

**Mumbai University**  
**3 Years LLB- Semester VI (February 2024),**  
**Alternate Dispute Resolution (ADR)**  
**Short Questions & Answers for Internal Exam.**

**Q1) What is an Alternate Dispute Resolution?**

**Ans) ADR is the collective term of methods such as arbitration, conciliation, mediation, and other tools which facilitate dispute settlement outside the formal judicial process. The process is mutual and voluntarily, and involves the appointment of a third party who will try and solve the dispute through the selected approach.**

**Q2) State any three reasons for emergence of Alternate Dispute Resolution (ADR)?**

- **High Cost of Litigation:** The cost of litigation consist of court fees, fees paid for summons and other processes, advocates fees etc. The costly nature of litigation compels parties to abandon claims and defences in court of law and look for alternate dispute resolution mechanism.
- **Efficiency and Speed:** ADR provides a faster method to resolve disputes compared to traditional court proceedings. The number of cases pending in courts and the lengthy time taken to resolve disputes have contributed to the development of ADR.
- **Confidentiality and Control:** Parties often prefer ADR because it offers greater confidentiality than court proceedings. It also allows parties to have more control over the selection of the individual or individuals who will decide their dispute. Furthermore, companies that do not want to make their disputes public, which could potentially harm their reputation, support alternative ways to resolve disputes privately.

**Q3) What is Arbitration?**

**Ans) Arbitration is settlement of a question or dispute (whether of fact, law, or procedure) between parties to a contract by a neutral third party (who is known as the arbitrator), without going through the rigours of the formal court process. Arbitration is a voluntary process, which starts only if all parties to a dispute agree to it. In the Indian context, the scope of the rules for the arbitration process are set out broadly by the provisions of the Arbitration and Conciliation Act 1998. The parties are however free to design an appropriate arbitration process themselves, relevant to their disputes, within this broad framework. The decision of the arbitrator is binding on all parties.**

**Q4) Define Arbitration Agreement?**

Ans) An Arbitration Agreement is typically a clause in a broader contract in which the parties involved agree to settle any dispute that arises out of the contract, out of court, through arbitration. The arbitration agreement mandates, guides, and establishes the arbitration proceedings at the time of dispute. The arbitration process starts when the parties enter into an arbitration agreement.

In arbitration, a trained, professional, and neutral arbitrator acts as a judge who will render a decision to end the dispute.

Q5) Write a note on role/duties of conciliator?

Ans) As per part 3 of the Arbitration & Conciliation Act, 1996/2015, Conciliation is a process by which settlement of disputes is encouraged through a process of continuous discussion, facilitated by the conciliator. (Sec. 61). In other words, Conciliation is a voluntary and confidential method of alternative dispute resolution (ADR), where the conciliator facilitates communication, encourages negotiation, and helps the parties reach a mutually acceptable settlement. A conciliator is a neutral third party appointed to assist parties in resolving their disputes through the process of conciliation.

Some key roles and responsibilities of a conciliator:

- i) **Assisting Parties in Reaching an Amicable Settlement:** The primary role of a conciliator, as stated in Section 67, is to assist the parties in reaching a mutually acceptable resolution to their dispute. This involves facilitating communication, encouraging dialogue, and exploring possible solutions.
- ii) **Guided by Principles of Objectivity, Fairness, and Justice:** The conciliator is guided by principles of objectivity, fairness, and justice. They maintain a neutral position within a meeting to ensure both parties receive fair considerations.
- iii) **Conducting the Conciliation Proceedings Appropriately:** The conciliator is responsible for conducting the conciliation proceedings appropriately. They hold meetings with each individual party to discuss how the meeting will go and review relevant documents and information to help reach conclusions.
- iv) **Making Proposals for Settlement:** Unlike a mediator, who typically focuses on guiding the parties towards a mutually agreeable solution, a conciliator may actively propose settlement options or suggestions for resolving the dispute.
- v) **Maintaining Confidentiality:** Confidentiality is an essential aspect of conciliation. The discussions and information shared during the conciliation process are usually protected by confidentiality provisions, allowing parties to speak openly without fear of their statements being used against them in any subsequent legal proceedings.

Thus, the role of a conciliator is crucial in assisting parties to resolve their disputes amicably and avoid lengthy and costly litigation. They play a significant role in alternative dispute resolution by facilitating communication, encouraging negotiation, and helping the parties reach a mutually acceptable settlement.

**Q6) What are three advantages of Conciliation?**

**Ans) Conciliation under the Arbitration Act offers several advantages:**

- i) Flexibility:** Conciliation is a flexible process that can be tailored to the needs of the parties involved. It can be used for a wide variety of disputes, both small and large.
- ii) Preservation of Relationships:** As the parties are directly engaged in negotiating a settlement, conciliation enhances the likelihood of the parties continuing their amicable business relationship during and after the proceedings.
- iii) Confidentiality:** The conciliation process is committed to maintaining confidentiality throughout the proceedings and thereafter. This includes the dispute, the information exchanged, the offers and counter-offers made, and the settlement arrived at.

These advantages make conciliation an attractive alternative to traditional court proceedings.

**Q7) State any three grounds to challenge the Arbitral Award?**

**Ans) Some of the grounds on which an arbitral award can be challenged:**

- i) Incapacity of Parties:** If the parties to the agreement were under some incapacity at the time of entering into the agreement, the arbitral award can be challenged.
- ii) Void Agreement:** If the arbitration agreement is void, i.e., it is not enforceable by law, the arbitral award can be challenged.
- iii) Beyond the Scope of Arbitration Agreement:** If the award contains decisions on matters that are beyond the scope of the arbitration agreement, it can be challenged.
- iv) Absence of Proper Notice:** If there was an absence of proper notice of the appointment of an arbitrator or of arbitral proceedings, the arbitral award can be challenged.
- v) Violation of Natural Justice:** If a party was unable to present his case or if there was a violation of natural justice, the arbitral award can be challenged.

The specific grounds for challenging an arbitral award may vary depending on the jurisdiction and the specific arbitration agreement.

**Q8) What is foreign award?**

**Ans) A Foreign Award in the context of Alternate Dispute Resolution (ADR) refers to an arbitral award that is made in a country other than the one where enforcement is sought. Section 44 Arbitration and Conciliation Act, 1996 defines "foreign award" as an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India. The enforcement of foreign arbitral awards is governed by international conventions like the New York Convention 1958, or Geneva Convention.**

The enforcement of these awards is considered one of the main factors in the success of International Commercial Arbitration.

However, it's important to note that while a foreign award cannot be disputed, its enforcement can be opposed on the same grounds that are available for a domestic award. This means that while the award itself is final and binding, its enforcement in a particular jurisdiction can be challenged under certain circumstances.

**Q9) What is consent award?**

**Ans) A Consent Award is a type of arbitral award that reflects the mutually agreed settlement terms of the parties involved in a dispute.**

Consent Awards are settlement agreements recorded between the parties after they have invoked arbitration to settle disputes. The consent award is non-adjudicatory in nature, meaning it does not involve a decision on the merits of the dispute. In rendering a consent award, the arbitral tribunal does not entertain the dispute on its merits, but only records the settlement agreement of both parties for the purpose of formality.

**Q10) What is Lok Adalat?**

**Ans) A Lok Adalat, which also known as "People's Court", is an alternative dispute resolution mechanism used in India. It is a forum where disputes or cases pending in the court of law or at a pre-litigation stage are settled or compromised amicably.**  
key points about Lok Adalats:

- i) Statutory Status:** Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987.
- ii) Composition:** The Lok Adalat is composed of a chairman, two members, and one social worker. The chairman must be a sitting or retired judicial officer.
- iii) Final Award:** The decision made by the Lok Adalats is considered to be a verdict of a civil court and is final and binding on all parties. There is no provision for an appeal against such an award.
- iv) No Fee:** There is no court fee payable when a dispute is filed in a Lok Adalat.
- v) Amicable Resolutions:** The Lok Adalat shall not decide the dispute so mentioned at its own instance (i.e there is no adjudication on the basis of merits), instead the same would be decided on the basis of the compromise between the parties.

**Q11) What is the date of commencement of Arbitral Proceedings?**

**Ans) The date of commencement of arbitral proceedings is typically the date on which a request for that dispute to be referred to arbitration is received by the respondent. This is unless otherwise agreed by the parties. In other words, a party can commence arbitration by issuing a notice in writing to the other party of its intention to refer the dispute to arbitration. The arbitration proceedings are deemed to have commenced on the date on which the respondent receives such notice from the claimant.**

**Q12) What is the Full form of UNICITRAL?**

**Ans) UNICITRAL stands for United Nations Convention on International Trade Law.**

**Q13) What is Lien of Award?**

**Ans) A Lien of Award refers to the right of an arbitrator to retain the arbitral award until the payment of the fees and expenses due to them is made. This right is similar to a lien in general legal terms, which is a claim or legal right against assets that are typically used as collateral to satisfy a debt.**

**In the context of arbitration, if the parties refuse to pay the arbitrator's fees, the arbitrator may exercise their lien over the award. This means they may refuse to release the final award to the parties until their fees are paid.**

**Q14) Who is mediator?**

**Ans) A mediator is a neutral third party who assists two or more parties in resolving a dispute. The mediator's role is to facilitate communication, promote understanding, and help the parties reach a mutually acceptable resolution. Unlike a judge or an arbitrator, a mediator does not make a decision or impose a solution on the dispute. Instead, the mediator helps the parties to create their own solution. Mediation is a method of alternative dispute resolution (ADR) and is an alternative to litigation.**

**Q15) Who is presiding Arbitrator?**

**Ans) A Presiding Arbitrator is typically the arbitrator who is appointed by the other arbitrators or designated in the arbitration agreement as the presiding arbitrator or chairman of the arbitral tribunal.**

**The Presiding Arbitrator often plays a crucial role in the arbitration process, including dictating the pace and tone of the arbitration, conducting the hearings, and drafting the award. They are often given considerable discretion in making procedural decisions.**

**Q16) Name two statutes dealing with ADR?**

**Ans) Two statutes dealing with Alternative Dispute Resolution (ADR) are:**

- i) Arbitration and Conciliation Act, 1996: This Act provides a framework for the arbitration process, including the appointment of arbitrators, the conduct of arbitral proceedings, the making of an arbitral award, and the enforcement of arbitral awards.**
- ii) The Legal Services Authority Act, 1987: This Act provides for the constitution of legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.**

**Q17) What are the different mechanisms of ADR?**

**Ans) ADR mechanism of dispute resolution in India, mainly comprise of Arbitration, Mediation, Conciliation and Negotiation.**

**Q18) In which of the landmark judgement, it was decided by the Supreme Court that Part I and Part II of the 1996 Act, are mutually exclusive of each other?**

**Ans) In the case of Bharat Aluminium Co V Kaiser Aluminium Technical Services Inc, it was decided by the Supreme Court that Part I and Part II of the 1996 Act, are mutually exclusive of each other.**

**Q19) What is fast track arbitration?**

**Ans) Fast Track Arbitration is an expedited arbitration procedure designed to yield a final award in a short period of time. It was introduced in India by the Arbitration and Conciliation Amendment Act 2015, to expedite the process of arbitration.**

**Here are some key features of Fast Track Arbitration:**

- i) Time Limit: The proceedings are governed by strict time limit policies and are expected to end within 6 months. If the time limit is not followed, the mandate of the arbitrator may terminate.**
- ii) Sole Arbitrator: Unlike regular arbitration which often involves a panel of three arbitrators, Fast Track Arbitration typically involves a sole arbitrator appointed by the parties.**
- iii) Written Submissions: Fast Track Arbitration primarily relies on written submissions and there is usually no provision for oral proceedings.**
- iv) Cost and Time Effective: Since speed and cost are vital elements in commercial dispute resolution, Fast Track Arbitration has evolved into a speedy and efficient settlement of disputes.**

**Q20) Whether limitation act is applicable to Arbitration Proceedings?**

**Ans) Yes, the Limitation Act is applicable to arbitration proceedings. Section 43 (1) of the Arbitration and Conciliation Act, 1996 states that "the Limitation Act, 1963, shall apply to arbitrations as it applies to proceedings in court".**

**The Limitation Act is a statute in the civil law system, which prescribes a maximum period, after the happening of an event (often called the cause of action), in which legal action can be commenced. Therefore, an action cannot be initiated by a party if the prescribed time has passed after the accrual of the cause of action on the basis of which the action is to be initiated.**

**The Act provides for the extension of the prescribed period in certain cases such as legal disability, sufficient cause, and acknowledgement of debt. Acknowledgement of debt plays a significant role in extending the limitation period under the Limitation Act, 1963. Section 18 of the Limitation Act provides that where, before the expiry of the prescribed period of limitation, an acknowledgement of liability is made in**

writing and signed by the debtor, a fresh period of limitation starts from the time when such acknowledgement was signed.

**Q21) What is arbitral tribunal?**

**Ans)** An Arbitral Tribunal is a panel of unbiased adjudicators which is convened and sits to resolve a dispute by way of arbitration. An arbitral tribunal can be a sole arbitrator or a panel of arbitrators. The task of an arbitral tribunal is to adjudicate and resolve the dispute and to provide an arbitral award. The parties to agree on arbitration are usually free to determine the number and composition of the arbitral tribunal. The powers of an arbitrator in India include the power to administer an oath to the parties and witnesses, take interim measures, proceed ex-parte, appoint an expert, and make awards.

**Q22) Non Speaking Award?**

**Ans)** A non-speaking award is an arbitral award where the arbitrator does not provide the reasons for the decision. The Supreme Court of India has observed that in a non-speaking award, it is not open for the court to probe the mental process of the arbitrator and speculate, where no reasons have been given by the arbitrator for arriving at a certain conclusion. An arbitral award is not ordinarily liable to be challenged on the ground that it is erroneous. The award of the arbitrator is final and conclusive unless it is contrary to the terms of the contract. However, a non-speaking award can be set aside if the arbitrator has exceeded his jurisdiction.

**Q23) Distinguish between Arbitration and Conciliation?**

**Ans) Meaning:** Arbitration is a dispute settlement process in which an impartial third party, known as an arbitrator, is appointed to study the dispute, hear both parties, and arrive at a decision that is binding on both parties. On the other hand, Conciliation is a method of resolving disputes, wherein an independent person, known as a conciliator, helps the parties to arrive at a negotiated settlement.

**Enforcement:** An arbitrator's decision is usually final and legally binding, similar to a court judgment. However, a conciliator does not have the power to enforce their decision.

**Legal Proceedings:** Arbitration often follows specific legal procedures and rules, and the arbitrator's role is similar to that of a judge. In contrast, conciliation focuses on finding a compromise that satisfies all parties.

**Prior Agreement:** Arbitration requires a prior agreement between the parties to resolve disputes through arbitration. However, such a prior agreement is not required for conciliation.

**Availability:** Arbitration is available for both existing and future disputes. In contrast, conciliation is typically used for existing disputes.

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