

Bill No. XXI of 2019

THE ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2019

A

BILL

further to amend the Arbitration and Conciliation Act, 1996.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Arbitration and Conciliation (Amendment) Act, 2019. Short title and commencement.

(2) Save as otherwise provided in this Act, it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

26 of 1996. 2. In the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act), in section 2,— Amendment of section 2.

10 (i) in sub-section (1),—

(A) after clause (c), the following clause shall be inserted, namely:—

‘(ca) “arbitral institution” means an arbitral institution designated by the Supreme Court or a High Court under this Act;’;

(B) after clause (h), the following clauses shall be inserted, namely: —

(i) “prescribed” means prescribed by rules made under this Act;

(j) “regulations” means the regulations made by the Council under this Act.’;

(ii) in sub-section (2), in the proviso, for the word, brackets and letter “clause (a)”, the word, brackets and letter “clause (b)” shall be substituted. 5

Amendment
of section 11.

3. In section 11 of the principal Act,—

(i) after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under section 43-I, for the purposes of this Act: 10

Provided that in respect of those High Court jurisdictions, where no graded arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to such fee at the rate as specified in the Fourth Schedule: 15

Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.”; 20

(ii) in sub-section (4), in the long line, for the portion beginning with “the appointment shall be made” and ending with “designated by such Court”, the following shall be substituted, namely:—

“the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be”; 25

(iii) in sub-section (5), for the portion beginning with “the appointment shall be made” and ending with “designated by such Court”, the following shall be substituted, namely: — 30

“the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (4)”;

(iv) in sub-section (6), in the long line, for the portion beginning with “party may request” and ending with “designated by such Court”, the following shall be substituted, namely:— 35

“the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be”;

(v) sub-sections (6A) and (7) shall be omitted; 40

(vi) in sub-section (8), for the words “The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court”, the words, brackets and figures “The arbitral institution referred to in sub-sections (4), (5) and (6)” shall be substituted;

(vii) in sub-section (9), for the words “the Supreme Court or the person or institution designated by that Court”, the words “the arbitral institution designated by the Supreme Court” shall be substituted; 45

(viii) sub-section (10) shall be omitted;

(ix) for sub-sections (11) to (14), the following sub-sections shall be substituted, namely:—

5 “(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different arbitral institutions, the arbitral institution to which the request has been first made under the relevant sub-section shall be competent to appoint.

(12) Where the matter referred to in sub-sections (4), (5), (6) and (8) arise in an international commercial arbitration or any other arbitration, the reference to the arbitral institution in those sub-sections shall be construed as a reference to the arbitral institution designated under sub-section (3A).

(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party.

15 (14) The arbitral institution shall determine the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal subject to the rates specified in the Fourth Schedule.

20 *Explanation.*—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) where parties have agreed for determination of fees as per the rules of an arbitral institution.”.

4. In section 17 of the principal Act, in sub-section (1), the words and figures “or at any time after the making of the arbitral award but before it is enforced in accordance with section 36” shall be omitted. Amendment of section 17.

25 5. In section 23 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:— Amendment of section 23.

“(4) 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.”.

30 6. In section 29A of the principal Act,— Amendment of section 29A.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

35 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 sub-section (4) of section 23.”

(b) in sub-section (4), after the proviso, the following provisos shall be inserted, namely:—

40 “Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.”.

45 7. In section 34 of the principal Act, in sub-section (2), in clause (a), for the words “furnishes proof that”, the words “establishes on the basis of the record of the arbitral tribunal that” shall be substituted. Amendment of section 34.

8. In section 37 of the principal Act, in sub-section (1), for the words “An appeal”, the words “Notwithstanding anything contained in any other law for the time being in force, an appeal” shall be substituted. Amendment of section 37.

Insertion of new sections 42A and 42B.	<p>9. After section 42 of the principal Act, the following sections shall be inserted, namely:—</p>	
Confidentiality of information.	<p>“42A. 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 for the purpose of implementation and enforcement of award.</p>	5
Protection of action taken in good faith.	<p>42B. 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>	10
Insertion of new Part.	<p>10. After Part I of the principal Act, the following Part shall be inserted, namely: —</p>	
	<p>‘PART IA ARBITRATION COUNCIL OF INDIA</p>	
Definitions.	<p>43A. In this Part, unless the context otherwise requires,—</p> <p>(a) “Chairperson” means the Chairperson of the Arbitration Council of India appointed under clause (a) of sub-section (1) of section 43C;</p> <p>(b) “Council” means the Arbitration Council of India established under section 43B;</p> <p>(c) “Member” means a Member of the Council and includes the Chairperson.</p>	15 20
Establishment and incorporation of Arbitration Council of India.	<p>43B. (1) The Central Government shall, by notification in the Official Gazette, establish, for the purposes of this Act, a Council to be known as the Arbitration Council of India to perform the duties and discharge the functions under this Act.</p> <p>(2) 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.</p> <p>(3) The head office of the Council shall be at Delhi.</p> <p>(4) The Council may, with the prior approval of the Central Government, establish offices at other places in India.</p>	25 30
Composition of Council.	<p>43C. (1) The Council shall consist of the following Members, namely:—</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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, <i>ex officio</i>;</p>	35 40 45

(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*;

5 (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*.

(2) 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:

10 Provided that no Chairperson or Member, other than *ex officio* Member, shall hold office as such after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Member.

15 (3) The salaries, allowances and other terms and conditions of the Chairperson and Members referred to in clauses (b) and (c) of sub-section (1) shall be such as may be prescribed by the Central Government.

(4) The Part-time Member shall be entitled to such travelling and other allowances as may be prescribed by the Central Government.

20 43D. (1) 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.

Duties and
functions of
Council.

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

25 (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;

30 (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;

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

(h) promote institutional arbitration by strengthening arbitral institutions;

40 (i) conduct examination and training on various subjects relating to arbitration and conciliation and award certificates thereof;

(j) establish and maintain depository of arbitral awards made in India;

(k) make recommendations regarding personnel, training and infrastructure of arbitral institutions; and

(l) such other functions as may be decided by the Central Government.

Vacancies, etc., not to invalidate proceedings of Council.	<p>43E. No act or proceeding of the Council shall be invalid merely by reason of—</p> <p style="padding-left: 40px;">(a) any vacancy or any defect, in the constitution of the Council;</p> <p style="padding-left: 40px;">(b) any defect in the appointment of a person acting as a Member of the Council; or</p> <p style="padding-left: 40px;">(c) any irregularity in the procedure of the Council not affecting the merits of the case.</p>	5
Resignation of Members.	<p>43F. The Chairperson or the Full-time or Part-time Member may, by notice in writing, under his hand addressed to the Central Government, resign his office:</p> <p>Provided that the Chairperson or the Full-time Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.</p>	10
Removal of Member.	<p>43G. (1) The Central Government may, remove a Member from his office if he—</p> <p style="padding-left: 40px;">(a) is an undischarged insolvent; or</p> <p style="padding-left: 40px;">(b) has engaged at any time (except Part-time Member), during his term of office, in any paid employment; or</p> <p style="padding-left: 40px;">(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or</p> <p style="padding-left: 40px;">(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or</p> <p style="padding-left: 40px;">(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or</p> <p style="padding-left: 40px;">(f) has become physically or mentally incapable of acting as a Member.</p> <p>(2) Notwithstanding anything contained in sub-section (1), no Member shall be removed from his office on the grounds specified in clauses (d) and (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.</p>	15 20 25 30
Appointment of experts and constitution of Committees thereof.	<p>43H. The Council may, appoint such experts and constitute such Committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified by the regulations.</p>	25
General norms for grading of arbitral institutions.	<p>43-I. The Council shall make grading of arbitral institutions on the basis of criteria relating to infrastructure, quality and calibre of arbitrators, performance and compliance of time limits for disposal of domestic or international commercial arbitrations, in such manner as may be specified by the regulations.</p>	35
Norms for accreditation.	<p>43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as specified in the Eighth Schedule:</p> <p>Provided that the Central Government may, after consultation with the Council, by notification in the Official Gazette, amend the Eighth Schedule and thereupon, the Eighth Schedule shall be deemed to have been amended accordingly.</p>	40
Depository of awards.	<p>43K. The Council shall maintain an electronic depository of arbitral awards made in India and such other records related thereto in such manner as may be specified by the regulations.</p>	45

43L. The Council may, in consultation with the Central Government, make regulations, consistent with the provisions of this Act and the rules made thereunder, for the discharge of its functions and perform its duties under this Act. Power to make regulations by Council.

5 43M. (1) There shall be a Chief Executive Officer of the Council, who shall be responsible for day-to-day administration of the Council. Chief Executive Officer.

(2) The qualifications, appointment and other terms and conditions of the service of the Chief Executive Officer shall be such as may be prescribed by the Central Government.

10 (3) The Chief Executive Officer shall discharge such functions and perform such duties as may be specified by the regulations.

(4) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be prescribed by the Central Government.

15 (5) The qualifications, appointment and other terms and conditions of the service of the employees and other officers of the Council shall be such as may be prescribed by the Central Government.’.

11. In section 45 of the principal Act, for the words “unless it finds”, the words “unless it *prima facie* finds”, shall be substituted. Amendment of section 45.

20 12. In section 50 of the principal Act, in sub-section (1), for the words “An appeal”, the words “Notwithstanding anything contained in any other law for the time being in force, an appeal” shall be substituted. Amendment of section 50.

13. After section 86 of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 23rd October, 2015, namely:— Insertion of new section 87.

3 of 2016. “87. Unless the parties otherwise agree, the amendments made to this Act by the Arbitration and Conciliation (Amendment) Act, 2015 shall—

25 (a) not apply to—

3 of 2016. (i) arbitral proceedings commenced before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015; Effect of arbitral and related court proceedings commenced prior to 23rd October, 2015.

30 3 of 2016. (ii) court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015;

3 of 2016. (b) apply only to arbitral proceedings commenced on or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 and to court proceedings arising out of or in relation to such arbitral proceedings.”.

35 14. After the Seventh Schedule to the principal Act, the following Schedule shall be inserted, namely: — Insertion of new Schedule.

“EIGHTH SCHEDULE

(See section 43J)0

Qualifications and Experience of Arbitrator

40 A person shall not be qualified to be an arbitrator unless he—

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

38 of 1949. (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 23 of 1959.
- (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 56 of 1980.
- (v) has been an officer of the Indian Legal Service; or 5
- (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 10
- (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; 15
- (ix) 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. 20

General norms applicable to Arbitrator

- (i) The arbitrator shall be a person of general reputation of fairness, integrity and capable to apply objectivity in arriving at settlement of disputes;
- (ii) 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; 25
- (iii) the arbitrator should not involve in any legal proceeding and avoid any potential conflict connected with any dispute to be arbitrated by him;
- (iv) the arbitrator should not have been convicted of an offence involving moral turpitude or economic offence; 30
- (v) 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;
- (vi) the arbitrator should possess robust understanding of the domestic and international legal system on arbitration and international best practices in regard thereto; 35
- (vii) the arbitrator should be able to understand key elements of contractual obligations in civil and commercial disputes and be able to apply legal principles to a situation under dispute and also to apply judicial decisions on a given matter relating to arbitration; and 40
- (viii) the arbitrator should be capable of suggesting, recommending or writing a reasoned and enforceable arbitral award in any dispute which comes before him for adjudication.”.

Amendment
to Act 3 of
2016.

15. Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015 shall be omitted and shall be deemed to have been omitted with effect from the 23rd October, 2015. 45

Amendment
to Fourth
Schedule.

16. In the Fourth Schedule to the principal Act, for the brackets, words and figures “[See section 11 (14)]”, the brackets, words, figures and letter “[See section 11 (3A)]” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Arbitration and Conciliation Act, 1996 (the said Act) was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and also to define the law relating to conciliation and for matters connected therewith or incidental thereto. The said Act was amended by the Arbitration and Conciliation (Amendment) Act, 2015 to make arbitration process cost effective, speedy, with minimum court intervention.

2. The promotion of the institutional arbitration in India by strengthening Indian arbitral institutions has been identified critical to the dispute resolution through arbitration. Though arbitral institutions have been working in India, they have not been preferred by parties, who have leaned in favour of *ad hoc* arbitration or arbitral institutions located abroad. Therefore, in order to identify the roadblocks to the development of institutional arbitration, examine specific issues affecting the Indian arbitration landscape and also to prepare a road map for making India a robust centre for institutional arbitration both domestic and international, the Central Government constituted a High Level Committee under the Chairmanship of Justice B. N. Srikrishna, Former Judge of the Supreme Court of India.

3. The terms of reference of the Committee, *inter alia*, include,—

(a) to examine the effectiveness of existing arbitration mechanism by studying the functioning and performance of arbitral institutions in India;

(b) to devise a road map to promote institutional arbitration mechanisms in India; and

(c) to evolve an effective and efficient arbitration eco-system for commercial dispute resolution and suggest reforms in the Arbitration and Conciliation Act, 1996.

4. The High Level Committee submitted its Report on 30th July, 2017. With a view to strengthen institutional arbitration in the country, the said Committee, *inter alia*, recommended for the establishment of an independent body for grading of arbitral institutions and accreditation of arbitrators, etc. The Committee has also recommended certain amendments to the said Act to minimise the need to approach the Courts for appointment of arbitrators. After examination of the said recommendations with a view to make India a hub of institutional arbitration for both domestic and international arbitration, it was decided to amend the Arbitration and Conciliation Act, 1996.

5. Accordingly, a Bill, namely, the Arbitration and Conciliation (Amendment) Bill, 2018 was introduced in Lok Sabha on the 18th July, 2018 and was passed by that House on the 10th August, 2018 and was pending in Rajya Sabha. However, the Sixteenth Lok Sabha was dissolved and the Bill got lapsed. Hence, the present Bill, namely, the Arbitration and Conciliation (Amendment) Bill, 2019.

6. The salient features of the Arbitration and Conciliation (Amendment) Bill, 2019, *inter alia*, are as follows:—

(i) to amend section 11 of the Act relating to "Appointment of Arbitrators" so as to change the present system of appointment of arbitrators by the Supreme Court or High Court, to a system where the arbitrators shall be appointed by the "arbitral institutions" designated by the Supreme Court or High Court;

(ii) in case where no graded arbitral institutions are available, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institutions;

(iii) to insert a new Part 1A to the Act for the establishment and incorporation of an independent body namely, the Arbitration Council of India for the purpose of grading of arbitral institutions and accreditation of arbitrators, etc.;

(iv) to amend section 23 of the Act relating to "Statement of claim and defence" so as to provide that the statement of claim and defence shall be completed within a period of six months from the date the arbitrator receives the notice of appointment;

(v) to provide that the arbitrator, the arbitral institutions and the parties shall maintain confidentiality of information relating to arbitral proceedings and also protect the arbitrator or arbitrators from any suit or other legal proceedings for any action or omission done in good faith in the course of arbitration proceedings; and

(vi) to clarify that section 26 of the Arbitration and Conciliation (Amendment) Act, 2015, is applicable only to the arbitral proceedings which commenced on or after 23rd October, 2015 and to such court proceedings which emanate from such arbitral proceedings.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 9th July, 2019.

RAVISHANKAR PRASAD

FINANCIAL MEMORANDUM

Clause 10 of the Bill proposes to insert new sections 43A to 43M in the Arbitration and Conciliation Act, 1996.

2. Proposed sub-section (1) of section 43B provides for the establishment of the Arbitration Council of India. Sub-section (2) provides that the Arbitration Council of India shall acquire, hold and dispose of property, both movable and immovable and sub-section (3) of the said section provides that the head office of the Council shall be at Delhi. Sub-section (4) provides that the Council may, with the prior approval of the Central Government, establish offices at other places in India.

3. Sub-section (3) of proposed section 43C provides that the salaries, allowances and other terms and conditions of the Chairperson and Members of the Council shall be prescribed by the Central Government and sub-section (4) provides for entitlement of travelling and other allowances of the Part-time Member, to be prescribed by the Central Government.

4. Sub-section (2) of proposed section 43M provides for the qualifications, appointment and other terms and conditions of service of the Chief Executive Officer shall be prescribed by the Central Government. Sub-section (4) of the said section also provides that the Council shall have a Secretariat consisting of such number of officers and employees as may be prescribed by the Central Government. Sub-section (5) of the said section provides that the qualifications, appointment and other terms and conditions of the service of the employees and other officers of the Council shall be prescribed by the Central Government.

5. The financial implication arising from the establishment of the Arbitration Council of India, etc., is estimated as recurring expenditure of Rs. 18.23 crore per annum and non-recurring expenditure about Rs. 1.93 crore per annum.

6. It would be difficult to indicate the exact expenditure incurred in the appointment of officers of the Arbitration Council of India, etc. The Bill does not envisage any other expenditure of recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill proposes to insert new sections 43A to 43M in the Arbitration and Conciliation Act, 1996.

2. Proposed sub-section (1) of section 43B provides for the establishment of Arbitration Council of India.

3. Proposed sub-sections (3) and (4) of section 43C, *inter alia*, provides for—

(a) salaries, allowances and other terms and conditions of the Chairperson and Members as prescribed by the Central Government;

(b) travelling and other allowances of Part-time Member as prescribed by the Central Government.

4. Proposed section 43 L provides that the Arbitration Council of India, in consultation with the Central Government, may make regulations consistent with the provisions of the Act and the rules made thereunder.

5. Proposed sub-section (2) of section 43M provides that the qualifications, appointment and other terms and conditions of the service of the Chief Executive Officer shall be prescribed by the Central Government. Sub-section (4) of the said section provides that the number of officers and employees of the Secretariat to the Council shall be such as may be prescribed by the Central Government.

6. The matters in respect of which rules and regulations may be made under the aforesaid provisions are matters of procedure and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE ARBITRATION AND CONCILIATION ACT, 1996

(26 OF 1996)

* * * * *

PART I
ARBITRATION
CHAPTER I

General provisions

2. (1) In this Part, unless the context otherwise requires,— Definitions.

* * * * *

(c) "arbitral award" includes an interim award;

* * * * *

(2) This Part shall apply where the place of arbitration is in India:

Provided that subject to an agreement to the contrary, the provisions of sections 9, 27 and clause (a) of sub-section (1) and sub-section (3) of section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act.

* * * * *

11. (1) * * * * * Appointment of arbitrators.

(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court;

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court.

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

* * * * *

(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision.

(8) The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court, before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to—

(a) any qualifications required for the arbitrator by the agreement of the parties; and

(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Supreme Court or the person or institution designated by that Court may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

(10) The Supreme Court or, as the case may be, the High Court, may make such scheme as the said Court may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6), to it.

(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justices of different High Courts or their designates, different High Courts or their designates, the High Court or its designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the "Supreme Court or, as the case may be, the High Court" in those sub-sections shall be construed as a reference to the "Supreme Court"; and

(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to "the Supreme Court or, as the case may be, the High Court" in those sub-sections shall be construed as a reference to the "High Court" within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate, and where the High Court itself is the Court referred to in that clause, to that High Court.

(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case may be, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

(14) For the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, the High Court may frame such rules as may be necessary, after taking into consideration the rates specified in the Fourth Schedule.

Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) in case where parties have agreed for determination of fees as per the rules of an arbitral institution.

* * * * *

17. (1) A party may, during the arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to the arbitral tribunal—

Interim measures ordered by arbitral tribunal.

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,

and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

* * * * *

29A. (1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Time limit for arbitral award.

Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

* * * * *

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

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CHAPTER VII

Recourse against arbitral award

Application for setting aside arbitral award.

- 34. (1)* * * *
- (2) An arbitral award may be set aside by the Court only if—
 - (a) the party making the application furnishes proof that—
 - (i) a party was under some incapacity, or
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
 - (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

* * * *

CHAPTER IX

Appeals

Appealable orders.

- 37. (1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—
 - (a) refusing to refer the parties to arbitration under section 8;
 - (b) granting or refusing to grant any measure under section 9;
 - (c) setting aside or refusing to set aside an arbitral award under section 34.

* * * *

Power of judicial authority to refer parties to arbitration.

45. Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908, a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

5 of 1908.

* * * *

Appealable orders.

- 50. (1) An appeal shall lie from the order refusing to—
 - (a) refer the parties to arbitration under section 45;
 - (b) enforce a foreign award under section 48,
 to the court authorised by law to hear appeals from such order.

* * * *

EXTRACTS FROM THE ARBITRATION AND CONCILIATION
(AMENDMENT) ACT, 2015

(3 OF 2016)

* * * * *

26. Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act. Act not to apply to pending arbitral proceedings.

* * * * *

THE FOURTH SCHEDULE

[See section 11(14)]

Sum in dispute	Model fee
Up to Rs. 5,00,000	Rs. 45,000
Above Rs. 5,00,000 and up to Rs. 20,00,000	Rs. 45,000 plus 3.5 per cent. of the claim amount over above Rs. 5,00,000
Above Rs. 20,00,000 and up to Rs. 1,00,00,000	Rs. 97,500 plus 3 per cent. of the claim amount over and above Rs. 20,00,000
Above Rs. 1,00,00,000 and up to Rs. 10,00,00,000	Rs. 3,37,500 plus 1 per cent. of the claim amount over and above Rs. 1,00,00,000
Above Rs. 10,00,00,000 and up to Rs. 20,00,00,000	Rs. 12,37,500 plus 0.75 per cent. of the claim amount over and above Rs. 1,00,00,000
Above Rs. 20,00,00,000	Rs. 19,87,500 plus 0.5 per cent. of the claim amount over and above Rs. 20,00,00,000 with a ceiling of Rs. 30,00,000

Note:—In the event, the arbitral tribunal is a sole arbitrator, he shall be entitled to an additional amount of twenty-five per cent. on the fee payable as per the table set out above.

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further to amend the Arbitration and Conciliation Act, 1996.

(Shri Ravi Shankar Prasad, Minister of Law and Justice)