

**SUGGESTED AMENDMENTS TO THE ARBITRATION AND
CONCILIATION ACT, 1996**

**Justice Mohit S. Shah
Judge, High Court of Gujarat**

Pursuant to the suggested amendments to Section 89 of the Code of Civil Procedure, 1908, the following amendments are also required to be made to the relevant provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) :-

I Section 30 of the Act provides for encouragement of settlement of dispute before the arbitral tribunal and sub-section (4) thereof provides that an arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute. Section 35 of the Act gives finality to an arbitral award and states that it shall be final and binding on the parties and persons claiming under them respectively. Section 36 of the Act provides that the arbitral award shall be enforced under the Code of Civil Procedure, 1908 (V of 1908) in the same manner as if it were a decree of the Court after the time for making an application to set aside the award under Section 34 has expired, or such application having been made, it has been refused.

It thus appears that Section 36 is applicable to all arbitral awards, particularly those which are rendered by the arbitration

tribunal on merits. It appears that arbitral awards on agreed terms need not be exposed to any possibility of an application to set aside the arbitration award under Section 34.

Accordingly, it is suggested as under :-

The existing Section 36 of the Act may be substituted by the following :-

“36. Enforcement.- (1) Where the arbitral award is rendered on agreed terms, the award shall be enforced under the Code of Civil Procedure, 1908 (V of 1908) in the same manner as if it were a decree of the Court.

(2) In other cases, where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (V of 1908) in the same manner as if it were a decree of the Court.”

II Part III of the Act contains the provisions relating to conciliation. In view of the fact that conciliation and mediation are generally interchangeable (Bryan A. Garner, A Dictionary of Modern Legal Usage, P. 5554, 2nd Edition, 1995 and also Black’s Law Dictionary, 7th Edition, Pages 96 and 284), it will be necessary to make the provisions of Part III of the Act application to **mediation** also.

Accordingly, it is suggested as under :-

In Section 61 of the Act, the existing sub-section (2) may be renumbered as sub-section (3) and the following may be added as sub-section (2) :-

“(2) In this part, conciliation shall include mediation and all references to “conciliation”, “conciliation proceedings” and “conciliator/s” shall include references to “mediation”, “mediation proceedings” and “mediator/s” respectively.”

III In Section 62 of the Act, the following shall be added as sub-section (5) :-

“Where the Court passes an order under Section 89 of the Code of Civil Procedure, 1908 (V of 1908) or under any other law for the time being in force, referring a dispute to conciliation, the conciliation proceedings shall commence when the Court passes such an order.”

IV The existing provisions of Section 74 may be substituted by the following :-

“74. Status and effect of settlement agreement.- (1)

Where the conciliation proceedings have commenced without intervention of the Court, the settlement agreement shall be enforced under the Code of Civil Procedure, 1908 (V of 1908)

(hereinafter referred to as 'the Code') in the same manner as if it were a decree of the Court.

(2) Where the conciliation proceedings have commenced with the intervention of the Court, the settlement agreement shall, within fifteen days of the date of signing the agreement, be produced before the Court by the conciliator or by any of the parties to the suit which is pending before the Court. Upon such production, the Court shall pass a decree in terms of the settlement agreement within fifteen days from the date of such production.

Provided that where any of the parties to the suit is a minor or a person to whom the provisions of Order XXXII of the Code apply, the Court shall not pass a decree in terms of the settlement agreement without ensuring compliance with the provisions of sub-rule (2) of Rule 1 of Order XXIII of the Code.

Provided further that where the suit in question is a representative suit, the Court shall not pass a decree in terms of the settlement agreement without ensuring compliance with the provisions of sub-rule (2) of Rule 3 of Order XXIII of the Code.”
