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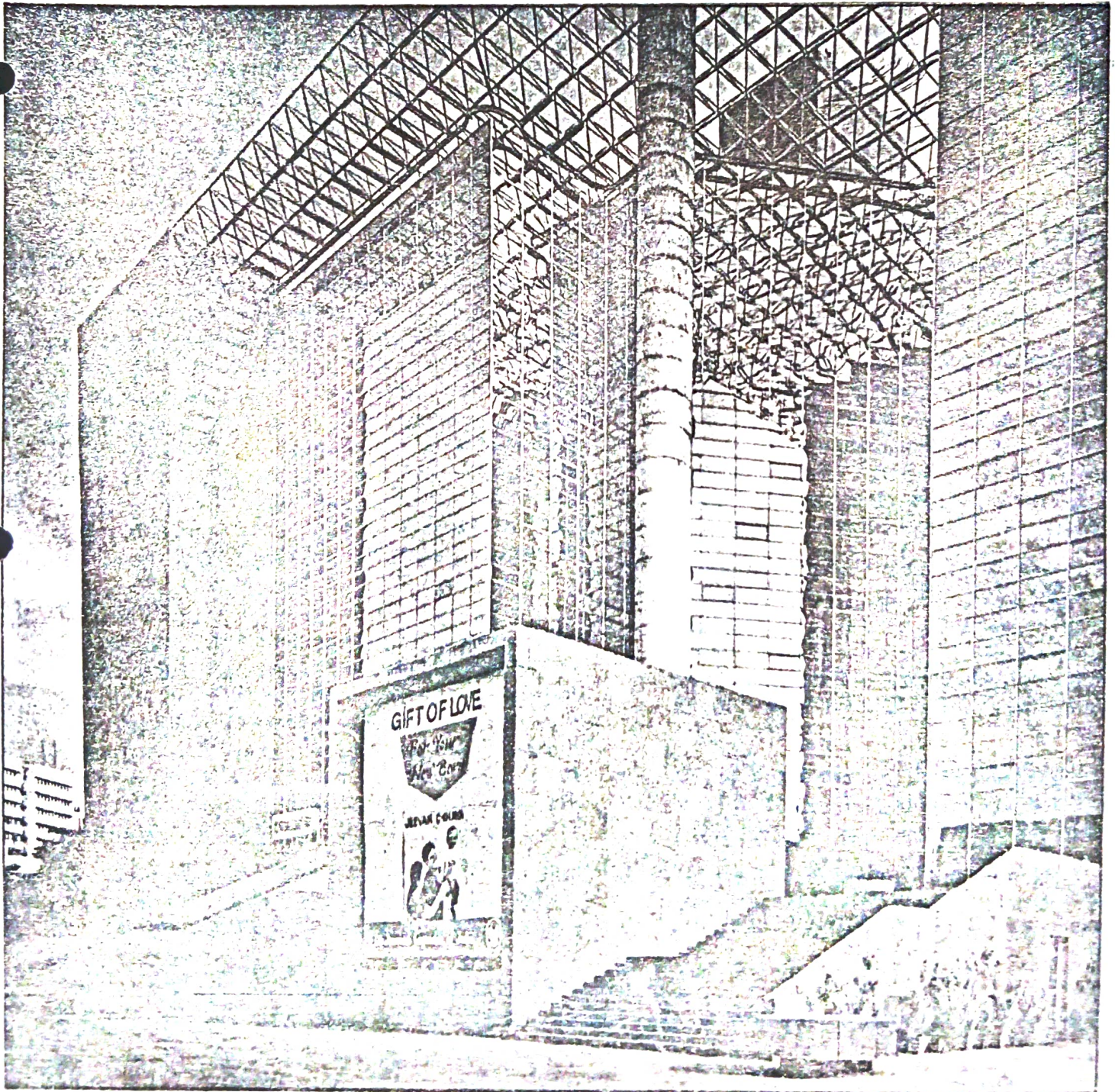


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New Law on Arbitration for Effective Dispute Resolution

by

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Since ancient times in India, arbitration is recognised as a mode of settlement of disputes. Decisions by Panchayats were regarded as binding long before the regular courts were established in India by British Government. Bengal Regulation of 1772 recognised arbitral awards, followed by other regulations from time to time in British India. Code of Civil Procedure of 1882 contained provisions relating to arbitration. In 1899 Indian Arbitration Act was passed which was based on English Arbitration Act of 1889. English Act was substantially amended in 1934; hence Indian Arbitration Law was also reviewed and Arbitration Act 1940 was enacted. English arbitration law has under-gone changes from time to time in 1950, 1975, 1979 but there was not a single amendment in Indian Arbitration Act 1940 in the last 55 years although India got freedom and volume of commercial activities and disputes increased many fold. However in 1994, Government of India decided to review arbitration law and constituted a working group who had prepared draft of Arbitration Bill and was commented upon by various arbitral and other bodies besides arbitration experts. Finally, Arbitration and Conciliation Bill, 1995 has been introduced in the Upper House of Parliament on 16.5.1995 and it was expected that it will be passed soon. As the parliament was not in session, the President of India has promulgated 'Arbitration and Conciliation' ordinance, 1996 on Tuesday the 16th January 1996 to give effect to the provisions of the bill.

NEW LAW :

Arbitration Act 1940 (hereinafter called as 1940 Act) is being repealed and replaced by new law. Various defects of 1940 Act have been removed and new rules have also been incorporated to make law simple, clear and effective. Mode of arbitration is most common in engineering and technical disputes. New law has made provisions to give more powers to arbitrators. Important provisions of new law are discussed as under:-

(a) **No time limit :** There is no time limit for making award by the arbitral tribunal. The statutory provision of 1940 Act to make award in 4 months

has been dropped. Now arbitral tribunal shall be competent to make award at any time.

- (b) **No stay orders/intervention by Court till making of award:** The jurisdiction of Courts has been restricted. Section 5 of the Bill provides that no judicial authority shall intervene except where so provided. Courts have been given power to set aside the award but can not stay arbitration.
- (c) **Arbitration Procedure:** Chapter 5 of the Bill makes provisions about conduct of arbitral proceedings. 1940 Act did not contain such provisions and only Judicial decisions were the guidelines. The arbitral tribunals have been given vast powers to decide the disputes effectively.
- (d) **C.P.C. not applicable:** The arbitral tribunal shall not be bound by the Code of Civil Procedure. Arbitral tribunal may conduct proceedings as per agreement of parties and if agreement is silent, in the manner it considers appropriate.
- (e) **Evidence before arbitral tribunal:** Arbitral tribunal has been given power to determine the admissibility, relevance, materiality and weight of any evidence. Indian evidence act, 1872 is not binding on arbitral tribunal. Arbitral tribunal can compel a witness to appear before it by applying to the court for assistance in taking evidence.
- (f) **Default of a party:** The arbitral tribunal has been authorised to terminate the proceedings if the claimant fails to file the statement of facts and claims. The arbitral tribunal is also authorised to continue proceedings if respondent fails to file his Counter Statement of facts and claims in the fixed time.
- (g) **Appointment of expert:** The arbitral tribunal is authorised to appoint one or more experts to report to it on specific issues to be determined by it.
- (h) **Reasons to be given:** The arbitral tribunal shall state the reasons upon which award is based. However where parties have agreed that no

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reasons are required or the award is a compromise award, it is not required to give reasons.

- (i) **Interest:** Arbitral tribunal has been authorised to award interest from the date on which cause of action arose and till making of award. The awarded amount shall carry 18% interest per annum. However arbitral tribunal can direct otherwise.
- (j) **Costs of arbitration:** The arbitral tribunal is authorised to have advance deposit from the parties and fix the fees and expenses of the arbitrators, witnesses, legal fees and expenses etc. The arbitral tribunal shall have lien on the award for unpaid costs of arbitration.
- (k) **Award is deemed decree of Court:** The provisions of 1940 Act for filing the original award in the Court and for applying to make it a decree by the Court have been dropped. The award shall be deemed as a decree of the Court, if not challenged by any party or challenge fails.
- (l) **Independent arbitrators:** Only independent persons not connected with any party shall be appointed as arbitrators. The arbitrators are required to disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality. The persons who are not independent can be challenged by a party and arbitral tribunal shall decide the Challenge.
- (m) **Interim measures:** Arbitral tribunal has been authorised to order a party to take any interim measure of protection in respect of the subject-matter of the dispute.
- (n) **Conciliation:** Part III of Bill provides for conciliation. The parties can enter into conciliation proceeding agreement which is non binding unless parties sign the settlement agreement. Settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal.
- (o) **Award is final:** The arbitral award shall be final and binding on the parties. It may be set aside on very limited grounds. There is no general ground for setting aside award like misconduct of arbitrator or misconduct of proceedings. The grounds for setting aside an award are given in Sec. 34 (2) of the Bill as under:-

An arbitral award may be set aside by the Court only if-

- (a) the party making the application furnishes proof that -
 - (i) a party was under some incapacity, or
 - (ii) the arbitration agreement is not valid under law to which the parties have subjected it or, failing any indication thereon, under the law for the times 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."

The Bill is largely based on provisions of Model law on International Commercial Arbitration of United Nations Commission on Trade Law (UNCITRAL) and its Conciliation Rules.

International Centre for Alternative Dispute Resolution (ICADR) has been established to promote Institutional arbitration of International Commercial disputes and also domestic disputes. It will appoint arbitrators and conciliators and administer arbitrations and conciliations to create credibility of alternative

dispute by resolution System in India. It is hoped that New Delhi will become a centre of international arbitration in this part of the World because of good law and availability of experienced arbitrators. It will reduce the burden of litigation in Courts and provide fast track for settlement of dispute.

Membership

ENTRANCE FEES & SUBSCRIPTION

HONORARY MEMBERS

Such persons, who on account of their being, in the opinion of the Governing Council, distinguished in the science and practice of building construction may be elected Honorary Members of the Congress by the Governing Council.

ENTRANCE FEE

An entrance fee shall be payable by Members on election on the following scale:

- | | |
|---|------------|
| 1) Chief Patron, Patrons and Hon. Members | Nil |
| 2) Ordinary Members | Rs. 500/- |
| 3) Institutional Members | Rs. 5000/- |

Provided however, that no entrance fee shall be payable by the Founding Individual Members signing the Memorandum of Association or those who were present at the Founders Meet on September 1, 1992 at Vigyan Bhawan Annexe, New Delhi. Entrance fee will also not be charged from Ordinary Members applying for membership between 1.4.95 to 31.3.96

SUBSCRIPTION

An yearly subscription shall be payable by members on the following Scale:

- | | |
|---|-----------|
| 1) Chief Patrons, Patrons and Hon. Members | Nil |
| 2) Members | |
| Indian Nationals & Nationals of SAARC Countries | Rs. 200/- |
| National of Other Countries | \$ 100/- |
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| Indian & SAARC Country Associations, Societies, Research Institutions, Teaching Institutions, | |

Government Departments and private firms or companies with annual budget/turnover

- | | |
|----------------------------------|--------------|
| a) Less than Rs. 10 Crores | Rs. 5,000/- |
| b) Between Rs. 10-100 Crores | Rs. 10,000/- |
| c) Between Rs. 100-200 Crores | Rs. 25,000/- |
| d) More than Rs. 200 Crores | Rs. 50,000/- |
| Organisations of Other Countries | \$ 1,000/- |

Members whose subscriptions are not in arrears may compound their future annual subscription by a single payment depending upon their age at the time in accordance with the table below:

Age as on date of Membership	Compounded Fee
a) Indian Nationals & Nationals of SAARC Countries	
Less than 50 Years	Rs. 5,000/-
50-55 Years	Rs. 2,000/-
55-60 Years	Rs. 1,500/-
Beyond 60 Years	Rs. 1,000/-
b) Nationals of other Countries	\$ 1,000/-
c) Organisations of other Countries	\$ 10,000/-

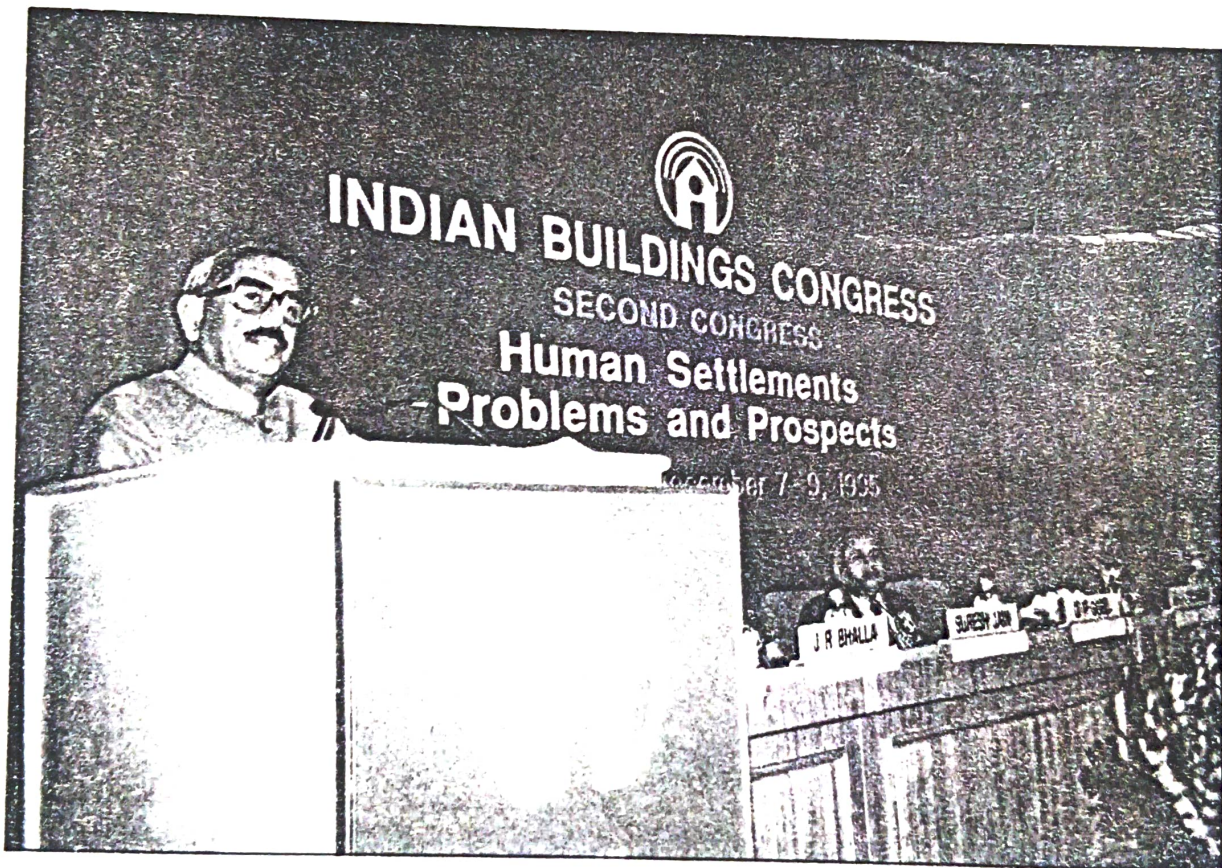
A year shall, for the purpose of this rule, be first day of April until the last day of March following. Subscription shall be due on election and on the first day of April every year following the date while a person continues to be member of the congress. For more details please Contact:-

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INDIAN BUILDINGS CONGRESS
Expresses sincere thanks to

Shri R. K. Dhawan
Hon'ble Minister for Urban Development



who has kindly consented to be
The Chief Patron
of Indian Buildings Congress