

## **AN ATTEMPT TO CONCILIATION: DEVELOPMENT OF THE CONCEPT OF ARBITRATION AND ITS RELEVANCE**

**- KRITI AERON<sup>1</sup>**

### **ABSTRACT**

Justice *Sanjay Kishan Kaul*, said “It was more gratifying for judges when variance are settle as opposed to having to pass judicial orders to broach legal issues. Mediation, contrary an untimely litigation, is quiet in nature and provides need-based solutions.”<sup>2</sup>

Alternative dispute resolution is a mean for resolving dispute without resorting to litigation. ADR techniques are used by parties for resolving legal dispute quickly, cheaply and more privately rather than conventional litigation ADR can be used when litigation is not an appropriate route for resolving dispute.

ADR method is classified into different types:

#### 1. Mediation

It is a process of alternative dispute resolution for settling dispute peacefully. It is voluntary and interactive process where a third party uses his skills and communication for resolving the dispute between the parties. Mediation provide opportunity to the parties for understanding the behaviour and the need of the situation. Proceedings of mediation are conducted in private and no settlement are imposed on the parties as happens in litigation.

#### 2. Arbitration

It is also a process of alternative dispute resolution for settling legal dispute in which an independent third party made a decision according to situation which is binding on the

---

<sup>1</sup> Student, B.A. LL.B 4<sup>th</sup> Year S.S Jain Subodh law college, Jaipur Rajasthan

<sup>2</sup>Express News Service, SC, HC judge vouch for mediation and conciliation, Indian Express (Feb. 20, 2019, 6:00 PM), <http://archive.indianexpress.com/news/sc-hc-judge-vouch-for-mediation-and-conciliation/1169346/>

parties. An arbitrator, who is the third party hears the evidence/document brought by the parties and makes a decision over it.

Arbitration is often confused with mediation. The mediation process is not binding, and the mediator does not hear evidence and made decision based on for discussion. Whereas arbitration process may be binding on the parties and the arbitrator hears evidences and made decision according to it. Litigation, arbitration, and mediation are all involved in settling business disputes.

### **INTRODUCTION**

Arbitration is one of the various methods which are referred to as alternative dispute resolution or ADR. Arbitration is a procedure in which disputing party submitted its dispute, to one or more arbitrators who hears statement and evidences of the parties and make a binding decision according to it. In choosing arbitration, the disputing party may opt for a private dispute resolution procedure instead of going to court.

The law of arbitration is generally composed of all provisions governing the arbitration in the country. The validity of the arbitration agreement is the constitution of arbitral tribunal, fundamental procedures and judicial review of the award. However, for the purpose of current study this article his article is limited to some important facts of arbitration law in India.

### **EVOLUTION OF ARBITRATION IN INDIA**

Arbitration is a process where disputing party refer their case to a neutral third party, who render decision according to statement of facts. The process of arbitration is quicker and less expensive so it can be considered better alternative to litigation.

The parties select an arbitrator who can render decision according to the basis of facts. Arbitrators can also bring an expert related to the subject matter of the dispute, for more efficient and quicker process. Such domain skills are particularly useful in cases involving technical arbitration.

Evidence of commercial arbitration has been found in all periods of history. In India, mediation and arbitration have enjoyed respectable place as a means of resolving disputes since the Vedic times.

The first modern arbitration law in India, however, was enacted as early as 1772 in form of the Bengal Regulation Act of 1772. It was updated in 1940, and again through the Arbitration and Conciliation Act, enacted in 1996. Aimed at reducing the excessive workload on our courts, the Act streamlined the arbitration process. It provided for enforcement of the arbitral awards with the same force as a court decree, in order to provide for speedy solution to disputes. The Legislation covered both international and domestic commercial arbitration and conciliation. The renovated Arbitration Act of 2015 has further sanctified the arbitration process by granting even more finality to the arbitral award.

There is much demand today for an internationally proven and judicially supported private method of civil dispute resolution, and arbitration is increasingly being seen as a crucial element in functioning of market economies.

Arbitration process in India has evolved over the years and now offer a useful and speedy tool for resolution of disputes that saves both the court's and the litigants' time. It has provided the business and private citizens with an approachable alternative to litigation. However, for arbitration to become a widely accepted practice, arbitration needs to be based on judicious application of law and fair and just treatment of the facts. In short, the quality of arbitrators will determine the credibility of the process.

For business dispute resolution, it is becoming ever popular for the advantages it brings. While the Courts provide a public forum for dispute resolution, arbitration, and mediation, allow for the private resolution of disputes away from media attention and with confidentiality<sup>3</sup>

### **PROCESS OF ARBITRATION**

Arbitration in India is governed by the law of Arbitration And Conciliation Act, 2015 passed by Parliament which states that for adopting the arbitration, the disputing party must sign an

---

<sup>3</sup> Press Information Bureau, Arbitration process has evolved over the years and now offer a useful and speedy tool for resolution of disputes, PIB (Feb. 20, 2019, 7:10 PM), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=161953>

agreement to that effect. The parties have a choice either opt separate arbitration or signed a single arbitration clause.

**Arbitration Clause** - It is an agreement between the parties specifying that if any dispute arises between the parties they will refer it to arbitration for its resolution.

**Arbitration notice** - In case a dispute has arisen between the party and they has opted to follow the procedure of arbitration then the party against whom the default has been committed will send a notice for call of arbitration process between the parties.

**Appointment of Arbitrator**- After receiving the notice by the parties then they will appoint an arbitrator in the manner specified in the arbitration agreement or arbitration clause.

**Statement of Claim**- Drafting a statement of claim is the next step in arbitration proceeding. It contains the main dispute between the parties, possibilities which lead to the dispute and the compensation claimed from the other party. Then the respondent party can file a statement of counter claim along with reply to the statement of claim.

**Hearing of Parties** - Arbitral tribunal will hear both the parties and their evidences and pass decision according to it.

**Award** - Decision of the tribunal is binding on the parties. However, the other party can made an appeal against the decision which can be filed before the High Court.

**Execution of Award** - Once the decision has been passed by the tribunal it has to be executed. The party in whose favour the decision has been passed has to file for execution or enforcement of decision with the help of its arbitrator.<sup>4</sup>

### **TYPES OF ARBITRATION**

There are two main types of arbitration procedures. These are:

- **Ad-Hoc Arbitration**

---

<sup>4</sup> Process of Arbitration in India, My Advo (Feb. 20, 2019, 7:53 PM), <https://www.myadvo.in/blog/steps-of-arbitration-in-india/>

Ad-Hoc Arbitration can be defined as a process of arbitration where an arbitral tribunal will conduct arbitration meeting between the parties, following the rules and procedure which have been agreed by the parties beforehand or in case the parties doesn't have any agreement between them, the rules which have been laid down by the arbitral tribunal may be followed.

- **Institutional Arbitration**

In the case of Institutional Arbitration, the disputing parties refer their issue to an institution that has been designated to regulate the arbitral process. The arbitration institution may then arbitrates the dispute followed by the rules. The institute may select a panel which regulate the whole process.<sup>5</sup>

### **INDIAN ARBITRATION AND CONCILIATION AMENDMENT ACT, 2015**

In an attempt to make arbitration a better mode of settlement of disputes and making India a hub of international commercial arbitration, the President of India on 23rd October 2015 publicize an Ordinance i.e. Arbitration and Conciliation Amendment Act, 2015 by amending the Arbitration and Conciliation Act, 1996.

By amending the Arbitration and Conciliation Act, 1996, the Arbitration and Conciliation (Amendment) Bill, 2018 was approved on 7<sup>th</sup> March, 2018 by Cabinet. These amendments in the Act tends to remove practical difficulties in bearing of the amendments made by the Arbitration and Conciliation (Amendment) Act, 2015 and regulate the arbitration in India<sup>6</sup>

---

<sup>5</sup> ARBITRATION PROCEDURES AND PRACTICE IN INDIA, The Indian Lawyer (Feb. 20, 2019, 8:10 PM), <http://www.theindianlawyer.in/blog/2016/08/23/arbitration-procedures-practice-india/>

<sup>6</sup> Archit Sehgal, An Insight into 2015 Amendment Act and 2018 Amendment Bill Arbitration and Conciliation Act, 1996, Legal Service India (Feb. 20, 2019, 10:10 PM), <http://www.legalserviceindia.com/legal/article-200-an-insight-into-2015-amendment-act-and-2018-amendment-bill-arbitration-and-conciliation-act-1996.html>

**CONCLUSION**

The Law of arbitration in India has gone through deep changes in recent decades. The Indian legal system provides for a comprehensive set of rules governing commercial arbitration. Arbitration is the tool to personify the legal system of India. The future of India is in arbitration rather than litigation. However there is a need to stabilize the process of arbitration. In the contrast to this, Indian Arbitration And Conciliation Act 2015 is quite modernized but there is lot more to change.