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ADVANCEMENT OF ARBITRATION PROCEDURES AND ITS DEVELOPMENTS IN INDIA

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ABSTRACT

The development of the court left behind the arbitration method. Continuous growth of cases and delay in adjudication which resulted in dissatisfaction and denied justice led the way for the development of Arbitration. Growing inter country trade relations resulted in the growth of disputes also. This also shows the need for evolution of conflict redressal system. An alternative method to litigation which includes the terms agreed upon the parties within the country laws. The enormous surge in economic growth of a nation in the last few decades has been followed by a significant increase in the number of commercial disputes. An alternative conflict resolution method such as arbitration has become increasingly important for enterprises operating in India as well as those conducting business with Indian firms. Having in mind the wider investigation between the standard of legal performance and economic progress, this study is an attempt to objectively analyse arbitration in India as a legal institution. In India, Lord Krishna in Mahabharata can be considered as an arbitrator who tried to mediate between Pandvas and Kaurvas and state the role of king who provides justice without throwing truth.

Keywords: – *International commercial Arbitration, ADR, Alabama Claims, Globalisation, Settlement.*

INTRODUCTION

The term arbitration is an instrument which resolves the disputes between parties without the intervention of the court but with involvement of a third person, called as arbitrator. It is one of the oldest ways of resolving the fights amongst people. The development of the court left behind the arbitration method. Continuous growth of cases and delay in adjudication which resulted in dissatisfaction and denied justice led the way for the development of Arbitration. This way provided a speedy and expeditious option to resolve the dispute considering the preservation of Human relations. The commercial transaction between countries also led to the international and national dispute. To avoid litigation across the national courts over commercial disputes, International commercial Arbitration came into existence. Arbitrators may be more than one. The disputing parties rest in the judgement given by the arbitrator and show readiness to accept by the judgement. Growing inter country trade relations resulted in the growth of disputes also. This also shows the need for evolution of conflict redressal system. An alternative method to litigation which includes the terms agreed upon the parties within the country laws. Arbitration can be “institutional” or “Ad-hoc”. The arbitration is based on the terms & condition of the contract.

Ancient Period

The first arbitrator as per Biblical account was Solomon who settled the dispute regarding a baby boy between two females who were claiming his mother. In the story two mothers were fighting over to title a baby. Both mothers gave birth to a baby boy. One baby succumbs to death during night and the other mother who lost the baby claimed that the live child was hers. The king suggested that baby should be cut into pieces and each part should be given to both women. Real mother instantly declared that she can give her baby to the other woman and can't see the baby being killed. The King judgement stated the woman showed empathy was the real mother and the other woman returned her baby. During the reign The Alexander the Great's father Phillip the II, referred to arbitration as a medium to settle local disputes which arose from the peace treaties as negotiated with the Greece Southern States in 337 BC. During the Babylonian days, the term arbitration was started to resolve great disputes by peace. It was declared that the Babylon, and as per the Code sovereign have the obligation to supervise the justice by the mode of arbitration. The concept arbitration spread to Roman civilization and was slowly influenced by Roman laws. This also moved to the countries which have trading relations with Rome. In England, the concept of arbitration existed before the establishment of Kings. As according to Massey England practiced arbitration as a means of commercial conflict settlement in 1224. The first ever recorded case expressing the arbitration law in England was in 1698. In India, Lord Krishna in Mahabharata can be considered as an arbitrator who tried to mediate between Pandvas and Kaurvas and state the role of king who provides justice without throwing truth. In times of Aryan, disputes were peacefully used to settle the disputes with mediation of Kulas; Srenis the King had power to settle on conflict.

Ancient Indian System

Guilds were an association of persons who were practicing the same trade. These guilds in fourth and third century BC settled their disputes among the members through the process of arbitration. The dispute resolution between guilds was accomplished by arbitration was an essential feature of the ancient Indian guilds system.

Mauryan Dynasty

India going through, ancient history in Mauryan Dynasty there were two kinds of courts:

1. The Civil courts were known as Dharmastheya dealing with the civil matters. It was administered by three each dharmasthas &
2. The Criminal Court called as Kantakasodhana considering the criminal cases. These courts acted as special tribunals which were administered by three pradestris or amatyas assisted by

The important cities and their headquarters, which had at least one police head office and court, were arranged. Apart from the matters, small and minor cases in the villages were resolved by the elders in the village panchayats. In matters of civil cases, the code of Hindu law, cases were administered based on the Shastras. The law sources according to Kautalya, were Dharma (accepted principles), Vyavahara (legal codes current at the time) charitra or customs and Rajasasaru (The King's degree).

The age of Gupta

In Gupta age, the judicial system was placed at the lowest level. The consuls were appointed in order to resolve the

disputes amongst the parties which are present before them. There were different consuls which were administered to decide different matters which are presented before them. When dispute are not resolved by any amicable settlement then it was resolved by consuls. The King, Council of ministers, judges and priest supervised by the highest solicit of appeal.

Period of Mughal

In Mughal period there was judicial system however which resolved dispute in village courts and in case of appeal can be made to Panchayat or caste courts, the mediation of candid empire, or by chance to enact. The rule was regulated by Islamic law, which were confined by Hedaya meaning arbitration. There was multiplicity of courts dealing with distinct kinds of cases. The main different kinds of courts are: – Court of Religious Law, Court of Political matters & Court of Secular Law resolving the matters pertaining to respective areas. Persian used as court language during this period. The punishment involved level of degree starting from imprisonment to death penalty, severe punishment included mutation and flogging. Death Penalty was given with the prior approval of the Emperors. The emperor acted as the final court of appeal in the Mughal System.

Arbitration during Marathas rule

The law during this period was informal and not practiced strictly. If a party fails to settle their dispute friendly, they can switch to arbitrator method to get settlement between the parties. The arbitrator can settle the dispute matter lawfully. The Maratha King was the final authority.

British Raj

During the British Raj, the alternative dispute settlement system was developed and formed. However, with the British Raj onset formal legal system was introduced which had English Medium. Indian modern arbitration started with Bengal Governance. In 1772, 1780 and 1781 arbitration regulation really practiced was of arbitral nature. The Bengal Resolution Act of 1772 and 1782 provided parties may submit dispute to an arbitrator. Arbitrator can be appointed by mutual consent. The suits between the parties to be for accounts breach of contract and partnership debts. The value for suit must not be more than 200 sicca (coin used in pre independence). His verdict should have been binding on both the parties. Later, the civil courts procedure was fortified based on Act VIII of 1857 excepting one incorporated by the royal. It is prescribed as per assigned section 3(12) – 3(25) concerning arbitration in cases. Later, in 1899 the Indian Arbitration Act was enacted based on the English Arbitration Act, 1889. However, this was only limited to three presidency states namely Madras, Calcutta and Bombay. As usual this was a preliminary attempt therefore it had several shortcomings. Later, when the civil procedure code was amended and enacted again, there was no serious change in the laws. During the 1940 Arbitration Act was passed. It was replaced by the Arbitration Act of 1899 and section 89, Section 104(1) clauses (a) to (f) and the Schedule II of the civil procedure 1908.

UNCLOS Arbitration

The United Nations Convention on the Law of the Sea (UNCLOS) charter requires to settle as per Article 287, Part XV, which provides a way out for a conflict verdict of the instrument concerning the marine border line where the member of the states can opt either the

1. International court of justice for the Sea Law.

2. Court at International level
3. Arbitral bar (Addendum VII, UNCLOS)
4. A specific arbitral bar (Addendum VIII).

When states representing two members elected any conflict resolving methods, the third measure can be utilized. On August 2016, the PCA has taken 12 cases admitted which were started by state under Addendum VII to the UNCLOS.

The Arbitration Conciliation Act, 1996 in India

In recent years, various significant developments in international business are operating out of India resulting in international cases. Therefore, there was a need to amend the Arbitration Act 1940 and development of arbitration can be a fast way out to lethargic lawsuits pending for long durations. As per the 1940 Act, there are three stages of the arbitration when the court can intervene. Such as

1. Reference of the dispute to the arbitral tribunal
2. Proceeding duration before tribunal
3. Award passed by tribunal

Pertaining the above supportive reasons and as too many cook spoils the broth similar involvement of Parties, lawyers made it outdated the case and this resulted in the abolishment of the Act. The amended version of the 1996 Act came into the picture. This act gave an efficient and rapid resolving framework which raised the Indian dispute resolving system and also attracted investment across global and ensuring the belief on Indian legal process for resolving the International & national System. However this resolving dispute became a settlement way to be workout in respective given time.

The Arbitration Act of 1996 Act has four important parts.

1. Part I focus on the Practice of arbitration at domestic & International Level.
2. Part II provides the process of foreign awards which is governed as per Geneva Code.
3. Part III- Deals in the method of Conciliation another form of Arbitration.
4. Part – IV – contains supplementary provisions of the Arbitration.

UNCITRAL only considers matters of International Commercial Arbitration, whereas 1996 Act holds both international and national matters.

CONCLUSION

Therefore it can be concluded that the international arbitration has come up a long way and is in highly developed state. More and more corporate of different countries are resorting to institutional arbitration through various international institutions. International organizations have played a very significant role in evolution of arbitration as Alternative Dispute Resolution Mechanism. The globalization which makes one world supports the development of international arbitration due to growing development of international business and alternatively become a cheapest, quicker and more

effective form of dispute resolution in the modern time. International arbitration is part of Alternate Dispute Resolution (ADR) which includes facilities in resolving commercial disputes such as negotiation, mediation, conciliation. Ample supporting reason caused growth are speed of resolution, level of confidentiality, flexibility given to both parties and effectiveness are effective methods for settling commercial disputes. Due to the recognition received by the UN, the alternative dispute settlement has been coming under increased litigation amongst the country.

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