

JIGL AMENDMENTS JUNE 2020

ARBITRATION & CONCILIATION ACT, 1996

Overview

- High Level Committee submitted its Report on 30th July, 2017
- Under the Chairmanship of Justice B. N. Srikrishna, Former Judge of the Supreme Court of India.
- the Arbitration and conciliation (Amendment) Act, 2019 passed by the Parliament.
- The latest amendment of 2019, received the assent of the President of India on 9th August, 2019.

Gist of Amendments

Sr. No	Section	Nature of Amendment
01	Section 11	"Appointment of Arbitrators"
02	Section 17	Interim Measures Ordered by Arbitral Tribunal
03	Section 23	"Statement of claim and Defence"
04	Section 29A	Time Limit for Arbitral Award
05	Section 34	Application for Setting Aside Arbitral Award
06	Section 37	Appealable Orders
07	Section 42A	Confidentiality of information relating to arbitral proceedings
08	Section 42A	Protection of action taken in good faith
09	Section 43A	Arbitration Council of India (ACI)

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Appointment of Arbitrator – Section 11

- ✚ The function of appointment of arbitrator, which were till date were being performed by Supreme Court of India or the High Court, will now be performed by arbitral institutions to be designated by Supreme Court and High Courts.
- ✚ Supreme Court of India will designate the arbitral institution for appointment of arbitrator (s) in international commercial arbitration whereas the High Courts will designate arbitral institutions within their respective jurisdictions for appointing arbitrators in cases of domestic arbitrations. In case there is no arbitral institution within jurisdiction of a High Court, such High Court can maintain a panel of arbitrators to perform the functions of arbitral institution.
- ✚ The arbitral institutions to be designated by Supreme Court or the High Court would be those which have been graded by the Council.
- ✚ The arbitral institution is mandated to dispose of an application for appointment of arbitrator within 30 days from the date of service of notice on the opposite party.
- ✚ The arbitral institutions shall determine fee of the arbitrators as per the rate specified in Fourth Schedule in case of domestic arbitrations unless parties have agreed for payment of fee as per rules of an arbitral institution. Fee provided in the Fourth Schedule shall not apply in case of international commercial arbitration.
- ✚ The amendment to Section 11 have provided for deletion of Section 11 (6A) as well as Section 11 (7) but retains provision of Section 11 (6B). The net effect is that arbitral institutions shall not perform any judicial function while appointing the arbitrators. With deletion of Section 11 (6A), arbitral institution is not confined to examining only the existence of an agreement between the parties while appointing the arbitrator. As Section 11 (7), attaching finality to the decision on appointment of arbitrator, has also been deleted, present amendment opens up avenues for challenging the decision on appointment of arbitrator(s) by way of proceedings other than filing Special Leave Petition before Supreme Court of India.

Interim Measures Ordered by Arbitral Tribunal – Section 17

- ✚ Amendment to Section 17 provides that arbitral tribunal shall have no power to pass any interim measures after making the award. In such a situation, interim protection can be sought only from the court.

Statement of claim and Defence - Section 23

- ✚ The amended Act introduces Section 23 (4), which provides that statement of claim and Statement of defense shall be completed within a period of six months from the date the arbitrator received notice of their appointment.
- ✚ Notably, the time spent in filing of rejoinder [in cases without any counter claims) or rejoinder to counter claim (in cases with counter claims) will not be considered as time spent in completion of pleading under Section 23 (4)].

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Timeline for making the award- Section 29A

- ✚ The amendment takes the international commercial arbitrations out of the time limitations provided under Section 29A(1).
- ✚ Time period of one year for making of the award as provided under Section 29A(1) shall begin from the date of completion of pleadings (statement of claim and statement of defense) only. Therefore, six month is the maximum time permissible for completion of pleading and the time period of one year for making of award shall commence irrespective of non-completion of pleadings within the said period. Conversely, if the pleading are completed before six months, the time period of one year for making of award shall commence forthwith the completion of the pleading.
- ✚ The amendment also provides that during the period an application for enlargement of time for making of award is pending before the court under Section 29 (5), the mandate of the arbitrator shall continue till disposal of the application. This amendment will help the tribunal to continue the proceedings without waiting for court's decision on enlargement of time for making of award under Section 29(5).

Application for Setting Aside Arbitral Award - Section 34

- ✚ Amendment to Section 34 clarifies that at the stage of challenging the award, court will not see any material other than record of the arbitral tribunal. This amendment shall help in cases where the courts in some part of the country record evidence at the stage of petition under Section 34 of the Act.
Now Act provides that recording of evidence is not permissible.

Appealable Orders - Section 37

- ✚ In Section 37 of the principal Act, expression "Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie....." has been incorporated in Section 37 (1). This is aimed restricting the scope of appeal and preventing courts from exercising power under any other provision of law for the time being in force against any orders (appealable or not in terms of Section 37 of the Act) that may be passed in relation to the arbitration proceedings.

Other Amendments - Section 42A & 42B

- ✚ The Amendment Act introduces Sections 42A & 42B respectively. Section 42A provides for maintaining confidentiality of arbitration proceedings by the arbitrators, arbitral institutions and the parties to arbitration, where Section 42B protects the arbitrators from any legal proceedings against acts done in good faith.

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Arbitration Council of India

- ✚ The amendment act introduces regulatory mechanism in the field of arbitration and provides for adding Part IA (Section 43A to Section 43M) to the Act, which makes provision of constitution of Arbitration Council of India ("Council"). The Council shall take necessary measures to promote and encourage arbitration, mediation, conciliation and other alternative dispute resolution mechanism and for that purpose frame policy guideline for the establishment, operation and maintenance of uniform professional standard in respect of matters relating to arbitration.
- ✚ The Council of India shall frame policy for grading the arbitral institutions and shall make policies guidelines etc. to ensure satisfactory levels of arbitrations and conciliations.

RIGHT TO INFORMATION ACT, 2005

Provision	RTI Act, 2005	RTI (Amendment) Act, 2019
Term	The Chief Information Commissioner (CIC) and Information Commissioners (ICs) (at the central and state level) will hold office for a term of five years.	The Act removes this provision and states that the central government will notify the term of office for the CIC and the ICs.
Quantum of Salary	<p>The salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively.</p> <p>Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively.</p>	The Act removes these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government.
Deductions in Salary	<p>The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension.</p> <p>Previous government service includes service under: (i) the central government, (ii) state government, (iii) corporation established under a central or state law, and (iv) company owned or controlled by the central or state government.</p>	The removes these provisions.

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