

Arbitration in India : Procedure and Challenges

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Introduction

Arbitration can be considered as an alternative dispute resolution approach, in addition to mediation and conciliation. Based on the UNCITRAL model law, India established the Arbitration and Conciliation Act, 1996, which has been amended in 2015, to address both domestic and foreign arbitration in India. Arbitration is a process in which disputes are referred to one or more arbitrators who deliver a binding decision on the dispute by consent of the parties. Arbitration can take place only if both parties agree to it. In the event of future contract problems, the parties include an arbitration clause in the relevant contract.

Arbitration agreement

Section 2(b) of the Arbitration and Conciliation Act, 1996 when read together with Section 7:

It is defined as any written statement or exchange of communication between the parties, as well as any statement made by telecommunication. It is not required that the parties sign or unsign it. Even if an arbitration clause is included in the contract, it is regarded an arbitration agreement.

Procedure

- 1) **Arbitration Agreement:** The parties must have a legally binding arbitration agreement, which can be a separate agreement or a clause in a contract. The agreement should explicitly state the parties' intention to resolve their issues through arbitration.
- 2) **Arbitrator Appointment:** If the parties have not already agreed on the number and process for appointing arbitrators, the Act establishes a default option. A single arbitrator or a panel of three arbitrators is usually appointed. Arbitrators must be impartial and self-sufficient.
- 3) **Initiation of Arbitration:** The party commencing arbitration, known as the claimant, sends a notice of arbitration to the opposing party, known as the respondent. The notice should include a summary of the dispute, the relief requested, and the name of the arbitrator appointed by the claimant.

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- 4) **Response and Appointment of Respondent's Arbitrator:** The respondent has a set amount of time to react to the arbitration notification and appoint its arbitrator. In its response, the respondent may also make a counterclaim against the claimant.
- 5) **Presiding Arbitrator or Arbitral Tribunal Appointment:** If the parties have selected their respective arbitrators, those arbitrators will appoint a presiding arbitrator (in the case of a three-member tribunal) or comprise the arbitral tribunal (in the case of a solo arbitrator). The tribunal is in charge of supervising the arbitration processes.
- 6) **Statement of Claim and Defence:** The claimant produces a claim statement that includes the facts, legal arguments, and evidence that support their case. The responder then files a statement of defence in which it responds to the claim and presents its own arguments and evidence.
- 7) **Award Enforceability:** The award is final and enforceable on the parties. Either party may seek the implementation of the award in a competent court. The award's legitimate activities and enforceability will be examined by the court.

Challenges

- 1) **Judicial Interference:** Excessive judicial interference in arbitration proceedings is one of the primary challenges. Indian courts have been known to intervene in arbitration cases by overturning arbitral decisions or revising interim decrees, which is contrary to the fundamental idea of restricted court intervention in arbitration.
- 2) **Lengthy Proceedings:** Arbitration proceedings in India are frequently characterised by delays and extended timetables. This can be due to reasons such as arbitrator appointment, procedural difficulties, and an overworked legal system, all of which impede the efficiency and efficacy of the arbitration process.

For further discussion or queries on the above-mentioned issue, we can be reached at anbay.legal@gmail.com.