



“बेटी बचाओ, बेटी पढ़ाओ”

JAYOTI VIDYAPEETH WOMEN'S UNIVERSITY, JAIPUR
Faculty of Law & Management

Faculty Name	-	JV'n Dr. Beena Dewan
Program	-	LLB VSem
Course Name	-	Alternative dispute & Resolution system
Session No. & Name	-	introduction of Arbitration Agreement

Academic Day starts with –

Greeting with saying ‘**Namaste**’ by joining Hands together following by 2-3 Minutes Happy session, Celebrating birthday of any student of respective class and **National Anthem**.

Lecture Starts with- Review of previous Session

The Arbitration and Conciliation Act 1996 sanctioned to "codify and revise the laws relating to residential assertion, universal commercial intervention and the authorization of remote grants and to characterize the law relating to arbitration".

Definition of Arbitration Agreement An arbitration agreement is the foundation of every contract. Basically, it is a contract clause that is subject to arbitration in case of dispute. It is also a contract from which a dispute has already arisen, the dispute has been submitted to arbitration.

Definition of arbitration agreement

Enforcement of arbitration agreement under the Arbitration and Conciliation Act 1996 There are two types of enforcement, the first being the right to waive the right to arbitrate in court and the second being to give jurisdiction to the arbitrators, which are in private hands. The Agreement may be enforced in accordance with the UNCITRAL Model Law and the New York Conventions. The arbitration agreement is defined in the Model Law as follows: "By agreement of the parties, all or certain disputes arising from the defined legal relationship between them are subject to arbitration, whether or not an agreement exists. ."

In relation to the New York Convention, the definition states that "Each State Party shall recognize in writing an agreement by which the parties undertake to submit to arbitration any or all disputes which have arisen or may arise between them in connection with a particular contract. . a legal relationship, whether or not the contract¹, which concerns a matter that can be resolved by arbitration" If the Applicable Law is based on modern legislation, the parties continue to use the arbitration clause as a contract. otherwise, the applicable law requires the consent of both parties Applicability of law Applicable law is an important determining factor: The first is the law chosen by the parties: In some cases, the law chosen by the parties governs the arbitration agreement.

Applicability of Law

the other is that the law applicable to the arbitration agreement is the law applicable to the law of incorporation. The third is the procedural law applicable to the arbitration: in the absence of an agreement, the procedural law is the arbitration law. Fourth and last is the law of the place of arbitration: the Arbitration Law. The place of arbitration is chosen as the law governing the arbitration. "" According to the New York Convention, the validity of an arbitration agreement depends mainly on the law chosen by the parties.

Otherwise, the law of the place of arbitration applies. This solution, which is clearly established when the recognition or enforcement of the judgment is requested in court, can also be reasonably applied when the question arises of requesting the recognition of the arbitration agreement in court.

One is that the law applicable to contracts is the law applicable to contract law: the other is that the law applicable to the arbitration agreement is the law applicable to the law of incorporation. The third is the procedural law applicable to the arbitration: in the absence of an agreement, the procedural law is the arbitration law. Fourth and last is the law of the place of arbitration: the Arbitration Law. The place of arbitration is chosen as the law governing the arbitration. "" According to the New York Convention, the validity of an arbitration agreement depends mainly on the law chosen by the parties. Otherwise, the law of the place of arbitration applies. This solution, which is clearly established when the recognition or enforcement of a judgment is requested, can also be reasonably applied when the question arises of requesting the recognition of an arbitration agreement in court.

Essential Elements of Arbitration Agreement under Arbitration and Conciliation

- (1) It must be based on consent
- (2) The parties must have legal capacity to enter into the contract
- (3) The agreement must be in writing
- (4) It must result from a well-defined
- (5) legal relationship must be in arbitration proceedings

Termination of Arbitration Agreement under Arbitration and Conciliation Act

Termination of the arbitration agreement is terminated by mutual consent of both parties. A second reason can be the death of the other party. Another common reason is that a party becomes insolvent or goes into bankruptcy

Regarding arbitrators, in many laws and jurisdictions the death of an arbitrator does not terminate the arbitration and a replacement is offered, but in some jurisdictions the death of an arbitrator. affects the proceedings.

Severability of arbitration agreement under the Arbitration and Conciliation Law.

It has been interpreted that the contract contains part of the contract clause, which is an appended clause to the arbitration agreement. Therefore, it was concluded that if the contract is void, the arbitration agreement will also be void. Instead, the doctrine of severability arose, the arbitration agreement is now considered independent and separate from the main contract. the invalidity of the contract does not automatically invalidate the arbitration agreement. The Model Law contains these principles explicitly.

Judicial intervention in arbitration proceedings Notwithstanding any other applicable legislation, no judicial authority may intervene in matters falling within the scope of this Part, except as provided in this Part. (Section 5 of the Arbitration and Conciliation Law) Arbitration and Conciliation Law) stipulates that the arbitration proceedings must be hindered as little as possible. The Court cannot substitute its opinions for those of the arbitrators in the recent case of *Ssangyong Engineering and Construction v. National Highways Authority of India.* , *McDermott International Inc. v. Burn Standards Co. Ltd.* In this case, the court noted that the Arbitration and Conciliation Act 1996 contains provisions for the supervisory function of the courts, the review of an arbitral

award only to ensure justice. (the court has legal control according to S. 3 of the Arbitration and Conciliation Law)

References

- Manupatra
- SCC Online
- Indian Kanoon
- Lawctopus
- Bar and Bench Articles
- Suggestions to secure good marks to answer in exam-
- Write answer with key points and examples.
- Questions to check understanding level of students-