

# [According one arbitrator and other party shall](https://assignbuster.com/according-one-arbitrator-and-other-party-shall/)

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According to Section 2(1) (d) of the Arbitration & Conciliation Act, 1996 provides “ ArbitralTribunal” means a sole arbitrator or panel of arbitrators. Arbitrators shall beappointed by the parties as per accordance with Section 11 of Arbitration &Conciliation Act, 1996. On other hand, party can appoint one arbitrator andother party shall also authorize to appoint an arbitrator. Third arbitratorshall be appointed by both parties with their mutual consent.

Qualificationofan arbitrator: – There was silence on the subject of qualification of anarbitrator under Old Arbitration Act, 1940. But this new Act gave guidelinesfor the appointment and qualification of an arbitrator. That person should beappointed as an arbitrator who has special knowledge about the Arbitration. Onother hand, that kind of person can also be appointed as an arbitrator who haveexpert in technical fields. Technical fields like such as trade, technology, commerce, industries etc. so in this way that kind of disputes shall only beadjudicated by the expert arbitrators. The appointment of an arbitrator can bechallenged on the ground of non possessing qualification1.

There was no provisionrelating to jurisdiction of an arbitrator in earlier Arbitration Act, 1940. Butnew Arbitration & Conciliation Act, 1996 provides jurisdiction of arbitrator. Arbitrator can resolvethe dispute within its jurisdiction. He cannot make any other decision indispute beyond its jurisdiction. It can focus upon arbitration agreementbetween the parties2.

In some cases, Apex Court held that jurisdiction includes power to decidedispute within its own jurisdiction. Arbitrator is bound to rule under itsboundary. It cannot take decisions out of his jurisdiction3. Tribunalis not a Court: – Arbitral Tribunal is a body to makean adjudication of disputes. It can resolve the matters arose between theparties.

But they cannot decide matters in speedy as well as expeditiouslymanner. It discharges functions of quasi – judicial nature on principle ofnatural justice and fair play. But it shall not be considered as a Court oflaw. It was held in Engineering MazdoorSabha vs. Hind Cycles Ltd. 4in technical sense. CourtAccording toArbitration & Conciliation Act, 1996 provides the definition of word” Court” means under Domestic Arbitration, Principal Civil Court who have jurisdictionto decide the subject matter of dispute.

High Courts can also be included forresolution of disputes arises between the parties. But it does not includecivil court of inferior grade to such Principal Civil Court, or any otherCourt. On other hand, in Case of International Commercial Arbitration, HighCourt is entitled to take subject –matter of disputes between parties.

HighCourt has its own ordinary Original Civil Jurisdiction to deal with cases ofdisputes. It can also deal with cases such as appeals from decrees of Courtssubordinate to High Courts. 5ManoharLal vs. Vinesh Anand 6inthis case Supreme Court declared that Arbitrator is not included in thedefinition of Court for Section 195 of Code of Criminal Procedure. So section340 of Code of Criminal Procedure cannot be dealt with it. ExecutiveEngineer, Road Development vs. Atlanta Limited7inthis case Court observed that court includes only Principal Civil Court indistrict level who has its own ordinary original jurisdiction. It can also involveHigh Courts but it cannot include courts inferior than to Principal CivilCourt.

If district judge assenting for matter then it would always be exclusionof High Courts from adjudication upon the matters. LegalRepresentative Arbitration &Conciliation Act, 1996 provides when a person represents himself on the behalfof deceased person. It also includes any person who has relation with theproperty of deceased person, such a person acts in representative character.

The estate devolves on that person on the death of party so doing8. No judicial authoritiesshall interfere in the matters of Arbitration process. This provision clearlyindicates about the non intervention by the courts in arbitration clause.

Suchmatters are covered under part I of Arbitration & Conciliation Act, 1996from section 1 to 43. But in certain cases, judicial courts can intervene inthe matters of arbitration like under Sections 8, 9, 11, 14, 27, 34, 36 and 37of this Act9.  Interimmeasures by CourtA party may before orduring arbitral proceedings or at any time after the making of the arbitralaward but before it is enforced in accordance with section 36 apply to a court10:-1.

Appointment of a guardian for a minor orunsound mind person. 2.       When the parties may feel the need for safeguarding interim custody, preservation, protection, sale, or disposal of thewhole or part of subject matter of dispute. 3.

For the inspection of subject matter orsamples is to be taken to the court under second schedule to the old Indianarbitration Act, 1940 the new arbitration and Conciliation Act, 1996 provideinterim measures to the arbitrator under section 9 or section 17 enables to thecourt. Arbitrator has empowered to make an interim arbitral award on any matterwith respect to which the arbitrator may make a final award. 4.      Interiminjunction or the appointment of a receiver11. 5.      Thecourt shall have the same power for making orders similar to the arbitrationproceedings. 6.      Beforethe commencement of arbitral proceeding a court has a power to order andinterim measure or protection, the arbitral proceeding shall be commencedwithin a period of 90 days from the date of such order12.

7.      Oncearbitral tribunal has been constituted, court shall not entertain anapplication except the condition based upon circumstances. Adhunik Steels ltd. Vs. Orissa manganese andminerals (P.) ltd13.

It is well knownprinciple applicable to exercise of general power to grant interim reliefs. Italso included specific injunctive relief under order 39 of the Code of civilprocedure, 1908 and the Specific Relief Act, 1963 would be applicable duringthe exercise of power under 1Section 12 of Arbitration & Conciliation Act, 19962Section 16 (1) of Arbitration & Conciliation Act, 19963 Union of India vs. Kishori Lal , AIR 1959 SC 13604 AIR 1963 SC 8745 Section 2 (1) (e) of Arbitration& Conciliation Act, 1996, also substituted by Act no. 3 of 2016. 6 AIR 2001 SC 18207 AIR 2014 SC 10938 Section 2 (1) (g) of Arbitration & Conciliation Act, 19969 Section 5 of Arbitration & Conciliation Act, 199610 Inserted by Act 3 of 2016. 11 Section 9 of arbitration andconciliation Act, 199612 Inserted by Act 3 of 2016. 13 AIR 2007 SC 2563