

LL.B. (INTEGRATED) FIVE YEARS DEGREE COURSE, 7th SEMESTER

ALTERNATIVE DISPUTE RESOLUTION

UNIT-II

<u>Syllabus</u>	Arbitral Tribunal & Procedure i. Jurisdiction of Arbitral Tribunal ii. Conduct of Arbitral Proceeding iii. Fast Track Arbitration iv. Making of Arbitral Award v. Termination of Proceedings
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Lecture 1: Jurisdiction of Arbitral Tribunal

Previous Year Questions:

1. What are the prerequisites for arbitral tribunal to rule on its own jurisdiction?
Examine the effects of failure to raise plea regarding jurisdiction under mandatory time.
What are the grounds to challenge jurisdiction of arbitral tribunal?
What do you mean by Judicial Authority? Discuss the ground for refer parties to arbitration by Judicial authority. [Long Question, 2017]
Extent of Judicial Intervention in Arbitration [Short Question 2017]
[Long Questions- 2012, 2014, 2015, 2017, 2019; Short Question- 2011, 2014]

NOTES

Competence of arbitral tribunal to rule on its jurisdiction [Section 16]

- **Jurisdiction of arbitral tribunal is always limited by actual reference** and therefore whatever is not under reference shall be beyond the scope of authority of the arbitral tribunal.
- The **Arbitral Tribunal may rule on its own jurisdiction**, including ruling on any objections with respect to the existence or validity of the arbitration agreement.
- Plea of Arbitral Tribunal not having jurisdiction cannot be raised after the submission of Written Statement. Plea that Arbitral Tribunal is exceeding the scope of its authority must be raised as soon as the authority is exceeded.
- Tribunal has power to **condone the delay** to entertain such plea on justified grounds.

- If the **plea is rejected**, the Tribunal **continues with the arbitral proceedings** and make arbitral award.
- The **award can be challenged under Section 34**.
- If objection as to jurisdiction is rejected then no appeal can lie against such decision. However, if such objection to jurisdiction is accepted, an appeal can lie to court against the order under Section 37(2)(a).

Principle of Kompetenz-Kompetenz/ Competence de la Competence

Autonomy of Arbitrator to decide its own jurisdiction.

Principle of Separability

The arbitration clause contained in a contract would subsist even if the contract is declared as null and void.

Case Laws

- ***Jugal Kishore vs. Vijayendra* [AIR 1993 SC 864]**- Arbitrators have all the powers which the court has in deciding the issues in a suit. Hence, they can make decision over their own jurisdiction and make awards.
- ***Shree Subhlaxmi Fabrics (P) Ltd. vs. Chandmal Baradias others* AIR 2005 SC 2261**- Section 16 empowers the arbitral tribunal to rule about its own jurisdiction and contentions issues should not be gone through at the stage of appointment of arbitrator.

ASSIGNMENT

1. Can Arbitral tribunal have jurisdiction even in absence of Arbitration Agreement? Yes/No
2. Does Arbitral tribunal have power to decide objection concerning its jurisdiction? Yes/No
3. Which provision of Arbitration and Conciliation Act, 1996 explicitly provides power to Arbitrators to rule on their own jurisdiction?
4. What do you mean by principle of Kompetenz-Kompetenz?
5. What are the prerequisites for arbitral tribunal to rule on its own jurisdiction?

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Lecture 2: Conduct of Arbitral Proceeding

Previous Year Questions:

- Q. 1 What is the procedure of Arbitral tribunal when one party of Arbitration is in default? Discuss ex-parte award with the help of suitable cases. [Long Question- 2015; Short Question- 2018]
- Q. 2 Describe the law relating to the conduct of arbitral-proceeding. Also discuss the law relating to 'Oral-Hearing' during the proceeding of Arbitral Tribunal. [Long Question- 2017]
- Q. 3 'Court's of Assistance' in arbitral proceedings. [Short Question- 2011, 2014, 2019; Long Question- 2021]

NOTES

Chapter V [Section 18-27] lays down rules dealing with Arbitral Procedure.

- **Equal treatment of parties (Section 18):**
 - Nemo judex in causa sua (Adjudicating authority to act fairly)
 - Audi alteram partem (proper opportunity of hearing).
 - ***Vengamma vs. Kesanna [AIR 1953 SC 21]***- Arbitrator should not examine one party in the absence of another.
 - ***International Airport Authority of India vs. K.D. Bali [AIR 1988 SC 1099]***- Once the arbitrator enters in an arbitration, he must not be guilty of any act which can be construed as indicative of partiality or unfairness.
- **Determination of Rules of Procedure; Place of Arbitration; Language (Section 19, 20, 22):**
 - Parties agree and decide the procedure to be followed, venue for arbitration and, language to be used in arbitral proceedings.
- **Conduct of Arbitral Proceeding:**

The Arbitration Act 1940 did not provide any procedure for conduct of proceedings but it was made a ground for setting aside the arbitral award.

 - **Statements of Claim and Defence (Section 23)**- Parties prescribe the time limit for submission of these statements to the arbitral tribunal.

- **Hearings and Written Proceedings (Section 24)**- It empowers the tribunal to decide whether to conduct proceeding orally or on the basis of documents and other materials.
- **Default of a Party (Section 25)**- Arbitral tribunal can terminate the proceeding without making any award if claimant fails to submit his claim.
- **Ex-parte Award (Section 25)**- If respondent fails to submit his defence, the Tribunal continue the proceedings and passes award.
Indian Iron & Steel Co. vs. Satna Stone [(1991) 1 Arb LR 208 (SC)]- Ex-Parte Arbitral Award was set aside court on the ground of violation of principles of natural justice.
- **Appointment of Expert (Section 26)**- Tribunal may appoint expert for his assistance.
- **Court assistance in taking evidence (Section 27)**- The arbitral tribunal or parties may seek such assistance. In 1940 Act processes could be issued only at the request of arbitrator while under the new law it can be issued at the request of the parties too.

ASSIGNMENT

1. _____ decides the venue of arbitration if parties fail to agree the place of arbitration.
2. Can an expert be appointed for his assistance during arbitral proceedings? Yes/No
3. Does Arbitral Tribunal have power to pass Ex-Parte Award? Yes/No
4. Which provision provides for equal treatment of parties during arbitral proceedings?
5. Explain court's assistance in arbitral proceedings.

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Lecture 3: Fast Track Arbitration

Previous Years' Questions

Q.1 Fast track procedure for arbitration. [Short Question- 2018]

NOTES

Fast Track Arbitration:

The Arbitration and Conciliation Amendment Act 2015 introduced Fast Track Arbitration in India to speed up the arbitration process in India. Proceedings are to be concluded within 6 months, and there is no provision for oral proceedings, rather than written pleadings.

Essential Features of Fast Track Arbitration:

- It is largely governed by strict time-limit policies that both the arbitrators and the parties must comply with.
- When the time limit is not reached then the arbitrator's order will be revoked unless the court has extended the time limit.
- It does not include a fixed collection of elements or procedures to be followed.
- Often in Fast Track Arbitration Procedures, no oral hearings are necessary and depend only on written submissions.
- The parties will select a single arbitrator, and the submissions must be written in large part.
- It protects the expense, speed, and time without violating any law.

Normal Arbitration Procedure vs. Fast Arbitration Procedure:

Normal Arbitration	Fast Track Arbitration (Section 29B)
One or three arbitrators	Sole arbitrator
Award to be made within 12 months from the date the reference [Section 29A(1)]	Award to be made within 6 months from the date the reference.
Payment of costs to be decided by the High Court [Section 11(14)]	Fees payable to the arbitrator agreed between the arbitrator and the parties.
Arbitral tribunal determines whether to conduct oral hearing or to have awards awarded based on records.	Written submissions are relied on for proceedings and no oral hearings are accepted unless the party so requests.

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Lecture 4: Making of Arbitral award

Q. 1 Define Arbitral Award and discuss its form and contents.

Types of Arbitral award. Interim arbitral award, additional arbitral award.

Discuss time limit for making of an arbitral award.

How can a correction be made in arbitration award?

[Long Question- 2011, 2018; Short Question- 2015, 2017, 2019, 2021]

NOTES

Arbitral Award- Definition, Form and Contents

- Arbitral Award, whether final or interim, is a decision of the Arbitrator determined after contentions of the parties. **Section 2(1)(c)** provides that an award includes an interim award.
- **Section 31** provides requirements as to form and contents of arbitral award:
 - Written Award
 - Signed Award
 - Date and Place of Making the Award
 - Reasoned Award
 - Awarding of Interest

Municipal Corporation of Delhi v. M/s Jagan Nath Ashok Kumar [AIR 1987 SC 2316]- Reasons must be intelligible and deal with the substantial points that have been raised.

M.L. Jaggi v. Mahanagar Telephone Nigam Ltd. [(1996) 3 SCC 119]- Reasons are required to be given in public interest.

State of Tripura vs. Smt. Anita Barman [AIR 1995 SC 763]- Where it is provided in the agreement that enhanced rate on escalation of price in the event of certain exigency shall be paid, any departure made by the arbitrator would amount to misconduct rendering the award invalid.

Guidelines to be followed by Arbitral Tribunal while making Arbitral Award [Section 28, 29, 30]

- Lex Loci to apply to dispute for determination of substantive rights and liabilities of parties. Substantive law of India would apply if place of arbitration is situated in India. For international commercial arbitration, the law designated by the parties would apply.
- Award is made on Majority basis by the Arbitrators.
- Opportunity is given to parties to arrive at a settlement during the conduct of arbitral proceeding.

Correction and Interpretation of Award [Section 33]

The mandate of Arbitral Tribunal terminates with the making of award. However, proceeding can be resumed for limited purposes:

1. Making correction in the award
2. Giving interpretation on specific issues in award
3. Making an additional award on issues left undecided

ASSIGNMENT

1. Does Arbitral Award include Interim Award? Yes/No
2. Can correction be made in Arbitral Award? Yes/No
3. Which substantive law would apply if place of arbitration is situated in India?
4. What do you mean by Arbitral Award?
5. What are the main requirements as to the form and contents of arbitral award?

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Lecture 5: Termination of proceedings

**Q. 1 Discuss the circumstances and procedure for the termination of arbitral proceeding.
[Long Question- 2012, 2018]**

NOTES

Termination of Proceedings

Section 32 provides that arbitral proceedings can be terminated by:

- **Making of final award-** It exhausts the reference and no more proceedings are necessary.
- **Claimant withdrawing his claim-** The Arbitral Tribunal shall order termination of the proceedings. But termination will not be ordered if the respondent objects to such withdrawal and satisfies the tribunal that he has a legitimate interest in obtaining a final settlement of the dispute and the tribunal recognizes such interest, then he may instead of ordering termination, proceed with the arbitration and make an arbitral award.
- **Parties agreeing to terminate the proceedings-** The arbitral tribunal shall be obliged to make a termination order. Such an agreement of the parties tantamount to cancelling the particular reference but the parties would be able to make further reference by reconstituting another tribunal consisting of same or different arbitrators.
- **Continuance of the proceedings has become impossible or unnecessary-** The proceedings would become unnecessary if the purpose of arbitration is lost. Impossibility would arise from circumstances such as an act of God, act of enemies or even when both parties continue to stay away from the proceedings. In any case it is the tribunal's discretion.

Other ways to terminate arbitral proceedings

- Settlement resulting in the award (Section 30)

- The arbitrator withdraws from his office or other parties agree to challenge to the appointment of arbitrator [Section 13(3)].
- The Arbitrator is unable to perform his function or, he had become de jure or de facto incompetent.
- The Arbitral tribunal unable to perform function for any other reasons.

Mandate terminates with proceedings

The mandate or authority of the arbitral tribunal shall terminate with the termination of the arbitral proceedings and thereupon the arbitral tribunal shall become functus officio but this is subject to Section 33 and 34(4).

ASSIGNMENT

1. Are arbitral proceedings terminated on passing of arbitral award by arbitrator? Yes/No
 2. Does authority of arbitrator terminate on termination of arbitral proceedings? Yes/No
 3. Would impossibility of continuing arbitral proceedings result in termination of arbitral proceedings? Yes/No
 4. What would be the result of arbitral proceedings if claimant withdraws his claim?
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5. What are the circumstances under Section 32 for the termination of arbitral proceeding?