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ARBITRATION IN INDIA: AN ASCENDANT JUDICIAL REVOLUTION

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Abstract: This study posits that arbitration, as a dispute resolution mechanism, is establishing its role inside the legal system and is becoming a dependable method for resolving disputes, circumventing the protracted processes of courtroom litigation. This paper will emphasize that arbitration has historically been an essential component of judiciary, as evidenced in our history and scriptures, where references to arbitration, whether direct or implied, are noted. However, the necessity for trust to facilitate its efficient operation has not been adequately demonstrated. The article will elucidate the reasons for the historical lack of faith and trust among the populace in settling disputes through arbitration, as well as the circumstances that prompted the Chief Justice of India to underscore the significance of arbitration in his words. Finally, the article will elucidate the growth of arbitration as a transformative force in Indian judicial operations through section 89 of the Code of Civil Procedure, the Arbitration Act of 1940, and numerous arbitration case settlements.

Index Terms - Arbitration, Arbitration Act 1940, Chief Justice of India, Dispute Redressal, Section 89, Code of Civil Procedure.

INTRODUCTION

Misunderstandings and disagreements sometimes arise during trade or economic interactions between two individuals. Such misconceptions and disagreements necessitate swift and effective resolution. Besides litigation, alternative conflict resolution methods are available that are both prompt and effective. Arbitration is a distinct process. Arbitration is a method of dispute settlement in which the parties settle their problem through a third party referred to as an arbitrator. In recent years, arbitration and alternative conflict resolution processes have gained prominence as mechanisms for both parties to reach an enforceable conclusion akin to a court order. In India, the dominant perspective on dispute resolution and access to justice prioritizes courts above arbitration. They possess a deficiency of trust in the third party, even if it necessitates years of legal endeavors to achieve justice. The notion of arbitration in India is progressing in accordance with societal

transformations, thereby reinforcing the legal tenet that "law is inherently dynamic." The Indian Constitution guarantees equality before the law and equal protection under it for all citizens. The framers of the constitution aimed for the mechanisms instituted by Indian law to resolve disputes between individuals. The slogan of the Indian Judiciary indicates that justice prevails; yet, it does not suggest that the courts bear sole responsibility for resolving disputes. Historically, likely Historically, older members utilized their guidance and life experience to address issues, whether familial or otherwise, inside the family. This style has remained stable throughout our civilization. However, the public's trust has declined due to the widespread belief that a court's formal recording of the dispute is the only way to achieve a resolution.

In India, the elderly argue that conflict resolution should preserve the bond between the relevant parties. Senior members executed the settlements under their supervision and knowledge throughout that time. Individuals are reluctant to settle disputes amicably, opting instead to elevate them to a judicial context, where one side may incur losses and face reputational harm. Additionally, the pursuit of financial profit by activists has exacerbated the existing issues. This occurs because individuals in conflict are unaware of other methods to resolve their disputes that would conserve time and resources for all parties involved.The paper seeks to address the public's lack of knowledge regarding arbitration as an alternative dispute resolution approach.

HISTORICAL BACKGROUND OF ARBITRATION

India possesses a rich history of arbitration, with the concept of non-judicial conflict resolution existing prior to any formal legislation. The writings of Yajnavalka reference the distinctive arbitration courts of ancient India. The panchayat system in India is considered one of the earliest mechanisms for dispute resolution. “It is undeniably a notable feature of daily Indian existence,” Chief Justice A. Marten stated while elucidating the concept of arbitration. I would assert that it is significantly more widespread across many sectors of society than in England. Referring a problem to a panchayat is a conventional method for resolving several problems in India. The panch may resemble a judicial court in certain situations, as it might act based on a single party's complaint rather than requiring the assent of both sides, particularly in caste disputes; nonetheless, there are numerous instances where the decision is achieved through mutual agreement. The subject of arbitration in ancient India is sufficiently wide to warrant its own dedicated page. This article aims to examine the evolution of India's arbitration regulations over time.

The progression of India's arbitration framework can be categorized into three distinct phases: (i) pre-1940; (ii) 1940-1996; and (iii) post-1996. (i) The Pre–1940 Phase - An epoch of fragmented legislation: The India Arbitration Act of 1899 was the inaugural legislation in India exclusively focused on arbitration. Its usefulness, however, was confined to the Presidency Towns of Calcutta, Bombay, and Madras. The Second Schedule of the Civil Procedure Code, 1908, constituted another specific statute pertaining to arbitration. The Indian Contract Act of 1872 (articles 10 and 28) and the Specific Relief Act of 1877 both reference arbitration (section 21).

The arbitration laws was fragmented over multiple statutes, without a cohesive legal framework. Legislators expressed concern regarding the absence of unified legislation; consequently, several committees were established to revise the existing law and create a more comprehensive framework for arbitration. (ii) The

1940-1996 phase - The Arbitration Act of 1940: In 1940, a comprehensive statute pertaining to arbitration was enacted, which abrogated the existing legislation governing arbitration.

The Arbitration Act of 1940 was based on the English Arbitration Act of 1934 and constituted a comprehensive code for domestic arbitration. Nevertheless, the Act included no provisions related to the recognition of foreign awards. Unfamiliar honors were sanctioned in India via two distinct regulations: (I) the Arbitration (Protocol and Convention) Act, 1973 (pertaining to Geneva Convention Awards) and (II) the Foreign Awards (Recognition and Enforcement) Act, 1961 (concerning New York Convention Awards). The arbitral framework in India, established by the 1940 Act and related legislation, was inadequate and faced significant criticism across several platforms. It did not succeed in attaining its intended goal of delivering a prompt and effective dispute settlement procedure. The operations under the dictatorship were sluggish, intricate, costly, technologically advanced, and plagued by court meddling.

The disastrous effect of the 1940 regime was supply summed up the Supreme court in the following judgments:

F.C.I. v. Joginderpal Mohinderpal "The arbitration law should be simplified, rendered less technical, and made more attuned to the actual circumstances, while still adhering to principles of justice and fairness. It is essential for the arbitrator to follow processes and standards that foster confidence, ensuring not only that justice is served between the parties but also that it is perceived as having been achieved." ***Guru Nanak Foundation v. Rattan Singh*** The protracted, intricate, and costly court procedures compelled jurists to seek an alternate forum that was less formal, more efficient, and expedited for dispute settlement, so avoiding procedural complexities, which led them to the Arbitration Act of 1940 (hereafter referred to as "the Act").

Nonetheless, the manner in which the processes under the Act are executed and invariably contested in courts has elicited laughter from lawyers and sorrow from legal philosophers. Experience and legal documentation demonstrate that the proceedings under that Act have grown exceedingly complicated and excessively verbose, presenting a legal entrapment for the unsuspecting at every point.

The informal forum selected by the parties for the swift resolution of their issues has, via the Court's rulings, been imbued with an unforeseen intricacy of legal terminology. The Post-1996 Era - The Present Regime The current regime is under further examination to assess the legislative developments concerning arbitration up to 2022, as well as the judicial bodies' emphasis on the significance of arbitration and their efforts to integrate it into societal norms, promoting it as an alternative dispute resolution mechanism.

LEGISLATIONS AND JUDICIAL PRONOUNCEMENTS IN REGARDS TO ARBITRATION IN INDIA

In India, many principal enactments had clauses that directed disputants towards arbitration, offering an alternate resolution method to traditional litigation. The author notes that arbitration in India has consistently been integrated into the legal system as a method of conflict resolution. The legislation concerning arbitration has historical origins illustrated by the following timeline: A. The 1996 Act The 1940 administration was perceived as a counterpoint to the post-economic liberalization surge in India. Consequently, a new legislative framework was necessary to support this expansion and attract foreign investment in the nation. The enactment of the Arbitration and Conciliation Act, 1996, was a pivotal moment in Indian arbitration law. The

Act was based on the 1985 UNCITRAL Model Law on International Commercial Arbitration and the 1980 UNCITRAL Conciliation Rules. It was enacted with the following principal objectives in consideration:

- Creating a cohesive legislative framework for both local and international arbitration and conciliation.
- Minimizing judicial intervention and oversight.
- Implementing an expedited and economical dispute settlement mechanism

Establishing a robust framework for the enforcement of arbitration rulings. As time progressed, the law grew afflicted with a malady it sought to rectify. The arbitration process was characterized by protracted delays and excessive costs. The concerns were exacerbated by increasing judicial participation at all stages of arbitration, leading to additional delays and undermining the primary objective of the Act, which is to depart from the complexities of traditional litigation.

Amendment of 2015 -: The Arbitration and Conciliation (Amendment) Bill 2003 represented the initial attempt to amend the Act. Nonetheless, numerous complaints were raised concerning the planned amendments, resulting in the Bill's removal from Parliament. A new committee was established to review the Act and propose amendments, chaired by Hon'ble Justice (retd.) A.P. Shah. The committee offered numerous revisions to the existing Act, the majority of which received legislative approval. This led to the implementation of the Arbitration and Conciliation (Amendment) Act of 2015. This Amendment Act substantially modified the existing structure and initiated a new era of arbitration, markedly enhancing public perception of the process.

Arbitration was designed as a procedure necessitating minimal or no judicial involvement. Consequently, due to several judicial rulings, court intervention has become standard practice. Consequently, a principal objective of this Amendment Act, among other aims, was to reduce court intervention. The Amendment Act implemented explicit provisions that significantly curtailed the Court's jurisdiction and capacity to intervene in arbitration processes. 2. Accelerating the arbitration process: A primary aim of the 2015 Amendment Act was to eradicate delays and enhance the efficiency and efficacy of the arbitration system for dispute resolution. Defined schedules for various phases of the arbitration process were established to attain the objective. A time restriction of 12 months, extendable by an additional 6 months, was established for the resolution of the complete arbitration case; otherwise, the parties were required to petition the court for an extension. In granting such an extension, the courts were also empowered to issue appropriate directives, including instructions to replace arbitrators. 3. Enhancing the efficacy of arbitration: The 2015 Amendment Act sought to fortify the governance of arbitration and increase its public acceptance by instituting measures to ensure the independence and impartiality of arbitrators.

Amendment of 2019

Despite the 2015 Amendment Act revitalizing arbitration, it did not advance institutional arbitration in India or establish it as a hub for international commercial arbitration. Due to the absence of institutionalized arbitration in India, parties have opted for overseas arbitration venues, like Singapore and Hong Kong. The 2019 Amendment Act was enacted with the objective of promoting institutional arbitration in India. The Act

conferred the authority to appoint arbitrators only to arbitral institutions sanctioned by the Supreme Court or the High Court, so promoting institutional arbitration.

The Amendment Act established the Arbitration Promotion Council of India (APCI), an apex institution for arbitration, composed of diverse stakeholders to supervise and advance arbitration in India. Nonetheless, these advancements regarding institutional arbitration and the establishment of APCI remain uncommunicated. D. (Amendment) Act, 20204 On 4 November 2020, the Arbitration and Conciliation (Amendment) Ordinance, 2020 was enacted, further amending the Act. Two modifications ensued from this. An unconditional suspension of the enforcement of an India-seated arbitration award (encompassing both domestic and international awards) until the challenge to the award is adjudicated, provided the court determines prima facie that the arbitration agreement or contract underlying the award, or the award itself, was procured or executed through fraud or corruption.[1]

The contentious qualifications, experience, and standards for arbitrator accreditation outlined in the Eighth Schedule of the Arbitration Act have been eliminated. The change regarding the execution of an arbitration award compromised by fraud or corruption has been adopted retroactively, therefore affecting all court actions related to arbitral processes, regardless of whether they commenced prior to or subsequent to 23rd October 2015. Since its inception, India's arbitration framework has had numerous modifications and continues to change consistently. [2]

Recent amendments in 2015 and 2019, along with multiple Court decisions over the past five years, have significantly enhanced the prominence of arbitration as a viable alternative to conventional litigation. Specific domains, such as institutional arbitration, necessitate further consideration; nonetheless, in light of current trends, we may be hopeful that these challenges will be addressed in the near future.

Arbitration is an alternative conflict resolution method that is increasingly favored over litigation in courts because of its efficiency and speed. The Arbitration and Conciliation Act of 1996 in India is designed in accordance with the United Nations Commission on International Trade Law (UNCITRAL) framework, with the objective of modernizing Indian arbitration law and aligning it with global best practices. In 2021, the Supreme Court of India and several High Courts rendered numerous pivotal judgments concerning the legal status and applicability of the Arbitration Act's provisions. The Indian Government amended the Arbitration Act to harmonize alternative dispute resolution mechanisms within Indian law with international standards.

The key judgments and updates on arbitration law for the year 2021 in India are summarised below:

Whether an arbitration agreement would be non-existent in law, invalid or unenforceable, if the underlying contract was not stamped as per the relevant stamp law, referred to a constitution bench. ***In N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. &Ors,***[3] the SC held that the arbitration agreement would not be rendered invalid, unenforceable, or non-existent, even if the substantive contract is not admissible in

[1] New York Convention, Article V(2)(b), 1958, provides that Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that the recognition or enforcement of the award would be contrary to the public policy of that country.

[2] Margaret Moses, PublicPolicy: National, International and Transnational,http://arbitrationblog.kluwerarbitration.com/2018/11/12/public-policy-national-international-and-transnational/ (last visited Oct 25, 2024).

[3] 11 January 2021

evidence or cannot be acted upon on account of non-payment of stamp duty. However, the SC referred the said issue to be decided by a Constitution Bench of Five Judges, because of conflict with an earlier judgment. Arbitration Act amended. On 10 March 2021, the Indian Government passed the Arbitration and Conciliation (Amendment Act), 2021. The significant changes brought by this amendment are: The amendment allows an automatic stay on enforcement of any arbitral awards if the courts find any clear evidence that the award is influenced by fraud or corruption; and The Eighth Schedule from the Arbitration Act, which specified the arbitrator's qualifications, experience, and norms to be followed, has been omitted.

Appeals against an order of the court under the Arbitration Act may be condoned even beyond 120 days**. *In Government of Maharashtra v. Borse Brothers Engineers & Contractors Pvt. Ltd*.**,[4]the SC held that in case there is a delay in filing an appeal against an order of the court under the Arbitration Act, the delay may be condoned even beyond 120 days. However, such delay may be condoned only in exceptional cases. By mutual agreement, parties to arbitration can change the seat of arbitration. ***In Inox Renewables Limited v. Jayesh Electricals Limited*** [5]the SC held that a change in the 'venue' of arbitration by mutual agreement of the parties will amount to a change in the juridical 'seat' of arbitration.

IS ARBITRATION TRULY REGARDED BY SOCIETY AS A VIABLE ALTERNATIVE?

In the society in India, the citizens are of the mindset that if any dispute arises among any of the individuals, then the courts are the only resort to the resolution of their dispute. The concept or the statement above is true as it shows the firm belief of citizens in the judicial system or the legal protection available in India by the Constitution under its part III which prescribes the Fundamental rights to all the citizens. Since the law is dynamic thereby the method to achieve the legislative intent of avoiding mischief also needs to be updated with that of the dynamism of society.

In India, if observe the supreme law of the land i.e., the Constitution of India depicts that "law is for the people and by the people", which shows that any law of the land is successfully executed only when the citizens give it their support, similarly the arbitration as a new resolution mechanism was supported by the citizens, the author realized the same on having a conversation with various individuals in society, the author came across some responses that now observing the hefty cases pilled in the courts and wanting a speedy justice people are looking upon arbitration as a revolution in judicial mechanism for the redressal for their disputes.

Moreover, people wanted that more encouragement should be given for arbitration so that the disputes get resolved in time, further an emotional angle was there wherein an individual responded that in traditional litigation many generations pass by but the dispute doesn't get resolved, to which arbitration comes as a solution.

In society, these methods of alternative dispute redressal are not something new rather it's just like the new clothes being worn by an individual. One of the individuals of the society with whom the author had a word said that the concept of arbitration had existed since the time of Mahabharata and Lord Krishna himself acted as an arbitrator. Lord Krishna followed in the principle of "Saam, Daam, Dand, and Bhed" because Lord Krishnafirstly followed the principle of "saam" i.e., "making someone understand something" and told

[4] 19 March 2021

[5] 13 April 2021

Duryodhan to leave behind his arrogance, and give back the rightful kingdom of Pandavas to them, to which Duryodhan didn't accept. Then the next principle came into the picture i.e., "Daam", so Lord Krishna on behalf of Pandavas made an offer that you give the Pandavas five (5) villages and then the Pandavas will never look up to his kingdom, so that was the price on which they were ready to settle against the wellestablished kingdom of Indraprastha but again the offer for settlement was refused.

Then the principle of "Dand" comes into the picture i.e., the punishment following which was the result as the 18-day long battle of Mahabharata took place. The individual further added that some say that Krishna was the cause of the war whereas he was the one who till the war had begun tried to stop the same or avoid the same, by giving the offer stated earlier i.e., of 5 villages but still the same was refused. This shows that when one is finished with the alternatives of Saam and Daam then the principle of Dand needs to be applied.

Similarly, the concept of arbitration is reflecting the principles of Saam and Daam but when any of the disputing parties are not ready to settle their dispute then the matter or the dispute needs to be adjudicated by the court as a reflection of the principle of "dand" i.e., punishment like time invested for ages and ages, monetary investment and one of the most important punishments is "justice delayed is justice denied". So, it shows that arbitration is deep-rooted in our country's judicial system or dispute resolution system, and not accepting the same is like forgetting our ancestral practices or something which is provided in our scriptures.

CONCLUSION

During the composition of this work, the author encountered numerous facets and recognized the historical presence of arbitration inside Indian culture. The author believed that arbitration is an efficient and expeditious method for resolving disputes. Moreover, after analyzing numerous reviews and comments, the author concluded that the concept of arbitration is inherently ingrained in the Indian populace. Many individuals, particularly following the COVID-19 pandemic, have recognized arbitration as a reliable ally, providing assurance that they can resolve disputes without the need for protracted court proceedings, opting instead for this alternative method of settlement. Ultimately, the author asserts that conflicts or wars result solely in animosity or resentment; however, as the adage suggests, achieving significant victories may necessitate conceding minor defeats. Thus, the objective should be to attain a mutually advantageous resolution, and one must exhibit the generosity to make judicious choices during arbitration processes.