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ARBITRATION AND CONCILIATION ACT, 1996: ALL THE MAJOR AMENDMENTS

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INTRODUCTION.

India's first arbitration Act was enforced in 1899; it has been more than 120 years since the first Act was enacted. The arbitration and conciliation in India was governed for more than a decade by the Arbitration and Conciliation Act, 1996. The primary goal of this Act was to reduce the role of courts as supervisors in the arbitration process while also giving conciliation a legal standing to effectively resolve contractual issues. Thereafter, India's law on Alternative Dispute Resolution (ADR) has constantly been improving. Continuous piecemeal amendments are being made in a bid to make our country a hub of arbitration by providing an excellent mechanism in Alternate Dispute Resolution for the ease of proclamation of justice.

This paper highlights the significant improvements in the Arbitration and Conciliation Act 1996, brought in by the three amendment Acts of 2015, 2019, and 2021, along with their impacts on the country. The 2015 amendment was the first one that brought major changes in the 1996 Act, such as making the process more cost-effective and setting a stipulated time for disposal of disputes. Whereas the amendment of 2019 accompanied changes in the appointment of arbitrators under section 11, it also introduced Arbitral Institutions and the Arbitration Council of India as well as timelines under the amendment Act. The provisions of 2021 Amendment Act deals with domestic and International Arbitration. It has repealed the amendment of 2020 and has set new conditions.

THE AMENDMENT OF 2015

ADR in India has been plagued by problems such as lengthy hearings, high costs that cause significant delays. The Arbitration and Conciliation (Amendment) Act, 2015 was introduced to

address these difficulties and give parties more confidence in choosing India as a venue for arbitration. It has brought various important alterations to the Arbitration & Conciliation Act, 1996. It had several goals: making arbitration a more popular means of conflict resolution by making it more cost-effective and setting a specified time for disposal of disputes.

It has a total of 27 sections which have brought numerous amendments. However, in this paper, only key amendments brought by the Act¹ are discussed; they are:

Amendment in the definition of Court [Section 2(e)]

Specific provisions of Part I of the Act has been amended, such as interim relief, appeal to an interim relief order, and court assistance in taking evidence, apply equally to International Commercial Arbitration, even if the arbitration happens outside the territory of India, subject to an agreement to the contrary.

Amendment to section 7

An arbitration agreement that is communicated by electronic means is treated the same as an arbitration agreement that is written.

Amendment to section 8

The sub-section (1) of section 8 has been amended, stating that the judicial authority shall refer the parties to arbitration notwithstanding any decision, decree, or order of the Supreme Court or any other court, unless it identifies that there is no valid arbitration agreement prima facie.²

Section 9 Amendment

If the Court issues an order for an interim measure under Section 9 sub-section (1) before the start of arbitral proceedings, the arbitral proceedings must be started within ninety days of the date of the order.

It further states that once the arbitral panel is established, the Court will not consider an application for an interim measure unless it discovers circumstantial evidence.

¹ Arbitration and Conciliation (Amendment) Act 2015.

² Arbitration and Conciliation (Amendment) Act 2015, s 8.

Change in the definition of public policy

The scope of section 34, which defines "public policy" has been narrowed, and an arbitral award can now be struck down only if : (i) it was swayed or influenced by fraud or corruption; (ii) clashes with the most fundamental notions of justice and morality; or (iii) is contradictory to India's fundamental policy.³

Provisions regarding duration of Arbitral Proceedings

This Act has imposed a strict limit on arbitral proceedings. An arbitral tribunal must pass an award within 12 months of the appointment of arbitrators that may be extended by the parties again for 6 months under section 29A of the Act. Section 29 B provides provisions regarding the Fast Track procedure, which allows them to complete arbitration in less than six months.

Amendment to section 17

The Section 17 of the 1996 Act has been amended to give the arbitral tribunal power to issue interim measures orders like a court, and their order u/s 17 shall be enforceable under Civil Procedure Code, 1908 in the manner equivalent to a court.

Appointment of Arbitrators by the Supreme Court or the High Court.

If one of the parties files an application, Section 11 of the Act gives the Supreme Court or High Court the jurisdiction to select arbitrators.

Power of Tribunal to Impose Exemplary Cost.

The Amendment to section 24 allowed the arbitral tribunals to impose exemplary costs on a party seeking frivolous adjournments and requiring courts to rule on applications to challenge arbitral awards within a year of the notice being served on the other party.

Introduction of a new expansive cost regime

In order to disallow frivolous actions, Section 31A codifies the "costs follow the event" or "loser pays" principle⁴.

³ Arbitration and Conciliation (Amendment) Act 2015, s 18.

⁴ Arbitration and Conciliation (Amendment) Act 2015, s 17.

Amendment to section 36

The Act has also amended Section 36 to provide that an arbitral award does not automatically result in a stay of enforcement actions by the mere filing of an application to set it aside⁵.

The 2015 Act's amendments, while commendable, were merely the first step toward establishing arbitration India's preferred means of conflict resolution. The amendments were intended to curtail practices that waste time and make the arbitration process excessively expensive. Even with so many changes brought up by this Act, there was much lacking, such as the Amendment Act leaves open the question of whether Indian parties can arbitrate their disputes under foreign law. Furthermore, the Amendment Act does not address the problem of arbitration confidentiality etc., which are some, amongst others.

THE AMENDMENT OF 2019

The word impact itself suggests the changes brought by. The Arbitration and Conciliation (Amendment) Act, 2019 brought the most crucial changes in the Act. The most significant changes are the establishment of an Arbitral Institution rather than courts in India, the introduction of six-month deadlines for filing pleadings, the establishment of the Arbitration Council of India, the alteration in the scope of Sections- 17, 45, and 50 of the Arbitration Act⁶, along with the exclusion of International Arbitrations from the twelve-month adjudication period provided under section 29 and the introduction of Section 87 to elucidate the impact of the 2015 Amendment Act⁷ in the future.

Amendment of Section 11 and Insertion of Section 43

The Arbitral Council of India is formed by Sec. 11 and Sec. 43 under Part 1A of the 2019 Amendment Act. This institution was essentially established to carry out the following roles:⁸

1. Arbitral institutions and arbitrators are graded.
2. Development of policies pertaining to arbitrations.

⁵ Arbitration and Conciliation (Amendment) Act 2015, s 19.

⁶ Arbitration and Conciliation Act, 1996.

⁷ Arbitration and Conciliation (Amendment) Act 2015.

⁸ Rai D, "The Impact of Arbitration and Conciliation Amendment Act, 2019" (*iPleaders* November 23, 2020) <<https://blog.ipleaders.in/the-impact-of-arbitration-and-conciliation-amendment-act-2019/>> accessed July 15, 2021.

3. Training in the area of Arbitration.
4. Keeping a digitized record of all awards given in India.
5. Promotion for ADR.

Section 11 deals with the appointment of arbitrators. Earlier, the Supreme Court or the High Court would appoint arbitrators in a matter. The 2019 Amendment Act, on the other hand, stipulates that arbitral institutions (chosen by the SC in cases of international disputes) be established.

Restraint on interim reliefs:

Section 17 has been changed to limit the arbitral tribunal's ability to grant interim relief only during the course of the arbitration. Earlier, the arbitral tribunal might grant interim relief after an award had been made⁹. Any post-award temporary remedies must now be sought through the courts under Section 9. The arbitration process is streamlined as a result of this.

Amendment of Section 29A

Previously, the time frame for arbitration was 12 months from the time the arbitrators were appointed. It could, however, be stretched for another six months if both parties agree. If more time was needed, the courts were to be addressed with suitable justifications for the request. The timeframe for the arbitration has been moved from the appointment of arbitrators to the end of the pleadings as a result of the amendment¹⁰. Therefore, six months of additional time has been allowed.

This alteration will allow the tribunal to conduct the proceedings without having to wait for the Court's decision on a time extension under Section 29A.

Amendment in Section 87

The addition of Section 87 to the 2019 Amendment Act removes the 2015 Amendment Act's Section 26. Section 87 inverts the Supreme Court's decision in Board of Control for Cricket in India v. Kochi Cricket Private Limited and Others¹¹. The Honorable Court held in BCCI vs.

⁹ Arbitration and Conciliation Act 1996.

¹⁰ Arbitration and Conciliation (Amendment) Act 2019.

¹¹ [2018] 6 SCC 287.

Kochi¹² that awards challenged under Section 34 prior to the 2015 Amendment Act would be subject to the terms of the 2015 Amendment Act, as the Act was enacted to minimize the time it took for an award to be enforced.

Amendment of section 45.

Section 45 of the Act, under Part II (power of Courts to refer the matter to arbitration unless it finds that the arbitration agreement is null and void, inoperative and incapable of being performed) has been amended to substitute the words "unless it finds", with the words "unless it prima facie finds."¹³

THE AMENDMENT OF 2021

The Arbitration and Conciliation (Amendment) Act, 2021 enacted into law on 10 March 2021. This Act follows the Arbitration and Conciliation amendment of 2020. It is the third amendment in the act of 1996 that shows the legislative goal for making India an arbitration-friendly country.

The amendment has brought two changes. The first change was to enable automatic stay on the awards in some instances where the court has prima facie evidence. The second change was the omission of eighth schedule from the principal Act, which provides the regulations, qualifications, experience, and norms of the arbitrators.

This Act has repealed The Arbitration and Conciliation (Amendment) Ordinance, 2020 and altered the 1996 Act¹⁴ in the following ways:¹⁵

- Section 36 of the Act has been extended to include that the court shall stay the award unconditionally in cases where it is prima facie made out that:
 - (a) the arbitration agreement or contract which is the basis of the award; or
 - (b) the award was induced or influenced by fraud or corruption. ¹⁶
- Provision 43J of the Act has been replaced, and the new section stipulates that regulations must specify the qualifications, experience, and standards for arbitrator accreditation.

¹² *Ibid.*

¹³ Arbitration and Conciliation (Amendment) Act 2019, s 45.

¹⁴ Arbitration and Conciliation Act 1996.

¹⁵ "Avantis RegTech - Arbitration and Conciliation (Amendment) Act, 2021" (*Avantis June 10, 2021*) <<https://avantis.co.in/updates/article/12966/arbitration-and-conciliation-amendment-act-2021/>> accessed July 15, 2021.

¹⁶ Arbitration and Conciliation (Amendment) Act 2021, s 2.

- Schedule VIII of the Act has been omitted.

Even though 2021 Amendment is the most recent and the smallest one, it is not immune to hindrances. The 2021 Amendment reflects a deep skepticism of the arbitral process, which is disappointing news for India's arbitration framework. Moreover, The omission of the eighth schedule could result in the appointment of unfit arbitrators. The parties, Council, and Indian Courts will all have to verify the arbitrator's competence again, which is unfavorable. In that scenario, the Council and the parties must proceed with prudence when choosing arbitrators under the updated Act.¹⁷ Furthermore, India aspires to become a regional and global arbitration center, and the resolution of commercial disputes could now take longer due to the implementation of these statutory amendments. The impact of this amendment is still in debate and only the time can declare the results.

CONCLUSION

The Indian Constitution is transformative, and this phenomenon can be seen in laws passed in the country. Not only the Constitution but the statutes passed on by the legislature are being continuously amended as per the changing values and needs of the society. All the Amendments happened so far in the Arbitration and Conciliation Act, 1996 is also a part of this phenomenon. The purpose of introducing ADR was to lighten the burden of courts. Now the demand for ADR is increasing among people because of its many advantages. It is the recently growing popularity of this method that led to these frequent changes in the 1996 Act.

The 2015 Amendment aimed to reduce the judiciary's interference in arbitration proceedings, align the 1996 Act with international best practices, speed up the process, and improve the overall effectiveness and efficiency of arbitration as a method for resolving disputes. While the 2019 Amendment not only fulfilled some of the backdrops of the 2015 Act but also introduced important changes such as the establishment of ACI, confidentiality, restricted review of awards, and deadlines for arbitration completion. The Amendment of 2021 is the most recent one of all, with only five sections carrying along, yet brought some changes worth of which are still in debate.

¹⁷ Ramaswamy R, "Arbitration and Conciliation (Amendment) Act'21: Commentary" (*Academike* May 29, 2021) <<https://www.lawctopus.com/academike/arbitration-act-21/>> accessed July 15, 2021

It is a hope that our legislature will continue to bring further improvement in the Arbitration and Conciliation proceedings so that justice can be served in the most effective and efficient manner.

