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LAW, PRACTICE AND PROCEDURE OF ARBITRATION IN INDIA

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BOOK REVIEW
LAW, PRACTICE AND PROCEDURE
OF ARBITRATION IN INDIA

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I. INTRODUCTION

Indian arbitration jurisprudence has developed through legislations and judicial precedents. The important scholastic writings provoked the stakeholders to read and understand the complex aspects of arbitration. Professor Rajoo’s book is an important scholarly work to provide the insights of law, practice and procedure of arbitration in India and to understand arbitration at the global level. It covers the legislative paradigm shift and the diagnosis of judicial precedents. The book, containing 12 divisions and 51 chapters, projects Professor Rajoo’s vast experience in the field of arbitration and his practical insights as an arbitrator. Every chapter of this book majorly focuses on comparative study with international level and provides the entire procedure and in-depth understanding of arbitration law in India. Professor Rajoo’s views on making India a global hub for arbitration in commercial disputes raise a real impact in this region for its development. An insight of this book would be a great resource to each and every stakeholder who is involved in arbitration jurisprudence.

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II. RAJOO'S VIEWS ON ARBITRATION LAW IN INDIA

“Law, Practice and Procedure of Arbitration in India” projects a 360-degree overview of the arbitration law in India. In his view, the arbitration law in India has developed extensively with the support from the legislature and the judiciary. The judicial precedents mentioned give a detailed outline of the position of law to the readers. It extensively covers the history of arbitration law in India. The book describes entire arbitration landscape in India with a worm’s-eye view for the readers to grasp. It is to be noted that book is an important scholastic writing in this new age in order to understand the procedure and practice of arbitration in India as well as the life cycle of an arbitration in domestic arbitration and international commercial arbitration.

The book explains that the life cycle of an arbitration consists of preparation of an arbitration agreement, composition of an arbitral tribunal, the jurisdiction of arbitral tribunal and conducting the arbitral proceedings. The process results in finality of arbitral awards having a binding nature which is enforced like a decree of the court. By the effective process of reading of this book the readers would be in position to understand the complex technicalities in the process of arbitration.

At present times the book is of great relevance. It desires to make reforms in the Indian arbitration jurisprudence. Professor Rajoo neatly articulates the loopholes in the present Indian arbitration landscape and projects the need for amendments in several aspects of Indian arbitration. The book also identifies the lukewarm attitude of relevant stakeholders in the development of arbitration law in India. According to the author, one of the major loop holes is the non-supportiveness from the judiciary. Further the need of timely active involvement of legislature is a major concern for the fruitful jurisprudence of arbitration in India. The author endorses the Indian Parliament to concentrate on international best practices which should be adopted in the Indian arbitration discourse.

This book itemizes the role of arbitration in India and the importance of this mechanism in resolving commercial disputes amicably. India is one of the fastest growing economies and currently witnessing a boom in commercial activities. The future disputes arising in such commercial activities need to be resolved through arbitration. Professor Rajoo points out that one reason for preferring arbitration as the go-to dispute resolution mechanism is its easy contract enforcement. The other reasons include reduction of lengthy and expensive litigation, improvement of commercial activity in India, and a healthy resolution of disputes through arbitration.

We are privileged to write a review on this book and identify the historical background of arbitration law in India. This is done by tracing the background, context and content of arbitration law in India. The historical developments culminated in the currently governing Arbitration and Conciliation Act, 1996¹ which includes both domestic and international commercial arbitration seated in India and outside India. The present arbitration law is codified after ratification of the UNCITRAL Model Law, 1985.² Prior to this legislation in India, arbitration was governed through different legislation including the Arbitration (Protocol and Convention) Act, 1937,³ the Arbitration Act, 1940,⁴ and the Foreign Awards (Recognition and Enforcement) Act, 1961.⁵

III. INSIDE CONTOURS OF LAW, PRACTICE AND PROCEDURE OF ARBITRATION

Every chapter of this book is a boon for readers to understand and apply the principles in their practice. The divisions systematically allow the readers to understand the various concepts of arbitration. This flow traverses the impact of arbitration law in India on its stakeholders. The book bifurcates the process of arbitration as seat-centric in both domestic and international commercial arbitration. In a broad overview, it mentions about the enforcement of foreign seated arbitral awards with the help from both the New York Convention and the Geneva Convention.

We, as reviewers, span the book chapter-wise to understand the holistic approach followed by the author which gives a comprehensive theoretical understanding. Division 1 of this book deals with the introductory aspects of arbitration. The author covers in detail the concept of arbitration and how it works as an alternative dispute resolution mechanism. The division further enumerates the legislative paradigm shift to the enactment of Arbitration and Conciliation Act, 1996 and its recent amendments to develop the arbitration law in India. It further deals with the functioning of ad-hoc arbitration and institutional arbitration as well as the categorization of domestic arbitration and international commercial arbitration. The author insists on the importance of privacy, confidentiality and transparency in conducting arbitration proceedings. On the critical review of this division of this book, the author has not

¹ The Arbitration and Conciliation Act 1996.

² The United Nations Commission of International Trade Law Model Law on International Commercial Arbitration 1985.

³ The Arbitration (Protocol and Convention) Act 1937.

⁴ The Arbitration Act 1940.

⁵ The Foreign Awards (Recognition and Enforcement) Act 1961.

mentioned about the factors which lead to choosing arbitration in the place of litigation in India.

Division II of this book looks at the making of an arbitration agreement and the reference to arbitration. The practical insights into drafting an arbitration agreement and refereeing arbitrable matters to arbitration are noteworthy. It also covers the scope of the arbitration agreement and how it is separate from the original contract. The arbitral tribunal rules its own jurisdiction according to the mandate given by the parties to arbitration.⁶ Avoiding pathological clauses in the arbitration agreement is a major concern. Addressing the challenges which parties face in avoiding such pathological clauses is a commendable achievement of the book.

Division III identifies the effect of the arbitration agreement. Once the arbitration agreement comes into existence, any dispute is to be solved through a process of arbitration and there will be no simultaneous proceedings in a court of law. The subsequent Division IV discusses the role of the courts and tribunals in an arbitration process. The role of a judicial authority in arbitration is to be at a minimal level, only to restrain by way of injunctions. According to the basic understating from the book, once arbitration is initiated, the courts do not have any role to play except in passing interim measures. It is observed that the book has covered the role of courts in different stages of arbitration process.

In this book, the author also emphasized about the arbitrability of consumer disputes in India.⁷ These disputes are adjudicated by consumer forums at different levels. The issue of arbitrability of consumer disputes is a crucial consideration in the recent times and it has been discussed in the case of *Afiab Singh v Emaar Mgf Land Ltd.*⁸ The Honourable Supreme Court of India has held that consumer disputes are arbitrable when there is an arbitration agreement and interest is shown by the parties to go for arbitration. Further, just because the option to arbitrate exists, it is not imperative that the statutory remedies provided under the Consumer Protection Act have been barred. It is upon the party to decide to go for arbitration or statutory remedy. The recent legislative dimensions through the Consumer Protection Act, 2019 clarified that once a dispute is submitted to a consumer forum, it is then not arbitrable.⁹

⁶ The United Nations Commission of International Trade Law Model Law on International Commercial Arbitration, 1985, art 16.

⁷ Sundra Rajoo, *Law Practice and Procedure of Arbitration in India* (1st edn, Thomson Reuters 2021) 746.

⁸ 2017 SCC OnLine NCDRC 1988.

⁹ Sundra Rajoo, *Law Practice and Procedure of Arbitration in India* (1st edn, Thomson Reuters 2021) 1557.

Division V goes into the commencement of arbitration and composition of the Arbitral Tribunal.¹⁰ The complex process of appointment of arbitrators has been articulated in a simplified way with up-to-date amendments. It also discusses the procedure to challenge the appointment of arbitrators, their substitution and the remuneration to be paid to arbitrators in line of statutory mandate. However, this book is silent on the detailed practices carried out in developed jurisdictions such as Singapore and Hong-Kong in relation to appointment of arbitrators.

The next Division VI focuses on the order to conduct the arbitration proceedings. It is significant to understand the process prior and post hearings, collecting evidence in arbitration, the consequences of default by parties and representation in the arbitration process.

Division VII speaks about the powers, duties and jurisdiction of the arbitral tribunal and the courts. Professor Rajoo distinguishes their jurisdictions in a clear and concise manner. The arbitral tribunal on ruling its own jurisdiction continues the process of arbitration and decides the arbitral award. The role of the court is divided into pre-arbitration, during arbitration and post-arbitration proceedings. The role of courts includes passing interim measures,¹¹ setting aside of an arbitral award,¹² and enforcing the award.¹³

Division VIII of this book is a review on arbitral award. A thorough classification of arbitral awards has been made by the author to give a better understating of making a reasoned award. The classification includes types of awards, the process of making of an arbitral award and remedies or reliefs available to the award creditor. Subsequently, it gives a broad overview of the effect of a valid arbitral award and its interest upon the parties to arbitration. In this division, the book does not cover the practical aspects of an arbitral award. It should bifurcate the awards rendered through ad-hoc arbitration and institutional arbitration.

Division IX covers the aspects of the cost of arbitration. In recent times arbitration has been becoming unfriendly due to the huge cost involvement in the arbitration proceedings. The Division extensively covers regulating costs in an arbitration and the principles to be followed by the arbitral tribunal while awarding the cost of arbitration upon the parties.

¹⁰ The Arbitration and Conciliation Act 1996, s 10.

¹¹ The Arbitration and Conciliation Act 1996, s 9.

¹² The Arbitration and Conciliation Act 1996, s 34.

¹³ The Arbitration and Conciliation Act 1996, s 36.

Division X traverses an important aspect of challenge to arbitral awards. This division gives detailed grounds to set aside an arbitral award¹⁴. The jurisdiction of courts is pivotal in setting aside the arbitral award seated outside India. The book's extensive reasoning about the process along with its seat-centric approach gives a diagnostic understating to the readers and implementation tips in real arbitration practice. Moreover, it also gives clarification on recourse of an arbitral award and the effect of setting it aside. This review suggests incorporating detailed grounds of the recourse to an arbitral award in the arbitration outside India and the specifics of patent illegality.

When it comes to the recognition and enforcement of an arbitral award, the technicalities under the New York convention¹⁵ and the Geneva Convention are to be understood. Division XI is an extensive work aimed at enhancing this understanding. The distinction between these conventions needs to be determined while framing an arbitration agreement. It is also a noteworthy point to be understood by reading the conflict of laws in arbitration. Lastly, Division XII provides a detailed overview of arbitration under investment treaties. Investment arbitration is an important dispute resolution mechanism for the growth of healthy investments across the nation and maintaining a healthy relation among the nations.

IV. INFERENCE OF “LAW, PRACTICE AND PROCEDURE OF ARBITRATION LAW IN INDIA”

The inferences drawn by reviewing this scholarly work gives a bird's-eye view of the entire arbitration landscape in India and its challenges. The overall purpose of reviewing “Law, Practice and Procedure of Arbitration in India” is to provide the readers an overview of arbitration jurisprudence. This book gives a solution to address the issues cropping with respect to the technicalities of arbitration in its study and practice. The concept-wise approach adopted under this book gives a clarity and objectivity to clear cobwebs in the simplest manner. A similar piece of work by Justice Indu Malhotra, titled “Commentary on the Law of Arbitration”,¹⁶ is also an important writing in this field of jurisprudence. It covers all the updated amendments and relevant case laws evolved in Indian courts, and also has chapters like third party funding in arbitration and grant or refusal of anti-arbitration injunctions. According to the reviewers, any unavailable content and case laws may be made up from Justice Indu Malhotra's commentary.

¹⁴ The Arbitration and Conciliation Act 1996, s 34.

¹⁵ The Arbitration and Conciliation Act 1996, s 48.

¹⁶ Indu Malhotra, *Commentary on the Law of Arbitration* (4th edn, Wolters Kluwers 2020).

Nonetheless, in the simplest sense the work done by Professor Rajoo would be a great help to Indian arbitration stakeholders. Undoubtedly the readers of this book acknowledge and laud the work of the author. The interest in arbitration jurisprudence in India and the quality of the work given by the author would help in adding knowledge to the existing arbitration law in India and help in its overall development.