

# LEGALFOXES LAW TIMES

## ARBITRATION – ARBITRAL AWARD

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### INTRODUCTION:

Arbitration is a process where the parties to the dispute settle the argument outside the court with the help of the arbitrator who is neutral to the dispute. It also can be defined as the process where an argument is solved by a third party with an acceptable solution. The process of arbitration comes under the mechanism of Alternate Dispute Resolution (ADR). The mechanism of ADR is been governed by the Arbitration and Conciliation Act 1996. The history of arbitration in India can be divided into three stages such as the

1. The pre-British period
2. During the British period
3. After the establishment of the ADR Act 1996

The history and evolution of arbitration in India are existing in India since ancient times. Arbitration in India came into existence in the 19<sup>th</sup> century. Before the introduction of the court system in India there was a practice of the panchayat system where the village heads of a particular community will decide and give a solution to the dispute that arise between the parties. If we trace back to even more ancient times in India the legal principles that were taken into consideration would be the smritis, srutis ie the knowledge that is coming from four-time immemorial which has been passed from generation to generation, these principles were considered to be a legal treasures. Later the concept of modern arbitration was introduced in India in the year 1772 by the Bengal Regulation Act 1772, in this act dispute resolution was recognised for the first time and it was enforced in the presidency towns like Madras, Bombay and Calcutta. Later the Bengal Regulation 1781 was introduced and the judge made some recommendations to settle the dispute without any compulsion to the parties. In the year 1940, the Arbitration Act of 1940 was introduced which was more specific about the arbitration process in India. It was applied to the whole of India and it settled many disputes in the country, still, the act lacked in quite a lot of areas and the act failed to attain its objective, therefore, it became litigation-oriented. In the year 1996, a new act was passed where it amended the laws related to arbitration and it was enforceable to the whole of India except Jammu and Kashmir.<sup>1</sup>

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<sup>1</sup> Uttarakhand Purva Sainik Kalyan Nigam Ltd. Vs. Northern Coal Field Ltd

### WHAT IS ARBITRATION:

In the fast-growing world of business, the concept of confidentiality and speedy results plays a very important role. The parties who have a dispute want more speedy results which are more flexible and which is more confidential in nature. Here in arbitration, the parties can an agreement between them in the business contract stating that in case any issues arise between them they can go for arbitration instead of litigation. The agreement between the parties is called the arbitral agreement. The arbitral agreement can be signed as a clause in the contract or it can also be made as a separate agreement between the parties. Arbitration is considered to be more cost-efficient compared to court proceedings around the world. The dispute between the parties will be confidential among the parties and the arbitrator whereas, in the judicial proceedings, the dispute will be handled publicly. The arbitration process is considered to be more convenient as reduces the time of litigation and also gives the parties access to speedy justice and also helps in maintaining the social status and relationship of the disputants. Arbitration became the most common technique of ADR because of its less formal process and speedy justice which save the time of the disputants. Here in arbitration, the parties can set the ground rules based on which the dispute should be resolved such as the parties can represent themselves, and speak for themselves and the parties can decide their choice of law and the jurisdiction in which they want their dispute to be handled. When it comes to arbitration the arbitrator plays a very important role in settling the dispute. The arbitrator is considered to be a neutral person to the dispute and the person can be appointed by the parties themselves, there is no need for any specific qualification to be an arbitrator. An arbitrator will not be a representative to the parties but he will act like a judge to the dispute who will provide a decision which is called an arbitral award. The parties can appoint either one arbitrator or a panel for arbitration which usually consists of three arbitrators, to whom the parties will agree.

The process of arbitration is very similar to that of a trial in court. The process of arbitration is generally used to settle the dispute between the parties which have separate laws to govern them. The law that is governing is called the Arbitration and Conciliation Act of 1996, this act provides

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Relying on the doctrine of *kompetenz – kompetenz* enshrined in Section 16 of the Arbitration & Conciliation Act, 1996 (**Arbitration Act**) and the legislative intent to restrict judicial intervention at the pre-reference stage, the Supreme Court held that the issue of limitation would be decided by an arbitrator.

It also reaffirmed that the legislative intent of the Arbitration Act is party autonomy and minimal judicial interference in the arbitration process. It observed that the regime of the Arbitration Act outlines that once an arbitrator has been appointed, all objections and issues are to be decided by the arbitrator.

The Supreme Court observed that the issue of limitation is a jurisdictional issue which should be decided by the arbitrator in terms of Section 16 of the Arbitration Act and not before the High Court at the pre-reference stage under Section 11 of the Arbitration Act. The Supreme Court observed that once the arbitration agreement is not in dispute, all issue including jurisdictional issues is to be decided by the arbitrator

the procedures that have to be followed in resolving the dispute between the parties. Here the act is divided into four parts in which only parts 1 and 2 govern the arbitration, part 1 deals with the arbitration and part 2 deals with the enforcement of certain foreign arbitral awards.

The very first stage in arbitration would be the arbitration clause or arbitral agreement, at the time of drafting the business agreement or insurance or partnership agreement the parties to the agreement can make a separate clause for the arbitration for the future in case any problem arises, so that resolve the dispute quickly stating the arbitral clause mentioned in the agreement. In case there was no arbitral clause mentioned while drafting the agreement then with mutual consent the parties to the dispute can take the matter to be resolved through arbitration. To make this arbitration agreement enforceable the arbitrators for the disputes should be appointed, in arbitration the parties to the dispute can select how many arbitrators can be in the panel and who can be the arbitrator for their dispute. This is mentioned in Section 10 and 11 of the Arbitration and Conciliation Act of 1996<sup>2</sup>. Section 10 deals with the number of arbitrators, here if the parties failed to appoint the arbitrator within 30 days then the arbitration tribunal will appoint a sole arbitrator to the dispute. Section 11 deals with the appointment of arbitrators, here the appointment of the person is mutually decided and if the parties fail to mutually appoint the arbitrator then they can move to court and request to appoint an arbitrator.

Section 21<sup>3</sup> deals with the commencement of arbitral proceedings, the commencement of the proceedings of the dispute starts from the date on which the request for the settling of the dispute is made and when the respondent receives the notice.

Section 23<sup>4</sup> deals with the statements of claims and defence give the parties a certain period where they can give their statement for the claim, and their point of issues to the dispute they should also submit the documents supporting their claims with the relevant facts.

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<sup>2</sup> Section 10: number of arbitrators-(1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in subsection (1), the arbitral tribunal shall consist of a sole arbitrator.

Section 11. Appointment of arbitrators.—(1) A person of any nationality may be an arbitrator unless otherwise agreed by the parties.

(2) Subject to subsection (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(4) If the appointment procedure in sub-section (3) applies and— (a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by 1 [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court];

<sup>3</sup>Section 21. Commencement of arbitral proceedings.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

<sup>4</sup> Section 23. Statements of claim and defence.—(1) Within the period agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or

Part 1 and chapter 5 of the Arbitration and Conciliation Act 1996 deals with the conduct of the arbitral proceedings from Section 18 to section 27, these sections deal with how the arbitration process will be conducted under the act. It gives equal treatment to the parties, determines the rules and regulations according to which the procedure will be done, the parties will be able to decide a place where they want the arbitration to take place, when they want the proceedings of the dispute to start, in what language they want the proceedings and filings to be done, what are their statements for claims and what are their issues and the statements will be submitted as a written document, at what dates the hearing and the written proceedings will be etc...

### **WHAT IS AN ARBITRAL AWARD:**

This topic is completely dealt with in Chapter 6 of the Arbitration and Conciliation Act of 1996. The final decision made by the arbitration tribunal is called the arbitral award and it is mentioned in section 2(d) of the act<sup>5</sup>. The act itself does not have a proper definition of what is an arbitral award but it only affirms what is included in interim awards under section 2(c) of the act. The arbitral award is of many types and the award is decided according to the dispute between the parties by the tribunal. As the process of arbitration is very similar to that of the trial proceedings in the court, the arbitral award is also regarded as equal to the court's judgement. The arbitral award or the arbitration award is considered to be the final decision of the arbitration tribunal. The arbitral award can not only be in one particular way but it can differ from one award to another, as the award can be a sum of money paid as compensation, sometimes it can also be an injunctive relief and substantive fulfilment of the contract or rectification in the agreement. The arbitral award is regarded to be the final decision and it can be of different natures such as a

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remedy sought, and the respondent shall state his defence in respect of these particulars unless the parties have otherwise agreed as to the required elements of those statements. (2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

<sup>5</sup> *Bharat Sanchar Nigam Ltd Vs Haryana Telecom Ltd*  
2010 (3) Arb LR460

In this case, the verdict was sent to the lawyer with proof of sending, which the court recognized as not complying with the provisions of the law, which means that the limitation of appeal of the verdict comes into effect only from the moment of the verdict. it is sent to "the party" and not to their agent or attorney. Regarding the correct notification of the sentence, the court in the above case stated as follows. took place "It seems to the court that the delivery/receipt of the arbitration award would necessarily take place at the initiative, responsibility and authority of the Tribunal In this case, it appears that the arbitration award was sent "proof of mailing" and not registered, and that too to the plaintiff's attorney. UPC only verifies the delivery of the letter/envelope, not its service In contemporary matters such as the service/receipt of an arbitral award, the arbitral tribunal has a duty to ensure that the award is effectively served on the directly aggrieved party. The Court fervently hopes that henceforth arbitrators and arbitral tribunals will consider their judicial contract terminated only after they are satisfied that the arbitral award has actually been served on each of the parties to it. If a registered letter is returned undelivered, the arbitral tribunal must return it until it has been served or there is sufficient reason to believe that it has been served.

temporary, interlocutory and partial arbitral award. All this is brought down based on the nature of the dispute between the parties. The place of the arbitral award comes into the picture when there is a foreign award issued in case of international arbitration<sup>6</sup>. In domestic arbitration, the place of the award will not cause any problem, because it can be anywhere in India where the parties to the dispute have agreed. But in the case of international arbitration, the place where the arbitration wants to be handled will be mentioned arbitration agreement itself. In the case of Indian parties to the dispute, they make use of a joint arbitration clause which deals with the determination of the place of arbitration. There are many different types of the arbitral award

- Interim award
- Final award
- Consent award
- Default award or Ex parte award
- Award on agreed terms or settlement award
- Partial award
- Draft award
- Additional award

#### **INTERIM AWARD:**

An interim award may be described as the determination of relief to some parts of the dispute between the parties by the tribunal which is referred to in the arbitration. The interim award will also be issued in the same manner as the final award.<sup>7</sup> An arbitral tribunal will be issued by the tribunal to the parties to the dispute as mentioned in the arbitration agreement. They can also pass an interim award to a dispute for which it has the power to pass the final award<sup>8</sup>. A party to the dispute at any time during the arbitral proceedings or before the enforcement of the final award under section 36 of the act issued by the tribunal can ask for an interim award under section 17<sup>9</sup> of the act. The interim measures that can be asked by the parties during the proceedings can be

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<sup>6</sup> In the case *Serajuddin vs Michael Golodetz* the Calcutta High Court stated down the essential conditions for it to be considered as "foreign arbitration" in the award issued will be called a foreign arbitral award. The conditions are 1. An arbitration should have been held in any foreign state 2. By a foreign arbitrator 3. One of the parties to the dispute should be a foreign national 4. The laws applied in arbitration should be foreign laws.

<sup>7</sup> *Tamil Nadu Water Supply and Drainage Board, Chennai vs Abhan Constructions* [2002(4)RAJ 575 (Mad)]

<sup>8</sup> *Deepak Mitra vs District Judge, Allahabad*[2000(2)RAJ 112(AII)]

<sup>9</sup> *Amazon.com NV Investment Holdings LLC v Future Retail Limited* (Judgment in Civil Appeal No. 4492-97 dated June 8, 2021)

The Supreme Court reiterated that party autonomy is an inherent feature of arbitration law. The parties are free to choose institutional rules for dispute resolution, which include the power of the emergency arbitrator to impose

- Prevention, if the subject matter of the agreement is the sale of goods interim custody can be asked
- Detention or inspection of any property or anything which is subject matter to the agreement

The powers of the arbitral tribunal are also limited to passing an interim award against the party to the arbitration under section 17(1)(ii) of the act. For example, the supreme court in the matter of MD Army Welfare Housing Organisation vs Sumangal Services (P)Ltd [(2004) 9 SCC 619] held that the arbitral tribunal does not have the jurisdiction under section 17 of the act to pass interim award against the third party.

### **FINAL AWARD:**

The final award will be given by the arbitrators when all the disputes referred to by the parties are completed. The final award comes under section 35 of the act. The final award is usually in writing so that it will be easy to calculate the interest on the payments and it will be signed by the arbitrators. There are certain essentials for it to be a final award such as the award should be legal, it should dispose of the matter, and the most important thing is that it should be reasonable. For example, if it is not following the principles then it will be considered illegal- for an award passed for ownership in perpetuity against section 14 of the transfer of property act will be considered void as it is against the rule of perpetuity.

### **CONSENT AWARD:**

The consent award is considered to be a settlement agreement between the parties to the dispute and this agreement will be recorded. The settlement that is brought between the parties through consent award ensures that the dispute ends in amicable ways where it leaves both parties satisfied. The consent award will have the same effect as that of the other arbitral award which is provided on merits. The consent award will always be considered different from the normal award because the dispute was considered on the merits, but it just reflects the mutually agreed settlement terms of the parties of the dispute. This comes under section 30 of the act. Through consent award, it leaves both parties to the dispute satisfied.

### **DEFAULT AWARD OR EX –PARTE AWARD:**

The default award or the ex-parte award is explained under section 25 of the act<sup>10</sup>. The default award will be issued by the tribunal when the claimant fails to communicate his claims according

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interim measures of protection on the parties An award made by an emergency arbitrator is an order under Article 17(1) enforceable within the meaning of Article 17(2) He further held that there is no remedy under Article 37 against an enforcement order under Article 17. 2), Paragraph 2 of Article 17.

<sup>10</sup> NarinderSingh v. Union of India (Judgment dated 11.18.2021 in Civil Appeal 6734/2021)

The Supreme Court held that unnecessary hurry and haste by the arbitrator which results in the deprivation of a party's right to produce evidence and cross-examine the witness of the other party, would result in violation of the

to section 23(1) of the act where the tribunal shall terminate the proceedings. In this situation, the tribunal can continue with the proceedings of the dispute and can provide an award with evidence and the documents that were submitted before. The tribunal will continue without treating that failure itself as an admission of the allegations made by the claimant.

#### **AWARD AGREED ON TERMS OR SETTLEMENT AWARD :**

If the parties to the dispute want to settle in the middle of the arbitral proceedings, then an award will be made on the agreed terms between the parties with the help of the tribunal. Here the tribunal need not give any reason for issuing the award. The tribunal can simply record the settlement between the parties in the form of an arbitral award on agreed terms. This is called the settlement award.

#### **PARTIAL AWARD:**

A few issues which have been claimed by the parties of the dispute will be determined and the other issues will be still undetermined by the tribunal, so until then for the claims that have been determined the tribunal will issue an award till the final award is made. Until then the parties can continue will the arbitral proceedings.

#### **DRAFT AWARD:**

This draft award does not have any binding power over the parties of the dispute until it is confirmed and passed by the tribunal.

#### **ADDITIONAL AWARD:**

Usually when the final award is made the tribunal has no further authority, but on the request of the parties, an additional award can be made on the undecided dispute to the issues<sup>11</sup>

#### **CONCLUSION:**

Here we have studied what is arbitration its history its development, and what arbitral awards are the types of awards in India. The arbitration mechanism helps people in the fast-revolving world to get a speedy solution to their problems. The arbitral award is the solution given by the tribunal

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principles of natural justice and Section 18, 24 and 25 of the Arbitration Act. Such an award would be set aside under Section 34(2)(a)(iii).

<sup>11</sup> <https://lawlex.org/lex-pedia/history-and-development-of-arbitration-law-in-india/20489>

<https://blog.ipleaders.in/analysis-of-an-award-under-arbitration-act/>

<https://legalexpertindia.net/arbitration-cases-study-some-of-the-important-judgments-under-the-arbitration-conciliation-act-1996/>

to the parties to the dispute which is agreed upon by the parties and the arbitral award. the next step will be the enforcement of awards. The arbitral awards come in many different forms and it is considered to be a solution to both the parties of the dispute.

REFERENCES

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