

# LAW SCHOOL NOTES

SUBJECT TITLE:

## **A.D.R.**

ALTERNATIVE DISPUTE RESOLUTION



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# Judicial Dispute Resolution

## Forms of A.D.R.

- 1) Arbitration
- 2) Conciliation
- 3) Mediation
- 4) Negotiation
- 5) Lok Adalat.

## \* Characteristics.

- Amicable settlement of dispute
- Avoids multiplicity of litigations
- Saves time and money of both the parties

## \* J.D.R. (Judicial Dispute Resolution)

- started in 1726
- Contribution of Lord Cornwallis, Hastings
- Sadar Diwani and Faujdari Adalat for civil & criminal cases

## \* Characteristics of J.D.R.

- ① The J.D.R. adjudicates the litigation (conflict)
- ② The Judicial Dispute Resolution is done successfully through the established courts.
- ③ J.D.R. is administered by the judges of the court.
- ④ Advocates assist the judges in delivering the justice.
- ⑤ J.D.R. is based on law.
- ⑥ Justice delivery system, the hierarchy of the courts is required to protect the interest and rights of citizen.
- ⑦ In justice delivery system, the courts should have jurisdiction and venue.
- ⑧ In judicial dispute resolution, there is scope for rectification in decisions through appeals.
- ⑨ In J.D.R. the court of records have power to issue any person or authority, directions, orders or writs.

## Chap. 2      ADR

- (A) Alternative to formal adjudication - Techniques processes
- (B) Techniques - Unilateral, Bilateral & Triadic intervention.
- (C) Advantages & Disadvantages
- (D) Distinct<sup>n</sup> b/w arbitration, conciliation and negotiation
- (E) Distinct<sup>n</sup> b/w judicial settlement and A.D.R.

(A)

ADR is not a new or foreign concept to India  
It was practised in India through Panchayat, where parish would intervene and solve the disputes.  
Formally, this concept was brought by the Bengal Regulation Act, 1772  
It provided reference to arbitrator could with consent of parties

(E) Advantages of A.D.R.

(1) Party Autonomy

- Parties are free to select the most appropriate decision maker for dispute
- They may choose applicable law, place & language of proceedings
- It results in material cost saving

(2) Neutrality

- It is neutral to the law, language & institutional culture
- It avoid any home court advantage that one of the party enjoy in court based litigation

(3) A single procedure

- It avoids the expense and complexity of multi-jurisdictional litigation

- ④ Confidentiality
  - ADR process are private
  - parties can choose to keep the proceeding outcomes confidential.
- ⑤ Finality of Awards
  - Arbitral award are not normally subject to appeal.
- ⑥ Enforceability of Awards
  - New York Convention, 1958
- ⑦ Inexpensive
- ⑧ Speedy in nature
- ⑨ Increased control over the process and the outcome
  - It allows party to fashion creative resolutions
- ⑩ It preserves relationship
  - It increases probability of win-win situation
- ⑪ Improved attorney-client relationship.

#### \* Disadvantages

- ① No guaranteed resolution
  - ADR does not always led to resolution
  - At the end of resolution before passing of awards, parties still can approach to the court
- ② Arbitration decisions are final, acc. to no right to appeal.
- ③ Delaying Tactics
  - It can be used as delaying tactics by one side before going to litigation.

- (4) Limited process.  
→ It cannot with consensus, involve multiple parties,
- (5) Vested interest may a role and vitiate the procedure.
- (6) This process encourages compromise, by way of mutual talks.
- (7) Not binding for parties, unlike litigation.

\* Distinction b/w Judicial Settlement and A.D.R.

Judicial Settlement (Litigation)	A.D.R.
It is a public proceeding	It is mostly held in private.
Rel <sup>n</sup> to civil and criminal issues	Mostly civil & commercial issues
It requires rules of evidence to be followed.	It requires limited evidentiary process
It is formal	It is informal
Appeals are easily preferable	Appeal is not always permitted
It is an expensive process	It is a cheaper process comparatively
Advocates are mandatory	Advocates may be enlisted at the discretion of parties.

Arbitration	Conciliation	Negotiation
Negotiation	Mediation	Arbitration
Voluntary	Usually voluntary	Usually voluntary
Enforceable as contract	Enforceable as contract	Binding
No third party (neutral)	Neutral appointed by parties to control process not decisions	Neutral, agreed by parties to impose decision
Informal	Informal and flexible model	Meant to be less formal but now more rigid
No set rule on how to negotiate	No set rule on how to mediate	Set rules with parties presenting evidence
Mutually acceptable agreement	Mutually acceptable agreement	Impose decision
Pvt.	Pvt.	Pvt.
Parties may or may not be involved in negotiations	Parties presents & free to engage fully	Parties may attend but participate only as witness

## Methods of Intervention

- Whenever a dispute arises there will be 2 parties or disputants
- The interest of two parties will be different
- 3 methods to solve the same.

### ① Unilateral Intervention.

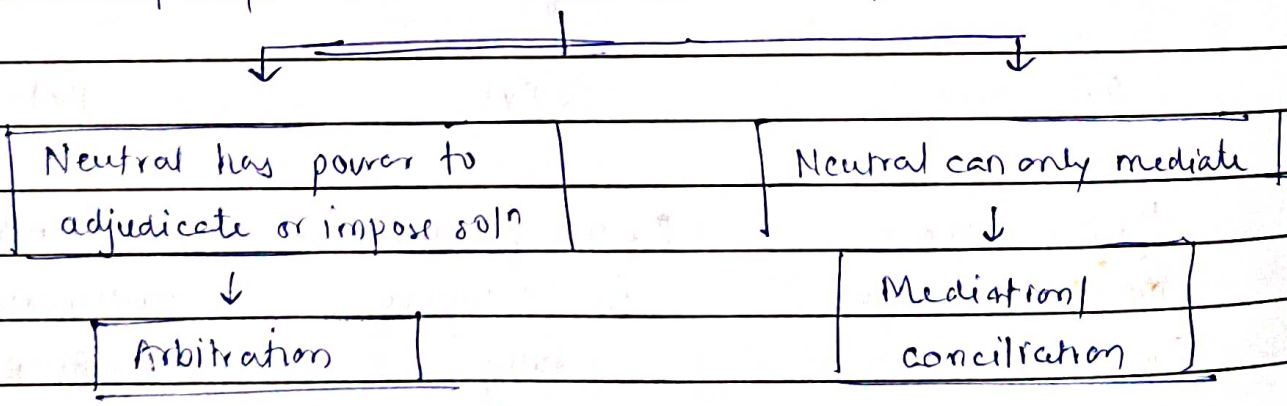
- Among two party, one party is of dominant position and other party is in dependant position
- Dominant party dictates the terms of settlement & other party accepts
- This is also known as crude method
- Brought to end by way of statutes
- Was practiced in early trade development days.

### ② Bilateral intervention.

- Both the parties intervene in settlement of dispute.
- Both the parties are at equal position.
- No statutory recognition.
- No third party intervention.

### ③ Triadic (Third party) intervention

- It is adopted when parties cannot settle dispute among themselves.
- Third party is introduced to settle the dispute



- (A) Self-help, avoidance and limping.
- (B) Negotiation, Mediation, Conciliation & Arbitration Distinction b/w.
- (C) Alternate Models of dispute resolution
- (a) Role of Panchayat.
  - (b) Role of Gram Sabha.
  - (c) Role of Lokpal, Lokayukta.
  - (d) Role of Lok Adalat.
  - (e) Role of family Courts.

(A) The first two forms of dispute resolution fall outside the ambit of any formal procedures.

(a) Avoidance :-

- It is a consciously chosen strategy in response to a perceived conflict.
- This strategy may be called "Get out Dodge City".
- They are unilateral and unorganized.

(b) Self-help.

- It is an action taken by a person designed to affect a resolution of a problem.
- It may include strikes, protests, theft and so on.
- They are unilateral and unorganized.

## (c) Alternate Models of Dispute Resolution

### (a) Role of Gram Panchayats

- i) Introduction
- ii) Before Pre-colonial period
- iii) Colonial period / pre-independence
- iv) Post-independence period

#### i) Introduction

- Each Indian village was Republic
- It was self sufficient and self reliant
- It was ruled by its own Gram Panchayat
- Village consisted all kinds of people and of all caste
- Head of the village (either hereditary or elected by people)
- It was more an economic and administrative organization

#### ii) Pre-colonial period. - Dispute resolution

- All offences were solved by the Gram Panchayat
- eg:- Matrimonial disputes, labour problems, land dispute, caste disputes

except :- Murder, dacoity

- In rarest of rare case, matters were sent to king
- Disputes were solved according to Dharma Shashtra & Customs
- There was no regular process or formalities
- Trial and punishment were completed on same day
- Witnesses & parties had to take oath in the name of God
- Speedy trial, inexpensive, quick implementation
- Continued till arrival of British

### iii) Colonial period.

- British destroyed this institution
- Britishers est. factories which destroyed resulted in urbanization.
- This destroyed village culture.
- The village started began to depend on urban.
- Later many steps were taken to save this institution
- Royal decentralization Comm. was set up to divide power in 3 tiers

### iv) After Independence

- The village self-sufficiency has been degraded to worst condition.
- The problems like politics, casteism, factional, communal riots destroyed it.
- The framers of constitution incorporated several provision in constitution for welfare.
- Art. 40 :- Organization of Village Panchayats.
- Today Gram Panchayat lost their zeal and control over dispute resolution which they enjoyed in pre-colonial period
- Gram Panchayat has failed to be good ADR
- G.P. are confined to welfare and administrative activities.
- Power of administration of justice is not vested on them.
- Due influence of politics.

### \* Role of Lokpal and Lokayuktas

They play crucial role in ADR system in India  
Anti-corruption / ombudsman

**Lokpal**  
Consist of body 1 Chairperson & 8 member  
Centre level

**Lokayukta**  
1 chairperson  
State level

Both institutions are responsible for addressing grievances and investigating allegations of corruption.

They can intervene in cases where corruption may hinder effectiveness of ADR.

### \* Role of Lokpal and Lokayukta

- 1) They receive complaints regarding corruption & maladministration including disputes related to ADR proceedings.
- 2) They conduct impartial investigation into complaints.
- 3) They monitor ADR proceedings to ensure compliance with ethical standards and procedural integrity.
- 4) They may suggest improvements to the ADR system, such as changes in legislation, policies or procedure, to enhance its effectiveness & fairness.
- 5) Quick, independent and inexpensive way to resolve dispute.

### \* Role of Lok Adalat

Lok Adalat is one of the most effective model of ADR.

#### \* Advantages

- i) It can resolve dispute quickly & efficiently.
- ii) Lok Adalats are free.
- iii) Held regularly in different parts of country.
- iv) Lok Adalats are flexible, can be decided on basis of merits rather than technicalities of law.
- v) Lok Adalats are fair and impartial.
- vi) It promotes and encourage settlement through negotiations and mutual agreement b/w parties involved in dispute.

## (v) Role of family Court

It plays a significant role in the ADR, particularly in resolving disputes related to family matter.

① It encourages Mediation or Conciliation.

→ to the parties involved in family disputes

such as divorce, child custody, visitation, spousal support.

→ Mediation involves a neutral third party intervention to amicably reach to an agreement

→ Conciliation involves assistance of conciliators, which helps parties to resolve their differences.

→ These process aim to promote effective communication, collaborate and resolution without need of formal litigation

② It actively promotes early settlement of dispute

→ It reduces emotional stress and saves money

③ It is based on child-focused approach

→ the best interest of parties to the dispute and of the child is taken into consideration,

④ It provides a private and confidential setting for ADR!

→ It encourages party to openly discuss sensitive issue

⑤ In case if ADR does not lead to settlement, family courts have authority to make binding decisions

⑥ It ensures final decisions are fair and just

# ADR

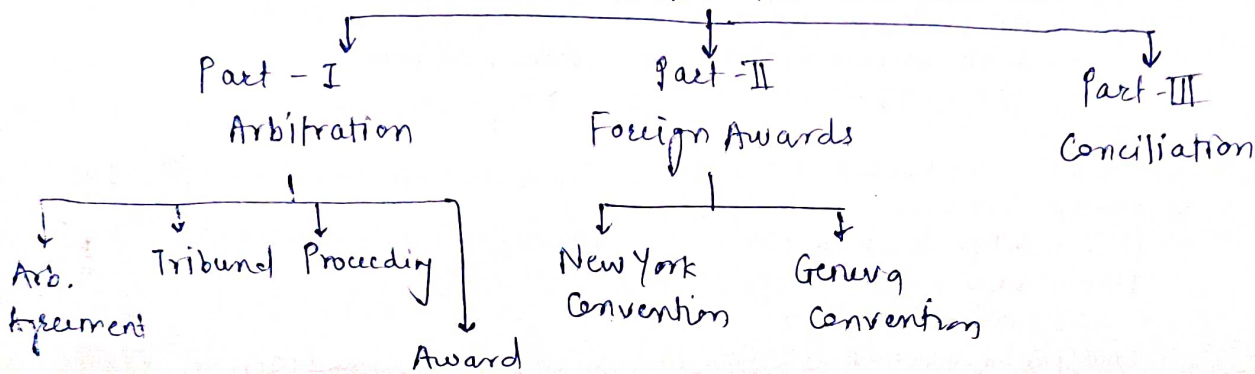
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## Unit IV :- Arbitration

### ① Introduction

- ↳ Arbitration Act, 1940 - to consolidate and amend law relating to arbitration.
- ↳ Reason behind enactment of Arbitration and Conciliation Act, 1996
  - ↳ Gurgaon Foundation v. Rattan Singh (1981)
  - ↳ S.C. observed that proceedings under Arbitration Act, 1940 have become too technical, inefficient and slow.

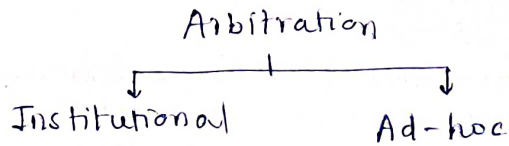
### ACA



\* Defn

### ① Arb. Agreement :- Sec. 2(a)

"Any arbitration whether or not done permanent arbitral institution"



### ② Arbitration Agreement :- Sec. 2(b)

#### Agreement

- 1) to submit to arbitration
- 2) for disputes arising within legal relationship
- 3) may be in the form of a clause in a contract (Arbitration clause)
- 4) in writing

#### \* features

- i) in writing.
- ii) signed by disputing parties.
- iii) Agreement to arbitrate.
- iv) Specifies number of arbitrators.
- v) Specifies method of appointment of arbitrator.

③ Arbitrator - sec. 2(d)

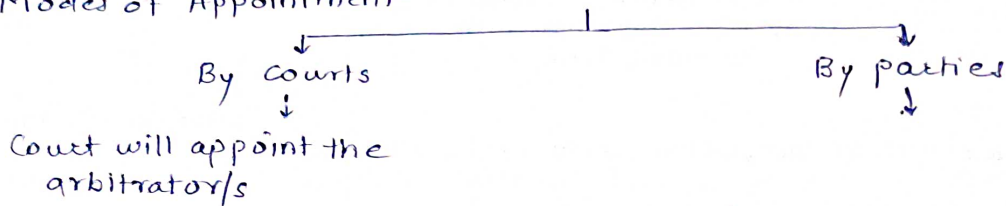
[No. of arbitrator should always be odd] (2)

• "Third party who resolves the dispute"

④ Appointment of Arbitrators.

i) should be decided in arbitration agreement.

\* Modes of Appointment



\* Procedure for Appointment by Parties.

P Step I :- Parties agree on method of appointment & no. of arbitrators.

A Step II :- Arbitrators are appointed.

D Step III :- Declaration by Arbitrator/s. → (that no personal interest of him lies.)

A Step IV :- Appointment of Presiding Arbitrators. (in case of more than one arbitrator)

F Step V :- formation of Arbitral Tribunal and initiation of Arbitration proceeding.

\* Grounds for removal or change of Arbitrator.

→ same grounds in case of removal or change

→ 2 unique grounds of change → i) Resign ii) Death.

① Lack of Impartiality.

② fail to conduct proceeding as per law

③ Lack of personal capability.

④ failure to comply with time limit.

⑤ Convicted of any criminal offence

⑥ Failure to disclose material facts.

③ Notice to Arbitrator.

④ Resignation of the Arbitrator / Approaching court for removal.

Case Law :- Bharat Aluminium Co. Ltd v. Kaiser Aluminium Co Ltd. (2012)  
[BALCO case]

→ part I of ACA, 1996 is not applicable to arbitration held outside India.

## Unit V :- Arbitral Awards & Proceedings.

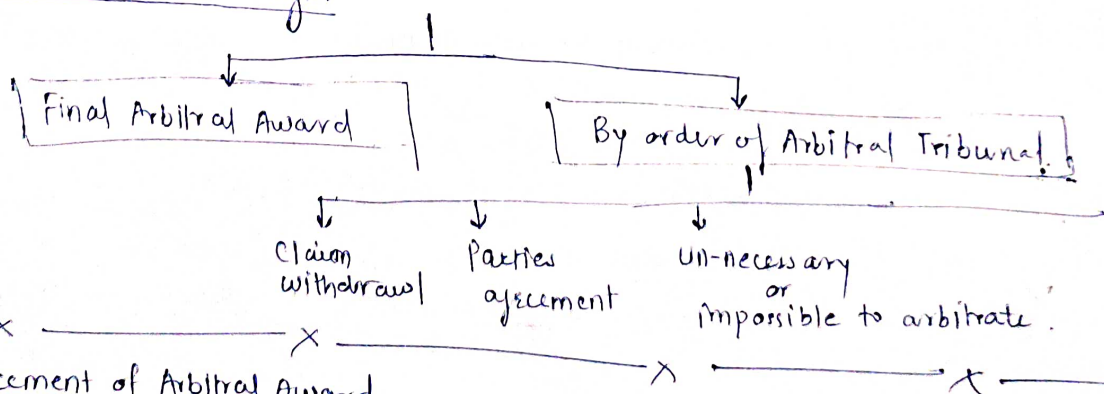
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- I. Proceeding in Arbitral Tribunal
- II. Termination of Arbitral Proceeding
- III. Enforcement of arbitral award
- IV. Foreign Awards.

### I. Proceedings in Arbitral Tribunal. [sec. 18-27].

- ① Equal treatment of both parties
- ② Rules of procedure to be determined by the parties
- ③ Not bound by C.P.C.
- ④ Not bound by I.E.A.
- ⑤ Place of arbitration to be decided by the parties.
- ⑥ Language of proceeding to be decided by parties.
- ⑦ Parties can make statement of claim / statement of counter claim / statement of defence, statement of withdrawal
- ⑧ Written Proceedings and other records to be determined by the arbitral tribunal
- ⑨ Arbitral tribunal may pass an award on default of party.
  - ↳ failure to make any statement.
  - ↳ failure to appear before tribunal
  - ↳ failure to comply with any order.
- ⑩ Tribunal may appoint experts for aid in the proceeding.
- ⑪ Tribunal may seek the assistance of court while recording evidence

### \*II. Termination of Proceedings.



### III. Enforcement of Arbitral Award.

↳ same as enforcement of a decree of court [as per Order 21 of CPC].

① final arbitral award passed.

② Application to app. court.

③ Examination of Arbitral Award.

④ Notice to judgment debtor. [against who judgment is passed].

decree holder [in whose favor judgment is passed].

⑤ Warrant of Execution, of seized or seal

⑥ Attachment and sale of foreclosed sale of property to satisfy the decree.

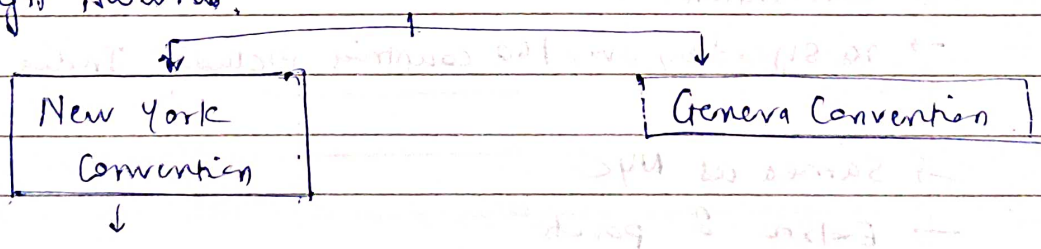
### \* Setting aside / Appeal Arbitral Award

- only on app<sup>n</sup> of parties
- \* Grounds for appeal available in application.
  - ① Applicant party was under some incapacity.
  - ② Arbitration was not valid.
  - ③ No proper notice to applicant party.
  - ④ Dispute arbitrated was not agreed to be arbitrated.
  - ⑤ Arbitral tribunal was not composed in accordance to law.

### \* Grounds for setting aside arbitral award

- ① Application for appeal was accepted.
- ② Subject matter of arbitration was not arbitrable.
- ③ Arbitral award was against public policy.
  - ↳ a) Illegal activity.
  - ↳ b) Unconstitutional activity.
  - ↳ c) actions against the social welfare of the society.

### Ⅴ Foreign Awards



- \* Under ACA, 1996 foreign arbitral awards are recognised as well as enforceable in India.
- \* for enforcement of foreign award the award holder must follow the procedure given in Order 21 of CPC.
- \* Court may refuse to enforce a foreign arbitral award if it is illegal, impossible or against public policy.

## NEW YORK CONVENTION (NYC)

- also known as [Convention on recognition and enforcement of foreign arbitral award]
- It was passed in 1958 at the United Nations General Assembly. It has been ratified or signed by more than 160 countries, including India.

### Important Terms:

Art. 2 :- require state to recognize process of arbitration and refer disputing parties to arbitration.

Art. 3 :- requires states to recognize foreign arbitral awards as binding and enforce them with their own procedure.

Art. 4 :- requires state to lay down requirement for enforcement of foreign arbitral award.

Art. 5 :- sets out limited grounds on which states may refuse to enforce foreign arbitral awards.

## Geneva Convention

→ Also known as execution of Foreign arbitral awards Convention.

→ signed by over 160 countries including India.

→ Same as NYC

→ Extra 2 parts-

1) Power of judicial authority to refer parties to arbitration.

2) foreign arbitral awards can be produced in front of Courts as evidence.

# Conciliation

Page No.

Date

- (I) Meaning and Definition → Conciliation Agreement
- (II) Appointment of Conciliators
- (III) Powers and Functions of Conciliators
- (IV) Techniques of Successful Conciliation proceeding
- (V) Enforceability

## (I) Meaning and Definition

Wharton's Law Lexicon

"conciliation is settling of dispute without litigation"

Halsbury's Law of England

"Conciliation is the process of persuading parties to reach an agreement, and is not plainly arbitration, nor is the chairman of board an arbitrator."

Main difference b/w Arb & Conc.

In Arbitration,  
award is passed by  
the Arbitral Tribunal

In Conciliation,  
the decision is of parties,  
arrived with assistance  
of conciliator.

## \* Application of this Act

→

Conciliation applies to

- i) To disputes arising out of legal relationship
- ii) To both contractual or non-contractual relations

II Appointment of Conciliators

1 Sec. 63 :- No. of Conciliators

→ may vary from 1 to 3

→ 1 conciliator → by both parties (Sole Conciliator)

Sec. 64(1) → 2 Conciliators → each by one party

→ 3 conciliators → each by one party + 3rd by both parties

2 Sec. 64(2) :- parties can approach a suitable institution for hiring a conciliator.

Party may request for appointment by institution [Direct].

Party may request for to recommend name of person [Indirect].

III Role / Functions of Conciliator [Duties]

- i) He shall assist parties to reach amicable settlement.
- ii) He shall conduct conciliation proceeding.
- iii) He shall consider rights and obligations of the parties.
- iv) Duty to keep all the records of proceeding.
- v) To maintain confidentiality of proceeding.
- vi) Duty to make settlement at any stage.
- vii) Hold meeting with individual party.

\* Powers of Conciliators

- i) To propose potential solutions.
- ii) To pass settlement agreement  
↳ effect of arbitral award.

## IV Techniques of successful conciliation proceeding

- i) Independence and Impartiality
- ii) Fairness and justice.
- iii) Confidentially
- iv) Disclosure of information with other party
- v) Co-operation of parties with Conciliator/s
- vi) Observance of principles of natural justice.
- vii) Not bound by rules of CPC, or technicalities
- viii) Parties have freedom to fix place of meeting
- ix) Communication b/w conciliators & parties.

## \* Termination of Conciliation Proceeding

→ Sec. 76

- i) By signing of settlement agreement.
- ii) Written declaration by conciliator  
(further efforts are not justified)
- iii) Written declaration by parties. / Party's request.
- iv) On declaration of termination by one party to another.

## \* Process of Conciliation

Steps

- I Initiation of Proceeding.
- II Appointment of Conciliator.
- III Exchange of statements
- IV Conduct of Conciliation proceeding
- V Settlement of dispute

## (V) Enforceability

→ Sec. 74 provides that settlement agreement shall have same status and effect as an arbitral award

→ ~~is a success~~

\* → Mysore Cements Ltd v. Svedala Barmac Ltd.

→ Sec. 73 speak about settlement agreement

→ once it is drawn & signed by parties, it is binding on parties

\* Hareesh Dayaram Thatkur v. State of Maharashtra

→ discussed at length about role of conciliator.