INTERNATIONAL COMMERCIAL ARBITRATION IN INDIA: CHALLENGES AND OPPORTUNITIES

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Abstract

21 years into the 21st Century, we have witnessed everything from booming global economies to apocalyptic pandemics that can threaten to wipe out the entire world. Everything changed albeit one thing – disputes. For as long as there are humans, there will be disputes. In order to effectively resolve these disputes, we need a robust mechanism that is efficient, speedy and not complicated. India is still a developing country. The disparity between the rich and the poor is vast. Litigation is reduced to being a luxury that few can afford. This is where arbitration enters the scenario.

What seems as a relatively new concept of 'Arbitration', surprisingly finds place in the three major religious texts namely, the *Upanishads, The Bible* and *The Holy Quran.* In fact, it is not just references, but the texts mention the word 'arbitrator' while imparting the teachings that people should not resort to litigation and should try to have their disputes amicably resolved. While the problems that existed in the earliest of the arbitration laws in India, where an arbitral award could be challenged even if the arbitrator had refused to grant an adjournment, there is a stark difference from present day legal practice where the most popular legal phrase even in common households is *'tareekh pe tareekh'!*

With the development of arbitration laws, India witnessed a growth in the number of disputes as well. It was felt that the laws will need to progress to adapt to the ever-changing scenario of dispute resolution. A number of amendments later, surprisingly, there was no revolutionary change. The time taken for resolution of disputes was still lengthy, the costs still sky-high. Countries like Singapore, UK, France, Hong Kong and many others came out with a different strategy. It was felt that it was not enough to merely amend laws, but also amend attitudes. Those who could afford the luxury of litigation began flocking to these countries for dispute resolution. With a 1.2 billion population, the need for an effective dispute resolution system was felt more than ever in the country.

The Arbitration and Conciliation Act 1996 was amended thrice in a span of 5 years. The question that might be asked is whether these amendments were well-thought or was it just done in haste to catch up to the global leaders in arbitration. It is the intention of the legislature to make India a favourable arbitration destination since 1996, which is when the first major

amendment to the arbitration law was brought. However, despite all the subsequent amendments, it doesn't seem like India is quite there yet. The primary objective of the study is to understand why India is not considered a favourable arbitration destination and what can be done in order to attract foreign parties to arbitrate in India. For this purpose, the study examines in detail the history of arbitration in India, the implications of successive amendments, the impact of judicial decisions on the arbitral framework in the country and the challenges that the arbitration legislation is riddled with. Each challenge that is identified, has been looked at from an opportunity point of view as well. The strengths and weaknesses of the existing legislation are discussed in order to enable the researcher to propose practical and possible solutions to bring about a radical change. This study also takes into account and consideration the opinions of lawyers, arbitrators and academicians that regularly work in arbitration disputes or teach arbitration law. In order to overcome the current challenges, a proposed legislation is drafted, that might be of some aid in order to understand what a comprehensive legislation ought to be.