RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

COURSE:B.A.LL.B.

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SUBJECT: Alternative Dispute Resolution

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NAME OF FACULTY: Mohammad Aqib

RAMA UNIVERSITY

Lecture-3

LECTURE 3: Objectives and History of Arbitration and Conciliation Act 1996

Arbitration and Conciliation Act, 1996

The law of arbitration is enumerated in the arbitration and Conciliation act,1996. It extends to the whole of India including Jammu and Kashmir. It came into force on 25 day of January 1996.

This Act provides domestic arbitration, International commercial arbitration and also enforcement of foreign arbitral awards.

The Act consists of Preamble. The Preamble proceed as follows:

"An Act to consolidate and amend the law relating to domestic arbitration, International commercial arbitration and enforcement of foreign arbitral awards and also to define the law relating to conciliation and for matters connected therewith or incidental thereto."

Objectives of Arbitration and Conciliation Act, 1996:- The most prominent objectives of this act are:-

- To cover International commercial arbitration and also domestic arbitration and conciliation.
- To provide that the Arbitral Tribunal justify the award passed by it by giving reasons.
- The Act ensures that the arbitral tribunal would remain within the limits of its jurisdictions.
- To make a fair and efficient arbitral procedure which is capable of meeting the needs of the specific arbitration.
- To reduce and minimize the supervisory role of courts in the arbitral process.
- To provide that every final arbitral award is enforced in the same way and manner as if it was a decree in the court.
- To permit the arbitral tribunal to use different modes of settlement of disputes like mediation and conciliation.

History of the Arbitration and Conciliation Act, 1996:-

Arbitration was long practiced in ancient India which followed traditions and customs where local disputes were often settled by the village headman whose office was either hereditary or elective. In some villages, it was not a single person but rather, a council, and even to this day it is known as a Panchayat. When the British set up the East India Company in Bengal, they brought with them their methods of settling disputes and as per the Bengal Regulation of 1772, all matters were to be submitted to arbitration, the award of which would be considered to be the decree of the court.

In the following years, as disputes were referred to arbitration, various inconsistencies and discrepancies came up with respect to the subject matter of disputes for arbitration, the time limit for granting an award, the role of village Panchayats, and reforms were made to solve them. The three

Presidency towns of Bombay, Madras and Calcutta had their own regulations guiding arbitration procedure, but they were all replaced by the enactment of the Code of Civil Procedure in 1859. The Act empowered parties to a suit to refer the matter to arbitration by applying to the Court.

Soon, discrepancies were found in this Act as well so, a specific Act dealing with arbitration was passed – The Indian Arbitration Act, 1899. This Act was on the lines of the existing English Law, at the time, and it provided for an agreement to refer future disputes to arbitration and also reference for arbitration without interference of the Court. Though this Act extended to the whole of India, it had direct application only in the Presidency Towns.

The next piece of legislation which came into force was the Code of Civil Procedure, 1908 which replaced the earlier Code. The new and improved Code contained elaborate provisions dealing with arbitration under Sections 89 and 104 of the Second Schedule. The provisions were under the Second Schedule considering the Indian Arbitration Act, 1899 which was more specific in nature. However, when the English Arbitration Act, 1934 was passed in Britain on the recommendations of the MacKinnon Committee, the Government of India saw fit to enact the Arbitration Act, 1940.

During the reign of the Arbitration Act, 1940, many were skeptical about its technical aspects and its abuse of the arbitration process. In the case of Guru Nanak Foundation v. Rattan & Sons, the court found that the cost of speedy justice and expeditious disposal of cases was borne by complex technical proceedings and widespread use of legalese, or legal language. The court went on to say that the arbitration process should be made simple, less technical and more responsive to the expectations of justice. Due to then many complaints against the Act of 1940, the Government of India referred the matter to the Law Commission of India which, in its 76th Report, under the chairmanship of H.R Khanna, recommended an amendment to the Act.

On 4th December 1993, in a conference presided by the Prime Minister of India, P.V Narasimha Rao, the Government of India considered international models like the United Nations Commission on International Trade Law (UNCITRAL) Model on Commercial International Arbitration and discussed the fate of arbitration in India. As a result of this conference, the Arbitration and Conciliation Act, 1996 was born.

The Arbitration and Conciliation Act, 1996 is a self-contained Code which contains 86 Sections and seeks to attain the objectives of consolidating and amending existing laws relating to domestic arbitration, defining conciliation, enforcing UNCITRAL, creating a uniform system of regulation relating to arbitration and conciliation and the establishment of a unified legal framework for fair and effective settlement of disputes.