

ARBITRATION IN RELIGIOUS TEXTS: AN INSIGHT INTO, AND COMPARATIVE ANALYSIS OF, REFERENCES TO ARBITRATION IN HINDUISM, BUDDHISM, CHRISTIANITY AND ISLAM

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*“Differences we shall always have but we must settle them all, whether religious or other,
by arbitration.”*

-Mahatma Gandhi

ABSTRACT

Arbitration is trending in India and the World due to its speedy disposal, awards, procedure, secrecy and the people involved in carrying out the arbitration whether its arbitration practitioners, arbitrators or its management. There are various verticals of businesses belonging to diverse backgrounds with distinct jurisdictions involving humans with multiple religions that are adopting alternate dispute resolution methods to resolve their disputes, especially arbitration. Judicial institutions in the present times throughout the world and especially, India is promoting Arbitration to lessen the burden of case logs from its roaster, and also, to make judiciary into the multi-dimensional institution to deal with the problems at a multi-tier level instead of a unilateral way of deciding the cases. This paper talks about the first instances dealt by human mankind in different geographies around the world in settling their disputes through the mode of arbitration based on their religious learnings provided in their religious textbooks in the field of alternate dispute resolution mechanisms. The paper is divided into four parts, whereas first part is introductory in nature, the second part deals with the instances of arbitration in different religions mentioned in their religious textbooks, the third part deals with the glimpses of earlier arbitration which can be witnessed in the present arbitration, and the fourth part is conclusive in nature. The reader shall witness the origin of arbitration practice in Hinduism, Islam, Christianity and Buddhism practised all over the world and does a

comparative analysis of the practice of arbitration in different religions with the perspectives of intertwinement of mythology. In the light of all above, a conclusion is drawn out analysing the existence of humans on the planet 'Earth' could have only been possible despite human wars, invasion of countries and religious conflicts through the practice of resolving disputes through the medium of alternate dispute resolution mechanism especially through arbitration, mediation and conciliation etc. provided in their respective religious textbooks.

Keywords: *Religious Arbitration, Origin of Arbitration, Arbitration in religious textbooks, Ancient Arbitration, Foundation of Arbitration, Arbitration not a western concept, etc.*

INTRODUCTION

Since ancient times there has been no instance where humans have not to find themselves in a conflict, may it be, commercially or family or a conflict getting created out of social interactions. No two human brains are similar and that leads to a difference of opinions which further results in disputes. In the ancient era, when there was no concept of a legal court system with a hierarchy to solve the conflicts, there was a system of resolving a conflict between two people by appointing a third person as a judge. Around the world, a similar dispute resolution mechanism was found to be practised by people of different ethnicities, cultures, traditions and religious faiths.

All over the world, there had been different subjects of conflicts between humans but one thing which has been seen as a common link between all the major four religions prevailing on the Earth i.e., Hinduism, Buddhism, Christianity and Islam was the goal of resolving a conflict promptly with the greatest sincerity and to bring the two conflicting parties at the same table and resolve the dispute most fashionably without one feeling inferior to the other. The procedure for arbitration may be different in every religion but the ultimate destination in every dispute resolution is to get the conflict resolved without getting oneself involved in the war (in ancient times) and litigation (in recent times).

The author through this paper discusses that in every religion first preference was always given to the most peaceful way to get the conflict resolved through arbitration which had efficiency,

neutrality, confidentiality and judicial enforceability followed by other alternate dispute resolution mechanisms over War.

EARLY ORIGINS OF ARBITRATION IN DIFFERENT RELIGIOUS TEXTBOOKS

Four major religions have been shortlisted for the study of early origins of arbitration - a form of dispute resolution is Hinduismⁱⁱ, Buddhismⁱⁱⁱ, Christianity^{iv}, and Islam^v.

The above mentioned four religions have been specifically chosen because these four religions are widespread across the globe and are practised by the maximum number of people on the Earth. Also, one of the major factors for choosing these four religions were the early origins of their existence on this planet.

a. *Hinduism*

Hinduism in the real term does not define any religion.^{vi} It is categorically considered as a way of life, the people who practise Hinduism, profess Vedic culture. It is believed that this Vedic culture dates back to more than 2500 BC and even more because of the belief that this religion has neither any beginning nor any founder and is eternal in nature.

In the Vedic age of the Hindu religion i.e., between 1500 BCE to 500 BCE, all the religious texts were written down and compiled.^{vii} The best reference of dispute resolution mechanism through arbitration can be seen in the religious textbooks named the Mahabharata^{viii} and the Brihadaranyaka Upanishad^{ix}. The Mahabharata which is a compilation of the greatest war ever took place on earth talks about the instance of an unsuccessful arbitration that took place resulting in a war.

In Mahabharata, reference can be drawn from an instance where two families by the names of Kauravas and Pandavas were into family disputes related to the throne of the kingdom. Where Kauravas forcefully seated themselves onto the throne and denied the throne to the original throne holders i.e., Pandavas. Circumstances led to the Pandavas asking for some property out

of their kingdom, if not a full kingdom but Kauravas refused to give an inch of a property to the Pandavas. Then Krishna as an arbitrator was appointed as he was familiar with both the families (parties) and he was seen as an ideal to resolve the dispute due to his superior godly qualities.

When Krishna got himself before both the parties, he tried to persuade Kauravas to agree with the offer and settle the matter by giving Pandavas half of the kingdom and if not half, at least some property which again Kauravas outrightly refused. Again, Krishna tried his best to arbitrate but again it was of no use. An unsuccessful arbitration resulted in war, and Kauravas lost the war with death and thereafter, Pandavas seated themselves on the throne, and ruled the kingdom. This shows that arbitration is to be implemented first, and if no resort is left, one should then move to war (litigation in recent times).

It can be found in various other instances of arbitration in Hindu religious texts named as Brihadaranyaka Upanishad where it lists out different types of arbitral bodies which consists of three primary bodies namely 'Puga' the local groups, 'Srenis' people engaged in the same business and 'Kulas' members concerned with the social matters of a particular community and all three bodies together as one were known as Panchayats^x. The members of the Panchayats were known as Panchas. And then they used to deal with the matter now known as arbitration which has relevancy and was observed by the Privy Council in the case of "Vytla Sitanna vs Marivada Viranna^{xi}."

So, the author hereby through the secondary data available, briefly puts up that the arbitration in Hinduism is not a new concept and specifically not a concept from the western countries. It's been there since the beginning of human evolution according to the Hindu religious texts.

b. Buddhism

Buddhism has founded somewhere around 500 BC and the founder of this religion was Gautama Buddha. This religion was more into self-realisation and maintained harmony amongst relationships in the society. It focused more on how one could correct himself by practising certain meditation techniques and by understanding the basic virtues which included love and compassion even during the time of conflict.^{xii} As religion was more about the inner

consciousness, one shall find very few resources that trace conflict resolution through arbitration. The main teachings of the law were based on the sermons given by the founder of this religion i.e., Gautama Buddha. The religious textbooks such as Vinaya - Pitaka talks about the legal aspects which used to be referred to, to solve the legal disputes and commentaries on vinya pitaka like samanta pasadika, Kankhaitaran, Patimokkha and Tipitaka etc^{xiii}.

Also, Buddhism, while preaching about conflict resolution through arbitration illustrates that people convincingly preferred this way of conflict resolution, if not corrected introspectively. The important thing here to note in Buddhism is that the case used to get decided on the following aspects such as teaching, discipline and prescription of the Buddha and the parameters on which case(vattu in pali language) got decided by the committee of monks(samaghammajje in pali) before the final verdict(vinicchayena tuttha bhavissatha in pali) was by way of arbitration(mahaviniccharya – amcca) for the conflict resolution, but if arbitration was failed, then, it was referred to the General(senapati) and if not resolved by him, then, it was referred to the Viceroy(Uparaja)and further, at last to the King(Raja)^{xiv}.

In Buddhism, the author found out that this religion is more inclined towards inner correction, that is, introspection though there had been instances where the people belonging to this religion have had been resolving their disputes most practically via arbitration, mediation and conciliation and through the system of panchayats and also, through the assistance of the King and his council of ministers etc.

c. Christianity

Christianity has been founded after the death of Jesus Christ somewhere around 100 A.D. in the outer region of Jerusalem.^{xv} The religious textbook of the people who follow Christianity is known as Bible. In this religious textbook, one finds instances where conflict resolution by the way of arbitration is mentioned. Christians believe that conflict resolution through arbitration should be considered as the prime option and disregard the people who went into litigation. The main reason for this approach was that the Christian community believed themselves as self-sufficient in handling legal disputes and people of this community were peace-loving and believed in moral righteousness. The best reference of arbitration in the Bible

can be drawn from an instance in 1 Kings 3:16-28 where two harlots present their dispute before the king and the conflict was resolved.^{xvi}

The Other instance can be seen in 1 Corinthians 6:1-8, where it was urged by Paul as a mode of action in dispute for Christians.^{xvii} The Bible discouraged about non - filing of lawsuits and encouraged, alternate dispute resolution to resolve their conflict like in 1 Kings Chapter 3, where jurist disciples were to be known for their love for one another and not by lawsuits.^{xviii}

Many religious textbooks reveal that Christians to be enemy loving and give up their rights for the good of society. Bible mentioned four guidelines to resolve the conflict i.e. (one) parties to directly resolve the dispute between themselves (two) if the dispute is not resolved, then, involve two or three people to act as a mediator or the arbitrator (three) still if the dispute is not resolved, then go to church (four) again, if the dispute is not resolved then go to court.

The author found that in Christianity, arbitration always comes first and lawsuit filing to be the last resort to resolve the disputes.

d. Islam

Islam formally came into the existence somewhere around 600 A.D., there were instances where the conflict was settled through the mode of alternate dispute resolution like arbitration.^{xix} The traces of arbitration can be found in their holy book known as Qur'an and under the Sharia law but formally, the rules were not let down because there had been a confusion between the religious scholars taking the concept of arbitration.^{xx}

There had been findings mentioning the concept of arbitration with the Islamic name '*tahkim*' and the procedure to get a judge (*Qada*) by appointing an arbitrator (*hakam*) and two parties present their case.^{xxi} Interestingly, the final award was binding upon the parties, only if at the beginning of arbitration both the parties consented for the same. The amicable settlement of the dispute is referred to as '*Sulh*'^{xxii}. Where one party was non – Islamic by faith, then, parties had an option to choose to initiate arbitration or not, and if parties agree, then with that consent, arbitration used to take place.

Arbitration under Sharia law and Qur'an are the prime way of settling any dispute because of the limitations under the litigation such as confidentiality. Islam prefers peacefully settling disputes by way of arbitration.

GLIMPSES OF PAST IN MODERN ARBITRATION

After World War II, trade between countries got more regulated and with that dispute related to it also, got increased, so to deal with the dispute resolution at the international fora, United Nations Commission on International Trade Law (“UNCITRAL”) was established by the United Nations General Assembly in the year 1966. Almost every country adopted/referred to UNCITRAL model law for formulating its arbitration laws in the country. India is one such example that while drafting its present Arbitration and Conciliation Act, 1996 (“ACA”) adopted UNCITRAL model law of commercial arbitration.

If we read the present-day ACA and relate it with instances of arbitration found in the religious textbooks, one can easily highlight the similarities between them. All the basics are still there to link the present and past arbitrations found in the ancient religious textbooks like qualifications for appointment of an arbitrator, procedure of arbitration and enforcement of awards, etc.

Many forms of arbitration have emerged. *Ad-hoc* arbitration being practised in a routine manner all over the world is followed by institutional arbitration. The international arbitral institutions have been established to resolve the disputes between countries-countries, companies-countries and companies-companies, to name a few oldest premium arbitral institutions which are still in existence are International Chamber of Commerce’s ‘ICC’ International Court of Arbitration based in Paris with various offices around the world was established in the year 1923,^{xxiii} Permanent Court of Arbitration (an inter-governmental organization) known by the other name also as ‘PCA’ based in Hague, Netherlands was established in the 1899,^{xxiv} London Court of International Arbitration famously known as ‘LCIA’ based in London with offices at major global destinations was established in the 1892,^{xxv} American Arbitration Association and International Centre for Dispute Resolution (ICDR-AAA) based in the United States of America was established in the year 1926,^{xxvi}

Stockholm Chamber of Commerce Arbitration Institute based in Stockholm was established in the year 1917,^{xxvii} and the recent arbitral institutions to join the list of premium list are Hong-Kong International Arbitration Centre based in Hong-Kong was established in the year 1985,^{xxviii} and Singapore International Arbitration Centre commonly known as ‘SIAC’ based in Singapore was established in the year 1991.^{xxix}

Today, there has been an emergence of sub-fields in Arbitration with their arbitral institutions which deals specifically to the particular profession, market or business such as The Court of Arbitration for Sport (CAS) was established in Lausanne, Switzerland, in 1984, and is often called the “Supreme Court of world sport”,^{xxx} The Institution of Engineers (India) Arbitration was established in 1920 was incorporated under The Royal Charter in 1935 by the then King of England George V is a “Body Corporate” protected under Article 372 of the Constitution of India which deals specifically with the disputes related to the engineering field,^{xxxi} International Centre for Settlement of Investment Disputes (ICSID) founded in 1966, is an international arbitral body established under the “Convention on the Settlement of Investment Disputes between States and Nationals of Other States” based in Washington, the USA is the leading international arbitration institution managing investor-State disputes.^{xxxii}

With the emergence of technology and the advancement of intelligence, various super-specialization arbitral institutions are getting born every day. There are new aspects to the Arbitration that are being put in place for the recording of the evidence such as availability of transcription and ODR, that is, Online Dispute resolution, etc. Since the birth of human mankind with each day passing, the technology-driven human intellect is adding new features to the list of dispute resolution, the best illustration of the present and future is Blockchain Arbitration^{xxxiii}, in which an arbitration award shall be executed without the involvement of a third party through the mechanism of automatic smart contracts without any additional claims by the parties but it shall be seen in coming times whether it will be considered even as legal if not complied with the statutes of the contract law.

CONCLUSION

Arbitration in all religions is considered to be the supreme, the best and the first option to be explored in resolving the disputes. Through the evolution of humans, arbitration has been the preferred mode of dispute resolution with all the findings found in the religious texts across the globe. One can see the similar qualifications for appointing an arbitrator, procedure of arbitration and importance of enforceability of the award in all religions. All the practising religions have one goal of dealing the dispute resolution through the mode of arbitration before moving into the courts of law. Starting from the beginning, as the world developed other factors like infrastructure, energy, mining and communications emerged and with those evolution components, disputes arose and humans since its origin, wants to have peace and by this nature, it always in the past had chosen the peaceful manner of settling the disputes through alternative dispute resolution. No religious textbooks in the world record an instance where it harboured war directly without taking recourse of dialogue between conflicting parties. Arbitration underwent radical changes with the changing pattern of the classes of the society and the growth of human intellect and age-old civilization.

The Researcher through the data available concludes that the human race on this planet could survive till the present day from 5000 years is because of the right usage of the alternate dispute resolution mechanism that prevailed throughout the history of mankind with the support of other human intervention techniques, that is, through intelligence, love, and sacrifice. Otherwise, the wars would have ended this world and we, would not be learning about the developments of the arbitration in reference with religious context through high tech wireless machines at the comfort of our homes in the 21st Century when the world is in the grip of corona pandemic followed by the omicron.

ENDNOTES

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