NAVIGATING THE APPOINTMENT AND CHALLENGES OF ARBITRATORS: AN ANALYTICAL REPORT

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ABSTRACT

When two or more population groups in the world clash, the need to settle disputes with a different system under the influence of the most advanced and the technology likewise arises. This report discusses the issue of the arbitration, a confidential mechanism for the resolution of the disputes in which the arbitrators who are quite often the expert professionals selected in the field are the ones who make the decision. We investigate the main principles of arbitration, such as the fact that it is a process based on agreement, the conditions and the selection procedure for arbitrators, as well as the legal nature of arbitral awards.

The fact that arbitration is a much favoured alternative to litigation comes with the condition that only those people who are appointed as unbiased and competent arbitrators will succeed. This document contains quite a few techniques that negotiate the complicated process of arbitrator appointment and presents a list of challenges with it. We look into the problem areas, such as the possible partiality of those involved, the existence of conflicts of interest, and the restrictions brought by the party knowledge.

When it comes to disagreeing, for example through the bias and the conflict of interest, one may be led to think that in order to keep the integrity of the arbitration panel special attention has to be given to it. It is a very onerous tax to discover arbitrators who have all the necessary qualifications and the adequacy of the specialized knowledge sector is crucial, particularly in those sectors of domain-specific knowledge essential. Moreover, it is shown that the scheduling of the arbitrators is a crucial issue in the cases that are expedited.

For the sake of smooth running, the arbitration hearing can be obstructed by the conflicting schedules, and previous engagements, thereby, the significance of efficient exchanges is emphasized. Furthermore, the monetary affect of arbitration selection must also be considered as each party has to take the burden of paying skilled workers.

Despite these challenges, one should have a detailed understanding of the Arbitration Act in India, as well as take steps toward openness and efficiency

in arbitrators' discretion in order to overcome untoward. The trust in the pronouncement and execution of the system is achieved through laws, which are one and the same, simplifying the process of nomination and the bettering of the arbitrators' qualifications. This will, therefore, allow for more confidence in the arbitration system as well as for India to be set as the best place for dealing with disagreements.

1. INTRODUCTION

Arbitration as the process of in that arbitration is one of the main that are used for the settlement of conflicts and their mechanism are various such as the seas, the sale of the quarrels, the international conflicts e.t.c. Moreover, arbitration is not hindered by standard court procedures as it comes with a quicker, confidential, and more flexible process for the conflicting sides. The main players in this process are the arbitrators, who assist in the whole process, from the initiation of the arbitration to the issuance of orders that are enforceable and are to be respected. This paper considers these and other issues involving arbitrators, going over the protocols they obey and their troubles in the current situation of dispute resolution.

Arbitrators are the reason for the supposed to be correct, smooth, and fair arbitration procedures. Key criteria for their choice include the personal status of the selected person, his/her mastery of the branch of the law, and his/her lack of bias. The procedure of appointment can take different directions, of which the parties either agree on a person to be the arbitrator, or in an event where there is none, they involve it in an arbitration institution. By means of this process, the undertaking becomes an even bigger responsibility of the parties and is continued being by the arbitrators in order to have the controversies solved completely and without inequalities.

The infrastructure of the arbitrators' method is decided formally by the resolution of proposed rules and according to the specific agreements the parties sign. The foundation of the procedure consists of the filing of allegations and the replies to them, the holding of the primary hearings, the gathering of the evidence, the overlapping of the witness testimonies, and the point of the description. Arbitrators head the work they do through the stages of selecting problems that are based on the correct liabilities principles and continue with the higher rate of arbitration than court determinations. Under rules of arbitration, they have an obligation to provide means of applications that are universally accepted as valid with the concept of this flexibility as an anchor for the conflict management process.

Although arbitration offers several natural benefits, arbitrators still have to deal with a number of issues that can affect the success and perception of arbitration. The first and most serious matter is to ensure the impartiality of the arbitrator. The arbitrators are under the obligation to avoid any exclusive kinds of an actual or even such imputation of the respective task as they can mislead the researchers. In the process of this, they have to be very careful of all their

disclosure obligations and remain very loyal to their ethical standards. In addition, the more unresolved, and inter-jurisdictional cases create additional elements of legal and procedural complexity, and arbitrators must go through differing legal codes and cultural differences in these cases.

One more obstacle the arbitrators face is setting the proper expectations of the parties, who might disagree about the arbitration proceedings and the outcomes. Arbitering parties are mandated to set up a process that is fair and transparent to all relevant interests. Procedures concerned should also be addressed, but the decisions made should be perceived as fair and balanced. This aspect is even more important because trade globalization has intensified the competition among the arbitration outcomes.

Additionally, the issue of the enforcement of arbitral awards is still a major concern. However, through international treaties like the New York Convention, the enforceability of arbitration awards has been materially improved, thus the arbitrators need to understand the legal standards in different jurisdictions to be assured that their awards will withstand judicial review.

Summing up, the assumption of the judicial function of arbitrators in their role as a mainstay of the arbitration operation is completed as the law revolves around them. They have a myriad of responsibilities like the handling of the proceedings, ensuring that the ethical standards are adhered to, and also making sure that the binding decisions are delivered. The challenges they are confronted with are concomitantly multifaceted as they entail very high expert, unbeaten temperament, and utmost adaptability to the given conditions. The progress of arbitration in reaction to the world's dynamics brings on the arbitration arbiters in the management of the process, the arbitrators' roles will continue to remain critical. It will require conducting regular reviews and modifying the approach to stay ahead of the game.

2. ARBITRATION: ADVANTAGES AND DISADVANTAGES

Arbitration is a way or method of dispute solution where the parties consent to have a third party to decide on an issue in place of the court. What is more, the parties decide on the procedure of arbitration, thus choosing the private method for resolution of the controversy over the judicial one.

It is effectively more or less an agreement to agree sort of process where both the parties have to consent to arbitrating the dispute. Commonly known as the arbitration clause, the arbitration agreement is incorporated into the body of the principal contract that both parties have entered. Yet, arbitration may be agreed upon by the parties individually after the emergence of the dispute.

In arbitration the dispute is resolved either through a single arbitrator or a number of arbitrators though the number is most often three. Similar to a judge, an arbitrator has the duty to control the proceedings to allow the two parties to the dispute a fair chance to give their side of the story. The final award shall be made by the arbitrator after the proceedings of the arbitration and this is final to the parties involved.

2.1 ADVANTAGES OF ARBITRATION

1.Speed and Efficiency: Another important beneficial aspect of arbitration is timely execution of a commercial arbitration process. Contrary to litigation whereby the process usually takes several years before the case is decided, parties are able to decide on their fate in a shorter time. The process is usually more informal and systematic than the basic method, thereby making the process faster.

2.Flexibility: Organizations and individuals like the flexibility of inviting their preferred arbitrator, and determine the laws that shall regulate this ADR form. This gives the parties an opportunity to find an arbitrator of his or her preference in the area of law that the case pertains to and also find a process that suits them.

3.Confidentiality: Arbitration is one of the forms of dispute resolution that is perhaps more flexible and provides less publicity compared to court trials. This is in contrast to public hearings that allow third parties to hear what the two parties are saying and even in some cases record the meetings.

4. Expertise: Arbitration enables the parties to make a selection of the arbitrator meant to have some understanding of the merits of the case. This makes the decision-maker be more specialized and informed on the issues to be covered under the decision because he or she is more inclined to the subject matter.

5. Cost-Effective: Arbitration could also be cheaper than a trial though the cost could vary depending on the complexity of the case. Arbitration process involves costs such as hiring an arbitrator to help and participate in the process. Yet, these are often lower than the costs associated with lawsuits. Pertaining to court expenses such as fee for filing, attorney charges, and discovery expenses, which is inclined more often than not to be higher than the expenditure incurred in this ADR. Choosing this Alternative means that, especially when compared to court proceedings, the costs of the parties involved when engaging in a dispute resolution process can be quite low.

2.2 DISADVANTAGES OF ARBITRATION

1. Limited Judicial Review: Another important disadvantage of arbitration relates to the rather restrictive nature of the judicial upset procedures governing arbitration awards. Arbitral awards, on the other hand, are final and therefore cannot be taken to other higher tiers of the court system as in the case of court determined judgments. This may be a drawback if a party thinks that the arbitrator erred in a legal matter or failed to interpret the facts of the case correctly.

2. Lack of Formal Discovery: In most cases, arbitration has less extensive methods of discovery compared to litigation. This can be a problem because it means that parties may have restricted access to data and proofs that can prove useful in the court. This can actually place specific players in a weak position given that one could have access to a lot of resources or information than the other.

3. Cost of Arbitration: However, similar to litigation, arbitration does come with its own expenses, which can be significantly less costly than going to trial. Unfortunately, the costs incurred by the parties for the services of the arbitrator are always the responsibility of the parties and are mostly based on trial and the level of complications. However, continuity of party's invited advocates is also possible in this system; therefore, the cost of this system of Alternative dispute resolution is still pushed up.

4. Limited Precedent: Court judgements as may be given in civil matters are different from arbitration awards because the latter does not set legal precedent. As a result, one arbitration case does not require that the decision given has to be a precedent in future arbitration cases of similar circumstances. Consequently, it is less clear how legal norms and precedents will be constantly defined and expounded for the situation of Alternative dispute resolution.

5. Lack of Public Scrutiny: However, it can also be a disadvantage because with arbitration, the proceedings are confidential. This is in addition to the fact that in most cases, the decision may not receive as much publicity as a court judgment because there is little public oversight. Besides, This can give rise to doubts as to the fairness and accountability of the personnel staffing the programmes.

3. APPOINTMENT OF ARBITRATORS

The appointment of arbitrators under Indian law is mainly regulated by the Arbitration and Conciliation Act, 1996 enacted based on the UNCITRAL model law on international commercial arbitration. In this framework, the common goal sought is to have an efficient, fair, and consistent system of solving disputes.

According to the Act, the parties to the arbitration agreement are free to decide on the procedure of appointing the arbitrators. This agreement is honoured only to the extent that it is not inconsistent with any the requirement stipulated in the Act. If parties fail to agree on a procedure, the Act provides a default mechanism: it should be noted that in a case where there are three arbitrators each party selects one arbitrator and these two together select the third who becomes the chair.

The Act also deals with a situation in which the parties or arbitrators do not make the appointment of an arbitrator. Section 11 therefore directs the Chief Justice of India or any other institution he may nominate, to do so, thus averting a King in Waiting situation. This provision is intended to avoid all sorts of scenarios and conditions that can postpone the arbitration and allow it to start with as little interference as possible.

Of all the issues that may affect the appointment of arbitrators in India, this is one of the most concerning. The Act, for instance, requires that arbitrators to provide information that will create suspicion as to their impartiality or independence. This requirement is to ensure that

the parties involved in the arbitration process do not influence others and also to ensure that credibility is maintained.

However, the practical difficulties have not been completely eliminated following the provisions listed above. Another challenge that is plaguing the parties is the selection of the arbitrators, this mainly comes about especially when the matters in the dispute are complicated or are very important. There is also a controversy as to who are experienced arbitrators in India and whether fresh faces should not be allowed to be appointed frequently thus possibly overworking or biased arbitrators.

These concerns have been tried to be addressed in the recent amendments of the Act in 2015 and 2019 where provision for time –line in appointment process has been made and 'Arbitration Council of India' to facilitate arbitration and training of the arbitrators has been formed. These amendments are part of a general strategy that seeks to improve the status of India in the international arbitration sphere through the optimization of procedures and the promotion of the principles of fairness and professionalism.

3.1 VARIOUS ASPECTS OF THE APPOINTMENT OF ARBITRATORS

- Autonomy of Parties: The 1996 Arbitration and Conciliation Act also aligns with the party autonomy which preserve the section's freedom of the parties to determine the number and manner of selecting the arbitrators. This autonomy is elementary in arbitration and is in consonance with the legal position that arbitration is voluntary at the instance of the parties. P lead 5 permits qualifications, nationality, and procedural issues to be incorporated in the arbitration clause that enables the arbitrators appointed to be unbiased and/or experts in the area of dispute.

- Default Mechanism: This is a very exhaustive procedure and when the parties cannot agree on it the Act has the fallbacks. When a tribunal comprises of three members, each of the parties gets to appoint their arbitrator and the two appointed arbitrators jointly appoint the third armed arbitrator. In exercising this power of appointment of the sole arbitrator where the parties fail to agree Section 11 of the Act allows the High Court or Supreme court depending on the amount in dispute to appoint the arbitrator thus ensuring that deadlocks do not occur and making arbitrations to go on without the interruption they would require where the parties cannot agree of the arbitrator.

- Institutional Arbitration: Currently, there has been a rise in institutionals arbitrations in India through Institutions like; ICA, ICADR & MCIA… These institutions have also set their individual laws regarding the appointment of arbitrators and, in essence, these have both formal and formalised procedures as compared to ad-hoc ones. For example, the rules of the MCIA reduce the time it takes to appoint officers so as to enhance the mechanisms of conflict solving.

3.2 NUMBER OF ARBITRATORS

The number of arbitrators is also a matter for the parties to decide; however, the number chosen shall not be an even number.

Failing the said determination the arbitral tribunal shall be composed of a single arbitrator. Where there are three arbitrators each party shall choose its arbitrator and the two chosen arbitrators shall in-turn choose the third arbitrator who shall be the Presiding Arbitrator.

3.3 APPOINTING AUTHORITY

The arbitration has to be carried out by an arbitrator selected in accordance with the procedure that is typical for the parties of the dispute. In other circumstances if the parties to the dispute fail to be in a position to appoint an arbitrator then the same parties can go to the Court and seek assistance in appointing an arbitrator.

3.4 SOLE ARBITRATOR

Either party may request with the other party for appointment of sole arbitrator. The other party receiving the request is to confirm to such appointment of sole arbitrator and nominate the sole arbitrator. As to the arbitration with a sole arbitrator, in case of no agreement as to the identity of the arbitrator within thirty days after the receipt by a party of a request from the other party to agree on such, the appointment shall be made upon the application of a party by the Supreme Court or High Court or any person or institution specified by such Court.

3.5 MORE ARBITRATORS

Where there is section in the agreement that set apart the three arbitrators, each party will select one of the arbitrators. The two appointed arbitrators are required to appoint a third one

whowill be the Presiding arbitrator. In the event that a party which received a request to appoint an arbitrator does not appoint it within 30 days from the receipt of such a request then the request shall be made to the Court to appoint an arbitrator or where the two appointed arbitrators have not agreed on the third arbitrator this shall call for the appointment of the arbitrator by the Court.

3.6 DOMESTIC ARBITRATION

Domestic arbitration is the one that contains the following two qualities -.

- Where both the parties to arbitration agreement are nationals or residents of the same country.

- The rules of the agreement indicate that arbitration is to be conducted in the country of the parties to the agreements on arbitration.

The domestic arbitration application regarding the appointment of an arbitrator shall be decided by the High Court or the person or institution nominated by the High Court as early as possible and it should be tried to be done in 60 days from the date of service of the notice to the opposite party.

3.7 INTERNATIONAL COMMERCIAL ARBITRATION

Some of the issues that are left to the discretion of the parties in international commercial arbitration include the procedure for the appointment of the arbitrators.

The agreement may put it that a tribunal is made of three arbitrators and each of the parties will nominate one of the arbitrators and the two arbitrators so nominated will in turn nominate the third arbitrator who will be the Presiding arbitrator. Either of the parties failing to appoint an arbitrator or the two appointed arbitrators failing to appoint the third arbitrator within 30 days, can apply to the Supreme Court having jurisdiction for the appointment of an arbitrator.

The Court may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities for the matters referr in sub-sections (4), (5), (6), (7), (8) and (10).

3.8 DISCLOSURE BY ARBITRATOR

Before the Court empanels an arbitrator, it shall require the latter to provide in writing and which the Court shall have sufficient regard for-

• Any requirements as may be set by the agreement of the parties regarding the arbitrator Conduct of the Arbitration 24

• The nature of the disclosure and such other matters as will ensure that an independent and unbiased arbitrator who shall be appointed as hereunder is provided.

3.9 TIME LIMIT

The application to make an appointment of an arbitrator has to be disposed by the Supreme Court/High Court or by the person or any institution authorized by such Court. The disposal of the application shall be as soon as possible. The said application shall be disposed within 60 days from the date of service of the notice of the opposite party.

3.10 FEES PAYABLE TO THE ARBITRATOR

Fees is required to be payable to the arbitrator or arbitrators who conducted arbitration and pass(es) an award. The fees has to be paid by both the parties to the dispute. The fees payable can be stated in the agreement or by agreement reached during the arbitration or as demanded by the arbitrators. There will be no particular regulation in regards to the measure of fee that is payable to arbitrator or arbitrators.

3.11 APPEAL

Appeal is usual in any law to be filed by any person who feels offended by the order of any lower power.

Anything referred to in subsection (4) or subsection (5) or sub-section (6) shall be final where the matter is decided by the Supreme Court or the High Court or the person or institution nominated by such Court. No appeal including letter patent appeal shall lie against such decision.

Letter patent appeal is an appeal by the petitioner against the decision made by a single learned

judge to another Division Bench of the same court. It was a remedy where for the first time High Courts were established at Calcutta, Bombay and Madras in 1865. This is the only remedy which is available in court to the petitioner against the decision of a single judge of a High Court, otherwise it will lie with in Supreme Court.

GUJARAT URJA VIKASH NIGAM LTD. VERSUS ESSAR POWER LTD.[1]

Sustaining the argument the Supreme Court stated that section 86 (1) (f) of the Electricity Act is a special law and hence will apply in exclusion to the general provisions contained under section 11 of the Arbitration and Conciliation Act, 1996. Consequently, section 11 is irrelevant to the aspect of who can rule on disputes between licensees and generating companies and it is only section 86(1)(f) of the Electricity Act.

SOUTH DELHI MUNICIPAL CORPORATION VERSUS SMS AAMW TOLLWAYS PRIVATE LTD.[2]

Arbitration has always been understood as a procedure for resolution of a dispute by an arbitrator who is either jointly selected by the parties to the dispute or at least has the consent of both the parties to the dispute, and this is under an arbitration agreement between the disputing parties. By the Clause 16 of the Agreement, it is only the dissatisfied party of the decision, recommendation, or order of the Competent Officer that seeks the aid of the Commissioner. It is, therefore, impossible to argue that the proceedings before the Commissioner as an arbitration.

The present Clause 16 and especially Clause 16(3) does not contemplate that any dispute that may exist between the parties will be referred to an Arbitrator. The objective of this Clause is to give the power of supervision and control to the Competent Officer of the executing agency and the Commissioner as and when required in the execution of the work and all administrative control hence eliminating disputes. The intention is not to come up with a platform for solving disputes. Therefore in the present circumstances nobody could have been appointed as Arbitrator by the High Court under Section 11(6) of the Arbitration and Conciliation Act 1996.

[1] Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755.
[2] South Delhi Municipal Corporation v. SMS AAMW Tollways Private Ltd., (2018) 11 SCC 657.

IBI CONSULTANCY INDIA PRIVATE LIMITED VERSUS DSC LIMITED[3]

The Apex Court stated that it can be considered that it is one of the fundamental principle that the determination of the number of arbitrators and the manner of their appointment are solely with the parties with reference to the fact that the number of arbitrators shall always be an uneven one. However, if the parties are not able to agree on the said procedure, or constitute the Arbitral Tribunal to their mutual satisfaction, either of the party has an option to knock the door of an appropriate remedy under Section 11 of the Act, which has laid down detailed machinery for the appointment of an Arbitrator through legal assistance.

4. AD-HOC ARBITRATION VS. INSTITUTIONAL ARBITRATION: APPOINTMENT OF ARBITRATORS

The legal nature of the arbitrations can be either ad hoc or institutional, depending on the special circumstances of the dispute. Institutional arbitration affords a well-defined stake and optimum environment for the arbitration whereas, ad-hoc arbitration gives flexibility and potentially cheaper and holds higher administrative authorities

4.1 AD-HOC ARBITRATION

In ad-hoc arbitration, the parties do not go through an arbitration institution, instead they organise the procedure of an arbitration themselves, including the selection of the arbitrators. This type of arbitration is regulated by the arbitration agreement and the country's laws of the arbitration proceedings.

Appointment Process:

- Party Agreement: The number and the procedure for the appointment of the arbitrators (which can be one, or three) are defined in the arbitration clause.

- Direct Appointment by Parties:

  - Sole Arbitrator: When there is likelihood of having a single arbitrator then the two parties must consent to the said arbitrator.

[3] IBI Consultancy India Private Limited v. DSC Limited, (2018) 4 SCC 108.

- Three-Member Tribunal: Both parties designate one arbitrator and these two arbitrators are to choose the third who is to hold a position of the chief arbitrator.

- Default Mechanism: In the event that the appointing parties did not reach a consensus of whom to appoint:In case of a sole arbitrator or the presiding arbitrator, the parties concerned can seek help of the High Court or Supreme Court under section 11 of law on arbitration and conciliation 1996.Then the court comes into the selection of the arbitrator to maintain neutrality and make a final decision in cases of staking out.

Challenges:

- Lack of Structure: There are the procedural risks due to the lack of the institutional norms.

- Potential Delays: Well, if there is no prior mechanism plan to be followed, the appointments may take a long time to be made, especially where the parties do not agree.

- Administrative Burden: To a certain extent, administrative burdens tend to be overwhelming since the parties are responsible for managing them.

4.2 INSTITUTIONAL ARBITRATION

An institutional arbitration is an arbitration process which is carried out in accordance with rules of an institution like the ICC, the LCIA or the SIAC. Herein, these institutions provide the much-requisite framework structure as well as organisational support to the arbitration process.

Appointment Process:

- Institutional Rules: The procedure of appointing is always dependent on the conditions of the respective institution.

- ICC: Arbitrators are to be appointed by the ICC Court, but the Parties may also appoint them by agreement.

- LCIA: LCIA Court has the jurisdiction of selecting the arbitrators.

- SIAC: The appointment process can be managed by the following bodies; the SIAC Secretariat.

- Nomination by Parties

- Sole Arbitrator: The parties may appoint its arbitrator but this is influenced by the institution that exercises approval on the nominee.

- Three-Member Tribunal: This is done through the choice of one arbitrator by each of them with the consent of the institution on the said appointments. Depending on the institution, the chair is nominated when parties do not agree on the aspect of chairmanship.

- Default Mechanism: Where parties fail to nominate the arbitrators within the given time as agreed then; there are the design changes and the activity within the process and the institution ensures that the right arbitrators are appointed to proceed with the process.

Advantages:

- Efficiency and Expertise: The institutions have set down discrete processes and formatted lists of arbitrators who are more sophisticated in their field of specialization making the process easier.

- Administrative Support: An institutions offer ample administrative assistance including appointment of the arbitrators till the termination of the process.

- Enforcement of Rules: This highlighted the relapses and delays by movers and shook necessary responsibilities through institution enforcement to promote discipline.

Challenges:

- Cost: Institutional arbitration may be costly since there are other costs that can be implication during the process.

- Less Flexibility: They have been observed to be characterized by lesser control as compared to the ad-hoc arbitration.

5. CHALLENGES OF ARBITRATORS: GROUNDS AND PROCEDURE

Under the Indian law the issues relating to arbitrators and challenges to such arbitrators are under the Arbitration and Conciliation Act, 1996 amended from time to time to further strengthen and bring harmonized with the international norms. As for the procedure of challenging the arbitrators there are specific grounds which are laid down under the Act for this process.

5.1 GROUNDS FOR CHALLENGING ARBITRATORS

The basis of arguments concerning arbitrators in India has therefore primarily stemmed from the desire to call for arbitrators' impartiality and independence. These grounds are mentioned in section 12 and 13 in the Arbitration and Conciliation Act 1996.

- Lack of Impartiality and Independence: Actually, one of the problems that results in such studies' weakness is lack of impartiality and independence of the author of the particular study.

  This is provided for under section 10 of the Act where there are circumstances that may progress that will make the arbitrator incapable of continuing the appointment as an arbitrator or biased. This is basic so as not to have a prejudiced hearing and making of the arbitration decree.

  From the analysis described above it can be assumed that due to amendments of the year 2015 more conditions are named in the Fifth and the Seventh Schedules of the Act thus providing certain circumstances on the basis of which the impartiality and independence of the arbitrators can be doubted. This includes where the arbitrator kindred are involved or taking either party's employment; where the arbitrator has a business interest in the business of the particular case.

- Ineligibility: The Seventh Schedule organizes situations or conditions under which an applicant cannot be appointed as an arbitrator. For instance, where the arbitrator has been associated in any way with one of the party such as legal representative of the party or expert witness for the party then the person cannot be an arbitrator in that matter.

  It is understood that such provisions have been made only to do away with any possibility

of bias and to avert situations that the arbitrators in one way or the other have any interest in the arbitration.

- Non-Disclosure: Arbitrator therefore has the duty to disclose circumstances which an impartial and independent third party would regard as giving rise to reasonable doubts as to the arbitrator's impartiality and independence both at the time when he/she is appointed and during the further course of the arbitration. If the like information disclosed it can, in turn, be a reason to challenge the specific arbitrator which puts into doubt the fundamental of arbitration.

The Supreme Court of India has consistently emphasized the significance of Section 12 in upholding the fundamental principles of fairness, impartiality, and neutrality in arbitration.

TRF LIMITED V. ENERGO ENGINEERING PROJECTS LIMITED[4]

The Supreme Court held that when through the law of the land, an arbitrator becomes incompetent then he cannot appoint another one as an arbitrator. It will be seen that the arbitrator becomes ineligible under the prescription contained in section 12(5) of the Act and that is, it is not conceivable in law that a person who is statutorily ineligible can nominate a person.

PERKINS EASTMAN ARCHITECTS DPC VS HSSCC (INDIA) LIMITED[5]

Argued that any person who has concern in relation to the matter in question that he is likely to be called upon to arbitrate would not be eligible to be an arbitrator and, as well, any person who could, in any way, have interest in any specific outcome or decision in relation to the putative dispute could not have power to appoint a sole arbitrator. Well, that has to be taken as the core of the amendments made by the Arbitration and Conciliation (Amendment) Act,2015 (3 of 2016) and endorsed by the TRF verdict.

BHARAT BROADBAND NETWORK LTD. VS UNITED TELECOMS LTD[6]

The Supreme Court pointed out that Section 12(5) and read with the Seventh Schedule reveals

[4] TRF Limited v. Energo Engineering Projects Limited, (2017) 8 SCC 377
[5] Perkins Eastman Architects DPC vs HSSCC (India) Limited, (2020) 20 SCC 760
[6] Bharat Broadband Network Ltd. vs United Telecoms Ltd., (2019) 5 SCC 755

that if the arbitrator falls in any one of the categories specified in the Seventh Schedule he is 'ineligible to act as arbitrator Inasmuch as the moment he becomes ineligible that according to Section 14(1)(a), he legal is de jure unable to perform his functions.

VOESTALPINE SCHIENEN GMBH VS DMRC[7]

The Supreme Court of India after analyzing the arbitration clause wherein the parties were made to designate their arbitrators from the list of nominees maintained by DMRC while dealing with the situation that the below-mentioned provisions of the Act involve the retired employees and servicemen in the panel of DMRC to attract the bar provided in the Seventh Schedule to the Act. As it said, this can be done to establish that the very purpose of empaneling these persons is to entail technicality of the dispute to be sub-suitably addressed by harnessing their services when acting in the capacity of arbitrators. In addition, on similar lines the Supreme Court has also inter-alia directed that the panel should be broad base and it should include not only the retired employees of government department but also the experts, engineers and the retired Judges.

5.2 PROCEDURE FOR CHALLENGING ARBITRATORS

The process for removal of the arbitrators is spelt in the section 13 of the Arbitration and Conciliation Act, 1996. This section presents a format to deal with problems and guarantee that proper procedures in a civil process are observed.

- Notification: An application to decap an arbitrator is done to the arbitral tribunal through the party that has the desire to do so accompanied by the reasons why the arbitrator should be decap. This has to be done before the expiry of fifteen days after the formation of the tribunal or knowledge of other circumstances that may cause the challenge. The statement should therefore make details of the exact challenge the maker of the statement is making to the Act and the provisions of the Fifth and Seventh Schedules of the Act.

- Decision by the Arbitral Tribunal: The challenge is decided by the arbitral tribunal, which includes the arbitrator being challenged, unless the challenged arbitrator withdraws or the other party accepts the challenge. Since the arbitrator under challenge has a say in the

[7] Voestalpine Schienen GmbH vs DMRC, (2017) 4 SCC 665

outcome, this self-policing method occasionally raises questions about impartiality.

- Outcome of the case as determined by the Arbitral Tribunal: If the arbitrator being challenged does not withdraw, or the other party does not accept the challenge then it is up to the arbitral tribunal to decide. This construct of self-policing can at times, cause eyebrows to be raised over impartiality since the concerned arbitrator has a say.

- Appeal to the Court: Making such an assertion the difficult party would have been forced to wait until the final award was made, then the make an application to set aside the award under section 34 of the Act. That is why application to set aside the arbitral award was competent concerning bias or conflict of interest on the part of an arbitrator, considered by the court at this stage.

- Interim Relief: As such, most of the time, the temporary orders are sought by the parties when an otherwise tried and tested case has to be maintained in status quo, because, where determinant evidentiary proof is produced later, it becomes almost impossible to alter a given situation or scenario. Despite the structured provisions for challenging arbitrators, several practical challenges persist: Nevertheless, 'on paper' there are still some practical difficulties that appear when employing the provisions of challenging arbitrators:

- Judicial Intervention and Delays: It is for this reason that the challenge process is characterized by judicial involvement thus making it quite a difficult factor. The issue of tested institutions persists to stay opened since the courts in India are congested because of a heavy burden. The procedures in courts may extend for a long time which defeats the whole tenets that are associated with arbitration that is supposed to be time-bound.

- Perception of Bias: One feels that there is bias when the arbitral tribunal, including the challenged arbitrator, hears the challenge. However, it can also lead to some controversy regarding the fairness of the decision made due to the essence of the self regulation. As suggested by economists, arbiters should consider it unimportant to act as biased and autonomous when resolving the squabbles.

- Limited Pool of Arbitrators: The professional arbitrators currently available in India are very few in number and that for this reason the same people are re-used in different cases. Such cases can give rise to issues concerning the objectivity and partisanship of the

organization or business, issues that may be vital when operating within specific and niches. To solve this problem it is impossible to proceed without widening the list of persons who may be proposed as arbitrators and diversification of appointments.

- Non-Disclosure Issues: Arbitrators the same may not have full disclosure of the conflicts of interests, they may fail to recall some details or may decide to with hold some information. This can be very depressing to the arbitration process since it lowers the competitiveness and the fairness of the process. This be done through the enhancement of disclosure regulation and as well as educating the arbitrators on their ethical conduct.

6. IMPACT OF TECHNOLOGY ON ARBITRATOR APPOINTMENT

The application of technology when making the appointments has however brought a small improvement on efficiency, openness, and in general to arbitration. Among these developments it is recognized that the methods of electronic means especially in the selection of arbitrators. They allow the parties to look for individual arbitrators based on the qualifications, the specialization or previous performances in arbitrations among other qualities. This transparency assists the parties in decision making, it also assists in making sure that arbiters have the right skill sets for some of the controversies. However, due to increased interaction between people, there is what is referred to as ODR or Online Dispute Resolution enabling the parties to conduct the whole arbitration through the internet. This is especially of the essence especially when dealing with international relations since it eliminates the challenge of often assemblies. Other changes which have been aspects that have been embraced include conducting of virtual hearings and doing away with physical filing and signing of papers in a bid to boost and make the arbitration system flexibility. At the same time, some of the concepts from the field of artificial intelligence are being discussed as one of the possible ways of selecting an arbitrator based on large database tables with information on candidates and lists of arealizations corresponding to their parameters. Nevertheless, there are some issues that still persist: the challenge of data protection and arbitration's confidentiality. In conclusion, the use of technology in the appointment on arbitrators has the potential of enhancing efficiency in arbitration process, expand the population's access to arbitration processes while at the same time, being surrounded by a number of concerns that can be deemed as unethical.

7. RECENT AMENDMENTS AND THEIR IMPACT

Arbitration and Conciliation (Amendment) Act, 2015

This amendment was a large leap toward the contemporary Indian arbitration law. It had a time axis of dealing with the arbitration matter and focuses on the speedy determination of dispute. Complementing the general provisions of section 12, new sub-sections were added to set out the disclosure obligations relating to arbitrators in order to promote adequate disclosure.

Fast Track Procedure-brought to fasten the procedure so that, whenever any dispute is taken for arbitration it must be decided in one half year from the date when the tribunal takes up the reference.

Neutrality of Arbitrators-Ensuring that of the arbitrators that are to be appointed they are impartial and have no connections with the parties to the dispute. Section 12 also placed a provision to the effect that the parties shall indicate such circumstances that may raise issue on the independence and impartiality of the arbitrator.

Time Limit for Award-To hold the term of the award for arbitration for one year and which may be further extended to half a year if agreed on by the parties.

Arbitration and Conciliation (Amendment) Act, 2019

The 2019 amendment created the Arbitration Council of India (ACI) for the development and administration of arbitration. The ACI is assigned with the responsibility of ranking the arbitral bodies and approving the arbitrators to help in uplifting the quality and standards of arbitration in India. Further, the amendment also intended to change the law that the appointment of the arbitrators by the Supreme Court and High Courts is a judicial function in a bid to remove all sorts of delay by providing the more and better procedures.

Arbitral Institutions-Amended sections to provide provisions for the setting up of arbitral institutions by the Supreme Court or High Courts to appoint arbitrators meaning to lighten the burden of the judiciary and more efficient appointment of the arbitrators.

Qualification and Accreditation- Prescribed the legal standards and procedures of accreditation concerning the arbitrators, contributing to the raising up of the quality required

by the arbitrators.

Confidentiality- Preserved the extent of the discretion of the arbitral proceeding and safeguarded the arbitrator and his/her immunity.

Arbitration and Conciliation (Amendment) Act, 2021

Automatic Stay on Awards-Struck out the provisions of the existence of an automatic stay as regards the enforcement of the said award where an application to set aside the award is pending, which in any case, excluded the possibility of delay of the enforcement of awards.

Qualification of Arbitrators-In more detail, it amended the rules pertaining to arbitrator's eligibilities that must be complied with to ensure that such a person has the capacity to deal with the case and is unbiased.

8. CONCLUSION

In conclusion, appointment and the areas of work expected of the arbitrators are special requiring equal level of professionalism, bias and following the procedures. As for arbitrators, they have many expectations placed on them in relation to the task of protecting viability of arbitration as a means of solving disputes. That is the reason why it is important to have those qualities which are vital in a case; knowledge, experience as well as legal training in the case of complex matters. Also, arbitrators cannot show any form of bias since this will make the party to have faith in the arbitration process as being 'unfair'.

Altogether, the problems arising in making appointments of arbitrators as it has been revealed to many societies proves the idea of creating sharp tests for selection of such people and the processes this or that society has to face while appointing arbitrators. Each of the parties has to get involved in order to reach the services of individuals who can perform the mentioned tasks and who can also have the proper ethical outlook and care for the neutrality of the process. The overcoming of these challenges makes the arbitration process more credible and reassuring of the disputing parties that consequently aid in the efficient settlement of their disputes.

Last but not least, there is the future work of the arbitration community about the further growth and strengthening that is to respond to new tasks and requirements of the global

economy and legal frameworks. Some of the useful strategies include; the continuous urge of diversifying the appointments of arbitrators, usage of technology help in correction of management of cases, and making legal changes that will in enhance arbitration.

Summing up, it is possible to conclude that the question of appointments and challenges of arbitrators is quite diverse and still full of possible opportunities for the enhancement of international dispute resolution systems' credibility. These challenges need to be tackled in order to maintain arbitration as one of the secure ways of solving the disputes for the stakeholders who are going to engage in the international or domestic arbitration process With the help of following principles: transparency, acknowledging the importance of technologies and professionalism, and also following the ethical norms.

9. RECOMMENDATIONS

- Diversity and Inclusion: Proposing gender diversity in arbitrator appointment and other diversity issues such as minority representation and arbitrators from different jurisdictions to bring variation in arbitrations.

- Training and Certification: Designing extensive courses and courses for professional accreditation of the arbitrators with the perspective of improving their skills related to the processes of arbitration and legal provisions of the matter.

- Ethical Standards: Stressing the fact that ethical norms are observed in their work nowadays (independence, impartiality, confidentiality) among the arbitrators and use measures for control and punitive measures.

- Transparent Selection Processes: Bringing clarity into the appointment process of arbitrators as well as the criteria, nomination of the arbitrators, and the conflict of interest policies.

- Peer Review and Feedback: Introducing systems of peer assessment in the form of feedback regarding arbitrator's performance in terms of parties' satisfaction, case handling, and fairness.

- Technology Integration: Adopting technology in arbitration within the processes like virtual hearing or any method of dealing with the documents electronically might be

suggested, and the arbitrators should be provided with the necessary equipment and trained to use technologies in their work.

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