



FACULTY OF JURIDICAL SCIENCES

COURSE: B.B.A.LL.B.

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**SUBJECT: Alternative Dispute
Resolution**

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NAME OF FACULTY: Mohammad Aqib

Lecture-15



LECTURE 15: Arbitration Proceedings

Section 21 of the Act provides the rules which govern the commencement of arbitral proceedings. It gives freedom to the parties to agree and determine when the arbitration proceeding can officially commence. But in the absence of such an agreement or where the parties fail to arrive at an agreement, the arbitral proceedings can commence when one party issues a notice to the other party, in writing, showing its intention to refer the dispute to arbitration.

So in respect of a particular dispute, the arbitral proceeding commences on the date on which a request for that dispute to be referred to arbitration is received by the other party. In order to determine the date of receipt, the provisions of Section 3 of the Act must be looked into.

Rules and Legislations related to Arbitral Proceedings:

Limitation Period:

Section 43 of the Act provides that the Limitation Act, 1963 shall apply to arbitrations as it applies to civil suit proceedings in the courts, except to the extent expressly excluded by the Arbitration and Conciliation Act. Thus, the date of commencement of arbitral proceedings assumes relevance for calculating the time-limit for arbitral proceedings under the Limitation Act, 1963. Any arbitration proceedings commenced after the limitation period, i.e., three years from the date on which the cause of action arose, will be time-barred.

Equal Treatment of Parties:

Section 18 of the Act has two fundamental principles. Firstly, it provides that the parties to an arbitration proceeding shall be treated with equality and secondly, that each party shall be given a full opportunity to present their case. This section is a mandatory provision and the arbitral tribunal has to comply with it. The tribunal has to act in an impartial manner to the parties and no party has to be given an advantage over the other.

Procedure of Arbitral Proceedings:

Section 19 of the Act recognises the right of the parties to agree on the procedural rules which are applicable in conducting the arbitral proceedings. This provision establishes the procedural autonomy of the parties.

When the parties fail to agree on a procedure or frame the procedure, it grants the arbitral tribunal a wide range of discretionary powers to frame the arbitral proceedings. The Act does not prescribe any default rules regulating the arbitral proceedings.

This provision also provides that the application of the Code of Civil Procedure, 1908 or the Evidence Act, 1872 to the arbitral proceeding is also at the discretion of the parties.

Place of Arbitration:

Section 20 of the Act provides that the parties are free to agree on the place of arbitration and if they fail to agree then the arbitral tribunal has to determine the place of arbitration in a judicial manner, considering the circumstances of the case and convenience of the parties.

Also, the place of arbitration is of paramount importance because the laws of the place of arbitration play a fundamental role in the arbitral proceeding. It determines the substantive laws for the time being in force in India.

Language to be used in Arbitral Proceedings:

Section 22 of the Act deals with the language which has to be used in arbitral proceedings. The parties to the arbitration agreement are free to choose the language or languages which have to be used in the arbitral proceedings. In cases where the parties fail to arrive at such an agreement then it is the role of the arbitral tribunal to determine the language or languages to be used in the arbitral proceedings. The language shall also apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

When the arbitral tribunal agrees on the language to be used in arbitral proceedings, it may order that any documentary evidence shall be accompanied by a translation into the language agreed. The arbitral tribunal must ensure that all the parties are able to follow and understand the proceedings.

Statement of Claim and Defence:

Section 23 of the Act provides for pleadings of the parties before the arbitral tribunal. After the arbitral tribunal has been established, the usual practice is to exchange and file their pleadings before the tribunal.

The claimant states the facts and other relevant matters, while the respondent opposes the facts and the averments made in the claim statement and contests the relief claimed by the claimant. The contents of pleading may vary from case to case depending upon the facts and circumstances of each case.

Within six months of the appointment of the arbitral tribunal, the statement of claim and defence has to be completed under this section.

Hearing and written proceedings:

Section 24 of the Act discusses the manner in which arbitral proceedings are to be conducted. In the absence of any prior agreement between the parties relating to this matter, the arbitral tribunal has the power to decide whether the proceedings shall be held orally or on the basis of documents and other materials.

Default of Party:

Section 25 of the Act deals with three situations where the parties are at default.

Firstly, the arbitral tribunal terminates the proceedings when the claimant without showing sufficient cause, fails to communicate his statement of claim in accordance with Section 23(1). Secondly, the arbitral tribunal continues the proceeding when the respondent fails to communicate his statement of defence in accordance with Section 23(1).

Thirdly, if there is sufficient cause then the termination is recalled and proceeding gets restored.

Appointment of Experts:

Section 26 of the Act gives the arbitral tribunal power to appoint one or more experts based on the requirement or request of the parties. It requires the parties to provide relevant information to the experts.

Also, the arbitral tribunal cannot appoint experts and delegate the duty of determination of the dispute.

