# UNIT IV - FOREIGN AWARDS & CONCILIATION

→ Unit IV completes the Arbitration and Conciliation Act, 1996.

→ Part II covers recognition and enforcement of foreign awards.

→ Chapter I concerns New York Convention awards, Sections 44-52.

→ Chapter II concerns Geneva Convention awards, Sections 53-60.

→ Part III explains conciliation, Sections 61-81, with later rules.

**REMEMBER: PART II = AWARDS; PART III = CONCILIATION**

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# WHY FOREIGN AWARDS MATTER

→ International trade needs a reliable method of enforcement.

→ An award made abroad may need execution against Indian assets.

→ Conventions promote recognition across member territories.

→ Indian courts use narrow statutory refusal grounds.

→ A foreign award is distinct from an Indian domestic award.

KEY IDEA: CONVENTION + RECIPROCITY + ENFORCEMENT

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# SECTION 44 - NEW YORK FOREIGN AWARD

→ Section 44 defines a New York Convention foreign award.

→ The dispute must arise from a commercial legal relationship.

→ The award must be made pursuant to a written agreement.

→ It must come from a notified reciprocal Convention territory.

→ The statutory date requirement begins from 11 October 1960.

REMEMBER: SECTION 44 = DEFINITION

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# SECTION 45 - COURT REFERS PARTIES

→ Section 45 concerns reference to foreign-seated arbitration.

→ A party may ask the judicial authority to refer the dispute.

→ The court examines the relevant arbitration agreement.

→ Referral is the norm unless the agreement is prima facie invalid.

→ An inoperative or incapable agreement will not compel referral.

**KEY SECTION: 45 = REFERENCE TO ARBITRATION**

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# SECTION 46 - FOREIGN AWARD IS BINDING

→ A qualifying foreign award is binding between the parties.

→ It may be relied on as a defence or set-off in India.

→ Part II governs how the award can be enforced.

→ The court does not rehear the entire commercial dispute.

→ Binding effect remains subject to the Convention provisions.

REMEMBER: SECTION 46 = BINDING EFFECT

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# SECTION 47 - DOCUMENTS FOR ENFORCEMENT

→ The applicant produces the original or authentic award copy.

→ The arbitration agreement must also be proved.

→ Evidence must show that the award is a foreign award.

→ Certified translation is needed for a foreign-language award.

→ Proper documents support a court's enforcement inquiry.

KEY SECTION: 47 = EVIDENCE AND DOCUMENTS

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# SECTION 48 - REFUSAL GROUNDS

→ Section 48 gives limited grounds to refuse enforcement.

→ One ground concerns incapacity or an invalid agreement.

→ Lack of notice or inability to present a case also matters.

→ An award beyond the submission may be refused in part.

→ Improper tribunal composition or procedure may be relevant.

REMEMBER: SECTION 48 = LIMITED DEFENCES

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# SECTION 48 - OTHER DEFENCES

→ An award not yet binding may face an enforcement objection.

→ An award set aside or suspended at the seat is relevant.

→ A dispute not arbitrable under Indian law may be refused.

→ Enforcement may be refused if contrary to Indian public policy.

→ The public policy exception is construed narrowly.

KEY IDEA: ENFORCEMENT IS GENERALLY FAVOURED

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# SECTION 49 - ENFORCEMENT AS DECREE

→ A court first decides whether the foreign award is enforceable.

→ If satisfied, the award is deemed a decree of that court.

→ Execution can then proceed using the civil process.

→ The court's role is enforcement, not a fresh trial.

→ Sections 47, 48 and 49 should be read together.

REMEMBER: 47 PROOF → 48 DEFENCES → 49 DECREE

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# SECTION 50 - APPEALABLE ORDERS

→ Section 50 provides appeals only from specified orders.

→ An order refusing referral under Section 45 is appealable.

→ An order refusing enforcement under Section 48 is appealable.

→ The provision does not grant unlimited appellate review.

→ The Supreme Court route remains subject to applicable law.

KEY SECTION: 50 = RESTRICTED APPEALS

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# SECTIONS 51 AND 52 - SAVINGS

→ Section 51 preserves certain rights concerning foreign awards.

→ Chapter I applies to New York Convention awards.

→ Section 52 avoids overlap with Geneva Convention Chapter II.

→ The two convention regimes have different requirements.

→ A court must identify the correct regime at the start.

REMEMBER: CHOOSE THE CORRECT CONVENTION

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# SECTION 53 - GENEVA FOREIGN AWARD

→ Section 53 defines Geneva Convention foreign awards.

→ The award concerns a commercial dispute under Indian law.

→ The statutory reference date is after 28 July 1924.

→ The arbitration falls within the Geneva Protocol regime.

→ The convention and reciprocity requirements must be satisfied.

KEY SECTION: 53 = GENEVA DEFINITION

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# SECTION 54 - REFERRAL TO ARBITRATION

→ Section 54 allows reference based on a Geneva agreement.

→ It applies where a judicial proceeding covers an agreed dispute.

→ The party invokes the arbitration agreement before the court.

→ The court considers the statutory requirements for referral.

→ This provision belongs to the older Geneva framework.

REMEMBER: SECTION 54 = GENEVA REFERENCE

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# SECTIONS 55 AND 56 - BINDING AND PROOF

→ Section 55 deals with the binding effect of Geneva awards.

→ A qualifying award may be relied on in Indian proceedings.

→ Section 56 concerns evidence needed for enforcement.

→ The award and arbitration agreement must be established.

→ The court verifies the Convention requirements.

KEY IDEA: BINDING EFFECT NEEDS PROPER PROOF

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# SECTION 57 - GENEVA ENFORCEMENT CONDITIONS

→ Section 57 sets conditions for enforcement of Geneva awards.

→ The agreement must be valid under the applicable law.

→ The subject must be capable of settlement by arbitration.

→ The tribunal must follow the agreed constitution and rules.

→ The award must satisfy the Convention's finality conditions.

REMEMBER: SECTION 57 = GENEVA CONDITIONS

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# Sections 58 to 60 - Geneva Awards

→ Section 58 addresses enforcement of qualifying Geneva awards.

→ An enforceable award is treated as a decree of the court.

→ Section 59 states the permitted appeals in this chapter.

→ Section 60 preserves relevant rights under the saving clause.

→ Geneva enforcement today is less common than New York.

KEY IDEA: GENEVA AWARD CAN BECOME A DECREE

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# TWO CONVENTION REGIMES COMPARED

→ The New York Convention was adopted in 1958.

→ The Geneva Protocol dates from 1923 and Convention from 1927.

→ New York awards are governed by Sections 44 to 52.

→ Geneva awards are governed by Sections 53 to 60.

→ Modern international enforcement mostly uses New York rules.

EXAM TIP: MENTION BOTH CONVENTIONS AND SECTIONS

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# FIRST SCHEDULE - NEW YORK CONVENTION

→ The First Schedule reproduces the 1958 Convention.

→ Article I describes its recognition and enforcement scope.

→ Article II concerns recognition of written arbitration agreements.

→ Article III requires enforcement under local procedural rules.

→ The Convention seeks to reduce barriers to foreign awards.

REMEMBER: FIRST SCHEDULE = NEW YORK 1958

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# FIRST SCHEDULE - REFUSAL EXCEPTIONS

→ Article V provides limited enforcement defences.

→ Invalid agreement and insufficient notice are examples.

→ Excess of arbitral authority may also be relevant.

→ Non-arbitrability and public policy can justify refusal.

→ Article VI permits adjournment where the award is challenged.

KEY ARTICLE: V = REFUSAL GROUNDS

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# FIRST SCHEDULE - PRACTICAL EXAMPLE

→ A business wins a London-seated commercial arbitration.

→ The losing party owns recoverable property in India.

→ The winner applies in India with Section 47 documents.

→ The court considers Section 48 objections, if any.

→ If enforceable, Section 49 treats the award as a decree.

FLOW: FOREIGN AWARD → INDIAN COURT → EXECUTION

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# SECOND SCHEDULE - GENEVA PROTOCOL

→ The Second Schedule reproduces the Geneva Protocol, 1923.

→ It recognises arbitration agreements in commercial matters.

→ Contracting states accept agreed arbitral procedures.

→ It reflects an early effort at international cooperation.

→ It is read with the later Geneva Convention provisions.

REMEMBER: SECOND SCHEDULE = 1923 PROTOCOL

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# THIRD SCHEDULE - GENEVA CONVENTION

→ The Third Schedule reproduces the Geneva Convention, 1927.

→ It deals with enforcement of foreign arbitral awards.

→ The Convention imposes conditions for recognition.

→ It is the historical predecessor to the New York system.

→ Sections 53 to 60 implement this older framework.

REMEMBER: THIRD SCHEDULE = 1927 CONVENTION

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# PART III - INTRODUCTION TO CONCILIATION

→ Conciliation is an amicable, voluntary settlement process.

→ A neutral conciliator helps parties reach common ground.

→ The conciliator does not impose a judicial decision.

→ The 1996 Act provides a structured process in Part III.

→ Its rules differ from binding arbitral adjudication.

KEY IDEA: CONCILIATOR HELPS; ARBITRATOR DECIDES

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# SECTION 61 - APPLICATION AND SCOPE

→ Section 61 addresses the scope of statutory conciliation.

→ It applies to disputes arising from legal relationships.

→ The parties may agree on the conciliation procedure.

→ Some disputes cannot be conciliated because of other laws.

→ Voluntary participation is an essential feature.

REMEMBER: SECTION 61 = SCOPE OF CONCILIATION

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# SECTION 62 - BEGINNING CONCILIATION

→ The initiating party sends a written invitation to conciliate.

→ The invitation briefly identifies the disputed matter.

→ Proceedings begin when the other party accepts in writing.

→ A rejection means conciliation does not commence.

→ No reply within the specified period may be treated as rejection.

KEY SECTION: 62 = WRITTEN INVITATION AND ACCEPTANCE

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# SECTIONS 63 AND 64 - CONCILIATORS

→ Section 63 generally provides for one conciliator.

→ Parties may agree to use two or three conciliators.

→ Section 64 explains appointment by mutual agreement.

→ An institution may assist with names or appointments.

→ Impartiality and independence are important in selection.

REMEMBER: NEUTRAL APPOINTMENT NEEDS CONSENT

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# SECTIONS 65 AND 66 - PROCEDURAL BASIS

→ Section 65 covers statements submitted to the conciliator.

→ The parties may provide facts, documents and issues.

→ The conciliator may seek further information as needed.

→ Section 66 removes strict CPC and Evidence Act application.

→ Informal procedure helps dialogue and practical settlement.

KEY IDEA: FLEXIBILITY WITH FAIRNESS

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# SECTION 67 - ROLE OF THE CONCILIATOR

→ The conciliator acts independently and impartially.

→ They help the parties find an amicable settlement.

→ They consider rights, obligations and trade practices.

→ They may propose terms at any stage of the process.

→ A proposal is not a binding decision without agreement.

**REMEMBER: SECTION 67 = ASSIST, DO NOT IMPOSE**

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# Sections 68 to 70 - Help and Communication

→ Section 68 permits administrative assistance if useful.

→ Section 69 allows joint or separate communication.

→ The conciliator may meet each side individually.

→ Section 70 concerns disclosure of factual information.

→ Confidential information may need protection when identified.

**KEY IDEA: CONTROLLED INFORMATION SHARING**

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# SECTIONS 71 AND 72 - PARTY COOPERATION

→ Section 71 asks parties to cooperate in good faith.

→ Parties should supply documents and attend requested meetings.

→ Section 72 permits settlement suggestions from the parties.

→ Suggestions can be made on the parties' own initiative.

→ A settlement grows through informed voluntary negotiation.

REMEMBER: PARTIES CONTROL THE FINAL AGREEMENT

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# SECTION 73 - SETTLEMENT AGREEMENT

→ When settlement appears possible, terms may be formulated.

→ Parties may comment and suggest modifications.

→ The final agreement is prepared and signed by the parties.

→ The conciliator authenticates the signed settlement.

→ The agreement is final and binding on the parties.

KEY SECTION: 73 = SIGNED SETTLEMENT AGREEMENT

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# SECTION 74 - STATUS OF SETTLEMENT

→ A conciliation settlement has special legal recognition.

→ Section 74 links it to an award on agreed terms.

→ This follows the treatment under Section 30 of the Act.

→ Its legal effect is stronger than a mere informal promise.

→ The signed settlement should be clear and enforceable.

REMEMBER: 73 AGREEMENT → 74 LEGAL STATUS

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# SECTIONS 75 AND 76 - CONFIDENTIALITY AND END

→ Section 75 generally requires confidentiality of conciliation.

→ Confidentiality protects candid settlement discussion.

→ Section 76 lists ways proceedings may terminate.

→ Signed settlement is one way of ending the proceedings.

→ A written declaration ending the process is another.

KEY IDEA: PRIVACY + VOLUNTARY TERMINATION

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## Sections 77 and 78 - Proceedings and Costs

→ Section 77 limits starting arbitral or judicial proceedings.

→ There is an exception where necessary to preserve rights.

→ Section 78 explains costs of conciliation proceedings.

→ Costs may cover conciliator fees and related expenses.

→ Parties ordinarily bear costs according to the statutory scheme.

REMEMBER: RIGHTS MAY NEED URGENT PROTECTION

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# SECTIONS 79 TO 81 - FAIR PROCEDURE

→ Section 79 covers deposits for conciliation expenses.

→ Section 80 restricts the conciliator's later procedural role.

→ A conciliator should not become arbitrator in the same dispute.

→ Section 81 limits use of conciliation statements as evidence.

→ Settlement offers or admissions should not be misused.

KEY IDEA: SAFE DISCUSSION ENCOURAGES SETTLEMENT

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# SECTIONS 82 TO 86 - SUPPLEMENTARY RULES

→ Section 82 allows High Courts to make relevant rules.

→ Section 83 addresses removal of implementation difficulties.

→ Section 84 authorises rule-making by Central Government.

→ Section 85 repeals older arbitration enactments with savings.

→ Section 86 concerns repeal and saving of the 1996 Ordinance.

**REMEMBER: 82-86 = RULES AND SAVINGS**

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# CASE LAW - BOOZ ALLEN (2011)

→ Case: Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.

→ The Supreme Court explained the limits of arbitrability.

→ Rights in personam are generally suitable for arbitration.

→ Rights in rem are commonly reserved for public courts.

→ Mortgage enforcement was treated as unsuitable for arbitration.

PRINCIPLE: NOT EVERY PRIVATE DISPUTE IS ARBITRABLE

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# CASE LAW - BALCO (2012)

→ Case: Bharat Aluminium Co. v. Kaiser Aluminium.

→ The Supreme Court stressed the territorial or seat principle.

→ Part I generally governs arbitration seated in India.

→ A foreign seat calls for the Part II enforcement route.

→ The judgment clarified the significance of seat selection.

PRINCIPLE: SEAT DETERMINES SUPERVISORY FRAMEWORK

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# CASES - KERALA SEB & ORIENTAL

→ Kerala SEB v. Kurien E. Kalathil (2017): agreement is essential.

→ A mere reference to dispute settlement is not always arbitration.

→ Oriental Insurance v. Narbheram Power (2018) concerned policy terms.

→ An express exclusion in an insurance clause must be respected.

→ Courts interpret the actual scope of consent to arbitrate.

REMEMBER: ARBITRATION DEPENDS ON VALID CONSENT

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# CASE - EMAAR MGF AND FINAL REVISION

→ Emaar MGF Land v. Aftab Singh (2018) concerned consumers.

→ An arbitration clause does not automatically bar consumer remedies.

→ Revise New York Convention Sections 44 to 52.

→ Revise Geneva Sections 53 to 60 and conciliation 61 to 81.

→ Remember the First, Second and Third Schedules.

EXAM FORMULA: SECTION + RULE + CASE + CONCLUSION

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