

DE JURE NEXUS LAW JOURNAL

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2nd Year, BBA LL.B.**GROWING SIGNIFICANCE OF ARBITRAL CLAUSES IN CONTRACT****Introduction**

In the words of Nani Palkhiwala¹, *“If the law is not to be a system of tyrannical rigidity, but instead to be the efficient and useful servant of a changing society, it must from time be adapted and parts of it replaced. A court of law is like an ancient castle, constantly under repair. There comes a time when it no longer pays to patch it up and it is better to resort to a new, compact house built on modern lines”*.

Since the inhabitation of humans on the earth, there have been disputes. Traditionally, a family's senior member would settle disagreements between two people. A third family was brought in to settle a feud between two families. For the purpose of resolving disagreements, courts were established. However, as the population increased, so did the industries and commercial disputes. The courts were overburdened with innumerable cases, causing justice to be delayed.

Alternative Dispute Resolution and Arbitration

To ensure that justice was delivered on time, the technique of out-of-court settlement, known as Alternative Dispute Resolution, was developed. There are a number of different techniques available, like Arbitration, Conciliation and mediation. Due to delay in justice, these techniques

¹ He Was an Indian jurist and liberal economist.

started growing rapidly. But Arbitration grew the most. Arbitration is the most comprehensive and cooperative method of resolving disputes arising from domestic and international commercial relationships, in which the parties agree to, resolve the dispute through the signing of a contract.

As a result of the delay in justice, these practices began to grow extensively. Arbitration, on the other hand, grew the greatest. Arbitration is the most complete and cooperative means of resolving disputes resulting from local and international business interactions, in which the parties agree to, resolve the problem by signing a contract.

Arbitration is a form of alternative dispute resolution in which the parties reach a mutual understanding or agreement to resolve their disagreement. It's akin to a panchayat.

In India, arbitration was governed by the Arbitration Act 1940 but it was replaced by the Arbitration and Conciliation Act, 1996. The old act had failed to keep pace with the changed world scenario. The arbitration proceedings instead of becoming alternative courts to judicial forum became an added burden on the judicial courts itself. The painful slowness and rigmarole of procedure made dispensation of justice expensive.

The provisions of the Act of 1996 are substantive law (*lex loci*²) and procedural law (*lex arbitri*³). Arbitration agreement, under Section 7 of the Arbitration and Conciliation Act of 1996, is an agreement by the parties to submit to arbitration all or certain dispute which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. A doctor's relationship with his patient or a lawyer's with his client is both examples of relations that are legal but not necessarily contractual.

Arbitrator and his importance

To solve the issue a third party is appointed, they are called Arbitrator. An arbitrator is a neutral third party who has been appointed and should be familiar with the arbitration process. They play a role comparable to a judge in that they will listen to both sides and make a decision. An arbitrator is a specialist who helps two parties in a disagreement communicate more effectively.

² The principle that the law of the place giving rise to particular rights is the law that governs the rights of parties to a legal proceeding.

³ The law applicable, to the relationship between, an arbitral tribunal and the courts of the jurisdiction.

Arbitrators can play a variety of roles, particularly in contract negotiations and commercial disputes, so effective arbitrators have a thorough understanding of the dispute they are attempting to resolve.

Essential conditions of a valid and binding agreement are: The parties to the agreement must be competent to contract. The agreement must be made for a lawful consideration and for lawful object. The parties to the arbitration agreement must not only have intention to refer the dispute to the arbitration but also to be bound by them. An arbitration agreement must relate to present or future disputes and it must be writing only. Arbitration clause in a contract, separate arbitration agreement and arbitration agreement by incorporation are forms of arbitration agreement recognized by the Act of 1996.

The trend of inserting arbitration in contract has increased. This is because arbitration clauses in commercial contracts allow disputing parties to resolve their disagreements with the help of arbitrators in a timely and cost-effective manner, rather than resorting to protracted litigation. Arbitration is popular because arbitration regulations give the contracting parties a great deal of liberty. Arbitration is a private and confidential process.

Characteristics

Arbitration has a number of distinguishing characteristics, which are:

- 1. Arbitrators' Appointment (Section 11):** - Parties are given the freedom to choose their own arbitrator under the Act. In a recent case⁴, Delhi High Court held that Arbitration can be forced on a non-signatory who is directly involved in the contract. In ***SPML Infra Ltd vs NTPC Limited***, it was held that the courts must relegate the parties to arbitration to adjudicate the dispute once it is established that they had entered into an arbitration agreement.

If the parties are unable to agree on the appointment of an arbitrator, the Chief Justice of the High Court for domestic arbitration and the Chief Justice of the Supreme Court of India for international commercial arbitration are contacted.

⁴ *Shapoorji Pallonji and Co. Pvt. Ltd. vs. Rattan India Power Ltd. and Ors.*

2. **An arbitral award's finality:** An arbitral award is recognized as the parties' final and binding order, and if the decree is approved by the Court, it is enforceable under **section 34** of the Act. In the case of an arbitral award made under section 34 that is set aside because the arbitrator was prejudiced or the award is contrary to public policy.

In *SAIL v. Jaldhi Overseas PTE Ltd* it was held that only the grounds listed in Section 34 of the Indian Arbitration and Conciliation Act 1996 can be used to overturn an international arbitration award.

3. **Appeal (Section 37):** In general, arbitration decisions are considered final, and getting a court to review or vacate them is extremely difficult. A court order granting or refusing to grant any measure under **section 9**, as well as setting aside or refusing to set aside an award, is subject to an appeal under **section 37(1)**. An order of the arbitral tribunal accepting the plea referred to in section 16 (2) or (3), or granting or refusing to grant an interim measure under **section 17**, may also be appealed to a court under section 37(2). There is no right of appeal against an order made under section 11 that appoints or refuses to appoint an arbitrator.

The Supreme Court of India overturned its earlier position in *Government of Maharashtra v M/s Borse Brothers Engineers & Contractors Pvt Ltd on March 19, 2021*, and held that Section 5 of the Limitation Act, 1963 (i.e. extension of prescribed period in certain cases) would apply to appeals arising out of Section 37 of the Arbitration & Conciliation Act, 1996.

4. **Interim Relief (Section 9) & (Section 17):-** The act allows for the issuance of interim relief orders in relation to the arbitration. If there is prima facie finding that an arbitration agreement exists and that a dispute has arisen, the petition for relief is maintainable under section 9. Section 36 of the Act allows the parties to petition the court before the arbitral proceedings begin or after the arbitral award is made but before it is enforced. In accordance with Section 17 of the Act, the arbitral tribunal may, at the request of a party, order the other party to take interim measures as it deems necessary in relation to the subject matter of the dispute.

- 5. Simplicity of process:** - it because the Indian Evidence Act 1882 does not apply to the arbitration proceedings that's why the proceedings are much simpler and quicker. This is one of the main reasons why contemporary issues are mostly referred to arbitration so as to avoid the tedious, hectic and extremely delayed legal proceedings which may take years to be adjudicated and drain both the parties mentally till their termination.

The rise of arbitration represents a fundamental shift in our approach to legislating and resolving disputes in a short period of time, with separate clauses within commercial contracts paving the way for the most appropriate and effective remedy without resorting to the courts.

Conclusion

So, while the disputes are arising tremendously in the current scenario every party wants their matter to be settled as soon as it can be for no one wants to go through some tedious time-consuming process of the legal proceedings in today's super-fast lifestyles. Arbitration comes to the rescue in these matters for these proceedings are not only legal but also take the parties through a much simpler and faster process to settle their issues and get the adjudication like a cake walk. There is a whole act which governs the arbitration proceedings yet it bypasses the other lex loci like the evidence act to make dispute settlement process smoother.



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