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Q6

## **What are the major changes brought in the Arbitration and Conciliation Act, 1966 through the recent ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss.**

UPSC Civil Services Mains 2015 · GS II · 12 marks · Indian Constitution

Indian Constitution - historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

### **Core demand of the question**

- State the major changes brought in the **Arbitration and Conciliation Act, 1996** by the recent Presidential ordinance
- Discuss how far they will improve India's dispute-resolution mechanism
- (The question paper said 1966; the statute is the 1996 Act.)

### **Revision summary**

The parent statute is the **Arbitration and Conciliation Act, 1996**; the 2015 Presidential ordinance amends it.

It introduces a twelve-month award limit, fast-track procedure, indicative fees, and stricter arbitrator neutrality.

**Section 11** is narrowed to the arbitration agreement; **Section 34** public policy is cut down; stay of the award is no longer automatic.

Interim relief is pushed toward the tribunal once constituted.

Improvement will be real if courts apply the new **Sections 34** and 36; institutions and government litigation culture must still catch up.

### **Introduction**

The **Arbitration and Conciliation Act, 1996**, was meant to give India a modern, UNCITRAL-based private justice system. Delay, high cost, and easy court stays made India a difficult seat. The **Arbitration and Conciliation (Amendment) Ordinance, 2015**, tries to fix those faults. How far it improves the mechanism depends on courts and on the quality of arbitrators, not only on the new sections.

### **Body**

#### **Why an ordinance, and what was wrong**

- Commercial courts were clogged; **Section 34** challenges and automatic stays turned awards into a second civil appeal.
- Appointment under **Section 11** was slow; arbitrator fees were unpredictable; a twelve-year arbitration was not rare in large contracts.

- Ease of doing business and the need to keep India an arbitration seat against Singapore and London supplied the political rationale for immediate amendment while the Bill waited.

### Major changes in the 2015 ordinance

- A time-limit of twelve months for the award, with a six-month extension by consent, and a further court extension with a possible fee cut for delay, attacks the culture of endless sittings.
- A fast-track procedure lets a sole arbitrator decide on written pleadings within a shorter clock when parties agree.
- The **Fourth Schedule** indicates a model fee; High Courts may frame rules so that costs are known at the start.
- **Section 11 appointment is streamlined:** the Supreme Court or the High Court, or a designate, examines mainly the existence of an arbitration agreement, not a mini-trial of the whole dispute.
- **Neutrality:** a new schedule of grounds (inspired by IBA standards) for disclosure and challenge of arbitrators, including relationships that raise justifiable doubts.
- **Section 34:** "public policy" is narrowed; mere error of law is not enough; patent illegality is confined, especially for international commercial awards seated in India.
- Filing a **Section 34** application does not by itself stay execution; a separate stay order is needed, so the winner is not automatically frozen.
- **Section 9** interim measures from a court are tied more tightly to a prompt request before the tribunal; once the tribunal is in place, it is the main interim forum under **Section 17**, and its orders are better aligned with court enforceability.
- Seat, jurisdiction, and the definition of international commercial arbitration are clarified so that Indian courts interfere less with foreign-seated matters, in the line of Bharat Aluminium (BALCO).

### How far this will improve dispute resolution

- **The ordinance attacks the three practical diseases:** time, cost, and stay. If High Courts apply the narrow **Section 34** and refuse automatic stays, India becomes a more honest seat.
- Institutional arbitration still needs strong centres, trained arbitrators, and party trust; a statute cannot create a Singapore-style institute overnight.
- Courts may still extend time generously, or reopen public policy through other words; then the old delay returns under a new number.
- Government contracts and public-sector delay in appointing and paying arbitrators will blunt the twelve-month rule unless departments change their litigation habit.
- Conciliation chapters of the 1996 Act remain under-used; the ordinance is mainly an arbitration speed Bill, not a full culture of mediation.
- Overall, the changes are the most serious statutory repair since 1996 and should improve commercial dispute resolution if the judiciary internalises BALCO and the new **Section 34**. They will not, by themselves, clear ordinary civil dockets or replace a commercial court for non-arbitrable matters.

### What must follow

- Replace the ordinance with an Act without diluting the stay and public-policy clauses.
- Promote institutional rules, a roster of accredited arbitrators, and specialised commercial benches that respect the clock.

### Flow diagram

Problems delay cost stay -> 2015 Amendment Ordinance  
2015 Amendment Ordinance -> 12-month award clock  
2015 Amendment Ordinance -> No automatic Section 34 stay  
2015 Amendment Ordinance -> Narrow public policy  
12-month award clock -> Better Indian seat  
No automatic Section 34 stay -> Better Indian seat  
Narrow public policy -> Better Indian seat

## Conclusion

The 2015 ordinance (amending the 1996 Act, not a 1966 Act) puts a clock on awards, narrows public-policy challenge, ends automatic stay, and tightens appointment and neutrality. It can improve India's arbitration mechanism if courts and public bodies obey the new discipline. It is a large step, not a finished dispute-resolution system.

## Facts & figures

### Arbitration and Conciliation Act, 1996

India's principal arbitration statute, based on the UNCITRAL Model Law; the question paper's "1966" is a misprint.

### Arbitration and Conciliation (Amendment) Ordinance, 2015

Presidential ordinance inserting time-limits, fee guidance, neutrality schedules, and changes to Sections 9, 11, 17, 34 and 36.

### Section 34

Application to set aside an award; the ordinance narrows public-policy review so that an award is not a full appeal.

### Section 36 stay

After the ordinance, a challenge does not automatically stay enforcement; the court must grant a stay.

### Bharat Aluminium Co. v. Kaiser Aluminium (BALCO, 2012)

Held that Indian courts should not supervise foreign-seated arbitrations; the 2015 changes travel in that less-interventionist direction.

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