



Arbitration and Conciliation (Amendment) Bill, 2021

Why in News

The Lok Sabha has passed the **Arbitration and Conciliation (Amendment) Bill, 2021 to check misuse by “fly-by-night operators”** who take advantage of the law to get favourable awards by fraud.

- The Bill **intends to replace the Arbitration and Conciliation (Amendment) ordinance** issued in November, 2020.

Key Points

▪ Features of the Bill:

◦ Qualifications of Arbitrators:

- It **does away with the qualifications of the arbitrators** under **8th Schedule** of the Arbitration and Conciliation Act, 1996 which specified that the arbitrator must be:
 - An advocate under the Advocates Act, 1961 with 10 years of experience, or
 - An officer of the Indian Legal Service.
- The qualifications for accreditation of arbitrators is **proposed to be prescribed by regulations to be framed by an arbitration council** to be set up.

◦ Unconditional Stay on Awards:

- If the Award is being **given on the basis of a fraudulent agreement or corruption**, then the court can grant an unconditional stay as long as an appeal under Section 34 of the arbitration law is pending.

▪ Benefits:

- Would bring about **parity among all the stakeholders** in the arbitration process.
 - All the stakeholders get an opportunity to seek unconditional stay on enforcement of arbitral awards where the agreement or contract is “induced by fraud or corruption”.
- Checking misuse of the provisions under Arbitration and Conciliation Act, 1996 **would save the taxpayers money** by holding those accountable who siphoned off of them unlawfully.

▪ Drawbacks:

- India already lags behind when it comes to the enforcement of international contracts and agreements. The Bill can further hamper the spirit of **Make in India** campaign and deteriorate rankings in **Ease of Doing Business Index**.
- India aims to become a hub of domestic and international arbitration. Through the implementation of these legislative changes, resolution of commercial disputes could take longer duration now onwards.

Arbitration Council of India

- **Constitutional Background:** The Constitution of India, **Article 51**, India is obliged to endeavour to:
 - Foster respect for international law and treaty obligations in the dealings of organised peoples with one country.
 - Encourage settlement of international disputes by arbitration. ACI is a step in realisation of this constitutional obligation.
- **Objective:** The Arbitration and Conciliation (Amendment) Act, 2019 seeks to establish an **independent body** called the Arbitration Council of India (ACI) for the promotion of arbitration, mediation, conciliation and other alternative dispute redressal mechanisms.
 - **Arbitration:** It is a process in which disputes resolve between the parties by appointing an independent third party who is an impartial and neutral person called arbitrator. Arbitrators hear both the parties before arriving at a solution to their dispute.
 - **Conciliation:** It is a process in which disputes resolve between the parties by appointing a conciliator who helps (amicable) the disputed parties to arrive at a negotiated settlement. Settling the dispute without litigation, it is an informal process. He does so by lowering tensions, improving communication, interpreting issues, providing technical help.
- **Composition of the ACI:**
 - The ACI will consist of a Chairperson who is either:
 - A Judge of the Supreme Court; or
 - A Judge of a High Court; or
 - Chief Justice of a High Court; or
 - An eminent person with expert knowledge in conduct of arbitration.
 - **Other members** will include an eminent arbitration practitioner, an academician with experience in arbitration, and government appointees.
- **Appointment of Arbitrators:** Under the Act, the Supreme Court and High Courts may designate arbitral institutions, which parties can approach for the appointment of arbitrators.
 - For international commercial arbitration, appointments will be made by the institution designated by the Supreme Court.
 - For domestic arbitration, appointments will be made by the institution designated by the concerned High Court.
 - In case there are no arbitral institutions available, the Chief Justice of the concerned High Court may maintain a panel of arbitrators to perform the functions of the arbitral institutions.
 - An application for appointment of an arbitrator is required to be disposed of within 30 days.

[Source:IE](#)

PDF Refernece URL: <https://www.drishtias.com/printpdf/arbitration-and-conciliation-amendment-bill-2021>