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IAS Study Circle
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ARBITRATION IN INDIA

MOST IMPORTANT NOTES FOR MAINS

"Coming together is a
beginning; keeping together is
progress; working together is
success"

-Sureshot success quotes

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GENERAL STUDIES 2
CONSTITUTION AND POLITY

Arbitration in India

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Arbitration in India

Arbitration is a legal mechanism encouraging settlement of disputes between two or more parties mutually by the appointment of a third party whose decision is binding on the parties referring to the said dispute.

Legislations

- Arbitration and conciliation Act, 1996
- Arbitration and conciliation (amendment) Act, 2021

The **Arbitration and Conciliation (Amendment) Bill, 2021** was introduced in Lok Sabha on February 4, 2021. It seeks to amend the Arbitration and Conciliation Act, 1996. The Act contains provisions to deal with domestic and international arbitration and defines the law for conducting conciliation proceedings. The Bill replaces an Ordinance with same provisions promulgated on November 4, 2020

Amendment provisions of 2021 bill

- **Timely conduct of proceedings:** Under new section 23(4), the statement of claim and defence shall be completed within a period of six months from the date of appointment of the arbitrator.
- **Confidentiality:** As per the new Section 42A, the arbitrator and the arbitral institution shall maintain confidentiality of all arbitral proceedings except award.
- **Qualification of arbitrators:** It does away with the 8th Schedule of the Act which contained the necessary qualifications for accreditation of arbitrators. An Arbitrator must be-
 - An advocate under Advocates Act 1961 with 10 years experience
 - An officer of the Indian Legal Service.
- **An unconditional stay:** An unconditional stay of enforcement of arbitral awards where the underlying arbitration agreement or contract or making of the arbitral award are induced by fraud or corruption.
- **check misuse by “fly-by-night operators”** who take advantage of the law to get favourable awards by fraud.

Benefits of Arbitration

- **Global Hub:** It will help to make India as global hubs of arbitration across the globe and make New Delhi as a centre for International arbitration.
- **Consolidation:** It'll Consolidate domestic arbitration, international commercial arbitration, and enforcement of foreign arbitral awards.
- **Speed Up:** To speed up the resolution of the commercial disputes.
- **Cost effective:** To make it more cost effective with minimum Court intervention.
- **Release the burden of judiciary:** The judicial system has been burdened with huge backlog of cases (almost 3 crores cases are pending) , which can be eased .
- **Time limit:** Arbitration are with regard to time limits and less time taken in resorting the dispute, encouraging Institutional arbitration, discouraging filing frivolous applications.
- It helps India's **make in India** programme and improve its ranking in **Ease of Doing Business Ranking** ,which will encourage foreign direct investment.

CHALLENGES FOR ARBITRATION IN INDIA

- **Attitude of Indians** , India is a developing country where most people are ignorant about arbitration and still trust courts more than alternate dispute resolution.
- Judicial interventions in the Arbitration process brings litigants closer to courts rather than arbitration.
- Lack of credible arbitral institutions in India.
- Misconceptions relating to institutional arbitration such as expenses in arbitration are high.
- Lack of adequate governmental support for institutional arbitration such as lack of comprehensive legislative support for institutional arbitration
- Judicial attitudes towards arbitration in general is not favourable.
- The rules and practices followed in Indian arbitration are often outdated and inadequate to match with global best practices.
- Fails to upgrade their administrative and working style as they only provide hearing venues with basic facilities and lack more advanced facilities such as multi-screen video conferencing, sound-proof caucus rooms, audio/video recording, court recorders, etc.

- Inflexible as it takes away the exclusive autonomy of the parties over arbitration proceedings
- Delays in Indian courts and excessive judicial involvement in arbitral proceedings contributed to discouraging foreign parties to arbitrate in India.
- Parties often delay arbitration proceedings by initiating court proceedings before or during arbitral proceedings, or at the enforcement stage of the arbitral award.

INSTITUTIONAL ARBITRATION : JUSTICE B.N SRIKRISHNA COMMITTEE RECOMMENDATIONS



- An **autonomous body -Arbitration Promotion Council of India (APCI)**, having representatives from all stakeholders for grading arbitral institutions in India.
- The APCI may
 - recognize professional institutes providing for accreditation of arbitrators.
 - hold training workshops and interact with law firms and law schools to train advocates with interest in arbitration.
 - create a specialist arbitration bar comprising advocates dedicated to the field.
 - A good arbitration bar could help in the speedy and efficient conduct of arbitral proceedings.
- Creation of a **specialist Arbitration Bench to deal with such commercial disputes, in the domain of the Courts.**
- **Changes suggested in various provisions of the 2015 Amendments of the Arbitration and Conciliation Act** with a view to making arbitration speedier and more efficacious and incorporate international best practices (immunity to arbitrators, confidentiality of arbitral proceedings, etc.).
- The Committee is also of the opinion that the **National Litigation Policy (NLP) must promote arbitration in government contracts.**
- Government's role: The **Central Government and various state governments may stipulate in arbitration clauses/agreements in government contracts** that only arbitrators accredited by any such recognised professional institute may be appointed as arbitrators under such arbitration clauses/agreements.

The judicial system is burdened with a massive backlog of cases . Recently, it is becoming standard practice for parties to include arbitration clauses in all large transactions and agreements. And recent amendments will make the arbitration system more streamlined.

Arbitration Council of India

- **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 is an informal process. He does so by lowering tensions, improving communication, interpreting issues and providing technical help to the parties.
- **Composition of the Council:**
 - The Chairperson is either a Judge of the Supreme Court or Chief Justice of the High Court or a Judge of the high court or an Eminent person with expert knowledge in conduct of Arbitration.
 - Other members 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.



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THE UNBEATABLES 2023

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