

UNIT – 2

Arbitration

Meaning • Attributes • Agreement • Arbitrator • Award • 1996 Act

Alternative Dispute Resolution Systems

Unit Overview

This unit examines arbitration as a formal ADR process – its meaning, essential attributes, general principles, kinds of arbitration, the arbitration agreement, appointment and qualities of the arbitrator, the principal steps in an arbitration, the arbitral award, and the framework of the Arbitration and Conciliation Act, 1996.

What You Will Learn

01 Meaning

Define arbitration and its core attributes

02 Principles

Explain the general principles of arbitration

03 Agreement

Draft and analyse an arbitration agreement

04 Arbitrator

Know the qualities, qualifications and appointment process

05 Procedure

Describe the principal steps in arbitration

06 1996 Act

Apply the key provisions of the Arbitration and Conciliation Act

MEANING

Meaning and Attributes of Arbitration

Arbitration is a private process in which the parties agree to submit their dispute to a neutral third party (or panel) for a binding decision (the award).

Party Autonomy

Parties choose the arbitrator, procedure and often the law

Binding Decision

The award is final and enforceable like a court decree

Neutrality

Arbitrator must be independent and impartial

Confidentiality

Proceedings are generally private

Flexibility

Procedure can be tailored to the dispute

General Principles of Arbitration

Consent

Arbitration is founded on the agreement of the parties

Kompetenz-Kompetenz

Tribunal can rule on its own jurisdiction

Separability

Arbitration clause survives the main contract

Natural Justice

Fair hearing, equality of parties, reasoned award

Finality

Limited grounds for challenge of the award

Enforceability

Domestic awards and foreign awards under the New York Convention

KINDS

Different Kinds of Arbitration

Ad hoc	Parties design the procedure themselves
Institutional	Administered by an institution (ICA, SIAC, ICC, etc.)
Domestic	Both parties Indian; seat in India
International Commercial	At least one party foreign; special regime under the 1996 Act
Statutory	Required by a statute (rare in India)

Arbitration Agreement and Drafting

Definition	Agreement to submit present or future disputes to arbitration (s.7)
Form	Must be in writing – clause in contract or separate agreement
Essential	Clear intention to arbitrate; scope of disputes; number of arbitrators
Pathological Clauses	Vague or conflicting clauses cause problems – avoid them
Drafting Tips	Specify seat, language, number of arbitrators, institution if any, governing law

Qualities, Qualifications and Appointment

Qualities	Independence, impartiality, integrity, competence, availability
Qualifications	No statutory qualifications; parties may specify expertise
Appointment	By parties, by institution, or by court under s.11
Challenge	Grounds of justifiable doubts as to independence or impartiality
Disclosure	Arbitrator must disclose any potential conflict

STEPS

Principal Steps in Arbitration

Commencement	Notice of arbitration / request for arbitration
Constitution	Appointment of tribunal
Pleadings	Statement of claim, defence, counter-claim
Hearing	Evidence, oral arguments (or documents-only)
Award	Reasoned award within the time limit
Challenge / Enforcement	s.34 petition or enforcement under s.36

AWARD

Arbitral Award

Form	In writing, signed, reasoned (unless parties agree otherwise)
Content	Decision on each issue; costs; interest if claimed
Types	Final, interim, partial, consent award
Correction	Tribunal can correct clerical errors; parties can request interpretation
Finality	Binding on parties; enforceable as a decree

Arbitration and Conciliation Act, 1996 – Key Features

The 1996 Act is based on the UNCITRAL Model Law. It covers domestic arbitration, international commercial arbitration and enforcement of foreign awards. Major amendments in 2015, 2019 and 2021 have strengthened the framework

Part I	Domestic and international commercial arbitration seated in India
Part II	Enforcement of New York Convention and Geneva Convention awards
Part III	Conciliation
Amendments	Time limits, institutional arbitration, confidentiality, arbitrator fees, emergency arbitrator

LANDMARK

Important Cases on Arbitration

Bharat Aluminium (BALCO)

Seat of arbitration determines the curial law

S.B.P. v. Patel Engineering

Scope of court intervention at s.11 stage (later narrowed)

Associate Builders

Grounds for setting aside award under s.34

Vidya Drolia

Arbitrability of disputes – four-fold test

Amazon v. Future

Emergency arbitrator awards and their status

Salient Features of Modern Arbitration in India

Pro-Arbitration	Legislative and judicial shift towards minimal court intervention
Time-bound	Statutory timelines for award and for s.34 disposal
Institutional	Growing preference for institutional arbitration
International	India as a potential seat; alignment with Model Law
Challenges	Still some delay in court-related stages; quality of awards

ESSENTIALS

Core Points

Consent

Arbitration rests on agreement

Attributes

Binding, private, flexible, neutral

Agreement

Must be in writing and clear

Arbitrator

Independent, impartial, competent

Award

Reasoned, final, enforceable

1996 Act

UNCITRAL-based; amended for efficiency

Party Autonomy vs Court Supervision

The 1996 Act seeks to maximise party autonomy while retaining a limited supervisory role for courts (appointment, interim measures, setting aside, enforcement). The trend of amendments and case law is to reduce court interference and strengthen the arbitral process.

HIGHLIGHTS

Key Highlights

s.7	Arbitration agreement – writing required
s.11	Court appointment of arbitrator
s.16	Kompetenz-kompetenz
s.34	Limited grounds to set aside award
s.36	Enforcement as a decree
Amendments	2015, 2019, 2021 – speed and institutional focus

Practical Tips for Arbitration Clauses

Clarity

Avoid pathological clauses

Seat

Specify the seat clearly

Institution

Name a reputable institution if desired

Number

Odd number of arbitrators (usually one or three)

Language

Specify the language of the arbitration

Governing Law

Distinguish substantive law and arbitration law

Must-Remember Points

- Arbitration is a private, binding, party-driven dispute resolution process.
- It rests on the arbitration agreement and the principles of party autonomy, natural justice and finality.
- The Arbitration and Conciliation Act 1996 (UNCITRAL-based) governs domestic and international commercial arbitration in India.
- Key stages include agreement, appointment, pleadings, hearing, award and limited challenge.
- Recent amendments and case law favour speed, institutional arbitration and minimal court intervention.
- Careful drafting of the arbitration clause is essential.

SUMMARY

Key Takeaways

1. Arbitration is the most formal of the ADR processes and produces a binding award.
2. The 1996 Act provides a modern, Model-Law-based framework.
3. Party autonomy is the guiding principle, subject to limited court supervision.
4. Drafting a clear arbitration agreement prevents most future problems.
5. Understanding the Act and key cases is essential for any commercial practice.

Next Unit: Conciliation.