

# International Arbitration

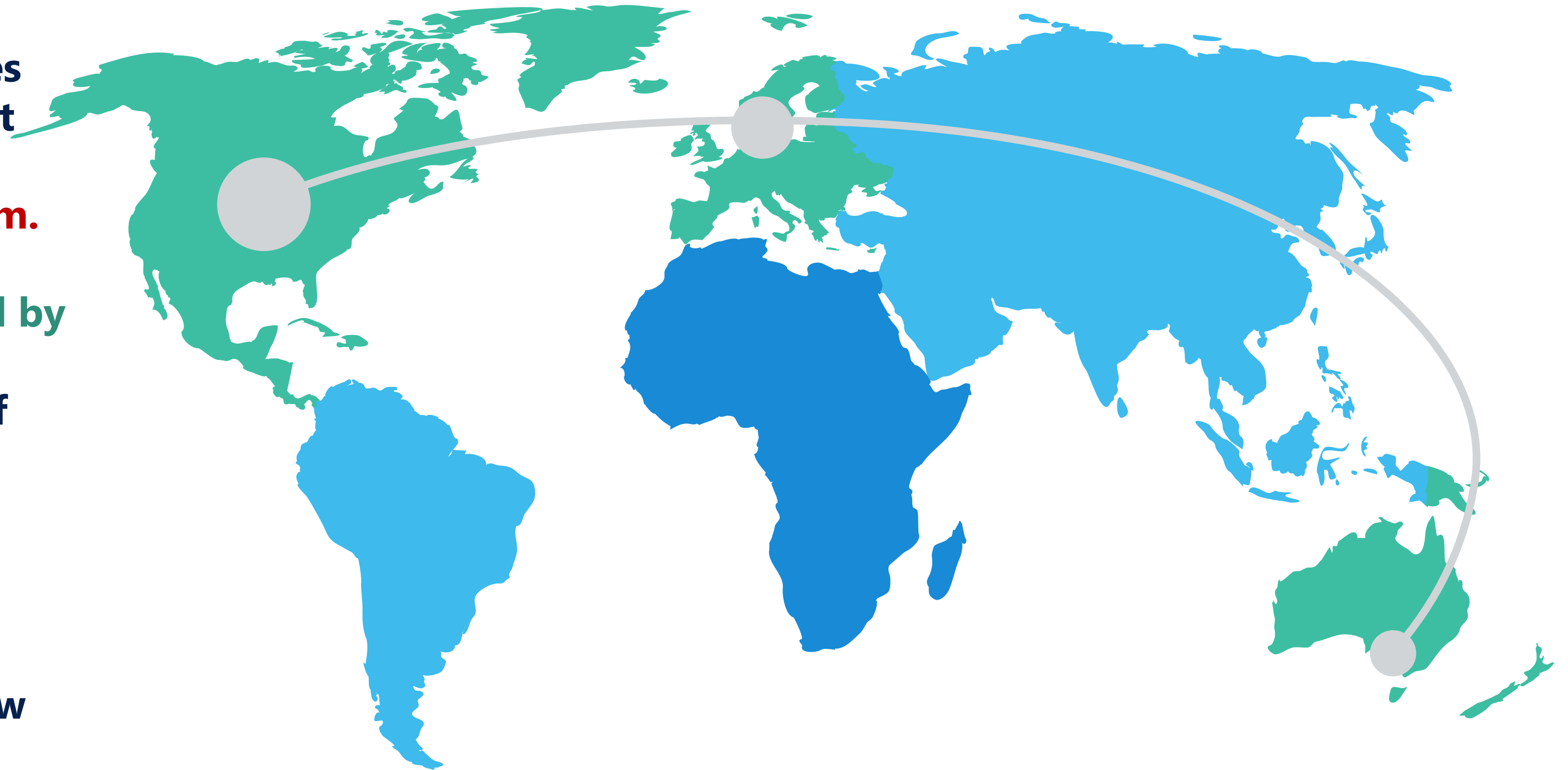
## FRAME WORK

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International Arbitration frame Work is created to find a Global **Uniform mechanism** that reduces the complexities of regular court Procedure but culminates more efficient **Enforcement mechanism**.

Global enforceability is achieved by New York Convention on the Recognition and Enforcement of Foreign Awards 1958 (163 Countries)

Uniformity is achieved by UNCITRAL Model Law Model Law On International Commercial Arbitration ,1985



# INTERNATIONAL ARBITRATION CLAUSE

2

## Seat of Arbitration 01

The Parties can choose any place as the seat of Arbitration.



## Number of Arbitrators 06

Parties may choose one or three arbitrators and incorporate in the contract.



## Arbitral Institution 02

It is advisable to specify the Arbitral Institution to administer the arbitration



## Language of Arbitration 05

Parties should specify the language of arbitration to avoid the application of default language.



## Substantive Laws 03

The Parties can choose any law including a neutral law as the substantive law of the arbitration.



## Law governing Arb Agreement 04

Parties may choose the law governing the arbitration agreement.



# Seat Selection

## Situations



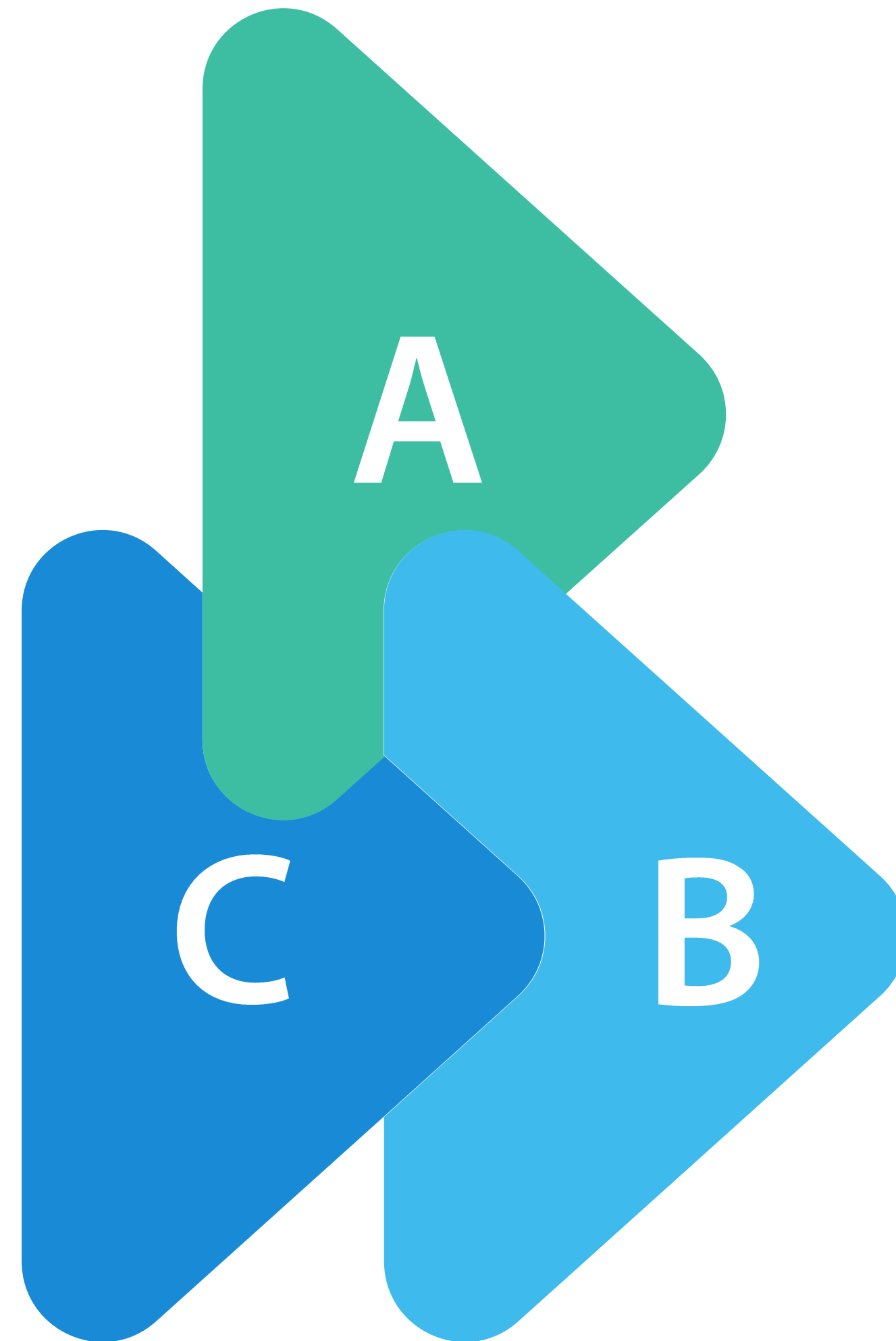
### A. Neutral Seat

Parties to the contract  
Choose a neutral seat  
for Arbitration  
Singapore, London,  
New York , Paris,  
Geneva etc.,



### B. Compulsion by one Party

Parties choose a seat  
because of the  
compulsion of the  
stronger Party



### C. Statutory requirements

The Statute of  
country like China  
does not allow  
Foreign Arbitral  
Institutions to  
administer  
Arbitrations in  
China

# Importance of a Seat

## in an International Arbitration

### Procedural Law

Seat Comes with the Procedural law. Example: If seat is Singapore International Arbitration Act of Singapore is the Procedural Law .

### Supervising Courts

Courts having Jurisdiction over the seat are the supervising Courts .



### Enforceability

If the seat is a New York Convention signatory then award becomes enforceable under the Convention

# India Seated International Arbitrations

5

Speaker S Ravi Shankar



**Procedural  
Law**



**New York  
Convention**



**Appointme  
nt of  
Arbitrators**



**Supervising  
Courts**



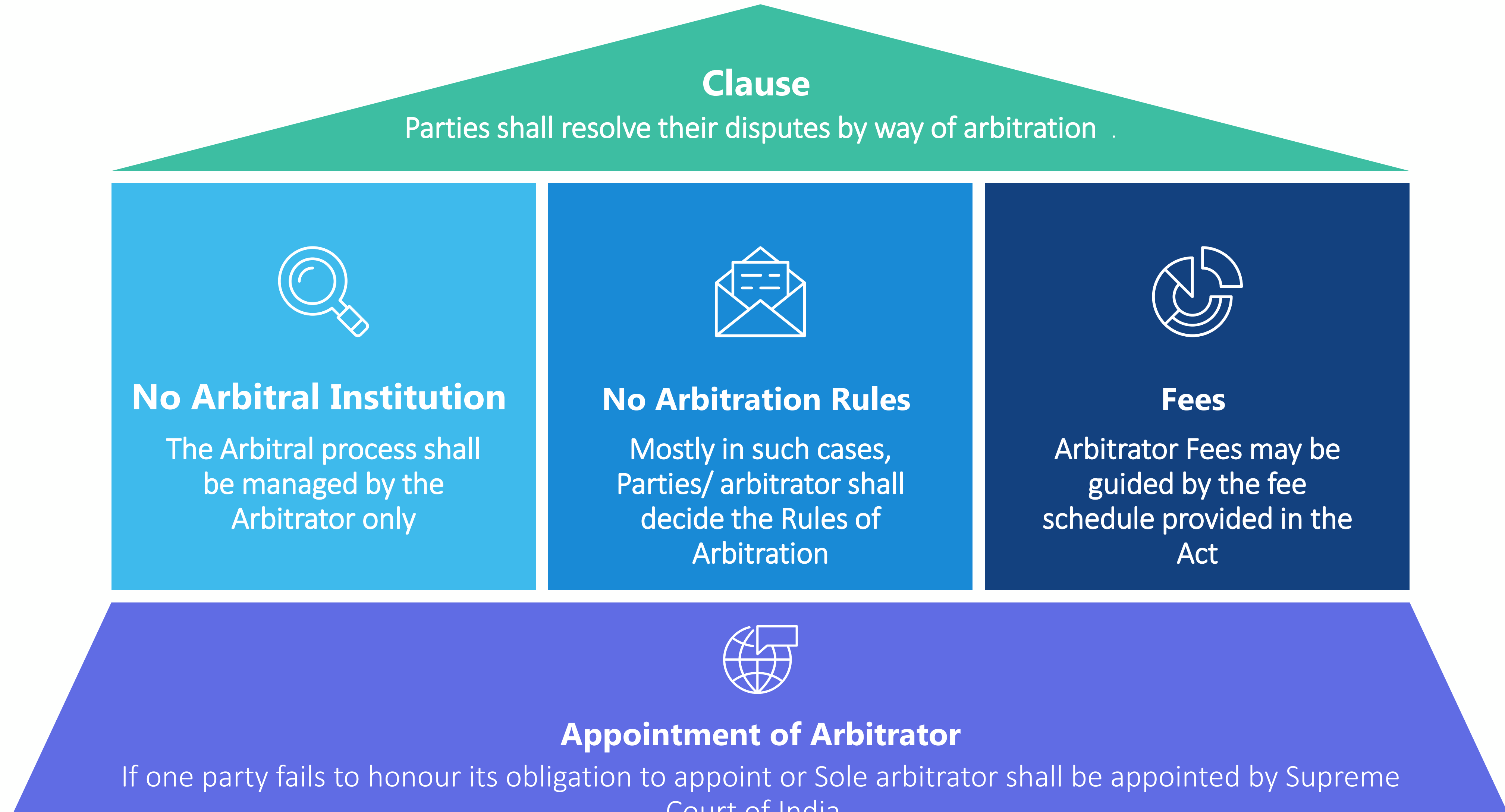
**Finality of  
Awards**



**Enforcemen  
t of Awards**

# ADHOC / INSTITUTIONAL ARBITRATION

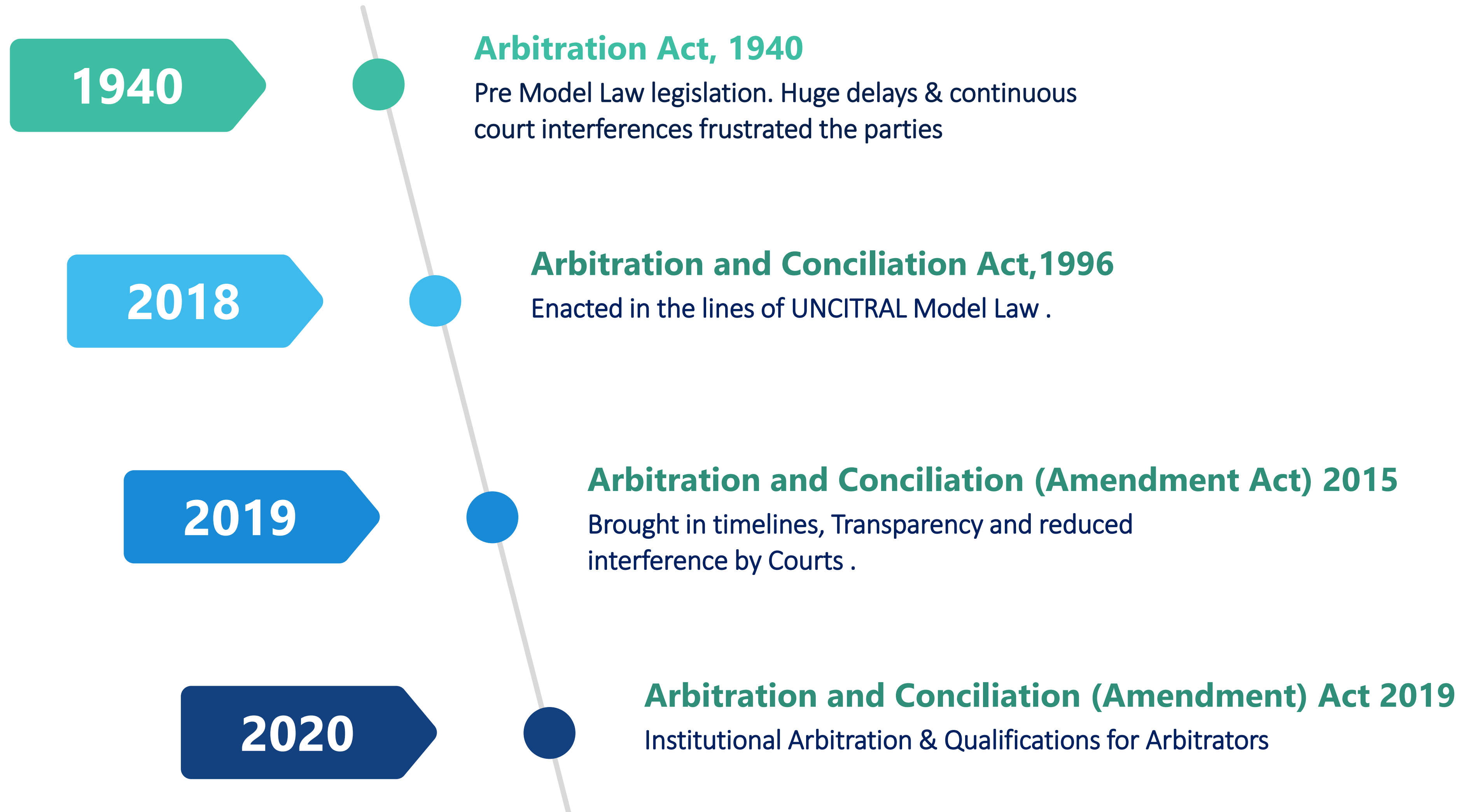
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# Procedural Law of Indian Seat

Seat determines procedural law

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# APPLICABLE LAWS & SEAT

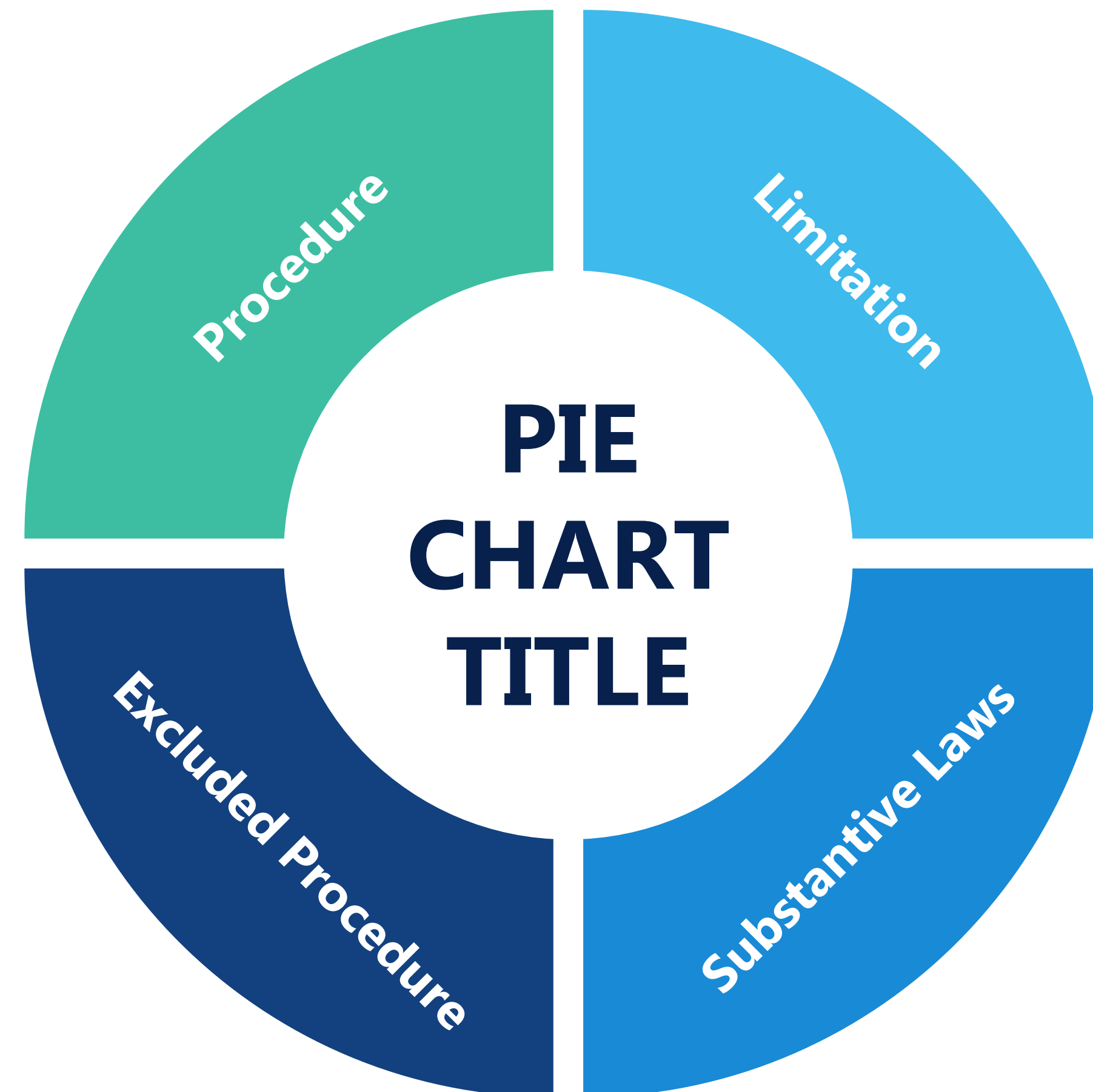
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Arbitration and Conciliation  
Act, 1996 .

Limitation Act, 1963 is  
applicable. Limitation for  
disputes arising out of  
contract in India is three  
years from the date of cause  
of Action

Applicability of Code of Civil  
Procedure and Evidence Act  
are expressly excluded .

Contract Act, Partnership  
Act, Companies Act, Specific  
Relief Act etc.,





# Special Features of the Procedural Law

9

As Amended

## Independence & Impartiality of Arbitrators

Mandatory declaration by Arbitrators in line with IBA Rules on Conflict of Interest .

## Interim orders in support of Foreign seated Arbitrations

Courts can pass interim orders in support of Foreign seated Arbitrations .

## Reduced Scope of Public Policy

Public Policy cannot lead to re-appreciation of Merits .



## Time lines

Time lines prescribed in all stages of Arbitration Process

## Delegation of Court Powers To Arbitral Institutions

High Court can delegate powers to appoint arbitrators to Institutions to appoint Arbitrators

## Enforceability of Interim orders Passed by Arbitrators

Interim orders Passed under S.17 are enforceable like Court orders .

# ARBITRAL INSTITUTIONS

10



01

## NO BAR

Any Foreign Arbitral Institution can administer Arbitrations seated in India



02

## Registration

Arbitral Institutions have to be Registered with High Courts / Supreme Court .



03

## Indian Arbitral Institutions Adhoc Arbitrations

There are many efficient Indian Arbitral Institutions in India including DIAC, ICA, MCIA, IDAC India etc.,



04

80% of the Arbitrations in India are Adhoc Arbitrations.



05

## Qualifications

Certain Qualifications for Arbitrators are prescribed in the Act.

# SUPERVISING COURTS

## HIGH COURTS

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### APPOINTMENT

S.11. Power to appoint Sole Arbitrator is with the Supreme Court of India /Institutions .



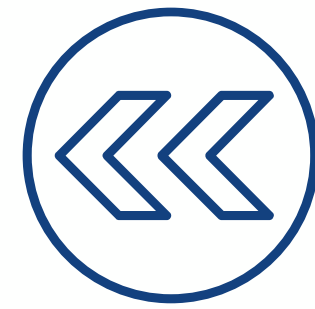
### Interim orders

S.9. Courts in India are fast and efficient in granting interim orders in pre-arbitration & Post arbitration stages



### Removal of Arbitrators

S.14. If Arbitrators are disqualified to be arbitrator under Schedule V.



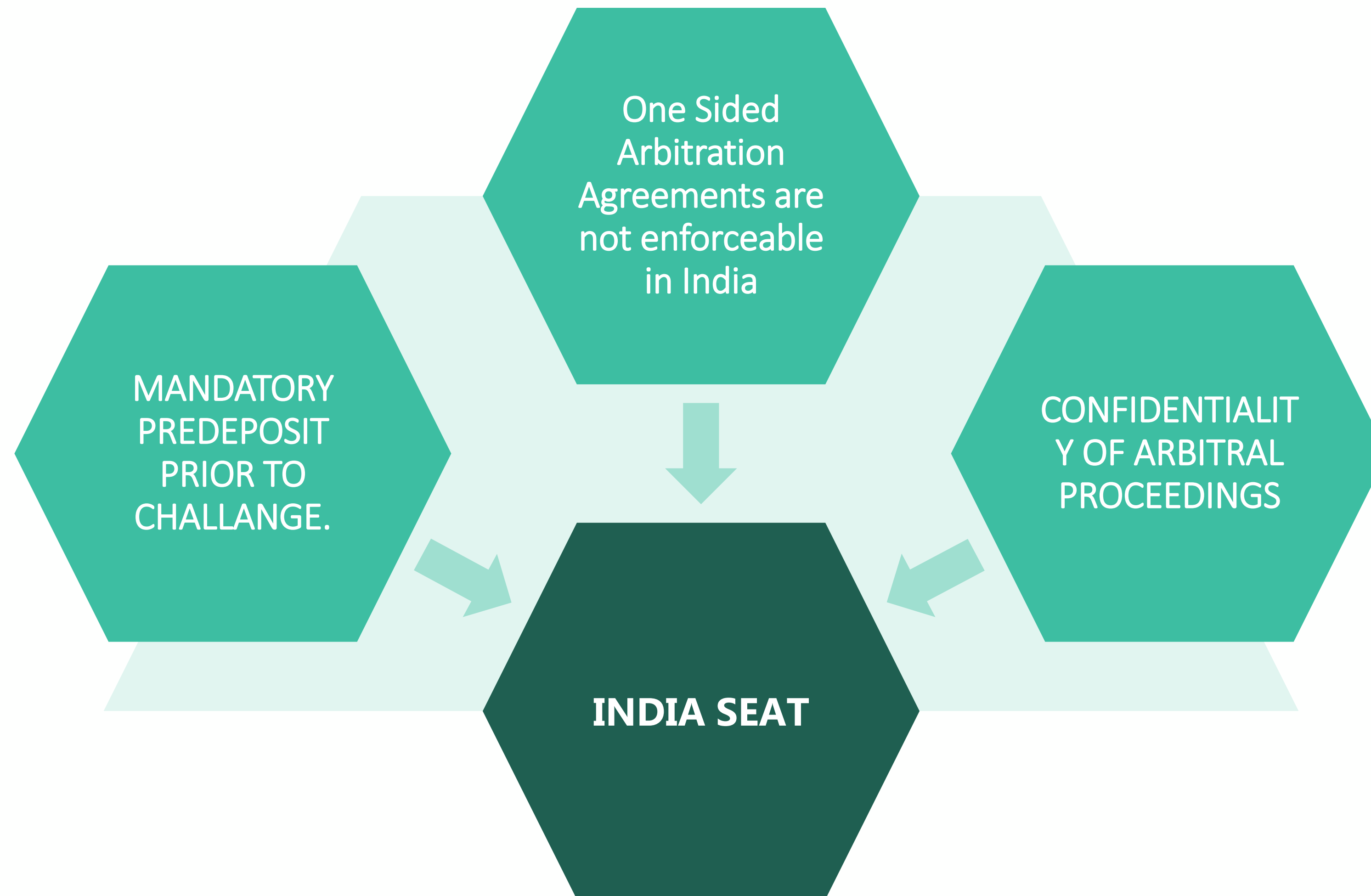
### Challenge to an Award

Courts cannot go into the merits or the case, perversity is a main ground on which awards are set aside.

# OTHER ADVANTAGES OF INDIA SEAT

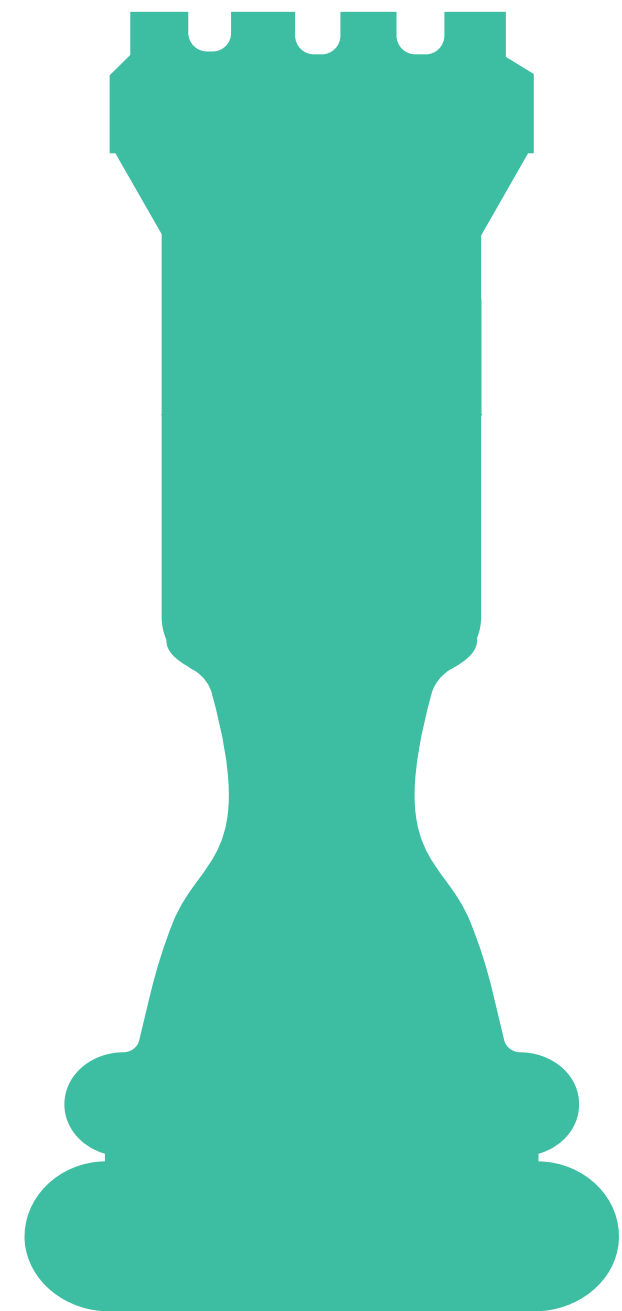
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# I recommend India seat Because

13



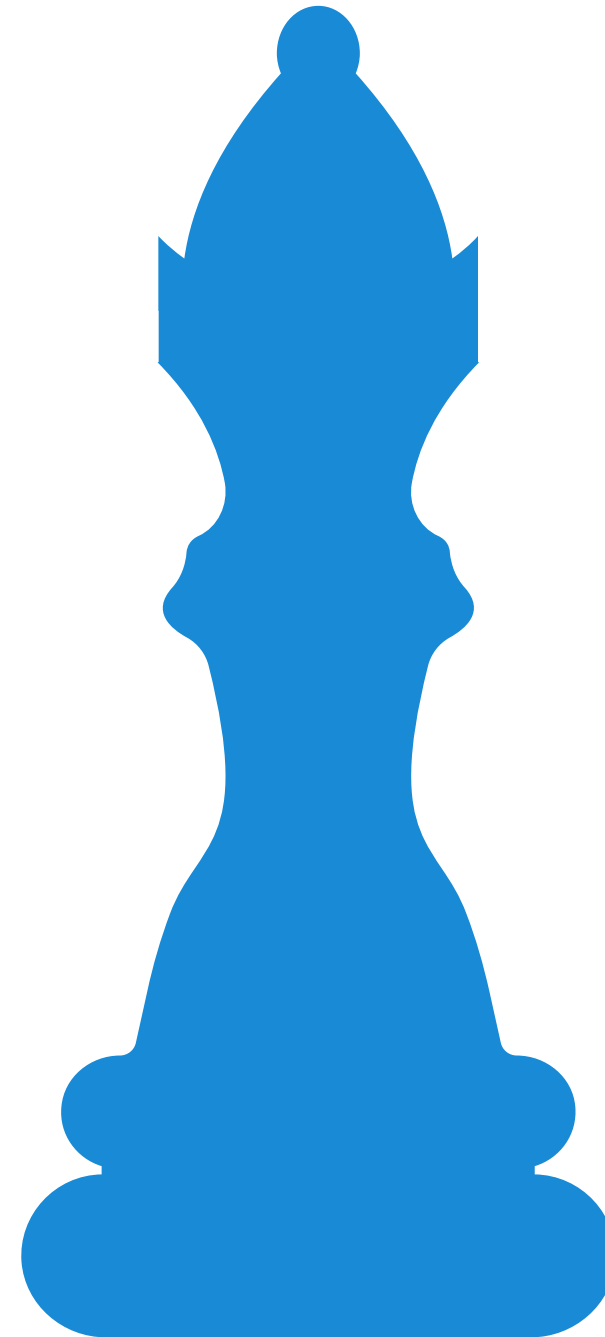
## MODEL LAW COUNTRY

Since we follow Model Law, parties from Foreign Countries can understand the process



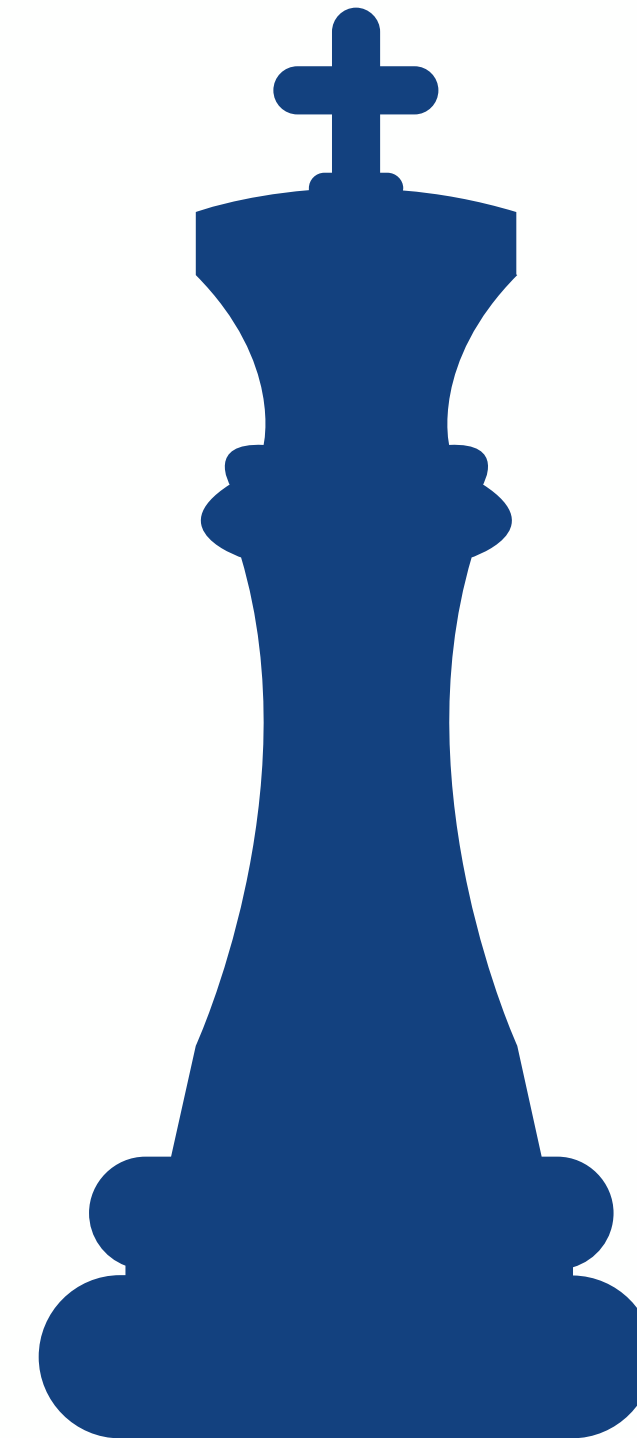
## NEW YORK CONVENTION

New York Convention supports Award arising out of India Seat



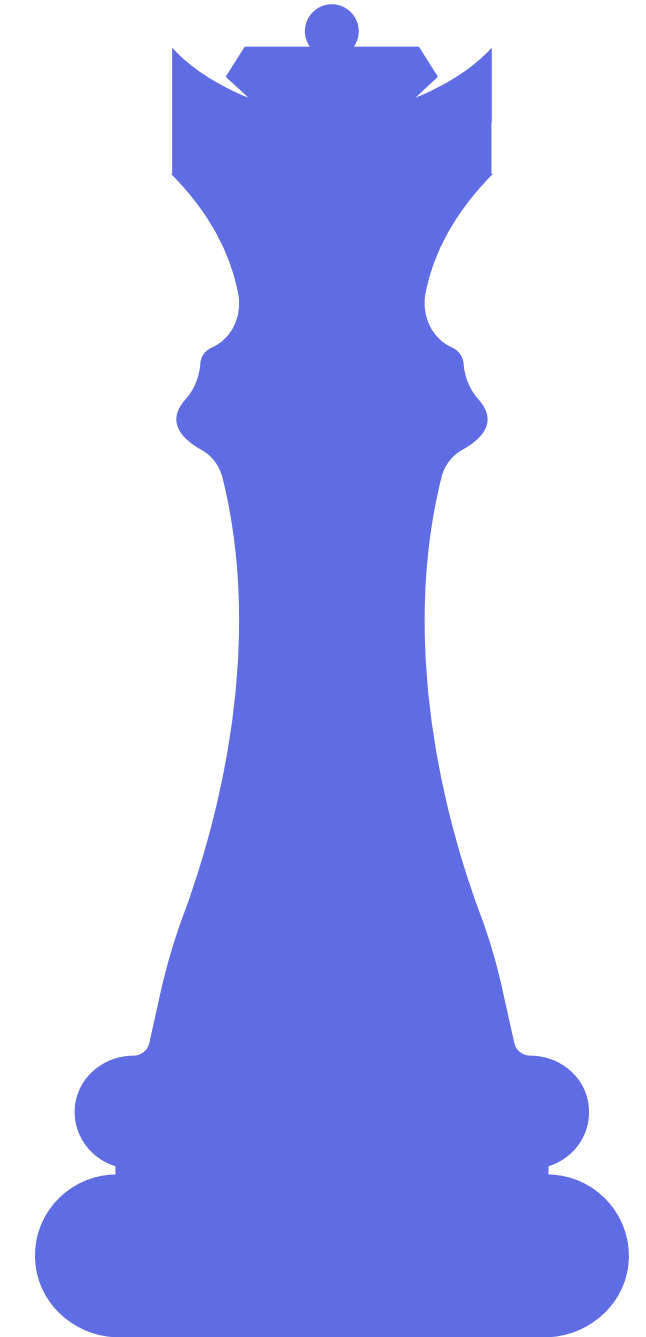
## TIME LINES

Speedy Conclusion of Arbitration ensured by law .



## FOREIGN INSTITUTIONS

Unlike China, India allows Foreign Arbitral Institutions to Administer



## PRE-DEPOSIT

Mandatory Pre-deposit of award amount forces parties to avoid unnecessary challenge.

# Thanks

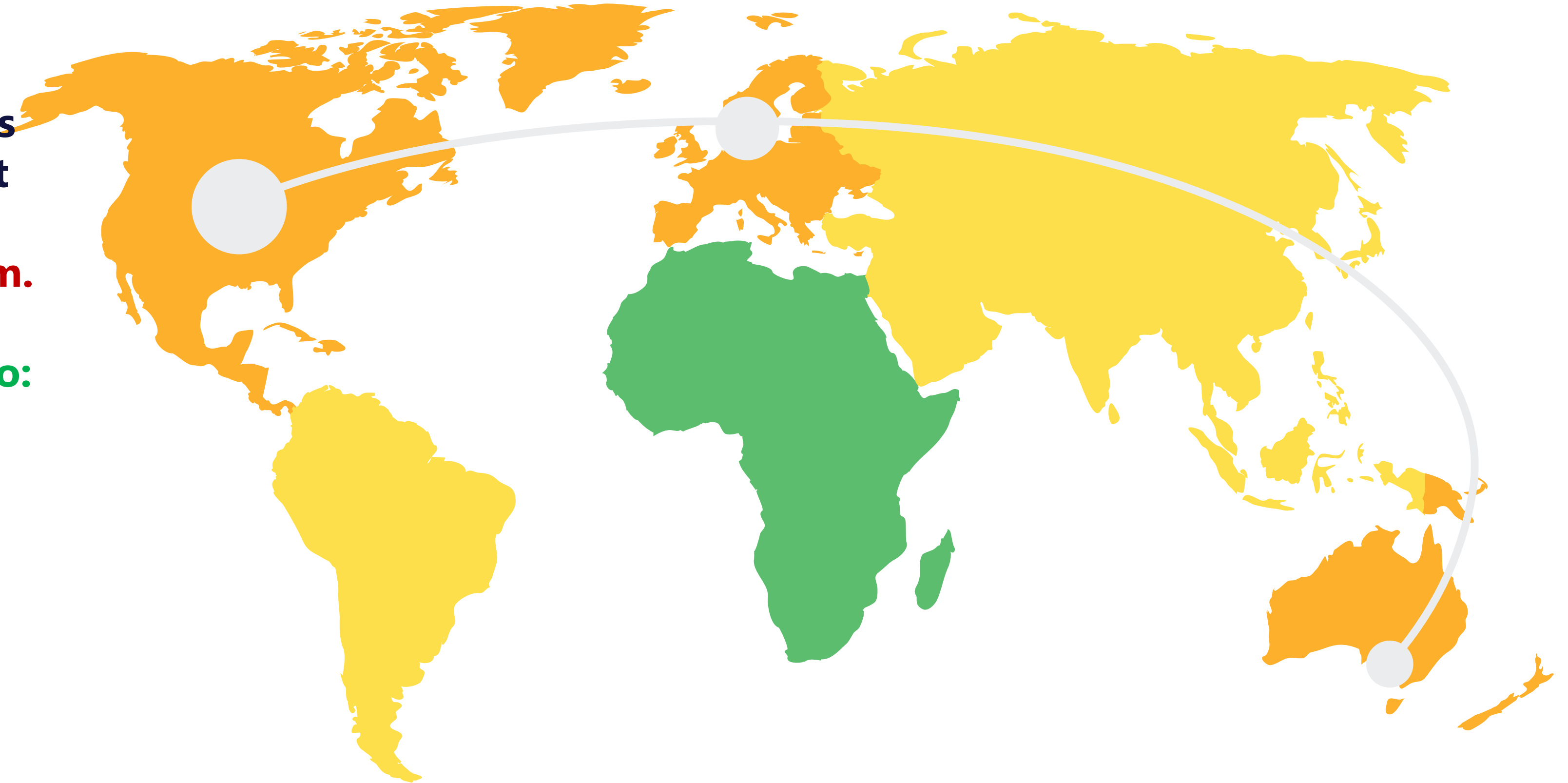
# International Arbitration

## FRAME WORK

International Arbitration frame Work is created to find a Global **Uniform mechanism** that reduces the complexities of regular court Procedure but culminates more efficient **Enforcement mechanism**.

Interim Protection is necessary to:

- Avoid frustration of awards
- Avoid third Party interests
- To avoid irreparable loss





# Interim Protections in International Arbitrations

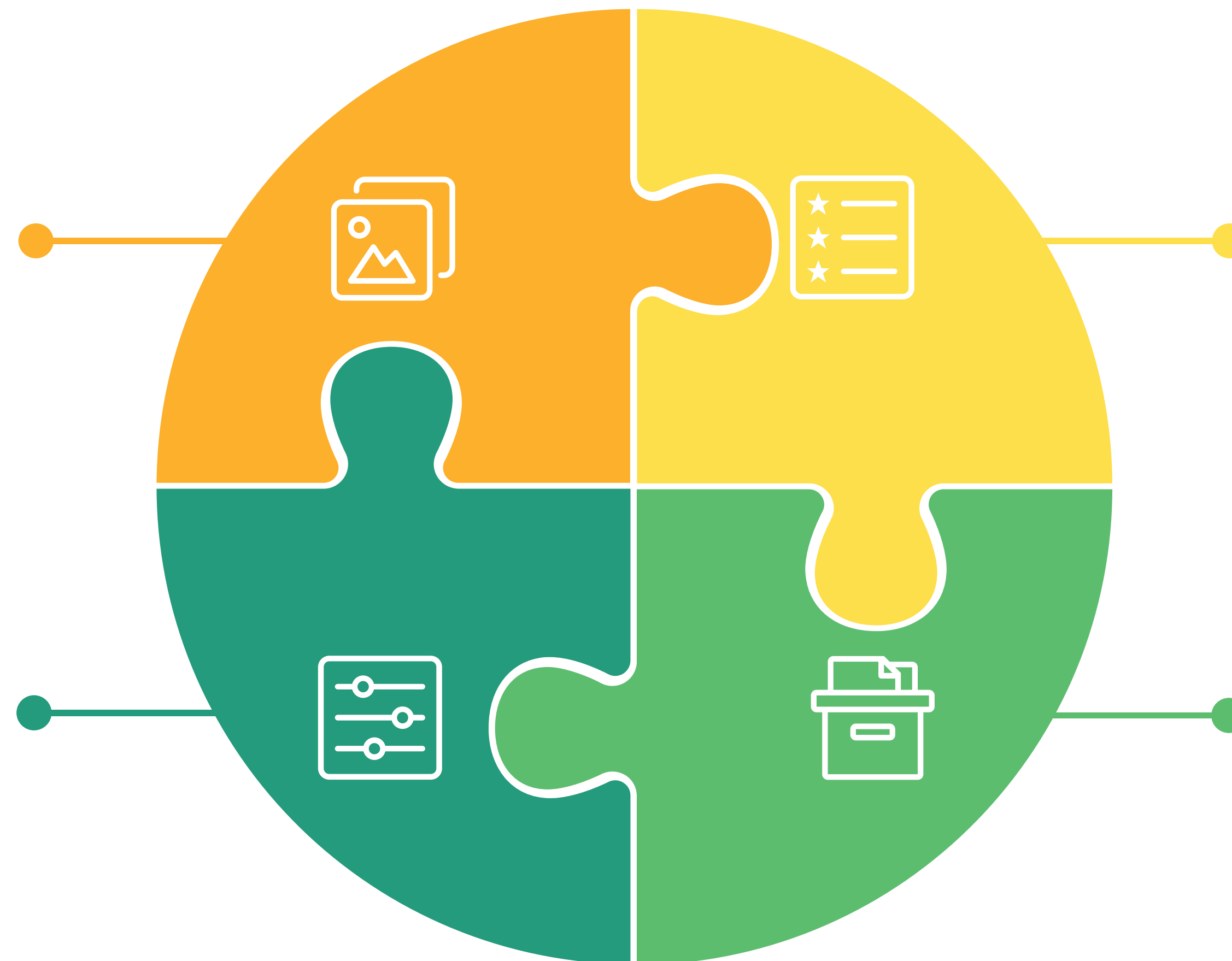
## Forums

### Prior to Formation of AT

S.9 through the court.  
Unlike Court Proceedings, formation of AT takes time hence there is a gap.

### After formation of AT

S.17 After formation of AT, AT has the power to grant interim protection.



### After award before Enforcement

S.9. through the Court.  
After award AT becomes functus officio

### During Enforcement

S.9 through the Court

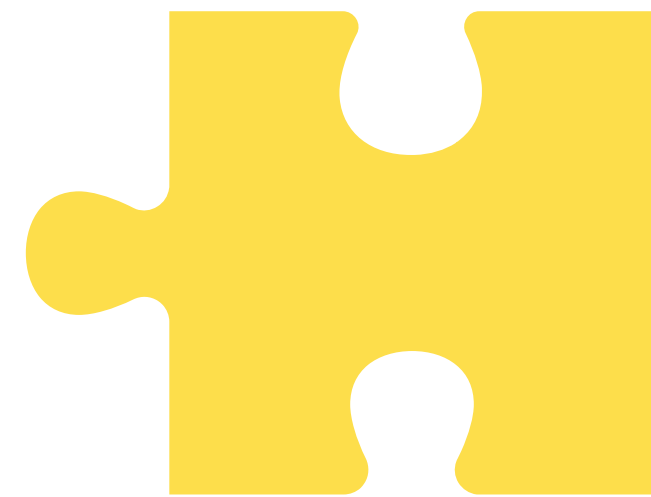
# Prior to formation of AT

Against a party located in India though the Courts



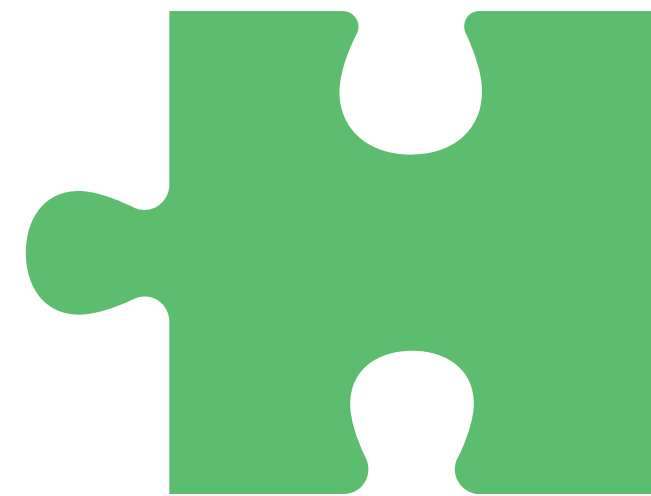
The preservation, interim custody of sale of any goods which are the subject matter of the arbitration agreement .

A



Securing the amount is dispute in the arbitration

B



Preservation of any property or authorizing any person to do certain things for interim protection .

C



Interim injunction or Appointment of Receiver

D

# After Formation of AT

Against an Indian Party through AT



## Powers of AT

All the interim protections that can be granted by the court under S.9 can be granted by AT.

## Enforceability

Under S.17(2) these orders are equal to orders of the court and enforceable



## Appeal

Any interim protection order passed under S.9 or S.17 are appealable to the Court.

## Bar to Court Jurisdiction

After formation of AT  
Courts will not entertain interim protection applications under S.9.



# After Award and during Enforcement

## Against an Indian Party

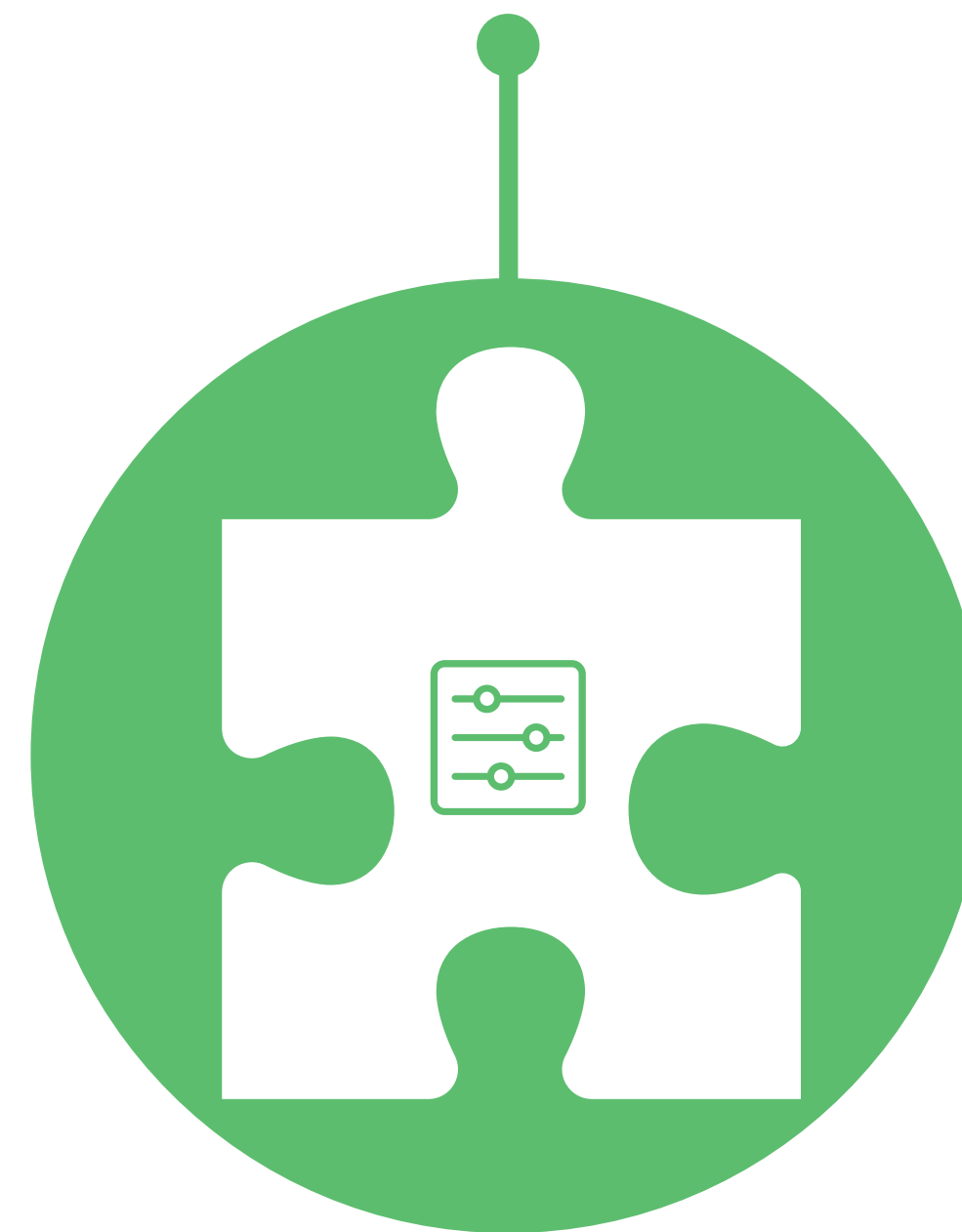
Securing the Subject matter



Injunctions



Securing the award amount



Only through Courts

These orders can be obtained under S.9 through the Courts and not from AT.



# Interim orders against a Foreign Party

OPTIONS AVAILABLE



# Emergency Arbitrator

Process

**Appointment**  
On the application of party, Arbitral Institution appoints an emergency Arbitrator.

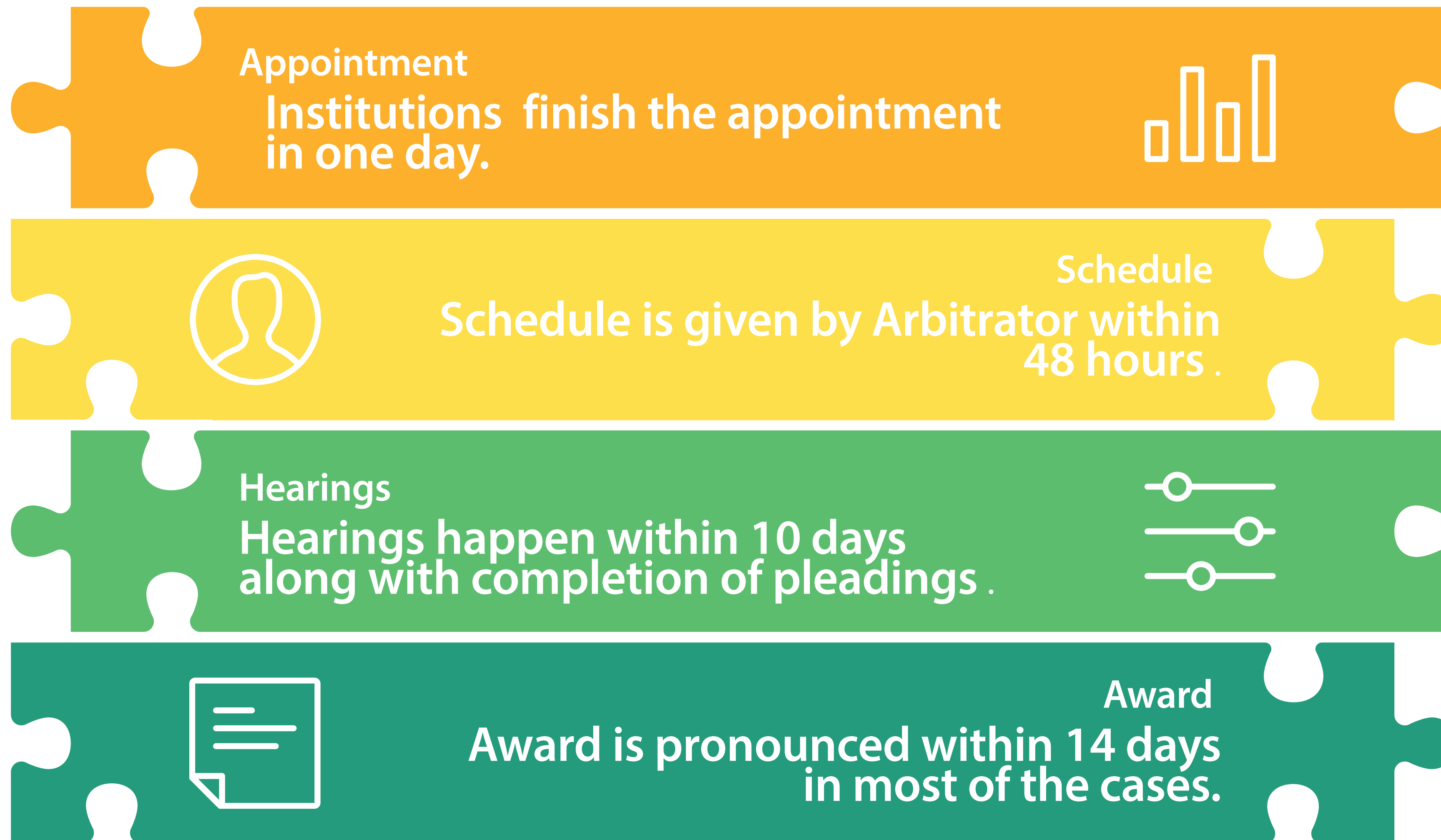
**Scope**  
His authority is restricted only to the interim order.

**Arbitral Tribunal**  
He won't be a part of AT and AT can review or alter the order of the emergency Arbitrator

**Enforceability**  
Singapore and Hong Kong recognize emergency arbitrator by law.



# Times Lines





# Emergency Arbitrator & India

WRITE YOUR SUBTITLE HERE

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## Not enforceable in India

Even though Law Commission recommended the amendment, Government did not incorporate in 2015

## Can be a basis for a Section 9 Application

Relying on Emergency Arbitrator award Section 9 orders are granted by Indian Courts

2

3

## Section 9 is advisable

Indian Courts handle Section 9 applications efficiently

## Grounds

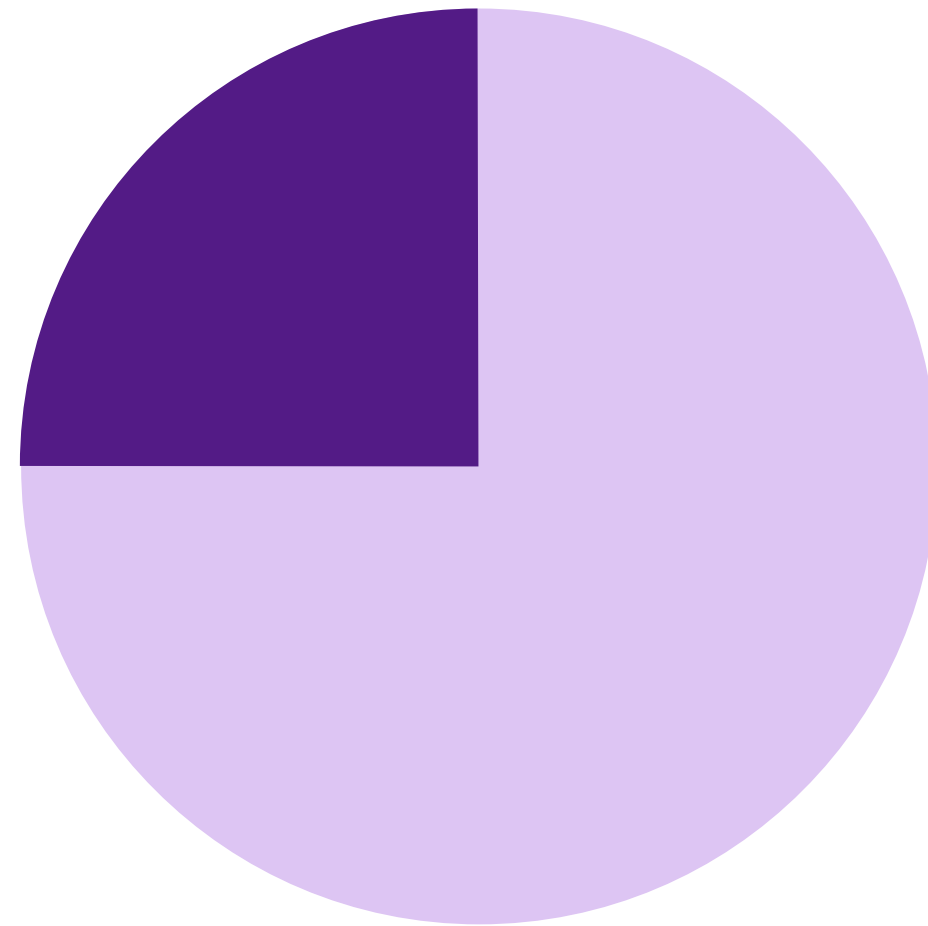
Irreparable loss is expected if not protected & Party has reasonable chance of succeeding

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**Thanks**

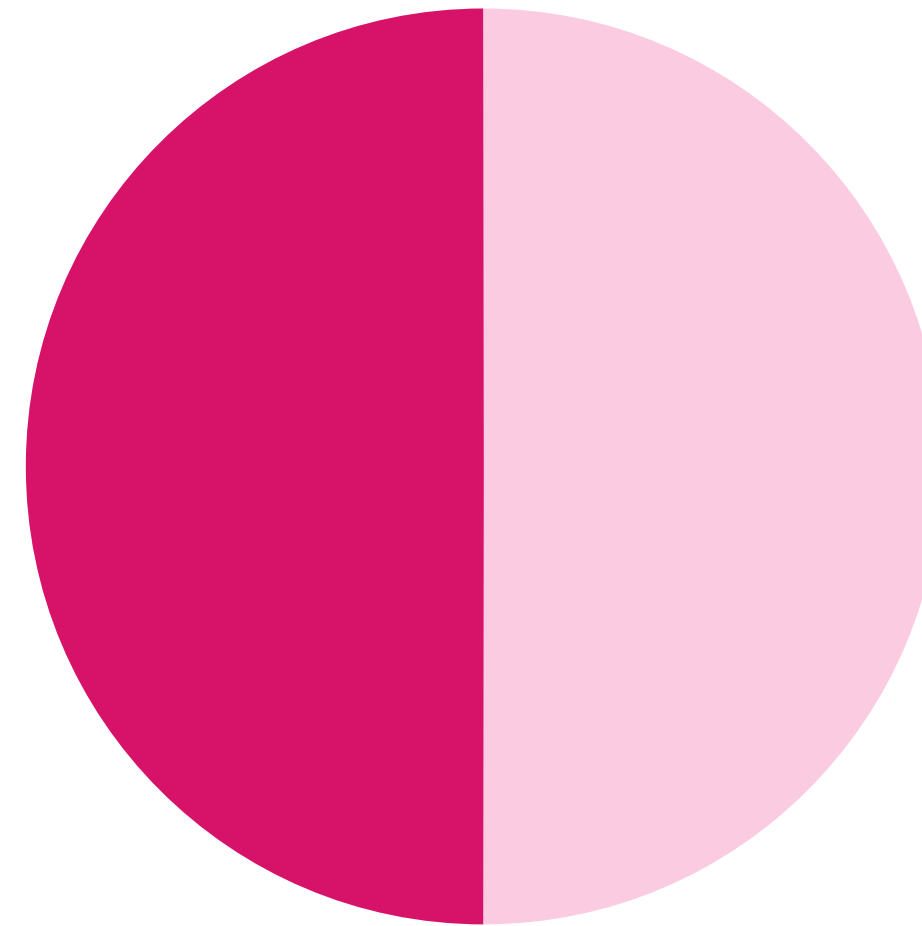
# Courts & Awards

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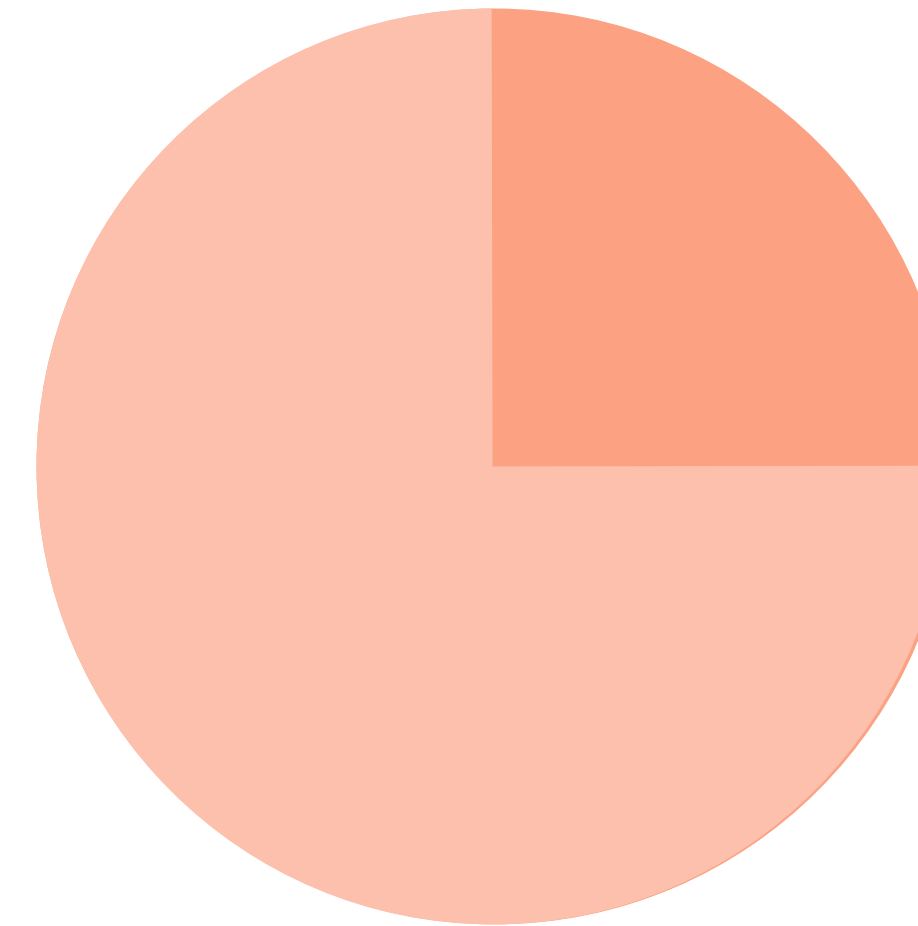
## Grounds

**S.34 grounds are similar to Article 34 of UNCITRAL Model law**



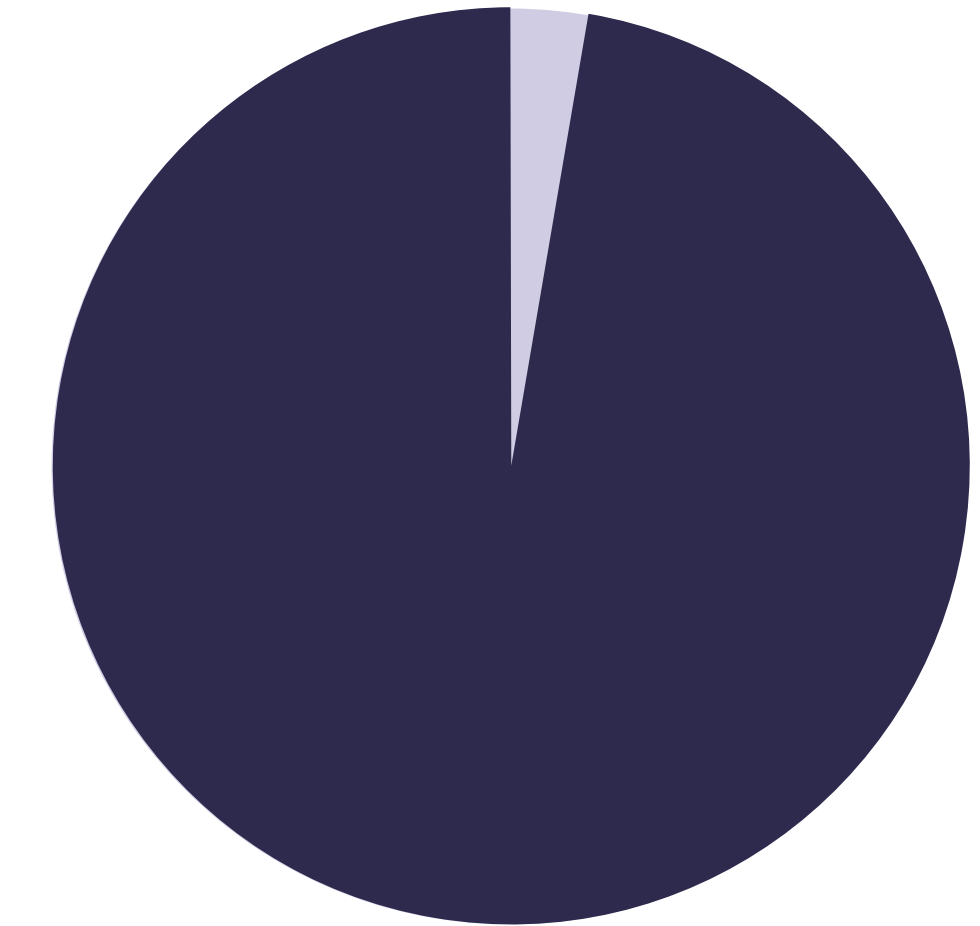
## Nature

**S.34 Proceedings are not Regular Civil Appeals**



## Courts Powers

**Are restricted to the grounds specified in S.34 of the Act.**

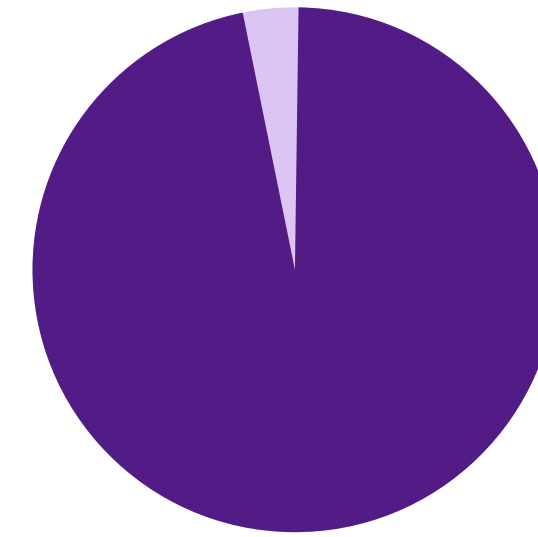


## Scope of S.34

**Has different approaches to domestic awards and awards arising out of international Commercial Arbitration**

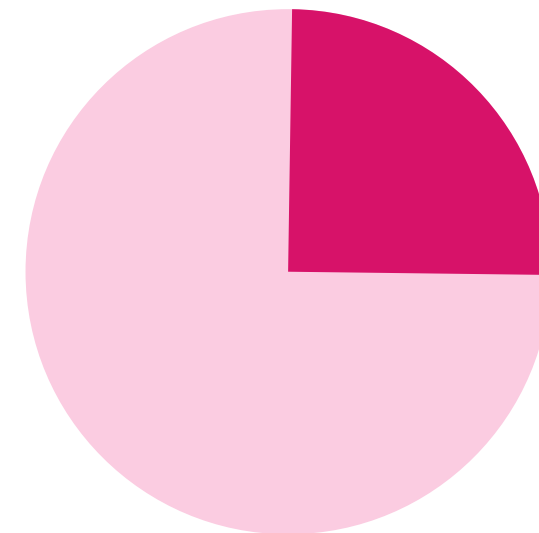
# Requirements to Challenge an Award under S.34

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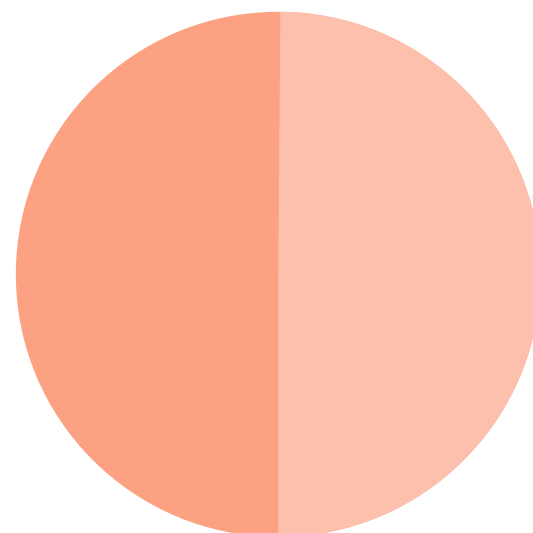
## S.34 Application

**The only recourse to challenge the award is filing an application under S.34 of the Act .**



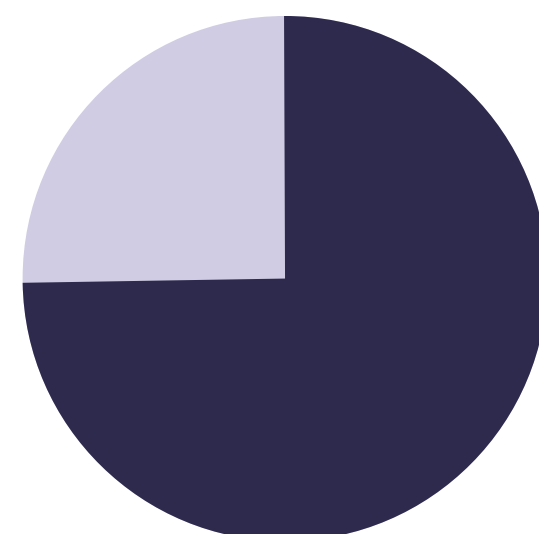
## Within 120 days from the Date of Receipt of the Award

**The Limitation is three months plus one month for special reasons. Limitation starts from delivery of the award**



## Establishing on the basis of record of the Arbitral Tribunal

**Parties cannot go beyond the Arbitral records to prove their challenge to an Arbitration award.**



## Time Limit for disposal of S.34 application

**Within one year from the date of receipt of notice by the other party.**

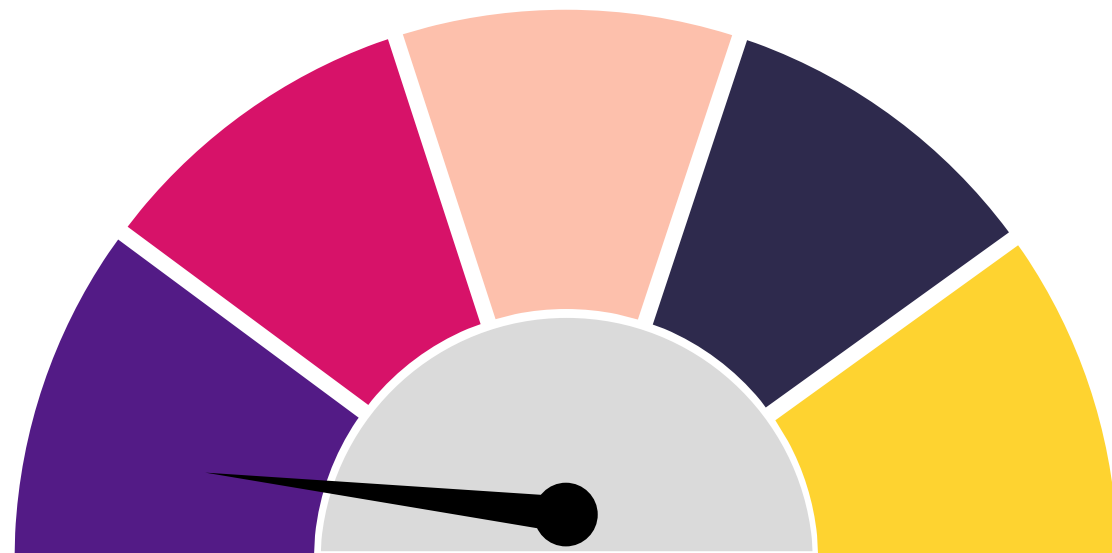
# Grounds of Challenge

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S.34 (2)(a) of Arbitration and Conciliation Act, 1996

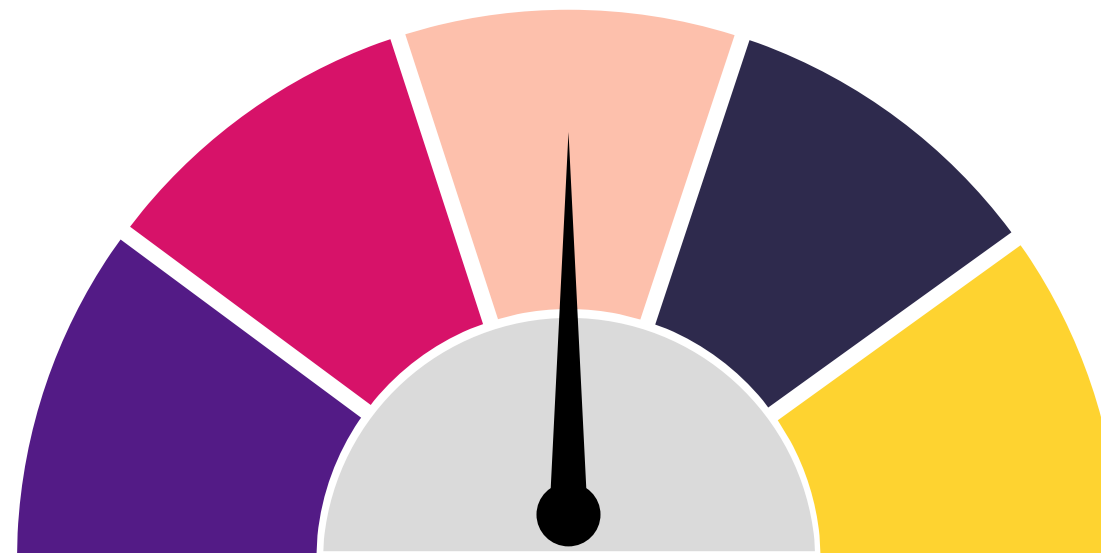
## Incapacity

If any of the party was under some incapacity.S.34(2)(a)(i)



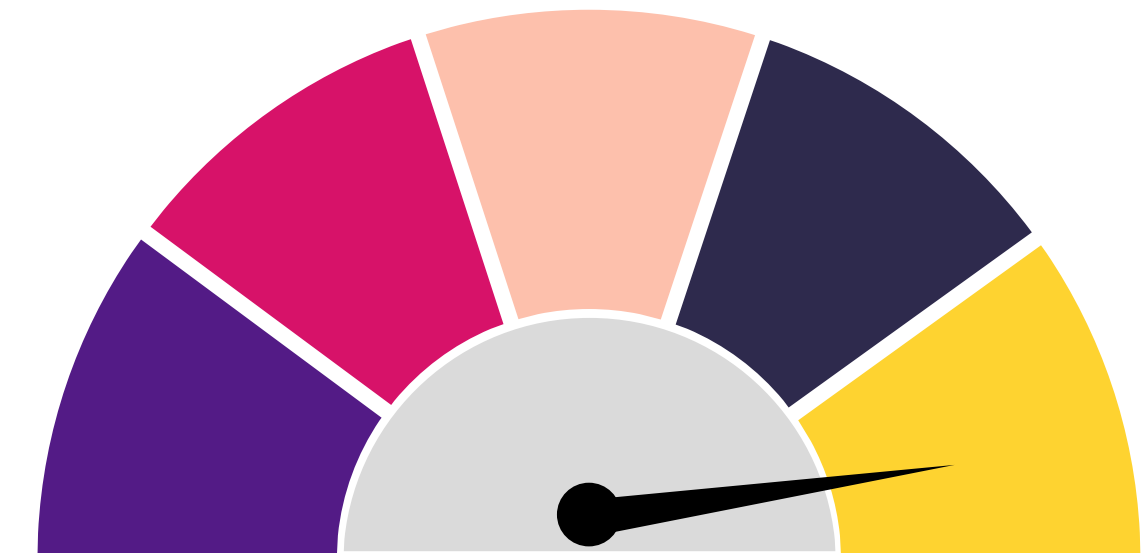
## Invalidity

Invalidity of the arbitration agreement under the procedural law. S.34(2)(a)(ii)



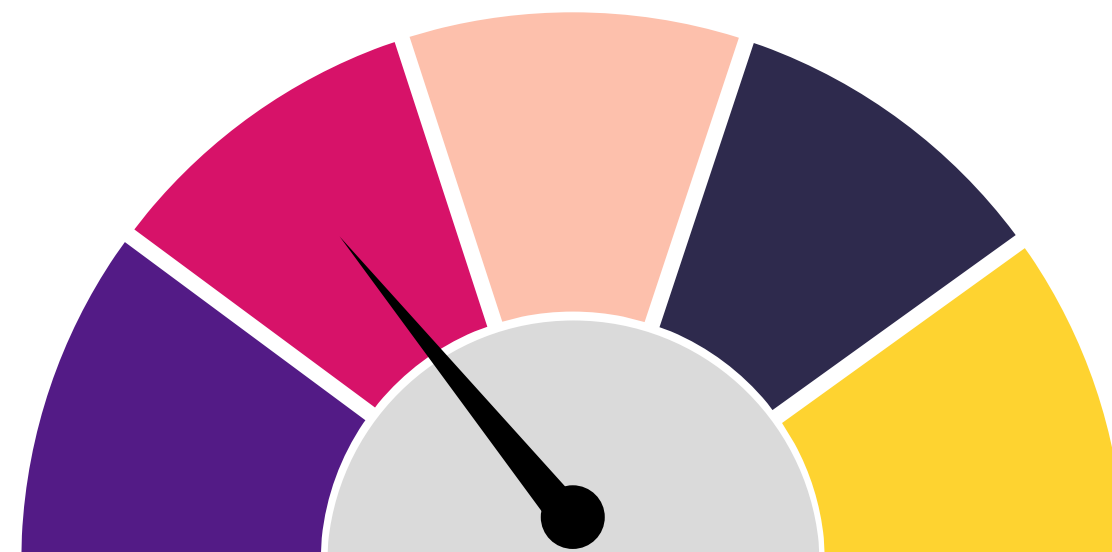
## Notice

No proper notice to a party/ unable to present the case S.34(2)(a)(iii)



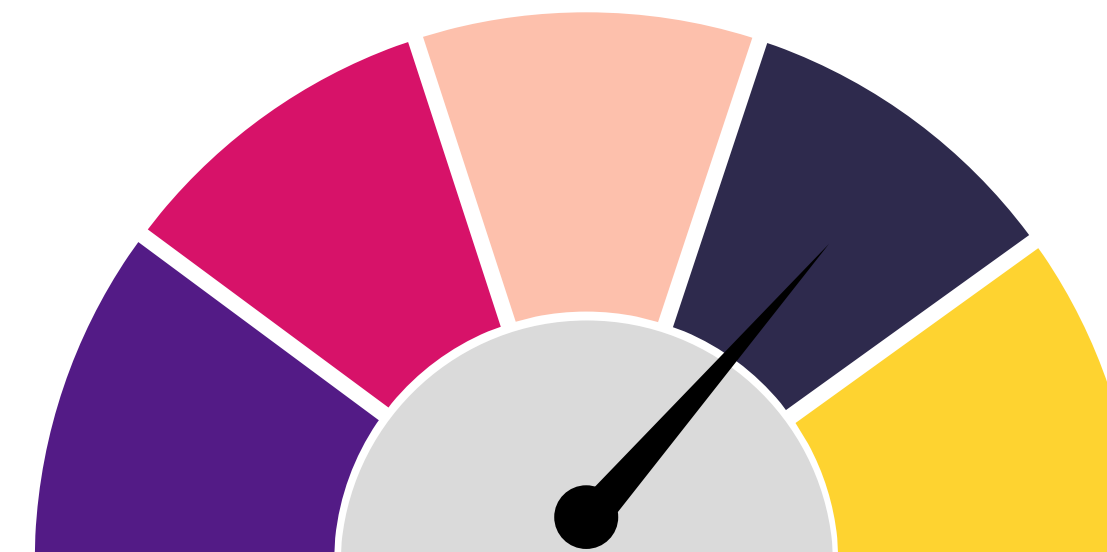
## Award beyond submission

Arbitral award is beyond the submission of parties S.34(2)(a)(iv)



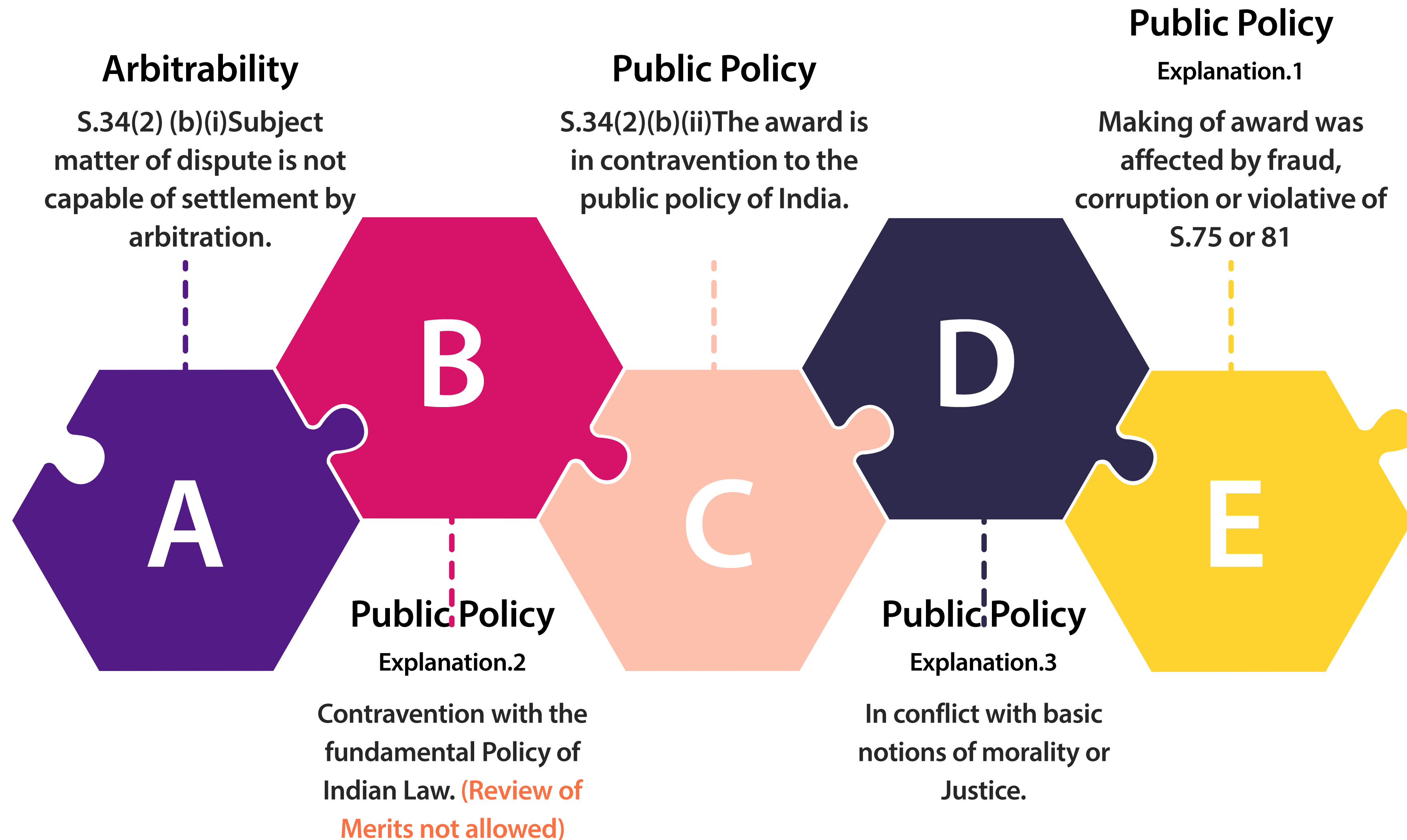
## Composition of AT

If composition of the tribunal was not according to the agreement S.34(2)(a)(v)



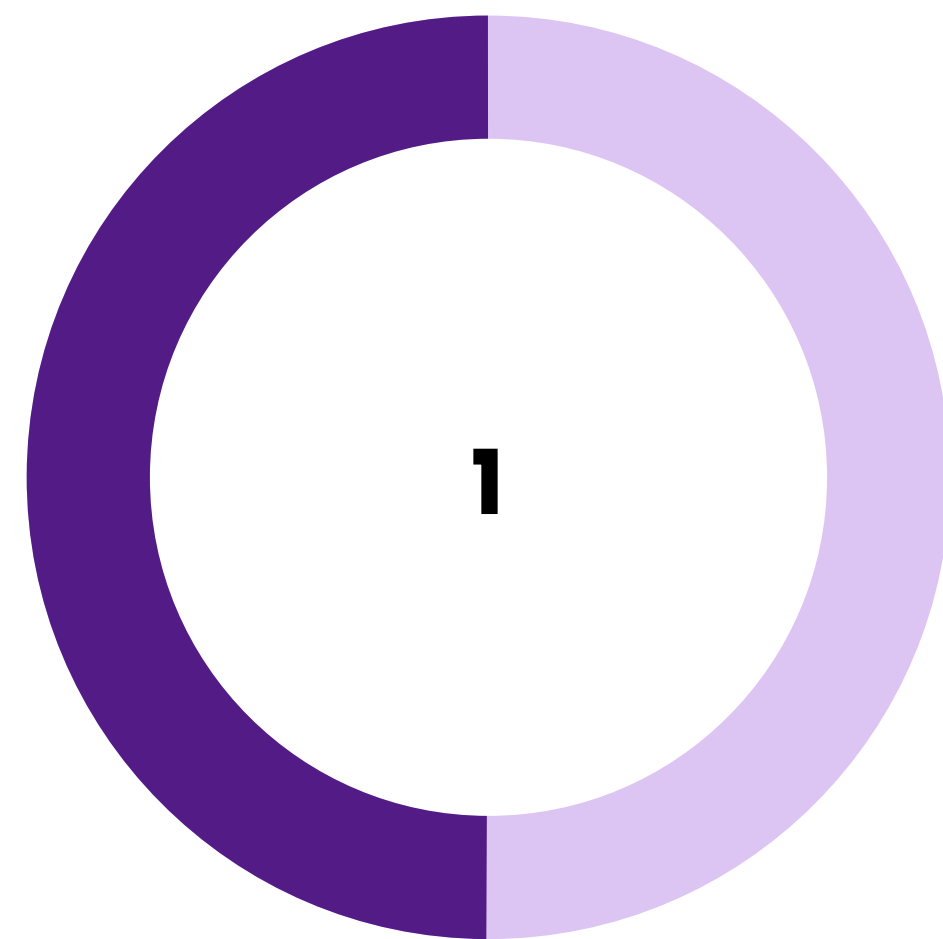
# Grounds of Challenge

S.34(2)(b) of the Arbitration and Conciliation Act



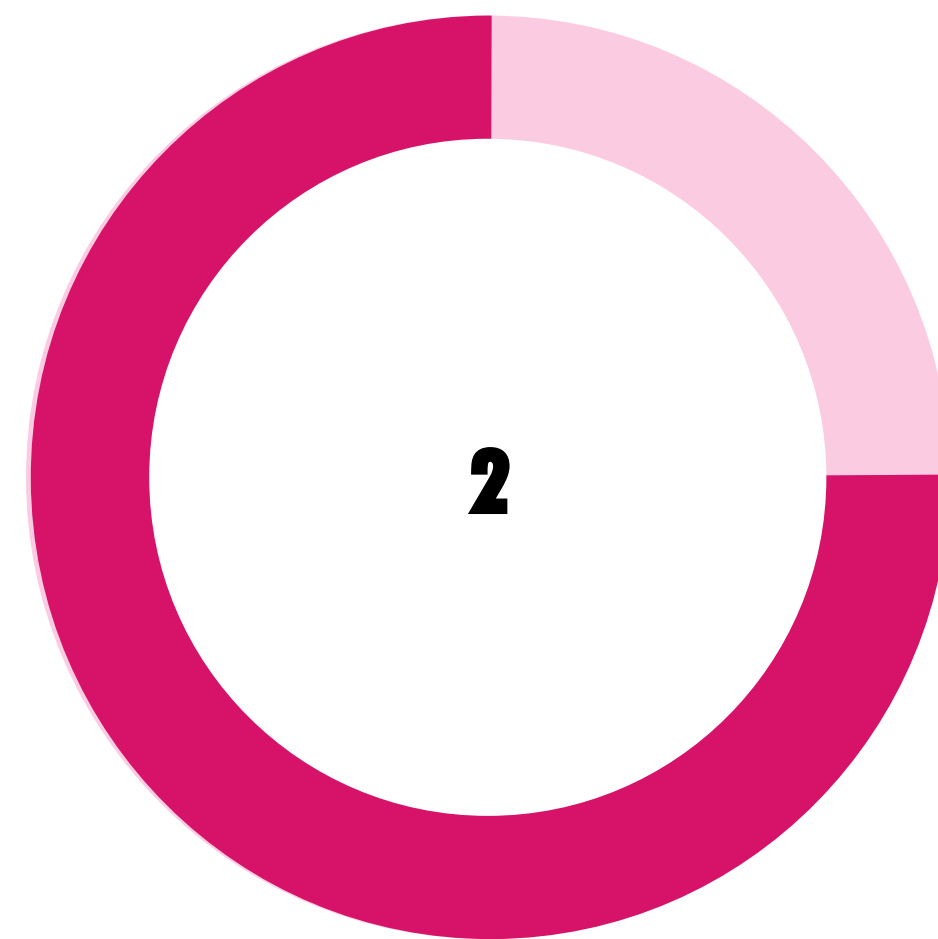
# Arbitrator is the final Authority for

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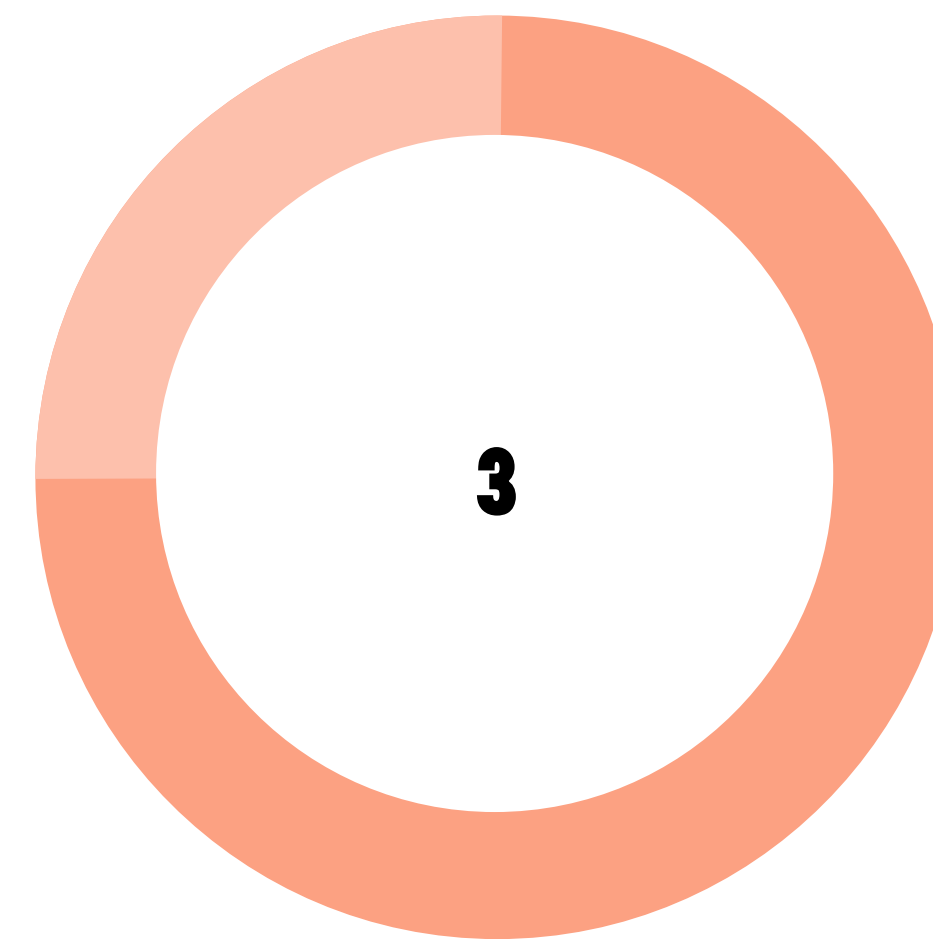
## Interpretation of Contract

**Arbitrator is the final authority for interpretation of contract**



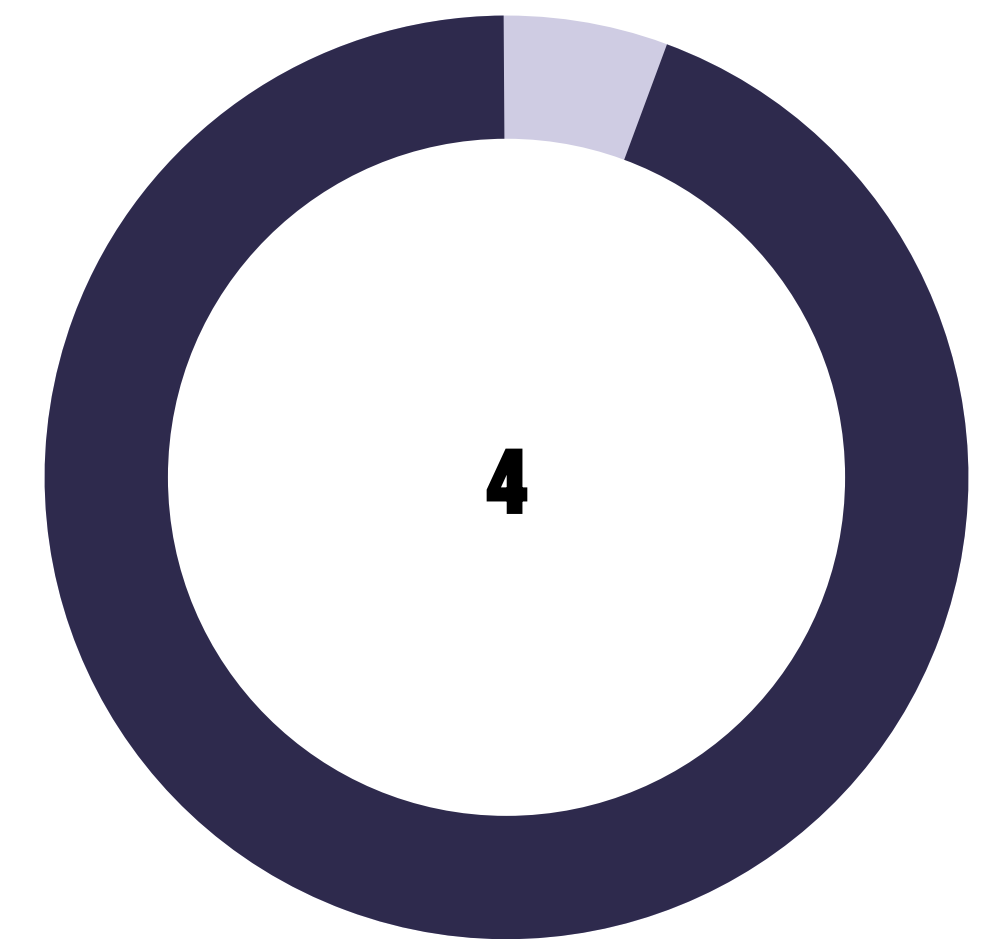
## Facts

**Arbitrator is the final authority for the facts of the case.**



## Interpretation of law

**Arbitrator view is final if a legal question was referred to him**



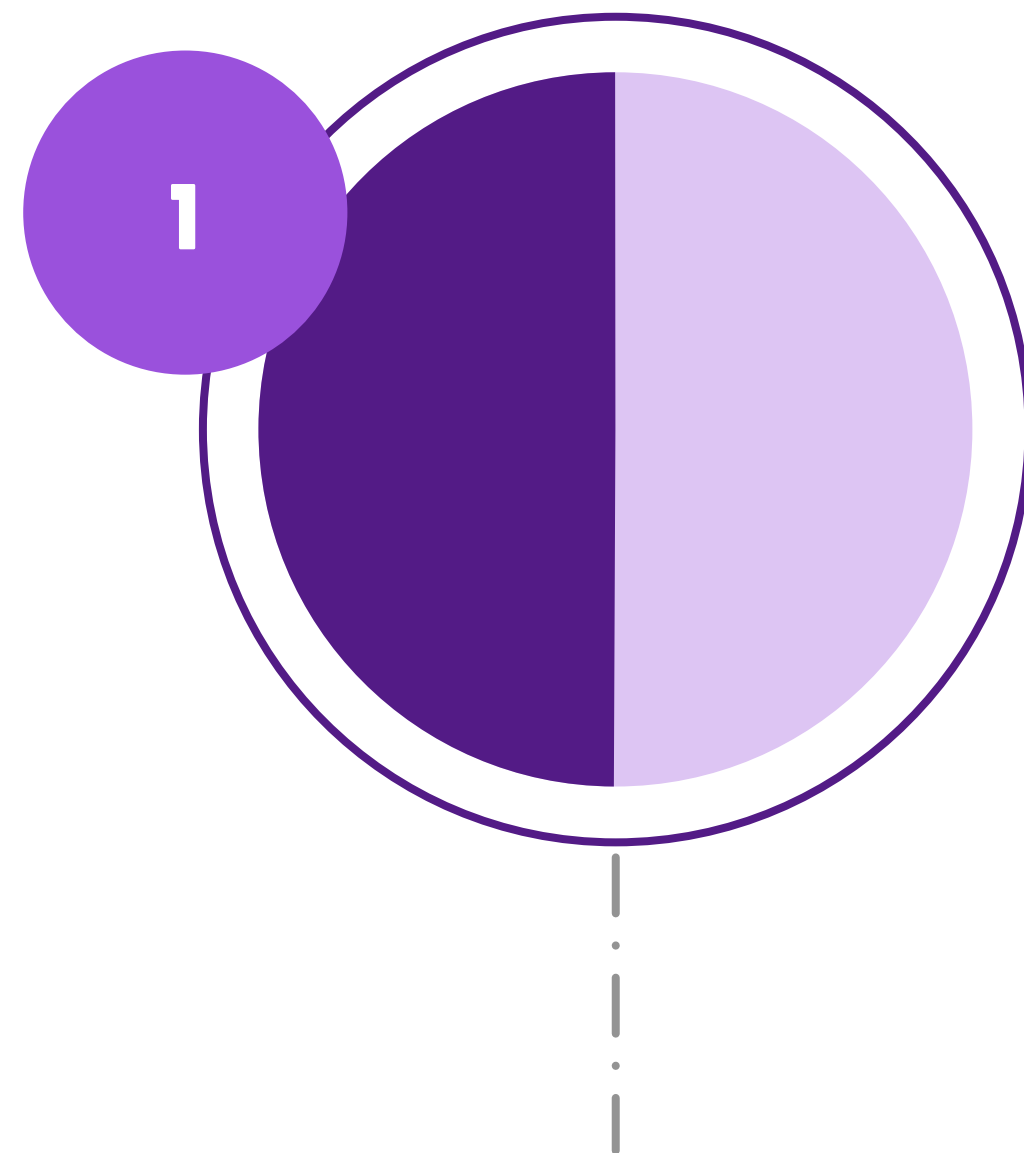
## Plausible view

**If the view taken by the arbitrator is a plausible view court should not interfere.**



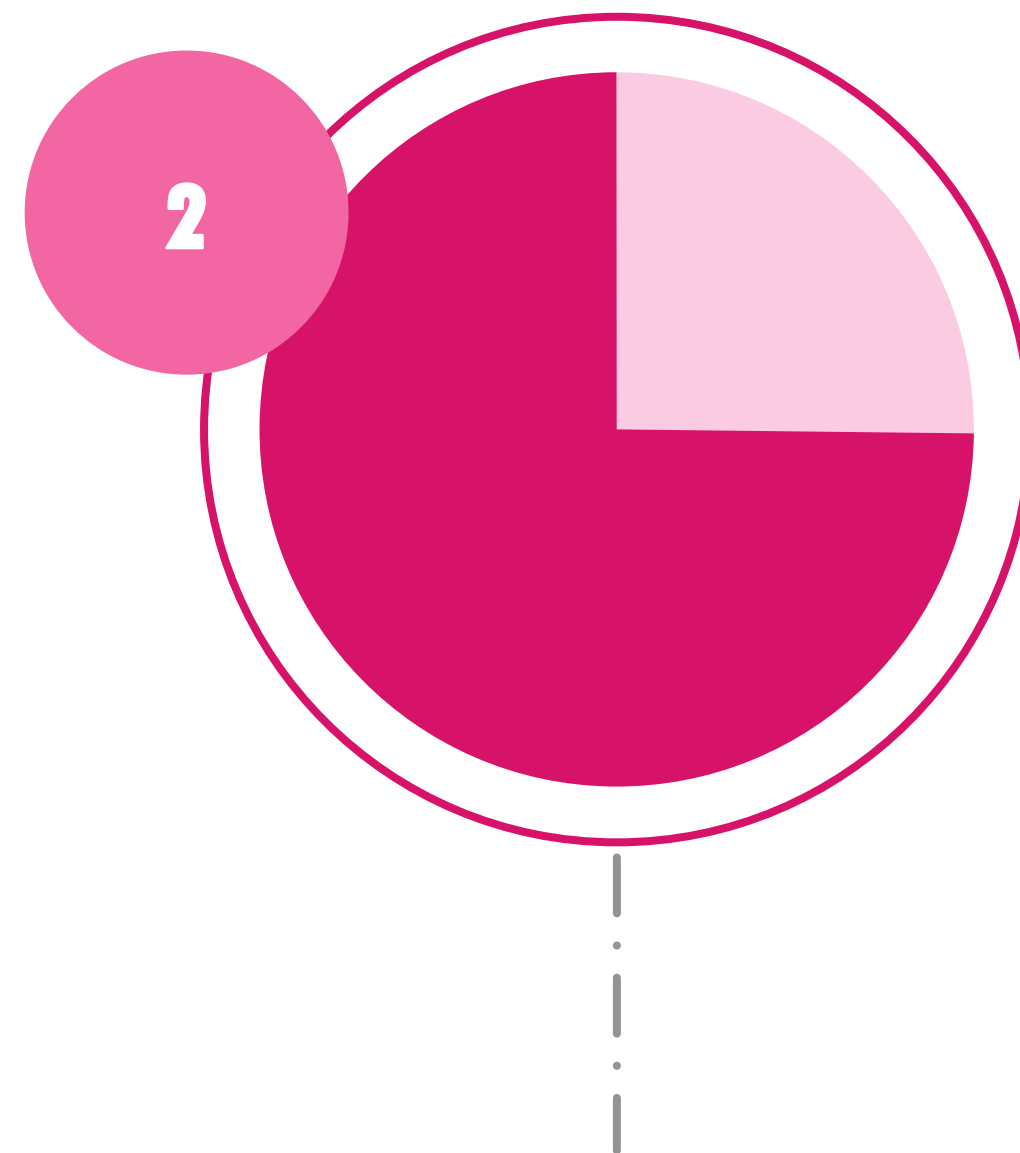
# When award can be set aside?

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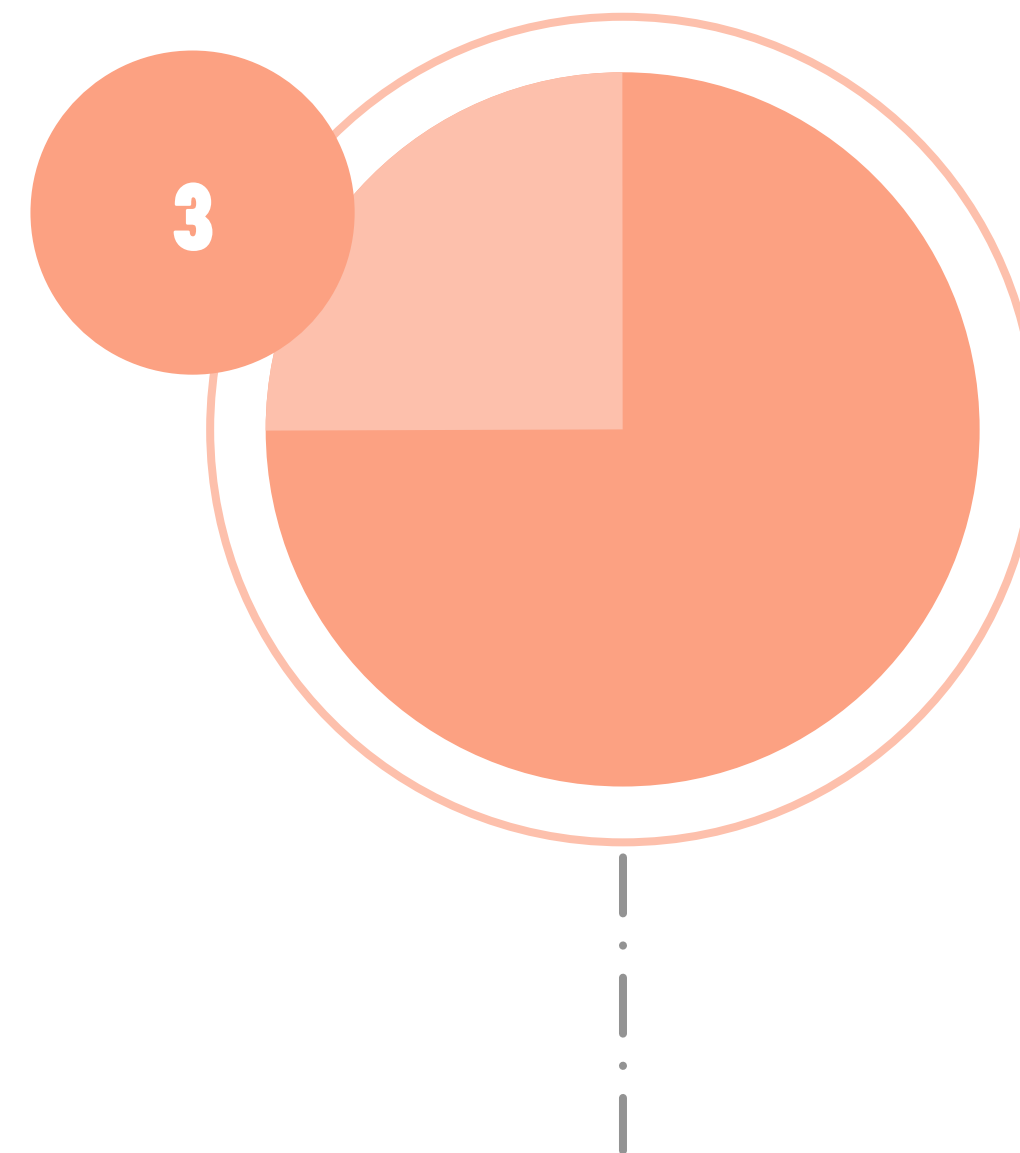
## Perversity

If the findings of the arbitrator is perverse.



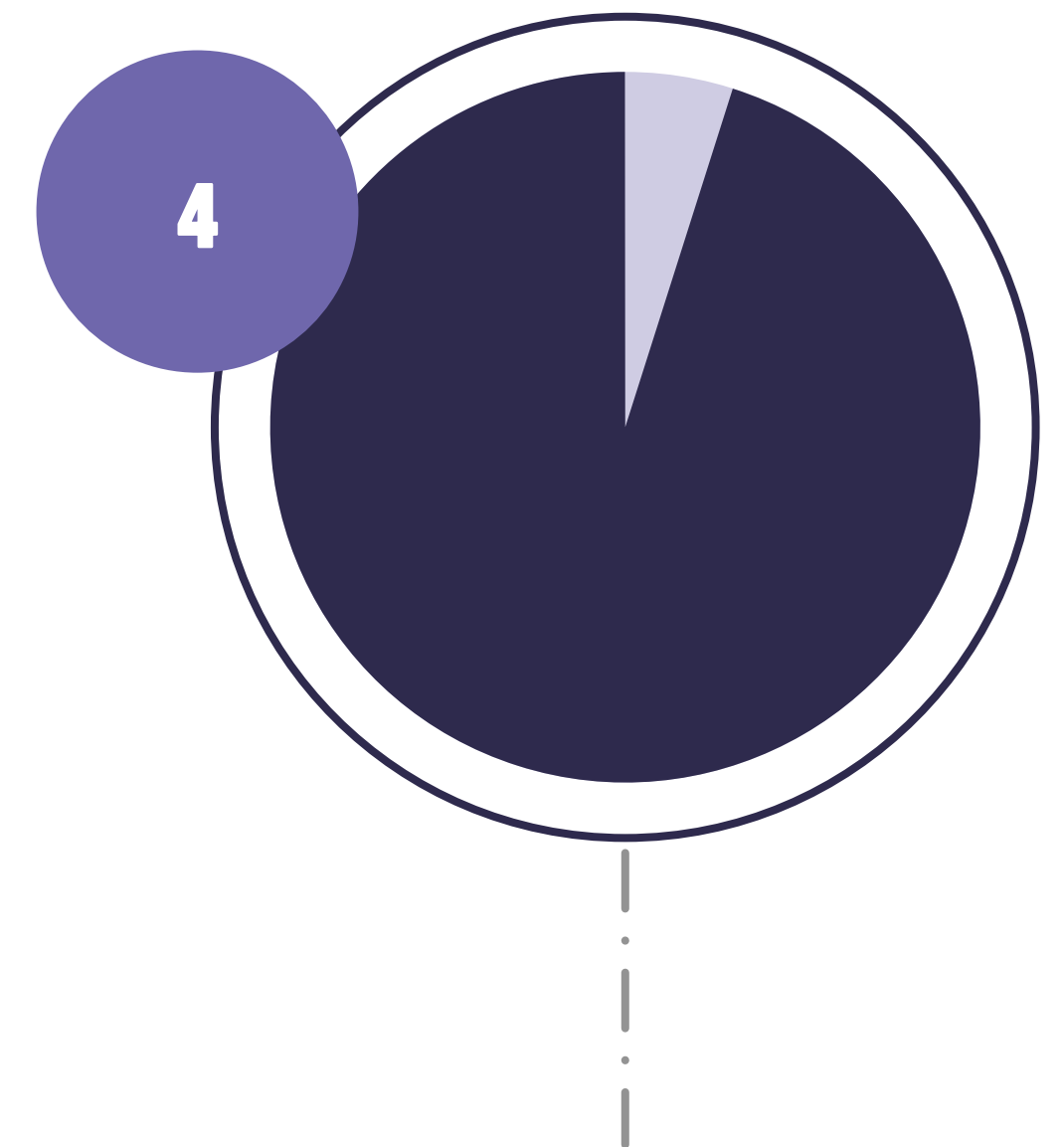
## Technical grounds

Incapacity, improper notice, beyond reference, arbitrability, AT formation ignoring contract.



## Ignoring the Contract

If the Arbitral tribunal ignores the contract provisions of the contract between parties.

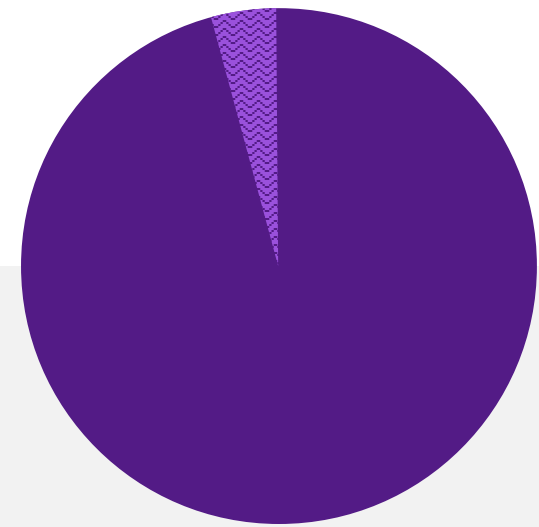


## Public Policy

Public Policy as explained by the Courts in India.

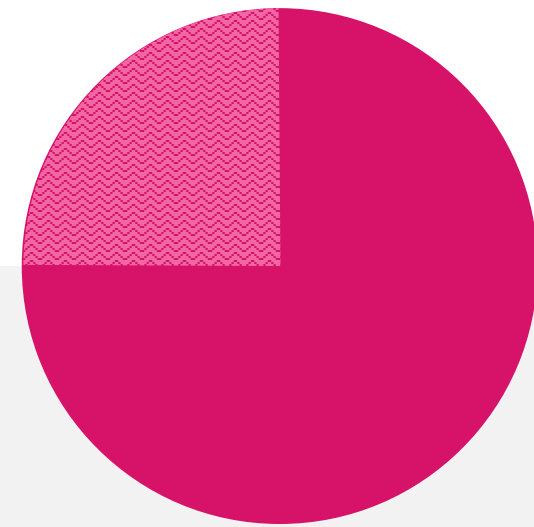
# Fundamental Policy of Indian Law

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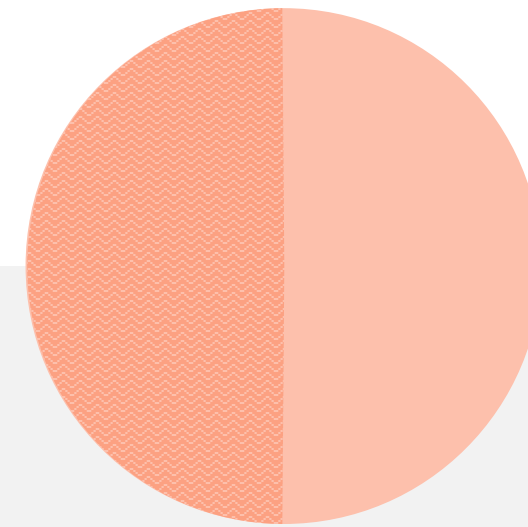
## **Legal compliance**

**Award should be compliant with statutes and Judicial precedents.**



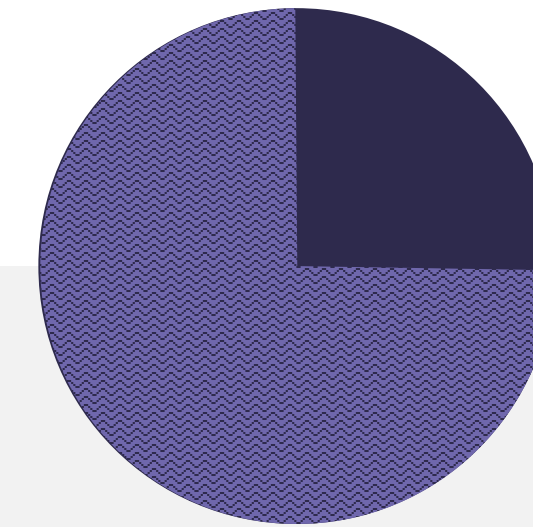
## **Judicial approach**

**Award should be fair, reasonable and objective.**



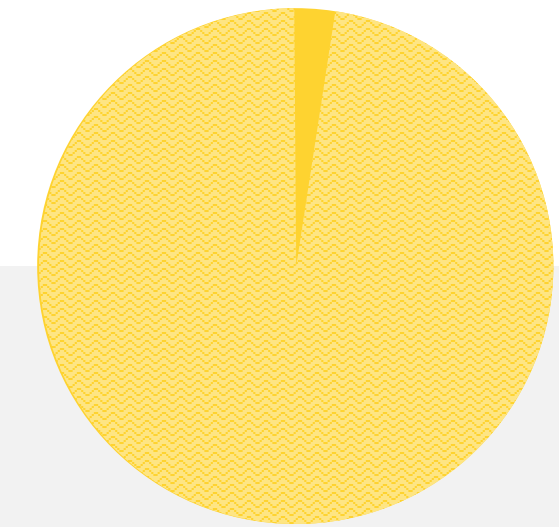
## **Natural Justice**

**Following the fundamental rules of natural justice.**



## **Wednesbury reasonableness**

**Perversity. Finding on no evidence or irrelevant evidence or ignoring evidence**



## **Judicial Morality**

**Following Judicial Approach to the disputes.**

# Patent Illegality

8

## Substantive Law

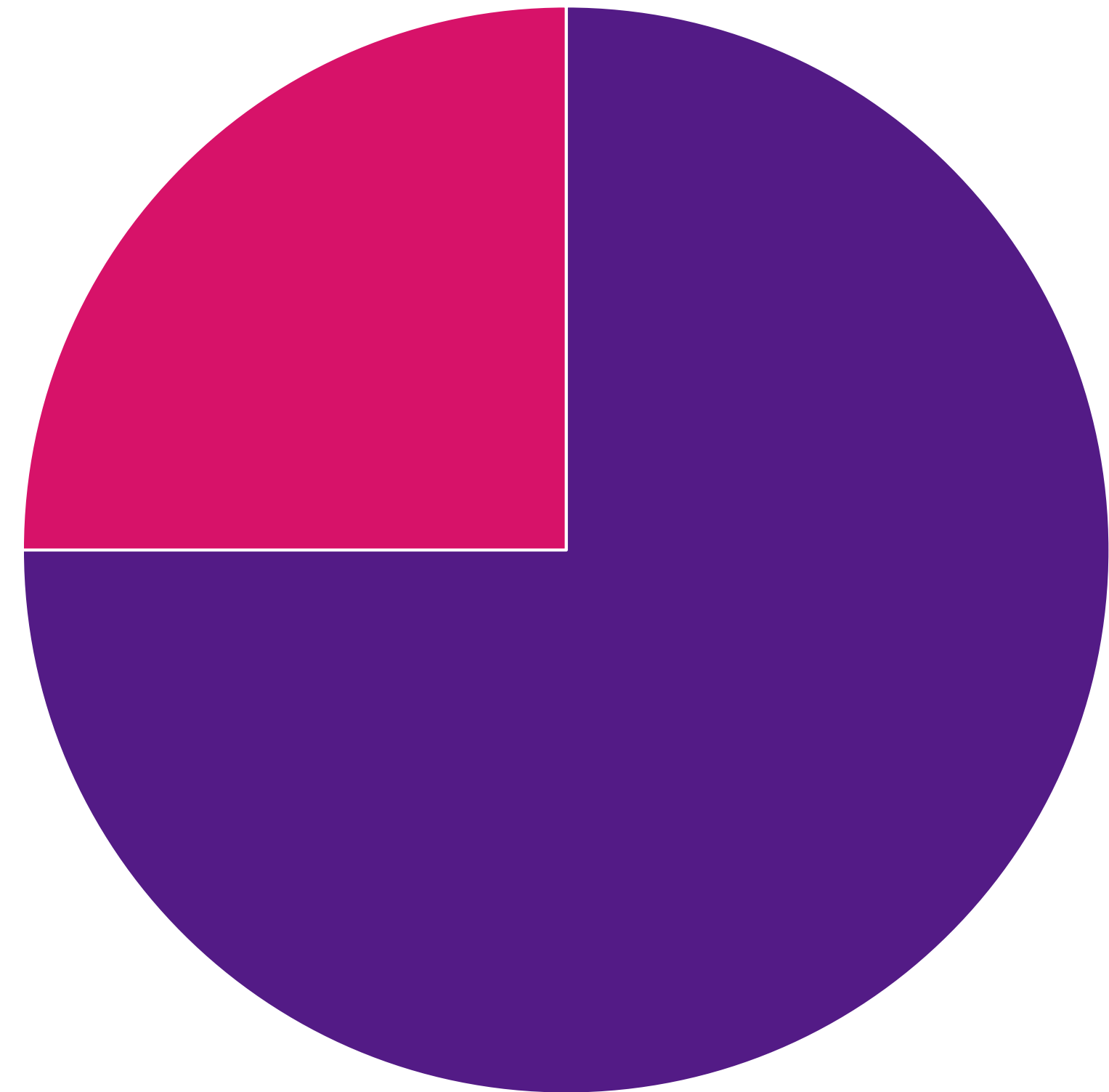
Award should not violate any substantive law of the country.

## Procedural Law

Award should not be violative of Arbitration and Conciliation Act, 1996.

## Contract

Award should not be violative of the contract provisions



# Online Arbitration

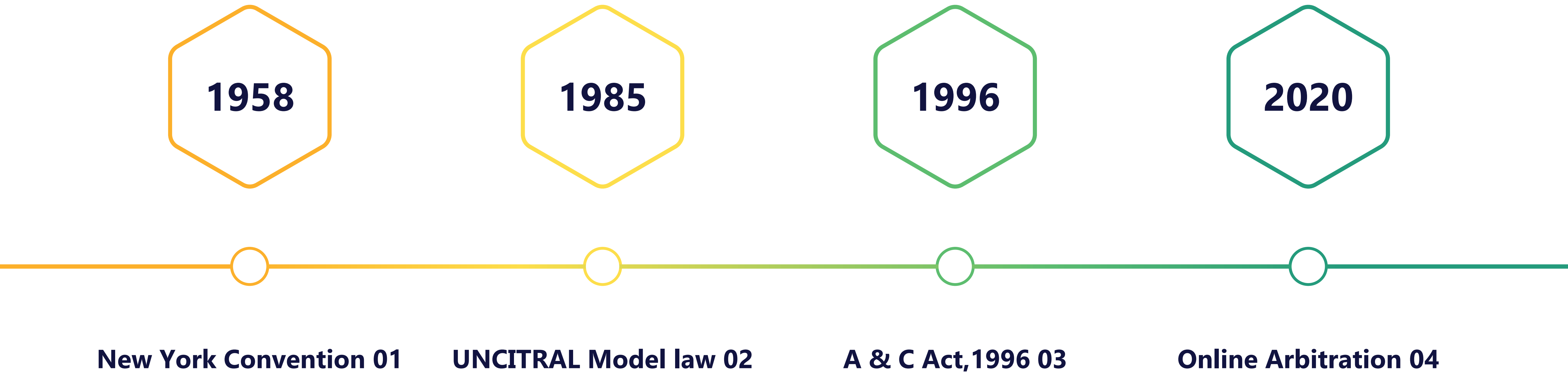
Under IDAC India Rules



## Increasing International Trade

Globalization of business has increased the requirement of less cost dispute resolution to help the small and medium enterprises. One of the emerging dispute resolution method is “Online Arbitration”

# Development of Arbitration

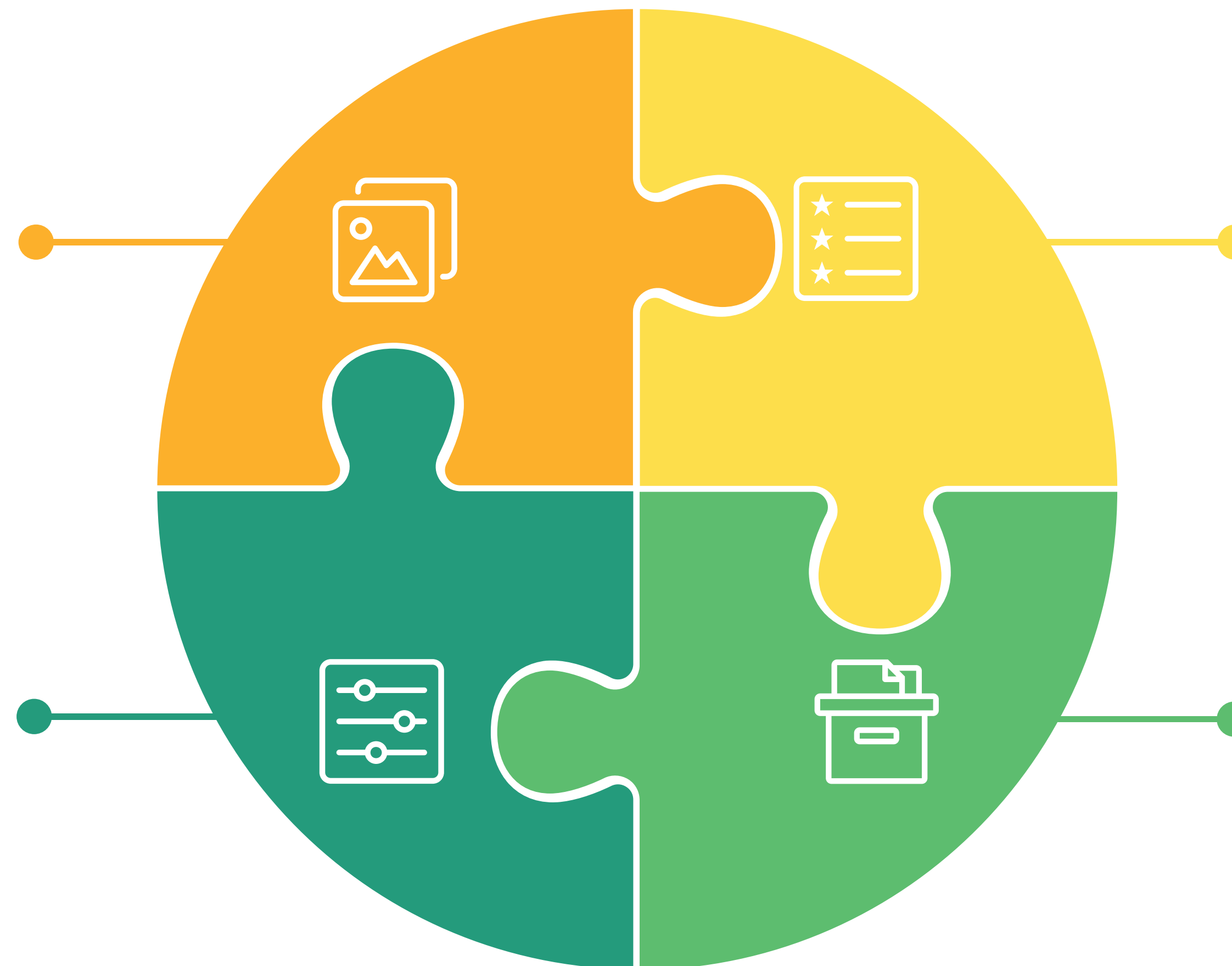


# Online Arbitration Framework

## Global Institutions

**WIPO**  
WIPO online dispute resolution resolves disputes relating to domain name disputes globally.

**UNCTD 2003**  
United Nations Conference on Trade and Development created a base paper on Electronic Arbitration.



**China Guangzhou**  
In China CIETAC & China Guangzhou Arbitration Centers have online Arbitration Process.

**UK European Consumer Centre**  
This online arbitration center provides online resolution process for consumer disputes in UK & entire Europe.

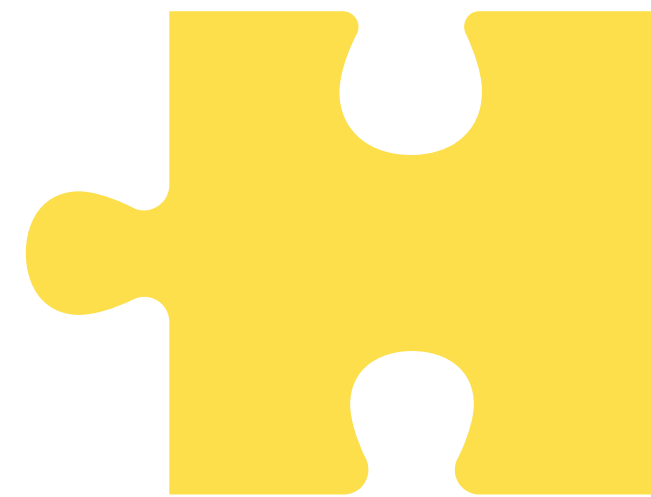
# WIPO Model

## Online Arbitration for domain name disputes



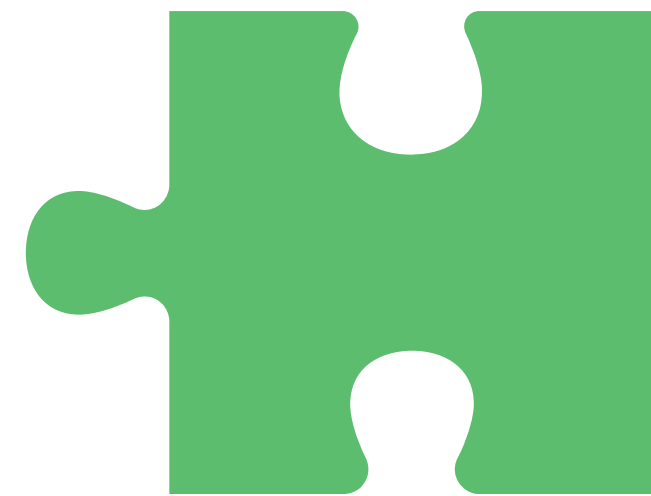
Rules: Uniform Domain name Dispute Resolution Policy as adopted by Internet corporation for assigned names and numbers (ICANN)

A



Disputes: Where domain names are confusingly similar, When domain names are registered and used in good faith & legitimate rights over the domain names.

B



Complaints are filed online, Responses are received online, Evidences produced online, AT decides after hearing parties, no oral hearing. Decision is final

C



If Court Proceedings are initiated by any of the parties then the process would be suspended or terminated.

D



# IDAC India Model

## Online Arbitration Process



### Notice of Arbitration

Notice of Arbitration is to be sent by email or hard copy request to IDAC India



### Completion of pleadings & Hearings

Filing of Claim, Statement of defense and all other activities happen online.

### Appointment of Arbitrator

Appointment of Arbitrator is done jointly by parties/ IDAC India and provides online Access.



### Award

Award is finalized by the arbitrator and IDAC provides copies to the Parties .



# Appointment of Arbitrator

Under IDAC India Rules

## Panel

IDAC India has a panel of trained Arbitrators



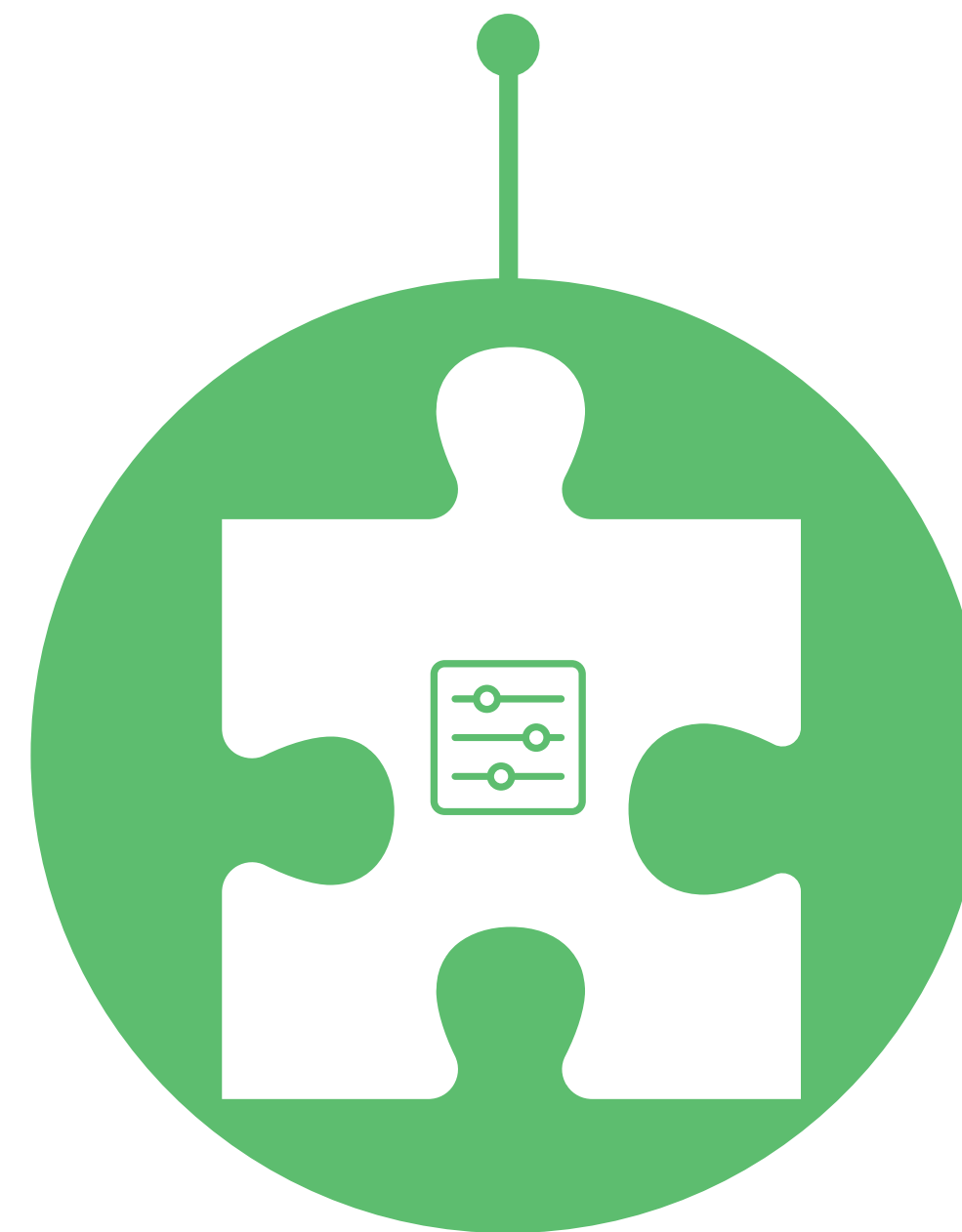
## Declaration

If respondent does not agree to any one of them, then IDAC will select one and seek declaration.



## Claimant Proposal

Claimant can select five names from the panel and send it to IDAC and to Respondent.



## Arbitrator appointment

After circulating the declaration to parties, the appointment shall be confirmed by IDAC India .

# Hearing Procedure

Under IDAC India Rules

## ● Filing of Documents & Pleadings

Using their login details parties should upload the documents in the case window. One hard copy shall be sent to IDAC India office.

## ● Evidences

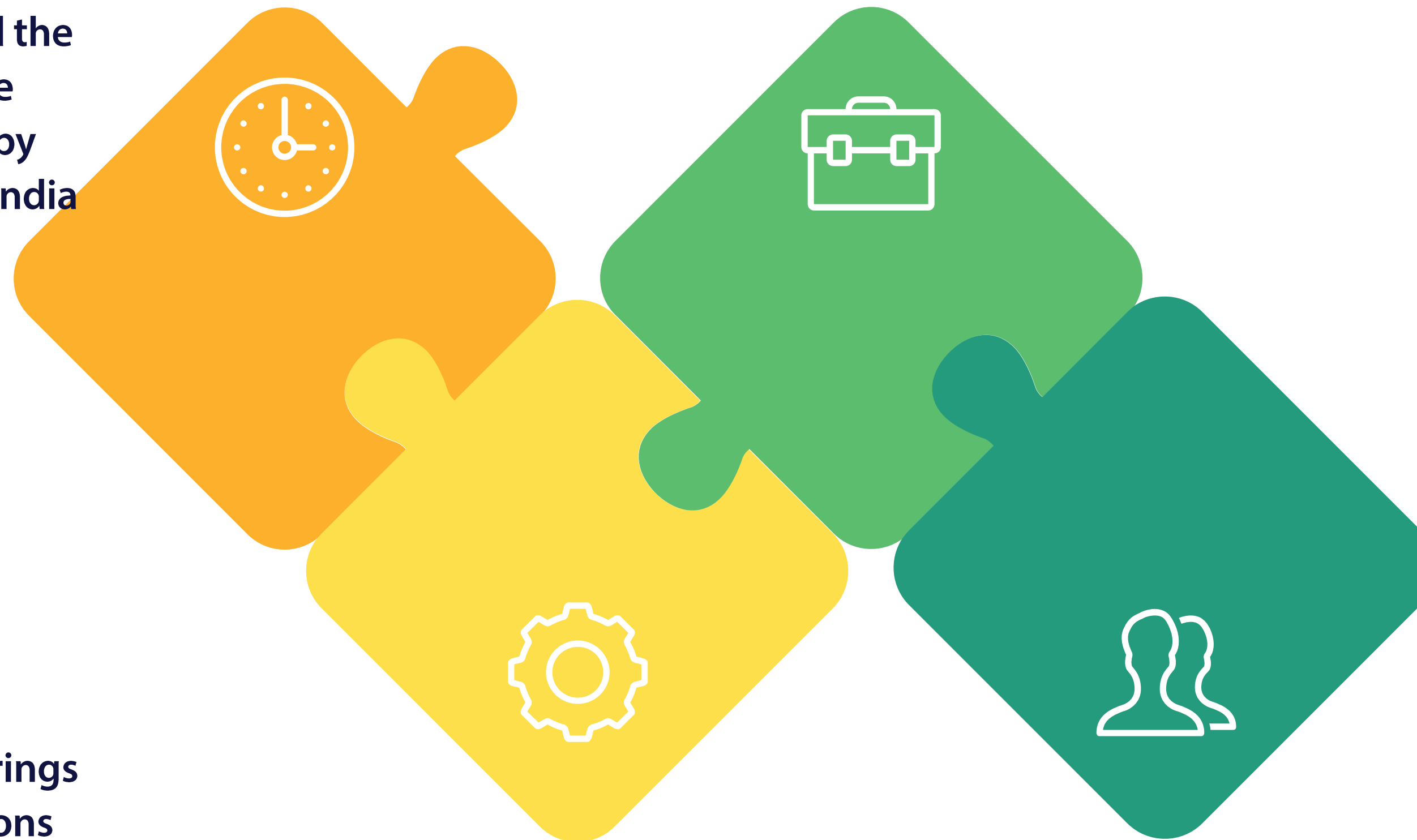
No oral evidence hearings are allowed. Arbitrations will be document only arbitrations

## ● Oral Hearings

In special cases, arbitrator may allow, online oral hearings by video conferencing

## ● Written Arguments

Arbitrator shall seek parties to file written arguments on the issues finalise in consultation with Parties



# Award & Seat

WRITE YOUR SUBTITLE HERE

## Seat

Arbitrator will follow the seat and laws provided by the parties in the agreement. If no seat is selected Delhi will be the default seat

## Fee Schedule

Fee Schedule is much cheaper than the Fee schedule Provided in the Act (30% of the Schedule Fee)

## Applicable Laws

Applicable laws are selected by parties, if not Indian laws are applicable laws.

## Enforceability

The seat chosen by the party if it is a New York Convention seat, it is enforceable all over the World.



# Advantages of online Arbitration

## Convenience

Parties can conduct the case sitting their own places and under the pre-determined Procedure.

## Less Cost

The travel costs, legal costs & arbitration costs are much lower.

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## Enforceable Award

Since there is no bar for online arbitration, New York Convention can be applied.

## Faster resolution

Most of the cases will see the final award within 6 months from the date of formation of the Arbitral tribunal.

Thanks