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**SUPPLEMENT FOR
JURISPRUDENCE INTERPRETATION
AND
GENERAL LAWS
MODULE 1
PAPER 1**

APPLICABLE FOR JUNE 2020 EXAMINATION

Arbitration and Conciliation (Amendment) Act, 2019

Introduction

The Arbitration and Conciliation Act, 1996 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.

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.

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, the Arbitration and conciliation (Amendment) Act, 2019 passed by the Parliament.

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

- (i) Amended 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) 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.;

(iii) 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;

(iv) Amended 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) 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.

Details of the Arbitration and conciliation (Amendment) Act, 2019 are as under:

Appointment of Arbitrators

According to Section 11(1) of the Act, a person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

Section 11(2) provides that subject to Section 11(6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

Section 11(3) states that failing any agreement referred to in Section 11(2) above, in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators, shall appoint the third arbitrator who shall act as the presiding arbitrator.

According to Section 11(3A) of the Act, 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 the Act.

It may be noted 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.

Further it may be noted that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.

Section 11(4) provides that 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, 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.

According to Section 11(5) of the Act, failing any agreement referred to in Section 11(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 “the appointment shall be made on an application of the party in accordance with the provisions contained in Section 11(4).

Section 11(6) states that 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 him or it under that procedure, 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 ; take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(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 by the Supreme Court or the High Court.

According to Section 11(8) of the Act, the arbitral institution referred to in Section 11(4), Section 11(5) and Section 11(6), before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of section 12(1), 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.”;

Section 11(9) provides that in the case of appointment of sole or third arbitrator in an international commercial arbitration, the arbitral institution designated by the Supreme Court may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

Section 11 (11) states that where more than one request has been made under Section 11(4), Section 11(5) and Section 11(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.

According to Section 11(12) of the Act, where the matter referred to in Section 11(4), Section 11(5) and Section 11(6) and Section 11 (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 Section 11(3A).

Section 11(13) provides that an application 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.

Section 11(14) states that 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.

It may be noted that Section 11(14) 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.

Interim Measures Ordered by Arbitral Tribunal

Section 17(1) provides that a party may, during the arbitral proceedings apply to the 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.

Sub-section (2) states that subject to any orders passed in an appeal under section 37 of the Act, 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.

Statements of Claim and Defence

Section 23(1) provides that within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

Sub-section (2) states that the parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

Sub-section (2A) provides that 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 counterclaim or set-off falls within the scope of the arbitration agreement.

Sub-section (3) states that unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

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

Time Limit for Arbitral Award

Section 29A(1) provides that 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 section 23(4).

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose off the matter within a period of twelve months from the date of completion of pleadings under section 23(4).

Section 29A (2) states that 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.

Under Section 29A(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.

Section 29A(4) states that 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 subsection, 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.

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.

As per Section 29A(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 only for sufficient cause and on such terms and conditions as may be imposed by the Court.

Section 29A (6) provides that while extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

Section 29A (7) states that 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.

Section 29A (8) provides that it shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

As per Section 29A (9) an application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and 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

Application for Setting Aside Arbitral Award

Section 34(1) provides that recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and subsection (3).

Section 34 (2) states that an arbitral award may be set aside by the Court only if,

(a) the party making the application establishes on the basis of the record of the arbitral tribunal 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

(b) the Court finds that,

- i. the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
- ii. the arbitral award is in conflict with the public policy of India.

Explanation 1

For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81 ; or

- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2

For the avoidance of 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.

As per Section 34(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:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re appreciation of evidence.

Section 34 (3) provides that an application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant 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.

Under Section 34(4) on receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

As per Section 34(5) an application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

Under Section 34(6) an application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

Appealable Orders

Section 37(1) provides that notwithstanding anything contained in any other law for the time being in force, 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, refusing to refer the parties to arbitration under section 8;

- (a) granting or refusing to grant any measure under section 9;
- (b) setting aside or refusing to set aside an arbitral award under section 34.

Further Section 37(2) provides that appeal shall also lie to a court from an order of the arbitral tribunal-

- a. accepting the plea referred to in sub-section (2) or sub-section (3) of section 16;
or
- b. granting or refusing to grant an interim measure under section 17.

Section 37(3) states that no second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

Confidentiality of information

Section 42A provides that notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award.

Protection of action taken in good faith

According to Section 42B of the Act, no suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.”

ARBITRATION COUNCIL OF INDIA (ACI)

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

Establishment and incorporation of Arbitration Council of India

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

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

Composition of Council

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

- (a) a person, who has been, a Judge of the Supreme Court or, Chief Justice of a High Court or, a Judge of a High Court or an eminent person, having special knowledge and experience in the conduct or administration of arbitration, to be appointed by the Central Government in consultation with the Chief Justice of India–Chairperson;
- (b) An eminent arbitration practitioner having substantial knowledge and experience in institutional arbitration, both domestic and international, to be nominated by the Central Government–Member;
- (c) an eminent academician having experience in research and teaching in the field of arbitration and alternative dispute resolution laws, to be appointed by the Central Government in consultation with the Chairperson–Member;
- (d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary–Member, ex officio
- (e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary– Member, ex officio;
- (f) one representative of a recognised body of commerce and industry, chosen on rotational basis by the Central Government–Part-time Member; and
- (g) Chief Executive Officer-Member-Secretary, ex officio.

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

Chairperson or Member, other than ex officio Member, shall not hold office after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Member.

The salaries, allowances and other terms and conditions of the Chairperson and Members as may be prescribed by the Central Government. The Part-time Member shall be entitled to such travelling and other allowances as may be prescribed by the Central Government.

Duties and functions of Council

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

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

- (a) frame policies governing the grading of arbitral institutions;
- (b) recognise professional institutes providing accreditation of arbitrators;
- (c) review the grading of arbitral institutions and arbitrators;
- (d) hold training, workshops and courses in the area of arbitration in collaboration of law firms, law universities and arbitral institutes;
- (e) frame, review and update norms to ensure satisfactory level of arbitration and conciliation;
- (f) act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration and conciliation;
- (g) make recommendations to the Central Government on various measures to be adopted to make provision for easy resolution of commercial disputes;
- (h) promote institutional arbitration by strengthening arbitral institutions;
- (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

Section 43E states that no act or proceeding of the Council shall be invalid merely by reason of—

- (a) any vacancy or any defect, in the constitution of the Council;
- (b) any defect in the appointment of a person acting as a Member of the Council; or
- (c) any irregularity in the procedure of the Council not affecting the merits of the case.

Resignation of Members

According to Section 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.

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.

Removal of Member

Section 43G (1) provides that the Central Government may, remove a Member from his office if he--

- (a) is an undischarged insolvent; or
- (b) has engaged at any time (except Part-time Member), during his term of office, in any paid employment; or
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- (f) has become physically or mentally incapable of acting as a Member.

According to Section 43G(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.

Appointment of experts and constitution of Committees thereof

Section 43H provides that 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.

General norms for grading of arbitral institutions

Section 43-I states that 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.

Norms for accreditation

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

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

It may be noted that the Central Government may, after consultation with the Council, amend the Eighth Schedule and thereupon, the Eighth Schedule shall be deemed to have been amended accordingly.

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

- (i) is an advocate within the meaning of the Advocates Act, 1961 having ten years of practice experience as an advocate; or
- (ii) is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 having ten years of practice experience as a chartered accountant; or
- (iii) is a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 having ten years of practice experience as a cost accountant; or
- (iv) is a company secretary within the meaning of the Company Secretaries Act, 1980 having ten years of practice experience as a company secretary; or***
- (v) Has been an officer of the Indian Legal Service; or
- (vi) has been an officer with law degree having ten years of experience in the legal matters in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector; or
- (vii) has been an officer with engineering degree having ten years of experience as an engineer in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector or self-employed; or
- (viii) has been an officer having senior level experience of administration in the Central Government or State Government or having experience of senior level management of a Public Sector Undertaking or a Government company or a private company of repute;
- (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.

General norms applicable to Arbitrator

- the arbitrator shall be a person of general reputation of fairness, integrity and capable to apply objectivity in arriving at settlement of disputes;
- 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;
- the arbitrator should not involve in any legal proceeding and avoid any potential conflict connected with any dispute to be arbitrated by him;
- the arbitrator should not have been convicted of an offence involving moral turpitude or economic offence;
- 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;
- the arbitrator should possess robust understanding of the domestic and international legal system on arbitration and international best practices in regard thereto;
- 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
- 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.

Depository of awards

According to the Section 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.

Power to make regulations by Council

Section 43L empowers 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 the Act.

Chief Executive Officer

Section 43M states that there shall be a Chief Executive Officer of the Council, who shall be responsible for day-to-day administration of the Council.

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.

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

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

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.

Right to Information (Amendment) Act, 2019

The Right to Information Act, 2005 was enacted to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

According to statement of objects and reasons of the Right to Information (Amendment) Bill, 2019, section 13 of the Act provides for the term of office and conditions of service of the Chief Information Commissioner and Information Commissioners. It provides, *inter -alia*, that the Chief Information Commissioner and every Information Commissioner shall hold office for a term of five years or till they attain the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment. It further provides that the salaries and allowances and other terms and conditions of service of the Chief Information Commissioner and Information Commissioners shall be the same as that of the Chief Election Commissioner and Election Commissioner, respectively. Similarly, section 16 of the Act provides for the term of office and conditions of service of the State Chief Information Commissioner and State Information Commissioners. It provides, *inter- alia*, that the State Chief Information Commissioner and every State Information Commissioner shall hold office for a term of five years or till they attain the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment. It provides that the salaries and allowances and other terms and conditions of service of the State Chief Information Commissioner and State Information Commissioners shall be the same as that of the Election Commissioner and the Chief Secretary to the State Government, respectively.

The salaries and allowances and other terms and conditions of service of the Chief Election Commissioner and Election Commissioner are equal to a Judge of the Supreme Court, therefore, the Chief Information Commissioner, Information Commissioner and the State Chief Information Commissioner becomes equivalent to a Judge of the Supreme Court in terms of their salaries and allowances and other terms and conditions of service.

The functions being carried out by the Election Commission of India and the Central and State Information Commissions are totally different. The Election Commission is a constitutional body established by clause (1) of article 324 of the Constitution and is responsible for the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under the Constitution. On the other hand, the Central Information Commission and State Information Commissions are statutory bodies established under the provisions of the Right to Information Act, 2005.

Therefore, the mandate of Election Commission of India and Central and State Information Commissions are different. Hence, their status and service conditions need to be rationalised accordingly.

In view of the above, Right to Information (Amendment) Act, 2019 enacted by the Parliament so as to provide that the term of office of, and the salaries, allowances and other terms and conditions of service of, the Chief Information Commissioner and Information Commissioners and the State Chief Information Commissioner and the State Information Commissioners, shall be such as may be prescribed by the Central Government.

Term of Office and Conditions of Service of Central Information Commission

Section 13 of the Right to Information Act provides that the Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment.

Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

Every Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner: Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in section 12(3).

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office: Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.

(5) The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government:

Provided that the salaries, allowances and other conditions of service of the Chief Information Commissioner or the Information Commissioners shall not be varied to their disadvantage after their appointment:

The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

Term of Office and Conditions of Service of State Information Commission

Section 16 of the Right to Information Act provides that the State Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment: Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

Every State Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner:

Provided that every State Information Commissioner shall, on vacating his office under this subsection, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15:

Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

The State Chief Information Commissioner or a State Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office: Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.

The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be such as may be prescribed by the Central Government.

Provided that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.

The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

Power to make rules by appropriate Government

Section 27 of the Right to Information Act states that the appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (i) the cost of the medium or print cost price of the materials to be disseminated under section 4(4);
- (ii) the fee payable under section 6(1);
- (iii) the fee payable under section 7(1) & section 7(5);
- (iv) the term of office of the Chief Information Commissioner and Information Commissioners under sub-sections (1) and (2) of section 13 and the State Chief Information Commissioner and State Information Commissioners under sub-sections (1) and (2) of section 16;
- (v) the salaries, allowances and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners under sub-section (5) of section 13 and the State Chief Information Commissioner and the State Information Commissioners under sub-section (5) of section 16;
- (vi) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;
- (vii) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and
- (viii) any other matter which is required to be, or may be, prescribed.
