



ARBITRATION & CONCILIATION ACT, 1996

SPOM SET C PAPER 6

“A concise summary of ICAI material for a quick revision on a day before the exam.”

Hey folks!

I put together this revision material originally just for my own SPOM revision. It really helped me get through the last-minute prep and played a big part in helping me score 75+. Later I thought—why not to share this with you all too? If you're appearing for Set C - Paper 6, I genuinely hope this helps you out the same way it helped me.

Disclaimer

This is just a concise summary of our main study material. It's meant to give you a quick revision and summarized understanding of the key concepts discussed in each chapter, not replace the full texts. I've put this together with the help of ChatGPT to keep things neat and understandable.

If you find any mistakes or have suggestions, feel free to drop me a message at poornambikababu@gmail.com

And if this material helps you in any way—even a little—I'd love to hear from you! Knowing it made a difference for someone would really mean a lot.

All the best for your exams!

– Poornambika
CA Final Student

CONTENT

| | |
|---|----|
| 1. <u>INTRODUCTION</u> | 2 |
| 2. <u>FUNDAMENTALS OF ARBITRATION</u> | 6 |
| 3. <u>ENFORCEMENT OF CERTAIN FOREIGN AWARDS</u> | 23 |
| 4. <u>CONCILIATION</u> | 31 |

CHAPTER – I

INTRODUCTION

Alternate Methods of Dispute Resolution (ADR)

- ADR refers to resolving disputes outside the court system.
- Common ADR methods:
 - ✓ Arbitration
 - ✓ Conciliation
 - ✓ Mediation
 - ✓ Negotiation
 - ✓ Lok Adalats

ARBITRATION:

- A neutral third party (Arbitrator) resolves disputes.
- Features:
 - ✓ Flexible procedures
 - ✓ Parties can select decision-makers
 - ✓ Privacy and confidentiality
 - ✓ Renders final and binding decision
 - ✓ No appeal against most cases
 - ✓ Less formal than a trial

CONCILIATION:

- A less formal form of arbitration where a Conciliator facilitates dispute resolution.
- Features:
 - ✓ No prior agreement needed
 - ✓ Less formal than arbitration
 - ✓ Non-binding recommendations unless accepted by all parties
 - ✓ Parties can reject conciliator's recommendations

Difference between Arbitration & Conciliation:

| Basis | Arbitration | Conciliation |
|-----------------------------|-------------------------------------|--|
| Third-Party Role | Arbitrator makes binding decision | Conciliator facilitates, does not decide |
| Decision-Making | Binding decision enforceable by law | Only binding if parties agree |
| Process Level | More formal, resembles court trial | Less formal, encourages discussion |
| Neutral Party's Role | Arbitrator acts as a Judge | Conciliator acts as a facilitator |
| Binding Nature | Decision is legally binding | Agreement is binding only if formalized |

MEDIATION:

- A neutral third party (Mediator) helps parties resolve disputes.
- Focuses on communication and collaboration.
- Less formal than arbitration or conciliation.

History of Mediation in India

- ❖ Used in ancient India by Panchayats & Mahajans.
- ❖ Recognized in the late 20th century.
- ❖ 2002 amendment to Civil Procedure Code introduced court-annexed mediation.
- ❖ 2005 Supreme Court mandate further promoted mediation.

Key Principles of Mediation

- 1) **Voluntary and Self-Determined** – Parties participate willingly.
- 2) **Impartiality & Neutrality** – Mediator must not take sides.
- 3) **Confidentiality** – Discussions remain private and cannot be used as evidence in court.
- 4) **Explicit Consent** – Mediation outcomes are valid only with mutual agreement.

Stages of Mediation Process

1. Stages of Mediation:

- a) Start
- b) Introduction & Opening Statements
- c) Joint Discussion with Parties
- d) Private Discussion with Parties
- e) Negotiation & Problem-Solving
- f) Agreement
- g) Closure

Mediation Process & Role of Mediator

1. **Introduction & Opening Statements** – Mediator explains rules, parties present their views.
2. **Joint Discussion** – Parties express concerns, identify common ground.
3. **Private Discussion** – Confidential discussion for solutions.
4. **Negotiation & Problem-Solving** – Mediator facilitates solutions.
5. **Agreement** – Formal resolution is drafted.
6. **Closure** – Summary & finalization of the mediation.

Role & Key Functions of Mediator:

- ✓ Facilitation - Guides discussion, ensures all issues are covered.
- ✓ Impartiality & Neutrality - Active listening, paraphrasing, reframing.
- ✓ Communication Skills - Avoids bias, ensures fairness.
- ✓ Conflict Resolution Expert - Trained in techniques for resolving disputes.
- ✓ Creator - Encourages innovative solutions.

Difference Between Arbitration & Mediation

| Basis | Arbitration | Mediation |
|--------------------------------------|--|---|
| Neutral Third-Party Role | Arbitrator acts as a judge, makes binding decisions. | Mediator facilitates communication, does not impose decisions. |
| Decision-Making Authority | Arbitrator has a legal authority to decide. | Parties control the outcome. |
| Binding of Decision | Binding and enforceable by law. | Non-binding unless agreed upon. |
| Adversarial vs. Collaborative | Formal, resembles a court trial. | Informal, focuses on communication and mutual understanding. |
| Status of Decision | Final and legally binding, with limited appeal. | Parties can choose after dispute resolution methods if mediation fails. |

Difference Between Conciliation & Mediation

| Basis | Conciliation | Mediation |
|----------------------------|---|--|
| Role | Proactive role, suggests solutions. | Facilitator, guides parties to a solution. |
| Outcome | Settlement agreement. | Agreement between parties. |
| Agreement | Same as an arbitral award, executable as a decree. | Enforceable contract. |
| Governing Law | Part III of the Arbitration and Conciliation Act, 1996. | Section 89 of the Code of Civil Procedure, 1908. |
| Confidentiality | Legally bound; breach can jeopardize the process. | Based on trust, not strictly defined by law. |
| Breach of Agreement | Enforced like an arbitral award under the Arbitration and Conciliation Act, 1996. | Regular contract breach procedure. |

NEGOTIATION:

- **Definition:** A dynamic, voluntary process where parties seek a mutual agreement to resolve disputes without third-party intervention.
- **Application:** Used in business, non-profit organizations, government branches, legal proceedings, among nations, and in personal situations such as marriage, divorce, parenting, and everyday life.

Principles of Negotiation

1. **Voluntary Process** – All parties willingly engage in discussions.
2. **Honest Communication** – Negotiations should be conducted with sincerity and good faith.
3. **Mutual Agreement** – Solutions are developed collaboratively to satisfy all parties.
4. **Flexibility** – The process adapts to unique dispute characteristics.

Negotiation Process

1. **Preparation** – Understanding interests, priorities, and possible compromises.
2. **Opening Statements** – Initiating negotiations by presenting positions.
3. **Bargaining and Concession** – Proposing solutions and making compromises.
4. **Closure and Agreement** – Finalizing terms and ensuring mutual satisfaction.

Role of Negotiators

- **Effective Communication** – Active listening, clear expression, and handling interpersonal dynamics.
- **Creative Solutions** – Finding innovative ways to resolve disputes.
- **High Emotional Intelligence** – Managing emotions, building rapport, and fostering a positive atmosphere.

Importance of Negotiation in Alternative Dispute Resolution (ADR)

- **Cost and Time Efficient** – Avoids lengthy court trials.
- **Preserves Relationships** – Encourages collaboration.
- **Tailored Solutions** – Customizes resolutions to suit parties' needs.

Difference Between Arbitration and Negotiation

| Basis | Arbitration | Negotiation |
|--------------------------------------|---|---|
| Third-Party Involvement | Involves a neutral third party (arbitrator) who makes a binding decision. | May or may not involve a third party; direct communication between parties. |
| Decision-Making Authority | Arbitrator has authority to make a final, binding decision. | Parties retain control over decisions; no external authority. |
| Formality of the process | More formal, structured like a simplified court trial. | Can be formal or informal, often flexible with counter-offers. |
| Confidentiality | Proceedings are private and confidential. | Confidentiality varies based on agreements. |
| Finality | Decision is legally binding, with limited appeal options. | Not necessarily final; parties negotiate until an agreement is reached. |
| Adversarial vs. Collaborative | More adversarial, like a court trial. | Generally collaborative, aiming for voluntary agreement. |

Difference between Mediation and Negotiation

| Basis | Mediation | Negotiation |
|--------------------------------|--|---|
| Third-Party Involvement | Involves a neutral mediator facilitating communication. | May or may not involve a third party. |
| Decision-Making Power | Mediator does not make decisions; helps parties reach agreement. | Parties retain decision-making control |
| Communication Style | Focuses on active listening, improving communication. | Can involve various tactics, may be adversarial. |
| Goal | Reach a mutually acceptable agreement. | Secure the best outcome for each party. |
| Confidentiality | Typically, confidential. | Depends on agreements; may be confidential or open. |

| | | |
|------------------|---|--|
| Formality | Can be formal or informal, emphasizing collaboration. | Varies widely from legal procedures to informal discussions. |
|------------------|---|--|

Difference between Conciliation and Negotiation

| Basis | Conciliation | Negotiation |
|--------------------------------------|--|---|
| Third-Party Involvement | Involves a neutral conciliator guiding communication. | May or may not involve a third party. |
| Role of Third Party | Actively participates, suggests solutions, but has no decision-making power. | Role varies if involved, ultimate decision-making rests with parties. |
| Decision-Making Authority | No decision-making power; agreements are non-binding unless formalized. | Parties retain decision-making control. |
| Formality of the Process | Less formal than arbitration, involves discussions and interactions. | Can be formal or informal, includes offers and counteroffers. |
| Finality | Non-binding unless separately formalized. | Binding only to the extent specified in an agreement. |
| Adversarial vs. Collaborative | Encourages communication and cooperation. | Can be collaborative but may include adversarial aspects. |

LOK ADALATS (PEOPLE'S COURTS)

- **Purpose:** Provide accessible and swift justice.
- **Legal Basis:** Operates under the Legal Services Authorities Act, 1987.
- **Key Features:**
 - ✓ Alternative dispute resolution using mediation and conciliation.
 - ✓ Voluntary participation.
 - ✓ Encourages active participation from disputing parties.
 - ✓ Covers family disputes, property conflicts, motor accident claims, etc.
 - ✓ Operates at National, State, and District levels.
- **Significance:**
 - ✓ Reduces the backlog of court cases.
 - ✓ Promotes accessibility, inclusivity, and quick justice.

Advantages of Alternative Dispute Resolution (ADR)

1. **Cost-Effective & Efficient** – ADR is more viable, economical, and time-saving compared to traditional litigation.
2. **Flexible Procedures** – The process is less rigid, saving both time and money without the formalities of a conventional trial.
3. **Confidentiality** – Since disputes are usually resolved in private settings, confidentiality is maintained.
4. **Expertise Availability** – ADR allows access to specialized arbitrators, mediators, or conciliators, ensuring expert guidance.
5. **Better Outcomes & Relationships** – ADR fosters creative solutions, leads to sustainable agreements, and improves relationships.
6. **Minimized Strain on Personal Relationships** – Since disputes are resolved amicably, personal relationships suffer less.

CHAPTER II

FUNDAMENTALS OF ARBITRATION

1. Introduction to Arbitration in India

- Arbitration in India is governed by **Part I of the Arbitration and Conciliation Act, 1996**, which regulates:
 - ✓ **Domestic Arbitration** (disputes between Indian parties).
 - ✓ **International Commercial Arbitration** (disputes where at least one party is foreign).
 - ✓ **Enforcement of Foreign Arbitral Awards.**
 - ✓ **Conciliation procedures** as an alternative dispute resolution (ADR) mechanism.
- The Act applies across **India** and came into effect on **August 22, 1996**, aligning with international standards.
- India follows the **UNCITRAL Model Law**, which helps bring uniformity to arbitration procedures worldwide.

2. Importance of Arbitration & the Legal Framework

- Arbitration ensures faster dispute resolution compared to traditional court litigation.
- The **United Nations** has recommended arbitration for resolving international commercial disputes efficiently.
- Indian courts have consistently emphasized the importance of **ADR mechanisms**.
 - ✓ **Landmark case:** *Salem Advocate Bar Association v. Union of India* – Courts directed parties to prefer **arbitration, conciliation, mediation, or judicial settlements** over lengthy litigation.
 - ✓ **High Court of Madras ruling (2012):** Foreign lawyers cannot conduct arbitration proceedings in India under *A.K. Balaji v. Government of India & Others*.

3. Key Features of Arbitration

Arbitration is an ADR method where disputes are resolved by a neutral third party (arbitrator).

Advantages of Arbitration:

- ✓ **Flexibility** – Parties can determine the arbitration procedure.
- ✓ **Party Autonomy** – Parties can select arbitrators, ensuring expertise in the subject matter.
- ✓ **Confidentiality** – Unlike court proceedings, arbitration ensures privacy.
- ✓ **Binding & Final** – The arbitral award (decision) is final and legally binding.

Process of Arbitration:

- Both disputing parties appoint arbitrators.
- A neutral **Arbitral Tribunal** adjudicates the dispute.
- A legally **binding Arbitral Award** is issued.

4. Basic Features of Arbitration

(a) Arbitration Agreement

- Arbitration is **voluntary**, and parties must agree to it via an **Arbitration Agreement**.
- The agreement can exist as:
 - ✓ A **separate arbitration contract**.
 - ✓ An **arbitration clause within a broader contract**.
- According to **Section 7 of the Act**, the arbitration agreement must be in writing.

(b) Arbitrator

- The **Arbitral Tribunal** functions like a judge but is selected by the disputing parties.
- Arbitrators must remain **neutral and impartial**. If bias is found, the court can remove them.
 - ✓ **Example:** If *Raghu and Sameer* appoint *Lalit* as their arbitrator but later discover that *Lalit* is *Sameer's cousin*, the court can replace him.

(c) Seat of Arbitration

- The **seat (or legal jurisdiction)** determines which country's laws govern arbitration.
- **Example:** If the seat is India, then Indian courts will have jurisdiction over disputes.

(d) Party Autonomy in Arbitration Procedure

- Parties have the **freedom to choose**:
 - ✓ The number of arbitrators.

- ✓ The mode of hearing (oral/written).
- ✓ The language of proceedings.
- ✓ The applicable legal system (for international arbitration).

5. Finality & Enforcement of Arbitral Awards

(e) Finality of Outcome

- An **arbitral award is binding**, and appeals are **rarely allowed**, except on limited grounds like:
 - ✓ Invalid arbitration agreements.
 - ✓ Procedural irregularities.
 - ✓ Arbitrator's incapacity or bias.

(f) Confidentiality

- Arbitration ensures **strict confidentiality**, meaning:
 - ✓ Only the involved parties (and their lawyers) have access to case details.
 - ✓ Information shared during arbitration **cannot be disclosed** to third parties.

(g) Arbitral Awards

- The **final decision** made by the arbitrator is legally enforceable and must be complied with by both parties.

(h) Enforcement of International Arbitral Awards

- Enforcing arbitration decisions in **foreign countries** is easier compared to court judgments.
- India follows the **New York Convention on Recognition & Enforcement of Foreign Arbitral Awards, 1958**.

6. Arbitration vs. Litigation (Court Proceedings)

| Basis | Litigation (Court System) | Arbitration |
|-----------------|--|---|
| Place | Disputes are settled in court. | Parties decide the location of arbitration. |
| Appointment | A judge is assigned by the court. | Parties choose arbitrators based on expertise. |
| Procedure | Strict legal procedures apply (e.g., Indian Civil Procedure Code). | Parties can determine arbitration procedures. |
| Confidentiality | Court proceedings are public. | Arbitration is private and confidential . |
| Appeals | Court decisions can be appealed multiple times. | Limited appeal grounds for arbitral awards. |
| Foreign Matters | Enforcing a court judgment internationally is complex. | International arbitral awards are easier to enforce under treaties. |

7. Authorities under the Arbitration and Conciliation Act, 1996

(a) Judicial Authority

- The term "**judicial authority**" is not strictly defined but includes courts and special tribunals (e.g., Consumer Forums) that refer disputes to arbitration.

(b) Courts (Section 2(1)(e))

- **For international arbitration** → The **High Court** has jurisdiction.
- **For domestic arbitration** → The **District Court & High Court** oversee matters.

(c) Supreme Court & High Court – Appointment of Arbitrators (Section 11)

- The **Supreme Court** appoints arbitrators for **international arbitration**.
- The **High Court** appoints arbitrators for **domestic arbitration**.

DEFINITIONS – SECTION 2(1)

This section provides fundamental definitions essential for understanding arbitration in India. Some key definitions include:

- ❖ **2(1)(a): Arbitration** – It covers all arbitration proceedings, regardless of whether they are administered by a permanent arbitral institution.
- ❖ **2(1)(b): Arbitration Agreement** – A formal agreement as per Section 7 made between parties to resolve disputes through arbitration rather than litigation.

- ❖ **2(1)(c): Arbitral Award** – Includes final decisions by arbitrators, including interim awards.
- ❖ **2(1) (ca): Arbitral Institution** – Institutions designated by the Supreme Court or High Court to administer arbitration.
- ❖ **2(1)(d): Arbitral Tribunal** – A sole arbitrator or a panel of arbitrators who conduct arbitration proceedings.
- ❖ **2(1)(e): Court** – Defines the competent court for arbitration matters, which varies based on whether it is a domestic or international commercial arbitration.
- ❖ **2(1)(f): International Commercial Arbitration** – Arbitration where at least one party is a foreign national, a foreign corporation, or a government of a foreign country.
- ❖ **2(1)(g): Legal Representative** – A person representing a deceased party's estate in arbitration.
- ❖ **2(1)(h): Party** – A participant in the arbitration agreement.
- ❖ **2(1)(i): Prescribed** Refer to rules made under this Act.
- ❖ **2(1)(j): Regulations** – Refer to rules and regulations established under the Act.

SCOPE OF ARBITRATION – SECTION 2(2) TO 2(9)

- **Section: 2(2) - Application of Part I** – Covers arbitrations conducted in India, including provisions for international arbitration enforceable under Indian law.
- **Section: 2(3) Effect on Other Laws** – Arbitration provisions do not override laws that prohibit certain disputes from being arbitrated.
- **Section: 2(4) Application to Other Enactments** – Arbitration applies to all agreements unless explicitly excluded by other laws.
- **Section: 2(5) Applicability to International Arbitrations** – Ensures uniform application of arbitration principles to all proceedings, regardless of location.
- **Section: 2(6) Party Autonomy** – Allows parties to choose arbitration rules, institutions, and arbitrators freely.
- **Section: 2(7) Domestic Recognition of Awards** – Awards under this Part are recognized as domestic.
- **Section: 2(8) Interpretation of Agreements** – Clarifies that arbitration agreements include all arbitration-related rules.
- **Section: 2(9) Claims & Counterclaims** – Allows arbitration to address counterclaims and defenses, ensuring comprehensive dispute resolution.

JUDICIAL INTERPRETATIONS

- ❖ **Bharat Aluminium Case Clarification** – Established that Part I applies only to arbitrations conducted in India, reinforcing a distinction between domestic and international arbitration.
- ❖ It is crystal clear in the act that there is no overlapping or intermingling of Part I & Part II of the Act.
- ❖ **Clarification of Court's Jurisdiction (2(1)(e))** – Indian courts have jurisdiction in international arbitrations when required.

PROCEDURAL ASPECTS

RECEIPT OF WRITTEN COMMUNICATIONS (SECTION 3)

- A written communication is considered received if:
 - ✓ Delivered personally or to the last known address.
 - ✓ Sent via registered mail or another recordable method.
 - ✓ The delivery date is treated as the official date of receipt.
- Judicial authorities' proceedings are excluded from this provision.

WAIVER OF RIGHT TO OBJECT (SECTION 4)

- A party forfeits the right to object if:
 - ✓ They are aware of a procedural defect but continue arbitration without raising an objection.
 - ✓ They do not object within the stipulated time.
- Key conditions for waiver:
 - ✓ The waiver must be voluntary and intentional.
 - ✓ Any party can waive its rights.

- ✓ No waiver applies if a party is actively protesting.
- ✓ Objections must be raised within the prescribed time limit.
- ✓ A waiver is not applicable if a party was prevented due to uncontrollable circumstances.

EXTENT OF JUDICIAL INTERVENTION (SECTION 5)

- Courts are prohibited from intervening in arbitration unless explicitly provided under the Act.
- This ensures minimal judicial interference and promotes arbitration as a binding and independent process.

ADMINISTRATIVE ASSISTANCE (SECTION 6)

- Arbitrators or parties may seek administrative assistance from institutions or individuals to facilitate arbitration proceedings.

ARBITRATION AGREEMENT

Definition and General Principles

An arbitration agreement is the foundation of arbitration, ensuring that disputes are resolved through private arbitration rather than litigation. Under Indian law, individuals have the right to seek court resolution, but Section 28 of the Indian Contract Act, 1872, provides an exception for arbitration.

For arbitration to occur, both parties must **consent** to arbitration. This consent is recorded in an **arbitration agreement**, which can either be a separate contract or a clause within a larger agreement. Courts recognize arbitration agreements as binding and enforceable, as seen in the case **SN Prasad, Hitek Industries (Bihar) Ltd Vs. Monnet Finance Ltd (2011) 1 SC 320**.

LEGAL FRAMEWORK: Arbitration and Conciliation Act, 1996

Arbitration agreements in India are governed by **Sections 2(1)(b) and 7** of the **Arbitration and Conciliation Act, 1996**.

- **Section 2(1)(b):** Defines arbitration agreements as those referred to in Section 7.
- **Section 7:**
 1. Arbitration agreements must be between parties agreeing to submit disputes to arbitration.
 2. The agreement can exist as a **separate agreement** or an **arbitration clause** in a contract.
 3. Must be **in writing**, either as:
 - ✓ A signed document
 - ✓ An exchange of communication (letters, emails, etc.)
 - ✓ A reference in a contract to another document that contains an arbitration clause

TYPES OF ARBITRATION AGREEMENTS

1. **Arbitration Clause:** A clause in a contract stating that disputes arising in connection with the contract will be resolved via arbitration.
2. **Submission Agreement:** A separate agreement made after a dispute has already arisen, agreeing to submit the dispute to arbitration.

Example Scenarios

- ❖ **Scenario I (Arbitration Clause):** A **Joint Venture Agreement (JVA)** contains a clause stating all disputes will be arbitrated in Mumbai.
- ❖ **Scenario II (Submission Agreement):** The JVA lacks an arbitration clause, and after a dispute arises, a separate agreement is made to arbitrate disputes.

GENERAL PRINCIPLES OF ARBITRATION AGREEMENTS

1. **Legal Validity:** An arbitration agreement is legally enforceable and must meet contract law requirements.
2. **Consent (Consensus ad idem):** Both parties must explicitly agree to arbitration. If the terms are ambiguous, the agreement is void (**Dresser Rand SA Vs. Bindal Agro Chem Ltd (2006) 1 SCC 751**).
3. **Ouster of Jurisdiction:** Once an arbitration agreement exists, parties cannot unilaterally go to court for litigation.
4. **Doctrine of Separability:** The arbitration agreement remains valid even if the main contract is deemed invalid.
5. **Competency of the Tribunal (Section 16):** The arbitration tribunal has the power to determine its own jurisdiction and the validity of the main contract.

REQUIREMENTS FOR A VALID ARBITRATION AGREEMENT

1. **Must be in writing** – Oral arbitration agreements are not valid. There is no specific template required.
2. **Clarity of Consent:** The intent to arbitrate must be explicit. Vague or optional clauses do not constitute a valid arbitration agreement.
3. **Defined Legal Relationship:** Only disputes arising from a legal relationship can be arbitrated. Illegal matters cannot be subject to arbitration.
4. **Final and Binding Award:** The decision of the arbitral tribunal must be accepted as final and enforceable.
5. **Specific Words:** Simply including words like "arbitration" or "arbitrator" in a contract does not automatically make it a valid arbitration agreement. While the use of these terms is common, the agreement must explicitly outline arbitration as a binding resolution method.
6. **Dispute Requirement:** Arbitration can only be applied to actual disputes (present or potential). Hypothetical or undefined future conflicts that may never arise do not qualify.
7. **Arbitrability:** Only disputes that the law permits can be arbitrated. Some matters are non-arbitrable and must be handled by courts, such as:
 - ❖ Criminal offences
 - ❖ Matrimonial disputes
 - ❖ Guardianship matters
 - ❖ Testamentary disputes (related to wills)
 - ❖ Mortgage suits for the sale of mortgaged property
8. **Signature Requirement:** A signature is necessary when the arbitration agreement is part of a contract. However, if arbitration is agreed upon through correspondence or exchanged pleadings, no signature is required.

ARBITRATION AGREEMENT THROUGH REFERENCE

- An arbitration agreement can be incorporated into a contract by reference to another agreement that contains an arbitration clause.
- The reference must be clear enough to show that the parties intended to adopt the arbitration agreement.
- **Example:** The Supreme Court in *Groupe Chimique Tunisien SA Vs. Southern Petrochemicals Industries Corp Ltd (2006)* ruled that a purchase order referencing another contract with arbitration terms was valid.

TERMINATION OF AN ARBITRATION AGREEMENT

- Just as parties enter into an arbitration agreement, they can also terminate it.
 1. **Mutual Consent** - Both parties can agree to end the arbitration agreement.
 2. **Termination of the Principal Contract** - If the main contract is discharged or substituted, the arbitration agreement also ends. However, if the contract is breached, arbitration may still be applicable due to the separability doctrine.
 3. **Legal Precedents on Termination** - The Delhi High Court (*B.L. Kashyap and Sons Limited Vs. Mist Avenue Private Limited*) ruled that arbitration clauses do not survive contract novation (when an old contract is replaced by a new one).

Example Scenarios:

- ❖ **Scenario 1:** If a service contract is not renewed, the arbitration agreement also ends.
- ❖ **Scenario 2:** If a new contract is signed without an arbitration clause, the previous arbitration agreement does not survive.
- ❖ **Scenario 3:** If a party raises a dispute after contract termination, arbitration can still apply due to separability.
- 4. **Death of a Party** - Under Indian law, arbitration agreements survive even after a party's death. Legal representatives can enforce or be held accountable under the agreement.
- 5. **Operation of Law** - Some legal provisions may extinguish arbitration agreements by eliminating the right of action.

CONDUCT OF ARBITRAL PROCEEDINGS

Arbitration is widely used in commercial, construction, and investment disputes. The **Arbitration and Conciliation Act, 1996**, was enacted to consolidate and amend arbitration laws, covering both domestic and international arbitration.

Pre-Requisites for Conducting Arbitral Proceedings

1. **Arbitration Agreement**
 - Section 7 of the Act mandates a written arbitration agreement, signed by both parties. The arbitration agreement can be:

- A clause within a contract
- A separate arbitration agreement
- Court-Ordered Arbitration Without Pre-Agreement
 - The Supreme Court in *P.A.G Raju Vs. P.V.G Raju (2000 SC)* ruled that arbitration may proceed even without a pre-existing arbitration agreement if both parties agree when referred to court.
 - The essential requirement is the **consensus of the parties**.
- Historical Context
 - The case *State of Orissa Vs. Gangaram Chhapolia (1982)* traced arbitration law back to British India, starting with Bengal Regulations of 1772 and 1780, leading to the Arbitration Act of 1940.
 - In *Bihar State Mineral Dev. Corpn. Vs. Encon Builders (I) Pvt. Ltd. (AIR 2003 SC 3688)*, the Supreme Court outlined the essential requirements of a valid arbitration agreement:
 - ✓ **Intention to Resolve Disputes through Arbitration:** The parties must clearly intend to settle disputes via arbitration.
 - ✓ **Written Agreement:** The arbitration agreement must be in writing and binding on both parties.
 - ✓ **Consensus Ad Idem (Meeting of Minds):** The parties must have mutual understanding and agreement on arbitration.
 - ✓ **Consent to Refer Disputes to Arbitration:** Arbitration requires voluntary agreement to submit disputes for resolution
 - **Court's Role in Referring Matters to Arbitration:** A dispute cannot be referred to arbitration if one party does not consent, even if the other party requests it. For Example
 - **Facts:**

M/s Ramanaa Fresh Fruits & Co. contracted with Hotel Crimson Palace to supply fruits. The agreement did not contain an arbitration clause. After a payment dispute, Hotel Crimson Palace sought court intervention to refer the matter to arbitration, but M/s Ramanaa Fresh Fruits & Co. refused.
 - ✓ **Judgment:**
 - Since there was no arbitration clause and no mutual consent, the court **cannot** refer the matter to arbitration.
 - Consensus ad idem is necessary for arbitration.

2. Mandatory Notice Before Referral to Arbitration

- Section 21 states that unless parties agree otherwise, arbitral proceedings commence when the respondent receives a request for arbitration.
 - Purpose: Ensures the respondent is aware of the claims and helps in consensus on the appointment of an arbitrator.
 - Case Law: *Alupro Building Systems Pvt Ltd Vs. Ozone Overseas Pvt. Ltd. (Delhi HC)*
 - ✓ The arbitration process starts only upon receipt of notice by the other party.
- **Freedom to Decide Date of Commencement**
 - Parties may **mutually agree** on when arbitration proceedings begin.
 - If no agreement exists, the **date of notice receipt** marks the commencement.
 - **Legal Significance:**
 - ✓ **Determines the application of the Law of Limitation**—ensuring the claim remains valid.
 - ✓ Once arbitration has commenced, the **time limit cannot expire** for causes of action included in the reference.
 - **Case Law: Delhi Transport Corp. Ltd. Vs. Rose Advertising (2003)**
 - ✓ The arbitration agreement stated that governing laws would be those in force at the relevant time.
 - ✓ Since the arbitration appointment was under the **1996 Act**, the award was governed by it, even though the request was made before its enforcement.
- **Making a Claim Does Not Initiate Arbitration**
 - **Babanaft International Vs. Avant Petroleum:**
 - ✗ A mere claim does not establish a dispute.
 - ✓ A dispute arises only when a party refuses or contests the claim, leading to arbitration.
 - **Example:**

- ✓ A partner files a claim for ₹1,00,000 against the firm—this alone does not constitute a dispute.
- **Arbitration Commenced Before 1996 Act Enforcement**
 - **U.P. State Sugar Corporation Ltd. Vs. Jain Construction Co.**
 - ✓ The dispute arose in 1991, and an application was filed under the **Arbitration Act, 1940**.
 - ✗ Since the proceedings commenced before 1996, the **1940 Act applied**, not the 1996 Act.

APPOINTMENT OF ARBITRATORS (SECTIONS 10 & 11)

- **Number of Arbitrators (Section 10)**
 - Parties can determine any **odd** number of arbitrators.
 - If **no agreement exists**, arbitration will be conducted by a **sole arbitrator by default**.
 - **Key Advantage of Arbitration:**
 - ✧ Parties have the **freedom to choose their arbitrator**, ensuring impartiality and expertise.
- **Appointment Procedure (Section 11)**
 - Parties can **mutually decide** the procedure for appointing an arbitrator.
 - If **no consensus is reached**, the arbitrator **cannot issue a valid award**—any award given would be **null and void**.
 - **Communication of Appointment:**
 - ✓ An arbitrator's appointment is **complete only when communicated** to the other party.
- **Prohibition on Third-Party Consultation**
 - **Arbitrators cannot consult third parties** without informing the involved parties.
 - **Case Law: Husein Ebrahim Vs. Keshardeo Kanaria & Co.**
 - ✗ Arbitrators sought information from a third party **without disclosure**, which was ruled as **misconduct** by the court.
 - **Example:**
 - ✗ An arbitrator independently consulted third parties about M/s Taj Leather's reputation, without informing either disputing party.
 - ✗ **Held:** The arbitrator was **guilty of misconduct** as it violated transparency principles.

EQUAL TREATMENT OF PARTIES (SECTION 18)

Fundamental Principles:

- **Equality of Treatment:** Both parties must be treated fairly, without bias.
- **Right to Present Case:** Each party must have a full and fair opportunity to present evidence, arguments, and statements.
- **Mandatory Compliance:** The arbitral tribunal **must** uphold these principles to ensure a just process.

Basic Principles of Natural Justice in Arbitration

Arbitrators must adhere to **basic principles of natural justice**, including:

- **No undisclosed information**—arbitrators cannot receive information from one party **without informing the other**.
- **No secret witness examination**—witnesses cannot be examined **without the presence of both parties**.
- **No secret inquiries**—arbitrators **cannot** base decisions on private investigations **without prior consent** from both parties.

Basic Requirements for a Proper Hearing

- **Notice of hearing** - (place, date, and time) must be given to both parties.
- **Reasonable opportunity** for parties:
 - To be present throughout the hearing.
 - To Submit statements, documents, and evidence.
 - To **Cross-examine witnesses** and respond to opposing arguments.
- **Case Law: Wazir Chand Karam Chand Vs. Union of India (1989)**
 - A party affected by evidence must be **present to hear it**, given the right to **cross-examine**, and allowed to **rebut** it.

DETERMINATION OF PROCEDURE FOR ARBITRATION (SECTION 19)

1. Independence from Civil Procedure & Evidence Act

- The arbitral tribunal is **not bound** by the **Code of Civil Procedure, 1908** or the **Indian Evidence Act, 1872**.
- This allows for a **more flexible and efficient** dispute resolution process.

2. Freedom to Decide Procedure

- **Parties can mutually agree** on the procedure to be followed.
- If no agreement is reached, the **tribunal has full discretion** to conduct proceedings **as it deems appropriate**.

3. Tribunal's Power Over Evidence

- The tribunal has the authority to decide:
 - ✓ **Admissibility** of evidence.
 - ✓ **Relevance** and **materiality** of submissions.
 - ✓ **Weight** given to different pieces of evidence.

PROCEDURAL AUTONOMY IN ARBITRATION (SECTION 19)

1. Discretion Over Legal Procedures

- The **Code of Civil Procedure, 1908** and **Indian Evidence Act, 1872** **do not** automatically apply to arbitration.
- **Parties can decide** whether to follow these legal frameworks.
- **Tribunal has broad discretion** to determine procedure if parties fail to agree.

2. Procedural Autonomy & Arbitrator's Discretion

- **Parties have the right** to decide procedural rules.
- If no agreement is reached, the tribunal can **frame the procedure independently**.
- **Case Law: J. Kaikobad Vs. F. Khambatta (1930)**
 - ❖ Arbitrators are **not bound** by all provisions of the Evidence Act.
 - **However, they must adhere to natural justice**, ensuring:
 - ✓ Fair hearings for both parties.
 - ✓ Reasonable opportunity to present claims.

3. Flexibility in Evidence Rules

- Arbitrators **can accept oral evidence**, even if it is generally inadmissible under the Evidence Act.
- **Example:**
 - ✓ In an arbitration between A & B, the arbitrator may consider A's oral statement as evidence.
 - ✓ **Held:** This is valid under Section 19 since arbitration is not strictly bound by the Evidence Act.
- **Case Law: SREI Infrastructure Finance Ltd. Vs. Tuff Drilling Pvt. Ltd.**
 - ✓ Arbitral tribunals **can refer to fundamental principles** of CPC and Evidence Act.
 - ✓ However, they **are not required to apply them in full rigor**.

PLACE OF ARBITRATION (SECTION 20)

1. Importance of Place of Arbitration

- **Laws of the arbitration venue** play a critical role in arbitration proceedings.
- **Parties have autonomy** to decide the arbitration venue.
- If **no agreement is reached**, the **arbitral tribunal must decide** the place in a judicial manner, considering:
 - ✓ **Case circumstances**
 - ✓ **Convenience of the parties**

2. Key Considerations for Venue Selection

- **Arbitrator cannot fix the venue** based on personal preference.
- **Case Law: Jagson Airlines Ltd. Vs. Bannari Amman Exports (P.) Ltd.**
 - ✗ Holding arbitration in a different venue does **not invalidate an exclusive jurisdiction clause** in the contract.

- **Case Law: Aarka Sports Management Pvt. Ltd. Vs. Kalsi Buildcon Pvt. Ltd.**
 - ✓ **Parties can choose a neutral arbitration seat** even if no part of the cause of action arose there.
 - ✓ Once the seat is determined, **courts at that location have exclusive jurisdiction.**

3. Tribunal's Role in Venue Selection

- The tribunal can decide the venue **only if parties fail to agree.**
- The tribunal must **consider party's convenience** while selecting the location.
- **Example: Arbitrator's Office as Venue**
 - ✦ If an arbitrator unilaterally selects a venue without party agreement, they **must reconsider** if parties object.

4. Impact on Arbitral Award

- The **place of arbitration must be stated** in the arbitral award.
- The award is **legally deemed to be made at that place.**

LANGUAGE TO BE USED IN ARBITRAL PROCEEDINGS (SECTION 22)

1. Party Autonomy in Language Selection

- **Parties are free to decide** the language(s) for arbitral proceedings.
- If **no agreement is reached**, the **arbitral tribunal determines** the language(s).

2. Scope of Language Agreement

- The **chosen language applies to:**
 - ✓ Written statements
 - ✓ Hearings
 - ✓ Arbitral awards, decisions, and communications

3. Translation of Documents

- The tribunal may **require documentary evidence** to be translated into the agreed/determined language.
- Ensures that **all parties can fully understand the proceedings.**

4. Case Example: Tribunal Deciding Language

- If **parties disagree on the language**, the tribunal may choose a neutral language.
- **Example:**
 - ✓ A dispute between a **Tamil-speaking supplier** and a **Hindi-speaking buyer.**
 - ✓ The tribunal decided on **English**, which both parties agreed to.
 - ✓ All documents, hearings, and awards must be in **English only.**

STATEMENT OF CLAIM AND DEFENCE (SECTION 23)

1. Filing of Claims & Defence:

- The **claimant** must submit a **statement of claims** with supporting facts, issues, and relief sought.
- The **respondent** must file a **defence** and may include **counterclaims** or **set-off**, provided they fall within the arbitration agreement.

2. Supporting Evidence:

- Parties may **submit relevant documents** with their statements or provide references to evidence they plan to submit.

3. Amendments & Supplements:

- Amendments to claims/defences **are allowed** unless they cause **undue delay** or have a **malicious intent** that harms the other party.
- Tribunal may **reject amendments** if they violate prior **agreed deadlines** (e.g., Company X vs. Company Y case).

4. Time Limit for Filing:

- The **entire process** of submitting claims and defences **must be completed within six months** from the appointment of the arbitrator(s).

5. Judicial Observations:

- **Fair Trial Requirement:** Claims must include **all essential facts** to prevent surprise (Ram Sarup Gupta case).
- **Pleadings Without Full Details:** Statements **lacking full particulars** may be deemed irrelevant (Ramchandran case).
- **Tribunal's Discretion:** Amendments may be **disallowed** if **malicious intent** is proven (Manoharlal case).

HEARINGS AND WRITTEN PROCEEDINGS (SECTION 24)**1. Mode of Proceedings:**

- The **arbitral tribunal** decides whether to conduct **oral hearings** or rely solely on **written documents**, unless the parties have an agreement.
- If a party requests an **oral hearing**, the tribunal **must grant it**, unless the parties have **explicitly agreed** otherwise.

2. Oral Hearing Guidelines:

- Hearings should be conducted **on a day-to-day basis** to avoid unnecessary delays.
- **Adjournments** should be avoided unless there is a **valid reason**; if not, **costs or penalties** may be imposed.

3. Advance Notice & Communication:

- Sufficient **advance notice** must be given for any hearing or inspection of **documents, goods, or property**.
- All **statements, documents, and information** shared with the tribunal by one party **must be communicated** to the other party.
- **Expert reports and evidentiary documents** used by the tribunal must also be shared with both parties.

3. Judicial Precedents:

- In **ADV Consultants Vs. Pioneer Equity Trade (India) Pvt. Ltd**, it was held that if a party requests an **oral hearing**, the **arbitrator is obligated** to provide it.

4. Example Case:

- In a dispute between **Company A and Company B**, Company B requests an **oral hearing** to clarify **technical aspects**.
- The tribunal **assesses the necessity** and grants the request, allowing both parties to present **oral arguments** and **expert testimonies**.
- The decision enhances **clarity and fairness**, ensuring a **comprehensive resolution**.

DEFAULT OF PARTY (SECTION 25)➤ **Failure to Submit Claims/Defence:**

- ❖ If the **claimant** fails to **submit the statement of claim** without sufficient cause, the **arbitral tribunal may terminate the proceedings**.
- ❖ If the **respondent** fails to **submit the statement of defence**, the tribunal will **continue the proceedings**, but the failure **will not be treated as an admission** of the claimant's allegations.
- ❖ The tribunal has **discretion** to **forfeit** the respondent's right to submit a defence due to delay.

➤ **Failure to Appear or Produce Evidence:**

- ❖ If a party **fails to appear** at an **oral hearing** or **fails to provide documentary evidence**, the tribunal **may proceed with the case** and **make an award** based on the available evidence.

➤ **Judicial Precedents:**

- ❖ **NRP Projects Pvt. Ltd. Vs. Bharat Petroleum Corporation Ltd.:**
 - If the respondent does not file a defence, the claim **should not be automatically accepted**; the tribunal must **evaluate its merits** before making a decision.
- ❖ **Bharat Heavy Electricals Ltd. Vs. Jyothi Turbopower Services (2016):**
 - The claimant **can request the tribunal** to reconsider **termination of proceedings** if they can demonstrate a **valid reason** for their failure to file the claim on time.

➤ **Key Principle:**

- ❖ **Proceedings should not be terminated arbitrarily**; parties must be given a chance to show **sufficient cause** for delays.
- ❖ Even if a **party defaults**, the tribunal must ensure **fairness and due process** before making a decision.

APPOINTMENT OF EXPERTS (SECTION 26)

1. *Appointment of Experts by the Tribunal:*

- The arbitral tribunal may appoint one or more experts to report on specific issues.
- The tribunal may direct a party to provide experts with relevant information, documents, goods, or property for inspection.

2. *Expert's Role in Proceedings:*

- If requested by a party or deemed necessary by the tribunal, the expert must participate in an oral hearing after submitting a report.
- Parties can question the expert and present their own expert witnesses to provide alternative viewpoints.
- The expert must make available all materials used in preparing their report for examination by any party upon request.

3. *Limitations:*

- The tribunal cannot delegate the determination of the dispute to an expert; their role is advisory only.

4. *Judicial Precedent & Example:*

- In a construction dispute, if structural defects are a key issue, the tribunal may appoint a neutral structural engineer as an expert.
- The expert's report helps in accurate assessment, ensuring a fair decision while maintaining procedural fairness.

5. *Key Principle:*

- Expert involvement enhances technical clarity but does not replace the tribunal's decision-making authority.

COURT ASSISTANCE IN TAKING EVIDENCE (SECTION 27)

1. *Application for Court Assistance:*

- The **arbitral tribunal** or a **party (with tribunal's approval)** may apply to the court for **assistance in obtaining evidence**.
- The application must include:
 - ❖ Names & addresses of **parties and arbitrators**.
 - ❖ **Nature of the claim** and relief sought.
 - ❖ Details of the **evidence** required (witnesses, documents, or property for inspection).

2. *Court's Role in Evidence Collection:*

- The court may execute the request **within its competence** and in accordance with its rules.
- It may issue **summonses and commissions** for examination of witnesses or production of documents.
- **Failure to comply** (non-attendance, refusal to testify, contempt) results in **legal penalties**, similar to those in court trials.

3. *Judicial Precedents:*

- **Lilit Madhvan Vs. Building Committee (Delhi HC):**
 - ❖ The court can only assist in **recording evidence**, not direct its production.
 - ❖ Arbitrators **must not deny** a party's request to seek court assistance for witness summons.

4. *Key Principle:*

- The **arbitral tribunal cannot compel a witness** to appear but can use **court procedures** for enforcement.
- This ensures **effective cooperation** between arbitration and judicial mechanisms.

5. *Example:*

- In an **international arbitration** case, a tribunal **seeks court assistance** to obtain evidence from a foreign jurisdiction.
- The court issues an **order facilitating evidence collection**, ensuring a **fair resolution**.
- This highlights the **importance of cross-jurisdictional cooperation** in arbitration.

MAKING OF ARBITRAL AWARD & TERMINATION OF PROCEEDINGS

1. *Arbitral Award & Termination of Proceedings:*

- **Arbitral Award** is the final and binding decision of the arbitral tribunal, issued after a thorough examination of evidence, legal arguments, and applicable laws.
- **Termination of Proceedings** occurs when the tribunal issues its final decision, marking the **conclusion of the arbitration process** and bringing **closure to the dispute**.

2. *Nature of an Arbitral Award:*

- It is **similar to a court judgment** and resolves the dispute between the parties.
- Though not explicitly defined under the **Arbitration and Conciliation Act, 1996**, it represents the **final determination of claims/issues submitted for arbitration**.

3. *Types of Relief in an Arbitral Award:*

- **Injunction:** An order directing a party to **stop a specific action**.
- **Monetary Award:** Compensation or payment **based on the contract or dispute**.
- **Incentives:** The arbitrator may **encourage compliance** by adding incentives for certain behaviors.

GENERAL PRINCIPLES OF CHALLENGING AN ARBITRAL AWARD

1. *Who Can Challenge?*

- Only a **party to the arbitration agreement** can challenge an arbitral award.

2. *Authority to Challenge*

- **Domestic arbitration:** District Court or High Court with original jurisdiction.
- **International commercial arbitration:** High Court.

3. *Timeline for Challenge*

- Initial **3-month period** from the date of receipt of the award.
- Maximum **30-day extension** by the court (Consolidated Engineering Enterprises case).
- **No further extensions** allowed.

4. *Automatic Stay on Enforcement*

- No **automatic stay** on enforcement; a party must request a stay.
- Courts can impose conditions while granting a stay [Section 36(2) & (3)].
- If the award was induced by **fraud or corruption**, the court shall grant an **unconditional stay**.

TYPES OF ARBITRAL AWARDS

1. **Final Award:** Fully adjudicates all issues submitted for arbitration, meeting legal requirements (signature, reasoning, delivery).
2. **Interim Award:**
 - **Temporary:** Remains in force until the final award.
 - **Partial Finality:** Decides certain matters conclusively while other issues remain pending.
3. **Settlement Award:** When parties **mutually settle** their dispute, and the arbitrator records the terms of the settlement in an award [Section 30].
4. **Additional Award:** Issued when the tribunal **fails to resolve certain claims** from the original arbitration. Request must be made **within 30 days** of receiving the final award [Section 33(4)].

TYPES OF ARBITRAL AWARDS WITH EXAMPLES

1. *Final Award*

- **Definition:** A single, comprehensive award that resolves all disputes submitted to arbitration.
- **Example:** The arbitral tribunal adjudicates all four disagreements (a, b, c, d) between NMRC and NAMEPL, giving a reasoned decision. **No further adjudication is required.**

2. *Interim Award*

- **Definition:** An award that resolves some issues while others remain pending for future determination.
- **Example:** The tribunal issues **Award No.1**, covering disagreements (a), (b), and (c), while reserving disagreement (d) for a later decision.

3. *Additional Award*

- **Definition:** Issued when a final award unintentionally omits certain disputes that were submitted for arbitration.

- **Example:** The tribunal initially issues an award covering (a), (c), and (d), but **omits (b)**. Upon request, they issue a separate award addressing (b), making it an additional award.

4. Settlement Award

- **Definition:** When parties settle the dispute during arbitration, and the tribunal incorporates the settlement terms into an official award.
- **Example:** NMRC and NAMEPL reach a mutual settlement covering all disagreements and request the tribunal to formalize it as an arbitral award.

RULES APPLICABLE TO THE SUBSTANCE OF DISPUTE (SECTION 28)

1. Applicable Law Based on Type of Arbitration

- **Domestic Arbitration:** Disputes must be decided as per **Indian substantive law** in force.
- **International Commercial Arbitration:**
 - ✓ Tribunal must apply the **law designated by the parties** in the arbitration agreement.
 - ✓ If a country's legal system is chosen, it refers to its **substantive law** and **not** its conflict of laws.
 - ✓ If no law is designated, the tribunal applies laws it deems appropriate.

2. Ex Aequo et Bono (Equitable Principles)

- Tribunal can decide based on **justice and good conscience** rather than strict legal rules **only if expressly authorized by the parties**.

3. Contractual Terms & Trade Usages

- Tribunal must consider **contract terms** and **trade usages** relevant to the transaction when making an award.

DECISION-MAKING BY PANEL OF ARBITRATORS (SECTION 29)

1. Majority Rule in Decision-Making

- **Sole Arbitrator:** Makes all decisions independently.
- **Panel of Arbitrators:** Decisions are made by **majority vote** unless parties agree otherwise.
- Arbitrators can communicate and decide using **modern means** (e.g., telephone, fax, telex).

2. Decision on Procedural Matters

- Can be made by **all members** of the tribunal.
- **Presiding Arbitrator** can decide procedural questions **if authorized** by all parties.

3. Handling Differences in Opinion

- If arbitrators **disagree without a majority decision**, arbitration proceedings **may be terminated** as per Section 32.
- No **umpire system**, but courts (as in **RBI vs. S.S. Investment Ltd.**) may appoint an additional arbitrator if two arbitrators deliver conflicting awards.

TIME LIMIT FOR MAKING ARBITRAL AWARD (SECTION 29A)

1. Time Limit for Making an Award

- **Domestic Arbitration:** Award must be made within **12 months** from the completion of pleadings (as per Section 23(4)).
- **International Commercial Arbitration:** No fixed time limit, but efforts should be made to complete it within **12 months** from the completion of pleadings.

2. Early Completion Incentive

- If the award is made within **6 months** from the arbitral tribunal entering upon reference, arbitrators may receive **additional fees** as agreed by the parties.

3. Extension of Time

- **Parties can extend** the 12-month period by **up to 6 months** by mutual consent.
- If the award is not made within the original or extended time, the **arbitrator's mandate terminates** unless the **Court grants an extension** (before or after the expiry).
- If the delay is due to the arbitrators, the Court may **reduce their fees** by up to **5% per month of delay**, after giving them an opportunity to be heard.

4. Role of the Court in Extending Time

- Extension is granted **only for sufficient cause** on an application by any party.
- The Court may **substitute one or all arbitrators** if needed, and proceedings continue from where they left off.

5. Costs and Timely Disposal

- The Court can impose **actual or exemplary costs** on parties responsible for delays.

- Applications for extension should be disposed of within **60 days** from the date of service of notice on the opposing party.

6. Key Case Laws

- **Suryadev Alloys Case:** The Madras HC upheld an arbitral award made **after the court-fixed deadline**, stating that courts have wide discretion to extend the time.
- **ONGC Petro Additions Case:** The Court ruled that the **12-month time limit does not apply** to international commercial arbitrations seated in India.

FAST-TRACK ARBITRATION PROCEDURE (SECTION 29B)

The **Arbitration and Conciliation (Amendment) Act, 2015** introduced **Section 29B** to provide a **fast-track procedure** for arbitration. This allows parties to opt for an **expedited dispute resolution** process by mutual agreement.

1. Key Features of Fast-Track Procedure

- **Agreement Requirement:** Parties can opt for **fast-track arbitration** at any stage **before or at the time of appointment of the tribunal** through a written agreement.
- **Composition of Tribunal:** The tribunal **must consist of a sole arbitrator**, chosen by mutual agreement of the parties.

2. Fast-Track Arbitration Process

- **No Oral Hearings:** The dispute is decided based **only on written pleadings, documents, and submissions**.
- **Additional Information:** The tribunal may **request clarifications** or additional documents if required.
- **Limited Oral Hearings:** Held **only if all parties request it** or if the tribunal deems it necessary.
- **Flexible Procedure:** The tribunal can **dispense with technical formalities** and adopt an **appropriate procedure** for quick disposal.

3. Timeframe for Award

- The **award must be made within 6 months** from the date the tribunal enters reference.
- If the award is not made within this period, the provisions of **Section 29A (time extension, fee reduction, arbitrator substitution, etc.)** apply.

4. Fees and Costs

- The **fees of the arbitrator** and **payment terms** are to be mutually decided between the arbitrator and the parties.

5. Example

- If parties opt for **fast-track arbitration on 10.06.2022**, the award **must be made by 10.12.2022**.
- If not completed within this time, the case **defaults to normal arbitration procedure** under **Section 29A**.

SETTLEMENT IN ARBITRATION (SECTION 30)

1. Encouragement of Settlement

- An **arbitral tribunal** can **encourage settlement** at any stage of the proceedings.
- The tribunal may use **mediation, conciliation, or other methods** with party consent.

2. Settlement During Arbitration

- If parties **reach a settlement**, the tribunal **terminates proceedings**.
- The settlement can be **recorded as an arbitral award** if:
 - ✓ **Both parties request it**, and
 - ✓ **The tribunal does not object** to it.

3. Legal Status of Settlement Award

- The **award must comply with Section 31** and explicitly state that it is an **arbitral award**.
- A **settlement award has the same legal status and enforceability** as any other arbitral award.

4. Tribunal's Right to Reject Settlement

- The tribunal can **refuse to record a settlement** if:
 - ✗ The terms **violate public policy in India**.
 - ✗ The terms settlement is **fraudulent, unfair, or coerced, etc.**,

5. Judicial Interpretation

- **Harendra H. Mehta vs. Mukesh H. Mehta:** The Supreme Court held that a **settlement reached during arbitration does not revoke the arbitration agreement**.
- A **settlement award remains a valid arbitral award**.

6. Example

- **Raja and Ravi** had a dispute over **quality of consumer goods**.
- Arbitration proceedings started under **Arbitrator Saurabh**.

- During arbitration, both **agreed to settle** and requested **termination** of proceedings.
- The arbitrator could **reject the request** if the settlement involved **fraud, unfair terms, or public policy violations**.

FORM AND CONTENTS OF ARBITRAL AWARD (SECTION 31)

1. Essentials of an Arbitral Award:

- Must be **in writing** and **signed** by arbitrators.
- If there are multiple arbitrators, a **majority signature** suffices, but the reason for any omitted signature must be stated.
- Must include **reasons for the award**, unless:
 - ✓ Parties have agreed otherwise, or
 - ✓ The award is based on a **settlement under Section 30**.
- Should mention the **date and place** of arbitration, which is deemed to be the place where the award is made.
- A **signed copy must be delivered** to each party.

2. Additional Provisions:

- An **interim award** can be made on any matter where a final award is possible.
- The tribunal can award **interest**:
 - ✓ Pre-award interest at a **reasonable rate** unless otherwise agreed.
 - ✓ Post-award interest at **2% higher** than the prevailing interest rate.
 - ✓ If the contract explicitly bars interest, the arbitrator **cannot** award interest (as per *Sree Kamatchi Amman Constructions case*).
- **Arbitration costs** are determined as per **Section 31A**.

3. Judicial Precedents:

- *Dwarka Das vs. India Engineering*: An arbitral award must not only be written but also **signed** by the arbitrators.
- *Raipur Development Authority vs. Chokhamol Contractors*: The arbitrator must provide **reasons** for the award unless parties have agreed otherwise.
- *Sree Kamatchi Amman Constructions case*: If the contract bars interest, arbitrators cannot award interest for the pre-award period or during litigation.

4. Example:

- If an arbitral award is signed by only **two out of three arbitrators** without mentioning the reason for the missing signature, the award is **invalid** as per **Section 31(2)**.

REGIME FOR COSTS (SECTION 31A)

1. Discretion to Award Costs:

- The **Court or arbitral tribunal** has the discretion to decide:
 - ✓ **Who** pays costs.
 - ✓ **How much** costs should be paid.
 - ✓ **When** costs should be paid.
- **Costs include**:
 - ✓ Arbitrators', courts', and witnesses' fees/expenses.
 - ✓ Legal fees and administrative expenses.
 - ✓ Any other expenses incurred in arbitration or court proceedings.

2. General Rule for Costs:

- **Unsuccessful party** generally bears the costs of the **successful party**.
- The tribunal may order differently, but must **record reasons in writing**.

3. Factors Considered When Determining Costs:

- **Conduct** of the parties.
- **Partial success** of a party in the case.
- **Frivolous claims** causing delays.
- **Refusal of reasonable settlement offers**.

4. Types of Cost Orders:

The tribunal may order a party to pay:

- A **proportion** of another party's costs.
- A **fixed amount** as costs.
- Costs **only up to a certain date**.

- Costs incurred before proceedings began.
- Costs for **specific steps** or **parts of the proceedings**.
- **Interest** on costs from a certain date.

5. Validity of Cost Agreements:

- Any agreement requiring a party to bear all arbitration costs is **valid only if made after the dispute arises**.

TERMINATION OF PROCEEDINGS (SECTION 32)

1. Modes of Termination:

Arbitral proceedings end by:

- **Final arbitral award**, or
- **Order of the tribunal** under Section 32(2).

2. Grounds for Termination by Tribunal:

The tribunal may terminate proceedings if:

- **Claimant withdraws the claim**, unless the respondent objects and has a legitimate interest in a final settlement.
- **Parties mutually agree** to terminate proceedings.
- **Proceedings become unnecessary or impossible** due to exceptional circumstances.

3. Effect of Termination:

- The **mandate of the tribunal ends** once proceedings are terminated, subject to Sections 33 and 34(4).
- Once proceedings are terminated under **Section 32(2)(c)**, they **cannot be revived** (Sai Babu v. Clariya Steels, 2019).

4. Key Differences from the Arbitration Act, 1940:

- The **1940 Act** had no provision for termination of proceedings.
- The **1996 Act (Section 32)** introduced **clear termination provisions**, ensuring procedural efficiency.

CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD (SECTION 33)

1. Functions of Arbitral Tribunal Under Section 33:

The tribunal can:

1. **Correct errors** (computational, clerical, typographical, or similar).
2. **Interpret the award** if parties request clarification on a specific point.
3. **Issue an additional award** for claims presented but omitted in the original award.

2. Time Limits for Requests:

- A party must **request corrections, interpretations, or an additional award within 30 days** of receiving the arbitral award (unless agreed otherwise).
- The tribunal must respond **within 30 days** (for corrections or interpretations) and **within 60 days** (for an additional award).

3. Tribunal's Discretion:

- The tribunal may **correct errors on its own within 30 days** of issuing the award.
- It may **extend the time period** for corrections, interpretations, or additional awards under extraordinary circumstances.

4. Compliance with Section 31:

- Any correction, interpretation, or additional award must adhere to **Section 31** (Form and Contents of Arbitral Award).

RECOURSE AGAINST ARBITRAL AWARD (SECTION 34)

1. Application for Setting Aside an Arbitral Award:

- A party may apply to the **court within three months** of receiving the award (extendable in exceptional cases).
- The court reviews the application based on specific **grounds for setting aside** the award.

2. Grounds for Setting Aside an Arbitral Award:

(A) Grounds Requiring a Party's Application:

1. **Incapacity** – If a party lacked legal capacity or the arbitration agreement is invalid.
2. **Violation of Due Process** – If a party was not given proper notice or was unable to present its case.
3. **Jurisdiction Issues** – If the tribunal exceeded its jurisdiction or acted against the arbitration agreement.

(B) Grounds Where No Party Application Is Required:

1. **Non-Arbitrability** – If the subject matter is not legally capable of being settled through arbitration.
2. **Against Public Policy** – If the award violates Indian public policy.

3. Judicial Interpretation:

- **Sanjay Madan Vs. National Insurance Co.** – Section 34 of the 1996 Act does not apply if the 1940 Act is in force.
- **Tata Hydro-Electric Power Co. Vs. Union of India** – Courts cannot set aside an award **just because they would have ruled differently**, but can do so if the arbitrator acted **illegally** (e.g., relying on inadmissible evidence).

FINALITY & ENFORCEMENT OF ARBITRAL AWARDS (SECTIONS 35 & 36)

1. Finality of Arbitral Award (Section 35)

- An **arbitral award is final and binding** on the parties and their legal successors.
- Once the period for setting aside the award under **Section 34 (3 months + possible extension)** expires, the award **cannot be challenged**.
- **Case Law: R.K. Textiles Vs. Sulabh Textiles Ltd.** – A final award can only be challenged on **jurisdictional grounds**, not otherwise.

2. Enforcement of Arbitral Awards (Section 36)

- An arbitral award is enforced **as a decree of the court** under the **Code of Civil Procedure, 1908**.
- If no application under **Section 34** is made within the prescribed time, the award becomes enforceable.

Key Provisions for Enforcement:

1. **Filing for Enforcement** – The award is filed in the court within the jurisdiction where the subject matter/assets are located.
2. **Stay of Enforcement** – If a party files an application under **Section 34** to set aside the award, the award remains **enforceable unless** the court grants a **stay order**.
3. **Conditions for Stay** – A court may stay enforcement based on conditions, including:
 - ✓ **Fraud or Corruption** – If the arbitration agreement or award was obtained by fraud or corruption, the court **must grant an unconditional stay**.
 - ✓ **Other Grounds** – Incapacity, invalid arbitration agreement, procedural irregularities, etc.

3. Importance of Section 36

- Ensures that **arbitral awards are treated with the same authority as court decrees**.
- Prevents unnecessary delays in execution by limiting the grounds for refusal of enforcement.
- Strengthens the **finality and credibility of arbitration** as an alternative dispute resolution mechanism.

CHAPTER – III

ENFORCEMENT OF CERTAIN FOREIGN AWARDS

ARBITRATION AND ITS TYPES

Arbitration is a private dispute resolution process where parties appoint a neutral arbitrator or panel for decision-making. It is legally binding, flexible, and commonly used in international disputes. The types of arbitration include:

- Ad-hoc Arbitration
- Institutional Arbitration
- Domestic Arbitration
- International Arbitration
- Contractual Arbitration
- Statutory Arbitration
- Fast Track Arbitration
- Foreign Arbitration

1. AD-HOC ARBITRATION

- ❖ Parties manage the arbitration independently without an institution's involvement.
- ❖ Offers greater flexibility in procedural rules, arbitrator selection, and administration.

Features Of Ad-Hoc Arbitration

1. **Selection of Arbitrator** – Parties choose their arbitrators by mutual agreement.
2. **Procedural Rules** – Parties determine their arbitration rules, within legal limits.
3. **Administration** – Parties handle all administrative tasks, including hearings and communication.
4. **Flexibility** – The process can be tailored based on dispute complexity.
5. **Cost** – More cost-effective than institutional arbitration due to no administrative fees.
6. **Enforceability** – Awards are enforceable under national and international laws.
7. **Expertise of Arbitrator** – Arbitrators can be chosen based on subject-matter expertise.
8. **Confidentiality** – Parties control confidentiality provisions for the proceedings.

2. INSTITUTIONAL ARBITRATION

Institutional arbitration refers to a dispute resolution process where parties agree in advance to resolve disputes through an established arbitration institution. These institutions provide procedural rules, administrative support, and a roster of arbitrators, ensuring a structured process.

Features of Institutional Arbitration

1. **Administration** – The institution manages case proceedings, communication, and hearings.
2. **Procedural Rules** – A set of standardized rules ensures consistency and fairness.
3. **Appointment of Arbitrator** – Institutions provide a list of qualified arbitrators or appoint them based on specific rules.
4. **Support of Institution** – Handles case management, document submission, and record-keeping.
5. **Impartiality** – Ensures neutrality and credibility in arbitration proceedings.
6. **Costs and Fees** – Higher than ad-hoc arbitration due to administrative and arbitrator fees.
7. **Confidentiality** – Institutions often include provisions to maintain confidentiality.

COMPARISON: AD-HOC VS. INSTITUTIONAL ARBITRATION

| Basis | Ad-Hoc Arbitration | Institutional Arbitration |
|---------------------------|--|---|
| Appointment of Arbitrator | Parties appoint arbitrators independently. | Institution is involved in the appointment process. |
| Selection Process | Determined in arbitration agreement | Institution follows structured appointment rules. |
| Rules and Procedures | Flexible; decided by parties | Governed by standardized institutional rules |
| Administration & Support | Managed by the parties themselves. | Institution handles administrative tasks. |
| Arbitration Fees | Controlled by parties; generally lower. | Institution charges fees for services. |
| Arbitration Costs | Lower but depends on case complexity. | Higher but ensures efficiency in the long run. |

3. DOMESTIC ARBITRATION

Domestic arbitration refers to arbitration proceedings conducted in India, where both parties are Indian, and Indian substantive and procedural law applies. Though not explicitly defined in the **Arbitration and Conciliation Act, 1996**, Sections 2(2) and 2(7) suggest that such arbitration must take place within India.

Key Features of Domestic Arbitration:

1. **Rules and Regulations** – Governed by Indian arbitration laws and procedural statutes.
2. **Flexibility in Procedure** – Parties have autonomy to decide arbitration rules, arbitrators, and scope.
3. **Arbitration Agreement** – A valid arbitration agreement is essential, specifying arbitration as the dispute resolution method.
4. **Selection of Arbitrator** – Parties can choose arbitrators, defining their qualifications and appointment methods.
5. **Powers of Tribunal** – The arbitral tribunal makes procedural decisions, evaluates evidence, and renders awards.
6. **Awards** – Enforceable like court judgments, governed by national laws.
7. **Confidentiality** – Arbitration proceedings and documents remain private.
8. **Cost Effectiveness** – Generally more efficient and cost-effective than litigation.
9. **Expertise of Arbitrator** – Allows selection of arbitrators with subject-matter expertise.
10. **Informal Process** – Less formal than court litigation, ensuring quicker and more adaptable dispute resolution.

INTERNATIONAL ARBITRATION

International arbitration occurs when at least one party is domiciled or resident outside India or when the dispute relates to a subject matter outside India. It is a preferred method for resolving cross-border disputes.

Key Features of International Arbitration:

1. **Parties** – Involves parties from different countries or international transactions.
2. **Arbitration Agreement** – Requires a valid agreement specifying arbitration as the dispute resolution method in international contracts.
3. **Impartial Forum** – Provides a neutral venue, avoiding potential biases of national courts.
4. **Autonomy** – Parties can choose the governing law for the dispute, ensuring flexibility.
5. **Ad hoc or Institutional** – Can be conducted either independently (ad hoc) or under an institution's established rules.
6. **Selection of Arbitrator** – Parties can choose arbitrators with international legal expertise.
7. **Confidentiality** – Includes provisions to protect sensitive business information and maintain privacy.
8. **Cultural Sensitivity** – Recognizes different legal traditions and business practices, fostering inclusivity.
9. **Witnesses & Experts** – Allows expert witnesses to clarify technical or industry-specific matters.
10. **Limited Grounds for Challenge** – Awards are final and binding, with minimal scope for appeal.
11. **Cost-Effective** – Often more economical than litigation, though costs vary with case complexity.

CONTRACTUAL ARBITRATION

Contractual arbitration occurs when parties include an arbitration clause in their contract, agreeing in advance to resolve future disputes through arbitration instead of litigation.

Key Features of Contractual Arbitration:

1. **Arbitration Clause** – A clause in the contract reflecting mutual consent for arbitration.
2. **Freedom of Parties** – Parties can tailor arbitration details like arbitrator selection, rules, and venue.
3. **Selection of Arbitrator** – Parties choose arbitrators based on required expertise.
4. **Rules of Arbitration** – Can follow institutional rules or adopt an ad hoc approach.
5. **Confidentiality** – Agreements may include provisions to safeguard sensitive information.
6. **Enforceability of Awards** – Arbitration awards are legally binding and enforceable like court judgments.
7. **Speedy Resolution** – Arbitration ensures faster dispute resolution compared to litigation.
8. **Procedural Flexibility** – Parties can customize the arbitration process based on contractual requirements.

STATUTORY ARBITRATION

Statutory arbitration is a mandatory form of arbitration imposed by law, where parties have no choice but to comply. Unlike other types of arbitration, party consent is not required, making it legally binding.

Key Features of Statutory Arbitration:

1. **Basis of Law** – Governed by specific legislation that defines procedures and rules.
2. **Requirements** – Statutory provisions dictate the validity of arbitration agreements, including notice and language requirements.
3. **Types of Disputes** – The law specifies which disputes qualify for statutory arbitration.
4. **Selection of Arbitrator** – Laws determine arbitrator qualifications and the appointment process.
5. **Specific Expertise** – Certain cases require arbitrators with subject-specific expertise.
6. **Confidentiality** – Some statutes include provisions to maintain confidentiality in arbitration proceedings.
7. **Cost-Effective** – Designed as an efficient and economical alternative to court litigation.

FAST TRACK ARBITRATION

As per Section 29B of the **Arbitration and Conciliation (Amendment) Act, 2015**, parties may agree in writing to resolve disputes through a **fast-track procedure**. It is a **time-bound** arbitration process, typically concluding within six months, commonly used for trade-related matters.

Key Features of Fast Track Arbitration

1. **Accelerated Process** – Faster and more efficient than regular arbitration.
2. **Limited Document Requirements** – Focuses only on key documents to expedite resolution.
3. **Simple Procedure** – Streamlined process with reduced formalities.
4. **Limited Hearings** – Fewer and shorter hearings; witness and expert testimonies are minimal.
5. **Selection of Arbitrator** – Priority is given to arbitrators experienced in expedited cases.
6. **Short Timeline** – Compressed schedule compared to standard arbitration.
7. **Cost-Effective** – Reduces costs through simplified procedures and shorter timelines.
8. **Final & Binding Awards** – Awards are enforceable with limited grounds for challenge.
9. **Flexibility** – Some procedural modifications are allowed based on party agreements.

FOREIGN ARBITRATION

Foreign arbitration refers to arbitration proceedings conducted **outside India**, resulting in a **foreign award** that may require enforcement under international arbitration laws.

TYPES OF ARBITRAL AWARDS

1. Ad hoc Arbitral Awards

- Issued in **ad hoc arbitrations**, where parties manage proceedings without an arbitration institution.
- Effectiveness depends on **party cooperation** and adherence to agreed procedures.

2. Domestic Arbitral Awards

- Issued in arbitration proceedings **within a single country** and governed by its laws.
- Enforceable **within the national legal system** and subject to domestic regulations.
- May be recognized internationally under conventions like the **New York Convention**.

INTERNATIONAL COMMERCIAL AWARDS

International commercial arbitral awards arise from arbitration involving parties from different countries, typically in **cross-border business transactions**. This method is preferred over litigation in national courts for its neutrality and enforceability.

Key Features of International Commercial Awards:

1. **Applicable Law** – Governed by an agreed legal framework, often international in scope.
2. **Arbitration Agreement** – Includes key details like arbitrator selection, procedural rules, and seat of arbitration.
3. **Appointment of Arbitrator** – Arbitrators with diverse expertise are often appointed, sometimes by institutions like ICC or LCIA.
4. **Enforcement** – Awards are enforceable across **160+ countries** under the **New York Convention**.
5. **Arbitral Procedural Rules** – Flexible rules tailored to the dispute, balancing efficiency and formality.

6. **Cost & Time Effectiveness** – More cost-efficient than multi-jurisdictional litigation, though costlier than domestic arbitration.
7. **Confidentiality** – Protects sensitive business information while ensuring fairness.

ENFORCEMENT OF FOREIGN AWARDS

The **Arbitration and Conciliation Act, 1996** modified provisions from earlier laws, namely the **Foreign Awards (Recognition and Enforcement) Act, 1961** and the **Arbitration (Protocol and Convention) Act, 1937**, to streamline the enforcement of foreign awards.

Key Modifications in the 1996 Act

1. Changes to the 1961 Act (New York Convention Awards):

- **Section 45** – Modifies **Section 3** of the 1961 Act, dealing with **stay of proceedings** for arbitration matters.
- **Section 49** – Introduced to govern **enforcement of foreign awards**, replacing sections 4(1), 5, and 6 of the 1961 Act.
- **Section 50** – Covers **appeals** against orders made under **Sections 45 & 48**.

2. Changes to the 1937 Act (Geneva Convention Awards):

- **Section 54** – Modifies **Section 3** of the 1937 Act, also dealing with **stay of proceedings**.
- **Section 58** – Governs **enforcement of foreign awards**, replacing sections 4(1), 5, and 6 of the 1937 Act.
- **Section 59** – Addresses **appeals** against orders made under **Sections 54 & 57**.

These modifications align Indian law with international conventions, improving the enforceability of foreign arbitral awards.

NEW YORK CONVENTION AWARDS (CHAPTER I, PART II, ARBITRATION AND CONCILIATION ACT, 1996) DEFINITION OF FOREIGN AWARD (SECTION 44)

A **foreign award** is an arbitral award resulting from disputes arising out of **commercial legal relationships**, whether **contractual or non-contractual**, made **on or after October 11, 1960**, and fulfilling the following conditions:

- **Arbitration agreement** must be in writing and covered under the **New York Convention** (First Schedule).
- The arbitration must occur in a **reciprocating territory** notified by the **Central Government**.

Essential Elements of Foreign Arbitration (Serajuddin Vs. Michael Golodetz - Calcutta HC)

For an arbitration to be classified as **foreign arbitration**, it must involve:

1. **Foreign arbitrator** conducting proceedings in a **foreign country**.
2. **Application of foreign laws**.
3. **Involvement of foreign nationals** as parties.

Key Judicial Interpretation (NTPC Vs. Singer Company - Supreme Court)

- If an **interim arbitral award** is made in a **foreign country** but governed by **Indian laws**, it does **not** qualify as a **foreign award**.
- Instead, it is considered a **domestic award**, subject to Indian arbitration laws.

This ensures that arbitration classification depends not just on location but also on the governing **substantive and procedural laws**.

POWER OF JUDICIAL AUTHORITY TO REFER PARTIES TO ARBITRATION (SECTION 45)

- Judicial authority **must** refer parties to arbitration if there is a **valid arbitration agreement** (as per Section 44), at the request of one of the parties.
- However, referral is **not mandatory** if the agreement is found to be **null, void, inoperative, or incapable of being performed**.
- **SC in Renusagar Power Co Ltd. Vs. General Electric Company**: The term "**shall**" in Section 45 signifies that the court **must** refer disputes to arbitration if conditions are met.
- **Court cannot refer parties to arbitration suo-motu**, except where it has jurisdiction over the matter.
- **Goyal MG Gases Ltd. Vs. Griesheim GMBH**: Judicial authority **must** refer parties to arbitration **if a valid agreement exists** under Section 44.

BINDING NATURE OF FOREIGN AWARDS (SECTION 46)

- **Foreign awards enforceable under this Chapter are binding** between the parties involved.
- These awards can be relied upon as **defense, set-off, or in any legal proceedings in India.**
- **Based on Article III of the New York Convention**, ensuring international enforceability.
- Establishes that **foreign awards are equivalent to domestic judgments** for enforcement purposes.

EVIDENCE FOR ENFORCEMENT OF FOREIGN AWARDS (SECTION 47)

Required Documentary Evidence

A party seeking enforcement of a **foreign award** must submit the following to the Court:

1. **Original award or an authenticated copy**, as per the law of the country where it was made.
2. **Original arbitration agreement or a certified copy.**
3. **Evidence proving that the award qualifies as a "foreign award."**

Translation Requirement

- If the award or arbitration agreement is in a **foreign language**, an **English translation** must be provided.
- The translation must be **certified by a diplomatic/consular agent** or as per Indian legal requirements.

Court's Role & Flexibility

- The High Court with **original jurisdiction** or appellate jurisdiction has the authority to enforce foreign awards.
- Parties **may fulfil documentary requirements even during proceedings**, not necessarily at the time of application.

Key Case Law

- **M/s Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.:**
 - ❖ Foreign awards issued **after** the commencement of the **1996 Act** can only be enforced under this Act, even if arbitration started before 1996.

CONDITIONS FOR ENFORCEMENT OF FOREIGN AWARDS (SECTION 48)

Grounds for Refusal of Enforcement

A court may **refuse** enforcement if the opposing party proves that:

1. **Incapacity or Invalid Agreement:** The parties lacked legal capacity, or the arbitration agreement was invalid under applicable law.
2. **Lack of Due Process:** The opposing party was not properly notified of the arbitration or was unable to present their case.
3. **Award Beyond Scope:** The award covers disputes beyond the arbitration agreement, though separable valid parts may still be enforced.
4. **Improper Arbitral Procedure:** The tribunal's composition or arbitration process was not as per the agreement or local laws.
5. **Non-Binding or Set Aside Award:** The award is not yet binding, or has been annulled/suspended by a competent authority.

Public Policy and Legal Constraints

The court may also refuse enforcement if:

1. The **dispute is not arbitrable** under Indian law.
2. Enforcement **violates India's public policy**, which includes:
 - Fraud or corruption in making the award.
 - Contravention of fundamental Indian legal principles.
 - Conflict with basic morality or justice.

Court's Discretion in Pending Set-Aside Proceedings

- If an application to set aside/suspend the award is pending in the issuing country, the Indian court may:
 - **Adjourn enforcement proceedings.**
 - Require the enforcing party to **provide security** from the opposing party.

CONDITIONS FOR ENFORCEMENT OF FOREIGN AWARDS (SECTION 48)

Grounds for Refusal of Enforcement (Section 48(1))

A foreign award may be refused enforcement **if the opposing party proves** any of the following:

1. **Incapacity or Invalid Agreement:**

- Parties were under legal incapacity.
- The arbitration agreement was invalid under the applicable law or the law of the country where the award was made.
- 2. **Lack of Due Process (Natural Justice):**
 - The party was not given proper notice of arbitrator appointment or arbitration proceedings.
 - The party was unable to present their case.
- 3. **Award Beyond Scope:**
 - The award includes decisions beyond the arbitration agreement.
 - However, separable valid parts may still be enforced.
- 4. **Improper Arbitral Procedure:**
 - The arbitral authority's composition or procedure did not comply with the agreement or local laws.
- 5. **Non-Binding or Set-Aside Award:**
 - The award has been annulled or suspended by a competent authority.
 - The award has not yet become binding.

Additional Grounds for Refusal (Section 48(2))

A court may also refuse enforcement if:

- The **subject matter** is non-arbitrable under Indian law.
- **Public policy** of India is violated, defined as:
 - Fraud or corruption influenced the award.
 - The award violates the **fundamental policy of Indian law**.
 - The award conflicts with **basic morality or justice**.
 - Courts cannot **re-examine the merits** of the dispute.

Court's Discretion in Pending Set-Aside Proceedings (Section 48(3))

- If an application is made to set aside/suspend the award, the Indian court **may adjourn enforcement**.
- The court **may require security** from the enforcing party.

Judicial Interpretation

- **Perfint Healthcare Pvt. Ltd. Vs. California Institute of Computer:** The burden is on the opposing party to prove non-enforceability under Section 48.
- **Glencore Grain Rotterdam B.V. Vs. Shivnath Rai Harnarain (India):** The opposing party must request refusal and provide proof before the court.

ENFORCEMENT OF FOREIGN AWARDS (SECTION 49)

- The court must be **satisfied** that the foreign award is enforceable under this chapter.
- Once satisfied, the **foreign award is deemed a decree of the court**.

APPEALABLE ORDERS (SECTION 50)

- **Appeal is allowed** if a court refuses to:
 1. Refer parties to arbitration (Section 45).
 2. Enforce a foreign award (Section 48).
- **No second appeal** is permitted.
- However, an **appeal to the Supreme Court** is allowed under constitutional provisions.

SAVING CLAUSE (SECTION 51)

- This Chapter **does not limit or prejudice** any pre-existing rights to enforce or benefit from foreign awards in India.

EXCLUSION OF CHAPTER II (SECTION 52)

- **Foreign awards under Chapter I** (New York Convention Awards) **are not governed by Chapter II** (Geneva Convention Awards).

GENEVA CONVENTION AWARDS – CHAPTER II OF PART II OF THE ARBITRATION AND CONCILIATION ACT, 1996

Definition of Foreign Award (Section 53)

- A **foreign award** under this chapter is an arbitral award on commercial matters (as per Indian law) made **after July 28, 1924**.
- The award must be:
 1. **Based on an arbitration agreement** governed by the Geneva Protocol (Second Schedule).
 2. **Between parties from countries** that India recognizes as having reciprocal provisions (declared by the Central Government).
 3. **Made in a territory** declared by the Central Government to be governed by the Geneva Convention (Third Schedule).
- A foreign award is **not considered final** if its validity is still being contested in the country where it was made.

This section is based on **Article 1 of the Geneva Protocol, Article 1(1) of the Geneva Convention, and Section 2 of the 1937 Act**.

POWER OF JUDICIAL AUTHORITY TO REFER PARTIES TO ARBITRATION (SECTION 54)

- Overrides conflicting provisions in **Part I of the Act** or **Code of Civil Procedure, 1908**.
- Based on **Article 4 of the Geneva Protocol**.
- A judicial authority must refer the parties to arbitration if:
 1. The dispute relates to a **contract** covered under **Section 53**.
 2. The contract includes a **valid arbitration agreement** (for present or future disputes).
 3. A party to the arbitration agreement (or someone claiming under them) **applies** for reference.
 4. The arbitration agreement is **valid, operative, and capable of being performed**.
- The judicial authority retains competence if the agreement **becomes inoperative** or arbitration **fails**.
- No **time limit** is prescribed; referral depends on **judicial discretion** and case circumstances.

BINDING NATURE OF FOREIGN AWARDS (SECTION 55)

- Based on **Article 11(1) of the Geneva Convention**.
- Any **enforceable foreign award** under Chapter II is **binding** between the parties.
- The award can be used as:
 - ✓ **Defense**
 - ✓ **Set-off**
 - ✓ **Basis for legal proceedings in India**.
- References to **enforcing a foreign award** include **relying on it** in legal matters.

BINDING NATURE OF FOREIGN AWARDS (SECTION 55)

- Based on **Article 11(1) of the Geneva Convention**.
- Foreign awards **enforceable under Chapter II** are **binding** between the parties.
- Such awards can be used as:
 - **Defense**
 - **Set-off**
 - **Basis for legal proceedings in India**.
- Enforcement includes **relying on the award** in legal matters.

EVIDENCE REQUIRED FOR ENFORCEMENT (SECTION 56)

- Based on **Article 4 of the Geneva Convention** and **Section 8 of the 1937 Act**.
- Party seeking enforcement must produce before the Court:
 1. **Original or authenticated copy of the award** (as per the law of the country where it was made).
 2. **Proof that the award is final**.
 3. **Evidence to fulfill conditions under Section 57(1)(a) and (c)**.
- If the award is in a **foreign language**, a **certified English translation** must be provided.
- The **High Court** has jurisdiction over enforcement matters.

CONDITIONS FOR ENFORCEMENT OF FOREIGN AWARDS (SECTION 57)

- Based on **Articles 1 & 2 of the Geneva Convention** and **Section 7 of the 1937 Act**.
- **Key conditions for enforcement:**
 1. **Valid arbitration agreement** under applicable law.
 2. **Dispute is arbitrable** under Indian law.
 3. **Award made by a properly constituted tribunal** as per agreed terms.
 4. **Finality** of the award (i.e., not subject to appeal or opposition).
 5. **Not against public policy of India** (e.g., fraud, corruption, fundamental policy violations).
- **Court must refuse enforcement if:**
 1. The **award is annulled** in the country where it was made.
 2. The party **was not given sufficient notice** or was legally incapacitated.
 3. The award **exceeds the scope of arbitration**.
- **Court has discretionary power to:**
 - **Postpone enforcement** or require a guarantee if some matters remain unresolved.
 - **Refuse or adjourn enforcement** if additional valid objections are raised.
- **Case Law:** *Societa Anonmina v. Gorakharam Gokalchand* – If the contract is illegal, the award given under its arbitration clause is **not enforceable**.

ENFORCEMENT OF FOREIGN AWARDS (SECTION 58)

- Based on **Article 1(1) of the Geneva Convention** and similar to **Section 49** of the Act.
- A **foreign award is deemed a decree of the Court** once the Court is **satisfied** that it is enforceable.
- The Court must not just form an opinion but be **fully convinced** about its enforceability.

APPEALABLE ORDERS (SECTION 59)

- Appeals can be filed against orders **refusing:**
 1. **Reference to arbitration** under Section 54.
 2. **Enforcement of a foreign award** under Section 57.
- **No second appeal** is allowed against such orders.
- However, the right to **appeal to the Supreme Court** remains intact.

SAVING CLAUSE (SECTION 60)

- Ensures that **existing rights** to enforce or benefit from an award **remain unaffected** by Chapter II.
- Chapter II **does not limit or weaken** any prior rights to enforce foreign awards in India.

CHAPTER – IV

CONCILIATION

CONCILIATION

Conciliation is an Alternative Dispute Resolution (ADR) method that avoids the adversarial nature of arbitration. It focuses on mutual agreement and relationship rebuilding through facilitated communication by a neutral third party, the **conciliator**.

Characteristics

1. **Voluntary** – All parties must agree to participate; no coercion is allowed. Without mutual consent, conciliation cannot proceed. (*Afcons Infrastructure Ltd. Vs. Cherian Varkey Construction Co. (P) Ltd.*, JT 2010 (7) SC 616).
2. **Non-Adversarial** – Unlike arbitration, conciliation aims for a win-win solution rather than a win-loss outcome.
3. **Assisted Procedure** – The conciliator helps structure the process, facilitating discussions and information sharing for amicable resolution.
4. **Finality of Settlement** – The agreed settlement is **final and binding** on both parties.
5. **Confidentiality** – All proceedings remain confidential. Any information shared with the conciliator is disclosed only if permitted by the disclosing party.

Conciliation ensures **flexibility, voluntary participation, and relationship preservation**, making it an effective ADR method.

CONCILIATION IN INDIA

Legal Framework

Conciliation in India is governed by:

- **Part III (Sections 61-81) of the Arbitration and Conciliation Act, 1996**
- **Section 89 of the Code of Civil Procedure, 1908**

Application & Scope (Section 61)

1. **General Applicability** – Conciliation applies to disputes arising from any legal relationship, whether contractual or non-contractual.
2. **Voluntary Nature** – Parties are free to **accept or reject** conciliation unless required by law.
3. **Legal Restrictions** – If a law prohibits conciliation for certain disputes, **Part III of the Act will not apply**.

Conciliation is a **flexible, legally recognized** ADR method, but it cannot be used where explicitly restricted by law or mutual party agreement.

COMMENCEMENT OF CONCILIATION PROCEEDINGS

SECTION 62 – INITIATION OF CONCILIATION

1. **Written Invitation** – The party initiating conciliation must send a written invitation identifying the dispute and stating that it is under **Part III** of the Act.
2. **Written Acceptance Required** – Conciliation begins only when the other party **accepts in writing**; verbal acceptance is not valid.
3. **Right to Reject** – The other party can reject the invitation, preventing the initiation of conciliation.
4. **Time Limit for Acceptance** – If no response is received within **30 days** (or another specified period), the initiator can **treat it as a rejection** and must send a written intimation.

Conciliation proceedings **cannot proceed without mutual written consent**, ensuring voluntary participation.

APPOINTMENT, NUMBER, AND ROLE OF CONCILIATOR

NUMBER OF CONCILIATORS (SECTION 63)

1. **Default Rule:** There is **one conciliator** unless the parties agree to appoint **two or three**.
2. **Joint Action:** If multiple conciliators are appointed, they must act **jointly** in the conciliation process.

Who is a Conciliator?

- A **neutral third-party** facilitating dispute resolution.
- Unlike an arbitrator, a conciliator's findings are **recommendatory**, not binding.

Why a Sole Conciliator is Preferred?

1. **Simplifies proceedings** and reduces complexity.

2. **Faster resolution** compared to multiple conciliators.
3. **Cost-effective** with lower expenses.
4. **Ensures consistency** in approach.
5. **Clearer communication** channels.
6. **Enhances confidentiality**.
7. **Empowers parties** to be more involved in the process.
8. **Allows expertise-based selection** relevant to the dispute.
9. **Easier settlement agreement drafting** with a single coordinator.

Multiple conciliators must work **jointly** to settle the dispute, ensuring collaborative decision-making.

APPOINTMENT OF CONCILIATORS (SECTION 64)

1. Appointment Process:

- **One Conciliator:** Parties mutually agree on a **sole conciliator**.
- **Two Conciliators:** Each party appoints **one conciliator**.
- **Three Conciliators:** Each party appoints **one conciliator**, and they mutually select a **third conciliator** as the **presiding conciliator**.

2. Role of Presiding Conciliator:

- Presides over proceedings but **cannot make binding decisions** unless parties agree otherwise.

3. Assistance in Appointment:

- Parties can seek help from **institutions** (e.g., Chambers of Commerce) or **individuals** to:
 - Recommend names of suitable conciliators.
 - Directly appoint one or more conciliators.

4. Selection Guidelines:

- The appointed conciliator must be **independent and impartial**.
- Preferably, a **sole or third conciliator** should have a **different nationality** from the parties to ensure neutrality.

SUBMISSION OF STATEMENTS (SECTION 65)

- **Initial Submission:** Upon appointment, the conciliator requests each party to submit a **written statement** describing the dispute, with copies shared between parties.
- **Further Statements:** The conciliator may ask for **additional written statements**, documents, and evidence to clarify positions.
- **Additional Information:** The conciliator can request more information at any stage to facilitate resolution.
- **Applicability:** The term "**conciliator**" includes **one, two, or three conciliators** as applicable.

CONCILIATOR NOT BOUND BY LEGAL ENACTMENTS (SECTION 66)

- The conciliator is **not bound** by the **Code of Civil Procedure, 1908** or **Indian Evidence Act, 1872**.
- However, they must follow **natural justice principles**, ensuring **impartiality, transparency, and fairness**.
- **Case Law:** *Haresh Dayaram Thakur vs. State of Maharashtra* – The Supreme Court held that a conciliator has wide discretion in deciding procedural matters.

ROLE OF THE CONCILIATOR (SECTION 67)

- **Neutral Assistance:** The conciliator **assists parties independently and impartially** to reach an amicable settlement.
- **Guiding Principles:** Must ensure **objectivity, fairness, and justice**, considering:
 - Rights & obligations of parties.
 - Trade practices & business history.
 - Circumstances surrounding the dispute.
- **Flexibility in Proceedings:** Can adopt **any appropriate method** for conciliation, considering the case's circumstances and party preferences (e.g., hearing oral statements for faster resolution).
- **Settlement Proposals:** The conciliator can propose settlements **at any stage**, without needing to provide reasons or written documentation.

ADMINISTRATIVE ASSISTANCE (SECTION 68)

- Parties or the conciliator (with party consent) **may seek administrative assistance** from a suitable institution or person.
- Assistance can include:
 - **Providing a list of conciliators**
 - **Facilitating communication**
 - **Legal interpretation services**

COMMUNICATION BETWEEN CONCILIATOR & PARTIES (SECTION 69)

- The conciliator **can communicate** with parties:
 - **Orally or in writing**
 - **Jointly or separately**
 - **By inviting them for meetings**
- **Meeting Location:**
 - Parties **may mutually decide** the place of conciliation.
 - If no agreement, the conciliator **determines the venue** after consulting the parties and considering the case circumstances.

DISCLOSURE OF INFORMATION (SECTION 70)

- If a conciliator receives factual information from one party, **they must disclose its substance** to the other party, ensuring fair opportunity for explanation.
- **Confidentiality Clause:**
 - If information is provided **with a confidentiality condition**, the conciliator **must not disclose it** to the other party.

PROCEDURE FOR SETTLEMENT AGREEMENT (SECTION 73)

- **Conciliator's Role:**
 - If the conciliator identifies a possible settlement, they **formulate and present terms** to the parties for observations.
 - Terms may be **revised based on party feedback**.
- **Finalization of Settlement:**
 - If parties **agree**, they **draft and sign a written settlement agreement**.
 - The conciliator **may assist** in drafting, if requested.
- **Binding Nature:**
 - Once signed, the settlement agreement becomes **final and binding** on the parties and their successors.
 - Example: If a dispute settlement includes **full and final payment**, further claims **cannot be made** beyond the agreed amount.
- **Authentication:**
 - The conciliator must **authenticate** the agreement and provide **copies to all parties**.
 - If multiple conciliators exist, **all must authenticate** the agreement.

STATUS & EFFECT OF SETTLEMENT AGREEMENT (SECTION 74)

- A settlement agreement **has the same status and effect as an arbitral award** under Section 30 of the Arbitration and Conciliation Act, 1996.
- **Legal Precedents:**
 - **Haresh Dayaram Thakur vs. State of Maharashtra:** A settlement agreement **must be properly signed** by the parties to be valid.
 - **Mysore Cement Ltd. vs. Suedalla Barmac Ltd.:** Not all agreements qualify as arbitral awards—**only those meeting Section 73 requirements**.

TERMINATION OF CONCILIATION PROCEEDINGS (SECTION 76)

Conciliation proceedings **terminate** in the following ways:

1. **Settlement Agreement (Clause a):**
 - Proceedings end when parties **sign the settlement agreement** on the date of signing.
2. **Conciliator's Declaration (Clause b):**
 - If the conciliator determines that further conciliation **is not justified**, they may issue a **written declaration** (after consulting the parties), terminating the proceedings.
3. **Mutual Declaration by Parties (Clause c):**
 - The parties may **jointly declare in writing** to the conciliator that they wish to terminate the proceedings.
4. **Unilateral Declaration by a Party (Clause d):**
 - Any party may **unilaterally declare in writing** to the conciliator and the other party that they are terminating the conciliation.

| Acts for Termination | | Effective date of Termination |
|-----------------------------|---|--------------------------------------|
| a) | By the signing of the settlement agreement by the parties. | On the date of the agreement. |
| b) | By a formal written declaration by conciliator, if he is of the opinion, after consultation with the parties that no further conciliation proceedings are required. | On the date of the declaration. |
| c) | By a written declaration by the parties addressed to the conciliator for termination of the conciliation proceedings. | On the date of the declaration. |
| c) | By a written declaration by a party to the other party and the conciliator, if appointed, for termination of the conciliation proceedings. | On the date of the declaration. |