

# Dispute Resolution Hotline

October 28, 2016

## INDIA'S ARBITRATION ACT: THE TURBULENT TEENAGE YEARS

### INTRODUCTION

Arbitration's legislative journey in India started from the Indian Arbitration Act 1899<sup>1</sup> followed by the Code of Civil Procedure, 1908<sup>2</sup>. Thereafter India's arbitration landscape was a potpourri of Arbitration Act, 1940<sup>3</sup> the Foreign Awards (Recognition & Enforcement) Act, 1961 and the Arbitration (Protocol and Convention) Act, 1937.

The inadequacies of this potpourri were often frowned upon by the Courts and led to the development of a sentiment of acute mistrust of the arbitral process amongst aggrieved litigants.

The Supreme Court in *Guru Nanak Foundation v Rattan Singh*<sup>4</sup> made many scathing observations *vis-à-vis* the 1940 Act stating that "*the way in which the proceedings under the Act are conducted and without exception challenged in Courts, has made Lawyers laugh and legal philosophers weep*".

It is from this extant petri dish of legislations that the Arbitration & Conciliation Act, 1996 ("**1996 Act**") was conceived and like any new born, it has had its teething problems in infancy and mood-swings of the teens. As any parent would, the Legislature and the judiciary mollycoddled it and when required, disciplined it.

The latest disciplining of the 1996 Act, has come in the form of The Arbitration and Conciliation (Amendment) Act, 2015 ("**2015 Amendment**") which sought to address various issues including interim reliefs in India for foreign seated arbitrations, recognition of the Institutional Arbitrations, accountability for the delays in Arbitration process, curbing the delays in Court proceedings incidental to Arbitration.

This Article is an attempt analyse some (and by no means all) of *the good; the not so good; and the unfinished* aspects of the extant 1996 Act (as amended by the 2015 Amendment). The same can be accessed from the link provided below:

### India's Arbitration Act: The turbulent teenage years

This article was published in LexisNexis dated October 21, 2016.

Moazzam Khan

<sup>1</sup> Applicable only in Presidency towns

<sup>2</sup> Second Schedule of the Code of Civil Procedure 1908 dealt entirely with Arbitration

<sup>3</sup> Based on the (English) Arbitration Act, 1934. The Act repealed the Arbitration Act, 1899 and the relevant provisions (Section 89, Section 104(1)(a) to (f)) in the Code of Civil Procedure, 1908 including the Second Schedule thereof.

<sup>4</sup> 1982 SCR (1) 842

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