

NO. #1

**CS Coaching at
Laxmi Nagar**

**CS EXECUTIVE
MODULE - 1**

JIGL

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By:-

**CS. NITESH
KR. JAISWAL**

(Company Secretary, FCS, LL.B)

“Senior Qualified CS” Faculty



ARBITRATION AND CONCILIATION ACT, 1996

THE ARBITRATION AND CONCILIATION ACT, 1996

The Arbitration and Conciliation Act, 1996 aims at streamlining the process of arbitration and facilitating conciliation in business matters. The Act recognizes the autonomy of parties in the conduct of arbitral proceedings by the arbitral tribunal and abolishes the scope of judicial review of the award and minimizes the supervisory role of Courts.

Before Amendment (Earlier)

The Act has been divided into <u>four Parts</u>	1. Part one deals with Arbitration (Sections 2 to 43);
	2. Part two deals with enforcement of certain Foreign Awards (Sections 44 to 60).
	3. Part three deals with conciliation (Sections 61 to 81); and
	4. Part four contains supplementary provisions (Sections 82 to 86).
and contains <u>three Schedules</u>	1. Schedule one contains provisions relating to convention on the Recognition and Enforcement of Foreign Arbitral Awards;
	2. Schedule two deals with Protocol on Arbitration Clauses;
	3. Schedule three contains provisions relating to Execution of Foreign Arbitral Awards.

After Amendment (Now)

The Act has been divided into <u>four Parts</u>	5. Part one deals with Arbitration (Sections 2 to 43);
	6. Part two deals with enforcement of certain Foreign Awards (Sections 44 to 60).
	7. Part three deals with conciliation (Sections 61 to 81); and
	8. Part four contains supplementary provisions (Sections 82 to 86).
and contains <u>three Schedules</u>	4. Schedule one contains provisions relating to convention on the Recognition and Enforcement of Foreign Arbitral Awards;
	5. Schedule two deals with Protocol on Arbitration Clauses;
	6. Schedule three contains provisions relating to Execution of Foreign Arbitral Awards.

the Arbitration and conciliation Act, 1996 is further amended by the Arbitration and conciliation (Amendment) Act, 2019

APPOINTMENT OF ARBITRATORS

SECTION 11

The **parties** may agree to a procedure of appointment of arbitrators. Otherwise the following procedure shall apply:-

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
<p>(a) Arbitrator could be of any nationality.</p> <p>(b) In case of an arbitration with three arbitrators, each party shall appoint its own arbitrator, and the two appointed arbitrators shall appoint a third arbitrator, who shall be the presiding arbitrator.</p> <p>(c) If, within 30 days, the parties fail to appoint their arbitrators, or the arbitrators fail to appoint the third arbitrator, the arbitrator shall be appointed by the Chief Justice of High court or a person institution designated by him at the request of a party.</p> <p>(d) Similar procedure is also applicable for appointment of a sole arbitrator. If parties fail to agree on the appointment of a sole arbitrator within 30 days, the appointment shall be done by the Chief Justice or a person/institution designated by him.</p> <p>In case of appointment of a sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or a person/Institution designed by him, may appoint a person of a nationality, other than that of the parties, where the parties are of different nationalities.</p>	<p>(e) Arbitrator could be of any nationality.</p> <p>(f) In case of an arbitration with three arbitrators, each party shall appoint its own arbitrator, and the two appointed arbitrators shall appoint a third arbitrator, who shall be the presiding arbitrator.</p> <p>(g) If, within 30 days, the parties fail to appoint their arbitrators, or the arbitrators fail to appoint the third arbitrator, the arbitrator shall be appointed by the by the "arbitral institutions" designated by the High Court;</p> <p>(h) Similar procedure is also applicable for appointment of a sole arbitrator. If parties fail to agree on the appointment of a sole arbitrator within 30 days, the appointment shall be done by the Chief Justice or a person/institution designated by him.</p> <p>In case of appointment of a sole or third arbitrator in an international commercial arbitration, the the arbitrator shall be appointed by the the "arbitral institutions" designated by the Supreme Court; may appoint a person of a nationality, other than that of the parties, where the parties are of different nationalities</p>

ARBITRAL PROCEEDINGS/ARBITRATION PROCEDURE

SECTION 23-27

Sections 23 to 27 stipulate the procedure to be followed in arbitration proceedings.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
<p>(1) <u>STATEMENTS OF CLAIMS AND DEFENCE</u></p> <p>Within the period of time agreed upon by the parties or determined by the tribunal, the claimant has to state the facts in supporting his claim, the points at issue and the relief or</p>	<p>1. <u>STATEMENTS OF CLAIMS AND DEFENCE</u></p> <p>Within the period of time agreed upon by the parties or determined by the tribunal, the claimant has to state the facts in supporting his claim, the points at issue and the relief or</p>

remedy sought.

Similarly, the respondent shall also state his defence in respect of these particulars. There is no restriction upon the parties to agree for holding oral hearings for presentation of evidence and for oral arguments or, alternatively, for conducting the proceedings on the basis of document

(2) SUBMISSION OF DOCUMENTS

The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence which they will submit later on.

(3) AMENDMENTS

Parties may amend or supplement these statements during the proceedings, unless:-

- (i) Parties have agreed otherwise, or
- (ii) Arbitral tribunal considers it inappropriate to allow the amendment or supplement, due to delay in making it.

(4) DETERMINATION OF RULES OF ARBITRAL PROCEDURE

According to **Section 19** the arbitral tribunal is neither bound by the Code of Civil Procedure 1908, nor by the Indian Evidence Act, 1872.

The parties are free to agree on a procedure to be followed by the arbitral tribunal in conducting its proceedings.

(5) APPOINTMENT OF EXPERTS BY ARBITRAL TRIBUNAL

Section 26 of the Act, provides for appointment of experts subject to agreement between the parties. **Section 26** obligates the parties to provide the expert access to necessary information and documents.

(6) DECISION BY MAJORITY

Section 29 of the Act provides for decision by majority where there is more than one arbitrator.

(7) COURT ASSISTANCE

Provisions are also made under the Act relating to Court assistance in taking evidence.

remedy sought.

Similarly, the respondent shall also state his defence in respect of these particulars. There is no restriction upon the parties to agree for holding oral hearings for presentation of evidence and for oral arguments or, alternatively, for conducting the proceedings on the basis of document

Section 23(4) states that the statement of claim and defence under this section shall be completed within a period of **six months** from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment.

2. SUBMISSION OF DOCUMENTS

The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence which they will submit later on.

3. AMENDMENTS

Parties may amend or supplement these statements during the proceedings, unless:-

- (i) Parties have agreed otherwise, or
- (ii) Arbitral tribunal considers it inappropriate to allow the amendment or supplement, due to delay in making it.

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5. APPOINTMENT OF EXPERTS BY ARBITRAL TRIBUNAL

Section 26 of the Act, provides for appointment of experts subject to agreement between the parties. **Section 26** obligates the parties to provide the expert access to necessary information and documents.

6. DECISION BY MAJORITY

<p>Section 27 of the Act provides that the arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the court for assistance in taking evidence.</p>	<p>Section 29 of the Act provides for decision by majority where there is more than one arbitrator.</p> <p><u>7.COURT ASSISTANCE</u></p> <p>Provisions are also made under the Act relating to Court assistance in taking evidence. Section 27 of the Act provides that the arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the court for assistance in taking evidence</p>
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JURISDICTION OF ARBITRAL TRIBUNALS

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
<p>The arbitral tribunal is empowered to rule its own jurisdiction including any objections in relation to existence and validity of the arbitration agreement.</p> <p>Section 16 of the Act relates to competence of arbitral tribunal to rule on its jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. For this purpose an arbitration clause which forms part of a contract shall be treated as an agreement independent of other terms of the contract; and</p> <p>A plea can be raised before the submission of the statement of defence where the arbitral tribunal does not have jurisdiction.</p> <p>It is further provided that a party shall not be precluded from raising such a plea merely because he has appointment or participated in the appointment of an arbitrator.</p>	<p>The arbitral tribunal is empowered to rule its own jurisdiction including any objections in relation to existence and validity of the arbitration agreement.</p> <p>Section 16 of the Act relates to competence of arbitral tribunal to rule on its jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. For this purpose an arbitration clause which forms part of a contract shall be treated as an agreement independent of other terms of the contract; and</p> <p>A plea can be raised before the submission of the statement of defence where the arbitral tribunal does not have jurisdiction.</p> <p>It is further provided that a party shall not be precluded from raising such a plea merely because he has appointment or participated in the appointment of an arbitrator.</p>
	<p style="background-color: yellow;"><u>CONFIDENTIALITY OF INFORMATION</u></p> <p style="background-color: yellow;">Section 42A provides that notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary</p>

	<p>for the purpose of implementation and enforcement of award.</p> <p><u>PROTECTION OF ACTION TAKEN IN GOOD FAITH</u></p> <p>According to Section 42B of the Act, no suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.”</p>
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ARBITRAL AWARD

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
<p>Arbitral award is the decision of arbitrator/Arbitral Tribunal</p> <p><u>INTERIM AWARD</u></p> <p>The arbitral tribunal can make an interim award on any matter with respect to which it may make a final award. "Arbitral award" includes an interim award.</p>	<p>Arbitral award is the decision of arbitrator/Arbitral Tribunal</p> <p><u>INTERIM AWARD</u></p> <p>The arbitral tribunal can make an interim award on any matter with respect to which it may make a final award. "Arbitral award" includes an interim award.</p> <p><u>Time Limit for Arbitral Award</u></p> <p>Section 29A(1) provides that the award in matters other than international commercial arbitrations shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under section 23(4). Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose off the matter within a period of twelve months from the date of completion of pleadings under section 23(4).</p>

ARBITRATION COUNCIL OF INDIA (ACI)

After Amendment (Now)

-NEW PROVISION-

ARBITRATION COUNCIL OF INDIA (ACI)

Part IA as inserted in the Amendment Act, 2019 deals with Arbitration Council of India. **Section 43A** of Act contains definitions of terms used in Part IA such as Chairperson, Council and Member.

ESTABLISHMENT AND INCORPORATION OF ARBITRATION COUNCIL OF INDIA

Section 43B empowers the Central Government to establish the Arbitration Council of India to perform the duties and discharge the functions under the Arbitration Conciliation Act, 1996.

The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued. The head office of the Council shall be at Delhi. The Council may, with the prior approval of the Central Government, establish offices at other places in India.

COMPOSITION OF COUNCIL

According to **Section 43C** of the Act, the Council shall consist of the following Members, namely:—

(a) a person, who has been, a Judge of the Supreme Court or, Chief Justice of a High Court or, a Judge of a High Court or an eminent person, having special knowledge and experience in the conduct or administration of arbitration, to be appointed by the Central Government in consultation with the Chief Justice of India—Chairperson;

(b) An eminent arbitration practitioner having substantial knowledge and experience in institutional arbitration, both domestic and international, to be nominated by the Central Government—Member;

(c) an eminent academician having experience in research and teaching in the field of arbitration and alternative dispute resolution laws, to be appointed by the Central Government in consultation with the Chairperson—Member;

(d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary–Member, ex officio

(e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary–Member, ex officio;

(f) one representative of a recognised body of commerce and industry, chosen on rotational basis by the Central Government–Part-time Member; and

(g) Chief Executive Officer-Member-Secretary, ex officio.

The Chairperson and Members of the Council, other than ex officio Members, shall hold office as such, for a term of three years from the date on which they enter upon their office.

DUTIES AND FUNCTIONS OF COUNCIL

Section 43D provides that it shall be the duty of the Council to take all such measures as may be necessary to promote and encourage arbitration, mediation, conciliation or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration.

For the purposes of performing the duties and discharging the functions under this Act, the Council may—

(a) frame policies governing the grading of arbitral institutions;

(b) recognise professional institutes providing accreditation of arbitrators;

(c) review the grading of arbitral institutions and arbitrators;

(d) hold training, workshops and courses in the area of arbitration in collaboration of law firms, law universities and arbitral institutes;

(e) frame, review and update norms to ensure satisfactory level of arbitration and conciliation;

(f) act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration and conciliation;

(g) make recommendations to the Central Government on various measures to be adopted to make provision for easy resolution of commercial disputes

NORMS FOR ACCREDITATION AS ARBITRATORS

Section 43J provides that the qualifications, experience and norms for accreditation of arbitrators shall be such as specified in the Eighth Schedule.

Eight Schedule of the Act authorizes a company secretary within the meaning of the Company Secretaries Act, 1980 having ten years of practice experience as a company secretary to act as an arbitrator under the Act.

According to the 'Eighth Schedule of the Act, a person shall not be qualified to be an arbitrator unless he—

(i) is an advocate within the meaning of the Advocates Act, 1961 having ten years of practice experience as an advocate; or

(ii) is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 having ten years of practice experience as a chartered accountant; or

(iii) is a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 having ten years of practice experience as a cost accountant; or

(iv) is a company secretary within the meaning of the Company Secretaries Act, 1980 having ten years of practice experience as a company secretary; or

(v) Has been an officer of the Indian Legal Service; or

(vi) has been an officer with law degree having ten years of experience in the legal matters in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector; or

(vii) has been an officer with engineering degree having ten years of experience as an engineer in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector or self-employed; or

(viii) has been an officer having senior level experience of administration in the Central Government or State Government or having experience of senior level management of a Public Sector Undertaking or a Government company or a private company of repute;

(i) is a person, in any other case, having educational qualification at degree level with ten years of experience in scientific or technical stream in the fields of telecom, information technology, Intellectual Property Rights or other specialised areas in the Government, Autonomous Body, Public Sector Undertaking or a senior level managerial position in a private sector, as the case may be.

GENERAL NORMS APPLICABLE TO ARBITRATOR-

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| (a) the arbitrator shall be a person of general reputation of fairness, integrity and capable to apply objectivity in arriving at settlement of disputes; |
| (b) the arbitrator must be impartial and neutral and avoid entering into any financial business or other relationship that is likely to affect impartiality or might reasonably create an appearance of partiality or bias amongst the parties; |
| (c) the arbitrator should not involve in any legal proceeding and avoid any potential conflict connected with any dispute to be arbitrated by him; |
| (d) the arbitrator should not have been convicted of an offence involving moral turpitude or economic offence ; |
| (e) the arbitrator shall be conversant with the Constitution of India, principles of natural justice, equity, common and customary laws, commercial laws, labour laws, law of torts, making and enforcing the arbitral awards ; |