

DIMENSIONS OF DIGITAL ARBITRATION IN INDIA

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ABSTRACT

The rapid enlargement of business transactions and globalization has given upward push to spiraling increase in arbitration on the countrywide in addition to worldwide stages. Arbitration is one of the current strategies of alternative dispute decision (ADR) that has received a lot of prominence because of the freedom it gives to the disputants. Online Arbitration is an aggregate of traditional Arbitration under Arbitration & Conciliation Act 1996, blended with technological functions requiring software of Information Technology Act 2000. This article discusses the dimensions of digital arbitration in India along with its pros and cons and legal complexities that it entails. The future of arbitration is digital arbitration, if India wants to eliminate the increasing backlog of cases, this form of alternative dispute resolution would allow faster settlements to international and domestic business entities. Digital Arbitration is developing and slowly progressing in India. There are both pros and cons pertaining to Digital Arbitration. India is slowly trying to navigate and mitigate the challenges and is hoping to make India as a hub for Arbitration. This article also discusses about the need for Digital Arbitration and how Digital Arbitration enhance and up build the legal system in future years and the author also suggests some points for smoother and effective Digital Arbitration.

INTRODUCTION

A technological revolution in the legal field has been in progress for some time now but only recently due to the Covid-19 pandemic, the same has come to light of the legal practitioners as well as in the consciousness of general public.

To put an end to the spread of Covid-19, many restrictions have been put in place, which has made holding in-person hearings really difficult which has led to increase in virtual hearings and there is an emerging consensus to better bring in the use of technological means in dispute

resolution, especially in digital arbitration practices. The primary aim should be on the incorporation of new methods so businesses are not to be burdened by unresolved disputes because of the inability of the parties to meet physically and resolve disputes. Different from the courts, the In ADR mechanism there is no need to clear bureaucratic hurdles to execute changes, the arbitral bodies are flexible and are able to adapt as per prevailing circumstances.

Although in both the virtual as well as physical hearing, the essential principles of Arbitration is confidentiality, consent, autonomy, fair treatment, etc. have to remain intact. The primary aim should be to hold substantive hearings remotely and as efficiently, efficiently and securely as possible.

EMERGRNCE OF DIGITAL ARBITRATION

The formal legal system is ill-equipped to handle the insurmountable arrears of disputes that continue to plague the legal system in India. The main concept of arbitration was to make the process easier to access justice as reported by many expert bodies¹

The first scenario pertaining to arbitration in India was The Bengal Regulation Act, 1772 that introduced arbitrators role in dispute resolution. After that, arbitration has undergone a lot of progress and has taken several dimensions in India, with the establishment of the The Arbitration Act, 1940 which revoked the Arbitration Act 1899 and finally the emergence of the Arbitration and Conciliation Act, 1996. Today, arbitration has achieved a long way further and a new form of arbitration has emerged known as online or Digital arbitration.

The Indian judicial system is marred through delays, backlogs and many pending cases is persevering with to surmount despite the diverse strategies of ADR current below the given legal device in India. Online dispute resolution appears to be the most effective opportunity left to reduce down the large backlog of cases and this shape of dispute resolution has been used

¹Report of the Committee on Legal Aid (1971).

Report of the Expert Committee on Legal Aid: Processual Justice to the People, (1973), Government of India, Ministry of Law, Justice and Company Affairs.

Report on National Juridicare Equal Justice – Social Justice, (1977), Ministry of Law, Justice and Company Affairs.

efficiently through the National Internet Exchange of India (NIXI) for area call dispute resolution². Online Arbitration is an aggregate of traditional Arbitration which comes under The Arbitration & Conciliation Act 1996, combined with technological functions requiring utility of Information Technology Act 2000. It is much like conventional arbitration however the most effective distinction is that it's far performed over the net. The improvement and extensive unfold recognition of on line arbitration complaints may be attributed to its cost-effectiveness and quickness. This is made viable due to the fact on line dispute decision through the use of net and the events autonomy, makes the complaints brief and unfastened from out of doors interference³. Online arbitration in India has to stand problems of virtual inclusion and great recognition of the dispute decision approach through net however India can genuinely enhance its generation infrastructure and expand institutional centers

KEY FEATURES OF DIGITAL ARBITRATION

Online arbitration in India is guided by the Information Technology Act 2000 in addition to the Arbitration and Conciliation Act 1996. Under the Information Technology Act, Sections 4 & five study with Section 65-B sincerely enumerates that digital facts and signatures can be brought as proof and give legality as recognition in the Legal system. Submitting a dispute to digital arbitration can arise whilst there's an e-settlement containing an on-line arbitration clause, or whilst there's every day written settlement with a clause detailing connection with online arbitration or whilst the dispute arises the events comply with solve the remember through on-line decision. Arbitration and Online Arbitration accommodates specifically of the arbitration settlement, nature of arbitral court cases, the arbitral award and the approach of enforcement of the arbitral award

Arbitration settlement entered into with the aid of using alternate of emails has been widely wide-spread as a legitimate form of settlement in India with the aid of using the Hon'ble Supreme Court withinside the instances of Trimex⁴ and Shakti Bhog⁵. In Trimex, it was held

²Anurag K. Agarwal. Is India Ready For Online Dispute Resolution? IIMA. W.P. No.2006-10-03.

³Ibrahim Al Swelmiyeen. Online Arbitration and Defamation in Social Networks. BILETTA 26th Annual Conference. Manchester Metropolitan University. School of Law

⁴Shakti Bhog Foods Ltd. V. Kola Shipping Ltd., AIR 2009 SC 12

that, if the parties intend to arbitrate any dispute that has arisen within the provided and attractiveness thereof, the dispute is to be settled via arbitration. The most effective requirement of the arbitration settlement is that the events should sincerely spell out the era for use in agreement of disputes, the vicinity of arbitration, legal guidelines governing the settlement entered into among the 2 events, jurisdiction of courts and whether or not it's far going to be the ad-hoc arbitration or institutional arbitration. The Online arbitration settlement is the maximum crucial file of the arbitration and for the reason that events do now no longer meet in my view however alternatively truly, it's far pertinent that the settlement sincerely defines all the particulars of the dispute decision mechanism. There should be assembly of minds and the settlement should be in keeping with Section 7 of the Arbitration and Conciliation Act 1996. The arbitral court cases in on-line arbitration are performed truly and all of the claims and defenses are provided in digital form. The International Chamber of Commerce (ICC) has formulated certain postulates to maintain standards in digital Arbitration proceedings.

For audio and video conferencing all through on-line arbitration ICC has said that the arbitral Tribunal, in session with the parties, will difficulty guidelines giving information for the Convention, along with:

- i) day and hour and relevant time zone;
- ii) locations wherein a convention front-stop is needed;
- iii) who shall take part and range of humans at every front-stop;
- iv) unique requirements, along with visualization of files;
- v) Every other requirements.

The arbitration court cases need to adhere via way of means of those policies and each element need to be clearly stated within the arbitration agreement. The arbitrators need to constantly attempt to preserve equality and impartiality all through the court cases and observe Sections 12 and 18 of the Arbitration and Conciliation Act 1996.

⁵Trimex International FZE Ltd. v. Vedanta Aluminium Ltd. (2010) 3 SCC 1

Finally, as soon as the arbitral award has been formulated it could be exchanged among the parties through electronic mail and signed via way of means of the arbitrators as enumerated in Section 31 of the Arbitration and Conciliation Act 1996. Scanned copies of the award may be dispatched through electronic mail even as the original files may be dispatched through submit at a later date for reference. This could entire the arbitration court cases. The arbitral award may be enforced in line with the regulation and there need to now no longer be any trouble bobbing up out of the award.

Around the world, there are numerous ODR vendors who provide offerings via way of means of the use of their owned IT software program technology. However, in India a whole lot of improvement is needed earlier than ODR providers are familiar via way of means of the overall public. Arbitration through digital platform continues to be in its nascent level even though the law is properly established pertaining to validity of such proceedings.

ADVANTAGES AND DISADVANTAGES OF DIGITAL ARBITRATION

There are numerous advantages springing up out of on line arbitration in India. Online arbitration encompasses using Internet, email, streaming media, websites, net chat periods and diverse different technological functions that are a part of the digital dispute resolution proceedings. Business network, authorities and ADR establishments have emphasized on the significance of on line arbitration due to the fact it'd complement offline dispute resolution mechanisms⁶. The maximum critical gain springing up out of on line arbitration is velocity of process. Business organizations need easy functioning in their business transactions and to end their disputes promptly they could sincerely avail digital arbitration. Further, on line arbitration gives ease of access to and comfort to the disputants. Internet availability is a key a part of on line arbitration and even though the unfold of net connectivity has now no longer reached remote villages however for the enterprise network on line arbitration is sincerely a supply of efficient time control price savings. Lastly, on line arbitration cuts down geographical boundaries and it additionally offer huge garage area for storing files. Most courts in India do now no longer have

⁶E. Katsh & J. Rifkin, Online Dispute Resolution: Resolving Conflicts in Cyberspace (John Wiley & Sons Inc., 2001

area to keep the huge quantity of papers and numerous courtroom docket documents are destroyed each year. However, digital storage space utilized in on line arbitration can sincerely assist in storing innumerable files and records.

The troubles with online arbitration in India are the dearth of infrastructure and human establishments who're nicely versed with arbitration proceedings. Trust and self-assurance should be instilled withinside the litigant public who typically decide on courts to arbitration in view that they're now no longer aware about arbitration proceedings. Technology hole among the vintage and the younger generation ought to be shortened to in addition expand on line arbitration. Lawyers ought to be advised to now no longer interact in frivolous litigation and inspire customers to settle their disputes amicably via on line arbitration proceedings. Education barrier and absence of get entry to generation is another most important disadvantage at the back of implementation of on line arbitration in India. Online arbitration might not be appropriate for resolving all styles of disputes including crook subjects and matrimonial disputes which do want different boards for get entry to to justice. However, regardless of the drawbacks connected with on line arbitration, it stays one of the maximum extensive strategies of resolving Business to Business (B2B) and Business to Consumer (B2C) disputes withinside the present day era.

BRILLOPEDIA

FUTURE OF DIGITAL ARBITRATION IN INDIA

Online Dispute Resolution (ODR) and Digital Arbitration have plenty of importance in the Present international wherein generation drives nearly each second of our lives. However, in India, there may be paucity of get entry to to simple, low priced and suitable computer systems or internet connections which bureaucracy the spine of any on line arbitration. The improvement of generation has now no longer been calmly allotted around the world so there may be the hazard that India might go through incredibly if on line arbitration turns into a critical function of dispute resolution in India. Though on line arbitration is maximum often applied to clear up disputes among e-trade Business to Consumer (B2C) disputes however there are positive growing nations wherein people often have interaction in on line corporations and thereby disputes do get up which wishes amicable solutions. India, for instance, engages in plenty of on line transactions however the variety of on line customers is miniscule in comparison to the

populace of the country. Under such circumstance, technological readiness is the important thing to assist people who get embroiled in on line disputes.

Online arbitration may also present numerous problems however in essence it isn't always one of a kind in comparison to everyday arbitration. Entering into arbitration agreements in positive on line settings may also war with the fundamental precept of global arbitration regulation that the consent of the events is a condition sine qua non to validly agree on arbitration due to the fact under positive conditions the events would possibly country that that they'd now no longer study the settlement cautiously earlier than accepting it via way of means of a single click on of a

mouse⁷. However, if the net arbitration settlement has been meticulously formulated then there need to be no cause to disclaim validity to the arbitral award bobbing up out of such proceedings.

Digital inclusion is the need of the hour and socio-cultural extrude can most effective assist India to cut down its ever growing backlog of cases. People who're skeptical approximately the net surroundings have to gain knowledge of to benefit agree with in on line arbitration. The global community is at a responsibility to help growing nations along with India to reap worldwide digital inclusion. Developing human and institutional capacities to deal with on line arbitration issues is likewise the want of the hour. With time, India might genuinely include on line arbitration and it has already set out at the path to reap it.

SUGGESTIONS FOR AN EFFECTIVE DIGITAL ARBITRATION

Thus, virtual hearings are absolutely necessary and a can save time and expense, and so by incorporating certain good practices in conducting them, one can ensure a smooth experience, which are as under –

- Technological and Logical specifications such as the participants number, access to technology, guiding rules, data privacy concerns, time-zone difference, the online

⁷A. Broches, Commentary on the UNCITRAL Model Law on International Commercial Arbitration (Deventer: Kluwer, 1990) at 38; J. Coe, International Commercial Arbitration: American Principles and Practice in a Global Context (New York: Transnational Juris, 1997) at 55; B. Poznanski, "The Nature and Extent of Arbitration Powers in International Commercial Arbitration" (1987) 4 J. Int'l Arb. 71 at 71; A. van den Berg, The New York Convention of 1958: Towards a Uniform Judicial Interpretation (Antwerp: Kluwer, 1981) at 173.

platform i.e., Face Time, Skype, VidyoCloud, and the online document management system should be agreed before to the hearing.

- The conduct of the digital arbitration intending need to be honest to the parties , so the duration of arguments and time allocation to every participants needs to be agreed, and arbitral tribunal ought to make sure that events keep on with them and do not talk over each other.
- Among the Arbitral participants practice rounds should be conducted to ensure everyone has sufficient training pertaining to technology for the hearing to run efficiently.
- The tribunal's clarity and audio-video quality of line of sight of the witness ought to be ensured.
- Access of the events and the tribunal to e-files need to be ensured, and presentation of proof via way of means of witnesses need to be carefully monitored and effectively displayed through computer systems in any respect venues to make sure safety of the files.
- A back-up plan in place is a must in case of any unavoidable circumstances, such as shifting to teleconference.
- The participants from their end should ensure quiet location lighting and proper access to internet, a proper virtual hearings can save considerable a lot of time and costs,

CONCLUSION

The acceptance of digital dispute decision isn't always unanimous, even though using video convention and digital hearings offers a feasible opportunity to worldwide travel and in-person attendance at an arbitral hearing. But using digital era to behavior remote court cases increases a few legal concerns, which include demanding situations to the legal enforcement of an arbitral award exceeded in an arbitration held thru video conferencing. Currently, because of pandemic, the digital hearings were used as an intervening time device for heading off disruptions, however ultimately the Virtual hearings are certain to turn out to be a brand new regular for cross-border disputes. Though still positive instances may also require in-person hearing.

The values learned during these trivial times may be the vigor needed to help arbitration better fulfill the purpose of providing a speedy and cost-effective means for the final resolution of disputes. Digital arbitration practices adopted can significantly decrease the travel cost and of organizing physical hearing. The government should make the necessary changes for adopting online hearings through video conferencing in the Arbitration Act, and issue guidelines pertaining to virtual hearing for all the arbitral institution in India.

