

**COMPARISON BETWEEN AMENDMENTS RECOMMENDED BY LAW COMMISSION IN IT'S 246TH REPORT TO ARBITRATION AND CONCILIATION ACT, 1996 AND THE
ARBITRATION AND CONCILIATION (AMENDMENT) ORDINANCE, 2015**

PROPOSED AMENDMENTS IN 246 TH REPORT OF LAW COMMISSION	ARBITRATION AND CONCILIATION (AMENDMENT) ORDINANCE, 2015
<p>Preamble:</p> <p>After the words, “Model Law and Rules the following be inserted:</p> <p>And whereas it is further required to improve the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation, in order to provide a fair, expeditious and cost-effective means of dispute resolution;</p>	<p>Not adopted.</p>
<p>Section 2</p> <p>After the words, “panel of arbitrators” add “and, in the case of an arbitration conducted under the rules of an institution providing for appointment of an emergency arbitrator, includes such emergency arbitrator;”</p>	<p>Not adopted.</p>
<p>S 2(1)(e): Add sub-section (i) beginning with the words, “in case of an arbitration other than international commercial arbitration,” before the words, “the principal Civil Court of original jurisdiction”</p>	<p>Adopted.</p>
<p>S 2(1)(e)(ii): New sub-section.</p> <p>“in case of an international commercial arbitration, the High Court exercising jurisdiction over the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Court of a grade inferior to such High Court, or in cases involving grant of interim measures in respect</p>	<p>Modified sub-section is inserted.</p> <p>S 2(1)(e)(ii): “in case of an international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide questions forming the subject-matter of the arbitration suit if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;</p>

of arbitrations outside India, the High Court exercising its jurisdiction over the court having jurisdiction to grant such measures as per the laws of India, and includes the High Court in exercise of its ordinary original civil jurisdiction.	
S 2(1)(f)(iii): Delete the words, “a company or” before the words, “an association or a body of individuals”	Adopted.
S 2(1)(h): Add the words, “or any person claiming through or under such party” after the words, “party to an arbitration agreement”	Not Adopted.
S 2(1)(hh): New sub-section. “Seat of arbitration means the juridical seat of the arbitration”	Not Adopted.
S 2(2): Add the word, “only” after the words, “shall apply” and delete the word “place” and inset the word “seat” in its place. Proviso: “Provided that, subject to an express agreement to the contrary, the provisions of section 9, 27, 37(1)(a) and 37(3) shall also apply to international commercial arbitration even if the seat of arbitration is outside India, if an award made, or that which might be made, in such place would be enforceable and recognized under Part II of this Act.”	Not Adopted.
S 2(2A): New sub-section. “Notwithstanding any judgment/ decree to the contrary, the amendment to this sub-section (2) shall not apply to applications which are pending before any judicial authority on the date of such amendment, and which have arisen in relation to arbitrations where the date of arbitration agreement is prior to 06.09.2012.”	Not Adopted.
Section 6A: New section. “6A (1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908, shall have the	The content of this section is duly incorporated under Section 31A .

discretion to determine-

- a) Whether costs are payable by one party to another;
- b) The amount of such costs; and
- c) When such costs are to be paid.

Explanation- For the purpose of this sub-section, "costs" means reasonable costs relating to-

- i. The fees and the expenses of the arbitrators, Courts and witnesses;
- ii. Legal fees and expenses;
- iii. Any administration fees of the institution supervising the arbitration; and
- iv. Any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

(2) If the Court or arbitral tribunal decides to make an order as to payment of costs-

- a) The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; or
- b) The Court or arbitral tribunal may make a different order for reasons to be recorded in writing.

(3) In determining the costs, the Court or the arbitral tribunal shall have regard to all the circumstances, including-

- a) The conduct of all parties;
- b) Whether a party has succeeded partly in the case;
- c) Whether a party had made a frivolous counter claim leading to delay in the disposal of the arbitral proceedings; and
- d) Whether any reasonable offer to settle the dispute is made by a party and is refused by the other party.

(4) The Court or arbitral tribunal may make any order under this section including an order that a party shall pay-

<p>a) A portion of another party’s costs; b) A stated amount in respect of another party’s costs; c) Costs from or until a certain date only; d) Costs incurred before the proceedings have begun; e) Costs relating to particular steps taken in the proceeding; f) Costs relating only to a distinct part of the proceedings; and g) Interest on costs from or until a certain date.</p> <p>(5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute has arisen.”</p>	
<p>Section 7(1): After the words, “contractual or not” add, “concerning a subject matter capable of settlement by arbitration.”</p>	<p>Not Adopted.</p>
<p>S 7(3A) and (3B): New sub-sections.</p> <p>“(3A) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract had been concluded orally, by conduct, or by other means.</p> <p>(3B) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.</p> <p>Explanation- For the purpose of this Act, “electronic communication” means any communication that the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex and telecopy.”</p>	<p>Not Adopted.</p>
<p>Not Proposed.</p>	<p>S 7(4)(b): After the words, “or other means of telecommunication” add the words, “including communication through electronic means”</p>



<p>S 8(1): After the words, “substance of the dispute, refer” add “to arbitration, such of” and after the words “the parties to” add “the action who are parties to the” and after the word “arbitration” add the word agreement “.</p>	<p>Not Adopted.</p>
<p>S 8(1): Proviso added.</p> <p>“Provided that no such reference shall be made only in cases where-</p> <ul style="list-style-type: none"> i. The parties to the action who are not parties to the arbitration agreement, are necessary parties to the action; ii. The judicial authority finds that the arbitration agreement does not exist or is null and void. <p>Explanation 1- If the judicial authority is prima facie satisfied about the existence of an arbitration agreement, it shall refer the parties to arbitration and leave the final determination of the existence of the arbitration agreement to the arbitral tribunal in accordance with section 16, which shall decide the same as a preliminary issue;</p> <p>Any pleading filed in relation to any interim application which has been filed before the judicial authority shall not be treated to be a statement on the substance of the dispute for the purpose of this section.”</p>	<p>Not Adopted.</p>
<p>Not Proposed.</p>	<p>S 8(1): It is substituted.</p> <p>“A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming under him or through him, so applies not later than when submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.”</p>
<p>Not Proposed.</p>	<p>S 8(2): Proviso added.</p> <p>“Provided that where the original arbitration agreement or a certified copy thereof is</p>

	not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original agreement or its dully certified copy before that Court".
<p>S 9 is renumbered. Sub-section (2) and (3) are added.</p> <p>"(2) Where, before the arbitral proceedings, a Court grants any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within 60 days from the date of such grant or within such shorter or future time as indicated by the Court, failing which the interim measure of protection shall cease to operate.</p> <p>(3) Once the arbitral tribunal has been constituted, the Court shall, ordinarily, not entertain an Applcation under this provision unless circumstances exist owing to which the remedy under section 17 is not efficacious."</p>	<p>S 9 is renumbered. Sub-section (2) and (3) are added.</p> <p>A modified sub-section (2) has been adopted.</p> <p>"(2) Where, before the commencement of arbitral proceedings, a Court orders for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine."</p> <p>Sub-section (3) has been adopted.</p>
<p>S 11(4)(b): After the words "by the" delete "Chief Justice" and add words "High Court" and after the words "designated by" delete the word "him" and add the word "it".</p>	<p>Change has been incorporated with modification in Section 11(4).</p> <p>The words, "the Chief Justice or any person or any institution designated by him" are substituted by "the Supreme Court or, as the case may be, the High Court or any person or any institution designated by such Court".</p>
<p>S 11(5): After the words "by the" delete "Chief Justice" and add words "High Court" and after the words "designated by" delete the word "him" and add the word "it".</p>	<p>Change has been incorporated with modification in Section 11(5).</p> <p>The words, "the Chief Justice or any person or any institution designated by him" are substituted by "the Supreme Court or, as the case may be, the High Court or any person or any institution designated by such Court".</p>
<p>S 11(6)(c): After the words "may request the" delete "Chief Justice" and add words "High Court" and after the words "designated by" delete the word "him" and add the word "it".</p>	<p>Change has been incorporated with modification in Section 11(6).</p> <p>The words, "the Chief Justice or any person or any institution designated by him" are substituted by "the Supreme Court or, as the case may be, the High Court or any person or any institution designated by such Court".</p>

<p>S 11(6A): New sub-section.</p> <p>“An appointment by the High Court or the person or the institution designated by it under sub-section (4) or sub-section (5) or sub-section (6) shall not be made only if the High Court finds that the arbitration agreement does not exist or is null and void.</p> <p>Explanation 1- If the High Court is prima facie satisfied regarding the existence of an arbitration agreement it shall refer the parties to arbitration and leave the final determination of the existence of the arbitration agreement to the arbitral tribunal in accordance with section 16, which shall decide the same as a preliminary issue.</p> <p>Explanation 2- For the removal of any doubt, it is clarified that reference by the High Court to any person or institution designated by it shall not be regarded as a delegation of judicial power.</p> <p>Explanation 3- The High Court may take steps to encourage the parties to refer the disputes to institutionalized arbitration by a professional Indian or International Arbitral Institute.”</p>	<p>S 11(6A) and (6B) have been newly inserted.</p> <p>“(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.</p> <p>(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power of the Supreme Court or the High Court”.</p>
<p>S 11(7): After the words, “or sub-section (6)” add the words “or sub-section (6A)” and after the words “to the” delete the words “Chief Justice or the” and the words “High Court is final where an arbitral tribunal has been appointed or a” and after the words “designated by” delete the words “him is final” and insert the words “the High Court, and no appeal, including letters patent appeal, shall lie against such order.”</p>	<p>Change has been incorporated under section 11(7) with modification.</p> <p>The words “the Chief Justice or any person or any institution designated by him is final” are substituted by “the Supreme Court or, as the case may be, the High Court or any person or any institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision”.</p>
<p>S 11(8): Delete the words “The Chief Justice or the person or the institution designated by him, in appointing an arbitrator,” and add the words “The High Court or the person or the institution designated by it, in appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of section 12 sub-section (1) and”</p> <p>S 11(8)(b): Add the words “the contents of the disclosure and”</p>	<p>S 11(8): Previous sub-section is substituted with the following:</p> <p>“(8) The Supreme Court or, as the case may be, the High Court or any person or any 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:</p> <p>a) Any qualification required for the arbitrator by the agreement of the parties;</p>

	<p>and</p> <p>b) The contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator”.</p>
<p>S 11(9): Delete the words “Chief Justice” and add the words “Supreme Court” before the words “of India” and after the words “designated by” delete the word “him” and add the word “it”.</p>	<p>The following change has been incorporated in S 11(9):</p> <p>The words, “the Chief Justice of India or any person or any institution designated by him” are substituted with “the Supreme Court or, a person designated by that Court”.</p>
<p>S 11(10): After the word “The” delete the words “Chief Justice” and add the words “High Court” and after the words “scheme as” delete the word “he” and add the word “it” and after the words “sub-section (6) to” delete the word “him” and add the word “it”.</p>	<p>S 11(10): Previous sub-section is substituted with the following:</p> <p>“(10) The Supreme Court or, as the case may be, the High Court or any person or any institution designated by such Court may deem appropriate for dealing with matters entrusted by sub-section (4) or, sub-section (5) or, sub-section (6), to it”.</p>
<p>S 11(11): After the words “sub-section (6) to” delete the words “the Chief Justices of” and after the words “High Court or” delete the word “their” and add the word “its” and after the words “designates, the”, delete the words “Chief Justice” and add words “High Court” and after the word “or” delete the words “his” and the word “its”</p>	<p>The following changes have adopted in Section 11(11):</p> <p>The words, “the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made” are substituted with the words, “different High Courts or their designates, the High Court or its designate to whom the request has been first made”.</p>
<p>S 11(12)(a): After the words “reference to” delete the words “Chief Justice” and add the words “High Court” and after the words “reference to” delete the words “Chief Justice” and add the words “Supreme Court”</p> <p>S 11(12)(b): After the words “reference to” delete the words “Chief Justice” and add the words “High Court” and after the words “construed as a reference to,” delete the words “the Chief Justice of” and after the words “in that clause, to” delete the words “the Chief Justice of”</p>	<p>S 11(12): Previous sub-section is substituted with the following:</p> <p>“(12) (a) Where the matter referred to in sub-sections (4), (5), (6), (7), (8) and (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</p> <p>(b) Where the matter referred to in sub-sections (4), (5), (6), (7), (8) and (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</p>

	clause, to that High Court”.
<p>S 11(13): New sub-section.</p> <p>“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 their designate, as the case may be, as expeditiously as possible and an endeavor shall be made to dispose of the matter within 60 days from the date of service of notice t the opposite party.</p>	<p>New sub-section (13) has been adopted with slight modification.</p> <p>“(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 the institution designated by such Court, as the case may be, as expeditiously as possible and an endeavor shall be made to dispose of the matter within sixty days from the date of service of notice t the opposite party.</p>
<p>S 11(14): New sub-section.</p> <p>“(14) In determining the fees of the arbitral tribunal in case of arbitrations other than internal commercial arbitrations and the schedule for its payment to the arbitral tribunal, the High Court is empowered to frame necessary rules, and for which purpose the High Court may look to the Sixth Schedule of the Act.</p> <p>Explanation- For the removal of doubt, it is hereby clarified that this sub-section (14) of section 11 shall not apply in case where parties have agreed for determination of fees as per the rules of an arbitral institution.”</p>	<p>S 11(14): New sub-section has been adopted wit modification.</p> <p>“(14) For the purpose of determination of 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.</p> <p>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”.</p>
Not Proposed.	<p>S 11A: New section.</p> <p>“(1) If the Central Government is satisfied and it is necessary or expedient so to do, it may, by notification in the Official Gazette, amend the Fourth Schedule and thereupon the Fourth Schedule shall be deemed to have been amended accordingly.</p> <p>(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or as the</p>

	<p>case may be, shall be issued only in such modified form as may be agreed upon by both the House of Parliament”.</p>
<p>S 12(1): After the words “writing any circumstances” add “-” and delete the words “likely to give rise to justifiable doubts as to his independence or impartiality” and insert sub-clause “(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and”</p> <p>S 12(1)(b): New sub-clause.</p> <p>“Which are likely to affect his ability to finish the entire arbitration within 24 months and render an award within 3 months from such date;</p> <p>Explanation 1- The contents of the Fourth Schedule shall be treated as a guide in relation to determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.</p> <p>Explanation 2- The disclosure shall be made by such person in the form set out in the Seventh Schedule of the Act.”</p> <p>S 12(5): New sub-section.</p> <p>(5) Notwithstanding any prior agreement to the contrary, any person whose relationship with the parties, Counsel or the subject matter of the dispute falls under one of the categories set out in the Fifth Schedule shall be ineligible to be as an arbitrator.</p> <p>Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this provision by an express agreement in writing;</p> <p>Provided further that the instant sub-section shall not apply to cases where an arbitrator has already been appointed prior to the effective date of the instant amendment.</p>	<p>S 12(1) has been substituted with the following:</p> <p>“When a person is approached in connection with his possible appointment as an arbitrator, he shall dispose writing any circumstances-</p> <ul style="list-style-type: none"> a) Such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and b) Which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months. <p>Explanation 1- the grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of the arbitrator.</p> <p>Explanation 2- the disclosure shall be made by such person in the form specified in the Sixth Schedule.</p> <p>Section 12 (5): A new sub-section has been inserted.</p> <p>“(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or the counsel or, the subject matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:</p> <p>Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing:</p> <p>Provided further that this sub-section shall not apply to cases where an arbitrator has</p>

	already been appointed on or before the commencement of the Arbitration and Conciliation (Amendment) Ordinance, 2015”.
S 14(1): After the word “terminate” delete the word “if” and add the words “and he shall be substituted by another arbitrator if”	S 14(1): The following changes have been adopted: The opening words “The mandate of the arbitrator shall terminate if”, are substituted with “The mandate of the arbitrator shall terminate and he shall be substituted by another arbitrator, if”.
S 14(1)(b): After sub-clause (b) of sub-section (1) of section 14 an Explanation has been proposed. “Explanation- Where an arbitrator whose relationship with the parties, Counsel or the subject matter of the dispute falls under one of the categories set out in the Fifth Schedule, such an arbitrator shall be deemed to be “de jure unable to perform his functions”.”	Not Adopted.
S 16(7): New sub-section. “(7) The arbitral tribunal shall have the power to make an award or give a ruling notwithstanding that the dispute before it involves a serious question of law, complicated questions of fact or allegations of fraud or corruption etc.”	Not Adopted.
S 17(1): Delete the words, “Unless otherwise agreed by the parties,” and add the words “A party may, during” after the words “the arbitral” delete the words “tribunal may” add the words “proceedings or” after the word “at” delete the words “the request of a party, order a party to take” and after the word “any” add the words “time after making the arbitral award but before it is enforced in accordance with section 36, apply to the arbitral tribunal for an” and after the words “interim measure of protection” delete the words “as the arbitral tribunal may consider necessary” and after the words “in respect of” add the words “any of the following matters, namely:-” S 17(1)(a): New sub-clause is proposed.	Section 17 has been substituted with the following: “17(1) A party may, during the arbitral proceedings or at any time after making the arbitral award but before it is enforced as per section 36, apply to the arbitral tribunal- For the appointment of a guardian for a minor or person of unsound mind for the purposes of the arbitral proceedings; or For an interim measure of protection in respect of any of the following matters: a) The preservation, interim custody or sale of any good which are the subject matter of the arbitration agreement; b) Securing the amount in dispute in the arbitration;

<p>“(a) The preservation, interim custody or sale of any good which are the subject matter of the arbitration agreement;”</p> <p>S 17(1)(b): New sub-clause is proposed.</p> <p>“(b) Securing the amount in dispute in the arbitration;”</p> <p>S 17(1)(c): New sub-clause is proposed.</p> <p>“(c) The detention or 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 authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken, which may be necessary or expedient for the purpose of obtaining full information or evidence;”</p> <p>S 17(1)(d): New sub-clause is proposed.</p> <p>“(d) Interim injunction or the appointment of a receiver;”</p> <p>S 17(1)(e): New sub-clause is proposed.</p> <p>“(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.”</p> <p>S 17(2): Delete words “In sub-section (2)” and add the words “(2): subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as if it were an order of the Court.”</p>	<p>c) The detention or 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 authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken, which may be necessary or expedient for the purpose of obtaining full information or evidence;</p> <p>d) Interim injunction or the appointment of a receiver;</p> <p>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.</p> <p>(2): subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as if it were an order of the Court.”</p>
<p>S 20 Delete the word “Place” and add the words “Seat and Venue” before the words</p>	<p>Not Adopted.</p>

<p>“of arbitration”.</p> <p>S 20(1): After the words “agree on the” delete the word “place” and add the word “seat and venue”</p> <p>S 20(3): After the words “meet at any” delete the word “place” and add the “word “venue”.</p>	
<p>S 23(1): Explanation is added.</p> <p>“Explanation- In his defense the respondent may also submit a counter claim or plead a set off, which shall be treated as being within the scope of reference and be adjudicated upon the arbitral tribunal notwithstanding that it may not fall within the scope of the initial reference to arbitration, but provided it falls within the scope of the arbitration agreement.”</p>	<p>Not Adopted.</p>
<p>Not Proposed.</p>	<p>S 23: Sub-section 2A has been inserted.</p> <p>“(2A) The Respondent, in support of his case, may also submit a counter-claim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counter-claim or set-off falls within the scope of the arbitration agreement.”</p>
<p>S 24: Another Proviso added.</p> <p>“Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on continuous days, and not grant adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking the adjournment.”</p>	<p>S 24: Another Proviso added with slight medication.</p> <p>“Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without sufficient cause.”</p>
<p>S 25(b): After the words, “allegations by the claimant”, the words, “and shall have the discretion to treat the right of the respondent to file such statement of defense as having being forfeited.”</p>	<p>Adopted.</p>
<p>S 28(1): After the words “Where the” delete the word “place” and add the word “seat” after the words “of arbitration is” delete the word “situate”</p>	<p>Not Adopted.</p>

<p>S 28(3): After the words “tribunal shall decide” delete the words “in accordance with” and add the words “having regard to”</p>	<p>Sub-section (3) has been substituted.</p> <p>“(3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.”</p>
<p>Not Proposed.</p>	<p>S 29A: New section inserted.</p> <p>“29A (1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.</p> <p>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.</p> <p>(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.</p> <p>(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.</p> <p>(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, extend the period:</p> <p>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 percent for each month of such delay.</p> <p>(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted for only sufficient cause and on such terms and conditions as may be imposed by the Court.</p>

	<p>(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all the arbitrators and if one or all the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and materials already on the record, and the arbitrator(s) appointed under this section shall be deemed to have received evidence and materials on record.</p> <p>(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.</p> <p>(8) It shall be open to the Court to impose or exemplary costs upon any of the parties under this section.</p> <p>(9) An application filed under subsection (5) shall be disposed of by the Court as expeditiously as possible and endeavor shall be made shall be made to dispose of the matter within a period of sixty days from the date of service of notice to the opposite party.”</p>
<p>Not Proposed.</p>	<p>S 29B: New section inserted.</p> <p>“29B (1) Notwithstanding contained anything in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).</p> <p>(2) The parties to an arbitration agreement, while agreeing for resolution of dispute b fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.</p> <p>(3) The arbitral tribunal shall follow the following procedure while conducting arbitration proceeding under sub-section (1):</p> <p>a) The arbitral tribunal shall decide the dispute on the basis of written pleadings,</p>

	<p>documents and submissions filed by the parties without any oral hearing;</p> <p>b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;</p> <p>c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;</p> <p>d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.</p> <p>(4) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.</p> <p>(5) If the award is not made within the period specified in sub-section (4), the provisions of sub-sections (3) to (9) of section 29A shall apply to the proceedings.</p> <p>(6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the parties and the arbitrator.</p>
<p>S 31(4): After the words “its date and the” delete the word “place” and add the word “seat”</p>	<p>Not Adopted.</p>
<p>S 31(7)(b): After the words “carry interest at” add the words “2% per annum more than” and before the words “rate of” add the word “current” and after the words “rate of” delete the words “eighteen per centum per annum” and add the word “interest”.</p> <p>S 31(7)(b): Two Explanations are added.</p> <p>“Explanation 1- The expression “current rate of interest” shall have the same meaning as assigned to it under Clause (2) section 2 of Interest Act, 1978.</p> <p>Explanation 2- The expression “sum directed to be paid by an arbitral award” includes</p>	<p>S 31 (7) (b) is substituted.</p> <p>“(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.</p> <p>Explanation- The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978.”</p>

<p>the interest awarded in accordance with section 31(7)(a).”</p>	
<p>S 31(8): After the words “by the parties” delete “,-“ and delete the provision for sub-clause (a) before the words “the costs of” and after the words “fixed by the arbitral tribunal” delete “:.” and add the words “in accordance with section 6A of this Act.” Rest of the sub-section 8 be deleted.</p>	<p>S 31 (8) is substituted.</p> <p>“(8) The costs of arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.</p>
<p>Proposed as Section 6A.</p>	<p>S 31A: New section.</p> <p>“31A (1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908, shall have the discretion to determine-</p> <ul style="list-style-type: none"> a) Whether costs are payable by one party to another; b) The amount of such costs; and c) When such costs are to be paid. <p>Explanation- For the purpose of this sub-section, “costs” means reasonable costs relating to-</p> <p>The fees and the expenses of the arbitrators, Courts and witnesses; Legal fees and expenses; Any administration fees of the institution supervising the arbitration; and Any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.</p> <p>(2) If the Court or arbitral tribunal decides to make an order as to payment of costs-</p> <ul style="list-style-type: none"> a) The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; or b) The Court or arbitral tribunal may make a different order for reasons to be recorded in writing. <p>(3) In determining the costs, the Court or the arbitral tribunal shall have regard to all</p>

	<p>the circumstances, including-</p> <ol style="list-style-type: none"> a) The conduct of all parties; b) Whether a party has succeed partly in the case; c) Whether a party had made a frivolous counter claim leading to delay in the disposal of the arbitral proceedings; and d) Whether any reasonable offer to settle the dispute is made by a party and is refused by the other party. <p>(4) The Court or arbitral tribunal may make any order under this section including an order that a party shall pay-</p> <ol style="list-style-type: none"> a) A portion of another party's costs; b) A stated amount in respect of another party's costs; c) Costs from or until a certain date only; d) Costs incurred before the proceedings have begun; e) Costs relating to particular steps taken in the proceeding; f) Costs relating only to a distinct part of the proceedings; and g) Interest on costs from or until a certain date. <p>(5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute has arisen.</p>
<p>S 34(1): After the words, "sub-section (2)" add the words ", sub-section (2A)".</p>	<p>Not Adopted.</p>
<p>S 34(2)(b): After the word "Explanation- " delete the words "Without prejudice to the generality of sub-clause (ii), it is hereby declared, for" and add the word "For" and after the words "the avoidance of any doubt," add the words "it is clarified" and after the words "public policy of India" add the word "only" and after the word "if" delete the word "-" and add the word ":" and add the sub-clause "(a)" before the words "the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81" and add the word ": or" after the words "violation of section 75 or section 81"</p>	<p>Explanation of section 34 (2) (b) has been substituted.</p> <p>"Explanation 1- For the avoidance of any doubt, it is clarified that an award is in conflict with public policy of India, only if,-</p> <p>The making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or</p> <p>It is in contravention with the fundamental policy of Indian law; or</p>

<p>S 34(2)(b): New sub-clause.</p> <p>“(b) it is in contravention with the fundamental policy of Indian law; or”</p> <p>S 34(2)(c): New sub-clause.</p> <p>“(c) it is in conflict with the most basic notions of morality or justice.”</p>	<p>It is in conflict with the most basic notions of morality or justice.</p> <p>Explanation 2- For the avoidance of any doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”</p>
<p>S 34(2A): New sub-section.</p> <p>“(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court if the Court finds that the award is vitiated by patent illegality appearing on the face of the award.</p> <p>Provided that as award shall not be set aside merely on the ground of an erroneous application of law or by re-appreciating evidence.”</p>	<p>Adopted.</p>
<p>S 34(3): After the words “An application” delete the word “for setting aside” and add the word “under the above sub-sections”</p>	<p>Not Adopted.</p>
<p>S 34(4) to be re-numbered as (6). The following shall be (4):</p> <p>“(4) An application under this section shall be filed by a party under this section shall be filed by a party only after issuing a prior notice to the other party and such an application shall be accompanied with an affidavit from the applicant endorsing compliance with this requirement.”</p>	<p>Adopted as S 34(5).</p>
<p>S 34(5): New sub-section.</p> <p>“(5) An application under this section shall be disposed off expeditiously and in any event within a period of one year from the date on which the notice under sub-section (4) is served.”</p>	<p>Adopted as (6) with slight modifications.</p> <p>“(6) An application under this section shall be disposed off expeditiously, and in any event, within a period of one year from the date on which the notice under sub-section (5) is served upon the other party.”</p>
<p>S 36(1): add numbering as sub-section (1) before the words “Where the time” and after</p>	<p>S 36 is substituted.</p>

<p>the words “Section 34 has expired,” delete the words “or such application having been made, it has been refused” and add the words “then subject to the provision of sub-section (2) hereof,”</p> <p>S 36(2): New sub-section.</p> <p>“(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render the award unenforceable, unless upon a separate application made for that purpose, the Court grants stay of the operation of the award in accordance with the provisions of (3) hereof;”</p> <p>“(3) Upon filing of the separate application under sub-section (2) for stay for operation of the award, the court may, subject to such conditions as it may deem fit, grant stay of operation of award for reasons to be recorded in writing:”</p> <p>S 36: Proviso added.</p> <p>“Provided that the Court shall while considering the grant of stay, in case of an award for money shall have due regard to the provisions for grant of stay of money decrees under the Code of Civil Procedure, 1908.”</p>	<p>“36(1) Where the time or making an application to set aside the arbitral award under section 34 has expired, the, subject to the provisions of sub-section (2), shall award shall be enforced in accordance with provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree from a court.</p> <p>(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render the award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.</p> <p>(3) Upon filing of the separate application under sub-section (2) for stay for operation of the award, the Court may, subject to such conditions as it may deem fit, grant stay of operation of award for reasons to be recorded in writing:</p> <p>Provided that the Court shall while considering the grant of stay, in case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions Code of Civil Procedure, 1908.”</p>
<p>S 37(1): Re-number sub-clause “(a)” as sub-clause “(b)” and insert sub-clause “(a) refusing to refer the parties to arbitration under section 8;”</p> <p>S 37(1): Re-number sub-clause “(b)” as sub-clause “(d)” and insert sub-clause “(c) refusing to appoint an arbitrator or refusing to refer such appointment to a person or institution designated by it under section 11, in the case of an arbitration other than an international commercial arbitration.”</p>	<p>S 37 (1) (a) and (b) are substituted. Also sub-clause (c) is inserted.</p> <p>“37 (1) (a) refusing to refer the parties to arbitration under section 8.</p> <p>37 (1) (b) granting or refusing to grant any measure under section 9.</p> <p>(c) has been inserted. It reads as, “setting aside or refusing to set aside an arbitral award under section 34.”</p>
<p>S 37(3): After the words “No second appeal” add the words “, including letters patent appeal,”</p>	<p>Not Adopted.</p>
<p>S 47(2): Explanation has been amended.</p>	<p>S 47: The explanation to section 47 has been substituted.</p>

<p>After the words ““Court” means the” add the words “High Court exercising jurisdiction over the” and after the words “including any” delete the words “civil court” and ad the word “Court” and after the words “inferior to such” delete the words “principal Civil Court, or any Court or Small Causes” and add the words “High Court.”</p>	<p>“Explanation- In this section and in the sections following in this Chapter, “Court” means High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.”</p>
<p>S 48(2): In the Explanation, delete the words “Without any prejudice to the generality of clause (b), it is hereby declared, for” and add the word “For” and after the words “avoidance of any doubt,” add the words “it is clarified” and after the words “the public policy of India” and add the word “only” and after the word “if” delete “-” and “;” and add sub-clause “(a)” before the words “the making of the award” and delete “.” And add “;” after the words “by fraud or corruption” and add sub-clause “(b) it is in contravention with the fundamental policy of India law; (c) it is in conflict with India’s most basic notions of morality or justice.”</p>	<p>The explanation of section 48 (2) has been substituted.</p> <p>“Explanation 1- For the avoidance of any doubt, it is clarified that an award is in conflict with public policy of India, only if,-</p> <p>The making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or It is in contravention with the fundamental policy of Indian law; or It is in conflict with the most basic notions of morality or justice.</p> <p>Explanation 2- For the avoidance of any doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”</p>
<p>S 48(3): Re-number sub-section (3) as sub-section (5).</p> <p>“(3) An objection under the above sub-sections shall not be made after three months have elapsed from the date on which the party making such objections has received notice of such application under section 47 of the Act:</p> <p>Provided that if the Court is satisfied that the party raising the objection was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”</p>	<p>Not Adopted.</p>
<p>S 48(4): New sub-section.</p> <p>“(4) An objection under this section shall be disposed off expeditiously and in any event</p>	<p>Not Adopted.</p>

within a period of one year from the date on which the notice issued pursuant to an application under section 47 is served.”	
<p>S 48(6): New sub-section.</p> <p>“(6) The costs regime set out in section 6A of the Act shall apply to a proceeding in relation to sections 47 and 47 of the Act.”</p>	Not Adopted.
Not Proposed.	<p>Explanation 2 has been inserted to section 56.</p> <p>“Explanation 2- In this section and in the sections following in this Chapter, “Court” means High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.”</p>
Not Proposed.	<p>Explanation for section 57 (1) has been substituted.</p> <p>“Explanation 1- For the avoidance of any doubt, it is clarified that an award is in conflict with public policy of India, only if,-</p> <p>The making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or</p> <p>It is in contravention with the fundamental policy of Indian law; or</p> <p>It is in conflict with the most basic notions of morality or justice.</p> <p>Explanation 2- For the avoidance of any doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”</p>
<p>S 85A: New section.</p> <p>“Transitory provision- (1) Unless otherwise provided in the Arbitration and Conciliation (Amending) Act, 2014, the provisions of the instant Act (as amended) shall be prospective in operation and shall apply only to fresh arbitrations and fresh</p>	Not Adopted.

<p>applications, except in the following situations-</p> <p>a) The provisions of section 6A shall apply to all pending proceedings and arbitrations.</p> <p>Explanation: It is clarified that where the issue of costs has already been decided by the court/tribunal, the same shall not be opened to that extent.</p> <p>b) The provisions of sub-section (7) of section 16 shall apply to all pending proceedings and arbitrations, except where the issue has been decided by the court/tribunal.</p> <p>c) The provisions of second proviso to section 24 shall apply to all pending arbitrations.</p> <p>(2) For the purpose of the instant section-</p> <p>a) “fresh arbitrations” mean arbitrations where there has been no request for appointment of arbitral tribunal; or application for appointment of arbitral tribunal; or appointment of arbitral tribunal, prior to the date of enforcement of the Arbitration and Conciliation (Amending) Act, 2014.</p> <p>b) “fresh applications” applications to a court or arbitral tribunal made subsequent to the date of enforcement of the Arbitration and Conciliation (Amending) Act, 2014.</p>	
Amendments to Fourth Schedule.	Insertion of New Fourth Schedule.
Amendments to Fifth Schedule.	Insertion of New Fifth Schedule.
Amendments to Sixth Schedule.	Insertion of New Sixth Schedule.
Amendments to Seventh Schedule.	Insertion of New Seventh Schedule.