

RAJYA SABHA

***SYNOPSIS OF DEBATE**

(Proceedings other than Questions and Answers)

Wednesday, March 10, 2021 / Phalgun 19, 1942 (Saka)

REFERENCE BY THE CHAIR

Celebrating ‘Azadi ka Amrit Mahotsav’

MR. CHAIRMAN: Hon. Members, as you are aware, this year, i.e., the year 2021, we shall be entering into the 75th year of our Independence. To mark this occasion, the Government of India has planned ‘Azadi ka Amrit Mahotsav’, from 12th March, 2021, which will continue till 15th August, 2023. The celebrations are to be dotted with several events, exhibitions, social media campaigns, virtual shows and site events across all the States and Union Territories of the country.

The Mahotsav will commence on 12th March, 2021 with the ‘padh yatra’ from Sabarmati to Dandi stretching over 24 days and culminating on 5th April, 2021, thus following the footsteps of Bapu, to commemorate the historic Dandi March undertaken by Bapu in 1930 during the aforesaid period. The 75th year of our Independence indeed is a special occasion for all of us and citizens of our country and ‘Azadi ka Amrit Mahotsav’, will definitely add to the ethos, values and spirit of freedom we all cherish.

***This Synopsis is not an authoritative record of the proceedings of the Rajya Sabha.**

I urge upon the hon. Members to take part in the 'Mahotsav' in large numbers and in various capacities in their own respective areas and spread the values and ideals which our freedom fighters always stood for and helped our country gain freedom from the yoke of colonial rule.

MATTERS RAISED WITH THE PERMISSION OF THE CHAIR

Need for Conservation of Mother Tongue/ Native Languages

SHRI HARNATH SINGH YADAV: All countries are conscious about the respect and prosperity of their languages, but India is an exception. The Hon'ble President has approved the recommendation number 5 of the 8th Volume of the Official Language Committee and ordered that all Hindi speaking and reading people, who are holding highest official positions should give their speeches and statements in Hindi only. All the ministers including the President also fall in this category.

(Several hon'ble Members associated.)

GOVERNMENT BILL

The Arbitration and Conciliation (Amendment) Bill, 2021 - Contd.

SHRI MAHESH PODDAR, Continuing his unfinished speech dated 09.03.2021, said: The Government has introduced the Arbitration and Reconciliation (Amendment) Bill, 2021 to curb illegal practices. I expect the hon'ble Minister to tell the country about the need for this law. Today, companies and investors around the world are contracting with governments and with the private sectors. Therefore, it is necessary that the contract is properly followed. Taxpayers do not even know that their hard earned income has been robbed. I will request the Minister to inform the country about the mess in the entire chain. A proviso has been added in Sub-Section-3 of Section 36 of the Arbitration and Reconciliation Act, 1996 by

amending the said Act that if for some reason, even if dishonestly, prima facie, there is a possibility of mess, then the court will stay that award. Businessmen know that there are many wrongdoings and it takes years when people go to court under section 34 to get a stay on the award taken wrongly. This barrier will be overcome by this law. The existing list in the old Section 8 has been removed by another provision made in it. The Arbitration Council of India has been empowered to take decisions in relation to the competent person for the arbitration. Here, provisions have been made to prevent the dishonesty being practised in the past. I strongly support this Bill and request the House to welcome these provisions.

DR. AMAR PATNAIK: This particular Amendment brings out a few words which are very important. The question of re-appreciation of evidence is not provided for in Section 34. It is not an appeal provision. Any issue of fraud is a mixed fact of law and it cannot be summarily decided unless it is proved. And that particular proving would require that they would have to take evidence from sources other than what was provided in the initial arbitral award. I will really not know how this particular provision will be implemented unless the court is able to reopen the entire case. The provision of the Eighth Schedule which was introduced in the last Amendment has actually not even come into force. The Arbitral Commission has not yet been formed. It is not known how the Arbitrators will be appointed in the absence of this particular provision. With these couple of observations, I support the Bill.

SHRI AYODHYA RAMI REDDY: The Arbitration Act was enacted with a view to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and the law relating to conciliation. The Amendment ensures that all the stakeholders get an equal opportunity from the Indian courts to seek unconditional stay of enforcement of arbitral awards where the underlying arbitration agreement or making of the arbitral award is induced by fraud or corruption. The Amendment also aims to promote India as a hub of international commercial arbitration. The proviso inserted by the Bill

stipulates that the court, if satisfied that a prima facie case of fraud or corruption has been made out, shall stay the award unconditionally pending disposal of the challenge under Section 34 of the Act. The Amendment will prove quite helpful in cases where inherent illegality by fraud or corruption has been prima facie shown in court. However, it will be interesting to see how the courts interpret the burden of proving a prima facie case of fraud or corruption. The provision of the Bill will also be tested in instances where parties use it to stall the operation of an award by filing a Section 36-application and waste precious time of court. Courts will have to be cautious in formulating a test for granting an unconditional stay on the operation of the award. The Bill seeks to omit the Eighth Schedule of the Act which laid down the qualifications, experiences and norms for accreditation of arbitrators and also specify by regulations the qualifications, experience and norms for accreditation of arbitrators. The 2020 Amendment directly addresses that concern by removing the Eighth Schedule altogether from the Act and replacing it with 'the regulations'. The qualifications of the arbitrators are now to be specified by regulations, which have not yet been notified. However, what these 'regulations' might be and by when they would be released, are some of the questions that have been left unanswered. It is only hoped that practitioners and key stakeholders would be consulted in finalizing these regulations to prevent any further controversy on this issue. In view of the above, our Party supports the Bill.

SHRI KANAKAMEDALA RAVINDRA KUMAR: The object of the proposed Amendment is that there was a need to ensure that all the stakeholders get an opportunity to seek unconditional stay of enforcement of arbitral awards and to promote India as a hub of international arbitrations by attracting eminent arbitrators. In case of fraud, if there is corruption, definitely, the court is having absolute authority to grant stay. However, Section 36(3) is sufficient to grant stay on the operation of award and there is no need to make a provision for unconditional stay. The proposed Amendment may cause delay in proceedings further. If it is implemented with retrospective effect, it means that all the cases, in which awards are already passed and appeal is pending, are going to be affected. We

want to make India the hub of arbitration. But, the businessmen and investors will not come if provisions are put in this Bill which will result in delay of arbitration proceedings by virtue of these Amendments. Now, the Parliament has the right to prescribe the qualification of an arbitrator. This right is being taken away by virtue of omission of Eighth Schedule. We have to create a mechanism to see that there is a minimum judicial interference in the award passed through arbitration.

THE MINISTER OF LAW AND JUSTICE; THE MINISTER OF COMMUNICATIONS; AND THE MINISTER OF ELECTRONICS AND INFORMATION TECHNOLOGY (SHRI RAVI SHANKAR PRASAD), replying to the discussion, said: Our only effort is to have a sincere arbitration in India. People may not loot taxpayers' money. We are strengthening the ecosystem of India's arbitration by law, making it honest. Will some traders in an independent country misuse the system to take natural resources, make collusive contracts? A system to stop it is being brought in this law. We want India to be a major centre of the arbitration. Arbitration Council is also being constituted. It is for the Arbitration Council to decide what should be the quality of the arbitrator. We are giving autonomy to the Arbitration Council. Passing this Bill is a national compelling necessity. This is absolutely legal.

The motion for consideration of the Bill was adopted.

Clauses etc., were adopted.

The Bill, was passed.

Desh Deepak Verma,
Secretary-General.

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**ERRATA TO THE SYNOPSIS OF DEBATE
DATED 9th MARCH, 2021**

Page No.	Line No.	Correction
267	10-12	Remove 'and while at that.....brought up.'
267	13	Read 'concluded' for 'commenced'.