



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B.

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SUBJECT: Alternative Dispute

Resolution

SUBJECT CODE: BAL803

NAME OF FACULTY: Mohammad Aqib

Lecture-5



LECTURE 5: Kinds of Arbitration

Kinds of Arbitration:-

A few types of Arbitrations in India on the basis of Jurisdiction:-

Domestic Arbitration:-

Domestic arbitration is that type of arbitration, which happens in India, wherein both parties must be Indians and the conflict has to be decided in accordance with the substantive law of India.

International Arbitration:-

When arbitration happens within India or outside India containing elements which are foreign in origin in relation to the parties or the subject of the dispute, it is called as International Arbitration. The law applicable can be Indian or foreign depending upon the facts and circumstances of the case and the contract in this regard between the respective parties. To fulfill the definition of International Arbitration it is sufficient if any one of the parties to the dispute is domiciled outside India or if the subject matter of dispute is abroad.

International Commercial Arbitration:-

International Commercial Arbitration is defined as the substitution of many burning questions for a smouldering one. Nani Palkhiwala has stated that International Commercial Arbitration is a 1987 Honda car, which will take you to the same destination with far greater speed, higher efficiency and dramatically less fuel consumption International Arbitration is considered to be commercial if it related to disputes arising out of a legal relationships irrespective of their contractual nature and are considered as commercial under the law in force in India and where at least one of the parties is-

A national of, or habitual resident in, any country other than India or

A body corporate which has to be incorporated in any foreign country, or

An association or a body of individuals whose core management and control in a country which is not India or

the government of a country other an India. In International Commercial Arbitration the arbitral tribunal is bound to decide the conflict according to the rules of law chosen by the parties as applicable to the substance of the dispute; any designation by the parties of the law or legal system of a given country can be interpreted, unless it has been expressed otherwise, one which directly refers to the substantive law of that country and does not refer to its conflict of laws rules.

Types of arbitrations that are primarily recognized in India on the basis of procedure and rules:

Institutional arbitration:-

When an arbitral Institution conducts arbitration, it is called Institutional Arbitration. The parties have

the choice of specifying, in the arbitration agreement, to refer the differences to be determined in accordance with the rules of an elected arbitral Institution. One or more arbitrators can be appointed from a pre-selected panel by the governing body of the institution or the disputants themselves can select their panel but it has to be restricted to the limited panel. Arbitration and Conciliation Act 1996 provides that where in Part I except section 28, the parties are free to determine a certain issue, that liberty encompasses the right the parties have to authorize any person including an institution, to determine that issue. The Act also explicitly provides that the parties have agreed or that they may agree, or in any other way refers to an agreement of the parties, that agreement shall include any arbitration rules referred to in that agreement.

Ad hoc Arbitration:-

If the parties agree among themselves and arrange for arbitration, it is called Ad hoc Arbitration without having an institutional proceeding. It can either be domestic, international or foreign arbitration. Russell on Arbitration says that, The expression Ad Hoc, as in Ad Hoc Arbitration or Ad Hoc Submission is used in two quite different senses:

An agreement to refer an existing dispute, and/or an agreement to refer either future or existing disputes to arbitration without an arbitration institution being specified to supervise the proceedings, or at least to supply the procedural rules for the arbitration. This second sense is more common in international arbitration.

Ad Hoc Arbitration means that the arbitration should not be conducted according to the rules of an arbitral institution. Since, parties do not have an obligation to submit their arbitration to the rules of an arbitral institution; they are free to state their own rules of procedure. The geographical jurisdiction of Ad hoc Arbitration is of essence, since most of the issues concerning arbitration will be resolved in accordance with the national law of the seat of arbitration.

Fast track Arbitration:-

Even the other processes of arbitration can be lengthy and tedious and thus this process of arbitration works like a remedy to the issue of time. Fast track arbitration is a method, which is time dependent in the provision of the arbitration and conciliation act. Its procedure is established in a way that it has abandoned all the methods, which consume time, and uphold the simplicity which is the originally the prime purpose of such arbitration.