically mentioned the restrictions in the Schedule and have said that such and such persons cannot become arbitrators. So everything has been given in the Bill elaborately and full clarity is there in regard to time schedule, fee structure and appointment of arbitrators. All these things have been taken into consideration and we have brought this Bill before Parliament.

Nobody has objected to this Bill but some of our friends have observed certain things. They have said that the Bill is the need of the hour and that a good Bill has been brought. A few suggestions have been given by them. One of the suggestions was that it should have retrospective effect. If the parties agree, then there will be no problem. Otherwise, it will only have prospective effect.

Somebody gave a few suggestions like opening new arbitration centres, empanelling arbitrators who are experts and specialists in various subjects as also training institutes should be established. The matter is under consideration of the Government. Certainly, this is one of the good suggestions. The Government has taken note of this and it will consider it.

One of my friends referred to the fee structure and mentioned that quality will go down if the fees are restricted. I may inform the hon. Member that it is not like that. When the fee structure is given, the fees will be applicable for both the parties, for the petitioner as well as the other party. Both the parties will have the same fee structure. So, there will be no problem as far as the fee structure is concerned. The report was given in 2005. At several stages the matter was discussed over the last ten years and finally the Bill has been brought to the House.

My friend mentioned about the notion of morality of justice. Practically, I feel that the Supreme Court has observed this fact in ONGC *versus* San Pipes Case and it is a subject of judicial interpretation as the term cannot be defined in the Bill. So, it is a matter of interpretation and the court can interpret as far as that matter is concerned.

So, all these issues have been properly taken into consideration and the provisions of this Bill certainly give a new direction as far as the Arbitration and Conciliation Act of 1996 is concerned. Therefore, I commend the Bill to bepassed by the House.

Thank you.

SHRI N.K. PREMACHANDRAN (KOLLAM): Hon. Deputy-Speaker, Sir, I thank you for giving me this opportunity. Yesterday also the hon. Minister was replying to the questions from this side regarding the pendency of cases and the accumulation of cases in the High Courts and the Supreme Court and other *Muffasil* courts. The basic issue which I would like to highlight even today is that a reply was given by the hon. Minister to my Starred Question No. 521 on 30th April, 2015. I am reading the reply given. The data on pendency of cases is maintained by the Supreme Court and the High Courts. As per information furnished by the Supreme Court, 61,081 cases were pending in the Supreme Court as on 01.04.2015; as per information furnished by the High Courts, 41.53 lakh cases are pending in the High Courts as on 31.12.2014.

In reply to the next question on what were the reasons for the pendency of the cases in the Supreme Court and the High Courts, the hon. Minister gave many reasons, but I would like to read out just two reasons. Some of the main reasons for pendency of cases in courts are increasing number of State and Central legislation. The first reason for the pendency of cases in the Supreme Court and the High Courts is increasing number of State and Central legislation. The second reason was continuation of original civil jurisdiction in some of the High Courts. I am only taking these two reasons.

Here, my point is that the number of legislations are increasing and the Government is giving more burden to the High Courts. In this case also if you go through the definition of clause 2, in the definition it says that if it is an international commercial arbitration, then the original jurisdiction will be the High Court. That means the Government is imposing further burden upon the High Courts. We have discussed about the commercial disputes. In the case of an international commercial arbitration also the original jurisdiction is also being given to the High Court. High Courts will be further burdened, pendency will be more and access and as a result of that poor common people will suffer.

In the Arbitration and Conciliation Act there is a provision that the case should be disposed of within 12 months from the date of starting the proceedings and it can go maximum up to 18 months. I fully agree with the hon. Minister on arbitration, fixing of fees, the time schedule, appointment of arbitrators. I agree with him on these points. But the point is that the indirect effect will be on the High Courts which will be heavily burdened. Also, with regard to the international commercial transactions, how has the definition changed? The hon. Minister has not explained that.

17.00 hours

A very interesting fact to be noted is that the definition of an international commercial arbitration in Section 2(f) of the original Act has been very clearly changed. It says: "International commercial arbitration means an arbitration relating to dispute arising out of legal relationship whether contractual or not considered as commercial under the law in force in India where at least one of the parties is outside India." One of the parties should be outside India. Only then it will become an international commercial transaction. In Clause 3, you have very intelligently and cleverly removed the term 'company'.

Sir, you may kindly note that 'company' is defined in the Companies Act, 1956. As per the definition of the company in the Companies Act, 1956, it should be registered in India. Otherwise, it should be a foreign company. So, you have deleted the term 'company'. It is said: "An association or a body of individuals whose central management and control is exercised in any country other than India." Any oil company or any company can very well tell that control, management, administration and everything are there whether the registered head office is not in foreign country or not. They need not have any registered head office in Britain or US or anywhere outside India. Any company in India, a domestic company, can very well argue that my business and administration are being carried outside India, I can be considered as a company operating outside and can come within the purview of international commercial arbitration. So, the original jurisdiction will go to the High Court. That will be disposed of within 12 months or 18 months. That means, is it for inviting foreign direct investment? Then why have you removed the term 'company' from this definition?

So, in the definition of international commercial arbitration, you have deleted and omitted 'company' with an ulterior motive that any Indian company, whether it is Reliance or whatever it may be, can very well argue the case that they are having an international commercial arbitration and so, it should come within the purview of Section 2 of this Act, that they can directly go to the High Court and can dispose the case within a specific period, as the hon. Minister has cited. That is the first objection which I would to make.

Regarding the next point, yesterday also I have said it and I want to explain that point further. Regarding international commercial transactions, the original jurisdiction is with the High Court. Indian courts have the jurisdiction to enforce and recognise the arbitration award even if the place of arbitration is outside India. I would like to ask the hon. Minister that, by this amendment, Indian courts have to recognise and enforce the awards passed by arbitrators or arbitration courts or whatever they may be, outside India.

My question is, what about the awards passed by the Indian arbitration outside the country? Is there any mutual treaty between India and foreign countries regarding arbitration? So, as far as the foreign arbitration is concerned, when the place of arbitration is outside India, that award has to be complied with and enforced and that has to be recognised in India. But my question is, what about Indian companies and any arbitration award that comes into force in our country? Will that be recognised, respected and enforced in other countries? This is my second point on which I would like to seek a clarification from the hon. Minister.

Regarding Clause 8, once again, I would like to say that it is a very dangerous provision. By means of the intervention of the courts in India, most of the proceedings are being delayed like anything. I do accept it. That is not because of the courts alone. It is because of the procedural formalities, because of the CPC and the CrPC which the Parliament has passed. We want judicial reforms *in toto* and not in respect of commercial disputes alone and not in respect of arbitration alone. Shri Joice George has made that point. An award cannot be set aside. In the original Act, an arbitral award arising out of arbitration other than international commercial arbitration may also be set aside by the court if the court finds that the award is vitiated by patent illegality appearing on the face of the record.

That is the point which is to be looked into by the Minister. Even though my amendment is not being accepted, kindly look into the fact even in the future course of drafting of all these things. Suppose an award passed in the foreign country, an international award passed in the foreign country, as far as the international commercial arbitration, you cannot question, that means Indian courts cannot question, even if there is a patent illegality appearing on the face of the record. So, even an illegal award passed by the foreign arbitration in the case of an international commercial arbitration, Indian courts cannot question. Even if it is apparent on the face of the record that there is an illegality, the Indian courts have no jurisdiction. I am coming to the proviso also.

It says: "An award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence. These are the two areas that are important. 'Application of law' and 'appreciation of evidence' are the two basic principles of Indian judicial system. We have to implement or we have to use the laws in a proper form. The law has to be applied in a proper way. If the law is applied in an erroneous way, if there is an erroneous application of law, the court has no right to set aside the award. What is this jurisprudence?

Second aspect is 're-appreciation of evidence'. The courts have no right to re-appreciate the evidence. Suppose when the legality of an arbitration award comes to the court, the court has no right to re-appreciate the evidence which was already put before the arbitration. Then what is the scope of appeal? Then what is the scope of judicial process? The supervisory capacity of the judge or the judiciary is the main fact to be considered. When we are talking about the ease of doing business, even the judicial system is being submitted to the international commercial arbitration. So, these two, 're-appreciation of evidence' and 'erroneous application of law' are the main points. That means you cannot re-appreciate factual evidence. If question of law cannot be considered and question of fact cannot be considered, then what is the role of Indian courts in discussing the veracity and legality of these arbitration awards?

Another point is regarding the 'fundamental policy'. Prior to this amendment, as per the original Act, conflict in award will come, if it is against the 'public policy' of India. Now, it is being changed to mean, 'public policy' means 'fundamental public policy'. Hon. Minister, kindly explain this and enlighten the House as to what is the difference between the 'public policy of India' and 'fundamental public policy of India'. It further says that it is in conflict with the most basic notions of morality or justice. So, if the 'fundamental public policy' is conflicted then the award can be set aside. 'Fundamental public policy' will come only if it is in conflict with the 'most basic notions of morality or justice'. So, my point is that the rights and powers of the judiciary to scrutinise the awards passed by the arbitration is being curtailed by means of this Amendment Act.

I fully agree with the fact that delay is being caused, arbitration proceedings are being prolonged. All these are happening only because of the procedure which we are following in our country, because of the CPC and other procedures which we have enunciated. So, all these points have to be taken into consideration when we are talking about ease of doing business.

I will speak on my amendments when they will be taken up. With these words, once again I move the Resolution disapproving the Ordinance.

With these words, I conclude. Thank you very much.

HON. DEPUTY-SPEAKER: Some Members want to seek clarification.

Shri Sharad Tripathi.

श्री शरद त्रिपाठी (संत कबीर नगर): माननीय उपाध्यक्ष जी, हमारे सरकार के मुखिया, प्रधानमंत्री श्री नरेन्द्र मोदी जी की अध्यक्षता में इस विधेयक की मंजूरी मिली। इस विधेयक को हमारे विद्वान मंत्री ने प्रस्तुत भी किया। निश्चित रूप से यह जो पंचायत की व्यवस्था है, मध्यस्थता की व्यवस्था है, भारत की जो पुरानी पंचायत की व्यवस्था थी, यह उसी का एक परिष्कृत और नवीनीकृत रूप है। प्रधानमंत्री जी ने देश के विभिन्न गांवों-कस्बों का दौरा किया है, जिनकी संख्या लगभग तीन हजार से ऊपर है। उनको सच्चाई दिखी कि किस तरह आज भी पारदर्शी एवं त्वरित न्याय आम लोगों की पहुंच से दूर है। वे उनको पारदर्शी और त्वरित न्याय प्रदान करने के लिए विशेष रूप से गंभीर हैं।

HON. DEPUTY-SPEAKER: What do you want? You put the question. 'Clarification' means only putting a question and not making a speech. So, you seek clarification on what you want.

श्री शरद त्रिपाठी : उसी के प्रतिफल में माननीय मंत्री जी ने कल कमर्शियल ऐक्ट संबंधी बिल लाया था और आज मध्यस्थता से संबंधित जो विधेयक लेकर आए हैं, मैं उसका पूरा समर्थन करता हूँ और आपके माध्यम से मैं माननीय मंत्री जी आग्रहपूर्वक एक सवाल करना चाहूंगा। हम जितने भी जनप्रतिनिधि लोग हैं। हम लोग जनता के प्रति जवाबदेह-जिम्मेदार हैं। हम लोग जनता की समस्याओं के कारण कभी-कभी धरना-प्रदर्शन में अपनी सहभागिता करते हैं। हम लोगों को पता भी नहीं होता है कि हम लोगों के ऊपर कब कौन-सा मुकदमा कर दिया गया है।

HON. DEPUTY-SPEAKER: Shri P.P. Chaudhary. You are not putting questions. I asked you to put question. You have to put the question. I cannot permit it.

श्री शरद त्रिपाठी : जैसा कि माननीय मंत्री जी इस विशेष प्रकार के विधेयक के द्वारा लोगों को त्वरित न्याय प्रदान करने के लिए विधेयक ला रहे हैं। मैं माननीय मंत्री जी से अनुरोध करना चाहूंगा कि क्या भविष्य में कोई ऐसे न्यायालय का प्रारूप लाने वाले हैं, जो राजनीतिक न्यायालय के रूप में काम करे और जो जनप्रतिनिधियों के ऊपर आपराधिक मुकदमे किये जाते हैं, उसके कारण जब उनका रिकॉर्ड देखा जाता है, तो वे अपराधियों की श्रेणी में खड़े होते हैं। इसलिए मैं माननीय मंत्री जी से निवेदन करना चाहूंगा कि देश में एक राजनैतिक न्यायालय भी बने, जहाँ केवल राजनीतिक लोगों के मुकदमों का निस्तारण किया जाए।

HON. DEPUTY-SPEAKER: It is not connected with this thing. That is the problem. You have to put the question related to the subject, not about other things.

SHRI P.P. CHAUDHARY (PALI): Sir, the Arbitration and Conciliation (Amendment) Bill, 2015 is the need of the hour. It will instill confidence in the minds of the investors. My clarificatory question to the hon. Minster, through you, Sir, is this. This is basically a post-litigation mediation. There are two types of mediations the posts pre-litigation mediations. In our country, we are only having the post-litigation mediation. We do not have the pre-litigation mediation. So, in post-litigation mediation, what is required is the application for appointment of an arbitrator is to be moved before the court. The court is required to decide that application within sixty days. Thereafter, the court can also examine the existence of *prima facie* arbitration agreement. The total period is twelve months. It is required to be decided within 12 months. Further, with the agreement of the parties, it can be extended to six months. Again, on account of "sufficient cause" –the court can extend the time for giving an arbitral award. It is a post-litigation mediation. In other countries of the world just like America, 70 per cent litigation is reduced only on account of pre-litigation mediation. So, in the case of pre-litigation mediation, if the legal status is given, the parties meet together, agree, and enter into an agreement, their agreement is only required to be registered with the Registrar, then, there is no need to file any arbitration application before the court. Is there any move with the Government to create pre-litigation mediation? Thank you.

SHRI VARAPRASAD RAO VELAGAPALLI (TIRUPATI): Sir, the one case that is long-pending is about the Bhopal Gas Tragedy.

The poor people are not able to get justice. Therefore, as the initiative of the Government and the Ministry of Law, Bhopal case could be the first case to be referred to where the worst has happened in the human history so that those people may get justice. The hon. Minister may kindly consider this.

ADV. JOICE GEORGE (IDUKKI): My only clarification is regarding Clause 18 where we have introduced the words `the fundamental policy of Indian law' and also the words, `the basic notion'. These words were introduced for the purpose of getting over the implication of judgement in the ONGC case. Again the hon. Minister is saying that this is a matter of interpretation by the court. I fear that we are again throwing the ball in the court of law. We are leaving the entire issue to the wisdom of the court to interpret all these things. That is not the spirit of the amendment because the spirit of the amendment is to reduce the judicial interference. On the one hand, we are talking about reducing the judicial interference, and on the other hand, we are giving again all the responsibilities to the courts to interpret the clauses of the Act, which would be counterproductive. So, kindly clarify on this issue.

श्री विनोद कुमार सोनकर (कौशाम्बी) : निश्चित रूप से जो बिल आया है, इससे देश में हजारों मुकदमों को कम करने में सहूलियत मिलेगा। विषय इसी से जुड़ा हुआ है, देश में उपभोक्ता फोरम का गठन हुआ। जिस समय उपभोक्ता कानून को लाया गया, उसके पक्ष में बड़ी-बड़ी दलीलें दी गयीं कि इससे उपभोक्ताओं का हित होगा, साथ ही साथ, त्वरित न्याय होगा, लेकिन आज देश के विभिन्न न्यायालयों में, जिला फोरम में, स्टेट फोरम में और नेशनल फोरम में लाखों मुकदमे उपभोक्ताओं से संबंधित पड़े हुए हैं। मैं मंत्री जी से जानना चाहूंगा कि क्या इनकी मध्यस्थता के लिए या उपभोक्ता फोरम में पड़े हुए मुकदमों के त्वरित निस्तारण के लिए विचार करके कोई कार्यक्रम या विधेयक लाएंगे? धन्यवाद।

SHRI D.V. SADANANDA GOWDA: Sir, I am not totally agreeing with Shri Premachandran's view. I beg to differ from his view. He has raised three issues. Yesterday, while answering I stated that the increasing pendency is due to increase in the number of State and Central legislations. I would like to bring it to the notice of this House this. We have see the Electricity Act. As soon as the said Act was brought into force, lakhs and lakhs of cases were filed under that Act. Today, we are going in for an amendment to the Negotiable Instruments Act. If a banker files a case or ten cases against one individual; those ten cases can be kept together and the same can be resolved as a single case.

The Domestic Violence Act was brought into force. Within a short period, thousands of cases have been filed. For that reason, I stated that

there are certain enactments or new legislations because of which cases have been increased. That is what I told. Same is the case with the Motor Vehicles Act under which challans are collected by some other modes with the result reduction of cases would be there. Likewise, the Arbitration and Conciliation Act.

As far as appeal is concerned, we have provided an appeal for patently illegal cases in the court. if you allow all the cases to go to the court, this Bill will have no base at all. Earlier what happened? If we accept the argument of Shri Premachandran, almost all amendments brought today will have no value at all; it would be infructuous. So, totally to avoid too much interference of the court, we have done all these things. At the same time, as far as ONGC case is concerned, practically the whole judgement was considered and on the basis of that, the present draft has been prepared.

Shri Premachandran had mentioned about the claim of a company as to whether it is a foreign company or not. Practically, reference under Sub-Section 3 is removed because it is already covered under Sub-Section 2 under the terms 'body corporate'. So, there is no confusion as far as the issues which have been raised in the House by Shri N.K. Premachandran. Therefore, I request the House to disapprove his Statutory Resolution.

HON. DEPUTY SPEAKER: I shall now put the Statutory Resolution moved by Shri N.K. Premachandran to the vote of the House.

The question is:

"That this House disapproves of the Arbitration and Conciliation (Amendment) Ordinance, 2015 (No. 9 of 2015) promulgated by the President on 23 October, 2015."

The motion was negatived.

HON. DEPUTY SPEAKER: The question is:

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

The motion was adopted.

HON. DEPUTY SPEAKER: The House will now take up clause-by-clause consideration of the Bill.

Clause 2 Amendment of Section 2

Prof. Saugtata Roy - Not present.

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

"Page 2, for lines 13 and 14,--

substitute '(*B*) in clause (*f*), in sub-clause (*iii*), after the words "a body of individuals whose", the words "registered head office," shall be inserted.'." (5)

"Page 2, line 20,--

after "this Act"

insert "if mutually agreed treaties for enforcement of arbitration award are in existence with such countries"." (6)

HON. DEPUTY SPEAKER: I shall now put Amendment Nos. 5 and 6 to Clause 2 moved by Shri N.K. Premachandran to the vote of the House.

The amendments were put and negatived.

HON. DEPUTY SPEAKER: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 and 4 were added to the Bill.

Clause 5 Amendment of Section 9

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

"Page 2, line 47,--

omit "or within such further time as the Court may determine"." (7)

Sir, the Government can very well accept this amendment. Just now hon. Member Shri P.P. Chaudhary also mentioned about it. It says 'within such further time as the Court may determine'. Then, what is the meaning of giving a prescribed period of 12 months plus six months. After that, again it is said 'or within such further time as the Court may determine'. So, the entire authority is being given to the Court to fix the time as to when it will be disposed of. My point is, this is to be deleted.

HON. DEPUTY SPEAKER: I shall now put Amendment No. 7 to Clause 5 moved by Shri N.K. Premachandran to the vote of the House.

The amendment was put and negatived.

HON. DEPUTY SPEAKER: The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

Clause 6 Amendment of Section 11

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

"Page 4, line 15,--

after "opposite party"

insert "and the procedure for service of notice shall be completed as expeditiously as possible within a maximum period of 60 days from the date of filing of application" " (8)

"Page 4, line 19,--

after "Fourth Schedule"

insert "and revise the same from time to time corresponding to the revision made as per Section 11A" " (9)

Sir, my Amendment No. 8 is about issuance of the notice which is a big problem because most of the time is being taken for the issuance of the notice. So, this should also be taken care of.

My Amendment No. 9 is regarding the fee of the arbitrator. The hon. Minister has stated that the fee of the arbitrator has already been fixed by the Parliament. But the Government can, at any time, change the fee as per Section 11A. So, it is not absolute. I am not objecting to it. My point

is, if you can change the fee structure at any time, this should also be incorporated along with other Sections.

HON. DEPUTY SPEAKER: I shall now put Amendment Nos. 8 and 9 to Clause 6 moved by Shri N.K. Premachandran to the vote of the House.

The amendments were put and negatived.

Shri Adhir Ranjan Chowdhury - Not present

Shri B. Vinod Kumar - Not present

HON. DEPUTY SPEAKER: The question is:

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill..

Clause 7 was added to the Bill.

Clause 8 Amendment of Section 12

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

"Page 5, *omit* lines 11 to 13." (10)

Sir, my Amendment is that the person who is interested either in the subject matter or is interested in the parties to the dispute cannot be an arbitrator. That is the provision for which we are making an amendment by virtue of the Schedule.

But a proviso has been given, if the parties are in agreement with the issue, then they can have any arbitrator. That cannot be allowed. It is because, suppose the Government of India is a party to the arbitration and a contractor or a claimant is there, the Government and the claimant are making an agreement. Okay, though the arbitrator is having some interest in the subject matter of the dispute, he can be, that shall never be allowed, that is the proviso. That is my amendment.

HON. DEPUTY SPEAKER: I shall now put Amendment No. 10 to Clause 8 moved by Shri N.K. Premachandran to the vote of the House.

The amendment was put and negatived.

HON. DEPUTY SPEAKER: Shri B. Vinod Kumar – not present.

The hon. Minister to move Amendment No. 22 to Clause 8.

Amendment made:

Page 5, *omit* lines 14 and 16. (22)

(Shri D.V. Sadananda Gowda)

HON. DEPUTY SPEAKER: The question is:

"That clause 8, as amended, stand part of the Bill."

The motion was adopted.

Clause 8, as amended, was added to the Bill.

Clauses 9 to 11 were added to the Bill.

Clause 12 Amendment of Section 24

HON. DEPUTY SPEAKER: Dr. Shashi Tharoor – not present.

The question is:

"That Clauses 12 to 14 stand part of the Bill."

The motion was adopted.

Clauses 12 to 14 were added to the Bill.

Clause 15 Insertion of new sections 29A and 29B

HON. DEPUTY SPEAKER: Prof. Saugata Roy, are you moving your Amendment Nos. 3 and 4 Clause 15?

PROF. SAUGATA ROY (DUM DUM): Yes, Sir,

I beg to move:

Page 6, line 27, –

for "twelve months",

substitute "six months". (3)

Page 6, *omit* lines 33 to 35. (4)

Sir, my purpose of moving the amendments is quite simple that India was ranked 178th among 189 nations in the speed of enforcing contracts. The importance is that urgent steps should be taken to facilitate quick enforcement of contracts, easy recovery of monetary claims and award of just compensation for damages suffered and reduce the pendency of the cases in courts. All I have suggested is that in line 27, for 'twelve months', substitute 'six months' and then omit lines 33 to 35. They say, if the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

The purpose of the Minister is good. He has introduced this clause so that more cases can be solved by arbitration; also that arbitration is not held up in courts to make the process easy so that contract can be easily enforced. But I still think that this Bill has been pending from 2005. The original Amendment Bill was 2003. Then the Law Commission gave a recommendation; the Standing Committee gave a recommendation. It has already been delayed 10 years. So, I would like this to be passed while urging the Minister that strictest step should be taken to enforcing contracts also.

I want to mention that here, for the first time, fees for arbitration have been indicated in the Bill. Normally it is not done. So I hope that this will lead to speedier disposal of the cases. I had mentioned to the Minister just one point that this Bill also has the original and appellate jurisdiction.

There are only three courts in the country which have got original jurisdiction, and they are Calcutta, Bombay and Madras, which are a part of the British Presidency. ...(*Interruptions*) Yes, Shimla also. It is high time that we do away with this colonial legacy. With that purpose, I moved the amendment. But this Bill is basically a harmless Bill. It tries to improve the ease of doing business. So, I would like the Minister to go ahead.

SHRI D.V. SADANANDA GOWDA: As far as the hon. Member, Prof. Saugata Roy's objection is concerned, I would like to say that there is a provision under this Act for fast track. Within six months, if both parties agree, they can resolve. Otherwise, a conscious decision has been taken after considering the Report of the Standing Committee, the Law Commission Report and everything. But there is a fast track provision. Under that fast track provision, that can be taken care of.

HON. DEPUTY SPEAKER: I shall now put Amendments Nos. 3 and 4 to Clause 15 moved by Prof. Saugata Roy to the vote of the House.

The amendments were put and negatived.

HON. DEPUTY SPEAKER: Shri Adhir Ranjan Chowdhury – not present.

Shri A.P. Jithender Reddy to move the Amendment No. 16.

SHRI A.P. JITHENDER REDDY (MAHABUBNAGAR): I beg to move:

"Page 6, line 27,â€”

for "twelve months"

substitute "twenty four months"." (16)

Sir, I want to prolong it. As many of my colleagues have said, there are lakhs and crores of cases are pending. ...(*Interruptions*)

SHRI D.V. SADANANDA GOWDA: Just now my friend said that there is arbitration between yourself and myself. It is delayed by more than six months. We will reduce it. ...(*Interruptions*)

SHRI A.P. JITHENDER REDDY : Even when this rule is there, arbitration is not going ahead. ...(*Interruptions*)

SHRI D.V. SADANANDA GOWDA: Sir, the purpose will be defeated if it is enhanced. ...(*Interruptions*)

SHRI A.P. JITHENDER REDDY: Even when this rule is there, arbitration is not going forward, and then it will be cancelled. That is why, I am saying that at least let it be prolonged.

HON. DEPUTY SPEAKER: I shall now put Amendment No. 16 to Clause 15 moved by Shri A.P. Jithender Reddy to the vote of the House.

The amendment was put and negatived.

HON. DEPUTY SPEAKER: Dr. Shashi Tharoor – not present.

The question is:

"That clause 15 stand part of the Bill."

The motion was adopted.

Clause 15 was added to the Bill.

Clauses 16 and 17 were added to the Bill.

Clause 18 Amendment of Section 34

HON. DEPUTY SPEAKER: Shri N.K. Premachandran to move the Amendment No. 11 to Clause 18.

SHRI N.K. PREMACHANDRAN (KOLLAM): I beg to move:

"Page 9, *omit* lines 21 and 22." (11)

Sir, my amendment to Clause 18 is re-appreciation of evidence and this application of law, that is erroneous application of law and re-appreciation of evidence. These are the basic principles and rights of the supervisory courts. If they are being curtailed, definitely this provision will be struck down by the judiciary. So, my humble submission is that these are the basics of jurisprudence having the application of law in a proper way and appreciation of evidence in a proper way. These are being taken away. So, my submission is that this proviso may be taken away. That is my amendment.

HON. DEPUTY SPEAKER: I shall now put Amendment No. 11 to Clause 18 moved by Shri N.K. Premachandran to the vote of the House.

The amendment was put and negatived.

HON. DEPUTY SPEAKER: Shri Adhir Ranjan Chowdhury – not present.

The question is:

"That clause 18 stand part of the Bill."

The motion was adopted.

Clause 18 was added to the Bill.

Clauses 19 to 24 were added to the Bill.

Clause 25 Insertion of new Fourth Schedule, Fifth Schedule, Sixth Schedule and Seventh Schedule

HON. DEPUTY SPEAKER: Hon. Minister to move the Amendment No. 23.

Amendment made:

"Page 14, lines 3 to 4,–

for "TWENTY-FOUR MONTHS AND RENDER AN AWARD WITHIN THREE MONTHS",

substitute "TWELVE MONTHS"." (23)

(Shri D.V. Sadananda Gowda)

HON. DEPUTY SPEAKER: The question is:

"That clause 25, as amended, stand part of the Bill."

The motion was adopted.

Clause 25, as amended, was added to the Bill.

HON. DEPUTY SPEAKER: Hon. Minister to move the motion for suspension of Rule 80 (i).

Motion Re: Suspension of Rule 80 (i)

SHRI D.V. SADANANDA GOWDA: I beg to move:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No. 24 *to the Arbitration and Conciliation (Amendment) Bill, 2015 and that this amendment may be allowed to be moved."

HON. SPEAKER: The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No. 24 *to the Arbitration and Conciliation (Amendment) Bill, 2015 and that this amendment may be allowed to be moved."

The motion was adopted.

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* *Vide* Amendments list No. 7 circulated on 10.12.2015

New Clause 25A

Amendment made:

"Page 15, after line 12, insert, -

"Act not to apply to pending arbitral proceedings.	25A. Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.".	(24)

(Shri D.V. Sadananda Gowda)

HON. DEPUTY SPEAKER: The question is:

"That new clause 25A be added to the Bill. "

The motion was adopted.

New clause 25A was added to the Bill.

Clause 26 Repeal and savings

HON. DEPUTY SPEAKER: Dr. Shashi Tharoor – not present.

The question is:

"That clause 26 stand part of the Bill."

The motion was adopted.

Clause 26 was added to the Bill.

HON. DEPUTY SPEAKER: The question is:

"That Clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

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

HON. DEPUTY SPEAKER: The Minister may now move that the Bill, as amended, be passed.

SHRI D.V. SADANANDA GOWDA: Sir, I beg to move:

"That the Bill, as amended, be passed."

HON. DEPUTY SPEAKER: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

17.36 hours