

Law relating to Arbitration, Mediation and Conciliation.

- Arbitration :- ^{Impartial & Disinterested.} method of solving civil dispute
 - :- Two or more parties.
 - :- With the help of Arbitrator.
 - :- By two or more parties by their mutual consent

Types of Arbitration

1. Ad hoc Arbitration :- It is not handled by formal organization. It states the no. of arbitrators, mode of selection, how arbitration will be conducted, procedural aspect should be decided by parties.
2. Domestic Arbitration :- The disputes are subject to Indian laws and the cause of action is entirely based in India.
3. International Arbitration :- Relating to disputes where at least one of the party is an individual who is a nation or resident of other than India. A body corporate, association or BOI or the government of foreign country.
4. Institutional arbitration :- In institutional arbitration, the matter is to be administered by established arbitration institution.

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* Essential of Arbitral process

- ① Seat of Arbitration :- party's are free to select any location as the arbitration's seat.
- ② Venue of Arbitration :- venue or location, for the sessions or the arbitral proceedings may be decided by the parties.
- ③ Arbitral Institution :- parties may select Arbitral institution.
- ④ Law :- the parties may by agreement choose any law.
- ⑤ Language :- the parties may also agree on the language of the arbitration proceedings.
- ⑥ No. of Arbitrators :- parties are free to determine but they should be in odd number.
- ⑦ Cost - court or arbitral tribunal have the discretion to determine -
 - whether cost are payable by one party to another
 - the amount of such costs
 - when such costs are to be paid

* Arbitrator

Person appointed to determine dispute b/w two or more parties by their mutual consent. Impartial and disinterested. usually parties themselves

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appoint arbitrator court can also appoint.
may be arbitrator or panel of arbitrator.

* Arbitration Agreement.

- Agreement by parties to submit to arbitration all or certain disputes.
- May be in the form of an arbitration clause or in the form of separate agreement
- Must be in writing
- Refers to the dispute of present or future.
- Agreement must be:-
 - Signed by parties telex, telegram exchange of letters.
 - exchange of claim & defence.

Power to refer parties to Arbitration when there is an Arbitration Agreement.

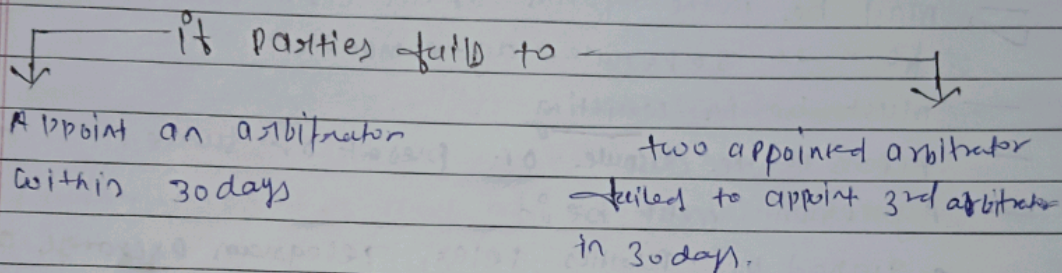
Judicial Authority may refer parties to arbitration if party applies to court before submitting the first statement

App. accompanied by original agreement or original document or certified copy is not available then file copy of agreement or petition to court to call other party to produce documents

Court must send disputes to arbitration unless there is a clear evidence of no valid arbitration agreement

If number of arbitrator is not mentioned in agreement then shall consist sole arbitration.

If procedure for appointment is not specified then, each party should appoint one arbitrator and two appointed arbitrators shall appoint one arbitrator who shall act as presiding arbitrator.



Apply to arbitral institution designated by HC or SC (International Commercial)

App. for appointment of arbitrator shall be disposed by HC & SC or Arbitral institution within 60 days from date of notice.

Before appointing an arbitrator shall seek a disclosure in writing and shall give due regard to any qualifications required for the arbitrator and an independent arbitrator.

Ground of challenge (Section 12)

- | | | |
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| <ul style="list-style-type: none"> ↳ Independent ↳ past or present relationship ↳ in any of the parties. ↳ financial or business int. | } | <p>Does not possess qualification or ability</p> |
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Case law

- ① Jivan Kumar Lohia vs. Durgadutt Lohia
- It was held that reasonable apprehension of bias or likelihood of bias in mind of other party is a ground for termination of arbitration
- ② BCC Developers and Promoter Ltd vs. DMRC.
- It was held that if appointed arbitrator is ex-employee of one party, it will not make them ineligible for appointment.

Challenge Procedure

Parties are free to agree on a procedure challenge within 15 days from becoming aware of any circumstances with written statement of reasons Application to arbitral tribunal along with reasons

Failure or impossibility to Act as an Arbitrator (Section 14)

Mandate shall terminate by right or by law unable to perform its function falls to act without undue delay withdrawn from office pursuant to agreement of parties

Termination of mandate and Substitution of Arbitrator (Section 15)

Substitution of arbitrator shall be appointed according to the rule of such appointment. Any hearing previously

held may be repeated (unless otherwise agreed by the parties) any interim award shall not be included.

An arbitration clause forms a part of contract shall be treated as an independent agreement. A decision by the arbitral tribunal which makes the contract null and void shall not make the invalidity of the arbitration clause.

Matters which can be referred to Arbitration

- ① Determination of damages in case of breach of contract
- ② Question of validity of marriage
- ③ Matter of right to office
- ④ Time barred claim

Matters which cannot be referred to Arbitration

- ① Matter relating to divorce
- ② Insolvency matter
- ③ Matter relating to public charity
- ④ Will
- ⑤ Tenancy proceeding
- ⑥ Matter of criminal nature

Failure or impossibility

- ① mandate shall terminate
- ② fulfilled to a ct without undue delay
- ③ withdrawn from office
- ④ Pursuant to agreement of parties
- ⑤ de jure (by right) or de facto (by law)

Case law

Chennai Metro Rail Limited Administrative Building vs M/s Trans Tunnelstroy Afcom (P) Pvt. Ltd.

- Chennai Metro and Afcom had a contract with an agreed arbitrator for a fee of 1 lakh per session.
- Tribunal later tried to increase the fee to 2 lakh to which Chennai Metro opposed. Afcom paid revised fee for 5 hearings despite objections from Chennai Metro.
- Chennai Metro filed an application under Section 11 before Madras HC seeking to terminate the mandate of the tribunal.

- HC initially stayed the proceeding but later declined Chennai Metro's request.

- On the SLP (Special Leave Petition) SC stated that doubts about an Arbitrator's impartiality must be based on specific statutory grounds.

- It was ruled that Chennai Metro's challenge is based on non-statutory grounds.

Section 17 Interim Measures ordered by Arbitral Tribunal

- 1) Appointment of a guardian for minor
- 2) Preservation interim custody for sale of good
- 3) Securing the amt. in disputes
- 4) Appointment of receiver
- 5) Detention, preservation or inspection of any property
- 6) Injunction

Order made by Arbitral tribunal is treated as an order of court. And is enforceable under CPC in same manner as court's order.

Determination of Rules of Procedure:-

- Not bound by CPC 1908, Indian Evidence Act 1872.
- Free to agree on procedure.
- Power of arbitration includes admissibility, materiality, materiality of evidence.

Statements of claim and Defense

The claimant shall state the facts supporting his claim, the points at issue and respondent shall state his defense in respect of the claims.

The statement of claim & defense must be completed within 6 months from the date arbitrator received notice in writing of their appointment.

Meaning and written Prolceeding-

- ① A Arbitral tribunal decides whether to hold oral hearings or proceed with written materials, unless parties are agreed to otherwise.
- ② If party represented or adjournment without a proper cause, tribunal can impose costs.
- ③ Party shall be given sufficient adv. notice of hearing.

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Arbitral Award

- Arbitral Award includes an interim award.
- Arbitral award must be in writing on paper and should be signed by majority of members and contain reasons.
- However 2 exceptions where an award without reasons is valid: -
 - (a) Arbitrator agrees no reasons to be given
 - (b) parties settled the dispute award be dated, place of arbitration, include the sum, arbitration cost and delivered to each party
- After the award is made, a signed copy should be delivered to each party for appropriate action like.

Types of Arbitral Awards

- ① Interim Award: it is an award made by a tribunal during the pendency.
- ② Additional Award: it is an award that is made after the original award. It can be requested by writing to the tribunal and asking for a further hearing.
- ③ Settlement Award: it is an award that records a settlement between parties in dispute.
- ④ Final Award: it is an award which finally determines all the issues in dispute.

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Default of a party (Section 25)

- ① If claimant fails to communicate then Arbitral tribunal shall terminate the proceedings.
- ② If respondent fails to communicate then Arbitral tribunal shall continue the proceedings without treating that failure in itself.
- ③ If both parties fail to appear then Arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

Competence of Arbitral tribunal to rule on its jurisdiction (Section 16)

- Arbitral tribunal can decide their own jurisdiction, including objection to the existence or validity of an arbitration agreement.
- Arbitration clause in a contract shall be treated as an independent agreement.
- If contract is null and void, it does not automatically invalidate the arbitration clause.
- Objection that arbitral tribunal is exceeding its authority must be raised promptly.
- If arbitrator rejects such objection and continues the proceedings, the aggrieved party can challenge the arbitral award.

Expert Appointed by Arbitral Tribunal (Section 26)

As per sec 26, the subject to agreement b/w the parties, the arbitral tribunal may,

- a) appoint one or more experts to report to it on specific issue.
- b) require a party to give the expert any relevant information or to provide access and relevant documents, goods or inspection,

Court Assistance in taking evidence (Section 27)

the arbitral tribunal or a party with the approval of the arbitral tribunal may apply to court for assistance in taking evidence

the applicant shall specify :-

- (a) Name and address of parties and arbitrator.
- (b) General nature of the claim and relief sought

Decision making by panel of Arbitrator (Section 29)

unless otherwise agreed by the parties in arbitral proceedings with more than one arbitrator any decision of the arbitral tribunal shall be made by a majority of all its members.

Time limit for Arbitral Award

— In domestic procedure award shall be made within 2 months from date of completion of pleading.

Parties may extend this period for not exceeding 6 months

— Award under fast track procedure shall be made within 6 months from the date of arbitral tribunal enters upon

— In international commercial arbitration award shall be made within 12 months from the date of completion of pleading.

— if award is made within the period of 6 months from the date of arbitral tribunal enters upon how will be entitled to receive extra fees.

— if award is not made within period specified, authority of arbitrator shall be terminated.

— Court may extend the period if required but may order reduction of fees of Arbitrator by not exceeding 5% for delay of each month.

— Court will extend arbitration only when there is sufficient cause while extending period court may substitute arbitrator. Court shall dispose application within 60 days regarding extension.

Fast track Procedure.

① Written pleadings without oral hearing → The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing.

② Further clarification → The arbitral tribunal shall have power to call for any further info. or clarification from the parties in addition to the pleading and document.

③ Oral hearing on request → An oral hearing may be held only if all the parties make a request.

④ Procedural discretion → The arbitral tribunal may dispense with any technical formalities and solve the case expeditiously.

Settlement (Section 30)

— Arbitrator at any time during arbitral proceedings, encourage settlement.

- if Parties settle the dispute, arbitrator shall terminate proceedings and if requested may give settlement in the form of arbitral award
- Such arbitrator award has same effect than any other
- no need to give reason in this case.

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Termination of Proceedings (Section 32)

- (1) Terminated by final Arbitral award
- (2) Even by order of arbitrator - reasons:
 - (i) Claimant withdraw his claim.
 - (ii) Parties agree on termination.
 - (iii) Arbitrator finds continuation of process is impossible.
- (3) Termination of process result in termination of arbitration

Construction and Interpretation of Award:- Additional award.
(Section 33)

- (1) Any party within 30 days from receipt of arbitral award request arbitrator to correct any mistake including clerical or typographical error
- (2) Request arbitrator to provide interpretation
- (3) Arbitrator consider correct or provide interpretation within 30 days
- (4) Party can also within 30 day request arbitrator to pass additional award as to claim presents in arbitral award.
- (5) Arbitrator may additional Award within 60 days
- (6) Arbitrator may further extend the time if required.

Exam Application for setting aside Arbitral Award. (Section 34)

- Party can apply to court within 3 months from receiving arbitral award for setting aside.
- further extension can be made not more than 3 months.
- Court may pass order of setting aside for party prove that:-
 - He was under some incapacity
 - Arbitration agreement is invalid
 - Not gives proper notice of appointment of arbitrator
 - Composition of arbitration is not as per agreement
- Court may pass order if it is finds,
 - Sub matter is not capable of settle by arbitration
 - Arbitral award is against public policy.

Exam Award can be set aside if it conflicts with:-

- public policy of India which includes:-
 - a) Award influenced by fraud or corruption.
 - b) Contravenes fundamental policy of Indian law.
 - c) conflicts with morality or justice.
- application for set aside must be resolved within 1 year from notice date.

Case law:-

- State of Maharashtra vs. Hindustan Construction Co.
→ it was held that grounds for challenging an arbitral award must be stated within the prescribed time limit.
- Any new grounds cannot be introduced after the period expires.

Regime for costs, Section 31(A)

- whether costs are payable by one party to another.
- the amount of such costs.
- when such costs are to be paid.

Cost means:-

- fees and expenses of arbitrator
- legal fees and expenses
- administrative fees or constitution
- any other expenses.

Enforcement (Section 36)

-) where the time of making application for setting aside is expired, award enforced like decree or writ
- + if application to set aside is filed stay not made award enforceable unless stay order passed by writ
-) court may pass stay order subject to conditions

Case law:- M/s obula purnam Mining com. Pvt. Ltd vs. RK Mining Pvt. Limited.

-) HC of Andhra Pradesh ruled that commercial courts have authority to exclude arbitrator's award.
-) despite some deciding arguments that only regular civil court will do so.
-) the court clarified that intent of commercial court was to improve procedures for handling commercial disputes.
-) it means they can essentially perform functions like execution of arbitration award.

Appellable orders Section 37(1)

Court authorised by law to hear appeals from original decree of the court passing the order, namely,

- refusing to refer the parties to arbitration.
- granting or refusing to grant to set aside any measure
- setting aside or refusing to set aside an arbitral award

Further section 37(2) provides, that appeal shall also lie to a court from an order of the arbitral tribunal:-

- accepting the plea.
- granting or refusing to grant an interim measure

Section 37(3) state that no second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect any right to appeal to the Supreme court.

Case law

Augmont Cold Pvt. Ltd. vs. one 97 communication Limited
It was held that no appeal shall lie under Sec. 37 of Arbitration and Conciliation Act 1996, with court in the order of the tribunal has been made under section on the act owing discretionary and final nature.

Deposits. (Section 38)

- A+ may fix amt of deposit which expected to be incurred in respect of any claim.
- If counter claim has been submitted by separate amt on deposit for claim,
- Deposit is payable by both the parties equally.
- If one party fails other party may pay that share.
- If both the parties fails to pay deposit arbitrator may terminate the proceeding.

Lien or Arbitrator Award and deposit as to costs

- ① the tribunal can lien the award until its unpaid cost are paid.
- ② if tribunal refuses to deliver award without payment of cost, court can order Applicant to deposit cost into court and after inquiry pay the tribunals cost, retaining any cost balance to applicant.

Arbitration Agreement not to be discharged by death of Party Thereto. (Section 40)

Arbitration Agreement shall be enforceable by or against the legal representative of the deceased.

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Arbitration Council of India (ACI) (Section 43(b))

- ① Established by CG (body corporate).
- ② Head office shall be at Delhi.
- ③ Composition of council.

Exam ✓ Composition of Council {Section 43 (1)}

— Appointed by CG in consultation with CJI must be a person with significant experience in arbitration, ideally a former SC or HC judge — Chairperson

— An eminent arbitration practitioner expert in domestic & international institutional arbitration to be nominated by the CG — member

— An eminent academically having experience in research & teaching in field of arbitration — member

— Secretary to the Govt. of India in the dept. of Legal Affairs — member ex officio

— One representative of a recognised body of commerce & industry — member ex officio

— CEO — member Secretary ex officio

* Chairperson or member, other than ex-officio members, shall not hold office after he has attained the age of 70 yrs.

in case of chairperson & 7 yrs in case of member

Exam ✓ Duties & functions of Council {Section 43 (2)}

- ① frame policies regarding grading of arbitral institutions
- ② Review of grading of arbitral institutions and arbitrators
- ③ Hold training and workshops in area of arbitration

- ④ Promote institution arbitrators by strengthening institutional arbitrator.
- ⑤ Establish & maintain depository of arbitral award in India

Vacancies, etc. not to invalidate proceedings of Council (Section 43E).

~~Sett~~ Act of Council shall not be invalid merely by reason of -

- ① Any vacancy or defect in constitution of Council
- ② Defect in appointment of person acting as member of Council
- ③ Irregularity in procedure of Council.

Removal of member } Section 43G(1)

Central Govt. may remove a member of Council if:

- ① He is an undischarged insolvent
- ② He has abused his position
- ③ He has become physically or mentally incapable
- ④ He has acquired financial or any other interest
- ⑤ Engaged in any paid fulltime employment during his term of office

General norms applicable to Arbitrator

1. Arbitrator shall be person of general reputation of fairness & integrity
2. must be impartial

- 3 shall not have been convicted for an offence involving moral turpitude.
- 4. must possess understanding of domestic and international arbitration.

Depository of Awards (Section 43K)

Council shall maintain an electronic depository of arbitral award made in India and such other awards related thereto.

Chief Executive Officer (Section 43M)

- ① CEO is responsible for day to day administration of Council.
- ② The qualifications, appointment and T & C for CEO will be prescribed by Govt.
- ③ CEO will perform functions and duties as defined by regulation.

International Commercial Arbitration (Section 2(1)(k))

disputes arising out of legal relationships, whether contractual or not considered as commercial under the law in force in India and where at least one of the parties is:-

- a) an individual who is a national or habitually resident in any country other than India
- b) body corporate incorporated in any country
- c) Govt. of a foreign country

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Section 10

Conditions for enforcement of foreign awards

- ① Award must be made under valid arbitration agreement
- ② Subject matter in award must be something that can be resolved in Arbitration under Indian law
- ③ Award is made by Arbitral tribunal that was setup according to rules agreed upon the parties and per valid law
- ④ Award must be final in the country where it was made
- ⑤ Award must not violate Indian public policy or law

Conciliation

- Conciliation means settling of disputes without litigation
- it is informal processes conciliator try to bring dispute to agreement
- it can be successful if only parties are ready to re-adjust
- Arbitration and conciliation 1996 provide legal recognition to recognition to conciliation
- Conciliation is not alternative to arbitration rather complementary to arbitration or litigation.

Appointment of Conciliators

- There shall be one conciliator even 2 or 3 if decided by party
- In conciliation proceeding with 1 conciliator party have to agree on sole conciliator
- In conciliation proceeding with 2 conciliator each party have to appoint 1 conciliator

* Conciliator not Bound by certain enactment like Code of Civil Procedure 1908, Indian Evidence Act 1872

Role of conciliator {Section 67(1)}

- Conciliator provide assistance in an independent and impartial manner to parties to reach a settlement or their dispute.
- Bring conciliation proceeding in such manner as it considers appropriate.
- His role not confined merely in appropriate assistance but also extends to making proposals for settlement or dispute.

Settlement Agreement {Section 73(1)}

- Conciliator send settlement agreement to both the parties parties send observations and conciliator make re-formulation of settlement agreement in light of such agreement
- parties reach settlement agreement and sign it, after signing it becomes binding on both the parties
- Conciliator authenticate settlement agreement and send copy to parties
- it has same effect as like arbitration.

Termination of conciliation proceeding

- By signing settlement agreement by both parties
- written declaration by conciliator for termination

- written declaration by both parties for termination
- written application by one party to another party to termination.

Difference b/w Arbitration and Conciliation.

Arbitration

Conciliation

- | | |
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| <ul style="list-style-type: none"> — A person appointed for the duties of arbitration is called arbitrator — Arbitrator has power to enforce his decision. — for arbitration prior agreement is needed. — Arbitrator can only be in odd number. — Arbitration agreement can be done for existing and future disputes. | <ul style="list-style-type: none"> — A person appointed for the process of conciliation is called conciliator — Conciliator only settles the dispute and has no power of enforcement. — for conciliation no prior agreement is needed. — Conciliation can be in even no. as well. — Conciliation can be done only for existing dispute. |
|--|--|
- * Cost :- fee & expenses of the conciliator & witness and expert advice requested by the conciliator with consent of parties.
- and assistance provided pursuant to it.

Rule of conciliator in other Proceeding

* Conciliator cannot act as arbitrator or conciliator in respect of sub matter of conciliation proceeding

* Conciliator shall not be present by parties as witness

Admissibility of Evidence in other Proceedings

(Section 8)

- a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute
- b) admission made by the other party in the course of the conciliation proceedings
- c) proposals made by the conciliator
- d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator

Power of High Court to make Rules (Section 22)

Act provide that HC may make rules consistent with this Act as to all proceedings before the court under this Act

Mediation . meaning

Mediation meaning includes a process where parties attempt to reach an amicable settlement of dispute with assistance of third person referred to as mediator who does not have authority to impose settlement upon parties to the dispute.

Meaning of mediator

mediator means a person appointed by a party or by Mediation Service Provider to undertake mediation or includes a person registered as mediator as a counil..

Mediation Act 2023

- ① To promote and facilitate mediation for resolving dispute
- ② To enforce mediated settled agreement
- ③ To establish a body for mediator registration
- ④ To encourage community mediation and make online mediation accessible and affordable.

The act came into force from 9th Oct 2023

Mediation Council of India { Section 31 to 38 }

- ① Central Govt will set up mediation Council of India to manage mediation process register mediator and set standards.

- ② Council can form committees and appoint a CEO
- ③ vacancies or resignation would not invalidate their proceeding.

Mediation, fund Awards & Audit {Section 45 to 47}

Mediation fund is created to support conciliatory activities audit is done by CAG and Council must follow policies distinct from the direction.

Protection power of making rule and removing difficulties (Section 50 to 54)

- ① No legal action can be filed against :-
 - ① central / state govt. or its officers
 - ② members, officer or employees of mediation council
 - ③ mediator mediation institution or service provider if they act in act good faith.

Council has power to make rules under the Act and mediation council can make regulations.

rules & regulations must be laid before both houses of parliament for 30 days

- ④ if any difficulties arise in implementing the Act central govt. can make provisions to remove these difficulties and such orders can be made within 5 yrs from act commencement.

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Effect on pending proceedings (Section 56 & 57)

This Act does not apply to mediation or conciliation that has begun before the ^{work} Act for works annexed. Mediation provisions continue for ongoing cases until new regulations are made.

Mediation under various laws

Laws which cover mediation or dispute redressal mechanism are:-

- a) The Companies Act 2013.
- b) Industrial Disputes Act 1947
- c) Code of Civil Procedure 1908
- d) MSME Development Act 2006
- e) Legal Services Authority Act 1987 read with Rule 890 CPC
- f) The Consumer Protection Act 2019.
- g) Hindu Marriage Act 1955 and Special Marriage Act 1954.

Case Law

1) Uttar Pradesh Ban Nigam vs. Bishan Nath Choswami
→ In UP Ban Nigam vs. Bishan Nath Choswami court ruled that arbitrator must consider factors like convenience of parties, location and subject matter before deciding venue of arbitration. Natural Arbitrator must follow principle of natural justice & fair hearing.

② Salem Advocate Bar Association vs. Union of India
2. Supreme Court of India upheld Amendment to CPC particularly with respect to Section 89 which promotes alternative dispute resolution to reduce courts burden.

- The Court highlighted that ADR methods, like arbitration, conciliation, judicial settlement and mediation are intended to expedite case resolution.

- Sec. 89 mandates that specific procedures of mediation to be established.

- Court noted that in India ADR efforts do not automatically remove a case from courts docket. If ADR fails, case will essentially proceed to trial.

③ AB Cons Infra Ltd. Co. M. vs. Cherian & Arkey Consulting
Supreme Court of India allows a court to refer parties to arbitration without their consent.

The court held that arbitration and conciliation require consent of all the parties.

In other ADR process such as Lok Adalat, mediation, or judicial settlement will do not require party consent.

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Law Relating to Registration of Documents
Key features of Mediation are:-

1. Parties control the process and outcomes -) A neutral third party aids in communication and negotiation
2. Parties play a central role with support from the mediator:- Address both legal issues and underlying interests
3. Mediation is efficient, effective, speedy, convenient and less expensive.

Case law

- (1) Brahmani river pellets Ltd. vs. Kamachi Smolushies Ltd.
- SC of India states that only odisha High court had jurisdiction over arbitration and not the madras HC.
 - The dispute involving a sale of iron ore pellets where the appellant failed to deliver goods. Parties agreed to Bhuvaneshwar as arbitration venue, but respondent filed the petition in madras HC.
 - SC decided that agreement of Bhuvaneshwar as venue meant that only odisha HC could handle the case.