



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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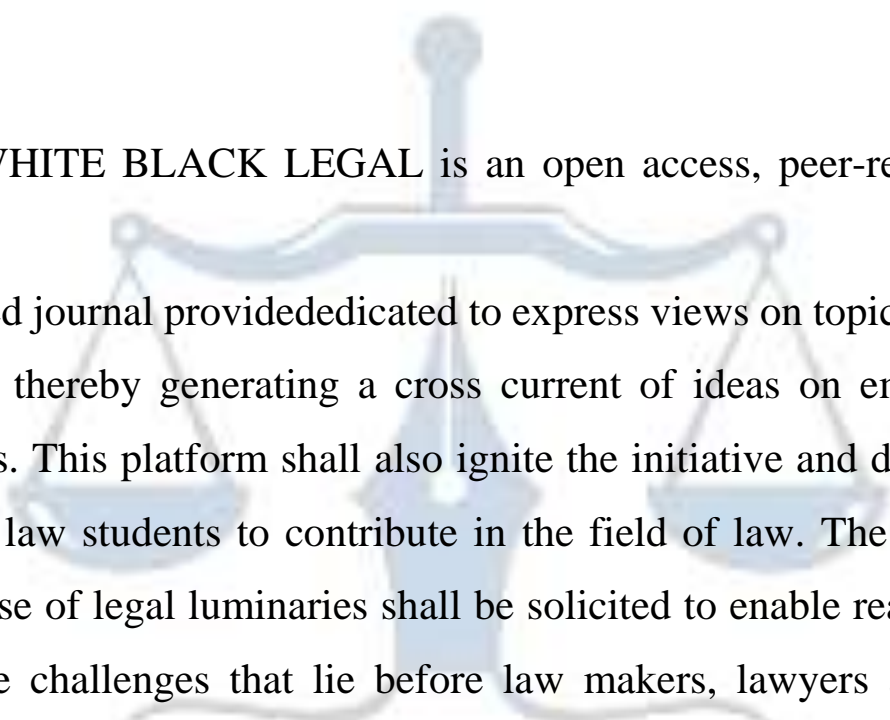


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LEGAL IMPLICATIONS OF THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, A TEMPORAL ANALYSIS

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ABSTRACT

The Arbitration and Conciliation (Amendment) Act, 2015 ("2015 Amendment Act") made significant changes to the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), increasing the speed and effectiveness of the arbitration process in India. However one of the most controversial issue is whether the revisions should be implemented retroactively or prospective especially concerning of pending court proceedings and arbitration was one of the most principal questions. In order to ascertain the 2015 Amendment Act's temporal applicability, this article looks at its contents, evaluates the legislative intent, and key judgements to talks about its significant rulings.

INTRODUCTION

The Arbitration and Conciliation Act of 1996 was created to provide a contemporary and efficient framework for arbitration in accordance with internationally accepted standards. However, the practical hindrance of the Act resulted in substantial delays and inefficiencies, causing the government to alter the amendment it in 2015. While the 2015 Amendment Act sought to expedite processes, questions arose about its relevance to ongoing proceedings. This resulted in multiple judicial interpretations, with courts debating whether the revisions were retrospective or prospective in nature.

THE ARBITRATION ACT,1996

The Arbitration and Conciliation Act of 1996 is a extensive piece of Indian legislation that consolidates and alters arbitration and conciliation law to bring it in line with international norms. The Act is founded on the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Conciliation Rules, with the primary goals of encouraging faster dispute resolution, reducing court intervention, and establishing a strong legal framework to support alternative dispute resolution mechanisms. With India's economic liberalisation in

the early 1990s, the necessity for a powerful, quick arbitration system became critical to attract foreign investors and accord with worldwide standards of arbitration.

Prior to the 1996 Act, arbitration in India was regulated by the Arbitration Act of 1940, which proved ineffective in fostering timely and effective dispute resolution. The 1940 Act was criticised for being extremely bureaucratic, lengthy, and frequently requiring court intervention, which undermined the goal of quick resolution. Recognising these criteria, the Indian government sought direction from the United Nations Commission on International Trade Law's (UNCITRAL) Model Law on International Commercial Arbitration, a widely accepted arbitration standard

The Arbitration and Conciliation Act of 1996 became effective on August 22, 1996. The legislation aimed to speed up conflict resolution and limit court intrusion. The legislation aimed to include both international and domestic business arbitration and conciliation. The goal was to undermine the arbitral tribunal, justify their decisions, reduce the function of courts, and enforce the arbitral judgement as a court decree. The 1996 Act consolidated and updated legislation on arbitration, international commercial arbitration, and enforcement of foreign arbitral awards. Section 9 of the Act of 1996 allows the court to issue interim orders in two stages: Firstly during arbitral proceedings, Secondly that court pass an order before the commencement of proceedings.

SIGNIFICANCE AND CRITICISM OF THE ARBITRATION ACT, 1996

Significance: Acknowledging these characteristics, the Indian government sought guidance from the United Nations Commission on International Trade Law's (UNCITRAL) Model Law on International Commercial Arbitration, an internationally recognised arbitration norm.

Criticism: Following the revisions, numerous difficulties persist, including as delays in judicial processes, limited institutional arbitration development, and variable arbitrator quality. In recent years, there has also been a call to establish a comprehensive framework for online dispute resolution (ODR).

THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT 2015

The Arbitration and Conciliation (Amendment) Act of 2015 is an important part of legislation in India that aims to modernise the arbitration process and promote India as an arbitration-

friendly jurisdiction. The amendment made significant amendments to the Arbitration and Conciliation Act of 1996 to address the demand for more effective and speedy conflict resolution. Although substantial efforts to streamline the law and make appropriate revisions to earlier legislation in order to achieve effective alternative dispute resolution, the 1996 Act set the stage for significant arbitration-related litigation. The process experienced significant delays. Given this context, the 2015 amendment seeks to fulfil two primary goals. First, to speed the arbitration procedure, and second, to establish certain standards and provisions for the judiciary to follow when deciding on applications.

Alternative dispute resolution, which focusses primarily on arbitration, conciliation, and mediation, has proven to be an effective alternative to the traditional legal system. In India, the existing system aims to prevent fast track judicial actions by utilising effective alternative methods such as International Commercial Arbitration (ICA), etc. In this regard, the changes brought about by the new amendment may be viewed as a missed opportunity for lawyers, who find it valuable in dealing with commercial arbitration disputes and opposing ICA in such situations. Today, we are seeing significant transactions across borders, territories, and countries.

The Arbitration Act of 1940 had a provision in Section 28 that allowed courts to extend the time for making awards only if the arbitration agreement was submitted with both parties' permission. The parties occasionally request a time extension, usually in the final hours before the award's expiration date. This leads to uncertainties, delays, and increased expenditures. The change to Section 29A requires that only the court can extend the time. The courts have also been given the authority to issue further directives while extend the term, including the substitution of an arbitrator without annulling earlier procedures. This is an area where the court is increasing its role in arbitral processes.

The modification to the 1996 Act is a welcome step towards making the arbitration process more cost-effective, efficient, and 'party-friendly'. The most recent change aims to address specific practices that waste time, money, and energy for both parties as well as the arbitrators. The new amendment also gives arbitrators a sense of independence and impartiality as compared to prior practices in the field of arbitratida. It also assures that the arbitration process does not exceed a reasonable time restriction and that the arbitrator is capable of reaching a resolution.

KEY AMENDMENTS INTRODUCED BY THE 2015, ACT

Some of the most significant changes by 2015 amendment act:

1. **Time Period for Arbitration:** Section 29A established a 12-month deadline for completing arbitrations, with the option of extending it by six months.
2. **Interim Relief:** Section 9 has been amended to limit court interference by directing parties to seek interim remedy through arbitral tribunals once established.
3. **Stay on award automatic:** Section 36 was altered to remove the automatic stay on the enforcement of arbitral awards after registering an objection.
4. **Arbitrator's fees:** The Act establishes a model price structure to make arbitration affordable and eliminate delays caused by expensive arbitrator fees.
5. **Neutrality of Arbitrators:** Arbitrators must disclose any relationships with the parties in order to maintain impartiality. The modification included conflict of interest guidelines based on the International Bar Association's (IBA) model.
6. **Challenges to Award:** The amendment restricts the grounds for challenging arbitral verdicts in court to cases of fraud, corruption, or a violation of public policy, thereby reducing superfluous litigation.
7. **Institutional Arbitration Promotion:** By supporting arbitration institutions and speeding up arbitration procedures, the amendment promotes Indian as a favourable arbitration destination.
8. **Fast-Procedure:** Section 29B introduce the Fast track procedure with timeline for disposal within 6 months.

ISSUE OF RETROSPECTIVE OR PROSPECTIVE APPLICATION

The 2015 Amendment Act does not indicate whether its provisions would apply retroactively to existing arbitrations and judicial procedures. This ambiguity led to disagreements about whether the revisions should apply to arbitrations and related judicial processes commenced prior to the amendment's implementation on October 23, 2015.

JUDICIAL APPROACH TO RETROSPECTIVE AND PROSPECTIVE APPLICATION

Indian courts first addressed the matter by applying the basic premise that statutes are believed to be prospective unless expressly stated otherwise. However, the intricacies of each modification provision demanded a more thorough examination.

CASES OF PROSPECTIVE AND RETROSPECTIVE IN NATURE

1. BCCI v. Kochi Cricket Pvt. Ltd.¹

The Supreme Court's decision in *BCCI v. Kochi Cricket Pvt. Ltd.* clarified the interpretation of the 2015 modifications, specifically Section 36. Prior to the 2015 revisions, submitting an objection under Section 34 resulted in an automatic stay on the enforcement of arbitration verdicts. The automatic stay provision was removed with the 2015 Amendment Act, which required a separate application for stay.

The Court ruled that Section 36 would apply in retrospect, including to current Section 34 proceedings. This ruling was based on the premise that enforcement of arbitral awards is a procedural matter, and changes in procedural legislation affect ongoing procedures. This order sought to avoid delays caused by frivolous objections filed under the former provision.

2. Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.²(Review Decision)

After the initial judgement in *BCCI v. Kochi Cricket Pvt. Ltd.*, the Arbitration and Conciliation (Amendment) Act of 2019 was approved, which included Section 87. Section 87 specifically stated that the 2015 Amendment Act will apply prospectively, so eliminating the issue caused by the 2015 amendment.

However, in *Hindustan Construction Company Ltd. v. Union of India* (2019) 17 SCC 648, the Supreme Court ruled that Section 87 was inconsistent with the intent of the 2015 modifications and would result in further delays. As a result, the Court reinstated the principle of retrospective applicability, as established in *BCCI v. Kochi Cricket Pvt. Ltd.*

3. Sundaram Finance Ltd. v. Abdul Samad³

In *Sundaram Finance Ltd. v. Abdul Samad*, the Supreme Court emphasised that the 2015 revisions were essentially procedural and hence applicable to ongoing proceedings. The Court emphasised the importance of interpreting the modifications in a way that reflects the legislative aim to promote a speedier dispute settlement system.

¹ *BCCI v. Kochi Cricket Pvt. Ltd.*(2018) 6 SCC 287

² *Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.*, (2018) 6 SCC 28

³ *Sundaram Finance Ltd. v. Abdul Samad*, (2018) 3 SCC 622.

ANALYSIS

Substantive versus Procedural Law: Courts have distinguished between substantive and procedural modifications. Substantive provisions affecting rights or responsibilities are generally presumed to apply prospectively unless expressly stated differently. Sections 9 and 36 demonstrate how procedural regulations can be applied retrospectively to current cases.

Legislative Intent and Purpose: The Supreme Court has underlined that the 2015 modifications were intended to shorten arbitration delays. This objective, together with the procedural structure of many revisions, warrants a retroactive application to current arbitrations and judicial procedures.

Practical Concerns: Courts acknowledged that a strictly prospective application would result in two different regimes operating simultaneously, producing confusion and negating the objective of the changes. The decision to apply procedural restrictions retrospectively is consistent with a pragmatic approach to arbitration reform.

CONCLUSION

The topic of whether the Arbitration and Conciliation (Amendment) Act, 2015 is retrospective or prospective has been mostly answered through judicial interpretation. Courts have adopted a balanced approach, implementing substantive rules prospectively and procedural provisions retrospectively to ongoing actions. Landmark decisions, such as *BCCI v. Kochi Cricket Pvt. Ltd.* and *Hindustan Construction Company Ltd. v. Union of India*⁴, highlight the judiciary's role in aligning the changes with the legislative aim to speed arbitration in India.

The Arbitration and Conciliation (Amendment) Act of 2019 attempted to resolve the problem through Section 87, but the Supreme Court overruled it, favouring retrospective application for procedural adjustments. Overall, the 2015 revisions were beneficial in lowering delays and enhancing arbitration efficiency, thereby meeting India's need for a simplified dispute settlement procedure.

⁴ *Hindustan Construction Company Ltd. v. Union of India*, (2019) 17 SCC 648