**Introduction to Arbitration as an Alternative Dispute Resolution Process:**

Indian judiciary is one of the oldest judicial systems, a world-renowned fact but nowadays it is also well-known fact that Indian judiciary is becoming inefficient to deal with pending cases, Indian courts are clogged with long unsettled cases. The scenario is that even after setting up more than a thousand fast track Courts that already settled millions of cases the problem is far from being solved as pending cases are still piling up.

To deal with such a situation Alternative Dispute Resolution (ADR) can be helpful mechanism, it resolves conflict in a peaceful manner where the outcome is accepted by both the parties.

As one of the ADR methods, Arbitration is emerging as the first-choice method of binding dispute resolution in the widest range of international commercial contracts. It is a private process requiring the agreement of the parties, which is usually given by way of an arbitration clause in the contract. If there is no contractual provision to arbitrate, a separate arbitration agreement may be entered into once a dispute has arisen.

Arbitration offers parties the freedom to choose a method of dispute resolution tailored to their precise needs. That freedom extends to the choice of applicable law, the venue, the language, and the choice of arbitration procedures, whether under institutional rules, stand-alone procedures, like the UNCITRAL rules, or entirely ad hoc.

An ad hoc arbitration is one which is not administered by an institution and therefore, the parties are required to determine all aspects of the arbitration like the number of arbitrators, manner of their appointment, procedure for conducting the arbitration, etc.

Ad hoc arbitration is a proceeding that is not administered by others and requires the parties to make their own arrangements for selection of arbitrators and for designation of rules, applicable law, procedures and administrative support.

An institutional arbitration is one in which a specialized institution with a permanent character intervenes and assumes the functions of aiding and administering the arbitral process, as provided by the rules of that institution.

Parties may also choose their arbitrators, thus ensuring the constitution of a tribunal with precisely the right qualifications and experience.

It is this freedom of choice that reinforces the key elements of international arbitration: enforceability, procedural flexibility, party-control, neutrality, privacy and
confidentiality, cost-effectiveness and speed.

**Enforcement of Awards**
For the many parties for whom a final and binding settlement is paramount, the enforcement argument is, perhaps, the most persuasive and enduring.

In case of institutional arbitrations, the rules of the major international arbitration institutions expressly provide that any award will be final and binding and will be complied with without delay. By agreeing to be bound by such rules, the parties usually also exclude any right of appeal on the merits to a national court which may have jurisdiction to hear such an appeal.

In the event that a losing party fails to comply with an award against it, enforcement may be considerably easier to achieve than would be the enforcement of the judgment of a national court in another jurisdiction. In the majority of cases, the successful party will be able to rely on the provisions of the New York Convention (The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Award), a convention having 140 countries as its parties.

Parties wishing to have the reassurance that an award will be enforceable must ensure that the arbitration takes place (and that the award is made) in a Convention State and that the enforcement is against assets of the losing party that are located in another Convention State.

**Procedural Flexibility**
Arbitration offers parties a great degree of control over the proceedings. It allows them to establish, from the outset, a method of resolving disputes which is not bound by the often rigid procedures and timetables of the courts.

Parties may agree a wide range of procedural matters, including such key issues as the number of arbitrators and their qualifications, the venue and language of the arbitration, the timetable, and the need or otherwise for oral hearings.

Such tailor-made dispute resolution provisions (both domestic and international) have been endorsed by the arbitration laws of many jurisdictions (in England, by the 1996 Arbitration Act) and are reflected in the rules of the major arbitral institutions.

**Party-nominated Arbitrators**
In arbitration, parties may also choose the judges who will determine their dispute. Where they say so in their contracts, or subsequently agree, each side may nominate an arbitrator to be one of a panel of three. The third and presiding arbitrator may be nominated by the parties, or by the party-nominated arbitrators, or by the chosen arbitral institution.

Each side may satisfy itself that the arbitrator it nominates has the requisite experience and knowledge in the field relating to which the dispute has arisen. An
arbitrator may also be nominated because of his or her knowledge of a particular national or state law and/or of a language pertinent to the dispute.

Similarly, it may be expressly provided, or agreed by the parties, that arbitrators should not be of the same nationality as the parties, and/or that, if two are, then the chairman will not be.

A party-nominated arbitrator is not, however, the representative of the party which nominates him or her. He or she must confirm and maintain his or her independence and impartiality.

Where, in the interests, for example, of speed and cost saving, the parties agree on a sole arbitrator, an administering body will be able to select an arbitrator with the requisite neutrality and the relevant legal/commercial/linguistic expertise, if the parties are unable to do so.

**Neutrality**
Parties to international agreements may be concerned that the national courts of the party with which they are contracting may have an instinctive, or even a manifest, bias towards a party of the same nationality. Whether or not such concerns are well-founded, international tribunals and the administration of a recognised arbitral institution may be seen as offering greater neutrality than the courts.

**Privacy and Confidentiality**
Litigation in national courts is generally open to the public and to the media. By contrast, arbitral proceedings are conducted in a private (and less formal) forum, in which the identities of the parties, and the nature of the dispute, may remain confidential.

**Cost-Effectiveness and Speed**
There is a strong case for international arbitration as the cost-effective alternative to litigation across different jurisdictions. It may be easier to get parties of different nationalities into a neutral arbitration venue in the first place than into the national courts of one of them. So, the costs of initiating proceedings and of preparing the case are less likely to be wasted than in court litigation. Also, and crucially, at the end of the proceedings (assuming no settlement), an award may be more likely to be complied with, or to be enforced, than would be the judgment of the courts of one jurisdiction in the courts of another. So, the successful party to an arbitration is less likely to experience the hollow victory that often besets international litigation.

Time is money (though undue haste may be more costly in the long run) and the inherent flexibility and party control of arbitration enable parties and tribunals to adopt as tight a procedural timetable as they wish, with potentially substantial cost savings.
And the issue of a final award is most likely to be the conclusion of the proceedings, in contrast to the judgment of a court of first instance, from which there may be several levels of appeal, each involving significant time and cost.

**Arbitration in India: Basics of Arbitration and Conciliation Act, 1996:**

Purpose of Arbitration Act is to provide quick redressal to commercial dispute by private Arbitration. Quick decision of any commercial dispute is necessary for smooth functioning of business and industry. Internationally, it is accepted that normally commercial disputes should be solved through arbitration and not through normal judicial system. Hence, the need of Alternate Dispute Resolution (ADR) arises. There are four methods of ADR - negotiation, mediation, conciliation and arbitration. 'Negotiation' is cheapest and simplest method. If it does not work, mediation through a mediator can be tried. If it does not work, conciliation and arbitration will be useful. Arbitration Act makes provision for conciliation and arbitration as ADR mechanisms. An arbitrator is basically a private judge appointed with consent of both the parties. Object of arbitration is settlement of dispute in an expeditious, convenient, inexpensive and private manner so that they do not become the subject of future litigation between the parties.

**Law Based on Uncitral Model Law**

The present Act is based on model law drafted by United Nations Commission on International Trade Laws (UNCITRAL), both on domestic arbitration as well as international commercial arbitration, to provide uniformity and certainty to both categories of cases.

**Matters Not Referable To Arbitration**

Certain matters which are not arbitrable are â€“

* Suits for divorce or restitution of conjugal rights
* Taxation
* Non-payment of admitted liability
* Criminal matters.

**Arbitration Agreement:**

The foundation of arbitration is the arbitration agreement between the parties to submit to arbitration all are certain disputes which have arisen or which may arise
between them. Thus, the provision of arbitration can be made at the time of entering the contract itself, so that if any dispute arises in future, the dispute can be referred to arbitrator as per the agreement. It is also possible to refer a dispute to arbitration after the dispute has arisen. Arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. The agreement must be in writing and must be signed by both parties. The arbitration agreement can be by exchange of letters, document, telex, telegram etc. [section 7].

**Court must refer the matter to arbitration in some cases:**

If a party approaches court despite the arbitration agreement, the other party can raise objection. However, such objection must be raised before submitting his first statement on the substance of dispute. Such objection must be accompanied by the original arbitration agreement or its certified copy. On such application the judicial authority shall refer the parties to arbitration. Since the word used is “shall”, it is mandatory for judicial authority to refer the matter to arbitration. [Section 8]. However, once first statement to court is already made by the opposite party, the matter has to continue in the court. Once an application is made by other party for referring the matter to arbitration, the arbitrator can continue with arbitration and even make an arbitral award.

**Appointment of Arbitrators:**

As per section 10 of the Act, there cannot be even number of arbitrators. The parties can agree on a procedure for appointing the arbitrator or arbitrators. If they are unable to agree, each party will appoint one arbitrator and the two appointed arbitrators will appoint the third arbitrator who will act as a presiding arbitrator. [section 11(3)]. If one of the parties does not appoint an arbitrator within 30 days, or if two appointed arbitrators do not appoint third arbitrator within 30 days, the party can request Chief Justice to appoint an arbitrator. [Section 11(4)]. The Chief Justice can authorise any person or institution to appoint an arbitrator. [Some High Courts have authorised District Judge to appoint an arbitrator]. In case of international commercial dispute, the application for appointment of arbitrator has to be made to Chief Justice of India. In case of other domestic disputes, application has to be made to Chief Justice of High Court within whose jurisdiction the parties are situated. [section 11(12)]

**Flexibility In Respect of Procedure, Place And Language:**

Arbitral Tribunal has full powers to decide the procedure to be followed, unless parties agree on the procedure to be followed. [section 19(3)]. The Tribunal also has powers to determine the admissibility, relevance, materiality and weight of any evidence. [section 19(4)]. Place of arbitration will be decided by mutual agreement. However if the parties do not agree to the place, the same will be decided by tribunal. [section 20]. Similarly, language to be used in arbitral proceedings can be mutually agreed. Otherwise, Arbitral Tribunal can decide. [section 22].
**Arbitral Award:**

Decision of Arbitral Tribunal is termed as 'Arbitral Award'. Arbitrator can decide the dispute ex aequo et bono (In justice and in good faith) if both the parties expressly authorise him to do so. [section 28(2)]. The decision of Arbitral Tribunal will be by majority. The arbitral award shall be in writing and signed by the members of the tribunal. [section 29]. The award must be in writing and signed by the members of Arbitral Tribunal. [section 31(1)]. It must state the reasons for the award unless the parties have agreed that no reason for the award is to be given. [section 31(3)]. The award should be dated and place where it is made should be mentioned. Copy of award should be given to each party. Tribunal can make interim award also. [section 31(6)].

Cost of Arbitration - Cost of arbitration means reasonable cost relating to fees and expenses of arbitrators and witnesses, legal fees and expenses, administration fees of the institution supervising the arbitration and other expenses in connection with arbitral proceedings. The tribunal can decide the cost and share of each party. [section 31(8)]. If the parties refuse to pay the costs, the Arbitral Tribunal may refuse to deliver its award. In such case, any party can approach Court. The Court will ask for deposit from the parties and on such deposit, the award will be delivered by the Tribunal. Then Court will decide the costs of arbitration and shall pay the same to Arbitrators. Balance, if any, will be refunded to the party. [section 39].

**Intervention By Court:**

One of the major defects of earlier arbitration law was that the party could access court almost at every stage of arbitration - right from appointment of arbitrator to implementation of final award. Thus, the defending party could approach court at various stages and stall the proceedings. Now, approach to court has been drastically curtailed. In some cases, if an objection is raised by the party, the decision on that objection can be given by Arbitral Tribunal itself. After the decision, the arbitration proceedings are continued and the aggrieved party can approach Court only after Arbitral Award is made. Appeal to court is now only on restricted grounds. Of course, Tribunal cannot be given unlimited and uncontrolled powers and supervision of Courts cannot be totally eliminated.

**Enforcement of domestic awards**

After an award had been made, it had to be made a decree of the court and the decree enforced against the defaulting party. For this purpose formal application was required and notice was to be given to both the parties and objections heard. If the losing party voluntarily made payment then in law, decree was not necessary.

Subject to the provisions for setting aside the award (Section 34 ) the award is enforceable in the same manner as if it were a decree of the Court (Section 36).
Enforcement of Foreign awards in India:

Where the place of arbitral proceedings has been a place outside India and the award has been given in such place, the said award would be considered as a foreign award.

A foreign award can be enforced in India under the multilateral international conventions to which India is a party, namely, the Geneva Convention of 1927 and the New York Convention of 1958, if the said Convention apply to the arbitrations. The foreign award must have been made in a country which has ratified the Geneva Convention of 1927 or the New York Convention of 1958.

India would apply the Convention only to differences arising out of legal relationship which are considered 'commercial' under Indian Law.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958 (the New York Convention). The Convention requires courts of contracting states (nations) to give effect to private agreements to arbitrate and to recognize and enforce arbitration awards made in other contracting states. Widely considered the foundational instrument for international arbitration, it applies to arbitrations that are not considered as domestic awards in the state where recognition and enforcement is sought.

The procedure for enforcement of foreign awards under the Geneva Convention of 1937 and the New York Convention of 1958 are much the same. Any person interested in enforcing a foreign award may apply in writing to any court having jurisdiction over the subject matter of the award. In addition to filing of the award and the agreement on which it is based as required by the Convention, the Act requires that evidence as to the award being a foreign award has to be filed.