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Analysis of Provisions of Arbitration and Conciliation Act 1996

ORIGINAL ARTICLE



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Abstract

This paper discuss the concept of arbitration given under the arbitration and conciliation act,1996. In this paper types of Arbitration their essential elements and jurisdictional approach are mentioned and discussed. The author in this paper stated the feature and importance in the present scenario.

Key Words

Arbitration, Conciliation, Ad-hoc, Dispute Resolution.

Introduction

Years ago, the method of Panchayata was used in India for dispute resolution, where group of people (Sarpanch & Panch) are the main decision maker after hearing the parties. Here, listening to both the parties was most important part and in the same manner,

present method of Arbitration and Conciliation works. Concept of Natural Justice is followed by all the Arbitrators with legal Procedure and by hearing both the parties.

At present there are some of the most efficient methods for getting rapid justice, because in present system the strict procedure of law, like Criminal Procedure Code, 1972, Civil Procedure Code, 1973. Hence, Alternate Dispute Resolution is one of the efficient tool for the solution of this issue where Arbitration and Conciliation Act, 1996 is proved to be most efficient in our Country.

The salient feature of Arbitration method is that it is a speedy procedure with low cost on both the parties and also under the choice and control of the parties. In, India Arbitration saves economy, health, pending issues as well as the interest of foreign and Indian investors. This Act comes as a milestone for increasing the business, economy and trade in Country for simple and easy method of dispute resolution.

Meaning & Definition

Russell has defined this as a dispute solving method by appointed persons with written agreement in any legal relationship of Contract. Under Section 2 of the Arbitration and Conciliation Act, 1996 defines the Arbitral Agreement as where both the parties mutually decide that in case of any dispute arise in future then the parties agree to follow the method of Arbitration, instead of Conventional Justice System of Law (i.e. Court). Generally, Arbitration is defined as method of solving a dispute through own choice of Procedure other than Courts of law with the help of Arbitrators either single or group of odd number of members. Here the most salient feature is that there is no need of using exactly the term 'Arbitration', also use of words like going to third person or any institution will be understood as Arbitration method.

Types of Arbitration

- I. **Ad hoc Arbitration:** Under ad hoc arbitration method a temporary jurisdiction would be given for the settlement of disputes. As the name suggest it is not permanent in nature.
- II. **Collective Arbitration:** It is a general term of arbitration under which all the necessary steps and procedure of Arbitration and Conciliation Act is followed by the arbitrator and the parties entered in agreement.
- III. **Settlement Arbitration:** This type of arbitration is used in the case where arbitration procedure is followed by the parties outside the arbitral tribunal and the final settlement in document form is presented before the tribunal then the final award is given based on it.
- IV. **Statutory Arbitration:** This type of arbitration is different from the types discussed above. Statutory Arbitration is strict in nature as it proceeds from the order of the court for the parties to settle their dispute by arbitration method. As there is no requirement of consent of the parties therefore the deciding authority is appointed by the Court if the parties are unable to appoint themselves.

Part 1 of Arbitration and Conciliation Act 1996 talks about number of Arbitrators appointed by parties and if the arbitrators appointed are even in number then a presiding arbitrator is appointed by the consent of the parties.

Here, the important part is Place of matter, if the place is within the territory of India, the proceeding takes under the domestic arbitration act but if any of the parties belongs to foreign country then foreign arbitration method will be followed. Here only change can occur with the seat of jurisdiction which will be decided as per the parties consent and by the New York Geneva treaty.

Essential Elements

There are some important things which needs to be taken care while making arbitral agreement:

- I. **Written Agreement:** Arbitral agreement must be in written form, any consent given orally, or by telephone call, or like later we will see, is not clear indication of it, hence under this way agreement will not valid.
- II. **Subject Matter:** Subject matter of agreement is very important because the matter related to taxation, criminal matter, long term debt dues, matrimonial matters etc. are not in the scope of Arbitration, only matters related to small labour disputes, civil matters, corporate trade issues etc. are covered in this Act of 1996.
- III. **Consent:** After the consent of both the parties, only one party can claim in Arbitration, without the consent or merely by oral consent it will be void. The consent must be affirmed in written with signature by both the parties entering into agreement.
- IV. A clause in agreement or separate agreement can be made for arbitration, if any clause is written in agreement then it must be clearly indicated that the parties are agreeing to arbitration in case of dispute.
- V. A person or group of persons in odd number can be appointed as arbitrators. It is not necessary to specify the name of arbitrators in any agreement. It can be appointed by choice of parties. Also it can be changed during arbitration proceeding in unavoidable circumstances like death of arbitrator.
- VI. There are some restrictions during arbitral proceeding:
 - If the Principle of Natural Justice is not followed by arbitrator.
 - Award given by tribunal is other than scope mentioned in agreement.
 - If arbitrator found to be biased or having any interest with subject matter or with any party.

Jurisdiction of Arbitration Tribunal

By the consent of parties the seat of jurisdiction of arbitration will be decided. The jurisdiction will depend upon subject matter of the dispute and not on the location of the parties or dispute. In the case of

International dispute, the location may be in Indian territory, but the law governing the arbitration can be different and not based on location.

Matter	Location	Jurisdiction
Domestic	Indian territory only(Section 31, 32)	Indian Law and Supreme Court & High Court decision
Foreign	Any territory (either India or choice of Parties) (Section 48, 58)	Choice of the Parties

It is clear that Arbitral Tribunal gives us a great flexibility of choosing various factors of jurisdiction and the tribunal must follow Principle of Natural Justice also the decision must follow the morality ground according to Indian Law.

Appointment of Conciliator

In the case of *Salem Bar Council Tamil Nadu vs. Union of India*¹, it clearly states that the Conciliation is wider than mediation and Conciliation is one of the tools to achieve the goal of speedy justice. Conciliation is given in Part 3 of Indian Arbitration and Conciliation Act, 1996. As also held in *P. Anand Gajapati Raju and Others v. P.V.G. Raju and others*² this arbitration applies to an agreement, where parties are agreed upon for arbitration and not otherwise.

For the appointment of Conciliator the claimant and the respondent must agree with written document to have the Conciliator and process of Conciliation.

In India, Conciliators can be appointed up to three persons and the conciliator must be expert in the matter of dispute and has a deep knowledge to find amicable solution of dispute.

In Conciliation, both party must be satisfied and must not get loss from Conciliation. There should be a win a win situation and not like Arbitration where one party must be compensated.

Conclusion

In simple words, arbitration is an agreement which is made between two persons or more, in which they decide to settle their dispute by the method of arbitration in case dispute arising out of agreement.

There are some proper ways that the agreement should be written and consented in order to settle for arbitration. The agreement must be written, properly signed by both parties, and clearly mention with a clause for arbitration.

This method of arbitration is simple, easy and speedy method for resolving dispute and this comes as more convenient for foreign traders to enter into agreement in India and settle with method of arbitration.

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3. <https://indiankanoon.org/doc/342197>
4. <https://www.legalserviceindia.com>
5. <https://www.academia.edu>

Footnotes

1. (2003) 1 SCC 49
2. (2000) 4 SCC 539

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