

Experts in International Arbitration

Introduction

International arbitration usually deals with disputes that are not merely legal, but also technical and complex. Such cases may involve industries such as construction, infrastructure, or complex commercial agreements where understanding the facts requires more than legal knowledge. This is where the role of experts in arbitration is highlighted. Experts are individuals who have specialized knowledge or experience in a particular field. Their role is basically to assist the tribunal in understanding issues that are beyond the knowledge of the tribunal. They help and assist the tribunal to simplify complex information and explain technical aspects in a way that supports and leads to proper decision making.

Over time, expert evidence has become an important aspect of international arbitration. In fact, most **international arbitration** cases today involve at least one expert. Their presence ensures that decisions are not based only on legal arguments but also on a proper understanding of technical aspects.

Types of Experts and Their Role

In **international arbitration**, **experts** are of three types, mostly depending on the nature of the dispute. Each type plays an important role in helping the tribunal to arrive at a proper and fair conclusion.

- **Quantum experts:** They are the most common type of experts. They are usually accountants, financial analysts, or cost engineers who calculate damages, loss of profits, or the value of assets. Their experience comes in handy when financial claims are too complex to understand.
- **Technical or scientific experts:** They deal with issues as to different industries. For example, in construction disputes, they may explain why a delay occurred based on certain technicalities. Similarly, in energy or mining related disputes, they may analyse operational failures and compare them with basic industry standards.

- **Legal experts:** They are used when the dispute involves foreign law. Since arbitrators may not be familiar with laws of different lands, these experts help explain how a particular law applies.

Together, these experts help bridge the gap between complicated facts and clear understanding, making it easier for tribunals to make well informed decisions.

Appointment of Experts and Challenges

The process of **appointment of arbitrators** goes long back and is usually based on the old practices in arbitration. In most cases, parties usually appoint experts of their own choice. This gives certain control to the parties. However, it also raises concerns as to bias, as experts might prefer to favour the side they were appointed by.

The tribunal on the other hand can also appoint independent experts. They are more neutral, and they help the tribunal in a more direct manner. However, this doesn't happen a lot since many parties might feel that they have a lesser say while presenting the issues at hand.

This brings us to the “hired gun” problem. This arises when experts act like advocates rather than being neutral professionals. Following the same, the reports by the experts might completely disagree with each other. This makes it difficult for the tribunal to rely on them.

In certain situations, the experts also sometimes complicate the dispute by using detailed reports and data which results in slowing down the process instead of assisting to deal with the same.

Rules and Way Forward

Since International Arbitration provides only basic guidance on experts in arbitration, certain rules have evolved over time to ensure efficiency as well as fairness in the process. Statutes, such as the IBA Rules on the Taking of Evidence and the CIArb Protocol provides for the independence of the experts, reporting, and conduct. They state that the main purpose of appointment of the experts is assistance to the tribunal and not the party, which appointed them.

To deal with the challenges mentioned above, various methods are now used:

- “Hot tubbing,” which basically means expert conferencing, which allows the experts from each side to present their opinions and answer the questions which follow at the same time. This helps the tribunal to clearly see the disagreement if any.
- Meeting of experts before hearings to identify common ground and submit joint reports which further reduces any unnecessary conflict or issue.
- Teaming of experts, which involves suggestions as to experts by both the parties following which the tribunal selects a few to work together as neutral advisors.

These techniques make sure that the expert evidence is more reliable for decision-making by the tribunal. Arbitrators can analyse the evidence and reach the conclusion on their own.

Conclusion

Experts are a very important part of international arbitration. They assist the tribunals in understanding the issues which go beyond their knowledge and expertise and ensure that the decisions are based on proper insights of the dispute. At the same time, challenges also arise when it comes to involvement of an expert such as bias, difference in opinions and increased costs. Proper procedures, clear rules, and proper management by the tribunal are very crucial. Techniques such as expert conferencing and joint reporting improve the usage of expert evidence, which makes it more effective and fairer. When used correctly and in a proper manner, experts do not complicate the process of international arbitration but strengthen it by bringing more clarity to complex issues.