BURNISHED LAW JOURNAL

ARBITRATION SYSTEM IN INDIA: A CONCISE STUDY OF ITS ESSENTIAL COMPONENTS

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INTRODUCTION

The period of industrial revolution initiated an era of commerce and trade. To correspond with the economic growth and avoid prolonged litigation, the parties resort to **ARBITRATON** as the preferred dispute resolution mechanism. Arbitration is one of the oldest systems of alternative dispute resolution to the traditional state administered court litigation. There are instances of arbitration in the earlier times as well, like – during the era of **King Solomon, he used to settle out trivial disputes occurring amongst their people**.[1] **Aristotle said that, 'the best approach to settle down a dispute is to go by the way of arbitration rather than by the going through the judicial process, because in arbitration the sole purpose is to look for equity (while figuring out the issue) but this is not the case with judiciary, as it only rely upon codified aspects of law'**.[2]

According, to the stats[3] provided by the **National Judicial Data Grid, it shows that the number of cases pending in the Indian courts reaches an astonishing figure of 3 crore and there are many cases which are pending from the past 15 to 20 years that are going completely un-noticed**. It is a serious threat to the social security of the country. These statistics reveal that the Indian courts are understaffed, meaning bottlenecks and the delays are endemic. Now, to quote a common legal saying i.e. – **'justice delayed is justice denied'**, is what the proper thing that

[1] FRANK D. EMERSON, HISTORY OF ARBITRATION PRACTICE AND LAW 155 (Marshal Publish House 1970).
[2] ARISTOTLE, RHETORIC 26 (Stanley Frost 2013).
[3] NATIONAL JUDICIAL DATA GRID, https://njdg.ecourts.gov.in/njdgnew/index.php (last visited Mar. 27, 2020).

explains the present situation of the Indian legal system. When the judiciary of the country is not able to effectively resolve the disputes, it is where the concept of Arbitration kicks in and portrays its intrinsic qualities which makes it a very useful dispute resolution tool in the present times.

Evolution of the Arbitration Law in India

India has had a very renowned and ancient history of arbitration. Before the arrival of Britishers in India, village elders or the Panch's (in a panchayat) used to settle the disputes between the conflicting members of the village. Even the ancient texts of **Narada** and **Yajnavalka** gives references about three types of courts i.e. **Kula, Puga and Sreni**, that used to resolve disputes via Arbitration.[4] In the British Era, the **Bengal Regulation Act of 1772, 1780, 1781** and the **Cornwallis Regulation of 1787** recognized and encouraged Arbitration. However, it was finally in 1859 that the **Civil Code of the Courts** was codified with provisions for arbitration, though there was no notable change in the law relating to arbitration until 1899 when the **Arbitration Act, 1899** was enacted. Then, in 1908, the **Civil Procedure Code** was amended which expanded the scope of Arbitration to the whole of British India and not just to the Presidency towns.[5]

After this, the laws governing Arbitration mechanism in India was fragmented into different other enactments like – the **Indian Arbitration Act, 1940 (supervising the domestic arbitration)**, the **Arbitration (Protocol and Convention) Act, 1937** and the **Foreign Awards (Recognition and Enforcement) Act, 1961**. To correct the loopholes pointed out by the **Law Commission of India in 1977**, the **Arbitration and Conciliation Act, 1996**, based on the **1985 United Nations International Commission on International Trade Law (UNICTRAL)** was enacted that proved to be a mile-stone in the history of Indian arbitration and till now it has amended twice i.e. in 2015 and then in 2019.[6]

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[4] Bibek Debroy and Suparna Jain, *Strengthening Arbitration and its Enforcement in India – Resolve in India*, NITI-AYOG WRITE A DATA (Mar. 28, 2020, 11:23 AM), https://niti.gov.in/writereaddata/files/document_publication/Arbitration.pdf.

[5] Shaneen Parikh, *Arbitration in India – A Story of Growth and Opportunity*, CYRIL SHROFF (Mar. 28, 2020, 12:05 PM), http://www.cyrilshroff.com/wp-content/uploads/2019/06/Arbitration-in-India-%E2%80%93-A-Story-of-Growth-and-Opportunity.pdf.

[6] Bibek, *supra* note 4, at 7.

Kinds of Arbitration in India

There are various kinds of arbitrations depending upon the terms, subject matter of the dispute and the law governing the arbitration agreement. For example, on the basis of jurisdiction, Arbitrations are classified into three kinds:[7]

1. **Domestic Arbitration.**
2. **International Arbitration.**
3. **International Commercial Arbitration.**

However, the most important ones are **Institutional Arbitration** and **Ad-hoc Arbitration** that are majorly practiced and followed in India.

a. **Institutional Arbitration --** In an institutional arbitration, the parties may specify in the arbitration agreement, to refer the disputed differences; to be determined in conformity with the procedures designated accordingly by the arbitral institutions such as **Indian Council of Arbitration (ICA)**, **Federation of the Indian Chambers of Commerce and Industry (FICCI)**, etc. The arbitration is conducted in accordance with the rules framed by each of these institutions. These institutions have fixed arbitration fees, administrative expenses, qualified arbitration panel, rules governing the arbitration proceedings, etc. which helps in the smooth and orderly conduct of arbitration proceedings. The recent legislative amendments to the Arbitration Act, 1996, including in particular the amendments in 2019, encouraged for more and more institutional arbitration.[8]

b. **Ad-hoc Arbitration --** In an ad-hoc arbitration, the parties themselves agree and arrange for arbitration. It means that either the procedure is agreed upon by the parties or in the absence of an agreement, the procedure is laid down by the arbitral tribunal. In such a kind of arbitration, if the parties are not able to nominate an arbitrator by consent, the appointment of arbitrator is made by the **High Court (in case of the domestic arbitration)** and by the **Supreme Court (in case of the International Arbitration)**.[9]

[7] F. Peter Phillips, *Arbitration in India*, MEDIATE INDIA (Mar. 26, 2020, 9:46 AM), https://www.mediate.com/articles/PhillipsPbl20130510.cfm.
[8] UKDISS, https://www.ukdiss.com/examples/arbitration-in-india.php (last visited Mar. 26, 2020).
[9] *Id.*

Arbitration methodology and procedures followed in India

The Indian system of arbitration found its origin from the Arbitration and Conciliation act, 1996 (as discussed above) which provided a strong legal back-hold for the foolproof establishment of the Arbitration mechanism in India. The act is divided into three parts and seven schedules and then further into chapters and articles respectively. The primary arbitration mechanisms are mentioned in Part-1 of the act i.e. **Appointment of arbitrators**[10], **Interim measures**[11], **Commencement of arbitral proceedings**[12] etc.

The following heads are discussed below to clearly explain the working pattern of the arbitration proceedings:-

a) **Enforceability of the act –** For the proper implementation of the act and to achieve the desired results one should stick to the designated rules which have been mentioned under **Section 7**[13] of the act and some are formulated by the **Hon'ble Supreme Court of India** with help of various prominent cases like **KK Modi v. KN Modi**[14], **Smita Conductors Ltd v. Euro Alloys Ltd.**[15] etc. and they are as follows :-

- The agreement of arbitration must be properly signed and communicated amongst the conflicting parties.
- For the agreement to be valid there must be **'meeting of minds'** of the contracted parties i.e. must be **'ad idem'**.
- The agreement must be made considering the disputes that can occur between the parties or the disputes which have already occurred between them
- The contracting parties must admit through a written letter that they would be bound by the finding of the governing council.

[10] Arbitration and Conciliation Act, 1996, S 11, No. 26, Acts of Parliament, 1996 (India).
[11] Arbitration and Conciliation Act, 1996, S 9, No. 26, Acts of Parliament, 1996 (India).

[12] Arbitration and Conciliation Act, 1996, S 22, No. 26, Acts of Parliament, 1996 (India).

[13] Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).
[14] KK Modi v. KN Modi, AIR 1998 SC 1297.
[15] Smita Conductors Ltd. v. Euro Alloys Ltd., (2001) 7 SCC 728.

- The parties must have a prior intention to seek out a dispute with the help of the arbitration proceedings.

b) **Arbitrability of the dispute –** A pre-requisite for the proper application of the rules laid out in the act is to check whether a certain dispute is arbitral or not, for which the courts in India have come up with two basic tests i.e. Firstly, **the mentioned dispute must be of the nature that it can be adjudicated in consonance with the India arbitration laws** and Secondly, **the dispute should be in accordance with the arbitration agreement.**
Then, the disputes that are specifically related to **'rights in rem'** are considered incompetent for the arbitration proceedings like, for example – **disputes relating to grave cases of fraud, disputes taking place under various legislations covering the employment and labour laws, disputes associated with guardianship laws etc.**[16]

CONCLUSION

The present day economic and commercial sectors of the country are in dire need of an infallible dispute resolution system (focusing specifically on arbitration mechanism) that would help to minimize the burden of the Indian judicial system and on the other hand making India a reputed location for the domestic as well as International arbitration proceedings.

Some of the best productive approaches that can be implemented are discussed below:-[17]

a. The arbitration mechanism in India should be properly dispersed by transforming it into a private working institution
b. A very crucial factor in establishing a proper system, requires for an appropriate engagement of the governmental administrative authorities by providing vocational and institutional training to the aspirants.

[16] Niti Dixit, Abhishek Tewari and Raunaq B. Mathur, *International Arbitration 2019 – India,* CHAMBERS AND PARTNERS (Mar. 29, 2020, 3:48 PM), https://practiceguides.chambers.com/practice-guides/international-arbitration-2019/india.
[17] Bibek, *supra* note 4, at 16.

c. The arbitration system should be modified in such a way that it stands at par with the all the other major arbitration institutions functioning around the globe, like it must be – cost effective and less time consuming; both at the same time.
d. Timely amendments and changes are one of the fundamental factors that can help the indigenous institutions to constitute a positive reputation in the global market.
e. One more path-breaking conversion that can be adapted by the system is to thoroughly discharge all the decisions made by the institution whether they are related to specific performance or with the enforcement of arbitral awards.

If the above described alterations are followed in the coming times with due resolve and with a positive spirit then India could easily emerge out as a commendable global arbitration leader.