UNIT III - THE ARBITRATION ACT

→ The Arbitration and Conciliation Act, 1996 governs arbitration in India.

→ Part I deals mainly with arbitration seated in India.

→ Unit III covers Sections 1 to 43 of the 1996 Act.

→ Main stages: agreement, tribunal, hearing, award and challenge.

→ Its purpose is fair and efficient private dispute resolution.

REMEMBER: 1996 ACT = AGREEMENT + TRIBUNAL + AWARD

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OBJECTIVES OF THE 1996 ACT

→ The Act draws on the UNCITRAL Model Law, 1985.

→ It promotes party autonomy in choosing the dispute process.

→ It aims to limit unnecessary intervention by courts.

→ It seeks impartial proceedings and enforceable awards.

→ It replaces many rigid procedures of older arbitration law.

KEY IDEA: FAIRNESS + SPEED + PARTY CHOICE

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EVOLUTION AND SCHEME OF THE ACT

→ Earlier law included the Arbitration Act, 1940.

→ The 1996 Act modernised domestic and international arbitration.

→ Major changes came in 2015, 2019 and 2021.

→ Part I contains ten chapters, ending in Section 43.

→ Unit IV separately covers foreign awards and conciliation.

REMEMBER: PART I = ARBITRATION

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SECTION 1 AND BASIC DEFINITIONS

→ Section 1 gives the Act its short title and commencement.

→ Section 2 defines arbitration, arbitrator and arbitral tribunal.

→ An arbitral award includes an interim award.

→ A tribunal may have a sole arbitrator or a panel.

→ Courts have roles only where the Act permits.

KEY SECTION: 2 = DEFINITIONS

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DOMESTIC AND INTERNATIONAL ARBITRATION

→ An international commercial arbitration has a foreign element.

→ Section 2(1)(f) lists the qualifying parties.

→ A foreign company or government may create that element.

→ The seat helps determine the supervisory court.

→ An arbitration in India may involve international parties.

REMEMBER: INTERNATIONAL = PARTY ELEMENT; SEAT = SUPERVISION

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SECTIONS 3 AND 4 - NOTICE AND WAIVER

→ Section 3 explains when written communication is received.

→ Parties can agree on a different communication method.

→ Section 4 concerns waiver of the right to object.

→ A party aware of non-compliance must object without delay.

→ Taking part silently may mean the objection is waived.

KEY IDEA: OBJECT AT THE RIGHT TIME

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SECTIONS 5 AND 6 - COURT ROLE

→ Section 5 adopts the principle of minimum court intervention.

→ Courts may step in only where the Act authorises it.

→ Section 6 permits suitable administrative assistance.

→ Arbitration is party-led, not a complete court replacement.

→ Fair procedure and statutory safeguards still apply.

REMEMBER: SECTION 5 = MINIMUM INTERVENTION

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SECTION 7 - ARBITRATION AGREEMENT

→ An arbitration agreement submits defined disputes to arbitration.

→ It may be a clause in a contract or a separate agreement.

→ The agreement must be in writing under Section 7.

→ Present or future disputes can be covered.

→ The parties must intend binding adjudication by arbitrators.

KEY SECTION: 7 = WRITTEN AGREEMENT

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SECTION 7 - FORMS AND EXAMPLES

→ A signed written contract can contain an arbitration clause.

→ Exchange of letters or electronic communications may suffice.

→ A statement of claim and defence may evidence agreement.

→ A written contract may incorporate another arbitration clause.

→ Example: a supply contract sends payment disputes to arbitration.

REMEMBER: AGREEMENT MAY BE INCORPORATED BY REFERENCE

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SECTION 8 - REFERENCE BY COURT

→ A judicial authority must ordinarily refer covered disputes.

→ The request is made before the first statement on substance.

→ The court checks prima facie for a valid arbitration agreement.

→ A party may apply with the agreement or certified copy.

→ Arbitration may continue while the court application is pending.

KEY SECTION: 8 = COURT REFERS TO ARBITRATION

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SECTION 9 - INTERIM COURT RELIEF

→ Section 9 allows a court to grant interim protection.

→ Examples: preserving goods, securing a claim or injunction.

→ Relief can be sought before or during arbitration.

→ It may also be sought after the award, before enforcement.

→ The court weighs urgency, fairness and statutory conditions.

REMEMBER: SECTION 9 PROTECTS RIGHTS BEFORE FINAL AWARD

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SECTION 9 - TIMING AND LIMITS

→ After pre-arbitration Section 9 relief, begin arbitration timely.

→ The usual statutory rule is within ninety days of the order.

→ A court may fix a different period where permitted.

→ Once a tribunal exists, Section 9 relief is ordinarily restricted.

→ The court may still help if Section 17 relief is ineffective.

KEY IDEA: INTERIM RELIEF IS NOT THE FINAL DECISION

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SECTION 10 - NUMBER OF ARBITRATORS

→ Parties can choose the number of arbitrators.

→ The number must not be even under Section 10(1).

→ Failing agreement, the tribunal consists of one arbitrator.

→ A sole arbitrator can make the process simpler and cheaper.

→ A panel may suit technical or high-value disputes.

REMEMBER: DEFAULT NUMBER = ONE

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SECTION 11 - APPOINTMENT OF ARBITRATORS

→ Parties are free to choose an appointment procedure.

→ Nationality is ordinarily not a bar to appointment.

→ If the agreed process fails, statutory assistance is available.

→ The Supreme Court or High Court role depends on the case.

→ The court looks at the existence of an arbitration agreement.

KEY SECTION: 11 = APPOINTMENT

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SECTION 11 - APPOINTMENT FAILURES

→ In a three-member panel, each side may nominate one arbitrator.

→ The two nominated arbitrators normally choose the presiding one.

→ Failure to cooperate can trigger Section 11 assistance.

→ An appointment must respect impartiality requirements.

→ An ineligible unilateral nomination can be challenged.

REMEMBER: NEUTRAL APPOINTMENT PROTECTS FAIRNESS

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SECTION 12 - DISCLOSURE AND IMPARTIALITY

→ A proposed arbitrator must disclose relevant relationships.

→ The written disclosure addresses independence and impartiality.

→ The Fifth Schedule guides doubts about impartiality.

→ The Seventh Schedule covers specified ineligibilities.

→ Parties must consider conflicts before confirming appointment.

KEY SECTION: 12 = DISCLOSE CONFLICTS

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SECTION 13 - CHALLENGING AN ARBITRATOR

→ Parties may agree on a challenge procedure.

→ Without agreement, a written challenge is normally required.

→ The Act provides a fifteen-day period from relevant knowledge.

→ The tribunal decides the challenge if it is not accepted.

→ A rejected challenge may be raised after the final award.

REMEMBER: CHALLENGE MUST BE TIMELY

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SECTIONS 14 AND 15 - ENDING MANDATE

→ Section 14 applies where an arbitrator cannot act or fails to act.

→ A mandate may end by agreement or a court decision.

→ Section 15 covers withdrawal and termination in other cases.

→ A replacement is appointed under the original appointment rules.

→ Prior valid decisions need not automatically be repeated.

KEY IDEA: REPLACE, THEN CONTINUE FAIRLY

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SECTION 16 - TRIBUNAL JURISDICTION

→ A tribunal may rule on its own jurisdiction.

→ This principle is called competence-competence.

→ It can decide whether an arbitration agreement exists.

→ A jurisdictional objection normally comes with the defence.

→ The tribunal can rule on jurisdiction as a preliminary question.

REMEMBER: SECTION 16 = COMPETENCE-COMPETENCE

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SECTION 16 - SEPARABILITY

→ An arbitration clause is legally distinct from the main contract.

→ Invalidity of the main contract does not always defeat the clause.

→ The tribunal may decide disputes about contractual validity.

→ An objection beyond the tribunal's scope should be raised promptly.

→ If a jurisdiction plea is accepted, appeal may lie under Section 37.

KEY IDEA: CLAUSE CAN SURVIVE CONTRACT DISPUTE

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SECTION 17 - TRIBUNAL INTERIM MEASURES

→ Section 17 lets the tribunal order interim protection.

→ It may preserve property, evidence or disputed goods.

→ The tribunal can protect a claim while the case continues.

→ Orders under Section 17 are enforceable under the Act.

→ The tribunal's power is distinct from the final award.

REMEMBER: SECTION 9 = COURT; SECTION 17 = TRIBUNAL

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SECTIONS 18 AND 19 - PROCEDURAL FAIRNESS

→ Section 18 requires equal treatment of parties.

→ Each side must receive a full opportunity to present its case.

→ Section 19 frees tribunals from strict CPC and Evidence Act rules.

→ Parties may agree on the procedure to be followed.

→ Without agreement, the tribunal may manage the process.

EXAM POINT: FLEXIBILITY NEVER REMOVES FAIR HEARING

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SECTIONS 20 TO 22 - PROCESS BASICS

→ Section 20 permits parties to choose the place of arbitration.

→ Without agreement, the tribunal decides the place.

→ Section 21 deals with commencement after request is received.

→ Section 22 covers the language or languages of proceedings.

→ The tribunal can require translations of documentary evidence.

REMEMBER: PLACE + COMMENCEMENT + LANGUAGE

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SECTIONS 23 AND 24 - PLEADINGS AND HEARING

→ The claimant states facts, issues and requested relief.

→ The respondent submits its defence and relevant documents.

→ Section 23 provides for completing pleadings within the stated period.

→ Section 24 covers oral hearings and written proceedings.

→ Parties should receive proper notice of hearings and meetings.

KEY IDEA: EACH PARTY MUST BE HEARD

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SECTIONS 25 AND 26 - DEFAULT AND EXPERTS

→ Section 25 addresses failure to file or attend as required.

→ The tribunal does not treat every default as admission.

→ Proceedings may continue on available evidence in suitable cases.

→ Section 26 allows tribunal-appointed experts on specific issues.

→ Parties can question experts where the Act requires.

REMEMBER: NO AUTOMATIC WIN FROM EVERY DEFAULT

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SECTION 27 - COURT HELP WITH EVIDENCE

→ An arbitral tribunal may seek court assistance in evidence.

→ A party may apply with the tribunal's approval.

→ The request can identify witnesses or documents required.

→ Courts use lawful processes to collect the evidence.

→ This is support, not general control over the tribunal.

KEY SECTION: 27 = COURT ASSISTS EVIDENCE

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SECTION 28 - LAW APPLICABLE TO DISPUTE

→ Domestic arbitration seated in India follows Indian substantive law.

→ International commercial arbitration allows chosen rules of law.

→ Without choice, the tribunal uses appropriate applicable rules.

→ The tribunal considers contract terms and trade usages.

→ Equity-based decisions require express party authorisation.

REMEMBER: PARTY CHOICE OPERATES WITHIN THE ACT.

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SECTIONS 29 AND 29A – DECISION AND TIME

→ Under Section 29, a multi-member panel normally decides by majority.

→ The presiding arbitrator may decide authorised procedure questions.

→ Section 29A governs the time limit for making an award.

→ For non-international cases, the usual limit is twelve months.

→ The time is counted from completion of pleadings under Section 23(4).

KEY SECTION: 29A = TIME LIMIT FOR AWARD

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SECTION 29B - FAST TRACK ARBITRATION

→ Parties may agree in writing to fast track arbitration.

→ A sole arbitrator is generally chosen for this procedure.

→ The case is usually decided from written submissions.

→ An oral hearing is possible where necessary or requested.

→ The award should normally come within six months of reference.

REMEMBER: 29B = FAST TRACK BY AGREEMENT

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SECTION 30 - SETTLEMENT DURING ARBITRATION

→ Parties may settle their dispute while arbitration is underway.

→ The tribunal may encourage settlement with the parties' agreement.

→ A settlement can be recorded as an award on agreed terms.

→ Such an award has the status of an arbitral award.

→ Consent and lawful terms remain essential.

KEY IDEA: ARBITRATION CAN END BY SETTLEMENT.

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SECTION 31 - FORM OF THE AWARD

→ An arbitral award must be in writing and signed appropriately.

→ It normally states reasons unless validly waived.

→ It must record its date and place of arbitration.

→ A signed copy is delivered to each party.

→ The tribunal may award interest according to Section 31.

REMEMBER: WRITING + REASONS + SIGNATURE + DATE

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SECTION 31A AND 32 - COSTS AND END

→ Section 31A gives rules for costs in arbitration proceedings.

→ Costs may include reasonable legal and tribunal expenses.

→ Section 32 provides for ending arbitral proceedings.

→ Proceedings end with the final award or termination order.

→ A withdrawal or agreed closure may justify termination.

KEY IDEA: FINAL AWARD ENDS THE REFERENCE

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SECTION 33 - CORRECTION OF AWARDS

→ Parties may request correction of clerical or computation errors.

→ The usual request period is thirty days, unless otherwise agreed.

→ The tribunal may interpret a specific part of an award if agreed.

→ An additional award may cover claims omitted from the decision.

→ This power is not a general rehearing on the merits.

REMEMBER: SECTION 33 = CORRECT; NOT RE-TRY

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SECTION 34 - SETTING ASIDE AN AWARD

→ An award may be challenged only on statutory grounds.

→ Examples include incapacity or invalid arbitration agreement.

→ Lack of proper notice and inability to present a case matter.

→ An award beyond the referred dispute may be set aside.

→ Court review under Section 34 is not an ordinary appeal.

KEY SECTION: 34 = LIMITED COURT REVIEW

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SECTION 34 - PUBLIC POLICY TEST

→ An award conflicting with Indian public policy may be set aside.

→ Fraud or corruption can bring the award within this ground.

→ Basic notions of morality or justice are also relevant.

→ Domestic awards face the additional patent-illegality ground.

→ An error of law alone is not a licence to rehear evidence.

REMEMBER: COURTS DO NOT REASSESS ALL FACTS

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Section 34 - Time and Procedure

→ A Section 34 application is generally filed within three months.

→ A further thirty days may be allowed for sufficient cause.

→ The court cannot extend time beyond that statutory limit.

→ Section 34(4) permits an opportunity to cure certain defects.

→ The court's task is supervision, not deciding the dispute afresh.

EXAM TIP: THREE MONTHS + AT MOST THIRTY DAYS

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SECTIONS 35 AND 36 - FINALITY AND EXECUTION

→ Section 35 makes awards final and binding subject to the Act.

→ Section 36 allows enforcement like a court decree.

→ Expiry of the challenge period is important for execution.

→ A Section 34 challenge alone does not automatically stay execution.

→ A separate stay application and court order are needed.

REMEMBER: CHALLENGE DOES NOT EQUAL STAY

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SECTIONS 36 AND 37 - STAY AND APPEALS

→ A court may grant a reasoned stay on suitable conditions.

→ Fraud or corruption may require unconditional stay under the Act.

→ Section 37 lists the orders from which appeals are allowed.

→ Examples concern referral, interim relief and setting aside awards.

→ Section 37 does not create an unrestricted second appeal.

KEY SECTION: 37 = LIMITED STATUTORY APPEALS

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SECTIONS 38 TO 43 - MISCELLANEOUS

→ Section 38 addresses deposits for arbitration costs.

→ Section 39 concerns an arbitrator's lien on the award.

→ Section 40 deals with death; Section 41 with insolvency.

→ Section 42 regulates exclusive court jurisdiction in certain cases.

→ Section 43 applies limitation law to arbitration proceedings.

REMEMBER: SECTION 43 = LIMITATION ACT APPLIES

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LANDMARK CASES AND EXAM REVISION

→ Booz Allen (2011): some rights in rem are non-arbitrable.

→ BALCO (2012): importance of seat and territorial principle.

→ Perkins Eastman (2019): neutrality in arbitrator appointment.

→ Vidya Drolia (2020): refined the test for arbitrability.

→ Revise Sections 7, 8, 9, 11, 12, 16, 17, 34, 36 and 37.

FINAL TIP: SECTION + RULE + CASE + EXAMPLE

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