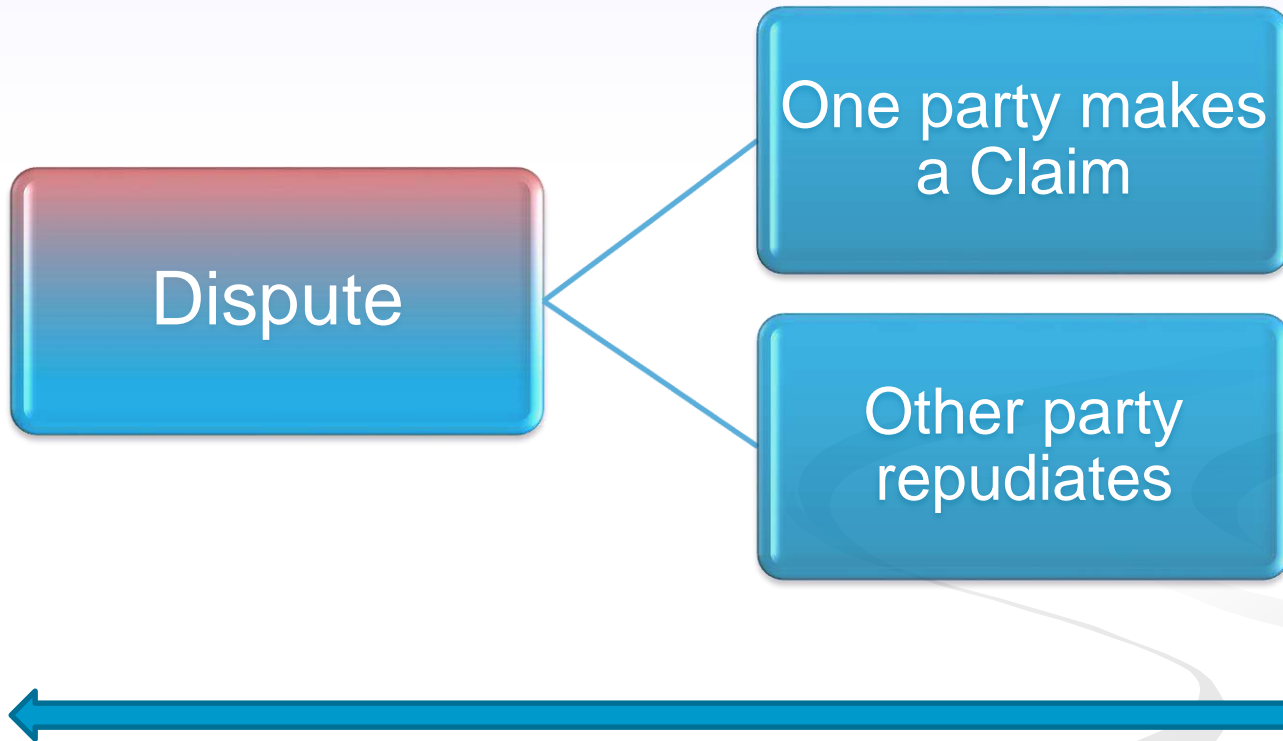


# Contract Dispute Resolution

## What to expect today

- What is a Dispute?
- Dispute Resolution Mechanism
- ADR Methods
- Need for Arbitration
- Arbitration clause in the contract
- Amendments to Arbitration Act
- Court views on amended Arbitration Act
- Jurisdiction of Court
- Strategy for successful Arbitration

# How does a dispute arise



# Contract Dispute resolution

**Strategy for dealing with disputes**

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graph TD; A[Strategy for dealing with disputes] --> B[Prevention of disputes]; A --> C[Settlement of disputes];
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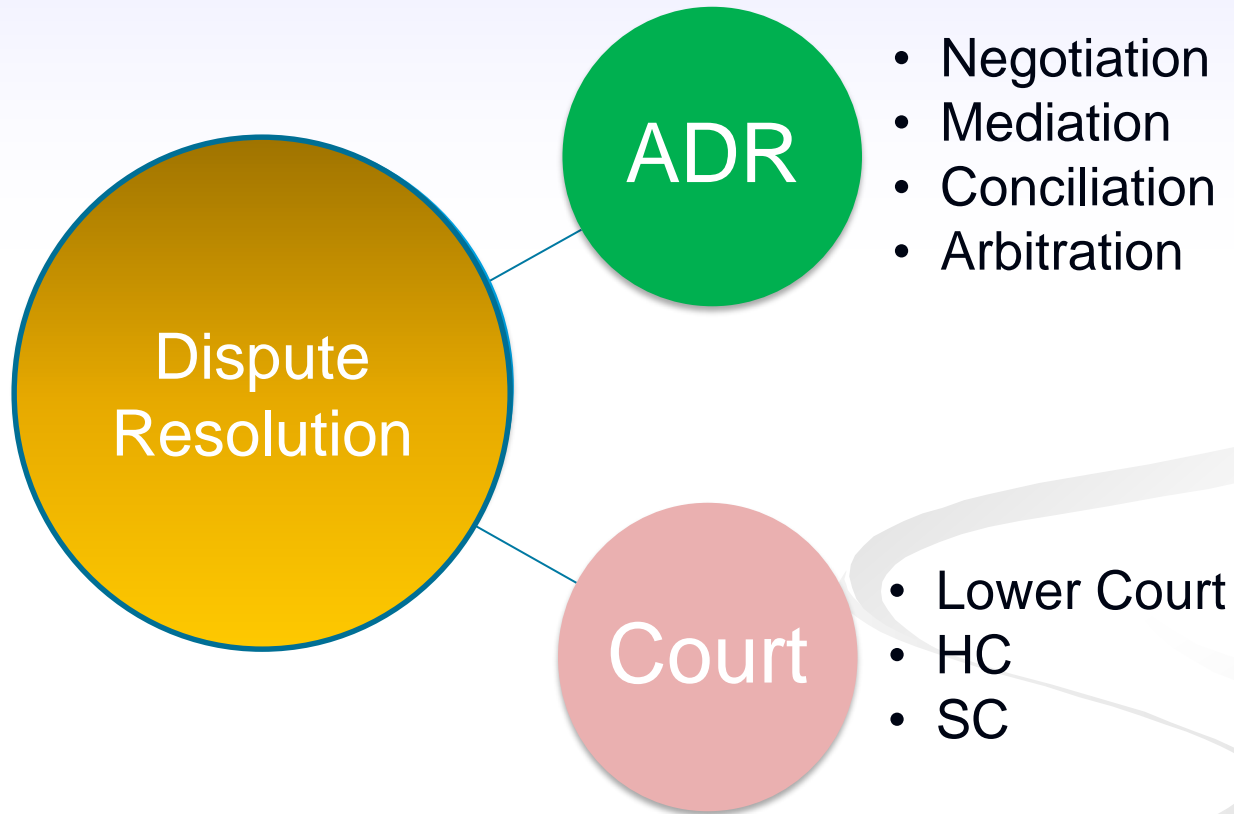
**Prevention of disputes**

- Drafting of contract
- Contract Mgmt
- DRB

**Settlement of disputes**

- ADR
- Court

# Dispute resolution

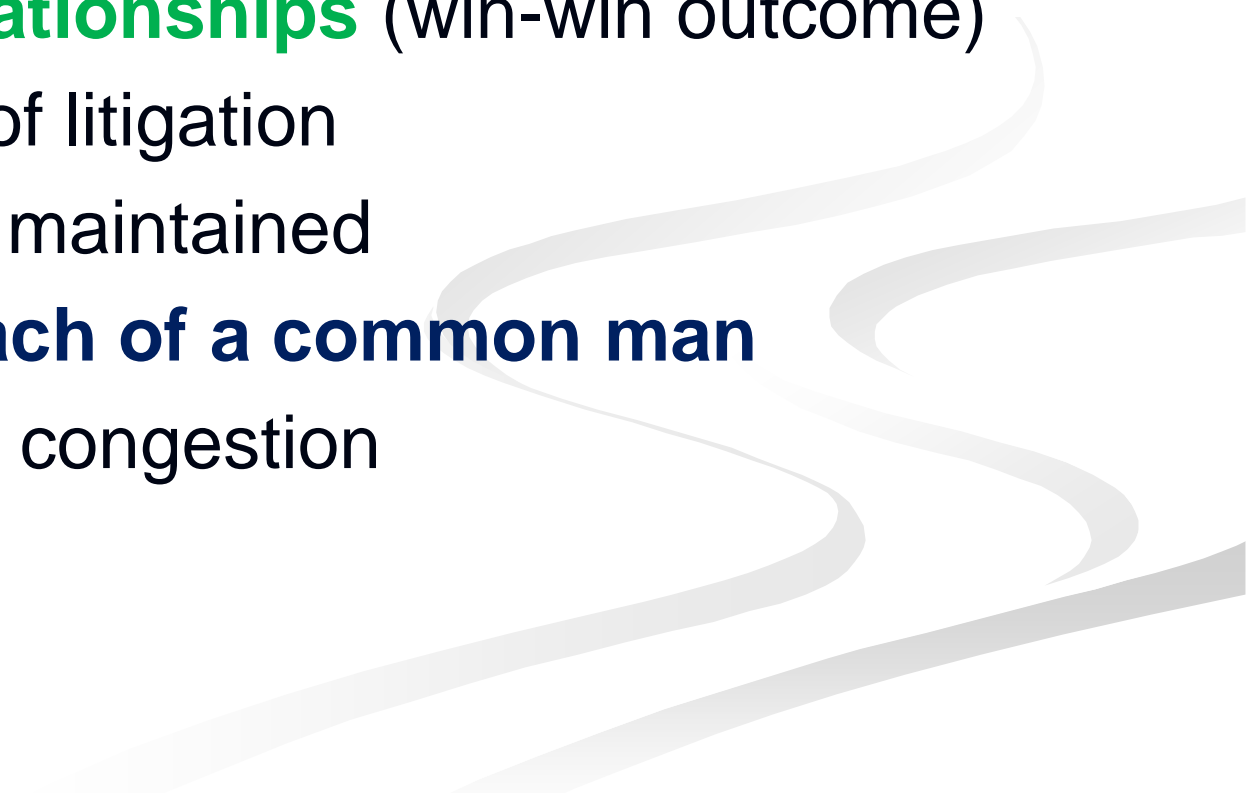


ADR- Alternative Dispute Resolution

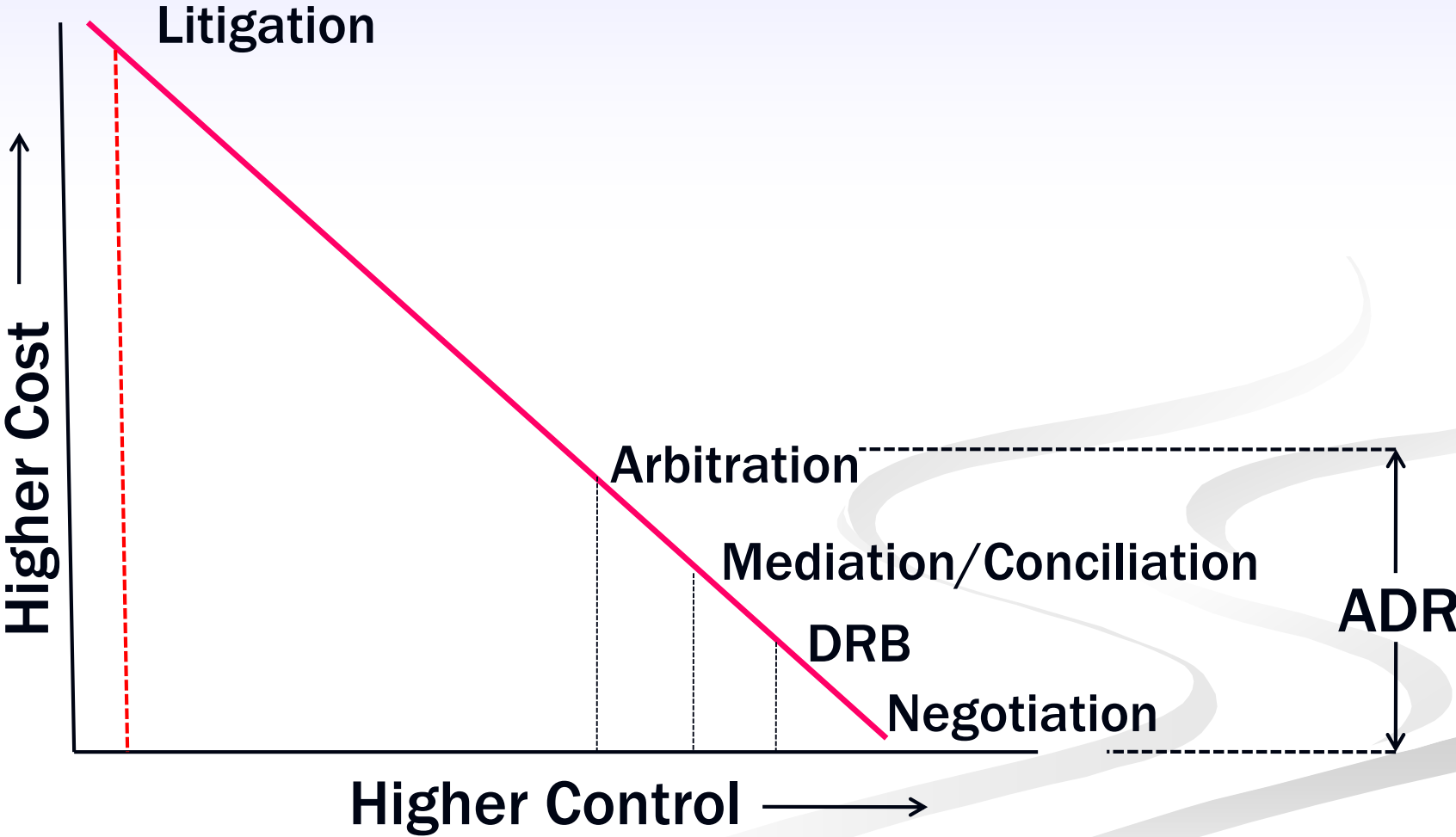
# What is ADR?

- It's term used to describe a variety of approaches/ processes where the parties arrive at a compromise (resolve disputes) **without litigation** (Court proceedings)
- It may involve cooperation of parties themselves or appointment of a neutral third party who plays the assigned role for resolution of dispute.
- **In a way, the parties appoint their judge**


# Advantages of ADR

- It's convenient, provides flexibility
  - **Saves time, energy and expenses**
  - Party participation, fosters communication
  - **Preserves relationships** (win-win outcome)
  - Avoids stress of litigation
  - Confidentiality maintained
  - **Within the reach of a common man**
  - Reduces court congestion
- 

# DRS-Cost and Control



# Disadvantages of ADR

- No guaranteed resolution (except for Arb)
  - After ADR, expenses may be incurred in litigation
  - Informal, more scope for abuse of power
  - May not be suitable for every dispute
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# Preferred mode of dispute resolution

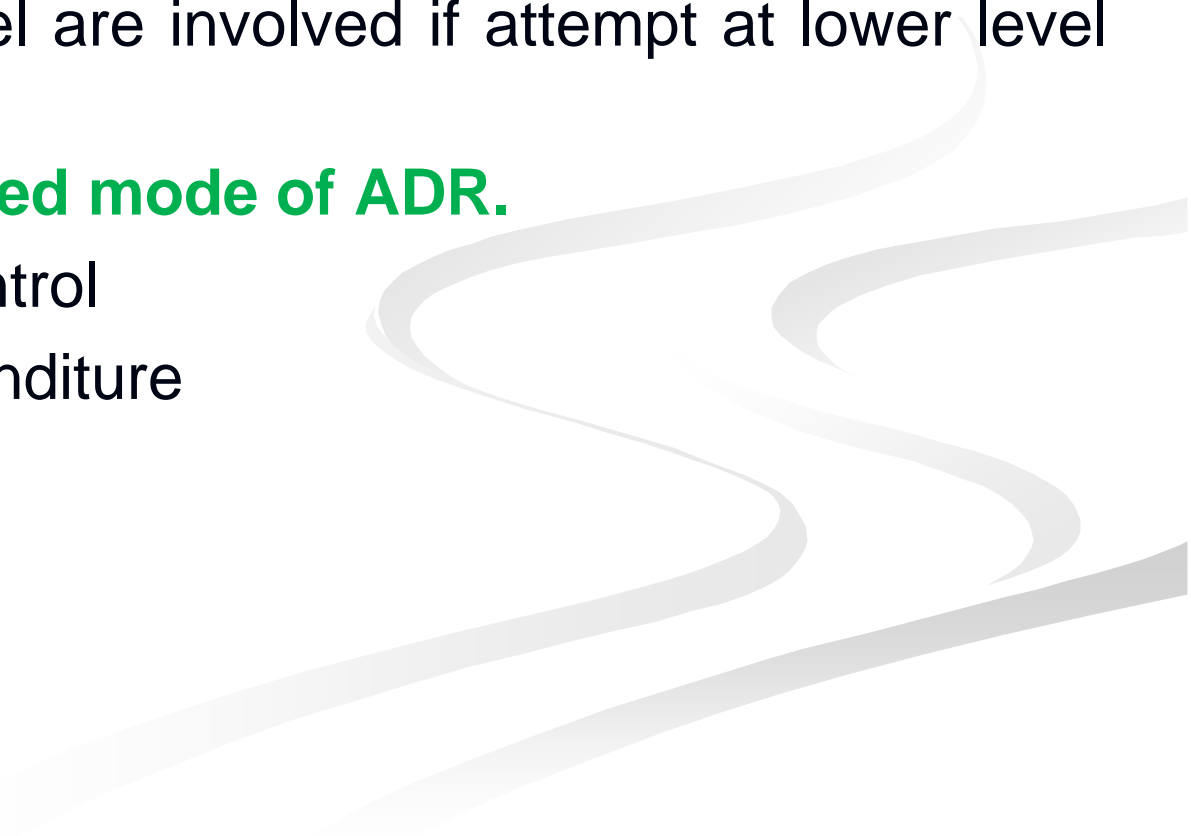
- **Negotiation, Mediation and Conciliation** are preferred as they provide opportunities for decision making by the disputants which paves the way towards a win-win solution, maintains confidentiality and preserves relationship

Win-Win

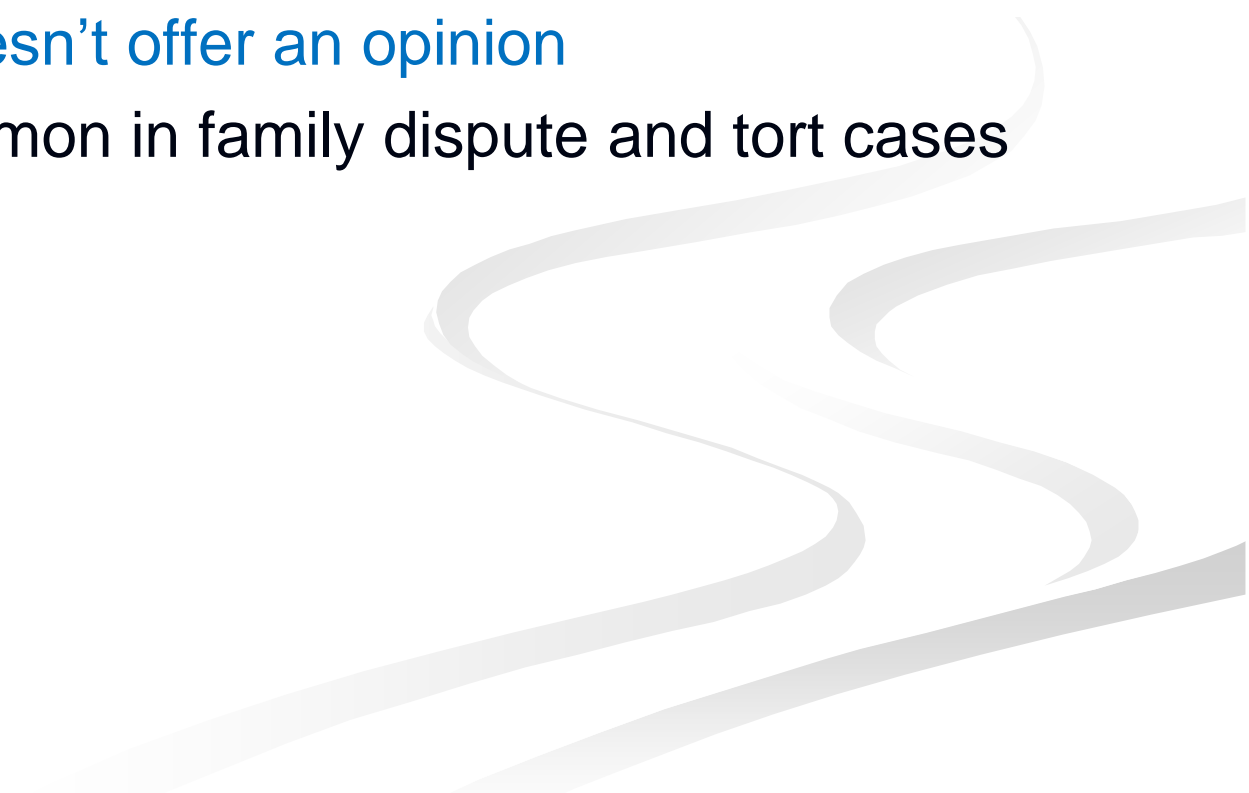


Relationship preserved

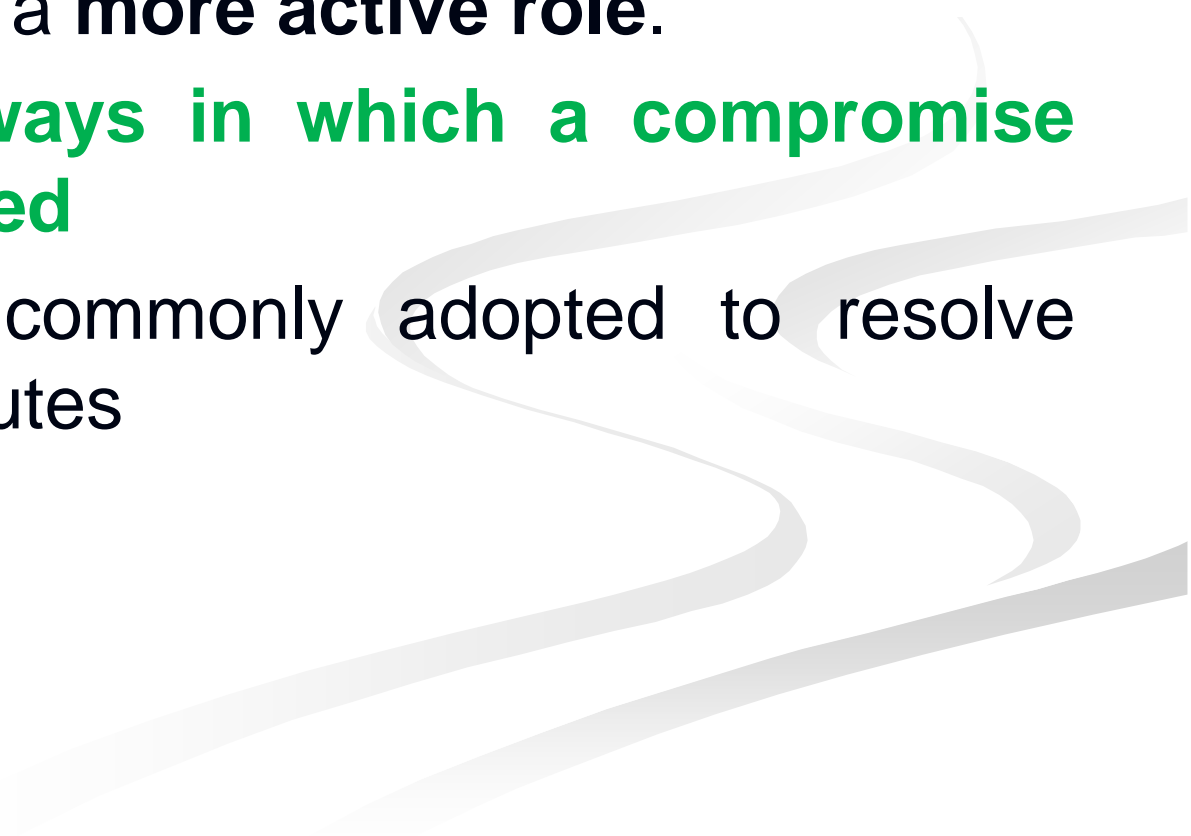
# Direct negotiation

- Parties resolve disputes through negotiation.
  - No third party is involved.
  - Disputes are resolved at job-site level.
  - People at higher level are involved if attempt at lower level fails.
  - **It's the most preferred mode of ADR.**
  - Parties have total control
  - It involves least expenditure
- 
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# Mediation

- The parties appoint a **neutral third party**
  - The third party takes offers between the parties; provides assistance as a **facilitator** in reaching a mutually agreeable voluntary compromise
  - The mediator **doesn't offer an opinion**
  - Mediation is common in family dispute and tort cases
- 

# Conciliation

- This is similar to mediation
  - There is a neutral third party who helps the disputants to resolve the dispute. However, the conciliator plays a **more active role**.
  - **He suggests ways in which a compromise could be reached**
  - Conciliation is commonly adopted to resolve contractual disputes
- 

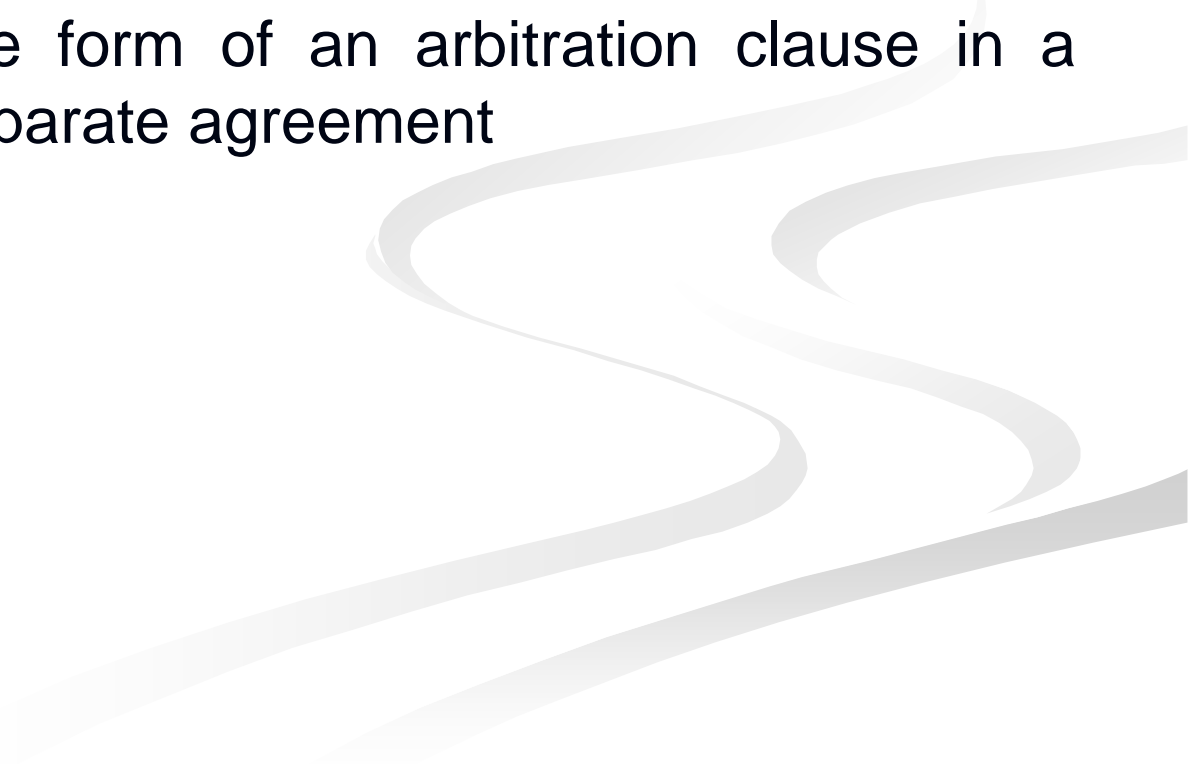
# Process of mediation/conciliation

- Preliminary communications and preparations
  - Meeting of the parties and mediators/conciliators
  - Presentation by the parties
  - Collection of relevant information/ data
  - Deliberations and negotiations
  - Drafting and signing of agreement
- 


# What is Arbitration

- Arbitration is a method of settling civil disputes between two or more parties by reference of the dispute to independent and impartial person(s), called arbitrator(s) instead of litigating the matter in the usual way through courts
- The Arbitrator serves like a **judge** and delivers a binding award. It saves time, energy, expenses and reduces burden on the Courts.

# Essentials of Arbitration agreement

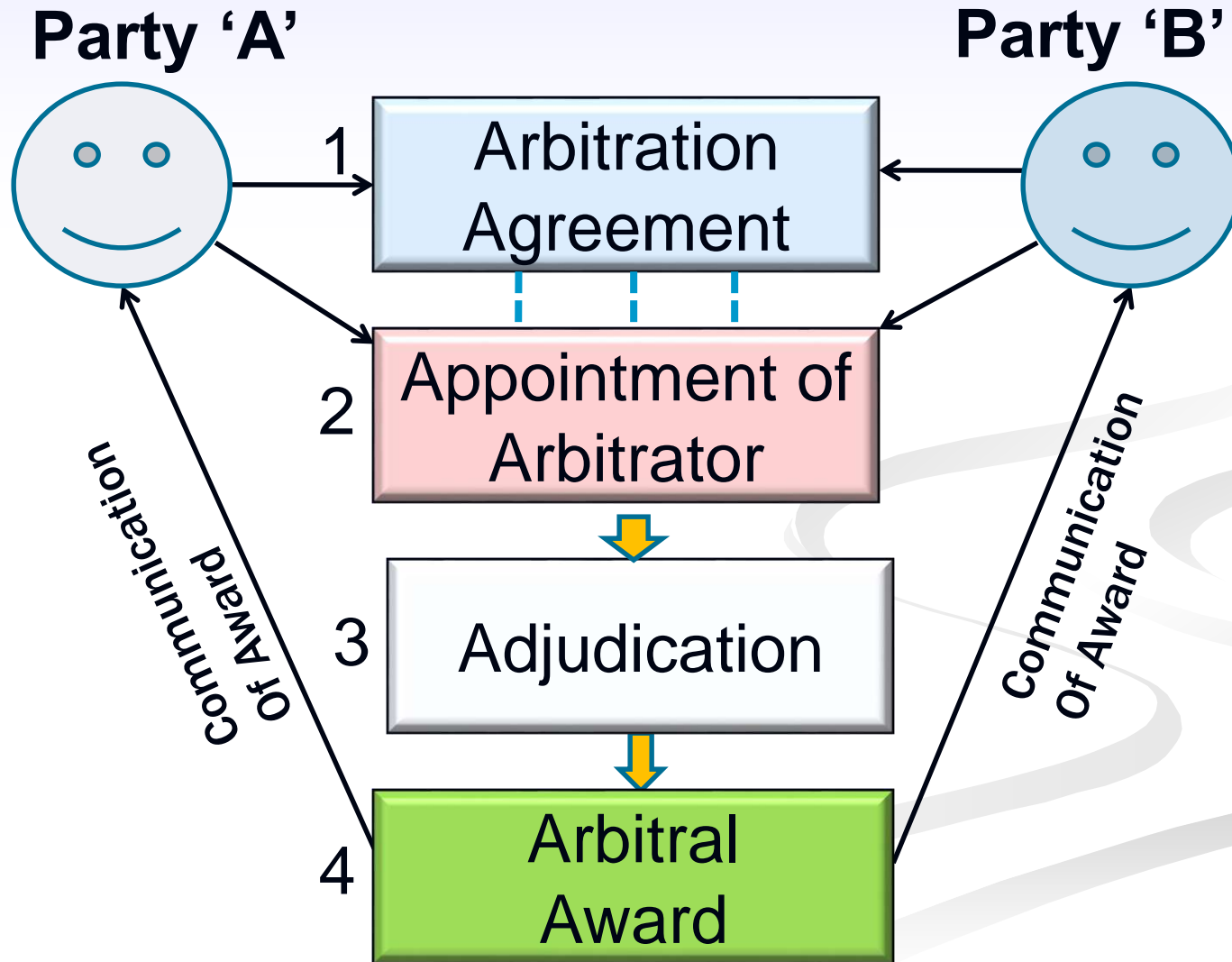
- An agreement by the parties to refer disputes, present or future between them in respect of their legal relationship to arbitration.
  - **It must be in writing**
  - Parties must be *ad idem* (consensus between parties)
  - It may be in the form of an arbitration clause in a contract or as a separate agreement
- 

# Arbitration agreement to include...


- Unconditional agreement by the parties to refer contractual disputes to arbitration
  - Number of Arbitrators
  - Appointing authority
  - Venue of arbitration
  - Sharing of cost involved in arbitration
  - Governing laws
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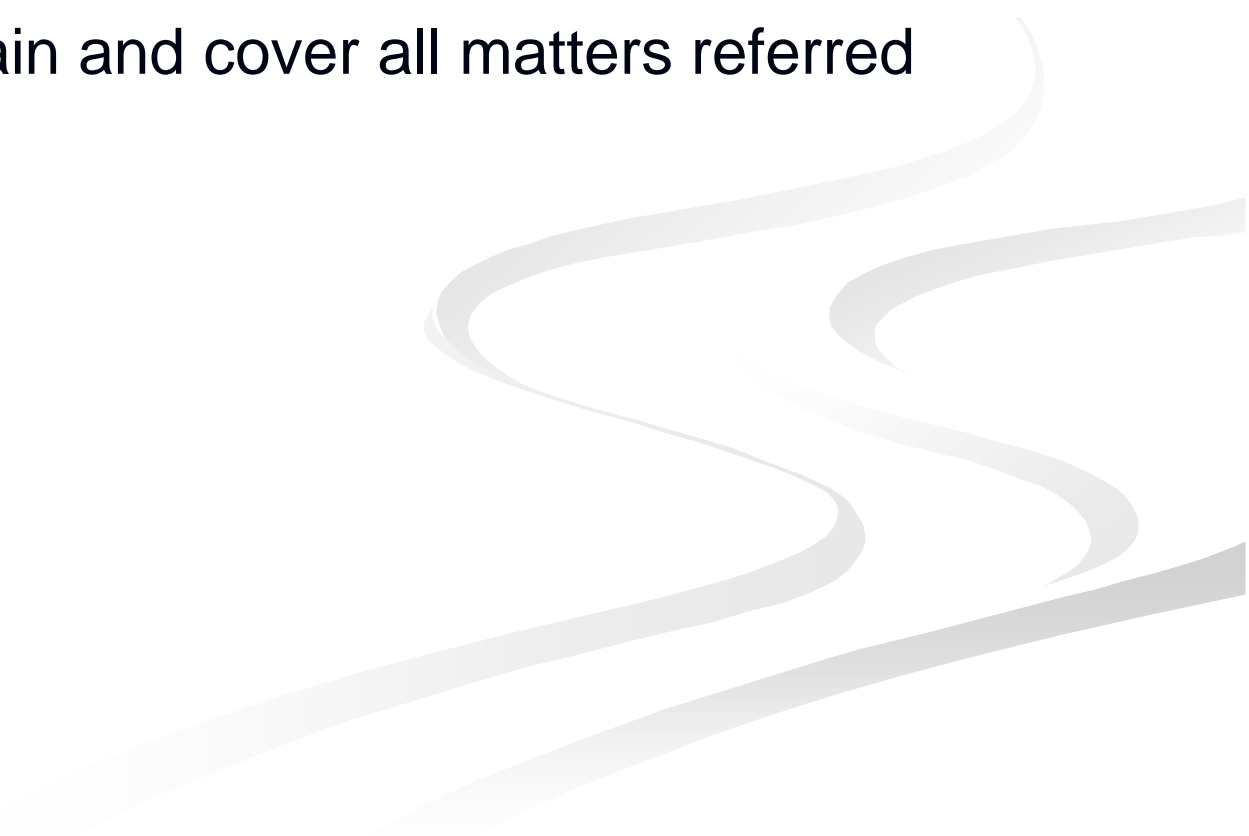
# Arbitration process



# Arbitration process

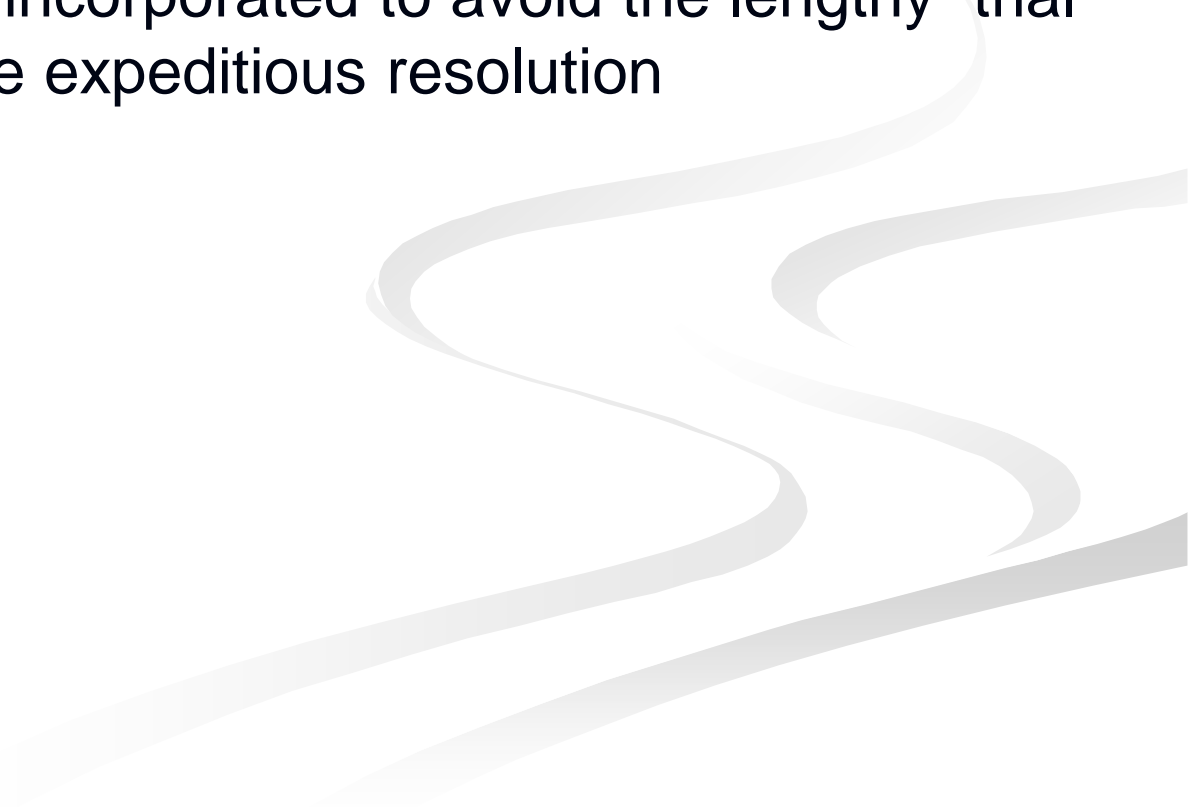
- Initiating Arbitration
  - Appointment of Arbitrator
  - Preliminary meeting
  - Filing of statement of claim and other pleadings
  - Hearings
  - Passing of award
- 
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# Arbitration award

- Award to be made within time limit and include:
  - (i) Should be in the direction of arb agreement
  - (ii) Can be reasoned or unreasoned
  - (iii) Should be in writing and signed
  - (iv) Must be certain and cover all matters referred
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# Indian Arbitration and Conciliation Act

## Section-19

- The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872
  - The essence of arbitration is expedition. The above provision has been incorporated to avoid the lengthy trial route and to achieve expeditious resolution
- 

# Party autonomy

- Party autonomy relates choice of procedure. This means that if a particular procedure is prescribed in the arbitration agreement which the parties have agreed to, that has to be generally resorted to
- It is because of this reason, as a normal practice, the Court will insist on the parties to adhere to the procedure to which they have agreed upon (Para 16 of SC judgment)

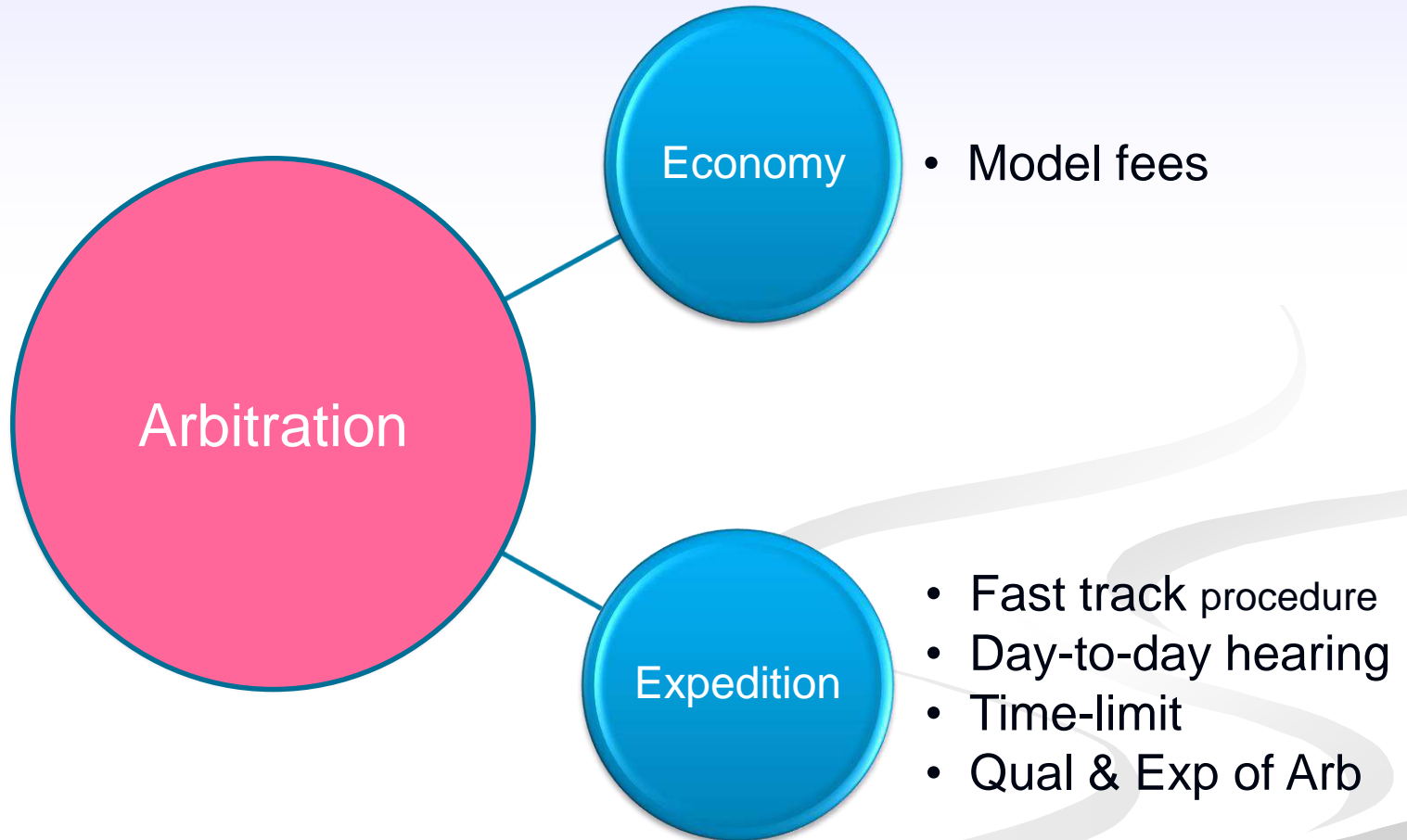
# Conducting hearings

- Administer oath to parties and witness appearing
- The Claimant makes an opening statement
- The Claimant calls and examines his witnesses who may be x-examined by the Respondent
- If a witness is x-examined by R, the claimant may re-examine him on any matter raised in x-examination (only on issues of x-examination, **NO** re-examination on other issues)

# Conducting hearings

- The Respondent opens his case
- The Respondent calls and examines his witnesses who may be x-examined by the C
- If a witness is x-examined by C, the respondent may re-examine him on any matter raised in x-examination (only on issues of x-examination)
- Respondent addresses Arbitrator summing up his whole case
- Finally, the Claimant submits a reply

# Steps for improvement





# Selection of Arbitrator

- Person having a degree with 10 yrs experience
- Person of high integrity, complete impartiality
- Believes in principles of natural justice and practical approach
- Technical person with domain knowledge
- Should understand legal procedure
- Should not have been convicted of an offence involving moral turpitude or economic offence

# Qualification & experience of Arbitrator

## 2019 Amendment

- Advocate/ CA/ Cost Accountant/ Company Secy with 10 years of practice experience
- Has been an officer of the Indian Legal Service
- Has been an officer with Engg degree having 10 years experience in Govt, Autonomous Body, PSU or at a senior level managerial position in private sector or self employed; or
- Has been an officer having senior level experience of administration in Central Govt, State Govt or having experience of senior level management of a PSU, or Govt Company or a private company of repute

# Qualification & experience of Arbitrator

## 2019 Amendment


- is a person, in any other case, having educational qualification at degree level with 10 years experience in scientific or technical stream in the fields of telecom, information technology, intellectual property rights or other specialised areas in the Govt, Autonomous Body, PSU or at a senior level managerial position in a private sector, as the case may be

## Time for award S29A

- 6 months for completion of pleading
- 12 months for proceedings and award
- Upto 6 months extension by parties
- Further extension of time by Court on an application
- Court can remove an arbitrator who caused delay
- Court can impose exemplary costs
- Bonus for quick disposal and penalty for delay
- No time limit for international commercial arbitration

# For quick resolution of disputes

## 2015 Amendment

- The provision of **fast-track** procedure introduced under section 29B through the 2015 amendment generally dispenses with oral hearing by agreement of the parties and paves the way for expeditious resolution of disputes
  - It sets resolution **time-line of 6 months**
- 

# Fast-track procedure

## 2015 Amendment-S 29 B

- Parties at any stage either before or at the time of appointment of arbitral tribunal, may agree in writing to have their dispute resolved by fast-track procedure, whereupon the tribunal shall have to make the award within **6 months**
- The tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without oral hearing.
- “An oral hearing may be held only if **all** the parties make a request **or** if the tribunal consider it necessary to have oral hearing for clarifying certain issues.”

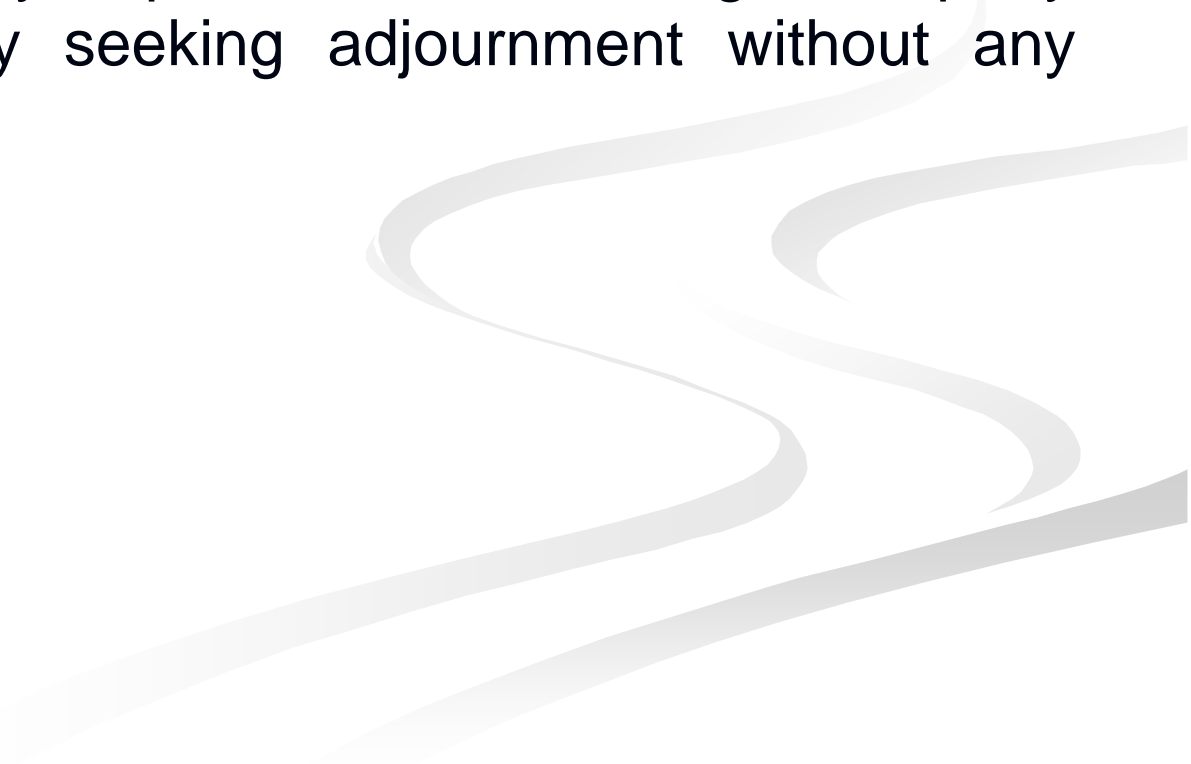
# Fast-track procedure

## Extension of time

- The parties “may agree that the arbitral tribunal shall consist of a **sole arbitrator** who shall be chosen by the parties.”
- The arbitral tribunal shall make the award in **6 months**
- If the award is not made within 6 months, the said time period can be extended by 6 months by the parties
- Further extension can be given by the Court and the Court is required to give its decision within 60 days

# Day-to-day hearing

Introduced in S 24, 2015 Amdt

- “Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral arguments on **day-to-day** basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.”
- 



## Act 2015: Fourth schedule

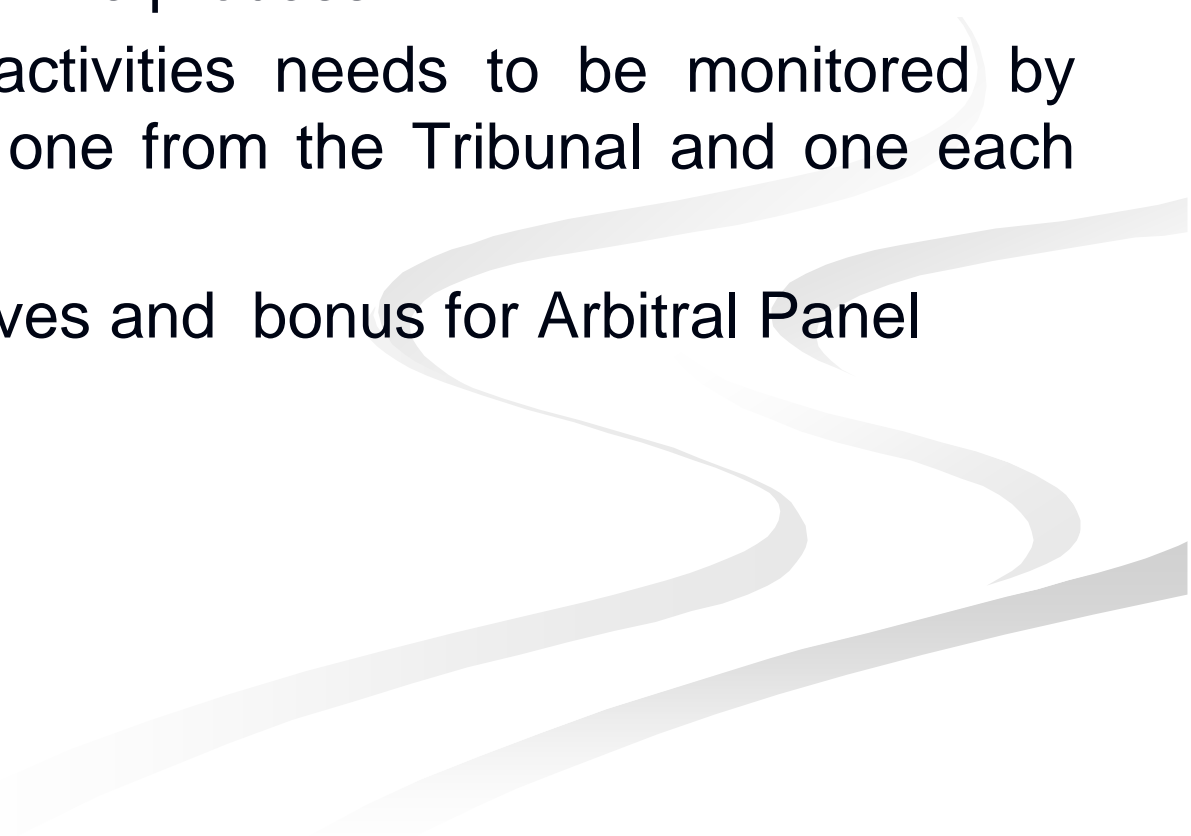
| Sum in dispute             | Model fees   |
|----------------------------|--|
| Upto 5 lakhs               | Rs 45000   |
| Above 5 and upto 20 lakhs  | Rs 45000 plus 3.5% of claim amount over and above 5 lakhs                              |
| Above 20 and upto 1 Cr     | Rs 97500 plus 3% of claim amount over and above 20 lakhs                               |
| Above 1 Cr and upto 10 Cr  | Rs 3,37,500 plus 1% of claim amount over and above 1 Cr                                |
| Above 10 Cr and upto 20 Cr | Rs 12,37,500 plus 0.75% of claim amount over and above 10 Cr                           |
| Above 20 Cr                | Rs 19,87,500 plus 0.5% of claim amount over and above 20 Cr with a ceiling of 30 lakhs |

Note- in the event, the arbitral tribunal is a sole arbitrator, he shall be entitled to an additional amount of 25% on the fee payable as per the table set out above

# Strategy for successful arbitration

- A comprehensive arbitration clause may be drafted and incorporated in the contract. This may include:
  - Fast-track procedure.
  - Time-limit for conclusion with consent of both parties
  - The Arbitrators should commit to such time-limit.
  - Provision regarding limiting the volume of paper work.
  - Fees of arbitrator & sharing of cost involved in arbitration.


## Strategy for successful arbitration

- The Parties may ask for a planning meeting to be held at the outset (within 2 weeks) between the parties and the tribunal to draw a schedule of activities to facilitate timely completion of the process.
  - The schedule of activities needs to be monitored by three executives - one from the Tribunal and one each from the Parties
  - Reward for executives and bonus for Arbitral Panel
- 

# Strategy for successful arbitration

- **“Cases are won in Advocate’s chambers.”**
- This stresses importance of planning & preparation
- Identify the conversant officer
- In case of his non-availability, select a suitable officer
- Treat the arbitration case as a **New Project**
- Adjust the work-load of the selected officer so that he finds time to devote to the arbitration case
- Issue directions from top level to others to provide required information promptly to the selected officer

# Strategy for successful arbitration

- Find out inconsistency between pleadings and documents of the other party
  - Locate case law in support of your stand (Palkiwala)
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**Thank you**

**for active participation**

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