

PROCEDURE OF ARBITRATION:

The rapid globalization of India has led to economic competition, which ultimately leads to disputes. Arbitration in India, unlike this economic boom, however, is not so new.¹ Arbitration was prevalent in the Indian society since old times, not in the exact same form, but in the forms of panchayats and other community settlement ways. Arbitration (ICA) as a method of adjudication is gaining foothold primarily due to factors like Confidentiality, Choice of Law, Seat of Arbitration, Choice of Panel/Institution, Pre- decided and customised procedure etc.

Arbitration is generally preferred as a means of dispute resolution due to the personalised procedure it offers. It can be carried on through an ad-hoc basis or through the submission to an arbitral institution. Generally the procedure of arbitration is as follows:

Step 1: Clause of Arbitration in the Contract

An Arbitration is the creature of contract. The dispute resolution is primarily governed by the contract. The contract specifies the seat/place of arbitration, the governing law, the procedural law, the preferred arbitral institution, if any, etc. The clause can be modified to some extent. And even if the contract which is the primary contract is adjudicated invalid, the arbitration clause becomes separable in various instances. It can also be included that there will be only one arbitrator of the dispute and the share of costs to be paid by each parties.

Step 2: Appointment of an Arbitrator and Statement of Claims;

In the event of dispute, the matter has to be taken to an arbitrator. An arbitrator is selected by the mutual agreement of the parties, at the same time being impartial and independent. The list of arbitrators is considered. An arbitrator who specializes in a particular field can be shortlisted. In the case of institutional arbitration, the claim is sent to the Arbitral Institution. And in case of Ad Hoc Arbitration, it is directly sent to the arbitrator.

¹ <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1018&context=arbitrationlawreview>

Step 3: The Arbitrator's Fees

Upon Court's and the Arbitrator's request, you pay the arbitration fee and the administration fee. The Arbitration fee is calculated either per hour or according to the institutional rules. The costs of the Arbitrator and the other miscellaneous fees are generally shared equally by the parties. The Claimant is supposed to deposit the fees of their part of the arbitrator along with the statement of claim. The Respondent then deposits the fee along with the Statement of Defense.

Step 4: Statement of Defense/Counterclaims

After the other party of the dispute receives the statement of claims, he/she is entitled to submit a statement of counterclaims or appoint a second arbitrator, if required. It is just the like reply raised to an application. The Respondent can suitably reply the various contentions and raise additional contentions if desired.

Step 5: Arbitral Proceedings

Alike in the civil courts, at a trial, an arbitral tribunal examines the case, analyzes the evidence, and hears witnesses. There is no such limitation of evidence, although a presiding arbitrator has the power to fix a date after which no evidence would be accepted; the parties may agree the manner in which the proceedings to take evidence are to be conducted. The trial is held rather as a meeting between two individuals. The participants are: the arbitrators, the parties and their counsels. Third parties are generally not allowed to attend the trial. The arbitrators undertake to keep the information about the trial confidential.

Step 6: Award

Whenever the Arbitrator thinks that the evidences are sufficient to satisfy the facts of the case, and upon arbitral tribunal's clarification of the case to the extent being sufficient for material resolution, the arbitral tribunal issues an award. The award is not appealable, except under appeal of Section 34.

The Arbitration and Conciliation Act, 1996 governs the procedure of Arbitration in India. The Act is divided into two parts. The act renders the definition of Arbitration Agreement in Section 7. Section 20(1) gives the freedom to decide on a place of arbitration, however, failing such agreement, the place is to be decided by the Arbitral Tribunal. Section 23 to 27 underline the basic policy of Conduct of Arbitral Proceedings. Section 23 of the Act provides that within the period of time agreed, the claimant shall state the facts. Section 24 envisages the law regarding the hearings and submissions of written proceedings. Further, Section 25 underlines the policy of statement of claims. Court's assistance under Section 27 can be sought.

The High Court of Bombay in the case Sahyadri Earthmovers vs. L and T Finance Limited and Anr.² examined the scope of applicability of CPC during the arbitration proceedings and held that although the Code and the Evidence Act are not applicable strictly, (Section 19), but their settled principles do apply. The principles of natural justice, fair play, equal opportunity to both the parties and to pass order, interim or final, based upon the material/evidence placed by the parties on the record and after due analysis and/or appreciation of the same by giving proper and correct interpretation to the terms of the contract, subject to the provisions of law, just cannot be overlooked.

International Commercial Arbitration (ICA) as a method of adjudication is gaining foothold primarily due to factors like Confidentiality, Choice of Law, Seat of Arbitration, Choice of Panel/Institution, Pre- decided and customised procedure etc. Although, Arbitration is a resolution system used by the parties to avoid the formalities, procedures and rigidity of the ordinary courts, it shares many aspects with litigation

India has showed a Pro- Arbitration approach in recent years. The recent amendment to the Arbitration and Conciliation Act, as recommended by the Law Commission includes very prominent steps to make India favourable destination for International Arbitrations by making the Act in consonance with UNCITRAL Law and New York Convention. The judgments given by the Indian Courts are an addition to

² 2011(7)ALLMR279

that. The 246th Law Commission Report recommended Institutional Arbitration in India.