

“Conceptual Framework of Arbitration and Dispute Resolution”

*Mohammad Athar Talib
PhD Research Scholar,
Faculty of Law,
Jamia Millia Islamia,
New Delhi*

INTRODUCTION

Meaning of Arbitration

Arbitration is 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.

In English law, arbitration is a mechanism for the resolution of disputes which takes place, usually in private, pursuant to an agreement between two or more parties, under which parties agree to be bound by the decision to be given by the arbitrator according to law or, if so agreed, other considerations, after a fair hearing, such decision being enforceable at law. Sometimes the submission instead of being voluntary is imposed by statute.

‘DISPUTE,’ ‘DIFFERENCE’ - DISTINCTION

It is not every kind of difference or dispute which is referable to arbitration. A difference may be, for instance, regarding the meaning of a particular term in a contract. It may be that one party feels that he has performed the contract but the other says that the real meaning of contract is something else and what has been done is not the true performance of the contract. This then would be a difference.

Under the Indian law of Arbitration, a dispute means one party has a claim and the other party says, for some specific reasons that this is correct claim.

This is a dispute.

Reference can be made if there is a dispute.

The Arbitration and Conciliation Act, 1996 defines under section 2(1)(a) “arbitration” means any arbitration whether or not administered by permanent arbitral institution.

INSTITUTIONAL ARBITRATION: THE WAY FORWARD

Meaning of Institutional Arbitration

Institutional arbitration refers to the administration of arbitration by an institution in accordance with its rules of procedure. The institution provides support for the conduct of the arbitration in the form of appointment of arbitrators, case management services including oversight of the arbitral process, venues for holding hearings, etc. for example London Court of International Arbitration LCIA or as ancillary to the other functions of a trade or professional association, The International Chamber of Commerce or ICC.

There had been several Arbitral Institutions in India that have had a long history of their presence, however it is for the first time that recently Arbitration and Conciliation Act, 1996

(ACA) recognized the role of such institutions. Despite several institutions that existed even prior to the independence like, the Bengal Chambers of Commerce and Industry, the Indian Merchant Chambers of Commerce and later even the Indian Council of Arbitration.

Though they left their imprint in the realm of institutional arbitration, adjudication through such like institutions could not provide any realistic opportunity to the litigants to opt for institutional arbitrations as their preferred mode for resolution of disputes. Section 2(6) of the ACA recognizes that the parties may opt for arbitration under the rules of a particular institution for arbitration and designating such institutions to take decisions on their behalf. Even with regard to the appointment of arbitrators under section 11 contemplated that the Chief Justices of the High Courts or the Chief Justice of India as the case may be may designate an Institution to perform the function of appointment of arbitrators.

Delhi High Court Arbitration Centre (DAC) was launched in 2009, initially it was promoted as an institution for domestic arbitration but later the rules were recast to provide for International Arbitration and the institution was rechristened as Delhi International Arbitration Centre (DIAC). However, it appears, that the litigants still opt for Ad-hoc arbitrations as compared to institutional arbitrations. In ACA (Amendment Act), 2015, the government recognized its responsibility and came forward with several legislative measures to reform the commercial litigations in the country including reforms in the realm of arbitration.

The Law Commission of India has in its 246th report has noted that adhoc arbitrations usually devolve into the format of a court hearing with the result that adjournments are granted regularly and lawyers too prefer to appear in court rather than completing the arbitration proceedings.

What is therefore recommended was that India needs to promote institutional arbitration where a specialized institution with a permanent character aids and administers the arbitral process.

ISSUE OF JURISDICTION OF COURTS

The Arbitration and Conciliation Act, 1996 was enacted to consolidated and amend the law relating to domestic and international commercial arbitration and for matters connected therewith and incidental thereto. One of the objects of the said Act is to minimize the role of Courts in the arbitration process. It is with this object in mind that Section 5 has been provided. Judicial authorities should not interfere except where so provided in the Act.

Further section 34 categorically provides that the court only on the grounds mentioned therein can set the award aside. Now the stages at which Judicial intervention takes place:

- At the Pre Reference stage , Sections 9 & 11 deals with it.
- At the Post Reference stage, Sections 12, 13, 14 , 16 & 37 of the Act deals with.
- The Post Award stage, Section 34 provides with the same.
- Finally at the Enforcement Stage, Sections 36(1), 48, 50 & 57 provides with it.

The term ‘Court’ defined under Section 2(e) of the ACA, 1996, makes it clear that the appeal is not to any designated person but to a Civil Court. In such a situation, the proceedings before such Court will have to be controlled by the provisions of the Civil Procedure Code, therefore, the remedies by the way of the revision under Section 115 of the Code will not amount to judicial intervention i.e. when the Act under Section 37 provided for an appeal to the Civil Court and the application of Code not having been expressly barred, the revisional jurisdiction of the High Court gets attracted. If that be so, the bar under Section 5 will not be attracted.

Conclusion

The dispute resolution process has a huge impact on the economy and doing business in our country. The rapidly changing economic activity demands expeditious settlement of disputes without much prolonged judicial process and by creation and establishment of mechanism such as institutional arbitration. This is necessary to inspire confidence and credibility, the huge pendency of cases in courts further underlines the need for strengthening the Alternative Dispute Resolution mechanism.

To promote institutional arbitration and to make India a hub of international arbitration, it has been decided to establish a new institution to be called the New Delhi International Arbitration Centre for better management of arbitration in the country and to declare it as an institution of national importance.