

ARBITRATION, CONCILIATION & ADR – EXAM QUICK NOTES

SHORT NOTES (5 Marks Each)

Topic	Key Points
UNCITRAL Model Law	UN framework for international arbitration (1985); basis of Indian Arbitration Act 1996; ensures uniformity & fairness
Reference to Arbitration (S.8)	Court must refer parties to arbitration if valid agreement exists; apply before first statement
Court Assistance (S.27)	Court helps summon witnesses, produce documents, take evidence
Costs in Arbitration (S.31A)	Arbitrator fees + legal fees + expenses; "costs follow the event" (losing party pays)
Setting Aside Award (S.34)	Court cancels award on grounds: invalid agreement, lack of notice, public policy violation
Interim Measures by Court (S.9)	Temporary relief: injunction, property protection, securing amount (before/during/after arbitration)

Fast-Track Arbitration (S.29B)	Written submissions only; award within 6 months; limited/no oral hearings
International vs Domestic	International = foreign parties, cross-border; Domestic = same country, local disputes
Mini Trial	Informal ADR; parties present case briefly to panel; non-binding; helps settlement
Negotiation	Direct party-to-party discussion; no third party; informal; voluntary
Mediation	Neutral mediator facilitates discussion; non-binding; confidential
Expert Determination	Expert in field decides technical dispute; faster than court
Administrative Tribunal	Quasi-judicial body for service/administrative disputes (CAT); faster than courts
Panchayat System	Traditional village-level dispute resolution; informal; community-based; quick
Lok Adalat	"People's Court" under Legal Services Act 1987; compromise-based; no court fee; binding award

Appealable Orders (S.37)	Refusal to refer to arbitration; setting aside/refusing to set aside award
Rules of Guidance	Flexible procedure; not bound by CPC/Evidence Act; based on fairness
Costs & Deposits	Advance payment for arbitrator fees & administrative expenses
Termination of Mandate (S.14)	Arbitrator's authority ends: inability, withdrawal, party agreement
Settlement Agreement (S.73)	Agreement during conciliation; has same status as arbitral award
Litigation vs Arbitration	Litigation: court, formal, public, slow; Arbitration: private, flexible, confidential, fast

LONG ANSWERS (8-20 Marks Each)

1. Arbitration & Court Intervention (S.5, 8, 9, 11, 27, 34, 36, 37)

Definition: Arbitration = dispute resolution by neutral arbitrator; based on party agreement; binding decision.

Principle of Minimum Judicial Intervention (S.5): Courts shall not intervene except where provided.

Circumstances for Court Intervention:

Section	Circumstance
8	Refer parties to arbitration (if agreement exists)
9	Grant interim measures (injunction, property protection)
11	Appoint arbitrator (when parties fail)
13,14	Challenge/terminate arbitrator (bias, incapacity)
27	Assistance in taking evidence
34	Set aside arbitral award
36	Enforce award as decree
37	Hear appeals

Case Law: *P. Anand Gajapathi Raju v. P.V.G. Raju* (S.8 referral mandatory); *SBP & Co. v. Patel Engineering* (S.11 power is judicial)

2. Arbitral Award & Grounds to Set Aside (S.31, 34)

Definition (S.2(1)(c)): Decision of arbitral tribunal resolving dispute; final & binding.

Types: Final award, Interim award, Additional award (S.33), Settlement award (S.30)

Form & Content (S.31): Writing, signed, reasons, date & place.

Grounds to Set Aside (S.34):

Ground	Explanation
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Incapacity of party	Legal incapacity to contract
Invalid agreement	Not valid under applicable law
Lack of proper notice	Party unable to present case
Beyond scope	Deciding matters outside agreement
Improper tribunal	Not formed as per agreement/law
Non-arbitrable subject	Criminal, matrimonial, insolvency matters
Public policy violation	Fraud, corruption, against justice/morality

Time limit: 3 months + 30 days extension

Case Laws: *ONGC v. Saw Pipes* (expanded public policy); *Associate Builders v. DDA* (limited interference); *Ssangyong Engineering v. NHAI* (narrowed public policy)

3. Making of Arbitral Award (S.29-33, 31A)

Provisions:

Section	Provision
29	Majority decision
29A	Award within 12 months (court extension possible)
30	Settlement recorded as award

31	Writing, signed, reasons, date & place
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31(7)	Interest on awarded amount
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31A	Costs (fees + expenses)
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33	Correction/interpretation within 30 days
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33(4)	Additional award for omitted issues
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Importance: Proper compliance ensures validity, enforceability, avoids disputes.

4. Finality & Binding Nature of Award (S.35, 36, 34, 37)

Principle (S.35): Arbitral award is final and binding on parties.

Exceptions to Finality:

1. Setting aside under S.34 (limited grounds)
2. Appeal under S.37 (specific orders only)

Enforcement (S.36): Award enforced like civil court decree.

Case Law: *McDermott International v. Burn Standard* – Court cannot correct errors, only set aside.

Significance: Speedy justice, certainty, reduced court burden, party autonomy.

5. Arbitration Agreement – Formation, Essentials, Validity (S.7, 2(b), 11, 16)

Definition (S.7): Agreement to submit disputes (existing/future) to arbitration.

Formation: Mutual consent + written form (signed document, letters, emails, reference to arbitration clause)

Essentials:

1. In writing
2. Clear intention to arbitrate
3. Definite & certain terms
4. Competent parties
5. Arbitrable subject matter (civil/commercial, not criminal/matrimonial)
6. Binding nature

Validity: Must satisfy Indian Contract Act + Arbitration Act (free consent, lawful object, competent parties, certainty)

Doctrines:

- Separability (S.16): Arbitration clause separate from main contract
- Kompetenz-Kompetenz (S.16): Tribunal decides its own jurisdiction

Case Laws: *K.K. Modi v. K.N. Modi* (conditions for arbitration); *Booz Allen v. SBI* (arbitrable/non-arbitrable)

6. Appointment of Arbitral Tribunal (S.10, 11)

Number of Arbitrators (S.10): Parties decide (must not be even); if not decided → sole arbitrator.

Appointment Procedure (S.11):

Scenario	Procedure
Sole arbitrator (parties agree)	As agreed
Sole arbitrator (parties fail)	Supreme Court/High Court appoints

Three arbitrators

Each party appoints one; two appoint third
(presiding)

Qualifications: Independence (S.12), disclosure of relationships/interests.

Case Law: *SBP & Co. v. Patel Engineering* (S.11 power is judicial); *TRF Ltd. v. Energo Engineering* (interested person cannot appoint)

Challenge (S.13): Written challenge → Tribunal decides → If rejected, party can challenge award under S.34

Termination (S.14): Inability, withdrawal, party agreement → Substitution (S.15)

7. Challenge to Arbitrator Appointment (S.12, 13, 14, Fifth & Seventh Schedules)

Grounds for Challenge (S.12):

1. Lack of independence & impartiality (reasonable doubt)
2. Conflict of interest (direct/indirect)
3. Lack of required qualifications
4. Ineligibility under Fifth/Schedule (e.g., employee of party, advisor)

Disclosure Requirement (S.12(1)): Arbitrator must disclose relationships, interests, circumstances affecting impartiality.

Procedure (S.13):

1. Written challenge with reasons
2. Tribunal decides challenge
3. If rejected → arbitration continues
4. Party can challenge award under S.34

Termination (S.14): Incapable, fails to act, withdraws.

Substitution (S.15): New arbitrator appointed by same procedure.

Case Law: *Voestalpine Schienen v. DMRC* (neutrality & independence essential)

8. Appeal & Revision (S.37, no provision for revision)

General Principle: Limited judicial intervention + No revision

Appealable Orders (S.37):

1. Refusal to refer to arbitration (S.8)
2. Grant/refusal of interim measures (S.9)
3. Setting aside/refusal to set aside award (S.34)
4. Tribunal's interim order (S.17)

No second appeal – but SLP to Supreme Court possible.

No revision – ensures finality.

Case Laws: *McDermott International v. Burn Standard* (cannot correct errors); *Fuerst Day Lawson v. Jindal Exports* (minimal interference)

9. Enforcement of Foreign Awards (Part II, S.44-52 New York; S.53-60 Geneva)

Definition: Arbitral award made outside India; recognized under New York/Geneva Conventions.

Conditions for Enforcement: Notified country, commercial dispute, final & binding, not against public policy.

Procedure: Application to court → Submit original award + agreement → Court examines → Enforced as decree.

Grounds for Refusal (S.48):

- Incapacity of parties
- Invalid agreement

- Lack of proper notice
- Beyond scope
- Improper tribunal
- Award not binding
- Non-arbitrable subject
- Public policy violation (fraud, corruption, fundamental policy, justice/morality)

Case Laws: *Renusagar v. GE* (narrow public policy); *Vijay Karia v. Prysmian* (minimal interference)

Critical Analysis: India is pro-arbitration but delays & misuse of public policy remain challenges.

10. Role of Conciliator (Part III, S.61-81)

Definition (S.61): Neutral third party assisting parties to reach amicable settlement.

Nature: Voluntary, flexible, confidential, non-binding until agreement.

Roles & Functions:

- Facilitate communication
- Identify issues
- Suggest solutions
- Encourage settlement
- Maintain neutrality
- Protect confidentiality
- Draft settlement agreement

Powers: Flexible procedure, meet jointly/separately, suggest terms, seek expert help.

Legal Status (S.74): Settlement agreement = arbitral award.

Advantages: Amicable, saves time/cost, preserves relationships, flexible.

Limitations: No binding power, depends on parties' willingness, not for all disputes.

Case Law: *Haresh Dayaram Thakur v. State of Maharashtra* (importance of ADR)

11. Conciliation Provisions (Part III, S.61-81)

Section	Provision
62	Commencement: invitation + acceptance
64	Appointment: sole (preferred), two, or three conciliators
66	Procedure: flexible, not bound by strict rules
67	Role: assist settlement, remain impartial
70	Communication: jointly or separately (confidential)
73	Settlement agreement: drafted by conciliator, signed by parties
74	Legal status: same as arbitral award
75	Confidentiality: all matters confidential
76	Termination: settlement, failure, withdrawal, party agreement

12. Advantages & Limitations of ADR

Advantages:

- Speedy resolution

- Cost effective
- Flexible procedure
- Confidentiality
- Party autonomy
- Reduced court burden
- Preserves relationships
- Expert decision-makers

Limitations:

- No precedent value
 - Limited appeal
 - Possible bias
 - Lack of enforcement (mediation/conciliation without agreement)
 - Not for criminal/public law matters
 - Power imbalance
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13. Need for ADR Mechanisms

Reasons:

- Delay in courts (huge backlog)
- High cost of litigation
- Complexity of legal procedures
- Need for speedy justice
- Preservation of relationships
- Flexibility
- Globalization requires efficient dispute resolution
- Confidentiality

Judicial Support: Courts encourage ADR to reduce burden & promote settlement.

14. Conciliation vs Mediation vs Negotiation vs Arbitration

Feature	Negotiation	Mediation	Conciliation	Arbitration
Third party	No	Yes (mediator)	Yes (conciliator)	Yes (arbitrator)
Role of third party	N/A	Facilitator	Active suggester	Decision-maker
Binding nature	Non-binding	Non-binding	Binding after agreement	Binding
Formality	Informal	Semi-formal	Semi-formal	Formal
Control	Parties	Shared	Shared	Arbitrator
Legal framework	None	Emerging	Arbitration Act Part III	Arbitration Act Part I

15. Mediation vs Negotiation

Point	Negotiation	Mediation
Third party	No	Yes (mediator)
Role	Parties decide	Mediator facilitates

Structure	Informal	Structured process
Control	Full with parties	Shared with mediator
Confidentiality	Yes	Yes (structured)

Similarities: Voluntary, non-binding, focus on settlement, preserve relationships.

16. Legal Aid – Importance & Philosophy (Art 14, 21, 39A)

Meaning: Free legal services to poor who cannot afford representation.

Philosophy: Equal justice, access to legal system, protection of fundamental rights, welfare state.

Constitutional Basis:

- Art 14: Equality before law
- Art 21: Right to life & liberty
- Art 39A: Free legal aid (Directive Principle)

Importance:

- Ensures justice for all
- Protects rights of poor
- Reduces inequality
- Promotes rule of law
- Supports ADR (Lok Adalat, mediation)

Case Laws:

- *Hussainara Khatoon v. State of Bihar* (right to free legal aid)
 - *Maneka Gandhi v. UOI* (expanded Art 21)
 - *Khatri v. State of Bihar* (state must provide legal aid)
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17. Legal Services Authorities Act, 1987 – Role in ADR

Objectives: Free legal aid + promote ADR (Lok Adalat)

Key Provisions:

- Establishment of NALSA, SLSA, DLSA
- Lok Adalat for pending & pre-litigation cases
- Permanent Lok Adalat for public utility services

Role in ADR:

1. Provides institutional support for Lok Adalat
2. Encourages compromise & settlement
3. Speedy justice at minimal cost
4. Reduces court backlog

Benefits: Access to justice, free legal services, efficient dispute resolution, social justice.

18. Lok Adalat – Constitution, Jurisdiction, Award

Meaning (S.19 Legal Services Act): "People's Court" – dispute settlement through compromise.

Constitution: Organized by NALSA/SLSA/DLSA; Members: Judicial officer + social worker + legal professional.

Jurisdiction:

- Pending cases (referred by court)
- Pre-litigation cases
- Civil, motor accident, matrimonial, labour, compoundable criminal cases
- Not: Non-compoundable criminal offences

Powers: Same as civil court – summon witnesses, examine documents.

Award:

- Based on mutual settlement

- Final & binding (no appeal)
- Deemed civil court decree
- Court fee refunded if settled

Advantages: Speedy, cost-effective, simple procedure, reduces court burden.

19. Lokpal & Lokayukta (Lokpal & Lokayuktas Act, 2013)

	Lokpal	Lokayukta
Level	Central	State
Chairperson	Former CJI/judge	Varies by state
Members	Max 8 (judicial + non-judicial)	Varies
Jurisdiction	PM (with limits), Ministers, MPs, officials	State ministers, state officials

Powers: Inquiry, investigation, recommend action, supervise.

Procedure: Complaint → Preliminary inquiry → Investigation → Report → Recommendation.

Importance: Transparency, prevents corruption, accountability, strengthens democracy.

Limitations: Dependence on other agencies, delays, limited enforcement.

20. Consumer Commissions – Jurisdiction (Consumer Protection Act, 2019)

Commission	Pecuniary Jurisdiction	Territorial Jurisdiction
District	Up to ₹50 lakh	Where opposite party resides/cause of action arises
State	₹50 lakh – ₹2 crore	Same + appeals from District
National	Above ₹2 crore	Same + appeals from State

Subject Matter: Defective goods, deficiency in services, unfair trade practices.

21. Three-Tier Grievance Redressal System (Consumer Protection Act, 2019)

Level	Body	Jurisdiction (Value)	Appellate Authority
1st	District Commission	Up to ₹50 lakh	State Commission
2nd	State Commission	₹50 lakh – ₹2 crore	National Commission
3rd	National Commission	Above ₹2 crore	Supreme Court

Features: Simple procedure, time-bound disposal, consumer-friendly, online filing.

22. Administrative Tribunals (Art 323A & 323B)

Article	Scope	Features
323A	Service matters (govt employees)	CAT; excludes court jurisdiction (except SC)
323B	Taxation, land, industrial, elections	Parliament or State Legislature can establish

Advantages: Speedy, expert, reduces court burden.

Disadvantages: Limited independence, lack of uniformity.

Case Law: *L. Chandra Kumar v. UOI* (tribunal decisions subject to HC judicial review)

23. Panchayat System as ADR Mechanism

Role: Traditional village-level dispute resolution; informal ADR.

Features: Local resolution, informal procedure, cost-effective, community participation, preserves relationships.

Disputes handled: Land, family, minor civil matters.

Advantages: Quick, accessible to rural population, promotes harmony.

Limitations: Lack of legal expertise, possible bias, no formal enforcement.

24. Rule-Making Powers

Central Government (S.84 Arbitration Act): Rules for procedure, fees, administrative matters.

High Courts (S.82 Arbitration Act): Rules for court procedures, filing processes, arbitration-related matters.

Importance: Uniform procedure, clarity, smooth functioning.

Limitation: Must be within scope of parent Act; cannot override law.

25. Historical Development of Arbitration

Period	Development
Ancient	Elders/community leaders; Panchayat system
Medieval	Informal arbitration; customs & traditions
British (1899)	Arbitration Act, 1899 (first formal law)
British (1908)	CPC provisions for arbitration
British (1940)	Arbitration Act, 1940 (comprehensive but flawed)
Modern (1996)	Arbitration & Conciliation Act, 1996 (based on UNCITRAL Model Law)
Recent (2015,2019)	Amendments for speed & efficiency

Significance: Improved efficiency, global acceptance, better legal framework.

26. Amicus Curiae – Role in Legal Aid

Meaning (S.2 Art 21): "Friend of the court" – person appointed to assist court.

Role:

- Assists court with legal expertise
- Protects public interest
- Supports legal aid (helps unrepresented poor litigants)
- Ensures fair trial

Importance: Helps court understand complex issues; ensures justice for those lacking legal resources.

27. Conduct of Arbitral Proceedings (S.18-27, 29B)

General Principles:

- Equal treatment (S.18)
- Party autonomy (S.19) – can decide procedure
- No strict CPC/Evidence Act

Provisions:

Section	Provision
20	Place of arbitration (seat)
21	Commencement (notice received)
22	Language
23	Claim + defence statements
24	Oral hearings + written proceedings

25	Default: claimant → termination; respondent → ex parte
26	Expert appointment
27	Court assistance for evidence
17	Interim measures by tribunal
29B	Fast-track procedure (6 months, written submissions)

Advantages: Less formal, time-saving, cost-effective, party-friendly.

QUICK REVISION TABLE – IMPORTANT SECTIONS (Arbitration Act, 1996)

Section	Topic
5	Minimum judicial intervention
7	Arbitration agreement
8	Reference to arbitration by court
9	Interim measures by court
10	Number of arbitrators
11	Appointment of arbitrators

12 Grounds for challenge

13 Challenge procedure

14 Termination of mandate

16 Kompetenz-kompetenz & separability

17 Interim measures by tribunal

18 Equal treatment

19 Party autonomy

20 Place of arbitration

21 Commencement

23 Claim & defence statements

24 Hearings

25 Default of party

27 Court assistance

29A Time limit for award (12 months)

29B Fast-track procedure

30 Settlement

31 Form & content of award

31A Costs

33 Correction & additional award

34 Setting aside award

35 Finality of award

36 Enforcement

37 Appealable orders

44-52 New York Convention (foreign awards)

53-60 Geneva Convention (foreign awards)

61-81 Conciliation (Part III)

73 Settlement agreement

74 Status of settlement agreement

75 Confidentiality
