

Q How is an arbitrator appointed under the arbitration and conciliation Act 1996? Discuss the procedure and power of an arbitral Tribunal to proceed ex-parte - 15

4/2023

Introduction :-

Arbitration is a preferred mechanism for resolving disputes outside the courts due to its efficiency, confidentiality, and flexibility. The Arbitration and conciliation act 1996 govern arbitration in India emphasizing party autonomy and procedural fairness. The appointment of arbitrators and the functioning of the arbitral Tribunal are central to this process.

Appointment of arbitrators

The procedure for appointing arbitrators is governed by Section-11 of the Arbitration and Conciliation Act 1996.

1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

2) Parties Decide Together :-

→ The parties can agree on how the arbitrator or arbitrators will be appointed.

→ They can choose the number of arbitrator must be odd and decide qualification

3) Number of arbitrators :-

→ If not decided by the parties the default

is one arbitrator (sec-10)

4) Single arbitrator :-

→ if the parties fail to agree on a sole arbitrator, any party can apply to the High court (domestic) or Supreme court (international) to appoint one.

5) Three arbitrators :-

→ each party appoints one arbitrator.

→ The two appointed arbitrators choose a third arbitrator as the presiding arbitrator

→ if there is no agreement within 30 days, court can step in.

6) Courts or institutional Role :-

→ If the parties or arbitrators fail to appoint

Court can intervene under Section - 11

→ The 2015 amendment allows courts to delegate this task to arbitration institution to speed up the process.

7) Neutrality of arbitrators :-

→ Arbitrators must be impartial and independent (Sec- 12)

→ They must disclose any circumstances that might affect their neutrality.

procedure for an arbitral Tribunal to proceed

ex- parte :- →

①. proper Notice to parties :-

→ The Tribunal must ensure all parties are given proper notice about hearing and deadlines.

2) Non-participation of a party :-

→ If one party does not appear for hearing or fails to submit documents without a valid reason, the tribunal can proceed in their absence (sec- 25)

3) Continuation of proceeding :-

→ The Tribunal can continue to hear the case based on the evidence and arguments presented by the present party.

4) Fair opportunity :-

→ Even in ex-parte proceeding, the tribunal must evaluate the case fairly and ensure the decision is based on available evidence.

5) Right to challenges :-

→ The absent party can later challenge the award under section 34 if they can prove that they were not properly notified or denied a chance to participate.

6) Resumption of proceeding :-

→ If the absent party provides a valid reason for their non-appearance, the tribunal can allow them to rejoin and resume the proceeding.

power of an arbitral tribunal to proceed ex-parte —

① proceed without a party :- —

→ if a party fail to attend hearing or submit document despite proper notice, The tribunal can ~~can~~ continue without them (Sec-25)

2) ~~B~~ Decide Based on evidence :-

→ The tribunal can evaluate the available evidence and argument presented by the attending party to make a decision.

3) issue an ex - parte award :-

→ The tribunal must ensure the absent party was given sufficient notice about the proceeding and deadlines.

4) prevent Delays :-

→ This power allows the tribunal to avoid delay caused by one party's non-cooperation

6) fair opportunity to challenge:-

→ The absent party can challenge the award later if they prove they were not properly notified or were unable to attend for valid reasons (Sec-34)

Conclusion :-

The arbitration and conciliation Act 1996, ensures a robust framework for appointment of arbitrators and the functioning of the arbitral tribunal. It strikes a balance between party autonomy and judicial oversight, and ~~efficiency in~~ ensuring impartiality and efficiency in dispute resolution.

Aspect	conciliation	mediation	Arbitration
Definition	A process where a conciliator helps disputing parties reach a mutually agreeable.	voluntary process where a mediator facilitates discussion between parties to resolve their disputes.	A binding process where an arbitrator hears evidence and makes a final decision.
Role of neutral party	Conciliator actively suggest solution and proposals.	Mediator facilitates communication but does not suggest solution.	Arbitrator evaluates evidence and issues a binding decision.
Legal basis	Governed by specific laws. arbitration and conciliation	Not always always governed by laws but often conducted per agreement.	Governed by Arbitration Act 1996.
Binding Nature	Non-binding unless the parties agree to settlement.	Non-binding parties voluntarily accept outcome.	Binding decision enforceable like a court judgement.

	Conciliation	Mediation	Arbitration
Formality	Semi-formal, less rigid,	informal, with no strict procedural rules	formal with procedural rules similar to court process.
Confidentiality	confidential unless the parties agree	full confidential unless disclosure is required by law.	confidential but record may be required for enforcement
Cost	moderate, depend on the conciliator fees	low-cost due to informality	higher due to legal fees and procedural
Control over outcome	parties have significant control over the settlement term	parties retain control over the outcome.	Arbitrator decides the outcome, limiting parties control
Time consumption	moderate, typically faster than litigation	shorter time frame depending on parties cooperation.	longer due to formalities but faster than court.

	Conciliation	Mediation	Arbitration
Flexibility.	Flexible	Highly flexible	less flexible due to procedural rule
use in international dispute.	often used in in-n trade dispute.	Rarely used for in-n disputes.	widely used in in-n disputes.
example	commercial disputes labor issues.	family disputes, workplace conflict	construction disputes in-n business conflict.
	① meaning ② role of neutral third party ③ Binding ④ legal basis ⑤ flexibility ⑥ formality ⑦ cost ⑧ control & ⑨ example ⑩ use.		

Q. Discuss The nature of power exercised by CJ of the HC or CJI under Sec-11(6) of the arbitration and conciliation Act 1996?

Introduction :-

Arbitration has become a cornerstone of ADR mechanism in India, primarily governed by the arbitration and conciliation Act 1996. Sec- 11(6) of the act empower the CJ of HC (in case of domestic arbitration) or CJI (in case of international commercial arbitration).

In exercise of the power conferred on the chief justice of India under Sub-section (10) of Section - 11 of Arbitration

and conciliation act 1996 make the following Scheme —

① Short title :— This Scheme may be called the appointment of arbitrator by the CT Scheme 1996.

② Submission of request :— The request to the CT under ~~Sec~~ Sub-Sec(4) or Sub-Sec(5) or Sub-Sec(6) of section 11 shall be made in writing

Ⓐ original arbitration agreement.

Ⓑ name and address of the parties to the arbitration agreement.

Ⓒ name and address of the arbitrators, if any already appointed.

② The name and address of the person or institution.

③ brief written statement describing the general nature of the dispute

④ The relief or remedy sought.

⑤ The affidavit, supported by the relevant document.

③ Authority to deal with the request :- upon CJ may deal with the matter entrusted to him.

④ forwarding of request to designated person or institution :-

⑤ seeking further information :-

The CJ or other person may seek further information or clarification from the party making the request under this scheme.

⑥ Rejection of request :-

The CJ or any other person where designated for this scheme may reject the request due to not accordance the provision.

Trick = SSAPSRNWI

⑦ Notice to affected person :-

⑧ withdrawal of authority :-

If the CJ on receipt of a complaint from either party to the arbitration agreement, that the arbitrator neglect to hear the case, then CJ withdrawn the authority

⑨ Request and communication to be sent to Registrar:— All request under this Scheme and communication relating thereto which are addressed to the CJ shall be presented to the registrar of this court.

⑩ Interpretation :- If any question arises with reference to the interpretation of any of the provision of this scheme, the question shall be referred to the CJ whose decision is final.

Q. Discuss the need and important of ADR in the Indian legal system with the help of judicial decisions?

Introduction :-

Alternative Dispute Resolution refers to method like arbitration, mediation, negotiation and conciliation that resolve disputes outside the traditional court system.

The Indian legal system, burdened with a backlog of cases, benefits significantly from ADR mechanism by providing speedy, cost-effective and amicable resolution.

Need for ADR in the Indian legal system :-

① Burden on judiciary :-

The Indian judiciary struggles with a backlog

of cases - over 4.5 crore cases as of recent data. ADR offer an effective mechanism to reduce this burden, especially for civil, commercial and family disputes.

① Timely Justice :-

Justice delayed is justice denied, ADR provide time-bound dispute resolution, ensuring that parties do not face prolonged litigation.

③ Cost- & effectiveness :-

Litigation involves hefty courts fees and legal costs. ADR minimizes expenses by reducing court procedures, making justice accessible to economically weaker section.

④ Flexible and informality :-

ADR process are more flexible and informal compared to rigid court procedures, allowing for amicable settlement based on mutual understanding.

⑤ Focus on amicable settlement :-

unlike adversarial litigation, ADR mechanism aim to maintain relationship between parties.

Importance of ADR on judicial system :-

① Hussainara Khatoon v. State of Bihar 1979

→ The Supreme court held that need for timely justice to ensure access to justice for marginalised section.

① Salem advocate Bar ~~assn~~ association
v. ~~the~~ union of India 2005 :-

→ The court acknowledged ADR significance
in reducing the burden on court. The
case led to the amendment of the civil
procedure code.

② Afcon infrastructure LTD v. Cherian
varkey construction co 2010 :-

→ The Supreme court highlighted the importance
of ADR in commercial disputes, encouraging
parties to opt for mediation.

④ B.S Krishnamurthy v. B.S Nagaraj 2010

→ The court held that in the family matter
the mediation mode is preferred.

Legislative framework supporting ADR

① Arbitration and conciliation Act 1996:-

→ This act govern arbitration and conciliation process in India

② Legal Service Authorities:-

→ It institutionalised Lok adalat in India

providing a platform for resolving disputes amicably without formal litigation.

③ Code of civil procedure:-

Section 89 and order x of the CPC mandate the use of ADR.

④ Commercial Courts Act 2015:-

→ This act mandate pre-institution mediation for commercial disputes.

Advantages of ADR :-

- ① cost :- it can be a provide better solution to disputing parties in less cost. in ADR procedure takes only a day or a few days to arrive at a settlement.
- ② ADR mechanism is flexible and not ~~regi~~ rigorous of rules.
- ③ Freedom :- The parties getting proper freedom in litigation proceeding.
- ④ using :- ADR can be used with or without a lawyer.
- ⑤ Reduce work load :- ADR procedures help in the reduction of work-load of the courts.

- vi) Saving time :- ADR enables the parties to overcome from waiting time of ADR proceeding.
- vii) To decide the parties time and place of hearing according to the convenience in ADR.
- viii) ADR procedure free parties from the loss atmosphere of business reputation, goodwill, and ongoing relation in litigation.

Disadvantages of ADR

- i) Lack of legal precedent :- ADR decision, particularly in mediation and conciliation do not create binding legal precedent, which can limit guidance for future dispute.

② Enforceable the issue

③ Limited appeal Rights :-

④ Imbalance of power :-

⑤ Lack of Transparency :-

⑥ No compulsion for cooperation.

⑦ inconsistent outcome

⑧ Risk of Bias

⑨ No Suitable for all cases :-

Conclusion :-

Alternate Dispute Resolution is like, Negotiation, conciliation, mediation and Arbitration, ADR mechanism is less expensive compare with Court Litigation because ADR process is less formal and rule and regulation is not follow

Q. How do you distinguish between mediation and conciliation? Discuss strategies that could be adopted for a successful conciliation in an industrial dispute?

Introduction :-

Industrial Dispute are a common phenomenon in the workplace and often disrupt organizational harmony. To resolve such disputes, alternative dispute resolution (ADR) methods like mediation and conciliation play a vital role. Both technique aim to restore balance and provide mutually acceptable solution.

	Mediation	Conciliation
Definition	mediation is a voluntary process where a neutral mediator facilitates communication between disputing parties and resolving their dispute	conciliation involve a third - party conciliator who assist parties in negotiating and resolving their dispute
Role of neutral third party	mediator facilitates the communication but does not suggest solution	in conciliator actively suggest solution and proposal.
Legal bodies	Not always governed by law	Governed by specific law, like arbitration and conciliation act.
Binding in nature	Non binding in nature	less binding in process.
formality	informal with no strict procedure law	less formal and semi-formal

	Mediation	conciliation
cost	Low cost due to informality.	moderate depend on depend on the conciliator fees.
time Consumption	shorter time	moderate time consumption
Flexibility	highly flexible	moderate in flexibility
example	family disputes work place conflict	commercial dispute Labor issues.

not properly visible

Strategies for successful conciliation in industrial Disputes :-

① Early intervention :-

- identify disputes at an early stage to prevent escalation.
- engage a conciliator immediately to maintain

Harmony in the workplace.

① 'Selection of a neutral and competent conciliator :-

ESTC SB

CCLF

→ The conciliator must possess sub-matter expertise and excellent negotiation skills.

→ impartiality is critical to gaining the trust of both parties.

③ clear communication channels :-

→ create an open environment where parties can express their grievances without fear of judgement.

→ ensure that all communication are transparent and respectful.

④ Structured negotiation process :-

→ follow a clear process with defined stages

such as issue identification, exploration of interests, and brainstorming solution.

→ maintain a timeline to prevent delays.

⑤ Building trust blw parties :-

→ Encourage mutual respect and focus on shared interest.

→ avoid blame-shifting and collaborative problem-solution.

⑥ Confidentiality :-

→ maintain confidentiality to ensure the integrity of the conciliation process.

→ parties are more likely to be honest if they know discussion are private.

⑦ creative problem-solving :-

→ Explore innovative solution tailored to

the specific needs of the disputing parties

→ use win-win approaches to ensure both parties feel satisfied.

⑧ Legal Support and documentation :-

→ formalise agreement in writing to make them legally binding.

→ ensure that the resolution complies with applicable Labor Laws and regulations.

⑨ Follow-up mechanism :-

→ establish mechanism to monitor the implementation of agreement.

→ address any future misunderstanding promptly.

conclusion :-

mediation and conciliation are both valuable ADR mechanisms for resolving industrial disputes, but they differ significantly in their process and outcome. Conciliation, in particular, offers a structured approach with active involvement from a conciliator, making it highly suitable for industrial conflicts.