



Potential Appeal Mechanism by Consent: Arbitration

Shivangi Sinha, Bhagyashree Deshpande, Sapna Deo, Smita Vedpathak

Abstract— Arbitration is a process of resolving disputes out of the court. It goes through many other synonyms such as mediation, conciliation, adjudication etc. One thing common in all is that we appoint an arbitrator who looks into all the matters in dispute and lays his decision in accordance to the legal statutes related to arbitration formed by the legislature. However the party in disputes gives an early consent to go for the arbitration rather than an appeal for many reasons. Howsoever there are people who consider that proper justice are not granted to them until and unless they go for appeal, but there are numerous advantages because of which parties now a day's prefer arbitration over the court proceedings. It is a less expensive, less time consuming process. Many states have made arbitration process compulsory. In many jurisdictions areas arbitration is somewhat a similar process to trial. This article will basically focus on the concept of Arbitration, its types and importance in today's world. One more important aspect which needs to be taken into account is the concept of "logic". Generally, we deal with the statutes or the codified law, but in this article we will try and see the genesis of applying logics in solving disputes, which is certainly more unpredictable approach towards any matter in dispute. This article, primarily focuses that even after having set of codified laws, how can one solve their matter in comparative less time period by using same set of laws and applying a little technical and logical reasoning towards it. These potential appeal mechanisms are friendly, and avoid signs of erosion. Along with the application of law, its enforcement (the arbitral awards given) also and always taken into consideration and are acted accordingly.

Index terms: Arbitration, Jurisdictions, Meditation, Negotiation.

I. INTRODUCTION

Arbitration is a form of alternative dispute resolution. It is merely a process in which in which parties in dispute choose an alternative method to resolve their disputes and avoid litigation. The parties appoint a person who acts as an arbitrator and after hearing both the parties pass an arbitral

award. The person so appointed at times is more expertise in specific subject matters than the judges. And therefore can give a large flexibility in decision making. The decision given by the arbitrator is binding[1] on both the parties. However, if the parties are not satisfied with the award passed they can challenge it in the court of law. Arbitration at times can be binding and non- binding on the parties.

Arbitration is a type of judicial process. And therefore the award so passed is given in reference to the justice, equity and good concise.

II. METHODOLOGY & ANALAYTICAL RESULTS

The process of arbitration is shown in fig. 1.

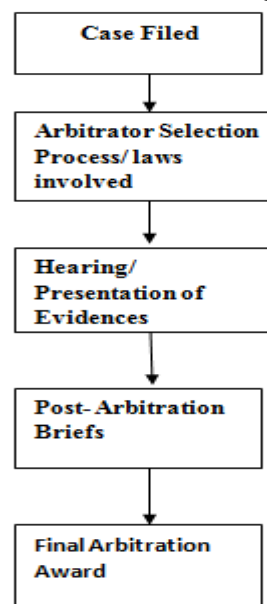


Fig. 1. Process of Arbitration

Matters related to property, insurance, contracts, family disputes, and construction related matters, commercial recoveries etc. go under this process of arbitration. Generally matters related to criminal, matrimonial relations, testamentary matters, Insolvency matters etc. are considered as non- arbitral matters.

The above mentioned chart shows up the process of how an arbitration matter is initiated and is further reaches its final destination[2] till the award. Since long years Arbitration owes its explanation to no Jurisprudence of law. However they have their own logics which need to be applied in various circumstances as per the need of the cases and what the parties demand.

Manuscript published on 30 September 2019

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According to this philosophy what arbitration requires is the application more logic than the theoretical approach towards the subject matter; it needs to obligation towards the rule of law.

It is therefore advisable to frame the arbitration agreement keeping in mind both the connotation of law and logic Arbitration agreement is merely a contract between two parties. We can also consider as one of the larger clause in whole of the agreement, which need to be drafted amicably, take into consideration the type of business parties are going for along with their needs and rights.

III. LOGICAL APPLICATION

Arbitration is one such law[3], which basically runs over logics than rule of law. It has been decades that Arbitration stated its journey from the concept evolved with the traders, who mutually try to settle all the disputes within themselves and run according to the situation favorable for them to trade further. When these mutual discussions were given a proper structure it further got segregated by various names known as Arbitration, Mediation, Negotiation or Conciliation. However, till today this process of alternative dispute resolution owes no obedience to any national laws. And as far as the private international law are concerned the situation becomes little rigid and complicated.

Thus, we came across different logics and the parties landed up with the concept of choice of law. Under many of the circumstances the arbitral tribunals are obliged to use the choice of law as chosen by the parties for giving any decision in the concerned matters. This concept logically means that the tribunal does not have to apply any rule of law, or go for any conflict of laws but can directly apply the chosen law. This concept was first initiated by ICC which is known as VOIE DIRECTE. This basically means, the tribunal has the application of law directly without referring to any other conflict of laws. However, there can be situations where the parties have not chosen any kind of laws there comes the UNICTRAL Model in picture, and the tribunal by referring the standard Model[4] Law can solve the matter in dispute in accordance to their discretion. Generally, the parties go or opt for business friendly law. For instance, if there are two parties in disputes one belongs to India and the other party belongs to UK, they can opt for Singapore Laws, in their arbitration agreement, which henceforth will take them to a path where if any situation for disputes arises, the tribunal chosen by them can use their choice of law[5], apply logic and pass the arbitral award as per the need and circumstances. However, there are always situations where when any of the party is not satisfied by the award passed by the tribunal can further go for appeal.

Another, logic which is applied in this regard is the suitable reason given by the tribunal while passing the award. The Arbitrator (Sole arbitrator or even the tribunal) needs to justify their award with reasons after passing them, which is once again an important point for the parties to accept it or go for an appeal further against it. So here once again the logic and the reason go hand in hand, the arbitrator need to pass the award in lieu with the chosen law, but need to take all the evidences, and assess the proceedings minutely before

coming into any justification or pass an award, in equity, justice and good concise. He need to completely assess his proceedings, weight the evidences and give his reasons by applying both the logic and law.

It's not always necessary the chosen arbitrator is always an expert in the field of law. He can be a person who can be expertise in any other field of science, logic, art, finance etc. The most important thing need to be taken into consideration is that the person appointed to solve the matter in dispute should be in accordance with the law but his intellect should be in accordance to the matter for which he was appointed. So, we can analyze that in the process of Alternative Dispute Resolution, both logical skills and codified law runs parallel.

IV. CONCLUSION

Every trade these days takes one important factor into consideration and i.e. the "time factor". This methodology of dispute resolution is way faster and cheaper than the long and lengthy litigation process. This is less formal method than the court proceedings. Unlike the court proceedings this method is little confidential as well. And the most important thing to focus on that this process involves the mixture of both law and logic in order to solve the matters in conflict. In the present scenario the most important deals such as acquisitions, mergers, financial disputes etc, opt for negotiation in order to settle their disputes.

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