Journal of The Gujarat Research Society
ISSN: 0374-8588
Volume 21 Issue 9, September 2019

Concept of Arbitration

Kamal Kumar Gola
Department of Law
Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India

ABSTRACT: ***Dispute resolution by appeal to a third party has been part of India's most populated since time immemorial. It has undergone a phenomenal metamorphosis, rising from the level of village elders seated under a banyan tree to the stage of statutory approval to settle disputes. A progressive piece of legislation has been put in place by India, which is largely based on the Model Law and UNCITRAL Arbitration Laws. With a view to make arbitration less technical and more useful and effective, Parliament passed the Arbitration and Conciliation Act of 1996, which not only eliminates certain significant deficiencies of the previous arbitration statute, but also introduces new principles of arbitration. The inculcation of the philosophy of arbitration within the bar, the bench and the arbitral society is what it now needs.***

KEYWORDS: Arbitration; Dispute Resolution; Mechanism.

INTRODUCTION

ADR is not prone to critique. Others have seen a waste of time in it; some consider the danger that it will only be launched to verify what is the minimum bid that the other party will accept. For whatever reason it might be, the delay in the disposal of cases in law courts has really defeated the aim for which people seek the courts for their remedy. For already overburdened courts, accelerated growth has meant increased caseloads in many parts of India, further contributing to chronically slow adjudication[1].

As a result, for companies working in India as well as those doing business with Indian companies, alternate conflict resolution strategies have become more crucial. As a replacement for current dispute resolution approaches such as arbitration, confrontation, aggression and physical fights or rough handling of cases, Alternative Dispute Resolution is also required. It is a trend with a push from changing constructive mind-set and mentality towards settling a conflict[1].

The language of Article 2(a) of the Model Law is repeated verbatim in the definition of 'arbitration' in Section 2(1) (a)-'arbitration means any arbitration, whether or not performed by a permanent arbitral agency.' It is a process in which the dispute is appealed to an arbitral tribunal which takes a decision on the dispute ('award') which is binding on the parties[2].

For adjudicating disputes, it is a private, usually informal and non-judicial trial process. The principle of arbitration has four requirements: an arbitration agreement; a dispute; a reference to a third party for its determination; and a third-party award[2].

The meaning lies in the fact that it is a venue selected by the parties with the expectation that, after taking account of the relevant facts before it and the submission of the parties, they must act judicially. Therefore, it follows that the procedure is not arbitration if the chosen forum is not allowed to behave judicially[3].

An ad hoc arbitration is one that is not conducted by an entity and the parties are thus required to decide all elements of the arbitration, such as the number of arbitrators, the way in which they are named, etc. Ad hoc proceedings will be more open, quicker and easier than an administered proceeding if the parties enter the arbitration in a spirit of collaboration. The benefit is that the parties themselves consent and arrange to do so. However, the ground realities show that arbitration in India, especially ad hoc arbitration, is becoming very costly vis-à-vis conventional litigation[3].

Institutional arbitration is an institution in which a permanent specialist institution intervenes and performs, in compliance with the laws of that institution, the duties of assisting and conducting the arbitral method. It is necessary to remember that the conflict is not arbitrated by these entities, it is the arbitrators who arbitrate, and so the term arbitration institution is unfit and only the laws of the institution are relevant[4].

Incorporation of book of rules in the "arbitration agreement" is one of the principle benefits of formal arbitration. Institutional Arbitration is accepted around the world as the predominant form of international commercial dispute resolution. That is an arbitration that an arbitral agency administers[4].

In addition, an experienced jury reviews it in several arbitral organizations, such as the International Chamber of Commerce (ICC), before the award is finalized and issued. As a consequence, the court's odds of putting the prize aside are small[4].

When a statute states that it must be referred to arbitration if a dispute occurs in a particular situation, the arbitration proceedings are considered "statutory arbitration." With the exception of section 40(1), section 41 and section 43, Section 2(4) of the Arbitration and Conciliation Act 1996 provides that the provisions of Part I shall, for the time being in effect in India, extend to any arbitration under any other act[5].

Quick track arbitration is a time-bound arbitration, with stringent procedural guidelines that do not allow time extensions to be lax, and the resultant waits, and the shortened time span makes it more cost-effective. Sections 11(2) and 13(2) of the 1996 Act ensure that the parties are able to settle on an arbitrator selection process and choose the shortest way to sue an arbitrator. The Indian Council of Arbitration (ICA) has pioneered India's principle of fast track arbitration and parties may invite the arbitral tribunal to resolve disputes within a defined timeframe under its rules[5].

DISCUSSION

The theory of Conflict Mediation by Alternative Dispute Resolution (ADR) has implemented a new non-adversarial dispute resolution process. A disagreement is simply 'lis inter partes' and, in the context of the ADR Process, the justice dispensation system in India has sought an alternative to adversarial litigation[6].

New conflict settlement approaches such as ADR make it possible for parties to negotiate with the root problems in the dispute in a more cost-effective way and with better efficiency. Furthermore, these mechanisms have the advantage of providing participants with the ability

to mitigate animosity, restore a sense of power, obtain approval of the result, mutually settle disagreement, and in each particular case seek a greater sense of justice. Dispute settlement typically takes place in a private setting which is more viable, economical and effective[6].

The arbitration process can begin only if a binding Arbitration Arrangement exists between the parties prior to the emergence of the dispute. Such an arrangement must be in writing, as per Section 7. The contract in terms of which the dispute occurs shall either contain an arbitration clause or apply to a separate settlement signed by the parties to the dispute. Written documents, such as emails, telexes, or telegrams containing a record of the negotiation, can also infer the nature of an arbitration agreement[6].

An exchange of a declaration of argument and a defence in which one party alleges the validity of an arbitration arrangement and is not disputed by another party is therefore called a legal written arbitration agreement[7].

The procedure of naming an arbitrator can be started by either party to the dispute and, if the other party does not comply, the party may approach the office of the Chief Justice to name an arbitrator. There are only two grounds in which a party may question an arbitrator's appointment: fair questions regarding the arbitrator's impartiality and the arbitrator's lack of sufficient qualification as required by the arbitration agreement. The Arbitration Tribunal shall be appointed by the single arbitrator or panels of arbitrators so named[7].

There is also little space for judicial interference in the arbitration process, except for certain transitional interventions. The arbitration tribunal is professional with respect to its own authority. Therefore, if a party wishes to contest the arbitration tribunal's authority, it can do so only before the tribunal itself. If the tribunal refuses the appeal, there is nothing the group can do agree or approach a court after the tribunal makes an award. Section 34 offers some grounds on which a party may appeal to the original jurisdiction of the main civil court to set aside the award[7].

Once the time limit for filing an appeal for setting aside an award has expired, or if such an appeal is denied, the award is binding on the parties and is regarded to be a judicial order[7].

Arbitration is an impartial way of settling disputes equally by an individual or persons or through an independent tribunal without the parties having access to arbitration according to an arrangement. It can be ad-hoc, institutional, contractual, or constitutional. The disputes between the parties in arbitration are resolved by an impartial third party appointed by the parties to the dispute. While it resembles the resolution based on the courtroom, it requires less protocol and the arbitrator's choice of participants[8].

With the less complicated approach developed, it exists and is very useful in settling various forms of disputes, including international commercial disputes. The only legally binding and enforceable solution to ordinary court cases is arbitration at present[8].

The most formal of the ADR processes is arbitration, which keeps the decision-making away from the parties. The arbitrator hears each side's claims and facts and then determines the result of the conflict. Arbitration is less rigorous than a courtroom and generally the rules of proof

are relaxed. At the trial, each party can submit facts and arguments. However, there isn't any facilitative dialogue between the parties. The award is also accompanied by a rational view, unlike other types of ADR (though the parties can agree that no opinion will issue)[9].

Arbitration may be "binding" or "non-binding." Binding arbitration means that the parties have reserved their right to a hearing, agree to recognize the ruling of the arbitrator as definitive, and the decision is normally not entitled to appeal. If a deal has a binding arbitration clause, the case must go to arbitration and no hearing can take place[9].

Non-binding arbitration ensures that if they don't support the decision of the arbitrator, the parties may order a hearing. Some courts, where the court ruling is not more favourable than that awarded in judgment, will levy penalties and penalties. Increasingly, non-binding arbitration is uncommon[10].

Arbitration uses an impartial third party's support, which is close to an informal hearing. The third party shall, after hearing each side, make a determination that the parties to the dispute may have agreed to be binding or non-binding. The ruling will be enacted by a court as binding, and is deemed final. Although the arbiter is an active facilitator who can pronounce a verdict, regardless of all of the rules of proof that do not apply, the arbitration procedure is still less systematic than an outright tribunal[10].

CONCLUSION & IMPLICATION

A neutral party called an "arbitrator" considers claims and facts from each side of arbitration and then determines the result of the dispute. Arbitration is less rigorous than a courtroom, and therefore the rules of proof are relaxed. Binding arbitration suggests that the parties forfeit their right to a hearing and have to recognize the ruling of the arbitrator as conclusive. Arbitration can be either "binding" or "nonbinding." There is usually no right to appeal the judgment of an arbitrator. Nonbinding arbitration ensures that if they do not support the arbitrator's ruling, the parties are entitled to order a trial.

ADR has been effective in clearing the backlog of cases at different tiers of the judiciary. In the last three years, Lok Adalats alone has solved more than 50 lakh cases on average per year. Yet there appears to be a lack of understanding of these processes' availability. More information on these can be disseminated by the National and State Legal Services Authorities, so they are the first choice sought by prospective litigants.

REFERENCES

[1] G. van Harten, “The public-private distinction in the international arbitration of individual claims against the State,” *Int. Comp. Law Q.*, 2007, doi: 10.1093/iclq/lei168.

[2] E. B. Haas, “The Balance of Power: Prescription, Concept, or Propaganda?,” *World Polit.*, 1953, doi: 10.2307/2009179.

[3] P. McCorry, S. Bakshi, I. Bentov, S. Meiklejohn, and A. Miller, “Pisa: Arbitration outsourcing for state channels,” 2019, doi: 10.1145/3318041.3355461.

[4] M. Waibel, A. Kaushal, K.-H. L. Chung, and C. Balchin, “The Backlash against Investment Arbitration: Perceptions and Reality,” in *The Backlash Against Investment Arbitration*, 2010.

[5] C. E. Dawkins, “The Principle of Good Faith: Toward Substantive Stakeholder Engagement,” *J. Bus. Ethics*, 2014,

doi: 10.1007/s10551-013-1697-z.

[6] T. Schultz, "The concept of law in transnational arbitral legal orders and some of its consequences," *J. Int. Disput. Settl.*, 2011, doi: 10.1093/jnlids/idq019.

[7] S. Lalani and R. P. Lazo, *The role of the state in investor-state arbitration*. 2014.

[8] Y. Kryvoi Ph.D., "Piercing the Corporate Veil in International Arbitration," *Glob. Bus. Law Rev.*, 2011.

[9] J. Paulsson, *The Idea of Arbitration*. 2014.

[10] C. Foster, "A new stratosphere? investment treaty arbitration as 'internationalized public law,'" *International and Comparative Law Quarterly*. 2015, doi: 10.1017/S0020589315000135.