

EVOLUTION OF ARBITRATION IN INDIA

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ABSTRACT

Alternate Dispute Resolution (ADR) generally means settling outside the court. It reduces the burden on litigation. ADR has both wider and narrow concepts, the wider concept talks about the techniques that how to throw ADR people can come to a fair conclusion, some of the techniques are: - Negotiations, Mediation, Arbitration, and Conciliation. Alternate dispute resolution has its advantages some of them are that they are cost-effective, less time taking, details of the matter are kept confidential and generally, most of the parties are satisfied by the decision taken under ADR. In this paper, we will be discussing how Arbitration can be a beneficiary technique for resolving the dispute.

For discussing any concept we have to learn about its beginning its functioning and what opportunities it has in the future and the same we will be doing with our topic Arbitration we will learn about its evolution its presence in India and what opportunities it can produce in future for India. In this paper we will be discussing the arbitration and conciliation act of 1996 and the amendment brought in the year 2015 and 2019, will also talk about the concept of Arbitration in India before independence and some landmark judgment made by Hon'ble courts for the betterment of Arbitration in India.

Keywords: Arbitration, Alternate Dispute Resolution, Negotiations, Mediation, Civil Disputes, Mechanism.

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INTRODUCTION

Before starting the concept of arbitration we have to learn about ADR from where the term arbitration evolved. Alternate dispute resolution generally means settling outside the court it reduces the burden on litigation. ADR has both wider and narrow concepts the wider concept talks about the technique that how through ADR people can come to fair conclusions, some of the techniques are: Negotiation, mediation, conciliation, and arbitration. ADR only functions for civil disputes.

ADR has some of its advantages It is cost-effective, it is less time taking unless like court where for solving a case it takes 10 or more years, if the court has not given his final decision on a case and if the parties are not satisfied with the procedure of the case they can choose ADR, Details of the matter are kept confidential and generally the parties are satisfied by the decision taken under ADR. Arbitration is one of the techniques of ADR, arbitration is binding in nature and it gives awards to the parties. Arbitration generally tries to settle the disputes between the parties on amicable terms. During the process of arbitration, a neutral party (third party) is also present to settle the dispute between the parties known as an arbitrator. The outcome of the proceeding is known as the 'arbitral award'. Arbitration is one of the mechanisms of ADR which encourages to settle of the dispute outside the court where the parties mutually appoint a third party whose decision is binding. The hearing of arbitration is very simple and small the parties present Have to show their evidence in support of their argument and after hearing the argument the arbitrator(third party) Gives his judgment in favour of one party the arbitrator acts like a judge in the proceedings of arbitration. At present where time is scarce, Arbitration can be helpful for people for solving their civil disputes because the decision can be taken quickly unlike the courts.

EVOLUTION OF ARBITRATION IN INDIA

Before Independence, the Arbitration act of 1899 prevailed, which was only confined to three states that were Bombay, Madras, and Calcutta. Afterward, arbitration was codified in section 89 and Schedule II of Code of Civil ¹Procedure 1908. According to section 89 of schedule II of code of civil procedure the proceedings of arbitration was extended to all region of British India. After that, the Indian Arbitration law evolved so that it would become the arbitration

¹ Section 89 & Schedule II of Code of Civil Procedure, 1908.

hub, so it developed a strong alignment with other foreign arbitration laws. As the scenarios changed the Indian arbitration law also started evolving and became Indian Arbitration and conciliation (Amendment) 2019. The changes and amendments that were brought were as follows:-

- The Arbitration act of 1899 and the provisions of the code of civil procedure of 1908 were considered technical and injudicious. So a new act of 1940 was enacted but it only dealt with domestic matters and was considered unsuitable for giving the foreign award and was far from satisfactory. Justice D.A Desai in *Guru Nanak Foundation v. Rattan Singh*² showed his concern for the ineffective working of the Arbitration act 1940 as it didn't deal with the foreign award, so a separate law was enacted as Foreign Award, 1961 under Geneva Convention but the working of 1961 legislation was considered as judicial intervention. In 1977 the act of 1940 was questioned and was remarked as a loophole which needed serious attention so the law commission decided to make some amendments so that's how The Arbitration and conciliation act of 1996 was enacted based on United Nation International Commission On International Trade Law(UNICTRAL).
- In 1991 major economic reforms were taken so that it would attract foreign investors to the country and help in ease of doing business, for this reason, the Arbitration and conciliation act of 1996 was introduced which was based on modern law (UNICTRAL), the Arbitration act of 1940 was repealed. The major goal for enacting the arbitration and conciliation act of 1996 was to boost the confidence of foreign investors in ease of doing business in India. But this act also faced backlash as the Supreme Court of India in *Bhatia International v. Bulk Trading SA & Anr.* held that Part 1 of the 1996 act³ will apply on the Arbitration sitting outside the country Unless it is expressly or impliedly excluded. After that many cases came across the Supreme Court where foreign arbitration was held accountable. This decision by Supreme Court was not welcomed by the people and it was termed as regressive as it was interpreted as a judicial intervention in foreign arbitration. After decades of dilemma the honorable Supreme Court of India in *Bharat Aluminum And Co. v. Kaiser*

² *Guru Nanak Foundation v. Rattan Singh* 1981 AIR 2075, 1982 SCR (1) 842

³ *Bhatia International v. Bulk Trading SA & Anr* [2002] 4 SCC 105

*Aluminum And Co.*⁴ held that Part 1 and 2 of the act are mutually exclusive, the impact of BALCO was that the court in Asian nation couldn't entertain application below section 9 of the act of foreign sitting arbitration that was ruled by half of part 2 of the act. However, the arbitration and conciliation act of 1996 suffered numerous Issues as well as high prices and an excessive amount of intervention by the court. And in most cases, the prices of arbitration were much higher than that of litigation.

- Seeing the ineffective working of the arbitration and conciliation act of 1996 the ministry of law invited prominent judges, legal experts, and jurists to discuss the functioning of the act of 1996. The arbitration and conciliation act of 2015 were made and some amendments were made for the act of 1996. These amendments were made for the easement of people and how India can become the hub of arbitration. Amendments were made in section-2,9,17,34,
- The uncertainties and Eventualities which were brought by the act of 2015 were resolved by the arbitration and conciliation act of 2019 the main objective of this amendment was to have an effective arbitration structure and promote institutional arbitration. Some of the farmer's crucial amendment square measure as follows:-
 - Arbitration Council of India was introduced for the advancement of varied sorts of different dispute resolution like conciliation, mediation, and arbitration to market institutional arbitration within the country
 - A mandatory grading of mediation establishment by the ACI was additionally introduced. A fundamental quantity of 30 days for the appointment of AN intercessor, from the date of acceptance of the request, by the mediation establishments was additionally created mandatory.
 - The 8th schedule was additionally inserted that provided varied norms, qualifications, and experience for endorsement of arbitrators, Section 29 was amended to change the timelines for completing the method of arbitration as a step toward a swift resolution.

⁴ Bharat Alminium And Co.v. Kaiser Alminium And Co. Civ App 3678 of 2007

PRESENT SCENARIO OF ARBITRATION IN INDIA

Recent developments in arbitration include shorter deadlines and less time spent resolving disputes, promoting institutional arbitration, discouraging filling featherbrain submissions, narrowing the scope of court participation at both the pre-arbitration and post-arbitration stages, and arbitration becoming cost-efficient. Through enabling ministries to use a Fits arbitration award, the manager hopes to carry inefficiencies in arbitration involving government bodies. The party's area unit is free to choose the process by which the issues are to be resolved by choosing trial and hearing times from a list of dates. In conflicts concerning technological issues, the parties will choose an intermediary that will provide them with expert intelligence. India amends the arbitration legislation to provide for social regulation of corrupted prizes and the credentials of intercessors. On November 4, 2020, the Government of India passed the arbitration and conciliation reform ordinance 2020 ordinance, which amends the act with immediate effect. The ordinance has measures to maintain social oversight of corrupted arbitrational awards and to exclude those provisions from the act governing arbitrators.

LANDMARK CASES ON ARBITRATION

*In Uttarakhand Purva Sainik Kalyan Nigam Ltd. v. Nothern Coal Field Ltd.*⁵

In this case, relying on the kompetenz-kompetenz conviction, The Supreme Court mandated that the issue of restriction be decided by an associate in the nursing arbiter, as stated in section 16 of the arbitration and conciliation act 1996, and hence the statutory aim to restrict judicial interference at the reference point. It further reaffirms that the Arbitration Act's statutory purpose is to promote party sovereignty and minimize judicial intervention in the arbitration process. It was discovered that the Arbitration Act stipulates that if an associate of nursing arbiter has been selected, the arbiter is responsible for resolving any objections and issues. "The Supreme Court found that the matter of restriction may be a geographical one that should be decided by the arbiter under section 16 of the Arbitration Act, rather than by the tribunal at the pre-referenced age under section 11 of the Arbitration Act. The Supreme

⁵ Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Nothern Coal Field Ltd (Special Leave Petition (C) No. 11476 of 2018)

Court found that if the arbitration arrangement isn't relevant, the arbiter would resolve all conflicts, including the territorial dispute.”

***Hindustan Construction Company Limited & Anr. v. Union of India & Ors*⁶**

In this case, “the Supreme Court of India (SC) handed down a landmark decision in the case of Hindustan Construction Company Limited & Anr. v. Union of India & Ors. On November 27, 2019, in which the substantive validity of Section 87 of the Arbitration and Conciliation Act, 1996 (Act) was questioned, among other things.”

A major concern under the Act was that an award debtor's motion for setting aside the award, brought under section 34, resulted in an immediate stay of the award's enforcement³. This seemed to be at odds with the concept of arbitration, which is to be a fast and effective alternative conflict settlement process. As a result, before the setting aside petition was eventually decided, an award winner did not know the sums due under the award.

The above dichotomy, among others, was intended to be rectified by the 2015 Amendment Act, which allowed the award debtor to submit a separate application requesting a stay against the execution of the award under section 36(3). The court can grant the requested stay if certain requirements are met, such as the deposit of the award number. Soon after the 2015 Amendment Act went into effect, concerns emerged over its applicability, namely whether it applied retroactively or prospectively. Companies who had won arbitral awards in their favor were uncertain if the awards were enforceable or whether they would be subject to an automatic stay in the months that followed. As a result, section 26 of the 2015 Amendment Act, which dealt with its applicability, was scrutinized by several courts throughout the world. In the meanwhile, the Srikrishna Committee Report⁴ in 2017 acknowledged the uncertainty. According to the paper, clarity can be achieved by clarifying that the 2015 Amendment Act is prospective.

CONCLUSION

This paper generally talks about Alternate dispute resolution (ADR) and its mechanisms and stresses on its one mechanism which is Arbitration. While Arbitration is very well known for the rest of the world its development in India started in the pre-independent era but

⁶ Hindustan Construction Company Limited & Anr. v. Union of India & Ors. WP (Civil) No. 1074 of 2019

according to the time the changes were brought on laws that were outdated or were irrational because it was not approachable. New laws and amendments were made and still, these amendments are made because the laws cannot be stagnant amendments will be made because of dynamic time. ADR and its mechanisms Arbitration tries that the people do not go with lengthy proceedings of courts and rather opt for Arbitration and solve their disagreement of a civil dispute with these mechanisms. And in the coming time surely more people will choose Arbitration as its binding in nature and it gives the arbitral award, and people can trust on it and India will become a hub for Arbitration as panchayats are very active in villages and the working of panchayats is same as Arbitration. As this method of solving civil dispute can be helpful for courts as these small cases take a lot of time of the court and this burden can be pulled off from the courts and they can lay attention to major cases which need their attention. All these civil court disputes can be solved in arbitration, arbitration is used in Labour disputes, business and consumer disputes, and family matters, and arbitration can also take up the cases for the dispute in property or money or breach of contract.

