

It law), panchayats  
were different  
systems of



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It signified the referral of a dispute outside of or above the ordinary law. But in due course, the word came to mean a person selected for settlement of disputes. Though it is not judicial in the strictest sense, yet arbitration is regulated by law by implication and the arbitrators cannot act arbitrarily, capriciously or misconduct themselves. In ancient India there were several grades of arbitration, for example the Puga or a board of persons who belonged to different sects and tribes but lived in the same locality; the Sreni or assemblies of tradesmen and way with each other, the Kula or groups of persons bound by family ties. From early times, the decisions of Panchayats were accepted as binding. According to Colebrooke (an English scholar and commentator on ancient Hindu law), Panchayats were different systems of arbitration subordinate to the regular courts of law. The decision of a Kula or kin group was subject to revision by the Sreni which, in turn, could be revised by the Puga.

From the decision of the Puga, appeal was maintainable to Pr3dvivaca and finally to the sovereign and the prince. The objects of arbitration are speed, economy, convenience, simplicity of procedure, secrecy and the encouragement of healthy and friendly relations between the disputants. Arbitration is increasingly being used in national and international commercial transactions, and arbitrators are like private judges between the concerned parties. For centuries, people engaged in commerce have preferred to use arbitration rather than the courts to resolve their business disputes. In a large number of cases the arbitrators are laymen without any legal training, but are known to be impartial and are usually knowledgeable about the intricacies and practices of the business in question.

Arbitration is often described as approximate justice with finality as against justice administered in the courts which has many rounds of appeal. It is advantageous in cases involving disputed questions of facts, for example whether goods are up to the original samples or in the assessment of damages or whether compensation is reasonable. But in complicated matters where intricate questions of law likely to arise, legal proceedings are the better course.

Arbitration, like courts, can also work both ways. For example, sometimes it can turn out to be more expensive than litigation. This is not because the machinery is operated by human agency and no force can be used. At other times honest people fear arbitration more than they do law suits. In India, the process of the appointment and proceedings of arbitration are prescribed by a law known as the Arbitration Act 1940 and the judgement known as award is subject to judicial appeal. The scheme of the Act is to provide a domestic forum for speedy and substantial justice unhampered by legal technicalities.

Almost all matters in dispute that are not of a criminal nature can be referred to arbitration. All matters of a civil nature, therefore, with few exceptions, where they relate to present or future disputes, may form the subject of reference, but not a dispute that has arisen from and is founded on an illegal transaction. However, where the law has given jurisdiction to determine a matter to specified tribunals only and determination of that matter by other tribunals is excluded, they cannot be referred to arbitration. Proceedings in insolvency including the question whether or not a certain person should be declared insolvent, or matters regarding tenancy, the Rent Act, etc. cannot

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be referred to arbitration. The law provides that the agreement to refer to arbitration should be in writing.

There cannot be an oral agreement should be in writing. There cannot be an oral agreement or reference to arbitration. The parties can go in for sole arbitration or each party appointing an arbitrator. If there is more than one arbitrator, the parties have to appoint an 'umpire' to whom the dispute is referred if there is any disagreement between the arbitrators. The arbitrators must be a reasonable opportunity to the parties to be heard either in person or, if the parties desire, through their advocates. The principles of natural justice including *Asia Alteram Partem* and *Memo Judice in re Suo Moto* must be observed. The parties can lead evidence and file documents.

The arbitrators must give their award within four months. However, this time can be extended by the parties themselves by consent or if any one of the parties does not consent, then the court has the power to extend the time in proper cases after hearing the parties. The umpire has also to give award within four months. The Act also provides that in a pending case before the court, if it is felt that the questions involved are too technical and require expert knowledge and if the parties agree, the court refers the case to arbitration. Such reference is known as reference by the court. The procedure is the same as in arbitration by private agreement, except that the arbitrators are responsible to the court and the award is filed in the case in the court, which remains undisposed till the award is filed. The parties may also provide that the arbitrators can dispense with the elaborate procedural law and can adopt a summary procedure in order to avoid delay

and elaborate documentation, and to save expenses. If the parties accept the award it becomes the rule of the Court and that is the end of the dispute.

It is now settled that an award can be made without stating any reasons unless parties by mutual agreement require reasons to be given. Most of the awards do not give reasons, so there are less chances of finding fault by the courts. When no reasons are recorded for arrived at the award the courts do not speculate into the mental process or reasons which may have carried weight with the arbitrator. However, there are limited grounds on which the award can be challenged.

These are: (i) That an arbitrator or umpire has misconduct himself in the proceedings. (ii) That an award has been made after the issue of an order by the court superseding the arbitration of after arbitration proceedings have become invalid under Section 35; (iii) That an award has been improperly procured or is otherwise invalid. The court may upon hearing the parties either affirm, vary, or set aside the award. There are further appeals up to the Supreme Court by either party. The arbitrator's fees and other expenses are paid by the parties.

However, in the award, the arbitrators can also give directions about payment of costs by a party or parties.