

National Judicial Academy

P-1145: Conference for High Court Justices on Arbitration including International Arbitration

14th – 16th December, 2018

Programme Coordinator : Mr. Prasidh Raj Singh, Law Associate

No. of Participants : 25

No. of forms received : 22

I. OVERALL				
PROPOSITION	To a great extent	To some extent	Not at all	Remarks
a. The objective of the Program was clear to me	90.91	9.09	-	21. Time was very short
b. The subject matter of the program is useful and relevant to my work	100.00	-	-	21. No comment.
c. Overall, I got benefited from attending this program	90.91	9.09	-	-
d. I will use the new learning, skills, ideas and knowledge in my work	90.91	9.09	-	-
e. Adequate time and opportunity was provided to participants to share experiences	86.95	13.64	-	17. More than adequate
II. KNOWLEDGE				
PROPOSITION	To a great extent	To some extent	Not at all	Remarks
The program provided knowledge (or provided links / references to knowledge) which is:				
a. Useful to my work	80.95	19.05	-	3. Very Good
b. Comprehensive (relevant case laws, national laws, leading text / articles / comments by jurists)	80.95	19.05	-	3. Very Good
c. Up to date	80.95	19.05	-	3. Very Good

d. Related to Constitutional Vision of Justice	47.62	47.62	4.76	3. Very Good
e. Related to international legal norms	66.67	33.3	-	3. Very Good
III. STRUCTURE OF THE PROGRAM				
PROPOSITION	Good	Satisfactory	Unsatisfactory	Remarks
a. The structure and sequence of the program was logical	68.18	31.82	-	-
b. The program was an adequate combination of the following methodologies viz.				-
(i) Group discussion cleared many doubts	78.95	21.05	-	-
(ii) Case studies were relevant	75.00	25.00	-	-
(iii) Interactive sessions were fruitful	81.82	18.18	-	-
(iv) Audio Visual Aids were beneficial	56.25	37.50	6.25	-
IV SESSIONS WISE VETTING				
Parameters				
Session	Discussions in individual sessions were effectively organized		The Session theme was adequately addressed by the Resource Persons	
	Effective and Useful	Satisfactory	Effective and Useful	Satisfactory
1	80.00	20.00	92.31	7.69
2	80.00	20.00	92.31	7.69
3	75.00	25.00	83.33	16.67
4	77.27	22.73	78.57	21.43
5	85.71	14.29	78.57	21.43
6	89.47	10.53	75.00	25.00
7	63.16	36.84	75.00	25.00
8	70.59	29.41	75.00	25.00
V. PROGRAM MATERIALS				
PROPOSITION	To a great extent	To some extent	Not at all	Remarks

a. The Program material is useful and relevant	86.36	13.64	-	-
b. The content was updated. It reflected recent case laws/ current thinking/ research/ policy in the discussed area	71.43	28.57	-	-
c. The content was organized and easy to follow	75.00	25.00	-	9. It would be appropriate that before opening, the overview of the scheme of the Act is also introduced so as to enable those judges who are not very well versed with the scheme are exposed to a brief resume of the Act.

VIII. GENERAL SUGGESTIONS

a. Three most important learning achievements of this Programme	<p>1. Participant did not comment.</p> <p>2. The study material was very helpful.</p> <p>3. The programme was useful.</p> <p>4. Updating of the current traits on domestic and international arbitration.</p> <p>5. Third party funding of arbitration; 2. Applicability of Part I to International Commercial Arbitration.</p> <p>6. 1. Thought provoking; 2. Got familiarized with the legal provisions and the changes brought in by amendments.</p> <p>7. 1. Learnt about their impact on arbitration laws; 2. Understood international commercial arbitration; 3. Discussion would enable us to deal with matters in court.</p> <p>8. Very useful to judges in dealing with arbitration law case.</p> <p>9. <i>Session 1: The Arbitration and Conciliation Act: Changing Trends in Legislative Scheme</i> • Reference to Arbitration (Section 8) • Appointments and Challenges to Arbitrators (Section 12 & 11) • Two-Tier Arbitration Clause • The Arbitration & Conciliation (Amendment) Bill, 2018; <i>Session 2: Balancing Conflicting Interests: “Public Policy” vis-à-vis Domestic Arbitration</i> • Construction and Interpretation of Applicability Clause • Interpreting “Fundamental Policy” Inserted by 2015 Amendment.</p> <p>10. Participant did not comment.</p> <p>11. Participant did not comment.</p> <p>12. 1. Balancing conflicting interests; 2. Jurisdictional issues; 3. Enforcement of foreign arbitral award.</p>
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	<p>13. 1. Object and applicability of different provisions of ACA, 1996 and Amendment Act, 2018; 2. Enforcement of international commercial arbitration award; 3. Third party funding (a new concept for me).</p> <p>14. 1. International commercial arbitration: Role of courts in post BALCO regime; 2. Emergency arbitration and enforceability of its orders in India; 3. Emergence of third party funding in international commercial arbitration.</p> <p>15. International arbitration, third party funding of arbitration.</p> <p>16. Nil, No suggestions.</p> <p>17. Updating of case laws.</p> <p>18. Session 7: Emergence of Third Party funding in International Commercial Arbitration: A New Scheme • Scope and Ambit of Third Party Funding • Liability of Funders • Third Party Funding in Foreign Jurisdiction and Session 8: Current and Evolving Issues • Time Limit under Section 29A • Counter-Claim • Schedule of Fees • Power to Review Arbitral Award – of Arbitration & Reconciliation Act 1996.</p> <p>19. 1. Learnt latest judicial pronouncements. 2. Limited scope of court's interference into the awards U/S 34.</p> <p>20. 1. Got an overall view of legislative changes; 2. Limited scope for courts to interfere U/S. 34.</p> <p>21. 1. Subjects are very vast for discussion when law is not fully settled. 2. Domestic laws; 3. International arbitration and its nuances.</p> <p>22. Various complicated issues got cleared by the resource persons.</p>
<p>b. Which part of the Programme did you find most useful and why</p>	<p>1. Participant did not comment.</p> <p>2. Discussion between the resource persons and the participants.</p> <p>3. Every programme was useful as they are informative.</p> <p>4. All.</p> <p>5. Participant did not comment.</p> <p>6. Sessions by Mr. D.J. Khambata and Dr. Nidhi Gupta.</p> <p>7. Session 1: The Arbitration and Conciliation Act: Changing Trends in Legislative Scheme • Reference to Arbitration (Section 8) • Appointments and Challenges to Arbitrators (Section 12 & 11) • Two-Tier Arbitration Clause • The Arbitration & Conciliation (Amendment) Bill, 2018; Session 2: Balancing Conflicting Interests: “Public Policy” vis-à-vis Domestic Arbitration • Construction and Interpretation of Applicability Clause • Interpreting “Fundamental Policy” Inserted by 2015 Amendment- on 14th December was able to understand the true scope of arbitration.</p> <p>8. Session 8: Current and Evolving Issues • Time Limit under Section 29A • Counter-Claim • Schedule of Fees • Power to Review Arbitral Award.</p> <p>9. Enforcement of international awards- not exposed earlier.</p> <p>10. Participant did not comment.</p> <p>11. Participant did not comment.</p> <p>12. Emergence of third party funding in I.C.A because of the potential of the same being made applicable in India to make India a heaven for arbitration.</p> <p>13. Session 4: Enforcement of Foreign Arbitral Award: Issues and Challenges • Convention on the Recognition and Enforcement of Foreign Arbitral Award (New York, 1958) • Foreign Judgments from NonReciprocating Countries • Enforcement of Foreign Award by Third Party; Session 5: Jurisdictional Issues: Court Intervention vis-à-vis Competence of Arbitral Tribunal</p>

	<p>• Principles of Kompetenz-Kompetenz • Doctrine of Separability; Session 6: Emergency Arbitration and Enforceability of its orders in India.</p> <p>14. Session 5: Jurisdictional Issues: Court Intervention vis-à-vis Competence of Arbitral Tribunal •Principles of Kompetenz-Kompetenz • Doctrine of Separability</p> <p>15. Session 1: The Arbitration and Conciliation Act: Changing Trends in Legislative Scheme •Reference to Arbitration (Section 8) •Appointments and Challenges to Arbitrators (Section 12 & 11) • Two-Tier Arbitration Clause • The Arbitration & Conciliation (Amendment) Bill, 2018; Session 2: Balancing Conflicting Interests: “Public Policy” vis-à-vis Domestic Arbitration • Construction and Interpretation of Applicability Clause • Interpreting “Fundamental Policy” Inserted by 2015 Amendment; Session 3: International Commercial Arbitration: Role of Courts in post BALCO Regime •Paradigm Shift and Change in Jurisprudence •Territoriality Principle under UNCITRAL Model •Exclusion or Inclusion of Part I of the Arbitration Act; Session 4: Enforcement of Foreign Arbitral Award: Issues and Challenges •Convention on the Recognition and Enforcement of Foreign Arbitral Award (New York, 1958) •Foreign Judgments from NonReciprocating Countries •Enforcement of Foreign Award by Third Party; Session 5: Jurisdictional Issues: Court Intervention vis-à-vis Competence of Arbitral Tribunal •Principles of Kompetenz-Kompetenz • Doctrine of Separability; Session 6: Emergency Arbitration and Enforceability of its orders in India. Session 7: Emergence of Third Party funding in International Commercial Arbitration: A New Scheme •Scope and Ambit of Third Party Funding •Liability of Funders •Third Party Funding in Foreign Jurisdiction and Session 8: Current and Evolving Issues •Time Limit under Section 29A • Counter-Claim • Schedule of Fees • Power to Review Arbitral Award</p> <p>16. Nil, No suggestions.</p> <p>17. Discussion</p> <p>18. Session 5: Jurisdictional Issues: Court Intervention vis-à-vis Competence of Arbitral Tribunal • Principles of Kompetenz-Kompetenz • Doctrine of Separability; Session 6: Emergency Arbitration and Enforceability of its orders in India – as I have been enlightened upon true object of Arbitration and Reconciliation Act 1996.</p> <p>19. Participant did not comment.</p> <p>20. First five sessions. As they give insights into the issues which arise before the court.</p> <p>21. All the parts.</p> <p>22. Session 3: International Commercial Arbitration: Role of Courts in post BALCO Regime • Paradigm Shift and Change in Jurisprudence • Territoriality Principle under UNCITRAL Model • Exclusion or Inclusion of Part I of the Arbitration Act; Session 4: Enforcement of Foreign Arbitral Award: Issues and Challenges • Convention on the Recognition and Enforcement of Foreign Arbitral Award (New York, 1958) • Foreign Judgments from NonReciprocating Countries • Enforcement of Foreign Award by Third Party; Session 5: Jurisdictional Issues: Court Intervention vis-à-vis Competence of Arbitral Tribunal •Principles of Kompetenz-Kompetenz • Doctrine of Separability;- complicated issues relating to international commercial arbitration were discussed in the simplest ways with clarity.</p>
<p>c. Which part of the Programme did you find least useful and why</p>	<p>1. Participant did not comment.</p> <p>2. All the parts were useful to some extent.</p> <p>3. No comment.</p> <p>4. Every bit was good, useful and interesting.</p> <p>5. Participant did not comment.</p> <p>6. No part. All parts have contributed to certain extent.</p> <p>7. All programme were useful.</p>

	<p>8. <i>Session 6: Emergency Arbitration and Enforceability of its orders in India.</i></p> <p>9. International awards & its enforcement.</p> <p>10. Third party funding. It is a subject a judge would not find relevant.</p> <p>11. Participant did not comment.</p> <p>12. Emergency arbitration as the same has no application in India.</p> <p>13. Participant did not comment.</p> <p>14. Participant did not comment.</p> <p>15. Participant did not comment.</p> <p>16. Nil, No suggestions.</p> <p>17. Participant did not comment.</p> <p>18. <i>Session 7: Emergence of Third Party funding in International Commercial Arbitration: A New Scheme • Scope and Ambit of Third Party Funding • Liability of Funders • Third Party Funding in Foreign Jurisdiction – as emergence of third party funding in international commercial arbitration does not arise in India.</i></p> <p>19. Participant did not comment.</p> <p>20. Third party funding issue is not relevant.</p> <p>21. Nil</p> <p>22. Third party funding; New concept in India.</p>
<p>d. Kindly make any suggestions you may have on how NJA may serve you better and make its programmes more effective</p>	<p>1. Participant did not comment.</p> <p>2. Case study way be more helpful.</p> <p>3. Participant did not comment.</p> <p>4. More resource persons (more than one) for each of the subjects would be more beneficial.</p> <p>5. Judges may be asked to participate more to enhance their skills.</p> <p>6. If interactions are made compulsory there would be attention effectively.</p> <p>7. Everything is excellent.</p> <p>8. Participant did not comment.</p> <p>9. NJA can also address common issues being faced by High Courts on expeditious disposal of criminal appeals.</p> <p>10. Private international law should have been included.</p> <p>11. Participant did not comment.</p> <p>12. The method of introducing a topic and leaving it for discussion with the final outcome to be enumerated.</p> <p>13. Participant did not comment.</p> <p>14. Well-designed subject and panelist were effectively wrapping up within time frame.</p> <p>15. Participant did not comment.</p> <p>16. Nil, No suggestions.</p> <p>17. This type of conference should be organized frequently.</p>

	<p>18. Participant did not comment.</p> <p>19. Participant did not comment.</p> <p>20. Satisfied with quality of programme.</p> <p>21. 1. More time for interest & discussion; 2. Each participant should be made to participate.</p> <p>22. Workshop/Conferences on arbitration subject to be held frequently; Senior resource persons to be invited from Supreme Court and High Courts.</p>
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