

# Arbitration Proceedings: Law, Rules, Procedure and Practice

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*The arbitral proceedings should be well planned to avoid misunderstandings and delay so that the proceedings are not unpredictable, surprising and difficult. The arbitral tribunal has to exercise its discretion subject to the broad principles specified in Chapter V of the first part of the New Arbitration Act of 1996. The law, rules, procedure and practice relating to arbitration proceedings have been explained elaborately herein.*

**T**HE phase after constitution of the arbitral tribunal and before the making of the award during which various documents are exchanged, hearings are held and various decisions are taken by the arbitral tribunal on procedural matters as also on other preliminaries or interim matters is an important phase of arbitration. The arbitral tribunal has to observe the provisions of law on procedural matters as laid down in the Ordinance. Broad principles have been given in Chapter-V of the first part of the Arbitration and Conciliation Act, 1996, relating to conduct of arbitral proceedings on matters like equal treatment of parties, determination of rules of procedure, place of arbitration, language, statements of claim and defence, hearings and written proceedings, default of a party etc. The arbitral tribunal has to exercise its discretion subject to broad principles laid down by the Act.

## PRELIMINARY HEARING

The arbitral proceedings should be well planned to avoid

misunderstanding and delay so that the proceedings are not unpredictable, surprising and difficult to prepare. The participants in the proceedings may have different expectations as to the manner in which the proceedings would be conducted. It is desirable, therefore, that a preliminary hearing is held at an early stage to plan the conduct of arbitral proceedings. The object of such a hearing is to take appropriate decisions for smooth conduct of the proceedings.

Hearing to deal with preliminary matters is referred to as pre-hearing conference, preparatory conference, pre-trial review, administrative conference or terms of similar nature, depending on the stages of the proceedings at which such a hearing takes place. If it is held shortly after the commencement of arbitration when all elements of the claim and the defence are not stated it is called preliminary meeting. If it is held when claims and defence are fully stated and main focus of the meeting is to prepare for the hearing, it is called preparatory meeting. If it is held when procedural decisions have already been taken, such a meeting is called pre-hearing review. Such kind of meetings can be called preliminary hearings.

A preliminary hearing has to be conducted within the limits laid down by law and also within the limits of arbitration rules agreed by the parties. Decisions relating to further details or new requirements to the provisions of law and the arbitration rules can be taken during such hearing.

The holding of hearing should not add unnecessarily to the cost of arbitration or prove a burden on the parties. Such hearing should preferably be held after consulting the parties.

There is no restriction by law on the arbitral tribunal to hold such a hearing. It has inherent jurisdiction to hold such a hearing. A party may have doubts about the usefulness of the preliminary hearing and object the same. Preliminary hearing may be necessary to take procedural decisions after providing an opportunity to the parties to be heard on matters affecting them. Arbitration can be planned by arbitral tribunal even without calling a preliminary hearing if the procedural decisions are general and parties are aware about the procedure being adopted by the arbitral tribunal. Preliminary hearing is held if the cost and time spent for the same is justified by the benefits accruing by way of increased efficiency and speed.

A preliminary hearing is useful in the following cases:

- (i) Participants in the arbitration are not used to the same procedural style and have divergent expectations.
- (ii) The procedural decisions are on matters of a variety of nature relating to length of hearings, number of witnesses, nature of expert evidences, place of arbitration, nature of claims, volume of documentation, linguistic problems, practical arrangements to be made, degree of coordination and consultations required.
- (iii) Participants in the arbitration are not far away from meeting and the expenditure and the time needed are not very high.

Generally, preliminary hearing is held after submission of statements of claim and defence when the requirement of documentation, witnesses etc. can be determined and points at issue could be defined and arrangements concerning evidence and preparation of hearings can be planned.

### Agenda of a preliminary hearing

The Agenda of the preliminary hearing may be prepared by the arbitral tribunal with or without the consultation of parties and is sent in advance for requisite preparation by the parties. The agenda may include following items:

- (i) Rules governing arbitral procedure.
- (ii) Jurisdiction and composition of the arbitral tribunal.
- (iii) Possibility of a settlement agreement through conciliation.
- (iv) Defining the points at issue and order of deciding the same.
- (v) Defining the relief and/or remedy sought.
- (vi) Listing undisputed facts.
- (vii) Arrangements concerning evidence (documentary and oral), requirement regarding oath or affirmation by the witnesses.
- (viii) Arrangements concerning evidence of experts.
- (ix) Arrangements concerning written submissions/arguments.
- (x) Details concerning numbering of exhibits/identification of exhibits, translations, desirable size of papers to be used for uniformity, admission or denial of authenticity of documents.
- (xi) Schedule of hearings and their expected duration.
- (xii) Any limitation to be imposed on the length of oral arguments or evidences.
- (xiii) Order in which parties will make arguments.
- (xiv) Recording of the proceedings.
- (xv) Language of the proceedings.
- (xvi) Type and extent of administrative support required (including Appointment of Secretary or Registrar of arbitral tribunal) and financial implications of the same.
- (xvii) Place of arbitration.
- (xviii) Mandatory provisions governing the arbitration proceedings.
- (xix) Deposit of amounts as advance for the costs.

The Arbitration Act, 1940, had no provision to indicate rules and procedures for conduct of arbitral proceedings. Sections 18 to 27 of the Arbitration and Conciliation Act, 1996, deal with rules and procedures for conduct of arbitral proceedings. The arbitral tribunal has to proceed with the matter in accordance with Chapter-V of the new Act.

### EQUAL TREATMENT OF PARTIES

Section 18 lays down two obligations on the arbitral tribunal i.e. to treat the party with equality and to give full opportunity to each party to present his case. Section 18 is the shortest section in the Act but one of the most significant. It constitutes a fundamental principle which is applicable to entire proceedings. The principle of equality and full opportunity to present the case should be observed by the parties also, when laying down any rules of procedure. An agreed procedure which violates the fundamental principle of equality and grant of opportunity to be heard, is null and void and an award passed in violation of this principle can be set aside. Section 34(2)(v) provides that an

award may be set aside if the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the law from which parties cannot derogate, or, failing such agreement, was not in accordance with law. Hence, an agreement cannot be in conflict with a mandatory provision of the law. If procedure agreed by the parties violates the fundamental principles, it cannot be enforced by the arbitral tribunal. The principle enshrined in section 18 should be observed during the entire arbitral proceedings. The principle does not entitle a party to adopt delaying tactics to obstruct the proceedings. The general principle is, however, subject to other provisions contained in sections 23, 24 and 25, wherein the right can be curtailed or limited by the parties or by the arbitral tribunal in certain cases. The parties may agree that arbitration be conducted on the basis of documents only under section 24. An award can be passed against the respondent if he fails to communicate the statement of defence in accordance with section 23(1). Hence, section 18 is influenced by sections 23, 24 and 25 and at the same time section 18 must also influence these sections. The arbitral tribunal has to maintain a balance for smooth conduct of the proceedings and has to make the parties feel that the arbitral tribunal is giving them full opportunity to present documents, witnesses and arguments. The parties are entitled to legal representation by the person of their choice and if disallowed it could be violation of given a full opportunity of presenting the case.

### DETERMINATION OF RULES OF PROCEDURE

According to section 19(1) the arbitral tribunal is neither bound by Code of Civil Procedure, 1908, nor by Indian Evidence Act, 1872. Code of Civil Procedure is of the Code of Civil Judicature and provides rules relating to suits, place of suing, summons and discovery, judgment and decree, interest, costs etc. The Evidence Act makes the law relating to evidence and applies to all judicial proceedings in or before any Court but not to proceedings before any arbitral tribunal. The arbitral tribunal is not bound to follow the procedure as followed by a Court. However, the arbitral tribunal is to observe fundamental principles underlying the Code of Civil Procedure and the Evidence Act. The procedure adopted by arbitral tribunal should be according to the principles of natural justice.

Section 19(2) provides that subject to provisions of the Part-I, the parties are free to agree on a procedure to be followed by the arbitral tribunal in conducting its proceedings. Rules of permanent arbitral Institutions usually deal with procedural matters in detail and are generally well tested in practice and are revised after consultation with experts to take into account fresh development in the law and practice of arbitration. Parties generally incorporate arbitration rules of a particular institution by reference to the same in the agreement. The arbitral tribunal does not have any discretion where any such rule has been provided for in the agreement.

The arbitral tribunal may conduct the proceedings in the manner it considers appropriate, but such power is subject to two exceptions mentioned below:

- (1) The arbitral tribunal cannot conduct the proceedings in a manner which is in violation of a mandatory provisions of the law.
- (2) The arbitral tribunal cannot conduct proceedings in a manner which is in violation of the procedure agreed by the

parties, if any. Where parties have agreed on the procedure to be followed by the arbitral tribunal in conducting its proceedings the arbitral tribunal is bound to follow that procedure.

There is no mandatory provision in the new Act as to how to determine the admissibility, relevance, materiality and weight of evidence. The parties may agree on the rules relating to this important aspect of the matter. However, if there was no agreed rules by the parties, the arbitral tribunal has power to determine the admissibility, relevance, materiality and weight of any evidence and make decision in the manner it considers appropriate. Section 19 is the most important provision of the law and it recognises the freedom of the parties to lay down the rules of procedure. It also grants discretion to the arbitral tribunal as to how to conduct the proceedings subject to agreement of the parties. Freedom to lay down rules of procedure is, however, subject to following restrictions (mandatory provisions) laid down by law:

- (1) Submission of a statement of claim and defence under section 23.
- (2) The parties should be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for purposes of inspection of documents, goods or other property under section 24(2).
- (3) All statements, documents or other information supplied to or applications made to the arbitral tribunal by one party should be communicated to the other party and any expert report or evidentiary document on which arbitral tribunal may rely in making its decision should be communicated to the parties, as per section 24(3).
- (4) The arbitral tribunal, or a party with the approval of the arbitral tribunal, is allowed to request the Court for assistance in taking evidence under section 27.
- (5) An award in agreed terms must state that it is an award and should be in accordance with section 30.
- (6) An arbitral award must be in writing and signed by the majority of all the members of the arbitral tribunal as per section 31(1).
- (7) The arbitral award must state its date and place of arbitration under section 31(4).
- (8) A copy of the award duly signed by the arbitral tribunal should be delivered to each party under section 31(5).
- (9) The arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal under section 32(2).
- (10) The arbitral tribunal has power to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature and to give interpretation of a specific point or part of the award under section 33.

Judges are bound by the Code of Civil Procedure and also by the Rules of Court while conducting proceedings in the court. There is no corresponding arbitration procedure and rules. Permanent arbitral institutions have their own sets of arbitration rules but those rules do not regulate the procedure in detail. The arbitral tribunal is master of the procedure of arbitration, subject, of course, to restrictions imposed by law, agreement of parties and natural justice. The arbitral tribunal may tailor the procedure

as per requirement of a particular matter for a quick and cheap resolution of disputes.

## PLACE OF ARBITRATION

Place of arbitration in an arbitration other than international commercial arbitration i.e. in domestic arbitration does not pose any problem. Parties may agree on the place of arbitration anywhere in India. But in international commercial arbitrations, place of arbitration has legal implications in terms of law applicable to arbitration. In domestic arbitration, the arbitral tribunal has to decide dispute in accordance with Indian laws, but in international commercial arbitration, parties have given freedom to designate law applicable to the substance of the dispute and the arbitral tribunal may apply the rules of law agreed by parties.

Section 20(1) provides that parties are free to agree on the place of arbitration. Where parties have not agreed on the place of arbitration the arbitral tribunal has to determine the place of arbitration having regard to the circumstances of the case, including the convenience of the parties. Section 31(4) provides a mandatory requirement and obligation on the arbitral tribunal to state the place of arbitration as determined in accordance with section 20 in the award and award is then deemed to have been made at that place. Part-II of the new Act deals with foreign awards and is applicable to those awards in which place of arbitration i.e. award is made outside the territories of India, to which New York Convention, 1958 applies. Hence, place of arbitration has on far reaching effect in terms of law applicable to arbitration and also enforcement of the arbitral award in international commercial arbitration.

UNCITRAL Analytical Commentary of Draft Text of Model Law Document No. A/CN/9/264 on Article 20 Para-3 on which section 20 is based states:

"The factual significance of the place of arbitration, in particular when determined by the parties themselves, is that in principle, the arbitral proceedings, including any hearings or other meetings, would be expected to be held at that place. However, there may be good reasons for meeting elsewhere, not merely in the case where a change of locale is necessary (e.g. for purposes of inspection of premises). For example, where witnesses are to be heard or where the arbitrators meet among themselves for consultations, another place may be more appropriate for the sake of convenience of the persons involved and for keeping down the costs of the arbitration. Yet another of the many possible considerations would be to balance the parties' own expenses by scheduling some of the meetings at the place of one party and some of the meetings at the place of the other party".

Actual venue of arbitration i.e. meeting place of arbitral tribunal may be different from the place of arbitration for consultation amongst members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other properties. However, the award is treated to have been made at the place of arbitration, although it might have been made at some different place.

## COMMENCEMENT OF ARBITRAL PROCEEDINGS

Section 21 gives freedom to the parties to agree on the date of commencement of arbitral proceedings. The arbitral

proceedings, subject to agreement of party, in respect of a particular dispute, commence on the date, on which a request for the dispute to be referred to arbitration is received by the respondent. A request for reference of disputes to arbitration is different from request for the appointment of arbitrator/constitution of arbitral tribunal. Section 7 clearly provides that parties may agree for reference of future disputes to arbitration but request for reference of disputes to arbitration is and constitution of arbitral tribunal made only after the disputes have arisen.

## LANGUAGE

Section 22 gives freedom to parties to agree upon the language or languages to be used in the arbitral proceedings. The arbitral tribunal, subject to agreement of parties, has power to determine the language or languages to be used in the arbitral proceedings. Generally, the language of arbitration is English, it being an international language and the same is agreed in most of the arbitrations by the parties and the arbitral tribunal. The arbitral tribunal may ask for translation of documentary evidence into the agreed language.

## STATEMENT OF CLAIM AND DEFENCE

Section 23 is a mandatory provision. The claimant should state the facts supporting his claim, the points at issue and the relief or remedies sought and the respondent should state his defence in respect of these particulars. However, the parties have been given freedom to agree on required elements of those statements. The parties have also been given freedom to agree upon the period of time for submission of those statements. The arbitral tribunal has power to determine the period of time for submission of these statements where parties have not agreed on the same. The statements contemplated by section 23 need not be in writing. Articles 3(2) and 4(1) ICC Rules deal with statements at the preliminary stage of a request for arbitration. Section 23(1) is a flexible provision and is in harmony with most of the arbitration rules and parties have been given freedom to such an extent that mandate is very slight. [It is possible that in an arbitration like "look-Sniff" variety there is no pleading at all]. Section 2(9) provides that any reference to claim embraces a counter claim, and any reference to the defence, embraces defence to a counter claim. The parties may submit with their statements all documents they consider to be relevant or may add a reference to documents or other evidence they will submit.

The parties may agree to amend or supplement their statements during the course of arbitral proceedings. The arbitral tribunal has exclusive discretion to restrict supplementary claim and defences having regard to the delay in making it. The parties can extend the scope of arbitration agreement. Such extension can be implied when one party does not object to a supplementary claim or an amendment which extends beyond the scope of agreement, as per the principle of waiver laid down in sections 4 and 16.

## SUPPLEMENTARY CLAIMS AND DEFENCES

The parties have freedom to agree that they have unrestricted right or restricted right or no right to amend or supplement their claims or defences. The amendment or supplement should not exceed the scope of arbitration agreement, as the jurisdiction of the arbitral tribunal depends on the arbitration agreement. The amendment or supplement may result in delay, prejudicial to other party by upsetting the normal course of the proceedings, and increase the cost of arbitration.

Section 23(2) provides that either party may amend or supplement his claim or defence during the course of arbitral proceedings subject to two limitations i.e. a contrary agreement of the parties and the tribunal consider it in appropriate to allow the amendment or supplement having regard to the delay in making it. The parties have right to submit amendment or supplement during the arbitral proceedings till termination of the proceedings. The arbitral tribunal may disallow the amendment or supplement or may allow the same subject to additional cost as deemed appropriate by it.

The Supreme Court of India in *Santokh Singh Arora v. Union of India*, 1992 (1) Arbitration Law Reporter 168, pointed out that the scope of arbitration has to be confined to claims made before the first arbitrator. No fresh claims can be allowed to be raised in respect of damages sustained after reference of the disputes to arbitration.

Order 2 Rule of Code of Civil Procedure provides that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion on his claims, he shall not afterwards sue in respect of the portion so omitted or relinquished. A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted. The principle of Code of Civil Procedure is not applicable to arbitral proceedings as section 23(3) gives freedom to parties to amend or supplement his claim or defence during the course of arbitral proceedings.

The provision is based on the principle that the party should not be prevented from amending his statement of claim or defence since any limitation in that respect would be contrary to his right to present his case, and problem of late amendment causing delay in proceedings can be dealt with by apportioning the costs of the proceedings or by making partial award in respect of issues already presented and postponing the settlement of other issues.

## WRITTEN SUBMISSIONS

Exchange of statements is required to define the issues to be determined by the arbitral tribunal. ICC Rules require the arbitral tribunal to draw up the terms of reference and the same are to be signed by the arbitrators and the parties.

At this stage of the proceedings the issues/objections against the jurisdiction are debated by the parties. Statement of claim and defence or documents of importance for the purpose of drawing up terms of reference.

## THE POINTS AT ISSUE

The points at issue are determined by the arbitral tribunal for the conduct of arbitral proceedings in a sensible and efficient way. The object of statement of claims and defence is to identify the facts and arguments in support of the parties position. In arbitrations in which there will be no hearing or only a very short hearing for clarification of certain aspects of the matter, the pleadings of the parties i.e. statements of claim and defence should be in sufficient detail accompanied by documentary evidence. If the statements are inadequate, time and money may be wasted in the detailed enquiry, evidence and argument. Parties should state their respective cases to avoid surprises at the hearing.

**ARTICLES**

The issues may lie within a narrow compass or there may be wide field of issues, or potential issues. Section 34(1)(iv) provides that if the arbitral tribunal deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, the arbitral award may be satisfied by the court.

As per section 33(4) the arbitral tribunal is required to make an additional arbitral award as to claim presented in the arbitral proceedings but omitted from arbitral award. Hence, it is desirable that the arbitral tribunal should deal in the arbitral award with all matters which have been submitted to it and should not deal with disputes not contemplated by or not falling within the terms of the submission to arbitration or matters beyond the scope of submission to arbitration. If the points at issue are defined the arbitral tribunal and the parties become aware of the matters to be decided by the arbitral award. It also enables arbitral tribunal to conduct the arbitral proceedings in an orderly manner. Defining the points at issue also avoids the possibility of a dispute getting converted into an entirely new.

**EVIDENCE**

Section 33(2) provides that the parties may submit with their statement, all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit. The evidence may be a documentary evidence or oral evidence i.e. hearing the witnesses or expert witnesses. Generally, arbitration is conducted on the basis of documentary evidence.

Evidence is presented to assist the arbitral tribunal in determining the facts in dispute or disputed aspects of foreign law. Parties are required to prove the facts relied in support of their respective cases. Evidence is generally presented by four methods—

- (i) Production of documents;
- (ii) Testimony of witnesses i.e. written or oral statement;
- (iii) Written or oral opinion of expert witnesses; and
- (iv) Inspection of documents, goods or other property.

Each party is required to discharge the burden of proof to the satisfaction of the arbitral tribunal. The arbitral tribunal has the power to determine the admissibility, relevance, materiality and weight of any evidence produced by a party. Production of documentary evidence is more reliable as it comes into existence when the events leading to a dispute takes place and it is easier and a time-saving method of presenting the evidence. The authenticity of documentary evidence can be decided by the arbitral tribunal if objected to by a party. Section 27(1) provides that the arbitral tribunal or a party with the approval of the arbitral tribunal, may apply to the court for assistance in taking evidence. The court may order that the evidence be provided directly to the arbitral tribunal and may issue the same process to witnesses as it may issue in suits tried before it. The arbitral tribunal does not have coercive power issue to processes to witnesses and order production of documents in the possession of a third party.

A number of sets of documents with identical numbering/page numbering should be prepared for use of arbitrators and each party alongwith index of the documents on the top of every set for proper/and easier references by the arbitrator or the parties at different stages of arbitration so that arbitration is conducted with speed and efficiency.

**NOTICE OF HEARING**

Hearing is useful if it is attended by the parties and they also know what is going to happen/take place during the hearing. Misunderstanding or failure to communication may lead to failure of the hearing. The arbitral tribunal should ensure proper communication of notice of hearing to the parties in advance of a hearing and of meeting of the arbitral tribunal for purposes of inspection of documents, goods or other property. The date of hearing should be as fixed to give sufficient time to the parties to have proper preparation for the hearing. Difficulty of parties such as illness, compelling engagements etc. should be accommodated to the possible extent. Arbitral proceedings are confidential in nature and strangers cannot be allowed to attend the hearing. A party may be represented by an advocate or by a person who is not an advocate. Some persons because of their familiarity with the trade and its arbitration procedure are chosen by the parties for representation in the arbitral proceedings. Persons who are familiar with arbitration procedures are preferred due to advantage of speed and experience. A party has a right to be present throughout the hearing.

**PROCEDURE AT HEARINGS**

The object of arbitration is speedy and economical settlement of disputes. The duration of a hearing should be kept to the minimum. The Iran-United States Claims Tribunal held hearings exceeding two days in only the most complex cases.

In Civil Law countries arbitration hearing generally does not take more than two or three days and hearing beyond three days is considered as a long hearing. International trend is towards shorter hearings and to decide the matter on the basis of documentary evidence. The International Centre for Alternative Dispute Resolution (ICADR) in India has a general policy not to conduct more than five days hearings in complex cases. The cases which are not complex should be decided in one day or two days hearing to reduce the cost.

Indian practice of arbitration is based on English practice, where in number of hearings are conducted resulting in lot of expenditure and wastage of time. Arbitrators fix a hearing sometimes even for filing of statement of claim, statement of defence or other documents. The new law of arbitration in India is based on UNCITRAL model law, whereas Arbitration Act, 1940, was based on English Arbitration Act, 1934. It is desirable that the practice prevalent in India of holding a number of hearings should be avoided and a new trend in harmony with the new law and also International trend should be preferred.

**DECISION MAKING BY THE ARBITRAL TRIBUNAL**

There are two types of decisions to be made by the arbitral tribunal i.e. decision on the merits of the dispute and decision on questions of procedure. Decision on merits of dispute is to be made by the majority of members of the arbitral tribunal but question of procedure can be decided by the presiding arbitrator, if authorised by the parties or all members of the arbitral tribunal. In the absence of such authorisation by the parties or other members of the tribunal, the decision on question of procedure is also to be made by majority of members of the arbitral tribunal.

In case there is no majority i.e. a case where all members have different opinion and no opinion constitute majority, no solution has been provided in the new Act. Section 32(2)(c) provides that

the arbitral tribunal shall issue an order for termination of arbitration proceedings where the arbitral tribunal finds that continuation of the proceedings for any other reason has become unnecessary or impossible. Where there is no majority the arbitral tribunal may terminate the proceedings under this clause so that the new arbitral tribunal is constituted under section 15 of the new Act to have a majority award for the success of arbitral proceedings. Parties can provide in their agreement that in case there is no majority view, the presiding arbitrator is to make the decision. In case agreement is silent and no such provision has been made it can be said that arbitral tribunal has failed to decide the dispute in case where there is no majority decision. The presiding arbitrator has not been given any special power under the Indian Law and he acts as arbitrator as any other arbitrator. All arbitrators have been given equal power irrespective mode of appointment.

### ESSENTIALS OF AN ARBITRAL AWARD

1. An arbitration agreement is required to be in writing. Similarly, a reference to arbitration and award is also required to be made in writing. The arbitral award is required to be made on stamp paper of prescribed value (as applicable at the place of making the award) and in writing. An oral decision is not an award under the law.

2. The award is to be signed by the members of the arbitral tribunal. However, the signatures of majority of all the members of the tribunals are sufficient if the reason for any omitted signature is stated, meaning thereby that the award should be signed by all members or the majority of all the members provided reason for omission to signature is given.

3. The making of an award is a rational process which is accentuated by recording the reasons. The award should contain reasons. However, there are two exceptions where award without reasons is valid i.e.

- (a) where the arbitration agreement expressly provides that no reasons are to be given, or
- (b) where the award has been made under section 30 of the new Act i.e. where the parties settled the dispute and the arbitral tribunal has recorded the settlement in the form of an arbitral award on agreed terms.

The formulation of reasons is a powerful discipline and it may lead the arbitrator to change his initial view on the matter. Recording of reasons involves, analysis of the dispute to reach a logical conclusion. Award can be divided into four parts i.e. general, findings of fact, submissions of the parties and conclusions of the tribunal. The tribunal should explain its view of the evidence and reasons of its conclusions. The preamble of the award may contain reference to the arbitration agreement, constitution of the tribunal, procedure adopted by the tribunal etc. and second part of the award may contain points at issue, argument for the claimant, argument for the respondent and findings of the tribunal. The points at issue may be divided into two heads i.e. issue of fact and issue for law.

4. The award should be dated i.e. the date of making of the award should be mentioned in the award.

5. Place of arbitration is important for the determination of rules applicable to substance of dispute, and recourse against the award. The arbitral tribunal is under obligation to state the place of arbitration as determined in accordance with section 20.

Place of arbitration refers to the jurisdiction of the court of a particular city or State.

6. The arbitral tribunal may include in the sum for which award is made, interest upto the date of award and also a direction regarding future interest.

7. The award may also include decisions and directions of the arbitrator regarding the cost of the arbitration.

8. After the award is made, a signed copy should be delivered to each party for appropriate action like implementation or recourse against arbitral award. □

### DEMOCRATIZATION OF JUSTICE DELIVERY SYSTEM

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the overall guidance and supervision of Hon'ble former Chief Justice of India, Justice Venkatachaliah.

To maintain law and order in the country which includes dispensation of justice to the people, is the first and foremost duty of every democratic government. In England, it is understood, that the Government has not only provided a very efficient and free medical care system to the people, but it also provides a very efficient administration of justice delivery system and at the same time spends billions of Pounds on legal aid. It is the experience of a large number of countries that without an efficient judicial system, no fast economic or social growth can take place. In our neighbouring Far Eastern countries, situation of large delays and arrears of cases pending in different Courts was almost the same what we have today. By democratising their justice delivery system in the ADR way, they could achieve a target of ensuring that no justiciable matters remain pending in any Court of Law or Tribunal for more than six months time. It has helped them in speeding up economic growth.

Our Constitution already grants many fundamental rights to the citizens as well as others in the country and warrants that our judicial system be so efficient so that people feel happier and comfortable with the system. At the moment, these rights have got no meaning when their enforcement system is not efficient and effective. □

**"Over the next generation society's greatest opportunities will lie in tapping human inclinations towards collaboration and compromise rather than stirring our proclivities for competition and rivalry. If Lawyers are not leaders in marshalling co-operation and designing mechanisms which allow it to flourish, they will not be at the centre of the most creative social experiments of our time..."**

**A serious effort to provide cheaper methods of resolving disputes will require skilled mediators and judges, who are trained to play a much more active part in guiding proceedings towards a fair solution. In short a just and effective legal system will not merely call for a revised curriculum; it will entail the education of entire new categories of people. It is time that our law schools began to take the lead in helping to devise such training".**

—DEREK BOK  
President, Harvard University  
(Benjamin Cardozo Lecture 1982)