

ARBITRATION ACT 1940

- Arbitration Act passed in 1940 and came into force on 1st July, 1940.
- It extends to the whole of India except J&K.

Meaning of Arbitration

The process of settling disputes between two parties, or their request through arbitrator is called Arbitration.

According to section – 2(a) of Arbitration Act, 1940,“ An Arbitration means a written agreement to submit present or future differences to arbitration whether arbitration is named or not.”

Essential Elements of Arbitration agreement

Valid Arbitration agreement must contain the following elements:-

- i. Must be in writing.
- ii. The disputes may be an existing one or it may arise in future, may be present for Arbitration.
- iii. It is not necessary to be signed on the arbitration agreement by the parties.
- iv. Must have all essentials of a valid contract.
- v. Parties should have an agreement to settle the disputes through Arbitration.

Person who can refer to Arbitration

- a) Agent duly authorised by employer.
- b) Karta of joint HUF may refer any dispute relating to property of that family.
- c) Official Assignee or Receiver with the leave of the court can refer dispute.
- d) Attorney
- e) Trustee, if authorised by the trust.
- f) Company, if authorised by its MOA.
- g) A partner only when he is authorised by other partners.
- h) An insolvent cannot refer to dispute to arbitration so as to bind his estate.

Subject matter of Arbitration

- I. All such matters relating to civil nature and affecting the personal or private rights of the parties.
- II. Compoundable offences of criminal nature of disputes.
- III. Question of Facts as well as of Law.
- IV. All disputes relating to Time barred claims.
- V. Disputes relating to compliment, marriage, civil right and dignity.
- VI. Question of determination of damages in case of Breach of Contract.

Matters which cannot be referred

1. Criminal nature
2. Matrimonial matters
3. Insolvency proceedings
4. Disputes relating to Public charities and Trust
5. Lunacy proceedings
6. Disputes relating Validity of Bill
7. Appointment of guardian of a Minor.
8. Illegal transaction

Modes of Submission to Arbitration

The provision of the act laid down the following modes for submitting the disputes to Arbitration.

- A. Without Intervention of Court**
- B. With Intervention of Court**
- C. In Suits**

Arbitrator

The person who may be appointed by the mutual consent of parties to settle the dispute is an Arbitrator.

Any person can be appointed as Arbitrator except the following:-

- A person who has direct interest in the subject matter of controversy.
- A person who is under any legal disability by virtue of statutory provision.
- Any person whose honesty is suspected

Appointment of Arbitrator

- 1) Appointment by Third Party**
- 2) Appointment by Court**
- 3) Appointment by Party**

Rights of Arbitrator

Sec – 13 of the Act provides the right to an arbitrator.

- To administer oath to parties to witnesses and parties appearing before him.
- To state a special case for the opinion of the court on any question of law or state the award in the form of a special case for the opinion of court.
- To make the award conditional or in alternative
- To rectify in an award any clerical mistake or error arising from any accidental slip or omission
- To administer any party interrogatories

Sec – 27 also give some powers to the arbitrator

- To make interim reward
- To award cost of reference and award of any party
- To order specific performance in certain cases
- To award interest
- Power to obtain legal assistance
- Power to delegate authority limited to the performance of acts of a ministerial character

Duties of Arbitrator

- ✚ He must observe the rules of natural justice
- ✚ He must act fairly to both parties
- ✚ He must not delegate his duties to a third person or to a co-arbitrator
- ✚ He must act within the scope of his authority as laid down by arbitration agreement
- ✚ He must decide all matters referred to him
- ✚ He must make the award within the time prescribed or extended, as the case may be
- ✚ To sign the award and file the copy of it to the court
- ✚ He must inform the parties after making the reward