



THE ARBITRATION ACT, 1940



CONTENTS

PREAMBLE.

CHAPTER I. INTRODUCTORY

- 1 Short title, extent and commencement.
- 2 Definitions.

CHAPTER II. ARBITRATION WITHOUT INTERVENTION OF A COURT

- 3 Provisions implied in arbitration agreement.
- 4 Agreement that arbitrators be appointed by third party.
- 5 Authority of appointed arbitrator or umpire irrevocable except by leave of court.
- 6 Arbitration agreement not to be discharged by death of party thereto.
- 7 Provisions in case of insolvency.
- 8 Power of court to appoint arbitrator or umpire.
- 9 Power to party to appoint new arbitrator or, in certain cases, a sole arbitrator.
- 10 Provisions as to appointment of three or more arbitrators.
- 11 Power of court to remove arbitrators or umpire in certain circumstances.
- 12 Power of court where arbitrator is removed or his authority revoked.
- 13 Powers of arbitrator.
- 14 Award to be signed and filed.
- 15 Power of court to modify award.
- 16 Power to remit award.
- 17 Judgment in terms of award.
- 18 Power of court to pass interim orders.
- 19 Power to supersede arbitration where award becomes void or is set aside.

CHAPTER III. ARBITRATION WITH INTERVENTION OF A COURT WHERE THERE IS NO SUIT PENDING.

- 20 Application to file in court arbitration agreement.

CHAPTER IV. ARBITRATION IN SUITS

- 21 Parties to suit may apply for order or reference.

- 22 Appointment of arbitrator.
- 23 Order of reference.
- 24 Reference to arbitration by some of the parties.
- 25 Provisions applicable to arbitrations under this chapter.

CHAPTER V. GENERAL.

- 26 Application of chapter.
- 26 A Award to set out reasons.
- 27 Power of arbitrators to make an interim award.
- 28 Power to court only to enlarge time for making award.
- 29 Interest on awards.
- 30 Grounds for setting aside award.
- 31 Jurisdiction.
- 32 Bar to suit contesting arbitration agreement or award.
- 33 Arbitration agreement or award to be contested by application.
- 34 Power to stay legal proceedings where there is an arbitration agreement.
- 35 Effect of legal proceedings on arbitration.
- 36 Power of court, to order that a provision making an award a condition precedent to an action shall not apply to such difference.
- 37 Limitations.
- 38 Disputes as to arbitrator's remuneration or costs.

CHAPTER VI. APPEALS

- 39 Appeasable orders.

CHAPTER VII. MISCELLANEOUS

- 40 Small cause court not to have jurisdictions over arbitration save arbitrations in suit before it.
- 41 Procedure and powers of Court.
- 42 Service of notice by party or arbitrator.
- 43 Power of Court to issue processes for appearance before arbitrator.
- 44 Power of High Court to make rules.
- 45 Government to be bound.
- 46 Application of Act to statutory arbitrations.
- 47 Act to apply to all arbitrations.
- 48 Saving for pending references.
- 49 [Repealed.]

THE FIRST SCHEDULE Implied conditions of arbitration agreements

THE SECOND SCHEDULE Power of Court

THE THIRD SCHEDULE [Repealed.]

THE FOURTH SCHEDULE [Repealed.]

THE ARBITRATION ACT, 1940.

¹ACT NO. X OF 1940

[11 March, 1940]

An Act to consolidate and amend the law relating to Arbitration

WHEREAS it is expedient to consolidate and amend the law relating to arbitration in ²[Pakistan];

It is hereby enacted as follows :—

CHAPTER I

INTRODUCTORY

1. Short title, extent and commencement.—(1) This Act may be called the Arbitration Act, 1940.

³[(2) It extends to the whole of Pakistan].

(3) It shall come into force on the 1st day of July, 1940.

2. Definitions. In this Act, unless there is any thing repugnant in the subject or context—

¹For statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 142, ; for the Report of Select Committee, see *ibid.*, 1940, Pt. V, p. 35.

This Act has been applied to —

Baluchistan, see Notification No. 168-N., dated the 17th October, 1940, Gazette of India, 1940, Pt. I, p. 1478;

Phulera in the Excluded Area of Upper Tanawal to the extent the Act is applicable in the N. W. F. P., subject to certain modifications- see N.W.F.P (Upper Tanawal) (Excluded Area) Laws Regulation, 1950; and also extended to the Excluded Area of Upper Tanawal other than Phulera by the aforesaid Regulation, and declared to be in force in that area with effect from the 1st June, 1951, see N.W.F.P. Gazette, Ext., dated the 1st June, 1951.

It has been extended to the Leased Areas of Baluchistan by the Leased Areas (Laws) Order, 1950 (G. G. O. 3 of 1950).

²Subs. by the Central Laws (Statue Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch (with effect from the 14th October, 1955), for “the Provinces and the Capital of the Federation” which had been subs., by A. O., 1949, for British India”.

³Subs. by Ordinance 21 of 1960, s. 3 and Sch (with effect from the 14th October, 1955), for the original sub-section (2) as amended by A. O, 1949.

- (a) “arbitration agreement” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not;
- (b) “award” means an arbitration award;
- (c) “Court” means a Civil Court having jurisdiction to decide the question forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings under section 21, include a Small Cause Court;
- (d) “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in representative character, the person on whom the estate devolves on the death of the party so acting;
- (e) “reference” means reference to arbitration.

CHAPTER II

ARBITRATION WITHOUT INTERVENTION OF A COURT

3. Provisions implied in arbitration agreement. An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.

4. Agreement that arbitrators be appointed by third party. The parties to an arbitration agreement may agree that any reference there under shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or as the holder for the time being of any office or appointment.

5. Authority of appointed arbitrator or umpire irrevocable except by leave of Court. The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court unless a contrary intention is expressed in the arbitration agreement.

6. Arbitration agreement not to be discharged by death of party thereto.—(1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of person.

7. Provisions in case of insolvency.—(1) Where it is provided by a term in a contract to which an insolvent is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such differences.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of the insolvency proceedings, then, if the case is one to which sub-section (1) does not apply, any other party to the agreement or the receiver may apply to the Court having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(3) In this section the expression “receiver” includes an Official Assignee.

8. Power of Court to appoint arbitrator or umpire.—(1) In any of the following cases

- (a) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not, after differences have arisen, concur in the appointment or appointments; or
- (b) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators, as the case may be, do not supply the vacancy; or
- (c) where the parties or the arbitrators are required to appoint an umpire and do not appoint him;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.

(2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties.

9. Power to party to appoint new arbitrator or, in certain cases, a sole arbitrator. Where an arbitrations agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed in the agreement,—

- (a) if either of the appointed arbitrators, neglects or refuses to act, or is incapable of acting or dies, the party who appointed him may appoint a new arbitrator in his place;