

UNIT-4

PPLE

ARBITRATION AGREEMENTS

Meaning

An **arbitration agreement** is a written agreement between parties to submit present or future disputes to arbitration instead of going to court.

It is governed by **Section 7 of the Arbitration and Conciliation Act, 1996** (India).

ESSENTIALS OF A VALID ARBITRATION AGREEMENT

1. **Written Agreement**
 - Must be in writing (Section 7(3)).
 - May be in the form of a signed document, exchange of letters, emails, or any other record showing agreement.
 2. **Intention to Submit to Arbitration**
 - Parties must clearly intend to refer disputes to arbitration, not merely negotiate or consult.
 3. **Existence of a Dispute**
 - There must be an identifiable legal dispute (present or future).
 4. **Agreement Between Competent Parties**
 - Parties must have legal capacity to contract (as per Contract Act).
 5. **Definiteness and Certainty**
 - The arbitration clause should be clear regarding the intention to arbitrate and the scope of disputes covered.
 6. **Reference to a Certain Arbitrator or Procedure**
 - Agreement may name the arbitrator(s) or specify a procedure for their appointment.
 7. **Subject Matter Capable of Arbitration**
 - The dispute must be one that can be settled by arbitration (e.g., not criminal or matrimonial disputes).
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KINDS / TYPES OF ARBITRATION AGREEMENTS

1. **Clause in a Contract (Arbitration Clause)**

- A clause within the main contract stating that disputes arising under it will be referred to arbitration.
 - Example: “*Any dispute arising out of this agreement shall be referred to arbitration...*”
 - 2. **Submission Agreement**
 - A separate agreement made after a dispute has arisen, referring that specific dispute to arbitration.
 - 3. **Ad hoc Arbitration Agreement**
 - Parties themselves decide all procedures without relying on an institution.
 - 4. **Institutional Arbitration Agreement**
 - Disputes are referred to a permanent arbitral institution (e.g., ICC, LCIA, ICA, SIAC) following its rules.
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VALIDITY AND REFERENCE TO ARBITRATION

Validity

- Determined by:
 - Compliance with **Section 7** (writing, intention, capacity).
 - Free consent under the **Indian Contract Act, 1872**.
 - Clear and certain terms.
- Invalid if obtained by fraud, coercion, or if the subject matter is non-arbitrable.

Reference to Arbitration (Section 8 of the Act)

- When a party brings a case before a judicial authority concerning a matter covered by an arbitration agreement:
 - The other party may apply for reference to arbitration.
 - The court **must refer** the parties to arbitration if:
 - There is a valid arbitration agreement, and
 - The application is made before submitting the first statement on the substance of the dispute.

INTERIM MEASURES BY COURT

Meaning

Interim measures are temporary orders passed by a court to protect the rights or property of parties before or during the arbitration process, or even after an arbitral award but before its enforcement.

They ensure that the arbitration proceedings are **effective and not rendered futile**.

KINDS OF INTERIM MEASURES

The Court may order measures for:

1. **Preservation, interim custody, or sale of goods** which are the subject matter of arbitration.
2. **Securing the amount in dispute** in arbitration (e.g., attachment of property).
3. **Detention, preservation, or inspection of property or evidence** relevant to arbitration.
4. **Granting an injunction or appointment of a receiver.**
5. **Any other interim measure** for protection as may appear just and convenient to the court.

ARBITRAL TRIBUNAL

Meaning

An **Arbitral Tribunal** is the body of one or more arbitrators appointed by the parties to resolve disputes referred to arbitration.

It derives its authority from the **Arbitration and Conciliation Act, 1996**, mainly **Sections 10–27**.

1. APPOINTMENT OF ARBITRATORS (Sections 10–11)

Number of Arbitrators

- Parties are free to decide the number of arbitrators (must not be even number – Section 10).
- In the absence of agreement → **one arbitrator**.

Procedure for Appointment (Section 11)

- Parties are free to agree on a procedure.
- Failing such agreement:
 - In a **three-member tribunal**: each party appoints one arbitrator; the two appointed arbitrators appoint the third (presiding arbitrator).
 - If a party fails to appoint within 30 days → the **court (High Court or Supreme Court)** may make the appointment.

- The **Chief Justice or his designate** ensures independence, impartiality, and qualifications agreed by the parties.

Case Law

- **Datar Switchgears Ltd. v. Tata Finance Ltd. (2000)** – A party can appoint an arbitrator even after expiry of 30 days, unless the other party has approached the court.
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2. JURISDICTION OF THE ARBITRAL TRIBUNAL (Sections 16–17)

Competence–Competence Principle (Section 16)

- The tribunal has the power to rule on its **own jurisdiction**, including:
 - Existence or validity of the arbitration agreement.
 - Validity of the contract containing the clause.
- An arbitration clause is **independent** of the main contract (separability doctrine).

Objection to Jurisdiction

- Must be raised **before** or **with the statement of defence**.
- The tribunal may rule as a **preliminary issue** or along with the final award.

Judicial Review

- If the tribunal rejects a jurisdictional plea, the party can challenge it only after the final award (Section 34).
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3. CHALLENGE TO ARBITRATORS (Sections 12–13)

Grounds of Challenge

1. **Justifiable doubts** as to the **independence or impartiality** of the arbitrator.
2. **Lack of required qualifications** as agreed by the parties.

Disclosure Requirement (Section 12)

- An arbitrator must disclose in writing any circumstances likely to give rise to doubts about his impartiality or independence.

Procedure (Section 13)

- Parties may agree on a challenge procedure.
 - Failing such procedure:
 - A party must send a written statement of reasons for challenge within **15 days** of becoming aware of the issue.
 - The tribunal decides the challenge.
 - If the challenge fails, the party may later challenge the award under **Section 34**.
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4. POWERS AND DUTIES OF THE TRIBUNAL

Powers

- To determine **its own procedure** (Section 19).
- To decide **jurisdictional issues** (Section 16).
- To grant **interim measures** (Section 17).
- To **administer oaths** and **receive evidence**.
- To decide on **costs** and **interest**.
- To **appoint experts** and require production of documents (Section 26).
- To make **interim and final awards**.

Duties

- To act **fairly and impartially**.
 - To give **equal opportunity** to both parties.
 - To conduct proceedings **without unnecessary delay or expense** (Section 18).
 - To make a **reasoned award** unless otherwise agreed.
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5. GROUNDS OF CHALLENGE (Section 12 & 13)

An arbitrator may be challenged if:

1. There are **justifiable doubts** about independence or impartiality.
 2. The arbitrator **does not possess qualifications** agreed by the parties.
 3. The arbitrator **fails to act** or causes **undue delay**.
 4. Circumstances listed in the **Fifth and Seventh Schedules** exist (e.g., relationship with parties, interest in dispute).
- **Seventh Schedule** → circumstances making arbitrator **ineligible** to be appointed (e.g., close business or family relationship).

- *Case: TRF Ltd. v. Energo Engineering Projects Ltd. (2017)* – A person ineligible to act as arbitrator cannot nominate another.
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6. PROCEDURE OF THE ARBITRAL TRIBUNAL

Freedom of Procedure (Section 19)

- Not bound by the Code of Civil Procedure or Evidence Act.
- May determine procedure subject to party agreement.

Key Procedural Aspects

1. **Notice of hearing** to parties.
 2. **Submission of statements of claim and defence** (Section 23).
 3. **Hearings and written proceedings** (Section 24).
 4. **Default of a party** – tribunal may proceed ex parte (Section 25).
 5. **Making of awards** – must be **in writing, signed, dated**, and state **reasons** (Section 31).
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7. COURT ASSISTANCE TO ARBITRAL TRIBUNAL

Under Section 27

- The tribunal or a party (with tribunal's approval) may request the **court's assistance** in:
 - Taking evidence.
 - Summoning witnesses.
 - Requiring production of documents.
- The court exercises powers similar to those in a civil suit.

Other Court Assistance

- **Section 9** – Interim measures.
- **Section 11** – Appointment of arbitrators.
- **Section 14–15** – Termination and substitution of arbitrators.
- **Section 34 & 36** – Setting aside and enforcement of awards.

DISTINCTION BETWEEN CONCILIATION, NEGOTIATION, MEDIATION AND ARBITRATION

BASIS	NEGOTIATION	CONCILIATION	MEDIATION	ARBITRATION
Meaning	A voluntary process where parties discuss disputes directly to reach a mutually acceptable solution.	A non-binding process where a neutral third party (conciliator) helps parties to reach a settlement.	A neutral mediator assists parties in identifying issues and exploring solutions but does not impose a decision.	A quasi-judicial process where a neutral arbitrator hears both sides and gives a binding award.
Third Party's Role	No third party.	Conciliator actively proposes terms of settlement.	Mediator facilitates communication; does not suggest terms unless asked.	Arbitrator acts like a private judge and delivers an enforceable award.
Legal Framework (India)	No statutory regulation.	Part III of the Arbitration and Conciliation Act, 1996 (Sections 61–81).	Governed by the Mediation Act, 2023 (earlier under Sec. 89 CPC).	Arbitration and Conciliation Act, 1996 (Part I).
Binding Nature	Non-binding.	Binding only if parties sign a settlement agreement (enforceable as arbitral award under Sec. 74).	Settlement binding when signed and authenticated under Mediation Act.	Award is final and binding; enforceable as a court decree (Sec. 36).
Confidentiality	Informal; not legally protected.	Strictly confidential (Sec. 75).	Legally protected under Mediation Act, 2023 (Sec. 22).	Proceedings are private but the award may become public if challenged in court.
Formality	Informal.	Semi-formal.	Informal but structured.	Formal legal process.
Result	Mutual agreement.	Settlement agreement proposed	Mediated settlement agreement.	Arbitral award (binding decision).

BASIS	NEGOTIATION	CONCILIATION	MEDIATION	ARBITRATION
		and accepted.		
Cost and Time	Minimal.	Low cost, quick.	Low cost, flexible.	Relatively expensive and time-consuming.
Resort to Judicial Proceedings	Free to go to court anytime.	Not allowed during conciliation (Sec. 77).	Judicial proceedings usually stayed during mediation.	Judicial intervention limited; appeal allowed only under Sec. 34.

CONFIDENTIALITY

Process	Confidentiality Rule
Negotiation	No statutory protection; depends on parties' agreement.
Conciliation	Section 75 – Confidentiality of all matters, proposals, and settlement terms.
Mediation	Section 22 of the Mediation Act, 2023 – Strict confidentiality; mediator cannot be called as a witness.
Arbitration	Proceedings are private; confidentiality implied (especially under institutional rules like ICC or LCIA).

RESORT TO JUDICIAL PROCEEDINGS

Process	Judicial Involvement
Negotiation	Parties may approach court anytime.
Conciliation	Section 77 – Parties shall not initiate judicial proceedings during conciliation.
Mediation	Courts may refer cases to mediation under Section 89 CPC or Mediation Act; limited court role during process.

Process

Judicial Involvement

Arbitration Limited court role (Sections 9, 11, 34, 36); otherwise, arbitration is autonomous.

COSTS

Process

Cost Implication

Negotiation Minimal or none (party-to-party).

Conciliation Low cost; conciliator's fee shared equally.

Mediation Cost-effective; mediator's fee and administrative expenses moderate.

Arbitration Expensive due to arbitrator's fees, legal representation, and procedural costs.

DISPUTE RESOLUTION BOARDS AND LOK ADALAT

A. DISPUTE RESOLUTION BOARDS (DRBs)

Meaning

A **Dispute Resolution Board (DRB)** is a neutral panel (usually of three members) established at the beginning of a large project—especially in construction contracts—to help resolve disputes as they arise, avoiding delays and litigation.

Functions

- Provides **advisory opinions or recommendations** on disputes.
- Encourages **early resolution** and continuity of work.
- Reduces cost and time compared to arbitration or litigation.

Features

1. **Established contractually** at project inception.
2. **Continuous involvement**—visits site, reviews progress, and prevents disputes.
3. **Findings are advisory**, sometimes binding if agreed by parties.
4. Popular in **infrastructure and international contracts** (e.g., World Bank-funded projects).

B. LOK ADALAT

Meaning

“**Lok Adalat**” means *People’s Court* — an informal forum where disputes are settled amicably through compromise and conciliation under the **Legal Services Authorities Act, 1987**.

Types of Lok Adalat

1. **Permanent Lok Adalat (Public Utility Services)** – Section 22B.
2. **National Lok Adalat** – held periodically across India.
3. **Mega / Mobile / Continuous Lok Adalats** – for different categories of cases.

Jurisdiction (Sections 19–22)

- Can take up cases:
 - **Pending in court**, or
 - **Pre-litigation disputes** (before filing in court).
- Jurisdiction **excludes non-compoundable criminal cases**.

Procedure

- Informal, flexible, and conciliatory.
- No strict application of Evidence Act or CPC.
- Decision is based on compromise between parties.

Award

- **Deemed to be a decree of a civil court** (Section 21).
- **Final and binding**, no appeal lies against it.
- If no compromise is reached → case returns to regular court.

Advantages

- Speedy and inexpensive justice.
- Reduces burden on courts.
- Promotes harmony and voluntary settlement.
- Encourages legal awareness and access to justice.