

DISPUTES WHICH CAN BE SETTLED BY ARBITRATION

(I) What disputes can be settled by Arbitration?

- Basically all disputes of Civil or Quasi Civil nature involving Civil Rights fall within the jurisdiction of Arbitration.
- Almost all disputes – commercial, civil, labour and family disputes in respect of which the parties are entitled to conclude a settlement – can be settled by A.D.A. procedures.
- Disputes involving joint ventures, construction projects, partnership differences, intellectual property rights, personal injury, product liabilities, professional liability, real estate securities, contract interpretation and performance, insurance claim and Banking & non-Banking transaction disputes fall within the jurisdiction of Arbitration.
- It is expanding to the areas or construction health care, telecommunication, entertainment and technology based industries.

DISPUTES BEYOND JURISDICTION OF ARBITRATION

- In any case dispute involving criminal offences are fully beyond jurisdiction of arbitration.
- Even in case of civil rights following matter cannot be referred to arbitration:
 - (a) Matrimonial matters and matters connected with conjugal rights.
 - (b) Industrial Disputes and Revenue matters (Income Tax & other Tax matters).
 - (c) Testamentary matters under Succession act.
 - (d) Motor Vehicle Accident conversation.
 - (e) Matters under Indian Trust Act, Trusteeship of Charitable Institutions, Public charity matters falling within the purview of Monopolies and Restrictive Trade Practices Act.
 - (f) Determination guardianship or wards.
 - (g) As per Section 24 of Indian Contract Act matters relating to unlawful consideration are void hence these matters can not be referred for arbitration.

(II) IMPORTANT PROVISIONS RELATING TO CONCILIATION

(A) Scope:

As per provisions of Sections 61(1), Conciliation can be resorted to in relation to disputes arising out of a legal relationship, whether contractual or not.

(B) Commencement:

As per provisions of Section 62 a written invitation to conciliation from initiating party is necessary and conciliation commences when other party accepts in writing this invitation. If not, there will be no commencement of conciliation proceeding.

(C) No. of Conciliators:

- There will be only one conciliator, unless parties agree to two or more.
- Where more than two or three conciliators, they are to act jointly.
- Where three conciliators, one will be acting as Presiding Conciliator.

(D) Conciliator's Procedure:

- The Conciliator is not bound by the strict procedure adopted the Court under CPC1908 or the Evidence Act 1872.
- The Conciliator is to be guided by the principles of objectivity, fairness and justice.

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- Subject to the above, arbitral proceedings in such a manner as the Conciliator considers appropriate taking into following points:
 - (a) Circumstances of the case
 - (b) Wishes expressed by the parties
 - (c) Needs for speedy settlement.

(E) Role of Parties:

As per Section 72 party may submit his own suggestions for settlement of dispute. Such suggestions may be submitted on his own initiative or on the request of the Conciliator.

(F) Procedure to be adopted by the Conciliator:

- The conciliator, when appointed may request each party setting out the general nature of the dispute and points of issue and to submit further written statement and other evidences.
- The conciliator shall assist the parties in an independent and impartial manner and without prejudice in their attempt to reach an amicable settlement.
- The Conciliator is to be guided on principles of objectivity, fairness and justice. He is to give consideration to the following matters
 - (a) Rights and obligation of the parties;
 - (b) Trade usage; and
 - (c) Circumstances surrounding the dispute, including previous business practice between the parties.

(G) Legal Effect:

- **Section 73(3)** : Settlement signed by the parties shall be binding on the parties.
- **Section 73(4)** Agreement to be authenticated by the conciliator.
- **Section 74 + 30**: Settlement agreement has the same status as in case of Arbitral Award.

(H) Parallel Proceedings:

During the pendency of conciliation proceedings, a party is debarred from initiating arbitral or judicial proceedings on the same dispute except such proceedings as are necessary for preserving his rights.

(I) Conciliator not to act as Arbitrator or Counsel.

(III) DIFFERENCE BETWEEN CONCILIATION & ARBITRATION

Arbitration	Conciliation
In case of Arbitration Arbitral Board delivers Arbitral Award of Judgement after hearing parties after consideration of facts and evidences with reference to statutory provisions.	In Conciliation, Conciliator does not pass any Award. He is neutral and independent faciliator helping parties to reach their own settlement through process of listening and creating understanding between parties to come to their own settlement. As per present Act of Arbitration the conciliation settlement are at par with Arbitral Award.
The result of Arbitration is legally reasoned award.	The result in case of conciliation may or may not reach a mutually acceptable settlement.
Arbitrator generally decides after contest between th parties.	In conciliation, final results depend upon the will of parties. Therefore, emotional harmony may not suffer in case of conciliation.
