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## Progress of Arbitration in Modern India

### Introduction

Arbitration is the procedure of resolving legal disputes between two parties outside the court of law and requires a mediator or qualified arbitrator. An Alternative Dispute Resolution which is undergoing reforms, development, progress and changing the landscape of the arbitration in a developing nation (i.e.India).

### Developments in Arbitration

After a number of years of discussions about appropriate changes and following a report by the *Law Commission of India* in 2014 (the law commission report), the arbitration law in India was initially changed by an ordinance issued in October 2015 . The changes have also brought the Indian arbitration regime closer to the internal standards and to the UNCITRAL model law on *International Commercial Arbitration*.<sup>1</sup>

#### 1. Interim Measures

Arbitral tribunals now have the same powers as courts with regard to interim measures both in relation to their scope and their effect.

#### 2. Enforcement of Arbitral Awards

*The Arbitration and conciliation (Amendment) Act, 2015* also amends section 36 of the 1996 Act, which permitted the stay of execution of arbitral awards upon any application to set aside the award. This delays the enforcement efforts. This only allows for the execution to be stayed if the court has passed a specific order.

#### 3. Reducing Delays

The amendment Act has introduced time bound arbitrations. This act inserts new provisions into 1996 Act (Section 29A) requiring arbitral tribunals to render awards within 12 months. Arbitration in India is currently undergoing reform and significant change.

This Act introduces a fast-track arbitration procedure.

#### 4. Cost

Cost effectiveness depends on the type of arbitration whether ad hoc arbitration or instituted arbitration which is applied. In India, it seems that due to lengthy arbitration the process for arbitration is costly.<sup>3</sup>

### **Reforms needed in Arbitration**

The government is now trying to understand that there is a need to change Arbitration.

*The Department of Legal Affairs, under the ministry of law and justice* (Government of India) has invited comments from various stakeholders to consider the reforms in the Arbitration and Conciliation Act, 1996. It has been noted that there are certain issues which must be taken into consideration and topics on which views must be made.

#### **1. Creation of an Arbitration Bar**

The problem with the developments of arbitration in India has been the absence of a dedicated arbitration bar. A holistic set of reforms must be aimed at encouraging the creation of a dedicated arbitration bar.

#### **2. Appointment of Arbitrators**

Courts are invariably called upon to appoint an arbitrator. We believe that Courts are ill-equipped to appoint arbitrators due to various reasons. Changes are needed in the appointment of the arbitrators.

#### **3. Arbitration Fees**

There is some dissatisfaction in the arbitration community regarding the Opaqueness with which the fees are charged by arbitrators in ad hoc arbitration.

#### **4. Emergency / Interim orders**

These orders are passed in foreign seated arbitrations and should also be made enforceable by legislation in India. There must however be some mechanism for ensuring that in rare circumstances, an Indian court can exercise before allowing the direct enforcement of an interim order.

Therefore, there should be some change in the aspects and criteria of the arbitration which has been recommended. Reforms and changes not only benefit the legal system but also development of the nation.<sup>4</sup>

### **Delhi International Arbitration Centre (DIAC)**

It is the first ever high court annexed institutional arbitration centre.

DIAC has made significant contribution to the growth of Arbitration as an effective catalyst to the dispute resolution mechanism. It provides State-of-the-art infrastructure, pre-established rules / procedures, organised structure, equitable fees and outstanding administrative as well as Secretarial support for the conduct of Arbitration.

*The New Delhi International Arbitration centre(Amendment) Bill, 2022* contains the provision renaming of NDIAC as *The India International Arbitration Centre* and also corrects several drafting errors in the Act. This Institution has been established in the year 2019.<sup>5</sup>

### **The Landscape of Arbitration**

There is the emergence of a new arbitration regime in India with the different changes in contracts related to arbitration. The system of arbitration in India and its landscape has been subject to change and has evolved through the period of panchayat systems to the principles of Lex Mercatoria and the UNCITRAL arbitration laws. The law of arbitration in India has been evolving in this ongoing period to complement the need of India's globalising economy. India has the intention to elevate the arbitration as the preferred mode of dispute resolution, which is required for both international and domestic business, that is, operating in India. There has been pro-arbitration judgments or orders passed by various High courts and the Supreme Court of India for Upgrading arbitration in this country.

Arbitration agreements should be stamped and registered but, recently according to the Supreme Court the arbitration clause in a contract if not stamped and registered could also be rendered valid and enforceable. Arbitration agreement in unstamped contract which is eligible to stamp duty not enforceable as held by the Supreme Court in 3:2 majority.<sup>6</sup>

### **Conclusion**

After observing the above-stated points, it is clear that the areas and aspects of arbitration and its process or procedure along with other related provisions are undergoing progress and rapid change. Amendments have been made in this regard which gave it more new or evolved outlook. It's all for the betterment of the people in the society and to lessen the burden on courts.

### **Reference :**

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