VOLUME 3 | ISSUE 3

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

EVOLUTION OF ARBITRATION

- Akshat Mishra & Niyati Vishwakarma[1]

Abstract

The key contributor to the success of arbitration is the ever-evolving jurisprudence, specifically the development the law has witnessed since the turn of the millennium. In this article we look at the brief history of arbitration and its development in the Indian legal system retracing its steps from being 'another dispute resolution mechanism' to being the 'preferred dispute resolution mechanism'

Keywords: - Arbitration, Evolution, Development

What is Arbitration?

Arbitration isn't defined anywhere in the law or statute. For that reason , legal language, publications by famous scholars, and court pronouncements from multiple countries must all be used to interpret the explanation of arbitration. Through the verdict of Collins vs. Collins[2] ,the earliest interpretations of the word "arbitration" can be inferred, where Justice John Romilly describes arbitration as "a reference to the decision of one or more persons, either with or without an umpire, of some matter or matters in difference between the parties".

Arbitration can be summarised as a kind of alternative dispute resolution determined by a professional adjudicator, in which participant independence is important and private adjudicators' rulings are final.

History and Evolution Of The Arbitration

Globally

[1]B.A.LL.B (Hons.) 4th year, Jagran Lakecity University, Bhopal (M.P.)
[2]28 LJ CH 186

International business and trade have exploded as a result of industrialization. To keep pace with financial progress and prevent lengthy court proceedings, the sides agree with arbitration as their primary method of conflict settlement. Arbitration has shown to be a beneficial method forward for everybody, in not just India, but in all coherent worldwide economic plans and countries. Cross-border activities and multilateral commercial relations have encouraged nations to form alliances, which has increased legal complexities. Conflicts, of course, are unavoidable, so there is a desire for methods to speed up legal recourse.

Historical origins of arbitration may be dated directly to Emperor Solomon's reign, when he used biblical doctrine to resolve a conflict among two women who were both asserting the claim to a newborn boy, and the question was who would be the genuine mother of the newborn. Following that, monarchs utilised arbitration to resolve geographical conflicts as well as economic problems. Arbitration has been practised since well before the time of Christ, as per ancient records. There are sources that back up this assertion

In India

India had been involved in arbitration and had a long history associated with it, even before any written legislation was brought into force , and the notion of non-judicial conflict settlement was widely accepted in Indian society. Yajnavalka's writings allude to historic India's unique arbitration tribunals. Even India's panchayat system is regarded as being among the earliest systems of dispute resolution. Chief Justice A. Marten made the following observation when explaining about arbitration, “It is indeed a striking feature of ordinary Indian life. And I would go further and say that it prevails in all ranks of life to a much greater extent than is the case in England. To refer matters to a panch is one of the natural ways of deciding many a dispute in India. It may be that in some cases the panch more resembles a judicial Court because the panch may intervene on the complaint of one party and not necessarily on the agreement of both, e.g., in a caste matter. But there are many cases where the decision is given by agreement between the parties”

Hindu Law: Glimpse of ancient Arbitration

As per Hinduism, "Brihadaranyaka Upanishad" is one of the most timely, recognised treatises which refers to arbitration. It discusses several types of arbitration organisations comprising the

local tribunals 'Puga,' the individuals working with comparable companies or occupations 'Srenis,' and the 'Kulas,' who were individuals of the society concerned about social matters, all three were referred to as Panchayats. The members of the same were the Panchas, the then arbitrators, used to manage the dispute under a framework; we currently refer to as Arbitration. It has been seen that the disputes which were referred to the Panchas and the courts have been appropriately recognized and have received belief in the awards passed by them. The same was observed by the Privy Council in the case of Vytla Sitanna vs. Marivada Viranna.

The Modern Arbitration Law was enacted in India as early as 1772 by the Bengal Regulation Act of 1772. This was a consequence of the successful resolution of disputes amongst parties by choosing a tribunal. From there on, the same was declared to other administration towns such as Bombay and Madras through the Bombay Regulations Act of 1799 and the Madras Regulation Act of 1802.

Muslim Law

Abu Hanifa's commentary on Muslim Law, "Hadiya," is a methodical compilation of Islamic law. Hadiya establishes procedures for resolving disputes between parties. The qualifications necessary of an arbitrator were the same as those needed of a Qazi, who is an authorized judge who preside over the court's sessions. If both parties involved are Muslims, Shariah law regulates both the procedural and substantive aspects of the case. The award can be enforced by such a court, but the issue or rationale cannot be examined on its merits.

British Rule

The Bengal Regulation Act, 1772 established modern Arbitral Law in India, which arose from the effective settlement of conflicts between parties by a tribunal of choice. Later, the Bombay Regulations Act of 1799 and the Madras Regulations Act of 1802, respectively, implemented the identical regulations in the Bombay and Madras presidencies.

Reason for the mentioning the early usage of arbitration in different times

In the wake of a widespread flux of disputes, it is important to remember these early uses of arbitration. Arbitration is often seen as anything that is really very fresh, unproven and possibly destructive to public relations or to judicial institutions that look older but are basically close

relatives. It is a dangerous activity.

Originally arbitration was used for all kind of controversies, which throughout the ages little change has occurred in its essential principles.Despite endeavors to restrict or put into legal strain the early idea, arbitration continues to be a mutual arrangement of States or people to present their disputes with the judge chosen by them out of their own free will and be ready to be bounded to accept the conclusions of the judges selected as legally binding

It was unavoidable that a time of uncertainty should have succeeded, without the structure of the concept.The basic concept that the contesting parties must pick a judge, based on evidence from the sides, to make a final and obligatory judgement on the substance of the case was subsequently mistaken with other proceedings to resolve the conflicts in a friendly manner. These proceedings, however, weren't really judicial, but were negotiational in nature, and in terms of mediation and conciliation.

Arbitration in medieval India is such a broad topic that it deserves its own page. The purpose of this essay is to look at how India's arbitration rules have evolved through time. The evolution of India's arbitration regime can be branched within these three main stages.:- (i) The Pre-1940 phase; (ii) The 1940-1996 Phase; and (iii) The Post 1996 phase.

a)The Pre 1940 phase – An era of scattered laws

The Indian Arbitration Act of 1899 can be said to be one of the earliest law in India dedicated entirely to arbitration. Its applicability, although, was restricted to Presidency Towns of Bombay,Calcutta and Madras. The Second Schedule of the Civil Procedure Code, 1908, was the other specialised statute for arbitration. The Indian Contract Act of 1872 (Sections 10 and 28) and the Specific Relief Act of 1877 both mention arbitration (Section 21).

As previously stated, the legislation regulating arbitration was dispersed among numerous statutes, and no uniform guideline had been in force.The absence of comprehensive legislation had been a problem for legislators to wonder about, consequently various committees were established to modify the current law and develop a more sound foundation for arbitration.

b) The 1940-1996 Phase – The Arbitration Act of 1940

In 1940, a single arbitration law was adopted,which repealed all existing arbitration laws. The

Arbitration Act of 1940 was a comprehensive national arbitration law based on the English Arbitration Act of 1934. The Act, on the other hand, included no measures for the execution of foreign arbitral verdicts. They were executed in India under two different laws: (i) the Arbitration (Protocol and Convention) Act, 1937 (for Geneva Convention Awards) and (ii) the Foreign Awards (Recognition and Enforcement) Act, 1961 (for New York Convention Awards).

The arbitral policy of India as per the 1940 Act and related legislations was far from ideal, and it was roundly condemned in various forums. It struggled to address the stated goal of delivering a quick and effective conflict management system. Functioning under the government was difficult, complicated, costly, overly-complex , and plagued with judicial intervention. The Supreme Court accurately summarised the catastrophic effects of the 1940 rule in the following decisions:

i) F.C.I. v. Joginderpal Mohinderpal-

1989 AIR 1263, 1989 SCR (1) 880[3]

In this it was summarised that there was a need to make arbitration laws uncomplicated and straightforward and more connected and in touch with the current realities of the time, and that the arbitrator must be bound by the law of justice and fairness and must respect the procedure and standards that would help in building trust not only just through transparency between the participants, but also through the belief that justice has been served.

ii)Guru Nanak Foundation v Rattan Singh[4]

In this case it was summarised that issues like long never-ending court proceedings which are expensive and too complex for common people, were the reason which compelled legal jurists to look for a alternate mode to settle disputes which is less formal in nature, prevents procedural nonsense, effectively deals with the issues and provides speedy solution for settlement of conflicts arising between parties and this lead them to Arbitration Act, 1940.

However, the manner in which the lawsuits under the Act are proceeded and contested in court regardless of circumstances, makes lawyers chuckle and scholars mourn. Observation and legal

[3]1989 AIR 1263, 1989 SCR (1) 880
[4]1981 AIR 2075, 1982 SCR (1) 842

reports reveal that the processes in accordance with that Act have grown very sophisticated, with continuous prolixity, presenting a juridical trap to the unfaithful at every level. Informal Forums established by the parties to resolve issues swiftly became "legal" with unforeseen intricacy by the rulings of the Court.

c) The Post-1996 phase - The current regime

i) The Act of 1996

The 1940 government was seen as the polar opposite of India's post-liberalisation development. As a result, a new legislative framework was urgently required, one that would support such expansion while also attracting international investment to the country.

In this context, the passage of the Arbitration and Conciliation Act, 1996 (“the Act”) was a watershed point in Indian arbitration law. The UNCITRAL Model Law on International Commercial Arbitration, 1985, and the UNCITRAL Conciliation Rules, 1980, were used to create the Act. It was passed with the following main goals in mind:

- Creation of a comprehensive legal framework for local and international arbitration and conciliation
- Keeping judicial oversight and intervention to a minimum
- Developing a cost-effective and quick conflict management method
- Building a solid framework for enforcing arbitration rulings

But the new legislation was affected by the same malaise through period that it was seeking to remedy. Long delays and terrible expenses were experienced in the arbitration procedure. The issues have been exacerbated by increased judicial inference throughout all phases of arbitration, leading to further delays and defeating the goal itself of the Act, i.e. the rubble of court proceedings.

ii) Amendment of 2015

The Arbitration and Reconciliation (Amendment) 2003 Bill was one of the earliest efforts to alter this Act. There have, however, been many reservations regarding the modifications suggested which led to the withdrawal of the Bill from Parliament.

Eventually, a new committee was set up to examine and propose modifications under the Chairmanship of Hon'ble Justice (Retd.) A.P. Shah. The committee proposed several amendments to the current Act, and the legislature adopted most of these amendments. This resulted in bringing about the implementation of the Arbitration and Conciliation (Amendment Act), 2015. This amendment act altered the current system dramatically and initiated a new age of arbitration that significantly improved public view of arbitration. The major modifications resulting from the 2015 amending legislation may be widely categorised as follows:

- **Limiting judicial interference in cases**: As a method with little judicial interference, the arbitration was envisioned. But, the court involvement had become a standard due to many judicial rulings. The main purpose of this Amendment Act was therefore, among other things, to restrict such judicial involvement. The Amendment Act introduced measures which severely reduced the Judiciary's authority and its involvement with arbitrary procedures in accordance with these goals.

- **Accelerating the arbitral proceedings:** The 2015 Amendment Act also has as its central objective the elimination of time impediments and the transformation of arbitration into a more prompt and efficient dispute settlement process. Specified timelines for distinct arbitral processes have been set in order to attain this aim. The fulfillment of the whole arbitration proceedings, failing which the parties must contact court to prolong, also had a period of 12 months (extended by an additional 6 months).The courts were also free to provide the relevant instructions, notably instructions on the substitution of arbitrators, whilst allowing such extensions.

- **Improving the overall functioning of arbitration:** The 2015 Amendment Act also intended to enhance general arbitration management and make arbitration increasingly attractive to the wider population. These reforms were establishing an arbitration model's fee structure to reduce expenditure, providing procedures for arbitrator neutrality and non-partisanship.

iii) Amendment of 2019

Although the 2015 Amendment Act led to an arbitration of fresh life, it did not encourage institutionalized arbitration in India and made it a global trade arbitration centre. Regularized arbitration still remains lackin in India and has resulted in parties preferring international seats

for arbitration like Singapore in Hong Kong.

A special emphasis on developing institutional arbitral proceedings was incorporated into the 2019 Act. The Law allocated the right to select arbitrators exclusively with arbitral bodies, appointed by the Apex Court or the High Courts to encourage such dispute resolution procedure. The Amendment Act also established, with the goal of overseeing and encouraging arbitral proceedings, the Apex of the Arbitration Promotion Council of India, ("APCI") comprising of diverse actors.

But the modifications in arbitration proceedings and the establishment of APCI have not yet been disclosed.

Covid-19 and Arbitration

As the world struggles with the problems posed by the deadly Covid-19, several industries are confronted with new obstacles that are prompting industry participants to come up with innovative solutions. The process of arbitration is no exception. The epidemic has pushed the industry to rethink its strategy, as in-person arbitration is no longer an option.

Arbitration, as an alternative conflict resolution process, has changed the perception of business dispute settlement, and it is chosen by parties for a variety of reasons, including the adjustability to decide procedures, defined time limitations, cost efficiency, and secrecy, among others. Covid-19 has caused a disruption in court operations, forcing practitioners to seek alternate means of resolving disputes.

Although the Arbitration and Conciliation Act of 1996 is quiet on use of the virtual meetings in arbitration proceedings, Section 19 (2) clearly allows the parties to agree on the method to be guided by the Arbitrator in trying to conduct its hearings, which may include the use of modern technologies. To meet social distance standards without sacrificing efficiency, the Arbitral Tribunal may allow all parties to the arbitral process to file pleadings by e - mails and conduct hearings via video conferences.

Dispute resolutions are taking place all over the world, and while videoconferencing or teleconferencing can be utilised for a specific purpose, such as recording witness testimony, special instructions would have to be made under Section 19 (2) when the arbitration

procedures started to make it a rule. We no longer have to put up with the conventional method of arbitration, which takes a long time and costs a lot of money because of repetitive tasks and high costs for communication, travel, and court appearances. Many nations, including the US, the UK, Singapore, and China, already had adopted digital arbitration to reduce costs and improve efficiency.

Paperless procedures, distant participation (to prevent against an outbreak like COVID-19), better cooperation, and increased protection for confidential information are all advantages of virtual arbitrations. As a result, technological transformation is critical at this time. It helps us to keep working effectively during pandemics like COVID-19 because of technology that enables us to operate remotely.

Arbitration has emerged as the most popular venue for quickly resolving conflicts, particularly in the industrial and business realms. However, because COVID-19's expansion has yet to be contained, the lockdown may rise or vary from time to time.

Conclusion

Since it was established, Indian arbitration has undergone numerous modifications and progresses. The latest changes in 2015 and 2019 together with other judicial decisions over the past five years have made a considerable contribution to the expansion of arbitration as an effective alternative to the conventional judicial proceedings. Certain sectors, such as institutional arbitration, are still quite important, but we may expect that these difficulties will be handled fairly soon, given the present trend.

Arbitration in India is a centuries-old idea that dates back to ancient India. Overall, it can be held that the court of arbitration in India for the purpose of resolving conflicts is in its early stages. However, the current arbitration system has to be amended to become even more successful in the future in matters of domestic or international business arbitration.

Concluding suggestions

To become a worldwide arbitration center, India, a fast-growing economy, needed a solid arbitration legislation. To meet this goal, a balance must be struck between keeping arbitration legislation current and developing arbitration centres capable of quickly resolving and

managing business disputes. With the Amendment Act in place and Courts and lawmakers assuming a pro-arbitration stance, the adoption of best practises is critical in the near future.

More steps must be done in order for India to become a global arbitration centre.Signing and ratifying international conventions, such as the ICSID Convention, and extending the extent of recognition of arbitral awards to non-reciprocating nations, will be an essential first step. This will allow a larger number of parties to be involved in commercial commerce in India, as the simplicity of resolving disputes is a key consideration when forming business connections.

India's arbitration legislation has progressed significantly, from the Arbitration Act 1940 to the present 1996 Arbitration Act, which has been amended several times, the most recent being in 2019. These Amendments were quite timely and played a significant part in bringing India's Arbitration System up to date with the rest of the world.

It's worth noting that, while indirectly, the Indian structure of arbitration allows for substantive review of arbitral judgments under S. 34 of the Act, a method that many prominent arbitration countries are cautious about and have limited their ability to do so. This thorough evaluation may serve as yet another deterrent to many international parties seeking to develop economic connections with India, and as a result, a change must be made.