2015 and 2019 *Amendments to the Arbitration and Conciliation Act, 1996*: A comparative analysis

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	Arbitration & Conciliation Act, 1996	*2015 Amendments*	*2019 Amendments*
1. *Date of Enactment*	*August 16, 1996.*	*Promulgated by the President of India on October 23, 2015.*	*Received presidential assent on August 9, 2019.*
2. *Qualifications of an arbitrator*	*No specific qualifications prescribed.* *Original s.12 of the Act necessitated an arbitrator to disclose in writing circumstances likely to give rise to justifiable doubts as to his independence or impartiality.*	*No specific qualifications prescribed for being appointed as an arbitrator, aside from the general requirements of independence and impartiality.* *The newly inserted V schedule of the Act lists 34 such grounds which shall act as a guide in determining whether circumstances exist which give rise to justifiable doubts under original s.12 as to the independence or impartiality of an arbitrator.*	*Introduced the VIII Schedule which specifically provides that only a certain specific class of persons holding certain qualifications would be eligible to be accredited as an arbitrator including advocates, chartered accountants, cost accountants and company secretaries; or officers of the Indian legal service, or officers with a law degree or an engineering degree; officers having senior level experience of administration; [all with 10 years of experience] or a person having educational qualification at the degree level with 10 years of experience in a technical or scientific stream in the fields of telecom, information technology, intellectual property rights or other specialized areas [both in*

			the government and in the private sector]. *However, any person having been convicted of any offence involving moral turpitude or an economic offence would be in conflict with these norms.*
3. Arbitral Institutions	*No delegating power with, either Supreme Court or the High Courts.*	*Under s.11(6)(B), delegation of the powers of appointment of an arbitrator by the Court concerned to an arbitral institution shall not amount to a delegation of judicial power.*	*Supreme Court and the High Courts empowered to designate arbitral institutions for performing crucial functions, including appointment of arbitrators under s.11.* *With the delegation under s.11 to Arbitral Institutions, the Supreme Court of India will directly hear challenges, under Article 136, against orders passed by designated Arbitral Institutions.*
4. Establishment of ACI	*No concept of 'Arbitration Council of India'.*	*No concept of 'Arbitration Council of India'.*	*Creation of the Arbitration Council of India, modelled as a premier arbitration regulator/overseer performing various functions for promoting, reforming and advancing the practice of arbitration in the country.* *The Arbitration Council of India has been given powers inter-alia for grading arbitral institutions, recognizing professional institutes*

			providing accreditation of arbitrators, maintaining a repository of arbitral awards made in India etc.
5. The Definition of 'Court'	*Original s.2(e) of the Act provided a single definition of "Court", which meant a District Court, or the High Court exercising its ordinary original civil jurisdiction, as the case may be.*	*The Ordinance, however, bifurcates the definition and clearly specifies that unlike other arbitrations, in case of international commercial arbitrations, only a High Court exercising its ordinary original civil jurisdiction will qualify as a "Court".*	*No change in the definition of "Court", under s.2(e).*
6. Confidentiality of arbitral proceeding			*Arbitrator(s), arbitral tribunal, parties to maintain confidentiality of all arbitration proceedings.* *Exception: if disclosure of award for purpose of its implementation and enforcement*
7. Protection for Arbitrators			*Provides an express safety-net for arbitrators and clarifies that no suit or other legal proceedings shall lie against an arbitrator(s) for anything done in good faith or intended to be done under the 1996 Act.*
8. Fee provisions	*No capping on the fees to be paid to an arbitrator*	*Provides a cap on the fees to be paid to an*	*In the absence of a designated arbitral*

		arbitrator, barring international commercial arbitrations and institutional arbitrations. *The amendment to s.11 of the Act empowers the concerned High Court to frame rules to determine the fees of the Arbitral Tribunal and the mode of such payment. The rates specified in the newly inserted IV schedule have to be considered.*	*institution, the High Court is required to maintain a panel of arbitrators and if a party were to appoint an arbitrator from such a panel then the fee as stipulated in the Fourth Schedule shall be applicable to the arbitrator so appointed.*
9. Interim measures under s.9	*No clarification on the applicability of s.9 to international commercial arbitrations.*	*Inserted a proviso to s.2 of the Act, whereby, s.9, 27 and clause (a) of sub-section (1) and sub-section (3) of s.37 (all falling in Part I of the Act) have been made applicable to international commercial arbitrations, even if the place of arbitration is outside India. As a result a party to an arbitration proceeding will be able to approach Courts in India for interim reliefs before the commencement of an arbitration proceeding, even if the seat of such arbitration is not in India.* *Importantly, under the newly inserted s.9(3), a Court cannot, as a matter of course, entertain an application for interim measure once an arbitral tribunal has been*	*Applicability of s.9 to international commercial arbitrations, if seat of Arbitration in India.*

		constituted, unless the Court finds that circumstances exist which may not render the remedy available under s.17 of the Act, i.e. approaching the arbitral tribunal for interim measures, efficacious.	
10. Interim measures under s.17	*No remedy under s.17, once the award has been made.*	*Permitted the parties to obtain interim measures from an arbitral tribunal under s.17 of the 1996 Act during the pendency of the arbitration proceedings or at any time after the making of the award, but before it was enforced in accordance with s.36.*	*After the making of an award and before its enforcement, it is the concerned Court only which can be approached for interim measures under s.9 of the 1996 Act. The arbitral tribunal has no further authority after the passing of the award except for certain limited functions such as those mentioned in s.33 of the 1996 Act.*
***11.** Time extension*	*No provision for the extension of time period for completion of the arbitration proceedings.*	*Parties, by consent can extend the prescribed period of 12 months for a further period not exceeding 6 months, under s.29A.*	*When the parties have approached the Court concerned with an application under s.29A for extension of time for completion of the arbitration proceedings, then the mandate of the arbitrator(s) shall continue till the disposal of the said application.* *This ensures the continuation of the arbitration proceedings for the period when the said application is pending before the Court, which*

			period prior to this amendment could not be put to any beneficial use
12. Completion of arbitral proceeding	*The completion of arbitral proceeding under the original Act 1996 was not so time bound.*	*- In order to discourage litigants who obtain an interim order under s.9 of the Act, but do not commence arbitration proceedings, a timeline of 90 days to commence arbitration proceedings after obtaining an order under s.9 of the Act has been introduced.* *- An application to set aside an arbitral award under s.34 of the Act has to be disposed of by the Court within a period of 1 year from its filing.* *- s.29A of the Act mandates completion of arbitration proceedings within a period of 12 months of entering into a reference.* *- The parties to an arbitration may, however, by consent, extend the period for making an arbitration award for a further period not exceeding 6 months.* *- Introduced a fast track arbitration proceeding. s.29B of the Act provides for an option whereby the parties to an arbitration agreement may mutually decide to appoint a sole arbitrator who decides the dispute on the basis of written pleadings, documents and submissions. Oral*	*The amendment frees international commercial arbitrations from a pre-determined time-period, albeit retaining a 'pious-hope' provision for completion thereof within a period of 12 months from the date of completion of pleadings.* *In the case of a domestic arbitration, the time-period of 12 months (extendable of course by another 6 months subject to consent by the parties, and thereafter by the Court) for the conclusion of the proceedings is now to be reckoned from the date of completion of pleadings instead of from the date of constitution of the arbitral tribunal.* *In order to ensure that this phase of completion of pleadings does not become a runaway-horse, there is a period of six months which has been prescribed for the filing of the Statement of Claim and Defence.*

		hearing and technical formalities may be dispensed with for the sake of an expeditious disposal. An award has to be rendered within a period of 6 months of entering into a reference.	
13. *Challenging an award:*	*s.34 of the Act provides that an arbitral award may be set aside if it is contrary to 'public policy'.* *No clear definition of 'public policy' provided.* *'Patent Illegality' not a ground for challenging an award under the original Act 1996.*	*Public Policy: the amendment clarifies that an award will be in conflict with the public policy of India, only in certain circumstances, such as if the award is induced or affected by fraud or corruption, or is in contravention with the fundamental policy of Indian law, or is in conflict with the most basic notions of morality or justice.* *Further whether there is a contravention with the fundamental policy of Indian law cannot entail a review of the merits of the dispute. Hence, the Legislature has fundamentally reduced the scope of the inquiry by the judiciary into the question of violation of 'public policy'.* *Patent illegality:* *Another amendment brought about by the Ordinance is that an arbitral award can be set aside by a Court if the award is vitiated by patent illegality appearing on the face of the award.*	

		However, an award cannot be set aside merely on the ground of an erroneous application of law or by re-appreciation of evidence.	
14. Refusal to Arbitrate	*s.45 required the Court to come to a definitive finding that a matter was not capable of settlement through arbitration.*	*No change to s.45 of the original Act.*	*s.45 has now been amended to reflect, pari-materia with s.8(1), that a Court may refuse a reference to arbitration under s.45 upon arriving at a prima-facie finding that the arbitration agreement was null and void, inoperative or incapable of being performed.*
15. Non-retrospective nature of amendment 2015			*Expressly made the 2015 Amendment prospective in nature i.e. the provisions of the 2015 Amendment would only apply to cases where the arbitration was invoked post October 23, 2015.* *The all-encompassing language makes the applicability of the 2019 Amendment prospective not only to arbitration proceedings themselves but also related court proceedings.*

Sources:

1. The Arbitration And Conciliation Act, 1996.

2. The Arbitration And Conciliation (Amendment) Act, 2015.

3. The Arbitration And Conciliation (Amendment) Act, 2019.

4. 2015 Amendment To The Arbitration And Conciliation Act, 1996 (By Argus Partners).

5. The 2019 Arbitration Amendment Act and the Changes It Ushers In - A Primer (By Dr. Amit George).