

NATIONAL JUDICIAL ACADEMY, BHOPAL



**Workshop for High Court Justices on Arbitration Including
International Arbitration**

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February 8-9, 2020

Programme Report

Programme Coordinator

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The National Judicial Academy conducted a two-day workshop on Arbitration including International Arbitration for High Court Justices from 8th-9th February 2020. The programme provided a platform, for justices to share experiences, skills and suggestions with a panel of distinguished resource persons from the judicial branch; and other relevant domains.

The workshop facilitated discussions on various modules such as The Scheme of Arbitration & Conciliation Act: Towards a Model Dispute Resolution Regime; Jurisdictional Challenges: Balancing the role of Court and Arbitral Tribunal; and Recognition & Enforcement of Domestic & Foreign Arbitral Awards. The workshop also covered deliberations on current and emerging trends in domestic and international arbitration like third party funding and emergency arbitration. Identifying challenges and evolving optimal solutions/strategies to effectuate qualitative justice delivery was focused upon during the workshop.

Session 1- The Scheme of Arbitration & Conciliation Act: Towards Model Dispute Resolution Regime

Speakers: Dr. Birendra Saraf, Dr. Nidhi Gupta]

Chair: Justice Sujata Manohar

The Scheme of Arbitration & Conciliation Act: Towards a Model Dispute Resolution Regime: The session included deliberations upon 2019 amendments in the Act and a shift in the regime from ad hoc to institutional arbitration in India. The UNICITRAL Model of arbitration as adopted was discussed at length. The session also included discussion on 2015 amendments in the Act. Judgements in BALCO International case, BCCI vs. Kochi Cricket and Bhatia International case were highlighted for discussion. It was pointed out that Institutional arbitration promotes party autonomy. On applicability of 2019 amendments the case of Shapporji vs. Pallonji of Delhi High Court was referred. It was pointed out that the 2019 amendment has statutorily incorporated a time limit and conduct of arbitration proceedings, Court regulated/supervised time bound ad hoc arbitration, omission of Section 11(6)(A), Role of the Supreme court & High Court to designating the institution for International commercial arbitration and domestic arbitration respectively. Further, Sections 29A, 42 and 43 were also discussed in detail.

Session 2- Jurisdiction challenges: Balancing the role of Court and Arbitral Tribunal

Speaker: Mr. Tejas Karia

Chair: Justice Sujata Manohar, Dr. Birendra Saraf

On the theme Jurisdictional Challenges: Balancing the role of Court and Arbitral Tribunal, the key areas focused upon included challenges to the tribunal's jurisdiction, invalid or non-binding arbitration agreement and excess of authority. The speaker highlighted specific provisions of the Act such as Sec(s). 8, 9, 11, 14(2), 27, 29A, 34 and 37 which provides for intervention of Courts and Sec. 16 dealing with jurisdiction of the tribunal. The principle of kompetenz kompetenz was discussed at length. It was pointed out that a plea on arbitral tribunal exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority raised during the arbitral proceedings. On arbitability of disputes various judgements were referred to such as Booz Allen Hamilton vs. SBI Home Finance Ltd (2011), A Ayyasamy vs. Paramasivam (2016), Shri Vimal Kishore Shah vs. Jayesh Dinesh Shah (2016), Vidya Drolia & Ors. vs. Durga Trading Corporation (2019) etc. On challenges to Jurisdiction the case of M/s Indian Farmers Fertilizer Co-operative Limited vs. M/s Bhadra Products (2018) was discussed. For deliberations on plea not raised before Tribunal the case of M/s Lion Engineering Consultants vs. State of M.P. and Ors. (2018) was mentioned.

Session 3- Recognition & Enforcement of Arbitral Awards

Speakers: Dr. Birendra Saraf, Mr. Tejas Karia]

Chair: Justice Sujata Manohar

The session on Recognition & Enforcement of Arbitral Awards: Domestic & Foreign Awards, focused on procedure for enforcement of award under Part I and Part II of the Act, construction & interpretation of the term 'Public Policy', limitation period for enforcement of an award and issues & challenges involved in enforcement. The speaker discussed upon perversity as a ground to decide on public policy. It was mentioned that recognition and enforcement of an award are two different concepts. Further, it was highlighted that there are three types of award: Award in domestic arbitration – India-seated arbitration, enforceable under Part I; Award in international

commercial arbitration – India-seated arbitration of a commercial dispute with at least one foreign party, enforceable under Part I; and Foreign award – Foreign-seated arbitration, enforceable under Part II. The procedure for enforcement of domestic awards, the final award is enforced under Sec. 36 and challenged under Sec. 34 of the Act and the interim order can be enforced similarly under Sec. 17. With regard to foreign awards, the Geneva Convention Awards and New York Convention Awards were discussed in detail. Various grounds for challenging the enforcement of an award under Part I and II were also deliberated upon. The session also involved discussion on some landmark judgements relating to public policy, enforcement and challenges in enforcement of award.

Session 4- Current and Emerging Trends in Domestic and International Arbitration

Speaker: Mr. Atul Sharma;

Panel: Justice R D Dhanuka, Justice G S Kulkarni]

Current and Emerging trends in Domestic and International Arbitration: The session included deliberations upon following core areas Institutional Arbitration (Sec. 43A – 43J), applicability of CPC & Evidence Act to Arbitration, expert witnesses, Third Party Funding and emergency arbitration. Two cases were mentioned i.e. HSBC Case for judicial recognition and Rafael Case passed by Singapore Arbitration Council on emergency Arbitration. The speaker highlighted the nature of orders which emergency arbitrators can pass include orders on intellectual property and on confidential information etc. On Third Party Funding it was pointed out that the English Association of Code of Conduct has consolidated rules/codes on Third Party Funding. It was stated that Third Party Funding is neither recognized nor barred. The speaker discussed institutional arbitration in light of 2019 amendments and prior. It was highlighted that in Singapore 64% arbitrations in their arbitration center are of India. With regard to application of rules of CPC and Evidence Act to arbitration, Sec. 19 of the Act was discussed. Participants were asked to refer to the judgement in the case Srei Infrastructure Finance vs. Tuff Drilling Private Limited (2017). It was stated that arbitrators are bound by the principles of natural justice. On expert witness the concept of “Hot Tubbing” was mentioned by the speaker. Also, Sec. 45 of the Evidence Act and Sec. 26 of the Arbitration and Conciliation Act was referred.

Three golden principles:

- Provide access to justice to non-accessible
- Efficient use of resources
- More objectivity

Session 5: Overview of Arbitration and Conciliation Act

Speaker: Atul Sharma

Panel: Justice R D Dhanuka, Justice G S Kulkarni

The last session was a continued session whereby the speaker gave an overview of Arbitration & Conciliation Act: Way Forward. Some of the relevant provisions of the Arbitration & Conciliation Act, 1996 and important case laws on the subject were discussed at length. Brahmani River Pellets Limited vs. Kamachi Industries Limited, 2019 SCC OnLine SC 929, Emkay Global Financial Services Ltd. vs. Girdhar Sondhi 2018 (9) SCC 49, M/s.Canara Nidhi Limited vs. M. Shashikala & Ors. 2019 SCC OnLine SC 1244, United India Insurance Company Limited vs. Eastern Bulk Company Limited 2019 SCC OnLine Bom 1404, Booz Allen Hamilton vs. SBI Home Finance (2011) 5 SCC 532, South Delhi Municipal Corporation vs. SMS AAMW Tollways Private Limited (2019) 11 SCC 776, Vidya Drolia and Others vs. Durga Trading Corporation 2019 SCC OnLine SC 358, and Mahanagar Telephone Nigam Ltd. vs. Canara Bank and Others, 2019 SCC OnLine SC 995, etc. were some of the few judgements referred during the course of discussions.