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BEYOND LITIGATION: THE RISE OF ARBITRATION IN INDIA

~ *Mahek Zubeariya*

“The greatest strength of arbitration is that it is not litigation.” - Nani Palkhivala

INTRODUCTION:

India's economy is expanding and it changes rapidly. This growth needs a truly effective, updated legal framework for resolving disputes. Business conflicts are inevitable. Settlement of these conflicts must be faster and more flexible. Courts remain the ultimate guardian of justice in India. Still, the need for a quicker and flexible way to settle commercial disputes has become necessary.

This is where Arbitration steps in. It serves as a powerful alternative for resolving conflicts in India. Arbitration is essential because it offers several key advantages. The process is often quicker than court procedures. Strict confidentiality protects sensitive business information. Also, a neutral expert hears the case, ensuring an informed decision. These strong points make arbitration the preferred method for commercial conflicts today.

MEANING OF ARBITRATION:

Arbitration is a quasi judicial process where two or more parties agree to submit their dispute to a third party. This third party should be neutral and is referred to as an 'arbitrator' while the decision of the arbitrator is known as 'Arbitral award'. Arbitration allows the disputing parties to choose their arbitrator(s), decide on the procedural rules, and select the venue for the proceedings, offering a level of control and flexibility in dispute resolution. Basically, arbitration is the resolution of disputes without the need to go to court.

EVOLUTION OF ARBITRATION LAW IN INDIA:

The journey of arbitration law in India is a fascinating story that mirrors the country's own economic and legal reforms. Its principles are not new to the subcontinent; they are rooted in ancient traditions and have evolved through legislation to the modern, globally-aligned framework we see today.

Ancient Roots and Colonial Codification

Long before formal laws, the arbitration existed in village Panchayats, where community elders would resolve disputes. The British gave this practice a formal legal structure with The Indian Arbitration Act of 1899¹. The law's reach was expanded significantly when arbitration rules were included in the Code of Civil Procedure in 1908². Later, these various provisions were brought together under a single law, The Arbitration Act of 1940³, which was heavily based on the English law.

The Game-Changer: The Act of 1996

For decades, the 1940 Act governed arbitration in India, but it was widely criticized for allowing too much court interference, which often defeated the purpose of a speedy resolution. The biggest transformation came with The Arbitration and Conciliation Act of 1996⁴. This was a landmark piece of legislation that completely modernized the system. It reduced the role of courts and provided a comprehensive framework covering domestic arbitration, international commercial arbitration, and the enforcement of foreign awards.

The Modern Era:

The evolution didn't stop there. Recognizing the need to make India a more attractive centre for international business, a new wave of reforms began post-2015. Significant amendments were

1. The Arbitration Act, 1899.

2. Code of Civil Procedure, 1908.

3. The Arbitration act of 1940.

4. The Arbitration and Conciliation Act, No. 26 of 1996.

introduced in 2015, 2019, and 2021. These changes have focused on making the entire arbitration process more efficient, time-bound, and trustworthy, cementing India's pro-arbitration stance on the world stage.

ADVANTAGES OF ARBITRATION IN INDIA:

Arbitration offers several distinct advantages that contribute to its growing popularity:

- **Speedy Resolution:** With strict timelines and streamlined procedures, arbitration is significantly faster than litigation in traditional courts.
- **Expertise of Arbitrators:** Parties can appoint arbitrators who are experts in the specific subject matter of the dispute (e.g., construction, maritime law, technology), ensuring a more informed and technically sound decision.
- **Confidentiality:** Unlike public court proceedings, arbitration hearings are private. This confidentiality is crucial for businesses wishing to protect their reputation and sensitive commercial information.
- **Cost-Effectiveness:** While not always cheaper, the efficiency and finality of arbitration can lead to significant cost savings compared to protracted, multi-level litigation.
- **Enforceability of Awards:** The 1996 Act¹ ensures that arbitral awards have the same legal standing as a court decree. Furthermore, India is a signatory to the New York Convention², making it easier to enforce foreign arbitral awards within the country.
- **Finality:** The grounds for challenging an arbitral award in court are extremely limited, which prevents lengthy appeal processes and provides finality to the dispute.

CHALLENGES AND CRITICISM:

Despite its benefits, arbitration in India faces certain challenges:

1. The Arbitration and Conciliation Act, No. 26 of 1966.

2. Convention on the Recognition and Enforcement of Foreign Arbitral Award, June 10, 1958.

- **Judicial Intervention:** Although the law aims to limit judicial intervention, courts are sometimes still approached for interim relief or to challenge awards, which can cause delays.
- **Rising Costs:** The fees of reputed arbitrators and institutional costs can sometimes make arbitration as expensive, especially in complex cases.
- **Lack of Domestic Arbitration Centres:** While improving, India is still developing the world-class arbitral institutions needed to compete with global hubs like Singapore, London, and Hong Kong.
- **Enforcement Hurdles:** Practical challenges in the execution of arbitral awards can sometimes dilute the advantage of a speedy decision.

CASE LAWS:

1. **BHEL v. Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited¹.** The Supreme Court held that where the parties do not insist on the exclusive jurisdiction clause in an agreement or raise such objection, and by their conduct, waive such condition / submit themselves to the jurisdiction of another court, it cannot be said that exclusive jurisdiction shall be without jurisdiction except in the court in which it is vested.
2. **R.V. Solutions Pvt. Ltd. v. Ajay Kumar Dixit & Ors².** In this case, The Delhi High Court held that a third party can only be subjected to arbitration in exceptional cases without its consent. The arbitrator is required to form a direct relationship with the signatory party of the agreement, or between the parties in the agreement or the equality of the subject or the overall transaction

CONCLUSION:

Arbitration has developed significantly in India and also the justice is served to the people without any detention. Currently, most of the people are including the arbitration clause in their contracts

1. BHEL v. Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd., (2014) 3 SCC 439 (SC).

2. R.V. Solutions Pvt. Ltd. v. Ajay Kumar Dixit & Ors., (2020) SCC Online Del 677 (Del.).

and agreements to resolve their disputes through arbitration without court's involvement. However, there are some decisions and provisions which are not clearly interpreted. Hopefully, these would be identified and addressed by the Supreme Court and a clear interpretation and decisions are given in the near future.