

Lesson 7: Arbitration and Conciliation Act, 1996

1. Alternate Methods of Dispute Resolution

- **Arbitration:** A method of dispute resolution involving one or more neutral third person selected by the disputing parties and whose decision is binding.
- **Conciliation:** A process of getting the parties to come to an agreement about a common dispute through confidential discussion and dialogue.
- **Mediation:** Mediation is a structured, interactive process where an impartial third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques. Mediation is governed by Section 89 of the Code of Civil Procedures, 1908. Mediation is governed by confidentiality.
- **Negotiation:** Negotiation is a dialogue between two or more people or parties intended to reach a beneficial outcome over one or more issues where a conflict exists with respect to at least one of these issues.

2. Primary Legislation dealing with Alternate methods of Dispute Resolution

- The Arbitration and Conciliation Act, 1996.
- Legal Services Authorities Act, 1987.
- The Code of Civil Procedures, 1908.

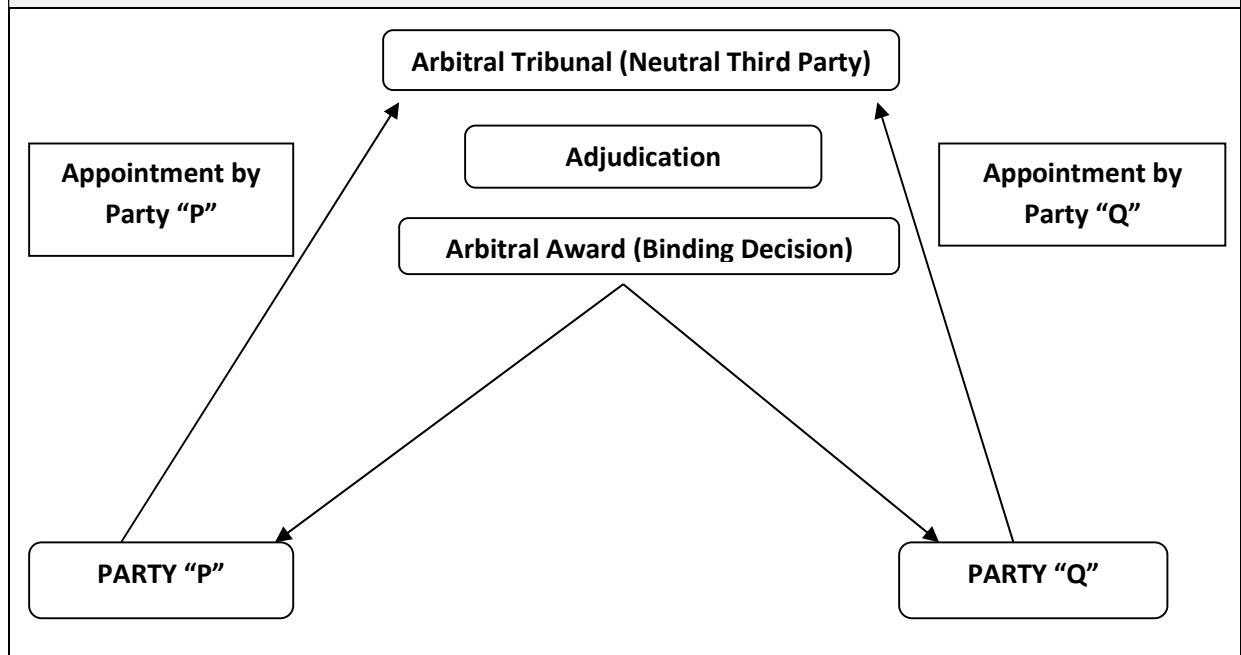
3. Methods of dealing with Alternate Methods of Dispute Resolution

- Arbitration.
- Conciliation.
- Mediation.
- Judicial Settlement.
- Lok Adalat.
- Permanent Lok Adalat.

4. Definitions (Section 2)

- **Section 2(1) (a) of the Act, defines “arbitration”** mean any arbitration whether or not administered by a permanent arbitral institution.
- **“Arbitral Tribunal”** means a sole arbitrator or panel of arbitrators.
- **“Arbitral Award”** includes a interim award.
- **“Party”** means a party to an arbitration agreement.
- **“International Commercial Arbitration”** means an arbitration relating to disputes arising due to legal relationships, contractual or not considered as commercial and where at least one of parties is:
 - An individual who is national or habitually in country other than India; or
 - A body corporate which is incorporated in any country other than India; or
 - An association or a body of individuals whose central management and control is exercised in any country other than India; or
 - The government of a foreign country.

5. Process of Arbitration



6. BASIC FEATURES OF ARBITRATION

Agreement:

- Happens with the consent of parties.
- Clearly states that in case disputes parties will be proceed to arbitration instead of going to the court.

Arbitrator:

- Similar to judge of the Court.
- Required to be Neutral Impartial.

Seat of Arbitration: Legal system will supervise arbitration.

Party of Autonomy & Procedure: Arbitration gives the parties choice of applicable law to choose kind of procedure, etc

Finality of Outcome: No appeal possible against arbitral awards.

Confidentiality: What happens in arbitration remains Private.

Arbitral Awards: Decision by Arbitrator.

Enforcement of Awards: More Simpler.

7. Authorities under Act

- Judicial Authority.
- Court.
- Supreme or high Court or institution designated by such court.

8. Distinction between Arbitration and Litigation

Litigation	Arbitration
Takes place in court	Place of arbitration is chosen by parties
A judge is assigned by court	Arbitrator(s) is selected by parties
Procedure followed by court is fixed & determined by rules of court	Parties have adequate flexibility to choose procedures that would apply to their arbitration
Proceedings are generally open to public	Confidentiality is one of most important characteristic of arbitration
Court decisions are subject to numerous	Arbitral Awards can be challenged on very limited grounds.
It is often difficult to enforce judgements of court of one country in a foreign country	Enforcing an arbitral award in foreign nations is much easier & is governed by international treaties.

9. Arbitration Agreement

Definition	“ It means an agreement by parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.”
Types	<ul style="list-style-type: none"> • Arbitration Clause: A clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration. • Submission Agreement: An agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.
General Principles	<ul style="list-style-type: none"> • It is an agreement enforceable under law. • Consent (consensus ad idem) • Ouster of Jurisdiction. • Doctrine of separability. • Competency to rule on its jurisdiction.
Requirements of a Valid Arbitration agreement	<ul style="list-style-type: none"> • Mandatorily in Writing. • Clarity to consent. • Defined Legal Relationship. • Final and binding Award • Specific words • Dispute • Arbitrability. • Signature
Termination of an Arbitration Agreement	<ul style="list-style-type: none"> • Mutual Consent • Termination of principal contract • Death of parties. • Operation of Law

10. Arbitral Tribunal

Appointment of Arbitral Tribunal	<ul style="list-style-type: none"> • An important principle of arbitration is principle of party autonomy. Party autonomy means “freedom to choose” whether it is procedure, venue, seat or arbitrators. • Parties have right to choose persons who would act as arbitrators in their dispute. • There are two aspects to appointment namely : (1) number of arbitrators & (2) actual procedure of appointment.
Number of Arbitrators	<p>The parties are free to determine the number of arbitrators provided that such number shall not be an even number.</p> <p>Note: Failing the determination, the arbitral tribunal shall consist of a sole arbitrator.</p>
Who can be an Arbitrator?	Any person capable of contracting in theory can be an arbitrator.
Procedure for Appointment	<p>The most common procedures are:</p> <ul style="list-style-type: none"> • The Parties will jointly appoint. • Each party will appoint one and the two arbitrators would appoint the rest. • Appointment would be made by an unrelated person or institution. <p>In case appointment not made then follow these steps as follows:</p> <p>Step1: Parties fails to appoint arbitrator in accordance with agreed procedure or parties had not decided on a procedure to appoint an arbitrator.</p> <p>Step 2: Parties are required to proceed in accordance with default procedure noted in the Act.</p> <p>Step3: If any party fails to follow the default procedure then other party can approach court.</p> <p>Step 4: The court may require parties to act in accordance with their agreement OR may itself appoint arbitrator.</p>
Requirements of An Arbitral Tribunal	<ul style="list-style-type: none"> • Arbitration could be of any nationality. • Capable of contracting. • Lack of bias.
Duties & Liabilities of Arbitrator	<ul style="list-style-type: none"> • Conduct arbitral proceedings without delay. • Remain at all times impartial i.e. treat both parties equally. • Keep all matters concerning arbitration confidential. • Deliberation. • Avoid unilateral communication with one party • Ensure all documents & communication received from one party is communicated to other party. • Ensure that award & all other decisions comply with legal requirements. • Ensure that he/she himself at all times comply with legal requirements associated with arbitrator.
Termination, removal & substitution of Arbitral Tribunal	<ul style="list-style-type: none"> • When arbitrator leaves voluntarily. • When all parties involved in arbitration agree that arbitrator should be removed. • When Operation of law arbitrator unable to continue and when arbitration process ends. • When the court decided that arbitrator should be removed.

11. Arbitral Award

Definition	An arbitral award is similar to a judgement given by a court of law. It is given by arbitral tribunal as a decision on various issues in a matter which parties had placed before arbitral tribunal.
General Principles	<ul style="list-style-type: none"> • Who can challenge. • Authority. • Timelines. • Automatic stay.
Types of Arbitral Award	<ul style="list-style-type: none"> • Final Award. • Interim Award. • Settlement Award. • Additional Award.
Consequences of challenge	<ul style="list-style-type: none"> • Set aside • Confirm • Modify • Remit back to Arbitral tribunal.
Requirements of an arbitral Award	<ul style="list-style-type: none"> • Must be a decision by majority. • Must be made in writing, signed & dated. • Must be reasoned. • Must not be vague. • Should be capable of being performed. • Must not be illegal (against public policy).
Challenging an Award	<p>Section 13: Challenge of bias against Arbitral Tribunal.</p> <p>Section 16: Overstepping of jurisdiction by the Arbitral Tribunal.</p> <p>Section 34: Specific grounds for reviewing an Award.</p>
	<p>The first set of grounds includes:</p> <ul style="list-style-type: none"> • Party is under some incapacity. • Invalid arbitration agreement. • Party is not given proper notice about appointment of arbitrator or arbitral. • Award deals with disputes not submitted to Arbitration. • Arbitral Tribunal or procedure was not in accordance with necessary requirements under law. <p>The second set of grounds which court can look at its own motion, includes:</p> <ul style="list-style-type: none"> • Subject matter of dispute is not capable of settlement by arbitration. • It is in contravention of public policy of India.
Consequences of Challenge	<p>There are four major outcomes when an award is challenged before the court:</p> <ul style="list-style-type: none"> ✓ Set aside ✓ Confirm ✓ Modify ✓ Remit Back to the arbitral award.

12. Conciliation

Definition	There is no single definition of conciliation. It is an alternative method of dispute resolution.
Characteristics	<ul style="list-style-type: none">• Voluntary• Non adversarial• Assisted Procedure• Finality of Settlement.• Confidentiality
Conciliation In India	<ul style="list-style-type: none">• Number of conciliator.• Appointment of conciliations.• Procedure of conciliation.• Bar on judicial
Settlement Agreement	<ul style="list-style-type: none">• Initial Steps• Agreement• Enforcement
Confidentiality	Both conciliator & parties are required to keep all matter relating to proceedings & settlement agreement confidential.

13. Requirement of An Arbitral Award

Must be a decision by the Majority	Made through majority submitted to the Arbitral Tribunal for Adjudication.
Must be made in writings, signed and dated	<ul style="list-style-type: none">• Writing and having the signature of majority members of the Arbitral Tribunal.• Two conditions are fulfilled not agree with the contents of the Award.• Majority of the arbitrators to sign.• Equal importance helps determining various timelines.
Must be Reasoned	<ul style="list-style-type: none">• Failure to state reasons would make the award invalid.• Arbitrator had applied their minds to the matter• The decision would not be an arbitrary decision• Agreed that no reasons need be given for the award.
Must not be Vague	<ul style="list-style-type: none">• Both certain and clearly note which party has to do what parity has and finally what relief has been awarded to parties.• Must not be tentative vagueness should be avoided at all cost.
Capability of being performed	The award should be capable of being performed. An unenforceable award would be set aside.
Must not be Illegal (against Public Policy)	<ul style="list-style-type: none">• It is violation of the public policy would be set aside.• If it is contrary to substantive provisions of Law.

14. Requirement of A Valid Arbitration Agreement

Writing	There is however no requirement for the same to be in writing in one document.
Clarity of Contract	<ul style="list-style-type: none">• The intention to go to arbitration must be clear in other words there must be consensus ad idem.• The words used should disclose a determination and obligation.
Define Legal Relationship	<ul style="list-style-type: none">• Borrowed from the UNCITRAL Model Law does not define this term.• Dispute that arisen from a legal relationship can be submitted to arbitration unless it is expressly or impliedly barred by a statute.
Final & Binding	Parties must agree that the determination of their substantive rights by the neutral third person.
Specific Words	Arbitration or Arbitrator will not make it an arbitration agreement.
Dispute	Future Dispute/difference in connection with some contemplated affairs that is proposed is submitted to arbitration.
Arbitrability	The Dispute proposed to be submitted to arbitration must be arbitrable.
Signature	Contained in a contract i.e. in one set of documents no signature is required respondence or exchange of pleadings.
