WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.

Senior Editor

Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.

Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM
Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.
More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK LEGAL

CHALLENGES FOR ARBITRATION INDIA

AUTHORED BY - POORVA CHAWLA

Introduction

According to recent reports, India is estimated to have 3.53 crore pending cases in total, where 58,669 cases are pending in supreme court, 43,63,260 pending cases across all high courts and a whopping 3.11 crore pending cases only across all District and Subordinate courts in India. Despite these statistics, more and more people are tilted towards the judiciary to resolve their disputes. Alternate dispute resolution methods are very helpful and very crucial for any business firm. It helps them to resolve any disputes internally and with a greater pace than any judicial system can ever do. The parties involved in an arbitration proceeding have power to add their own terms and conditions, like they would do in any other form of contract or agreement.

Various forms of Alternate Dispute Resolution

Alternate dispute resolution involves settling disputes outside the court. There are various forms of alternative dispute resolution like early neutral evaluation, arbitration, conciliation, mediation and negotiation. Although they fall under the same head but they vary a lot from one another. Some important provisions relating to alternative dispute resolution are provided in Section 89 of the Civil Procedure Code, 1908, Arbitration and Conciliation Act, 1996 and Legal Services Authority Act, 1987. Some of them are explained below:

- **Arbitration** is typically used to resolve disputes between private entities, outside the court machinery.
- **Negotiation** is a dialogue between two or more people or parties intended to reach a beneficial outcome over one or more issues where a conflict exists with respect to at least one of these issues.
- **Conciliation** refers to the process where the parties use a conciliator, who meets the parties both separately and together, and tries to resolve the dispute(s).

- The fourth method of Alternate Dispute Resolution is **Mediation,** it refers to a process a person called as a mediator, sits between/with the parties and helps them to negotiate and come to a final decision/settlement. The mediator tries to facilitate open communication between the parties.

The present paper focuses on the reasons for slow growth of arbitration in india. But, first we should discuss arbitration and the process of arbitration to better understand and evaluate the topic in question.

Arbitration and its Process

Arbitration as explained above, is a process of resolving disputes between private entities, outside the court machinery. In simple terms, arbitration is a process when two or more parties decide to settle a dispute outside the court(s).

A simplified arbitration agreement involves following steps:

- First of all, the parties to a contract/agreement, adds arbitration clause into their agreement/contract and if and when any dispute arises between them, one party informs the other party about the dispute by issuing arbitration notice.
- This is followed by response by the other party and subsequent appointment of an arbitrator, decision on rules and procedures, place of arbitration and language.
- Once the arbitration proceedings commence, there are formal hearings and written proceedings.
- The arbitrator, if the matter so requires, issues interim reliefs followed by a final award which is binding on both parties.
- The tricky part arises if either of the parties, unhappy with the award, challenges it before the court. This can be before the appellate court or the Supreme Court depending upon the matter.

Reasons for Hindrance in Growth of Arbitration in India

The Constitution of India provides ‘one’ with many reliefs and aims to deliver justice to each and every person, who has been wronged. One such relief is the Process of arbitration that has been provided under Arbitration and Conciliation Act, 1996 (A&C Act). But due to the following reasons, Arbitration in India has not grown properly as it is accepted to be:

Conventional thinking of Indians

Although India is moving towards modernisation, it is yet a developing country. Which means, most people are ignorant towards arbitration and still trust courts more than alternate dispute resolution. This is not necessarily a bad thing, putting faith in one's judicial system, but when the citizens of a country are ignorant and are unwilling towards change, this kind of orthodox thinking can really harm rather than helping anyone.

Lack of Proper Laws

The Arbitration and Conciliation Act was introduced in 1996, and last amended in 2015. In India, there is a serious need for introduction of more comprehensive law regarding arbitration process and proceedings. The law makers need to extensively study the problems regarding the needs and requirements of business houses, that usually deals with arbitration proceedings. The laws must become strict and more carefully elaborated so that more and more people gain assurance in Arbitration than the Judicial System. In simple terms, most of the people are still not willing to take risks or a leap of faith regarding matters of large magnitude that they may face in a business.

Intervention of Courts in Arbitration Proceedings

The intervention of courts in arbitration proceedings shall be kept to minimum. Due to such interventions, those who opt for arbitration rather than pleading to a court, also result in inclination towards courts furthermore. People sometimes find it better to approach the court at first. Court intervention should be kept in check, not only the intervention during arbitral proceedings, but the intervention after the proceedings is concluded. This means, there must be a limited scope to challenge the arbitral award under Section 34 of Arbitration Act, 1996. In **White Industries Vs. Republic of India**, two issues arise: a) Intervention of judiciary and, b) Delay in arbitration. And, so it was well debated and agreed that the involvement of the judiciary should be minimised to an extent.

Lack of Awareness

One of the major issues due to which Arbitration is not growing in India is because of lack of awareness among the people. Some businessmen, advocates or legal advisors are only aware of the situation relating to arbitration proceedings and due to this unawareness, many small scale businessmen or various newcomers who are not aware of such remedies are left out of the scope of such proceedings.

The above-mentioned points are the main reason as to why arbitration is not growing faster in India. And now, we must discuss how we can overcome these problems, to create a better image of India as a business and arbitral destination.

Addressing Issues And Overcoming Them

- Creating Awareness

Among the people is the first and foremost need, if we want to create a better position for arbitration in India. Messaging is critical. Promoting arbitration and, therefore, preventing private players to rush to the courts without resorting to the relevant provisions of arbitration in the contract, must be a goal. If people are unaware of their rights, they can never seek justice. Keeping this in mind, it is very essential for us to create awareness about arbitration, it's needs and its importance.

- Mandatory Arbitration

Should be introduced. India will not have a robust domestic arbitration environment unless institutional arbitration becomes mandatory. This can only be done if arbitration agreements mention the specific institution that will conduct arbitral proceedings.

- Minimum Court Intervention

Minimum court intervention is required. Arbitration is an Alternate Dispute Resolution (ADR) method, which means resolving disputes by some other method than courts, and even then, Courts are allowed to intervene in arbitration proceedings, the whole concept of ADR is lost. Court intervention should be kept to minimum and in check, like there must be a limited scope to challenge the arbitral award under Section 34 of Arbitration Act, 1996.

- Introduction of Proper Laws

Introduction of proper laws is also a necessary requirement in such scenarios. Arbitration laws are required to be amended on a regular basis, and are crucial if our goal is to improve the conditions of the arbitration in India.

Conclusion

Indian legal system needs a way to deal with cases that are pending in the courts, and arbitration has proved itself a boon in this regard. Arbitration is not only helpful in reducing the excess burden that is put upon the Legal System but is also helpful in many more ways, like faster decision making, less costly, parties can put forward their own terms and conditions, etc. If the above-mentioned reasons are somehow overcome, and both legislature and judiciary keep a strict check on arbitration laws, growth of arbitration in India is certain.