COMMENTS ON THE DRAFT ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2024

INDIAN REVIEW OF INTERNATIONAL ARBIRTRATION
CENTRE FOR ARBITRATION AND RESEARCH
MAHARASTHRA NATIONAL LAW UNIVERSITY, MUMBAI

MAHARASHTRA NATIONAL LAW UNIVERSITY

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INDIAN REVIEW OF INTERNATIONAL ARBITRATION

Indian Review of International Arbitration ("**IRIArb**") is an international journal which follows a blind peer-review format and is edited by professors, practitioners, and research scholars from around the globe. Our advisory and editorial board also manifest the international outlook of the journal. IRIArb is published bi-annually by the CAR, and accepts high-quality, analytical, rigorous papers from professors, practitioners, research scholars, and students in the field of international arbitration and the allied areas. IRIArb is an open-access journal whose aim is to make the knowledge of international arbitration more democratic and accessible. Chirag Balyan is the Editor in Chief (Assistant Professor of Law, MNLU Mumbai) and Abhisar Vidyarthi (Advocate, New Delhi) is the Managing Editor of IRIArb. Further details on IRIArb may be found on our website HERE.

I. INTRODUCTION

The Department of Legal Affairs ("**Department**") is in the process of considering further amendments to the Arbitration and Conciliation Act 1996 ("**Act**") in India. Recently, the Department released the Draft Arbitration and Conciliation (Amendment) Bill, 2024 ("**Draft Amendment Bill**"), inviting comments/feedback for all stakeholders till 3 November 2024. The present comments ("**CAR Comments**") are being submitted on behalf of CAR, MNLU Mumbai and Indian Review of International Arbitration. We strongly believe that a strong link between academia and industry is critical to India's bid to create a strong arbitration culture and establish itself as an arbitration hub. Academic and research centers are essential stakeholders in the arbitration community and their participation in law reforms must be strongly embraced and encouraged.

The Draft Amendment Bill comes after the sixteen-member expert committee, chaired by Dr. T.K. Vishwanathan ("**Vishwanathan Committee**"), assessed the effectiveness of arbitration law and proposed reforms to the Act in February 2024. While the Act has undergone significant amendments in the past (2015, 2019 and 2021), the Draft Amendment Bill proposes unprecedented amendments in a bid to push India as an arbitration hub, strengthen institutional arbitration, and promote enforcement of contracts. The proposed amendments are far reaching and may need scrutiny to ensure absence of loose ends.

CAR Comments engage critically with the key changes proposed in the Draft Amendment Bill. The comments have been provided in a tabular format, like the one adopted in the Draft Amendment Bill. We have added an extra column on the right to provide our comments on the proposed amendments. We do not reproduce all the proposed amendments in the table below, and only those proposed amendments to which we have comments have been reproduced. Our modications/suggestions to the language of the provision are provided in **blue** for ease of identification.

II. TEAM

1. **PROF. CHIRAG BALYAN** (Editor in Chief, IRIArb; Head, CAR)
2. **MR. ABHISAR VIDYARTHI** (Managing Editor, IRIArb; Research Associate, CAR)
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III. TABULAR COMMENTS ON AMENDMENTS TO ARBITRATION AND CONCILIATION ACT, 1996

Section	EXISTING PROVISION	PROPOSED AMENDMENTS	IRIARB COMMENTS
2	**Definitions. — (**1) In this Part, unless the context otherwise requires,—	2. Definitions. — (1) In this Part, unless the context otherwise requires,—	
	(a) —arbitration means any arbitration whether or not administered by permanent arbitral **institution**;	(a) —arbitration means any arbitration whether or not administered by **an** arbitral institution **and includes arbitration conducted, wholly or partly, by use of audio-video electronic means.**	Artificial intelligence (AI) and Technology is increasing adopted by parties for the conduct of arbitration proceedings, particularly in international commercial arbitrations. The use of AI for e-discovery and document management in arbitrations is a reality now. Given that the Draft Amendment Bill is future facing, we suggest that the definition of arbitration should be extended to include arbitrations conducted, wholly or partly by use of technology and artificial intelligence. We also suggest that "audio-video electronic means" restrict party autonomy and broader wordings could be used i.e. "**modern means of communication**". These would include other means such as arbitration over telephone or documents only arbitration over email. Proposed amendment: (a) —arbitration means any arbitration whether or not administered by **an** arbitral institution **and includes arbitration conducted, wholly or partly, by use of technological tools, artificial intelligence tools or modern means of communication.**

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		(aa) — "audio-video electronic means" shall include use of any communication device for video conferencing, filing of pleadings, recording of evidence, transmission of electronic communication, for the purposes of conduct of arbitral proceedings and any other matter incidental thereto, in the manner as specified by the Council under sub-section 5 of section 19;	We strongly suggest that the means of communication should not be restricted to the manner specified by the Council as it takes away autonomy of the parties and arbitral institutions to decide their own means of conducting arbitration. Such a power would make the Council a regulator of arbitration in India. However, the Council could form guidelines on the same. In line with the above suggestion, we suggest providing a definition for "**modern means of communication**" as follows: **(aa) – "modern means of communication" means communication by use of electronic communications and other information and communication technology for the purposes of conduct of arbitral proceedings and any other matter incidental thereto, including but not limited to communication via audio-video electronic means;**
			In line with the above suggestion, we suggest providing a definition for "artificial intelligence tools" as follows: **(ab) "artificial intelligence tools" refers to machine-based systems capable of completing tasks that would otherwise require cognition. This does not include substantive or decision-making tasks.**
	(2) This Part shall apply where the place of arbitration is in India: Provided that subject to an	(2) This Part shall apply where the place of arbitration is in India: Provided that subject to an agreement to	While the proposed amendment to the proviso to section 2(2) suggests that section 9A (2) would apply to foreign seated arbitrations, there is no such provision for section 9A (3). Consequently, foreign seated emergency awards continue to be

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	agreement to the contrary, the provisions of **sections 9, 27** and clause (a)of sub-section (1) and sub-section (3) of section37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognized under the provisions of Part II of this Act.	the contrary, the provisions of section 9, **sub-section (2) of section 9A, section** 27 and clause (a) of sub-section (1) and sub-section (3) of section37 shall also apply to **an** arbitration, even if the **seat** of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognized under the provisions of Part II of this Act.	treated unequally to domestic emergency awards, with there being no direct enforcement mechanism for the former. As one of us argued **here**, there is no basis for such distinction existing in the Act, and the Draft Amendment Bill fails to rectify this gap. We suggest the following modification: (2) This Part shall apply where the place of arbitration is in India: Provided that subject to an agreement to the contrary, the provisions of section 9, **sub-section (2) of section 9A, section** 27**, sub-section (3) of section 9A** and clause (a) of sub-section (1) and sub-section (3) of section37 shall also apply to **an** arbitration, even if the **seat** of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognized under the provisions of Part II of this Act.
			To facilitate arbitration via modern means of communication and technology, there is a need for techno-legal utilities as suggested by the Vishwanathan Committee. The following addition is proposed for the same – **6A. Techno-Legal Utilities – In order to facilitate the conduct of arbitration, techno-legal utilities may be engaged which provide techno-legal services to ad hoc as well as to institutional arbitrations.** **Explanation - "Techno-legal services" include, but are not limited to, secure online platforms for efficient**

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			document sharing, technological support for transcription, recordings and virtual hearings and cybersecurity measures.
9	**Interim measures, etc., by Court.—** (1) A party may, before **or during** arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with **section 36,** apply to a court—	**Interim measures, etc., by Court.—**(1)A party may, before **the commencement of** arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with **the provisions of the Act**, apply to a court—	Proposed amendment to section 9(1) suggests that the power of the court to grant interim relief during the pendency of arbitration has been totally done away with. Consequently, section 9(3), which would otherwise shield against section 9(1) applications during the arbitration, has also been omitted. Removal of "or during" would lead to a complete omission of the power of the Court to grant of interim reliefs during the arbitral proceedings, denying access to urgent remedy in certain exceptional cases. Such removal would also deprive parties from approaching courts for Anti-arbitration injunctions or in foreign-seated proceedings, for interim measures for better efficacy purpose. We suggest retaining the words "or during" in line with the amendments proposed to section 9(3) below - **Interim measures, etc., by Court.—(**1)A party may, before **the commencement of** or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with the provisions of the Act, apply to a court—
	(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be	(2) Where, before the commencement of the arbitral proceedings, a **party files an application for** any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of filing **of such an application in the**	As recommended by the Vishwanathan Committee, a provision for vacation of interim order should be provided for cases wherein the stipulated timeline is not followed. We suggest addition of the provision 9(2A): **"9(2A) In the event, the arbitration proceedings are not commenced within a period specified under sub-section**

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	commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.	**Court.**	**(2), any interim order passed by the court shall stand vacated on the expiry of said period."**
	(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.	**Omitted.**	Section 9(3) provides that once the tribunal has been constituted, the court would only entertain a section 9(1) application when the relief under section 17 was either not available or not efficacious. It may be prudent to keep limited room open for such extraordinary circumstances rather than completing shutting the door to section 9(1) once the tribunal is constituted. Section 9(3), for instance, allows courts to grant interim relief when the tribunal cannot convene hearings for personal reasons, and relief is urgently required to safeguard the subject matter of the arbitration. Notably, the Vishwanathan Committee did not recommend deletion of section 9(3) but substitution of the word 'entertain' with 'proceed with'. The recommendation was made to ensure that the bar under section 9(3) operates not only against entertaining fresh applications under section 9(1) but also proceeding with pending applications, when efficacious remedy was available before the tribunal. The following provision is proposed: **"Once the arbitral tribunal has been constituted, the Court shall not proceed with an application under sub-section (1), unless the arbitral tribunal has no power or is unable to act effectively."**
9A		**Emergency arbitrators – (1) Arbitral institutions may, for the purpose of grant of interim measures referred to in section 9, provide for appointment of**	A provision providing the maximum time period within which an emergency arbitral award is to be made would be desirable as recommended by Vishwanathan Committee Report. Sub-section (2) of the Section requires mandatory compliance

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		emergency arbitrator prior to the constitution of an arbitral tribunal. **(2) The emergency arbitrator appointed under sub-section (1) shall conduct proceedings in the manner as may be specified by the Council.** **(3) Any order passed by an emergency arbitrator under sub- section (2) shall be enforced in the same manner as if it is an order of an arbitral tribunal under sub-section (2) of section 17 of the Act.** **An order of the emergency arbitrator may be confirmed, modified, or vacated, in whole or in part, by an order or arbitral award made by the arbitral tribunal.** **(4) An order of the emergency arbitrator may be confirmed, modified, or vacated, in whole or in part, by an order or arbitral award made by the arbitral tribunal.**	with the procedure specified by the Council with the use of "shall". This might cause conflict between the arbitral institutional rules and the Council regulations. It would be more suitable to use the term "may" or provide for a model procedure. Sub-section (4) of the Section hinders party autonomy and may be removed. Such a provision falls within the ambit of institutional rules and the parties can select an institution which may or may not provide for such a rule.
19	**Determination of rules of procedure.—** (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).	**Determination of rules of procedure.—** (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).	

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	(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.	(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.	
	(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.	(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate **Provided that in cases where arbitration is conducted other than under the aegis of an arbitral institution, the arbitral tribunal shall duly consider to carry on the arbitration proceedings as per the model rules of procedures or guidelines to be issued by the Council from time to time.**	The proviso should be made directory and not mandatory, in line with the recommendation of the Vishwanathan Committee. The Council could frame directory guidelines in line with the UNCITRAL Arbitration Rules and UNCITRAL Notes on organizing arbitral proceedings: **Provided that in cases where arbitration is conducted other than under the aegis of an arbitral institution, the arbitral tribunal may adopt the model rules of procedures or guidelines to be issued by the Council from time to time to carry on the arbitration proceedings.**
	(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.	(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.	
		(5) The proceedings may be conducted through use of audio- video electronic means in the manner specified by the Council.	There is no requirement for a separate provision for audio-video electronic proceedings. Instead, the words **", including proceedings conducted through use of modern means of communication"** can be added after the words "conducting its proceedings" in Sub-section 19(2). Sub-section (5) restricts the autonomy of the parties to adopt a

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			procedure which varies from the manner specified by the Council.
20	**Place of arbitration.—**(1) The parties are free to agree on the **place** of arbitration.	**Option I** **Seat of arbitration.—**(1) The parties are free to agree on the **seat** of arbitration.	Option I is a more suitable option coupled with deletion of Section 42 of the Act. It would be in line with the Vishwanathan Committee Report.
	(2) Failing any agreement referred to in sub-section (1), the **place** of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.	(2) Failing any agreement referred to in sub-section (1), the **seat** of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.	
	(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any **place** it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.	(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any **venue** it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.	
		Option II **20 (1) In case of domestic arbitration other than international commercial arbitration the seat of arbitration shall be the place where the contract/arbitration agreement is executed or where the cause of action**	In case Option II is opted, Section 42 would have to be retained. Additionally, in cases of domestic arbitration, there would be no need to determine the seat of arbitration and seat could be determined as if the matter was subject matter of the suit, in line with the proposed Section 2A.

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		has arisen. **(2) Notwithstanding sub-section (1), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any venue it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.**	
30	**Settlement.—**(1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation**, conciliation or other procedures** at any time during the arbitral proceedings to encourage settlement.	**Settlement.—**(1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation **at any** time during the arbitral proceedings to encourage settlement.	
	(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of **an arbitral award** on agreed terms.	(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of **a mediated settlement agreement enforceable in accordance with the provisions of Mediation Act, 2023**.	The following points may be considered before legally designating a consent award as a mediated settlement agreement: i. There are limited grounds to challenge under Mediation Act, 2023. No ground for fundamental public policy. ii. Only a mediator so appointed can authenticate a mediated settlement agreement. iii. A mediated settlement agreement requires registration before the appointed authority. iv. No provision for interest on sum under mediated settlement agreement whereas there is interest on a consent

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			award under Section 31(7).
	(3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.	**Omitted**	
	(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.	**Omitted**	
34	**Application for setting aside arbitral award.—(1)** 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 sub-section (3).	**Application for setting aside arbitral award.—(1)** Recourse to a Court **or an appellate arbitral tribunal, as the case may be,** against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3) **Provided that where parties have agreed to take recourse to an appellate arbitral tribunal under this sub-section, no application for setting aside an arbitral award shall lie before the Court.**	
		(1A) The party in its application made under sub-section (1) shall make a disclosure with respect to any challenge pending or decided in respect of all arbitral awards, if any, passed for any disputes having arisen	

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		between the parties from a common defined legal relationship, whether contractual or not.	
		(1B) The Court or an appellate arbitral tribunal shall, prior to hearing an application under this Section, formulate specific grounds which arise and the application may thereafter be heard on whether the said grounds are made out or not, Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court or an appellate arbitral tribunal to hear subsequently, for reasons to be recorded in writing, any other grounds not formulated by it earlier.	
	(2) 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—	(2) An arbitral award may be set aside in whole by the Court or an appellate arbitral tribunal, as the case may be, only if 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	In line with the Vishwanath Committee Report, an explicit power for modification of arbitral awards should be provided in the statute akin to the UK Arbitration Act, 1996. The following is suggested – "Provided also that, in cases where the Court sets aside the arbitral award in whole or in part, the Court may make consequential orders varying the award to meet the ends of justice."

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		(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 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 **(v)** the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force.	
	(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		

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	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		

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	(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 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 **(c)** 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		

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	review on the merits of the dispute.		
	(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 reappreciation of evidence.	(2A) An arbitral award may be set aside in whole or in part by the Court or an appellate arbitral tribunal, as the case may be, only if the party making the application establishes on the basis of the record of the arbitral tribunal that— (i) 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 (ii) the arbitral award is in conflict with the public policy of India. (iii) 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	In line with the Vishwanath Committee Report, an explicit power for modification of arbitral awards should be provided in the statute akin to the UK Arbitration Act, 1996, Singapore Arbitration Act, 2001 and United States Arbitration Act, 1925. The following is suggested – "Provided also that, in cases where the Court sets aside the arbitral award in whole or in part, the Court may make consequential orders varying the award to meet the ends of justice."

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		erroneous application of the law or by reappreciation of evidence. ***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** **(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.**	
	(3) 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	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 **or an appellate arbitral tribunal, as the case may be,** is satisfied that the applicant was prevented	

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	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.	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.	
	(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.	(4) On receipt of an application under sub-section (1), the Court **or an appellate arbitral tribunal, as the case may be,** 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.	
	(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.	(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.	
	(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.	(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.	

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		Where the arbitral award is set aside in part, the Court or an appellate arbitral tribunal, as the case may be, may direct that the arbitral tribunal shall decide in a fixed time, only the issues on which the award has been set aside: **Provided that the said arbitral tribunal shall make the award on the said issues on the basis of existing records in the original arbitral award, unless the Courtor an appellate arbitral tribunal, as the case may be, directs to the contrary:** **Provided further that the arbitral tribunal shall be bound by the findings of the original arbitral award, which have not been set aside.**	
		34A. Appellate Arbitral Tribunal. – (1) The arbitral institutions may, provide for an appellate arbitral tribunal to entertain applications made under Section 34, for setting aside an arbitral award. **(2) The appellate arbitral tribunal while deciding an application under Section 34 shall follow such procedure, as may be specified by the Council.**	In sub-section (2), the word "shall follow" should be replaced with "**may follow**". Arbitral institutions would provide the procedure for appellate arbitration taking place under its aegis. Council should not intervene or conflict such arbitral institution rules. It should be clarified whether parties opting for ad-hoc arbitration can opt for appellate arbitral mechanism. We suggest that parties opting for ad-hoc arbitration should be given an option to opt for appellate arbitral mechanism.

Section	EXISTING PROVISION	PROPOSED AMENDMENTS	IRIARB COMMENTS
	.	**(1A) Notwithstanding anything contained in any other law, an appeal under sub-section (1) shall be made within 60 days from the date of receipt of the Order appealed against, but not thereafter.**	

IV. CONCLUSION

The underlying objective of the Draft Amendment Bill is to promote institutional arbitration and kill judicial intervention in arbitration, to the maximum extent possible, in the pre-constitution stage, pendent lite, and post award stage. The Draft Amendment Bill only partially follows the recommendations made by Vishwanathan Committee, and some important recommendations do not find mention. While most proposed amendments are welcomed, some may require closer scrutiny and deliberation. In particular, the Council has been given a wide-ranging role to shape the future of arbitration in India. Its establishment and workings would need to be overseen to ensure that the objectives of the Draft Amendment Bill are successfully achieved.