Thirty-day Notice: Before asking the Chief Justice to act in the matter, a thirty clear days' notice should be given to the other party to concur in the appointment and if he fails to do so then an application can be made to the court. The court will also give an opportunity to the other party to explain his position. The Chief Justice must have due regard to the qualifications f the arbitrators required by the parties under their agreement and also independence and impartiality of the person in question. An application for appointment of arbitrator made before giving any notice to the other party or raising a demand against him was held to be incompetent.

Challenge to Arbitrators: The old topic of revoking the authority of an arbitrator and seeking removal has been given a new jargon, namely challenging the arbitrator. The grounds on which a challenge can be presented are listed in Section 12 of Arbitration and Conciliation Act, 1996.
Grounds for Challenge:

Grounds for challenge:

1) When a person is approached in connection with his possible appointment as an arbitrator he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

3) An arbitrator may be challenged only if-

   a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

   b) he does not possess the qualifications agreed to by the parties.

4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Doubt as to Independence. or Impartiality at initial stage: One of the grounds for challenge is the existence of a doubt about the arbitrator's independence or impartiality. Section 12 (1) says that when a person is approached in connection with his possible appointment as an arbitrator, he is under a duty to disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

Disclosure of circumstances by proposed arbitrator: Sub-section (1) casts a duty upon a person who is approached for appointment as an arbitrator to disclose in writing any circumstances which are liable to cast justifiable doubts as to his independence or impartiality.

The arbitrator must be, and must be seen to be, disinterested and unbiased. Unless both parties, with full knowledge of the facts expressly agree to his acting, no one should adjudicate in proceedings in the outcome of which he has a direct pecuniary interest. For example, no one should accept appointment in a dispute if he holds shares in one of the parties, or if he would benefit in some other way from a decision in favour of one of the parties. And the arbitrator in a valuation dispute should not be remunerated on a scale

such that the higher the amount of his award, the higher his fee.

The arbitrator should have no connection, direct or indirect, with a party such that it creates an appearance of partiality. It is easier to recognise than to define the boundary between what previous connections do and what do not disqualify. Actual bias is irrelevant for this purpose. The test is whether a reasonable person who was not a party to the dispute would think it likely that the connection was close enough to cause the arbitrator to be biased. Thus, personal friendship or hostility; an employment relationship; a previous professional relationship either direct or through other members of a firm in which the arbitrator is a partner; these are examples of a relationship which might create in a responsible outsider a reasonable suspicion of bias. If there is any real doubt about the matter, the arbitrator should disclose the facts to the parties and should ask if they object to his accepting the appointment. If the facts become known to him after appointment, he should disclose them and ask if they object to his continuing.

It is well-settled that there must be purity in the administration of justice as well as in administration or quasi-judicial functions as are involved in the adjudicatory process before the arbitrators.

An arbitrator ought to be an indifferent and impartial person between ~he disputants. When the parties entrust their facts into the hands of an arbitrator, it is essential that there must be abundant good faith. The arbitrator must be absolutely disinterested and impartial. An interested person is disqualified from acting as an arbitrator. The interest disqualifies the arbitrator if it is calculated to produce a bias in his mind. The test is whether he is likely to be biased. Actual bias need not be proved.

Doubts Developing Afterwards: Disclosure after appointment: Sub-section (2) casts a duty on the arbitrator after his appointment and throughout the arbitral proceedings to make to the parties the disclosures, mentioned in sub-section (1), relating to matter which may have arisen after the appointment began. He may not do so if he has already made the disclosure before the appointment. Section 12(2) takes care of doubts which develop after the appointment. It requires the arbitrator to disclose' to the parties in writing and without any delay any circumstances developing after the time of his appointment and during the course of the arbitral proceedings which give rise to a justifiable doubt about his independence or impartiality. Thus an arbitrator can be challenged, whether he discloses his disqualification or not jf there are justifiable doubts about his independence or impartiality.

The appointment of an arbitrator can be challenged only on one or more of the following grounds:

a) That circumstances exist which give rise to justifiable doubts as to his independence of impartiality, or

b) That he does not possess the qualifications agreed to by the parties. The appointment can not be challenged on any other grounds.

Party's Challenge to his own arbitrator: An arbitrator can be challenged by the party who appointed him or in whose appointment he participated only for reasons of which the party became aware after the appointment has been made.

Challenge Procedure:

1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall,

within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of Section 12, send a written statement' of the reasons for the challenge to the arbitral tribunal.

3) Unless the arbitrator challenged under sub-section(2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with Section 34.

6) Where an arbitral award is set aside on an application made under sub-section (5), the Co may decide as to whether the arbitrator who is challenged is entitled to any fees.

On this point also the Act gives freedom to the parties to settle by agreement the procedure by which the arbitrator in question would be challenged. If there is no agreement on the point or the parties have failed to agree, then the procedure to be followed is that the party wishing to challenge the person has to inform the Arbitral Tribunal of the matter. This should be done within fifteen days. If the other party agrees to the challenge and the -arbitrator does not voluntarily withdraw, the Tribunal shall decide the matter. If the challenge is not successful, the Tribunal shall continue with the proceeding and make an award. The arty who challenged the arbitrator may challenge the award also and make an application for setting aside in accordance with Section 34. If the award is set aside, the court can consider whether the arbitrator should be entitled to his remuneration or not.

The grounds on which leave to revoke could be given were put under five heads:

1. Excess or refusal of jurisdiction by the arbitrator.
2. Misconduct of arbitrator.
3. Disqualification of arbitrator
4. Charges of fraud.
5. Exceptional cases.

Termination of authority of arbitration: Sub-section (1) of Section 14 sets out the following grounds on which the mandate or authority of an arbitrator can be terminated:

1. (a) the arbitrator either in law of factually becomes unable to perform his functions, or
   (b) For some reasons he fails to act without undue delay, and
2. (a) he withdraw from his office, or
   (b) the parties agree the termination.

There was no provision corresponding to Section 14 in the repealed Arbitration Act, 1940. Section 11(1) of the old Act gave power to the Court to remove an arbitrator in circumstances similar to those mentioned in Section 14(1) (a) of the present Act. Section 11 (1) of the old Act provided:

"The court may, on the application of any party to a reference, remove an arbitrator or umpire who fails o use all reasonable dispatch in entering on the proceeding with the reference and making an award."

Retirement or Change of Posting of Ex-officio Arbitrator: An arbitration agreement provided for reference to an engineer officer to be appointed by a third party. The arbitrator so appointed retired during the pendency of the proceedings. The Supreme Court held that the retirement resulted in the termination of the authority of the arbitrator. A new arbitrator would be appointed and the proceedings would be deemed to have continued before the new arbitrator.

Court's Assistance: If there is a dispute between the parties as to the existence of the grounds mentioned in clause (a) of sub-section (1) of Section 14, any party may apply to the Court for resolution of the dispute. Such grounds are de jure or de facto inability to act or failure to act without undue delay.

But the section does not contemplate a dispute as regards the grounds mentioned in Section 14 (1) (b) and there is no provision for a reference to the Court in this regard. These grounds are withdrawing from office or termination of authority under parties' agreement: There can hardly be any doubt about the operation of these grounds.

Effect of withdrawal: Where - (a) an arbitrator withdraws from his office, or (b) a party agrees to the termination of his mandate, it will not be inferred that any of the grounds referred to in Section 14 (1) or in Section 12 (3) have been established. Withdrawal from office by the arbitrator is not on account of any decision on the merits of grounds for termination of his mandate. Likewise the agreement of the parties to the termination of the mandate does not entail any decision on merits. The mandate of an office holder arbitrator comes to an end on his withdrawal from office. The court cannot provide an extension except perhaps, where he was appointed by the court.

Additional Grounds for Termination: Section 15 (1) purports to set out an additional ground for terminating the mandate of an arbitrator: namely, where he withdraws from office for any reason. But the provisions being of overlapping nature, it seems that the ground mentioned is already covered by Section 14(1) (b).

Removal of arbitrator (Sections 12 and 13): The provisions of the Arbitration and Conciliation Act, 1996 about removal of arbitrators are somewhat different. They do not confer -a straight power on the court. Section 12 casts a duty upon a would be arbitrator to disclose in writing if there is anything which gives rise to a justifiable doubt as to his independence ,and impartiality. An arbitrator's appointment can be challenged on' that ground and also on the ground of his being not in possession of requisite qualifications as agreed to between the parties. A party can challenge his own appointee only on the basis of a ground which he discovered afterwards. If the arbitrator does not withdraw after the challenge, the Tribunal would decide the question. If the challenge is successful the mandate of the arbitrator would be terminated. The mandate of an arbitrator also becomes terminated under Section 14 if he becomes unable to perform his functions de facto or de jure or if one withdraws or agrees to the termination of his mandate or fails to act without under delay.

Jurisdiction of Arbitral Tribunal:

1. The arbitral tribunal may rule on its own ,jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose:

a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be' precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

3. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

4. The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

5. The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section 93) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

6. A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34.

Challenge to Jurisdiction: Section 16(1) empowers an Arbitral Tribunal to decide:

1. The question as to its jurisdiction, and
2. The objection as to the existence or validity of the arbitration agreement.

For this purpose an arbitration clause in a contract shall be-treated as an arbitration agreemerit independent of the contract.

If the Arbitral Tribunal holds that the contract is null and void it will not resu1t in the automatic invalidity of the arbitration clause

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Though there was no similar provision in the erstwhile .1940 Act, the position in law was more or less the same.

AWARD

When an award has been made after rejection of the objections as to lack of or excess of jurisdiction the aggrieved party may make an application under Section 34 to set aside the award. In these proceedings the award can be challenged. inter alia, on the ground that the objections were wrongly rejected.

This provision [Section 16(5)] has been held to be constitutionally valid. The fact that the court can consider the question of jurisdiction of arbitrator only after passing of the award was held to be not a ground for contending that the award is not subject to any judicial scrutiny.

Arbitration Clause is Collateral or Ancillary Contract: The arbitration agreement contained in the

arbitration clause in a contract is often referred to as a collateral or ancillary contract in relation to the main contract of which it forms a part in the sense that it survives even after the parties have broken or repudiated the rest of the contract and will remain applicable for the settlement of the resulting dispute. The repudiation or breach of the main contract does not put an end to the arbitration clause. The failure of the main contract constitutes the occasion for the application of the arbitration clause. The main contract does not become irrelevant. That still provides the framework within which the rights and liabilities of the parties would be determined. The arbitration would, therefore, proceed according to the proper or applicable law of contract. Section 7(2) of the Arbitration and Conciliation Act, 1996 provides that an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. Section 16 (1) (b) further provides that a decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

Interim Measures by Tribunal

According to Section 17 of Arbitration and Conciliation Act, 1996

Interim Measures Ordered by Arbitral Tribunal

1. Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

2. The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

While Section 9 provides for the taking of interim measures by the Court in certain matters, Section 17 provides for the taking of interim measures in respect of the subject-matter of the dispute by the Arbitral Tribunal. The opening words of Section 17(1) indicate that the parties may be agreement exclude the exercise of such a power by the arbitral Tribunal.

Sub-section (2) empowers the tribunal to order tile furnishing of adequate security by a party for carrying out an interim measure ordered under the section.

Conduct of Arbitral Proceedings: The Arbitrator has to come to a conclusion on the matters of difference between the parties which are referred to him and to express it in terms of an award. He cannot delegate this function to any other person. The parties have appointed him because of their trust and confidence in him and they may not repose the same trust in any other person. But he may obtain legal assistance of drawing up his award.

The Tribunal has to treat the parties with equality. They should be given full opportunity to present their respective cases.

Time and Place of Hearing (Section 20)

Equal Treatment of Parties: The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

This section casts a two fold duty on the arbitral tribunal :

a) It must be independent and impartial and must mete out equal treatment to each party. [See Section 12 Note (1)]

b) It must give each party a full opportunity to present its case. Sections 23 and 24 provide for the giving of such opportunity.

A time and place should be fixed, for hearing and notice should be given to the parties accordingly. Section 20 provides that the parties are free to agree on the place of arbitration. Failing such agreement the place is to be determined by the Arbitral Tribunal. In doing so, the Tribunal has to give due consideration to the circumstances of the case and also the convenience of the parties. Unless otherwise agreed by the parties, the Tribunal may meet at any appropriate place for mutual consultation, for hearing witness, experts or other parties or for inspection of documents, goods or other property.

Rules of Procedure

1. The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

2. Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

3. Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

4. The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

C PC & Evidence Act: Sub-section (1) provides that the Code of Civil Procedure, 1908, and the evidence Act, 1872 are not to be binding in arbitration proceedings. The position under the repealed arbitration Act, 1940 was the same.

Natural Justice: No doubt arbitrator is not bound by technical rules of procedure but he cannot ignore les of natural justice. The thread of natural justice should run through the entire arbitration proceedings d the principles of natural justice require that the person who is to be prejudiced by the evidence ought be present to hear it taken, to suggest cross-examination or himself to cross-examine and to be able find evidence, if he can, that shall meet and answer it, in short, to deal with in the same manner as in e ordinary course of legal proceedings. Except in a few cases where exceptions are unavoidable, both ides must be heard, each in the presence of the other.

COURT ASSISTANCE (SECTION 27)

The Tribunal may by itself, or any party with the approval of the Tribunal, apply to the court of assistance taking evidence. The application has to specify the particulars as stated in Section 27-

1. The arbitral tribunal, or a party with the approval of the arbitral tribunal, maY-apply to the court for assistance in taking evidence.

2. The application shall specify :
   i. the names and addresses of the parties and the arbitrators;
   ii. the general nature of the claim and the relief sought;
   iii. the evidence to be obtained, in particular
      a. the name and address of any person to be heard as witness or expert witness and' a statement of the subject-matter of the testimony required;

      b. the description of any document to be produced or property to be inspected

3. The court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence by provided directly to the arbitral tribunal.

4. The court may, while making an order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

5. Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

6. In this section the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

Seeking Court's assistance: Under Section 27(1), the Arbitral Tribunal as well as any part with the approval of the Arbitral Tribunal can apply to the court for assistance in taking evidence. Under Section 43 of the old 1949 Act only the arbitrator or umpire could apply and not a party.

Orders of Court: The court may order that the evidence be provided directly to the Arbitral Tribunal. It will issue to the witnesses the same processes as it issues in the suits before it. The processes that may be issued include:

   a. summonses for the examination of witnesses,
   b. commissions for the examination of witnesses, and
   c. summonses for the production of documents.

Disobedience of Orders: Persons who fail to attend as required, or make any other default; or refuse to give evidence; or are guilty of contempt of the Arbitral Tribunal, shall be dealt with by the Court on the representation of the Arbitral Tribunal in the same way as a person who was guilty of like offences in suits before the court.

Default of party (Section 25)

Default of a Party: Unless otherwise agreed by the parties, where, without showing sufficient cause:

1. the claimant fails to communicate his statement of claim in accordance with sub-section (1) of Section

23, the arbitral tribunal shall terminate the proceedings:

2. the respondent fails to communicate his statement of defence in accordance with sub-section (1) of Section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the' allegations by the claimant;

3. a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

Principles governing ex parte proceedings: The principles governing the arbitrator's right to proceed ex parte are:

1) If a party to an arbitration agreement fails to appear at one of the sittings, the arbitrator cannot or, at least, ought not to proceed ex parte against him at that sitting;

2) Where non-appearance was accidental or casual, the arbitrator should ordinarily proceed it the ordinary way, fixing another date of hearing and awaiting the future behaviour of the defaulting party;

3) If, on the other hand, it appears that the defaulting party had absented himself for defeating the object of the reference, the arbitrator should issue a notice that he intended at specified time and place to proceed with the reference and that if the party concerned did not attend he would proceed in his absence;

4) But if after making such peremptory appointment issuing such a notice the arbitrator did not in fact proceed ex parte on the day fixed, but fixed another subsequent date, he could not proceed ex parte on such subsequent date, unless he issued a similar notice in respect of e ate well; and

5) If he issued a similar notice and the party concerned did not appear, an award made ex parte would be in order. But, if he did not issue such notice on the second occasion but nevertheless proceeded ex parte, the award would be liable to be set aside in spite of a notice of peremptory hearing having been given in respect of the earlier date, Subject, however, to the condition that prejudice was caused to the party against whom the ex parte order was made. Arbitrator's action ought to be in due compliance with the concept of natural justice. In the event of there being any such violation, courts oughts not to hesitate to strike down an action of the Arbitrtrator and set aside the award if made.

In Juggilal Kamlapat v. General Fibre Dealers Ltd., AIR 1955 Cal 354, the Calcutta High Court laid down e procedural rule to be followed by the arbitrators: "If a party fails to appear, the arbitrator ought ordinarily to fix another date of hearing and await the future behaviour of the defaulting party, and give the party notice that is he does not appear, he (the arbitrator) would proceed ex parte against him. If after having issued such a notice the arbitrator does not proceed ex parte on the adjourned date, and fixed another date, he cannot proceed ex parte on that date, unless similar notice has been given in respect of that date as well." The same view was been taken by the Punjab High Court.

If no such notice was given, and it could be shown that no prejudice was caused to the absenting party, e award would not be set aside. But it has been held in the very same case that where no such notice as given, there will always be a presumption that prejudice has been caused.

Power to Limit evidence [Section 19(4)]: The arbitrator may restrict evidence to the necessities of e case and the court may not interfere in such matters.

A contract for the construction of two office blocks contained an arbitration clause. Disputes arose as to 81 separate roofs in the two blocks. They were referred to arbitration. The roofs involved being too any, attempts were made by the parties to limit the issues. The parties failed to agree. One of them asked the arbitrator to do so by an order. He accordingly ordered that the issue of liability be determined by reference to a maximum of 25 roofs and then suspended it to enable the parties to test its validity in a court. He indicated by his letter that the parties were still free to raise any matter requiring special consideration.

I was held that in general the court should be slow to interfere with an arbitrator's procedural orders. In is case, the particular question of law was one which the arbitrator ought not to have been asked to state. There was no requirement that an arbitrator must allow each party to call the evidence which he wishes to call. In all the circumstances of the case the arbitrator was not acting unfairly or refusing to decide the case submitted to him.

An arbitrator may order for filing of pleadings, or for discovery or inspection of documents. Under the receding 1940 Act, the arbitrator could call upon a party to provide security for costs unless such power was granted to him by the parties. But now by virtue of the provisions in. Section 38 of the arbitration and Conciliation Act, 1996, the Arbitral Tribunal can call upon the parties to deposit a sum of money for covering costs.

The arbitrator has to follow the ordinary rules of evidence. The owner engaged a building contractor. Disputes arose as to adjustments to be made for certain sums and were referred to arbitration.

Closure of Hearings: There is no provision in the 1996 Act requiring the arbitrator to give notice of closure of hearing to the parties. But judicial pronouncements and fair play require that the parties should be informed of the closure of the proceedings. The Courts have held that such a notice should be given so as to enable the parties to lead any additional evidence if they so desire.

Settlement

1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

3) An arbitral award on agreed terms shall be made in accordance with Section 31 and shall state that it is an arbitral award.

4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.

Settlement Through Alternative Dispute Resolution (ADR): Though there was no specific provision corresponding to this section in the repealed Arbitration Act, 1940, the law was the same. An award which merely embodied a compromise of the parties themselves was a valid award. Accepting a compromise is an adjudication of the case as is a decree of the court founded on a compromise. An award remains an award even though it approved an arrangement put forward by the parties and was in accordance with their