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INDIAN COUNCIL OF ARBITRATION

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ABSTRACT

The Indian Council of Arbitration (ICA) plays a pivotal role in the resolution of commercial disputes in India, offering a structured and efficient alternative to traditional litigation. This abstract provides an overview of the ICA, examining its foundational principles, organizational structure, and key functions. It highlights the significance of the ICA in promoting arbitration as a preferred method of dispute resolution within the Indian legal framework. The research delves into the historical evolution of the ICA, tracing its establishment and growth in response to the increasing demand for expedited and cost-effective dispute resolution mechanisms in the business community. The study explores the procedural aspects of arbitration under the ICA, including the rules governing arbitration proceedings, the appointment of arbitrators, and the enforcement of arbitral awards.

Additionally, the abstract addresses the impact of the ICA on the Indian commercial landscape, analyzing its contributions to enhancing the ease of doing business and fostering a favorable investment climate. The role of the ICA in facilitating cross-border arbitration and its alignment with international arbitration standards is also examined, underscoring its importance in a globalized economy.Challenges faced by the ICA, such as ensuring impartiality, maintaining the quality of arbitral decisions, and managing the costs associated with arbitration, are critically assessed. The research proposes potential reforms and strategies to address these challenges, aiming to strengthen the effectiveness and credibility of the ICA.

Finally, the abstract outlines future prospects for the ICA, considering emerging trends in arbitration and the potential impact of technological advancements on the arbitration process. By providing a comprehensive analysis of the Indian Council of Arbitration, this study aims to contribute to the broader discourse on alternative dispute resolution in India and offer insights for practitioners, policymakers, and scholars interested in the development of arbitration in the country.

INTRODUCTION

A thriving democratic nation necessitates continuous progress, with ongoing modifications to policies and laws aimed at fostering social, political, and economic development. The judiciary, a vital pillar of democracy, plays a pivotal role in achieving these objectives. Despite being one of the world's oldest, the Indian judicial system grapples with the challenge of efficiently addressing a mounting backlog of pending

cases. Although numerous fast-track courts have been established, successfully resolving millions of cases, the issue persists and continues to grow due to an escalating number of pending cases. Originally designed to settle disputes and uphold the constitution, traditional courts have become burdened with an abundance of civil and criminal cases, exacerbated by population growth and, more recently, the integration of information technology.

A significant portion of the cases handled by traditional courts pertains to seemingly trivial matters, which, despite their seemingly minor nature, contribute to the backlog. Recognizing this issue, the government and judicial committees have advocated for alternative methods of dispute resolution (ADR). ADR, encompassing mediation, arbitration, conciliation, negotiation, and other non-judicial approaches, emerges as a valuable solution in addressing the challenges faced by the Indian judicial system.

In the contemporary era, where courts worldwide grapple with overwhelming caseloads, ADR has gained widespread acceptance as an alternative means to resolve disputes. Individuals increasingly turn to ADR to address issues ranging from divorce and tax disputes to complex commercial matters such as mergers and acquisitions. Throughout history, ADR has evolved as a method to achieve consensus and genuine peace, offering a practical alternative to addressing oppression in social, political, and economic spheres while making the litigation process more cost-effective and efficient.

In cases where the oppressed seek redress against powerful oppressors, innovative strategies are recommended, urging a transformation of legal systems that primarily safeguard property rights rather than human liberty. Global ADR movements contribute to disempowering existing structures, highlighting the need for a reformed legal framework. ADR utilizes various effective tools to foster a more harmonious society, offering an affordable, less procedural, and time-efficient resolution process. The promise of confidentiality and increased control for individuals involved in the dispute further enhances its appeal. Jurists increasingly advocate for ADR as a post-proceeding's settlement mechanism, with its application extending to commercial and company-based disputes.

NEED FOR STUDY

The Indian Council of Arbitration (ICA) plays a pivotal role in the resolution of commercial disputes through arbitration, offering an alternative to the traditional judicial system. Given the growing complexity and volume of commercial transactions in India, there is a pressing need to examine the effectiveness, efficiency, and impact of the ICA in fostering a conducive environment for business and trade. This study seeks to address several critical aspects that underscore the necessity for a comprehensive research on the ICA.

- **Enhancing Dispute Resolution Efficiency:** The traditional court system in India is often marred by delays and backlogs, which can impede the timely resolution of commercial disputes. Arbitration, as facilitated by the ICA, offers a more expedient alternative. Understanding how effectively the ICA

manages and resolves disputes can provide insights into improving arbitration practices and enhancing overall dispute resolution efficiency.

- **Assessing Arbitration Quality and Standards:** The credibility and acceptance of arbitration outcomes depend on the quality and standards of the arbitration process. This study aims to evaluate the procedural rigor, fairness, and transparency of ICA arbitration, ensuring that it meets international best practices and inspires confidence among stakeholders.
- **Economic Impact on Businesses:** Efficient dispute resolution mechanisms are crucial for the economic health of businesses. Prolonged disputes can drain resources and disrupt operations. By examining the economic impact of ICA's arbitration services, this study can highlight the benefits and cost-effectiveness of arbitration compared to litigation, thereby promoting arbitration as a viable option for businesses.
- **Policy and Legislative Implications:** Arbitration in India is governed by the Arbitration and Conciliation Act, 1996, which has undergone several amendments. Research on the ICA can provide empirical data and insights to inform policymakers about the effectiveness of current legislation and suggest necessary reforms to enhance the arbitration framework.
- **Promoting International Trade and Investment:** A robust arbitration mechanism is a key factor in attracting international trade and investment. The ICA's role in resolving cross-border disputes can significantly impact India's global trade relations. This study will assess how the ICA's practices align with international arbitration standards and its role in promoting India as an arbitration-friendly jurisdiction.
- **Addressing Challenges and Improving Practices:** The arbitration landscape in India faces various challenges, including issues related to enforcement of arbitral awards, arbitrator bias, and costs. By identifying these challenges, the study can propose strategies to address them, thereby improving the overall effectiveness of the ICA.
- **Stakeholder Satisfaction and Trust:** The success of arbitration depends on the satisfaction and trust of the parties involved. This study will gather feedback from businesses, legal practitioners, and arbitrators to gauge their experiences and perceptions of the ICA, providing valuable insights into areas for improvement.
- **Educational and Professional Development:** As arbitration becomes more prevalent, there is a need for specialized training and education for arbitrators and legal professionals. Research on the ICA can identify gaps in current training programs and suggest enhancements to build a cadre of skilled arbitration professionals.

RESEARCH METHODOLOGY

The research methodology outlines the systematic approach adopted to study the Indian Council of Arbitration (ICA). This includes the methods used for data collection, analysis, and interpretation to ensure the reliability and validity of the findings.

CHAPTER-1

1.1 ARBITRAL TRIBUNAL

As per section 2(1)(d)[1], the term 'Arbitral Tribunal' refers to either a single arbitrator or a group of arbitrators. The Amendment Act empowers the Supreme Court (for international commercial arbitration) and the High Court (for cases other than international commercial arbitration) to designate arbitral institutions for the appointment of arbitrators. The evaluation of such arbitral institutions will be conducted by the Arbitration Council of India. If a recognized arbitral institution is not available, the Chief Justice of the respective High Court may constitute a panel of arbitrators to fulfil the functions and responsibilities of the arbitral institution. The arbitrator can belong to any nationality, and the parties have the freedom to agree on the procedure for appointing the arbitrator or arbitrators for their case. However, Section 11(9) of the Arbitration Act, 1996 stipulates that in the case of arbitrators involved in international commercial transactions, at least one arbitrator must be of a nationality different from that of the parties. Under the 1996 Act, parties have the autonomy to appoint arbitrators themselves. Nevertheless, in accordance with The Arbitration and Conciliation (Amendment) Act, 2019, parties are now permitted to appoint an arbitrator within 30 days from the receipt date. Additionally, arbitrators are given a period of 30 days to appoint a third arbitrator to facilitate the completion of the arbitration process.[2]

COMPOSITION

Before the enactment of this amendment Act, there is no denying that parties had the liberty to select arbitrators, with the condition that the number chosen should not be an even number. However, under the Arbitration and Conciliation (Amendment) Act, 2019, the composition is mandated to include a chairperson who can be a judge of the Supreme Court, a judge of a High Court, a Chief Justice of a High Court, or an eminent individual possessing expert knowledge in the conduct of arbitration proceedings. Consequently, other members of the council comprise a distinguished arbitration practitioner, an academician experienced in arbitration, and government appointees. The ex-officio members of the council include the Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and

[1] Arbitration and Conciliation Act, 1996, Sec 2(1)(d)
[2] LawBhoomi (2020) Arbitration tribunal, LawBhoomi. Available at: https://lawbhoomi.com/arbitration-tribunal/ (Accessed: 09 December 2023).

Justice, and the Secretary to the Government of India in the Department of Expenditure, Ministry of Finance, or their respective representatives not below the rank of Joint Secretary. Additionally, one representative from a recognized body of commerce and industry will serve as a part-time member.

JURISDICTION

It would not be appropriate to say that an arbitral tribunal has statutory jurisdiction. The tribunal determines its jurisdiction to adjust the needs of the parties. The arbitral agreement mainly determines the ambit of jurisdiction of the arbitral tribunal. The focal of party-autonomy declares that when the two parties have the remedy to resolve their disputes on their own then they have the remedy to show this right to any third party, to determine overt that squabble. Thus it is very essential to contemplate a well-drafted agreement because it results in giving complete strength to the tribunal to determine matters related to the jurisdiction. The Arbitration and Conciliation Act, 1996 also specifically mentions the jurisdiction to determine explicit matters in Section 17[3] of the Act.

- Appointment of a guardian for a person who is of unsound mind or minor age in between the process of arbitration
- Safety/Security/ Confinement/ provisional injunction of the subject matter of the arbitration.

THE RELEVANT PROVISION UNDER THE ARBITRATION AND CONCILIATION ACT, 1996

Section 16[4] of the Arbitration and Conciliation Act provides the following provisions:

● The arbitral tribunal has the authority to independently regulate or decide on matters concerning its jurisdiction, including objections related to the validity or existence of the arbitration agreement. To achieve this:

- An arbitration clause, considered a part of a contract, is to be treated as a separate and independent agreement from the other terms of the contract.

- A determination by the arbitral tribunal declaring the contract as invalid does not automatically render the arbitration clause invalid.

● An argument asserting that the arbitral tribunal lacks jurisdiction must be raised before the submission of the defense statement. However, a party is not barred from making such a claim merely because they participated in the appointment of an arbitrator or appointed one themselves.

● A claim that the arbitral tribunal is exceeding its authority must be raised promptly when the alleged overstepping occurs during the arbitral proceedings.

[3] Arbitration and Conciliation Act, 1996, sec 17, 16

[4] Garg, R. (2022) All about the arbitral tribunal, iPleaders. Available at: https://blog.ipleaders.in/all-about-the-arbitral-tribunal/#Jurisdiction_of_arbitral_tribunals (Accessed: 09 December 2023).

● In both situations described in sub-section (2) or sub-section (3), the arbitral tribunal has the discretion to entertain a belated objection if it determines that the delay is justified.

● The arbitral tribunal is responsible for resolving the objection mentioned in sub-section (2) or sub-section (3) and proceeding with the arbitral proceedings if it decides to reject the objection.

● If a party is dissatisfied with such an arbitral award, they have the option to file an application for setting aside the arbitral award in accordance with Section 34.

Jurisdiction of the arbitral tribunal when contract containing an arbitration clause is declared void

There might be instances where the arbitration agreement is not established as an independent contract but is instead incorporated as a clause within the agreement between the involved parties. In situations where the overarching contract or agreement between the parties is declared void or illegal, a pertinent question arises regarding the fate of the arbitration clause within such agreements.

In the legal case of **Waverly Jute Mills Co. Ltd. vs. Raymon and Co. (India) Ltd**[5]., the esteemed Supreme Court expressed the view that the legality of a contract could be a valid subject for arbitration, just like a dispute arising under the contract. However, the effectiveness of such an arbitration agreement is contingent upon it being distinct and independent from the contract in question that is being contested as illegal.

1.2 ARBITRATION AGREEMENT

The Arbitration and Conciliation Act, 1966, vide its Section 7[6], has provided the following definition for Arbitration Agreement: -

"...arbitration agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not."

The section also stipulates that the agreement must be unequivocally 'written,' where 'written' can encompass a document signed by the parties or an exchange of letters, telex, telegrams, or other telecommunication means, including electronic communication, that provides a documented record of the agreement. Additionally, an exchange of statements of claim and defense, where one party alleges the existence of the agreement and the other party does not deny it, qualifies as a written agreement[7].

[5] Waverly Jute Mills Co. Ltd. vs. Raymon and Co. (India) Ltd 1963 AIR 90, 1962 SCR (3) 209
[6] Arbitration and Conciliation Act, 1996, sec 7
[7] Team, L. (2020) Student notes - ADR - arbitration agreement, lawyersclubindia. Available at: https://www.lawyersclubindia.com/articles/student-notes-adr-arbitration-agreement-13500.asp (Accessed: 09 December 2023).

Essentials of an Arbitration Agreement:

1. Existence of a Dispute:

- A valid arbitration agreement requires the existence of a dispute among the parties. If the parties have already settled the dispute, the arbitration clause cannot be invoked to challenge the settlement.

2. Written Agreement:

- An arbitration agreement must be in writing, which includes:
- Being signed by both parties in the form of a documented agreement.
- Exchange of telex, letters, telegrams, or other communicative means, providing a record of the agreement.
- An exchange of statements between parties where one party asserts the existence of the arbitration agreement, and the other party does not dispute it.

3. Intent of the Parties:

- The intention of the parties during the contract formation is crucial. Specific terms like "arbitrator" or "arbitration" need not be explicitly stated, emphasizing the importance of the parties' mutual intention in the agreement.

4. Signature of the Parties:

- The signature of the parties is essential for constituting an arbitration agreement. It can take the form of a document signed by both parties containing all terms and conditions or a document signed by one party, including terms, and accepted by the other party. A single signature by one party, followed by acceptance by the other, is sufficient.

1.3 ARBITRAL AWARD[8]

An arbitration award constitutes the decision rendered by an arbitrator, encompassing financial obligations or non-financial directives such as halting specific business practices or introducing employment incentives. Put simply, arbitral awards represent the determinations of an arbitral tribunal, whether in a domestic or international arbitration setting.

Arbitral awards can be classified into two categories:

Domestic Award:

Domestic awards result from domestic arbitration proceedings and are limited to the geographical boundaries of India. The connection to India is essential, involving parties with Indian origins or a dispute falling within Indian jurisdiction. This includes awards issued by an Indian arbitral tribunal or a foreign

[8] Yash Arbitral awards in India, Legal Service India - Law, Lawyers and Legal Resources. Available at: https://www.legalserviceindia.com/legal/article-8172-arbitral-awards-in-india.html (Accessed: 09 December 2023).

state's award for a dispute involving parties of Indian origin, regulated by Indian law. The governance of domestic awards falls under Part I of the Arbitration and Conciliation Act of 1996, encompassing awards granted as per Sections 2 to 43[9] of the Act.

Foreign Award:

Foreign awards arise from foreign arbitration proceedings. When parties opt for a foreign arbitration institution or agree to ad hoc arbitration outside India, the resulting award is termed a foreign award. Part II of the Arbitration and Conciliation Act of 1996 addresses international or foreign arbitration, with Section 44 specifically defining foreign awards.

Essentials of an arbitral award

- The award shall be in writing.
- The award shall be signed by all the members of the arbitral tribunal.
- The award shall state the reasoning on which it is based.
- Date and place of arbitration should be mentioned on the award.

Enforcement of Arbitral Award

The regulation and enforcement of decrees in India fall under the jurisdiction of the Civil Procedure Code, 1908 ("CPC"), while the process of enforcing arbitral awards is primarily governed by the Arbitration & Conciliation Act, 1996 ("Act") and the CPC.

For the enforcement of a domestic arbitral award, the awardee must wait for a 90-day period from the date of receiving the award before filing for compliance and execution. During this transitional period, the award can be challenged in accordance with Section 34 of the Act. After the expiration of this time frame, if a court deems the award enforceable, its authenticity cannot be further contested during the execution process.

In the case of foreign arbitral awards, India is a party to both the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 ("Geneva Convention") and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ("New York Convention").

1.4 EVOLUTION OF ADR

The origins of Alternative Dispute Resolution (ADR) trace back to 1800 B.C., where mediation and arbitration were utilized to settle disputes between kingdoms in the ancient Middle East. ADR practices can be identified among various cultures, including the Bushmen of the Kalahari Desert, the Hawaiian Islanders, and the Yoruba of Nigeria, dating back to 960 B.C. These practices were influenced by diverse religious beliefs, with roots in the Biblical Wisdom of Solomon.[10]

[9] Arbitration and Conciliation Act, 1996, sec 43, 44

[10] Admin, Y. (2022) History of ADR in India: An overview, YLCC. Available at: https://www.yourlegalcareercoach.com/history-of-adr-in-india-an-overview/ (Accessed: 10 December 2023).

During the early modern era, ADR found application in business and land disputes, as well as in international relations where third countries assisted in resolving political conflicts among nations. The Industrial Revolution marked a period when ADR was employed in labor management disputes, particularly in mediating issues related to labor, employment relations, and equal employment opportunity.

The 1960s witnessed the use of ADR in addressing disputes arising from the revolution among black civilians. The late 1980s saw Congress recognizing ADR as a cost-efficient alternative to traditional dispute resolution methods, leading to the enactment of the Judicial Improvements and Access to Justice Act in 1988, permitting U.S. district courts to submit disputes to arbitration.

In the late 1980s and early 1990s, concerns over the expense, slowness, and complexity of traditional litigation methods in the United States led to a growing embrace of ADR. This trend extended to administrative agencies, with ADR being applied to environmental issues, Native American concerns, prisoners' rights, and foreign relations matters. In the 1990s, Congress amended the Alternative Dispute Resolution Act of 1998, mandating district courts to require litigants in civil cases to consider using an ADR process.

By the early 2000s, ADR techniques gained prominence, recognized for their ability to facilitate swift, cost-effective, and private resolution of legal disputes. Courts began to mandate ADR, particularly mediation, before allowing cases to proceed to trial. In the 21st century, ADR has undergone modern institutionalization and garnered widespread acceptance among the general public and legal professionals. Some jurisdictions, such as those following the European Mediation Directive of 2008, explicitly contemplate "compulsory" mediation in certain cases.

Status of ADR Mechanism in India

The concept of Alternative Dispute Resolution (ADR) is deeply ingrained in Indian society and has historical roots. Examination of official records reveals that arbitration, whether through mediation or other methods, has been a longstanding practice in India, dating back to ancient times. It was employed to settle disputes within family, commercial, or social groups. The historical legal landscape illustrates the involvement of impartial individuals (judges) in entities like Panchayats, Puga, Sreni, and Kula.

One of the prominent systems in India is the Panchayat program, with 'Pancha' meaning five, representing a group of five adults in a village led by a local chief. The Panchayat system, recognized as the initial form of dispute resolution in India, played a significant role in conflict resolution. Over time, the King began appointing a local chief, seeking advice on governance. Subsequently, an appeals process was introduced, allowing parties to appeal to the Lord against Panchayats' decisions. Presently, the Panchayat program holds constitutional recognition for resolving disputes related to specific issues.

Pre-Independence era[11]

Under British rule, the League of Nations convened in 1923 and endorsed the Geneva Convention (Arbitration (Protocol And Convention) Act 1937), which incorporated arbitration clauses. The initial dedicated arbitration provision was outlined in Section 89 of the Civil Procedure Code of 1908, facilitating arbitration, but this provision was annulled by Section 49 and Schedule III of the Arbitration Act of 1940. The British administration, by enacting legislation in the presidential towns of Calcutta, Bombay, and Madras, provided a legislative framework for the law of arbitration. The Bengal Resolution Act of 1772 and the Bengal Regulation Act of 1781 empowered parties to submit disputes to an arbitrator mutually selected, whose decision held binding authority. These provisions were in force until the introduction of the Civil Procedure Code of 1859, and subsequently, they were extended to the Presidency towns in 1862. Despite the ongoing reduction of case backlogs in courts nationwide, Alternative Dispute Resolution (ADR) is gaining traction. However, it is noteworthy that ADR in India is still in its early stages of development.

Current legislations of ADR in practice

The Indian Government, aiming to address the rising number of disputes and promote arbitration as a flexible, cost-effective, and expeditious mechanism for settling commercial disputes, introduced the Arbitration and Conciliation Act, 1996 ('Act'). The Act, aligned with the **UNCITRAL Model Law** on International Commercial Arbitration, 1985, encompasses both domestic and international commercial arbitration. Its primary objective is to manage delays and ensure finality in dispute resolution for the involved parties.

When enacting the Act, Indian lawmakers meticulously considered the UNCITRAL Model Law, as emphasized in the Act's Preamble, which clarifies that its provisions are connected to and based on the UNCITRAL Model Law[12]. Consequently, most of the Act's provisions align with the Model Law. Some key features of the Act include:

- Applicability to both national and international commercial arbitration, utilizing a definition clause similar to that in the Model Law.

[11] Saraf, A. ADR system in India: A brief historical background, Legal Service India - Law, Lawyers and Legal Resources. Available at: https://www.legalserviceindia.com/legal/article-8265-adr-system-in-india-a-brief-historical-background.html (Accessed: 10 December 2023).

[12] Sehgal, D.R. (2021) Analysing the law of International Commercial Arbitration in India W.R.T. the UNCITRAL Model Law Amendment, 2006, iPleaders. Available at: https://blog.ipleaders.in/analysing-law-international-commercial-arbitration-india-w-r-t-uncitral-model-law-amendment-2006/#What_is_UNCITRAL_Model_Law_on_International_Commercial_Arbitration (Accessed: 10 December 2023).

- Recognition of the necessity for an arbitration agreement between parties prior to the initiation of arbitration proceedings, outlining specific provisions for the agreement and court intervention in cases where the tribunal faces inefficiencies.
- Specification of the composition and jurisdiction of arbitral tribunals, mirroring the Model Law. It grants tribunals authority over their jurisdiction and permits them to issue final awards with limited court intervention.
- Provisions governing the conduct of arbitral proceedings, emphasizing arbitrators' freedom and the parties' will, akin to the Model Law.
- Guidelines for pronouncing awards, enforcing them, and setting aside or challenging awards. Court intervention is limited to specific circumstances outlined in Section 34(2) of the Act.

Section 9 of the Act, addressing arbitration agreements and interim measures by the court, has been modified from Article 9 of the Model Law. While the Model Law allows parties to seek court intervention for interim protective measures during arbitral proceedings, the Indian Act goes further, enabling parties to approach the courts even after the enforcement of the arbitral award. Section 9(3) of the Act, introduced through the Arbitration and Conciliation (Amendment) Act, 2015, prohibits invoking court measures after the initiation of an arbitral tribunal in foreign-seated arbitrations when speedy remedies are available to the parties. This amendment aligns with the UNCITRAL Model Law's spirit, giving primary power to tribunals in India.

Notably, the UNCITRAL Model Law on International Commercial Arbitration, 1985 (Model Law, 2006) does not explicitly state whether court power should be a secondary option available when an arbitrator cannot act effectively. The consideration of courts as a primary power, only if the arbitral tribunal proves ineffective, is commendable and aligns with various judicial precedents in India. This principle is applicable to foreign-seated arbitration as well.

1.6 MODES OF ALTERNATIVE DISPUTE RESOLUTION

Arbitration

Arbitration is a method of resolving disputes where the involved parties select a neutral and independent arbitrator, who can be an individual or an institution. The dispute, whether ongoing or anticipated, is agreed upon in advance, with the understanding that the arbitrator's decision will be binding but not mandatory. Parties can submit their disputes to arbitration either before the dispute arises, as a preventive measure, or after it has already occurred. Arbitration shares similarities with judicial courts, as rules and procedures are predetermined. Arbitration comes in two forms: private and judicial arbitration, with private arbitration being more widely used in Alternative Dispute Resolution (ADR). In private arbitration, prior agreements govern future disputes, and parties opt to handle matters outside the court through private arbitration.

Negotiation[13]

Negotiation, on the other hand, involves discussions aimed at resolving disagreements, reaching agreements, bartering for personal or collective gain, or devising solutions that satisfy various interests. It is the most common form of ad hoc dispute resolution and is applicable in various contexts, including business, legal proceedings, international interactions, and personal circumstances. Negotiators, who work in the field of negotiation, may specialize in areas such as union negotiations, leverage buyouts, peace negotiations, or hostage negotiations, and may also go by titles like diplomats, legislators, or brokers.

Conciliation

Conciliation is a less formal method, akin to arbitration, used to achieve an amicable resolution between disputing parties. In conciliation, the parties hire a conciliator to meet with them separately to settle their differences. These separate meetings aim to reduce tension, improve communication, and interpret issues to facilitate a negotiated settlement. Unlike arbitration, there is no prerequisite for prior consent, and conciliation cannot be imposed on a party unwilling to reconcile[14].

Mediation

Mediation is a form of facilitated negotiation where the mediator's decision is non-binding. In mediation, there are three parties involved: the mediator, who remains neutral, and the two disputing parties. The mediator lacks judicial authority and decision-making power, focusing on providing a broad perspective and suggesting favorable solutions to help the parties reach a mutually acceptable resolution. Mediation is initiated when both parties consent to this resolution mechanism and commit to the resulting decision or agreement. The process includes a joint session where mediation guidelines, including confidentiality clauses, are explained. The rules can be adjusted with the consent of both parties. The parties then present their positions, followed by private and confidential one-on-one discussions with the mediator, leading to a more mutually agreeable settlement.

1.7 INDIAN COUNCIL OF ARBITRATION

The Indian Council of Arbitration (ICA) is a distinguished arbitration institution established on the recommendation of the Indian Ministry of Commerce in 1965. Registered under the Societies Registration Act, 1860, it was initiated and sponsored by the Government of India and prominent business entities such as the Chambers of Commerce and Industry. Initially formed as an arbitral body at the national level, ICA[15] evolved into an independent and autonomous organization over the years.

[13] Nerei, Kshitij and thalakola, V. (2019) ADR in India: Legislations and practices, Academike. Available at: https://www.lawctopus.com/academike/arbitration-adr-in-india/ (Accessed: 01 December 2023).
[14] Rai, D. (2020) Introduction to the concepts of additional dispute resolution , iPleaders. Available at: https://blog.ipleaders.in/introduction-to-the-concepts-of-additional-dispute-resolution (Accessed: 10 December 2023).
[15] Indian Council of Arbitration: Objectives: Activities, Accountlearning. Available at: https://accountlearning.com/indian-council-of-arbitration-objectives-activities/ (Accessed: 10 December 2023).

Established with the collaboration of the Government of India and entities like FICCI, the primary objective of ICA is to facilitate amicable, swift, and cost-effective resolutions of commercial disputes through arbitration, mediation, conciliation, and Lok Adalat.

In the present landscape, ICA not only leads arbitration in India but also holds a significant role in arbitration centers across the Asia Pacific, handling over 200 domestic and international cases annually. It offers unparalleled services in business and maritime sectors and is actively involved in providing education and training in alternative dispute resolution. Various training programs are conducted nationwide to equip arbitrators with the skills to deliver unbiased and equitable decisions for the aggrieved parties, promoting justice. ICA is integral to the administration and panel of arbitrators, serving as a comprehensive solution for all dispute resolution needs.

Functions of Indian Council of Arbitration

While the outcome of arbitration holds binding force for the involved parties, certain provisions guide the arbitral proceedings. The primary role of the Indian Council of Arbitration (ICA) lies in the administration of arbitration proceedings, functioning as a non-profit organization dedicated to promoting commercial arbitration. Its oversight ensures the smooth operation of the arbitration process, with a commitment to enhancing and adapting alternative dispute resolution methods. ICA has established a set of rules governing the entire arbitration process, from initiation to conclusion.

The ICA is actively engaged in promoting and enhancing capacity and capability in the field of Alternative Dispute Resolution (ADR). Its facilities include court and conference rooms with capacities ranging from 12 to 175 individuals. In an ongoing effort to build capacity and disseminate information on ADR, the ICA organizes various courses and forums covering different aspects of ADR.

Objectives of Indian Council Of Arbitration

The objectives of the Indian Council of Arbitration encompass the following:

- Propagation and popularization of commercial arbitration in the context of foreign trade.
- Facilitating the arbitration of disputes in international trade through its constituent members.
- Maintenance of panels comprising individuals eligible to act as arbitrators.
- Collaboration with international organizations and arbitral bodies concerning international commercial arbitration.
- Conducting training courses on commercial arbitration.

1.8 LOK ADALATS

Lok Adalat[16] serves as an alternative dispute resolution mechanism, providing a forum for the amicable settlement or compromise of disputes pending in a court of law or at the pre-litigation stage. The Legal Services Authorities Act, 1987, grants statutory status to Lok Adalats, deeming their awards as decrees of a civil court, which are final and binding on all parties. While there is no provision for appealing against Lok Adalat awards, parties dissatisfied with the outcome are free to initiate litigation by approaching the appropriate court.

Initiating a matter in a Lok Adalat incurs no court fees, and if a case pending in a court of law is subsequently settled in the Lok Adalat, the original court fees paid are refunded to the parties. Members of the Lok Adalats act as statutory conciliators, lacking a judicial role, and can only persuade parties to reach an amicable settlement. They are not permitted to pressure or coerce parties directly or indirectly into compromising or settling cases.

The Lok Adalat does not independently decide matters but relies on the compromise or settlement between the parties. Members assist parties impartially in attempting to reach an amicable resolution of their disputes. Lok Adalat represents a system of dispensing justice aimed at providing affordable and speedy resolution to people. As a people's court, it differs from traditional law courts by going to the people and delivering justice at their doorstep.

Lok Adalat is not a conventional court; rather, it is a forum provided by the people themselves or interested parties, including social activists, legal aiders, and public-spirited individuals from various walks of life. It serves as a platform for common people to voice grievances against state agencies or fellow citizens, seeking a just settlement if possible. The fundamental philosophy behind Lok Adalat is to resolve disputes through discussion, counselling, persuasion, and conciliation, offering swift and cost-effective justice based on the mutual and free consent of the parties. In essence, Lok Adalat embodies a form of justice where both people and judges participate, resolving disputes through discussion, persuasion, and mutual consent.

Jurisdiction

Lok Adalat holds jurisdiction over cases pending in any court, provided that the matter falls within the Lok Adalat's jurisdiction and has not been previously brought before the court. If a case has been initiated in a court but a decision has not been rendered, Lok Adalat can address the matter if both parties consent to resolving the dispute in Lok Adalat. Alternatively, if one party applies for an appeal in Lok Adalat or if the court deems it suitable for the matter to be resolved in Lok Adalat, the case can be brought before it. Cases

[16] Sehgal, D.R. (2021a) All you need to know about the judicial recognition of Lok Adalat, iPleaders. Available at: https://blog.ipleaders.in/all-you-need-to-know-about-the-judicial-recognition-of-lok-adalat (Accessed: 11 December 2023).

in the pretrial stage, where a request is received from any party involved in the conflict, can also be considered by Lok Adalat.

Lok Adalat has the authority to address cases related to various issues, including marriage, labor disputes, land acquisition, divorce, criminal cases, family disputes, bankruptcy cases, and similar matters. However, Lok Adalat lacks jurisdiction over cases or matters that are not covered under any law. In other words, cases falling outside the purview of any law are beyond the scope of Lok Adalat's authority.

Functions

Lok Adalats[17] have the capacity to handle only cases within their jurisdiction and capabilities. Initially, they primarily focused on motor vehicle accident cases and related appeals. There is a hopeful expectation that Lok Adalats will broaden their scope to include other types of cases, such as property disputes and financial matters, facilitating the resolution of disputes through personal bonds or agreements. This development signals a return to traditional dispute resolution methods in India. However, the experience has shown that bringing disputing parties to the negotiation table and persuading them to settle through compromise, involving concessions from both sides, is a challenging task. Many legal cases involve one party seeking to prolong litigation while the other desires a swift resolution. This approach aims to save the state from unnecessary litigation costs and administrative complications. The government bears various direct and indirect costs of litigation, including court and lawyer fees, prosecution expenses, and incidental costs. Indirect costs include the time lost in disputes and the increasing costs of managing fiduciary matters. Lok Adalats can play a constructive role in certain categories of government litigation, particularly those related to land acquisition. Typically, individuals affected by land acquisition are poor villagers or middle-class individuals, and they expect prompt compensation when their land is taken away.

1.9 Gram Nyayalaya

The Gram Nyayalayas Act of 2008 (No. 4 of 2009) is a legislative measure enacted to establish village courts or gram nyayalayas nationwide, enhancing the accessibility of the judicial system to rural communities in an efficient and timely manner. Gram nyayalayas are mobile village courts designed to offer affordable justice to villagers. The term "Gram Nyayalaya" is derived from three Hindi words: "Gram," meaning 'a village,' "Nyay," meaning 'justice,' and "Aalya," referring to a 'house' or 'center.'

In its 114th Report, the Law Commission of India proposed transitioning from the democratic Nyaya Panchayat setup, based on elections, to a form of 'participatory justice' facilitated by individuals possessing requisite legal skills and traditional knowledge. The Commission recommended establishing a three-member panel, including a presiding judicial officer selected from the state's cadre of judges and two lay-

[17] India, legal S.Lawyers - our offices in India, Lawyers in India - Advocates,Law Firms,Attorney directory, Lawyer,vakil. Available at: https://www.legalserviceindia.com/legal/article-1823-lok-adalat-alternative-dispute-resolution-mechanism-in-india (Accessed: 11 December 2023).

judges chosen based on recommendations from the panel consisting of the District Magistrate and District and Sessions Judge.

The presence of a judicial officer led the Commission to expand the criminal jurisdiction of these courts, while not specifying any pecuniary jurisdiction. The intent was to create a comprehensive framework combining the benefits of both the indigenous panchayat system and the formal adversarial judicial setup of the modern Indian judiciary. Certain provisions in the Act have been drawn from the recommendations of the 114th report of the Law Commission of India. Additionally, Article 39A of the Indian Constitution, which ensures free legal aid to the impoverished and vulnerable sections of society, serves as a basis for establishing affordable gram nyayalayas in the country, promoting fair and accessible justice for all.

Establishment of Gram Nyayalayas[18]

Section 3 of the Gram Nyayalayas Act, 2008 provides for the establishment of gram nyayalayas. The State governments have been vested with the authority of setting up one or more nyayalayas, after proper consultation with the respective High Court, in every Panchayat at the intermediate level or group of adjacent Panchayats at the intermediate level of a district. The governments of respective states are also sanctioned to control and alter the territorial jurisdiction of the gram nyayalayas from time to time, depending upon the requirement or circumstance. Section 4 of the Act provides for the headquarter of the gram nyayalaya to be situated in the respective Panchayat or some other place notified by the state government.

Composition of the Gram Nyayalayas

Section 5 of the Gram Nyayalayas Act, 2008 lays down the appointment of the presiding officer of the rural mobile courts, designated as Nyayadhikari, by the State Government after deliberation with the High court. Section 6 of the Act requires the Nyayadhikari to fulfil the requirements and qualifications of a First-class Judicial Magistrate and provides for proper reservation of the marginalized, women, the Scheduled Tribes and Scheduled Castes for the post. The salary of the Nyayadhikari, governed by section 7 of the Act, shall be equivalent to that of the Judicial Magistrate of the first class.

Jurisdiction of Nyaya Panchayats

It has judicial functions both in civil as well as in criminal fields. It can deal with several minor offences) like simple hurt, wrongful restraint, theft etc, and punish an accused to pay fine. In civil matters nyaya panchayat have jurisdiction in cases like suits for money and goods etc. The pecuniary limit of such cases is very low.

[18] India, legal S. Lawyers - our offices in India, Lawyers in India - Advocates,Law Firms,Attorney directory, Lawyer,vakil. Available at: https://www.legalserviceindia.com/legal/article-3195-the-gram-nyayalayas-act-nyaya-panchayats-lok-adalat-and- (Accessed: 11 December 2023).

Procedure in Nyaya Panchayats

The procedure laid down for trial of cases has been so designed as to avoid delays and technical difficulties. Therefore, procedure followed in nyaya panchayats is very simple and informal. The procedure codes like Code of Civil Procedure, Criminal Procedure Code and Indian Evidence Act apply to the nyaya panchyats. But they have power to call witnesses and the parties for recording their evidence or producing any relevant document or fact. Unlike courts, they have the power to investigate the facts to find out the truth and at the same time they have the power to punish for its contempt. Lawyers cannot appear before a nyaya panchyat in any of its proceedings.

Kinds of offences tried by Nyayalayas

To gain a comprehensive understanding of the distinct nature of offenses falling under the jurisdiction of Nyayalayas[19], it is essential to differentiate between Schedule I and II of the Act. Both schedules are subject to amendments by both central and state governments and are outlined below:

- Schedule I: This schedule enumerates offenses that fall under the purview of Nyayalayas for adjudication. Criminal offenses such as theft, concealment, receiving and disposal of stolen goods, and malicious insult causing a breach of peace are among the offenses that come under the jurisdiction of these rural courts. Essentially, offenses not punishable by death and carrying a penalty of life imprisonment exceeding two years fall within the adjudicative authority of these mobile village courts.
- Schedule II: This schedule encompasses specific statutes and offenses to be tried within the criminal jurisdiction of rural courts. These statutes include the Payment of Wages Act, 1936, the Protection of Civil Rights Act of 1955, the Bonded Labour System (Abolition) Act of 1976, Protection of Women from Domestic Violence Act of 2005, and Equal Remuneration Act of 1976. Additionally, civil matters such as property disputes also fall under the purview of this schedule of the Act.

[19] Team, C. (2023) Gram Nyayalayas: Village Courts in India, ClearIAS. Available at: https://www.clearias.com/gram-nyayalayas/ (Accessed: 11 December 2023).

CHAPTER- II

LEGISLATIVE PROVISIONS

Part-IA of the Arbitration and Conciliation Act, 1996, specifically encompasses sections 43A to 43M, outlining the structure and operations of the Indian Council of Arbitration.

2.1 Formation and Incorporation of the Indian Council of Arbitration:

Under section 43B[20] of the Arbitration and Conciliation Act, 1996, the central government is authorized to establish the Arbitration Council of India, known as the Indian Council of Arbitration (ICA), with the responsibility of carrying out tasks outlined in the Act.

The ACI is a legally established entity with perpetual succession, a common seal, and the authority to possess, transfer, and dispose of movable and immovable assets as specified in the Arbitration and Conciliation Act, 1996[21].

Additionally, the council has the capacity to enter into contracts in its own name, as well as to initiate and defend legal proceedings. The council's headquarters is located in Delhi, and with prior approval from the central government, it can establish offices at other locations in India.

2.2 Composition of the Indian Council of Arbitration:

As stipulated in section 43C[22] of the Arbitration and Conciliation Act, 1996, the Arbitration Council is comprised of the following members:

A. The chairperson, appointed by the central government after consulting with the Chief Justice of India, must be a former Supreme Court judge, Chief Justice of any High Court, or a High Court judge, possessing specialized knowledge and experience in the administration of arbitration.

B. An accomplished arbitration practitioner with extensive expertise in both domestic and international institutional arbitration is nominated by the central government as a council member.

C. An eminent academician, well-versed in arbitration and alternative dispute resolution laws through research and teaching, is appointed as a member by the central government after consulting with the chairperson.

D. A person who has served as the Secretary to the Government of India in the Legal Affairs Department, Ministry of Law and Justice, or their representative, not below the rank of Joint Secretary, can be appointed as a member or ex-officio member of the council.

[20] Arbitration and Conciliation Act, 1996, sec 43B
[21] Dr. S.R. Myneni, Alternate Dispute Resolution (5th Edition)
[22] Arbitration and Conciliation Act, 1996, sec 43C

E. The Government Secretary in the Expenditure Department, Ministry of Finance, or their representative not below the rank of Joint Member, can also be appointed as a member or ex-officio member of the council.

F. A representative of a recognized commerce and industry body can be selected as a part-time member on a rotational basis by the central government.

The term of office for the chairperson and council members (excluding ex-officio members) is three years from the date of assuming office. The chairperson must retire upon reaching the age of seventy, while other members must retire upon reaching the age of sixty-seven. Salaries, allowances, and other terms and conditions for the chairperson and members are determined by the central government. Part-time members are entitled to travel and other allowances as prescribed by the central government.

2.3 Responsibilities and Functions of the Indian Council of Arbitration:

In accordance with section 43D of the Arbitration and Conciliation Act, 1996[23], the Arbitration Council of India is mandated to take all necessary actions to foster and support arbitration, mediation, conciliation, and other alternative dispute resolution methods. Additionally, it is tasked with formulating policies and guidelines to establish, operate, and maintain consistent professional standards across all facets of arbitration.

The council may adhere to the following criteria in fulfilling its functions and duties:

(a) Develop policies governing the grading of arbitral institutions.

(b) Acknowledge professional institutes that provide accreditation for arbitrators.

(c) Review the grading of both arbitral institutions and arbitrators.

(d) Conduct training, workshops, and courses in the field of arbitration in collaboration with law firms, law universities, and arbitral institutes.

(e) Formulate, review, and update norms to ensure a satisfactory level of arbitration and conciliation.

(f) Serve as a platform for the exchange of views and techniques, aiming to establish India as a robust center for both domestic and international arbitration and conciliation.

(g) Provide recommendations to the Central Government on various measures to facilitate the easy resolution of commercial disputes.

(h) Promote institutional arbitration by enhancing the capabilities of arbitral institutions.

(i) Organize examinations and training sessions on various subjects related to arbitration and conciliation, awarding certificates accordingly.

[23] Arbitration and Conciliation Act, 1996, Sec 43D

(j) Establish and maintain a depository of arbitral awards made in India.

(k) Make suggestions concerning the personnel, training, and infrastructure of arbitral institutions.

(l) Undertake any other functions as determined by the Central Government.

2.4 Voluntary Resignation from the Indian Council of Arbitration:

As outlined in section 43F[24] of the Arbitration and Conciliation Act, 1996, the chairperson, full-time, or part-time member of the ACI has the option to resign by submitting a written notice to the central government. However, the chairperson or full-time member must continue in office until either three months have elapsed from the date of receiving the resignation notice or a replacement assumes the position, whichever comes first, unless the central government permits an earlier departure.[25]

2.5 Removal of Indian Council of Arbitration Members:[26]

The Central Government holds the authority to remove a member from office if the individual:

(a) is an undischarged insolvent;

(b) has engaged in any paid employment at any time during their term (excluding Part-time Members);

(c) has been convicted of an offense involving moral turpitude, as determined by the Central Government;

(d) has acquired a financial or other interest likely to adversely affect their functions as a member;

(e) has abused their position to the detriment of public interest;

(f) has become physically or mentally incapable of performing the duties of a member.

According to Section 43G(2)[27] of the Arbitration and Conciliation Act, a member cannot be removed on grounds mentioned in clauses (d) and (e) of sub-section (1) until the Supreme Court conducts an inquiry on behalf of the central government and determines the member's guilt on those specific grounds.

2.6 Chief Executive Officer of the Indian Council of Arbitration:

The Council will have a Chief Executive Officer responsible for the day-to-day administration, with qualifications, appointment, and terms of service determined by the Central Government. The CEO will carry out functions specified by regulations. The Council will also have a Secretariat with officers and employees, with their qualifications, appointment, and terms of service prescribed by the Central Government.

[24] Arbitration and Conciliation Act, 1996, sec 43F

[25] Dr. S.R. Myneni, Alternate Dispute Resolution (5th Edition)

[26] The Arbitration and Conciliation Act - India code. Available at: https://www.indiacode.nic.in/bitstream/123456789/11799/1/the_arbitration_and_conciliation_act%2C_1996.pdf (Accessed: 12 December 2023).

[27] Arbitration and Conciliation Act, 1996, sec 43G(2)

2.7 Additional Functional Activities of the Indian Council of Arbitration:

The Council has the authority to appoint experts and establish expert committees as deemed necessary to fulfill its functions, with the terms and conditions specified by regulations. Grading of arbitral institutions by the Council will be based on criteria encompassing infrastructure, arbitrator quality and expertise, performance, and adherence to time limits for resolving domestic or international commercial arbitrations, as outlined in the regulations. The qualifications, experience, and standards for accrediting arbitrators will be defined by the regulations. The Council is mandated to maintain an electronic depository for arbitral awards made in India and related records, following the guidelines specified by the regulations. Additionally, the Council is empowered to formulate regulations, in consultation with the Central Government, in accordance with the provisions of this Act and the accompanying rules, to effectively carry out its functions and duties under this Act.

2.8 Amendments Introduced in the Arbitration and Conciliation Act, 1996:[28]

On the 23rd day of October 2015, the President of India promulgated an ordinance to amend the Arbitration and Conciliation Act, 1996, primarily aimed at facilitating business for foreign investors operating in India. Several significant amendments made by the Parliament include:

A. Section 2(1)(e)[29] now divides the definition of "court" into two parts, distinguishing between domestic and international commercial arbitration. The amendment specifies the courts responsible for each type.

B. A condition has been added to section 2(2)[30], stating that Sections 9, 27, 37(1)(a), and 37(3) of the Arbitration and Conciliation Act will be applicable to International Commercial Arbitrations, regardless of the arbitration's location outside India, unless there is a specific agreement stating otherwise. This applies as long as the arbitral award, made or to be made in that location, is enforceable and recognized under the provisions of Part II of the mentioned Act.

C. Amendment to section 7(4)(b)[31] includes "communication through electronic means" alongside other means of telecommunication.

D. Section 8(1)[32] has been revised to state that in cases where a dispute subject to an arbitration agreement is brought before a judge, the judge must, even if there is a judgment, decree, or order from the Hon'ble Supreme Court of India or any other court, upon application by a party to the arbitration agreement or any person claiming through or under them, refer the parties to arbitration. This referral should occur unless the judge prima facie determines that a valid arbitration agreement does not exist. Additionally, a proviso

[28] Goel, V. (2015) Highlights of amendment to the Arbitration and Conciliation Act 1996 via Arbitration Ordinance 2015 - Arbitration & Dispute resolution - india, Highlights Of Amendment To The Arbitration And Conciliation Act 1996 Via Arbitration Ordinance 2015 - Arbitration & Dispute Resolution - India. Available at: https://www.mondaq.com/india/arbitration--dispute-resolution/448666/highlights-of-amendment-to-the-arbitration-and-conciliation-act-1996-via-arbitration-ordinance-2015 (Accessed: 11 December 2023).
[29] Arbitration and Conciliation Act, 1996, sec 2(1)(e)
[30] Arbitration and Conciliation Act, 1996. sec2(2)
[31] Arbitration and Conciliation Act, 1996, sec7(4)(b)
[32] Arbitration and Conciliation Act, 1996, sec8(1)

has been added to Section 8(2), stating that if a party lacks the original or certified copy of the arbitration agreement, and it is in the possession of another party, the requesting party can file a petition with the court, asking the other party to produce the original arbitration agreement or its certified copy.

E. Section 9[33] has undergone amendments, including the addition of Clauses (2) and (3). According to the changes, when the Hon'ble Court issues orders for interim measures as outlined in Section 9(1), the arbitration proceedings must commence within 90 days from the date of the court's order or within a timeframe specified by the Hon'ble Court. It is further clarified that once the arbitral tribunal is formed, the Hon'ble Court will not entertain applications for interim measures unless it determines that exceptional circumstances exist, preventing the remedy under Section 17 from being pursued.

F. Section 11[34] has undergone changes, replacing the phrase "the Chief Justice or any person or institution designated by him" with "the Supreme Court or, as applicable, the High Court or any person or institution designated by such Court." Furthermore, Section 11(3) now stipulates that when a party files an application for the appointment of an arbitrator, the matter should be resolved expeditiously, and every attempt should be made to dispose of the application within 60 days from the date of notice served on the other party.

G. Section 12[35] has been modified to require a comprehensive disclosure of the circumstances surrounding the appointment of an arbitrator. Additionally, Schedule 5 has been appended to the Act, outlining the rules for determining situations that may raise justifiable doubts about the arbitrator's independence or impartiality. Furthermore, Schedule 6 has been introduced, specifying the format in which an arbitrator should disclose information regarding their independence or impartiality. The newly added Section 12(5), in conjunction with the 7th Schedule, specifies that if an individual has any relationship, whether with the party involved or their counsel concerning the subject matter of the dispute, falling within the categories listed in the 7th schedule, it renders the arbitrator ineligible for appointment.[36]

H. Section 17[37] has been revised to state that when parties seek interim measures from the arbitrator, the determined interim measures will be regarded as an order of the Hon'ble Court. These measures are enforceable under the CPC in a manner similar to an order of the Hon'ble Court.

I. Section 29-A[38] has been added, stating that the arbitrator or arbitral tribunal must issue the award within twelve months from the date of commencing the reference. This timeframe may be extended for an additional six months, but only with the consent of the parties. It is specified that if the award is not rendered within the initial twelve months or the extended period, the arbitration proceedings must cease unless the Hon'ble Court, either before or after the expiration of the stipulated period, extends the duration of the arbitration proceedings.

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[33] Arbitration and Conciliation Act, 1996, sec 9, sec 17
[34] Arbitration and Conciliation Act, 1996, sec 11
[35] Arbitration and Conciliation Act, 1996, sec 12
[36] The Arbitration and Conciliation (Amendment) Bill, 2015 (2023) PRS Legislative Research. Available at: https://prsindia.org/billtrack/the-arbitration-and-conciliation-amendment-bill-2015 (Accessed: 11 December 2023).
[37] Arbitration and Conciliation Act, 1996, sec 17
[38] Arbitration and Conciliation Act, 1996, sec 29-A

J. Section 29-B[39] is newly incorporated, allowing parties opting for a fast track resolution to forgo oral hearings. In such cases, the arbitral tribunal can determine the matter solely based on written pleadings, including the claim, reply, documents, and written arguments. This arrangement must be mutually agreed upon and documented in writing by the parties. This agreement can occur at any stage of the proceedings, either before the initiation or after the commencement of the arbitration proceedings.

K. Section 34[40] has been clarified through amendments, stating that an award will be considered in conflict with the public policy of India only if: (i) the award's making was influenced by fraud, corruption, or a violation of Section 75 or Section 81; or (ii) it violates the fundamental policy of Indian law (Explanation 2 clarifies that assessing this violation does not involve reviewing the merits of the dispute); or (iii) it conflicts with the fundamental principles of morality or justice. Additionally, Explanation (2A) has been introduced, indicating that a non-International Commercial Arbitration award may be set aside by the Hon'ble Court if it is tainted by patent illegality evident on the face of the award. However, it cannot be set aside solely on the grounds of an erroneous application of law or a revaluation of evidence.[41]

L. Section 37(1)[42] has been amended to allow appeals against orders refusing to refer parties to arbitration under Section 8.

M. Schedule 4 provides a model fee structure for Arbitral Tribunal/Arbitrator based on the amount in dispute.

[39] Arbitration and Conciliation Act, 1996, sec 29 -B
[40] Arbitration and Conciliation Act, 1996, sec 34
[41] Goel, V. (2015) Highlights of amendment to the Arbitration and Conciliation Act 1996 via Arbitration Ordinance 2015 - Arbitration & Dispute resolution - india, Highlights Of Amendment To The Arbitration And Conciliation Act 1996 Via Arbitration Ordinance 2015 - Arbitration & Dispute Resolution - India. Available at: https://www.mondaq.com/india/arbitration--dispute-resolution/448666/highlights-of-amendment-to-the-arbitration-and-conciliation-act-1996-via-arbitration-ordinance-2015 (Accessed: 11 December 2023).

[42] Arbitration and Conciliation Act, 1996, sec 37(1)

CHAPTER-III

JUDICIAL ANALYSIS

3.1RECOMMENDATION OF SRI KRISHNA COMMITTEE: -

The committee's findings on the reasons behind the lack of popularity of institutional arbitration in India led to several recommendations and proposals aimed at enhancing the public perception and administrative efficiency of arbitration tribunals. Chaired by former Supreme Court Justice B.N. Srikrishna, a high-level committee was established to review the institutionalization of the arbitration mechanism, and its recommendations have been submitted to the Union Law Ministry.

The proposed measures to improve the functioning and effectiveness of arbitral institutions are as follows:

Establishment of a Statutory Autonomous Body:[43]

- At the national level, the creation of the Arbitration Promotion Council of India (APCI) is recommended.
- Comprising representatives from the government, legal profession, and arbitral institutions, this autonomous body will play a crucial role in rating arbitral institutions based on a grading policy.
- The APCI will make recommendations for institutional governance, conduct research, and actively promote institutional arbitration in India.
- APCI ratings will influence the accreditation of arbitrators, addressing a significant challenge faced by arbitral institutions.
- High and Supreme Courts are encouraged to appoint arbitral organizations as authorities for naming arbitrators based on APCI ratings.
- Qualified and professional arbitrators, possessing extensive qualifications, experience, and ethical standing, will form a jury that can change the public's perception of organizations. The selection process may include interviews, qualifying exams, prestigious degrees, among other considerations.
- The administration of this process will be under the purview of APCI.

Establishment of a Specialist Bar:

- The committee advocates for the creation of a specialist arbitration bar and arbitration benches in India to expedite and effectively manage arbitration proceedings.
- The arbitration bar will consist of young, well-trained arbitrators with extensive experience in arbitration and APCI accreditation.
- A specialized tribunal will address arbitration issues, including appeals for awards under Section 34 of the Act.

[43] AC Team 1, By and 1, A.T. (2017) Recommendations of Justice Srikrishna Committee to review the Institutionalization of Arbitration Mechanism, AffairsCloud.com. Available at: https://affairscloud.com/recommendations-justice-srikrishna-committee-review-institutionalization-arbitration-mechanism/ (Accessed: 12 December 2023).

- Commercial judges forming the tribunal will provide regular seminars on existing arbitration practices, contributing to the reform of arbitration and the promotion of international best practices in India.

Establishment of a Standing Committee:

- A standing committee, under the jurisdiction of APCI, should be established to ensure that Indian arbitration laws and procedures remain current.
- The committee's responsibilities include updating government arbitration policies, supporting formal arbitration, and regularly monitoring the rules of the Arbitration and Conciliation Act.

Expanded Role of the Government:

The government's active promotion of formal arbitration and financial support for infrastructure development will be crucial. The government can facilitate institutional arbitration by contributing to the construction of physical infrastructure and implementing measures to establish integrated facilities similar to Maxwell Chambers.

Promotion of Mediation as a Viable ADR Mechanism:

This committee emphasizes the need to distinguish between alternative dispute resolution (ADR) and litigation, recognizing the significance of various conflict resolution methods. Emphasis is placed on the promotion of mediation, given the increasing use of this approach for conflict resolution. There has been notable improvement in mediation practices, with the "Med-Arb" hybrid gaining praise for its enhanced effectiveness and providing parties with greater control compared to either mediation or arbitration alone. The proposal suggests the establishment of a dedicated cell within all arbitral institutions to offer mediation services. The Arbitration Promotion Council of India (APCI) is empowered to set criteria for the enrollment of mediators.

3.2CASE LAWS: -

- **Salem Advocates Bar Association v Union of India**[44]

FACTS-

The case of Salem Advocate Bar Association v. Union of India is essentially a consequence of the original case Salem Advocates Bar Association, Tamil Nadu v. Union of India. The judges presiding over the case were Y.K. Sabharwal, D.M. Dharmadhikari, and Tarun Chatterjee. It pertains to constitutional matters and falls under the category of civil cases.

In the prior case, several amendments were introduced to the Code of Civil Procedure, 1908, through the Amendment Acts of 1999 and 2002. These amendments include:

[44] Salem Advocates Bar Association v Union of India 2005,381 SC

(i) Section 26(2) and Order 6 Rule 15(4) of the Code of Civil Procedure, 1908[45], were modified to specify that affidavits filed under these provisions would not be considered as evidence during the trial.

(ii) Amendments were made to Order 8 Rules 1 and 10 of the Code of Civil Procedure, 1908, concerning the written statement.

(iii) Changes were implemented in Section 39(4) and Order 21 Rules 3 and 48 related to the execution of decrees.

(iv) Amendments were introduced to Sections 64(1) and 64(2) of the Code of Civil Procedure, 1908, regarding the sale of attached property.

(v) Section 80 of the Code of Civil Procedure, 1908[46], dealing with notices, mandated the Central and State Governments to appoint an Officer responsible for responding to notices under Section 80. If the notice remained unanswered or the reply was evasive, the court had the authority to impose substantial costs on the government and direct appropriate action against the concerned Officer, including cost recovery.

(vi) Concerning Alternative Dispute Resolution (ADR), changes were made to Section 89 of the Code of Civil Procedure, 1908, and Sections 82 and 84 of the Arbitration and Conciliation Act[47]. The amendments clarified that the Act did not envisage a specific procedure for arbitration among four ADRs. Moreover, the Act would apply only after the reference stage, and the judge making the reference would not be disqualified from trying the suit if no settlement was reached between the parties.

To ensure the effectiveness of these amendments and expedite the dispensation of justice, a committee led by a former Judge of the Court and the Chairman of the Law Commission of India, Justice M. Jagannadha Rao, was established.

ISSUE-

If the amendments made in the Code of Civil Procedure, 1908 through the Amendment Act of 1999 and 2000 were constitutionally valid or not?

JUDGMENT:

The report is divided into three sections. The first part, Report 1, encompasses the examination of diverse complaints regarding the amendments made to the Code. It also includes the recommendations put forth by the committee. In the second part, Report 2, a thorough analysis is provided for the various issues raised concerning the draft rules for Alternative Dispute Resolution (ADR) and mediation. These rules are in alignment with Section 89 of the Code, coupled with Order X Rules 1A, 1B, and 1C.

[45] Code of Civil Procedure, 1908, sec 26(2) and Order 6 Rule 15(4)
[46] Code of Civil Procedure, 1908, sec 80
[47] Arbitration and Conciliation Act, 1996, sec 82 &84

- **KK Modi v KN Modi 1998**[48]

FACTS: -

The Modi family, originally united, underwent a division into two factions – Group A, consisting of KN Modi (the younger brother of Mai Modi) and his sons, and Group B, encompassing Mai Modi's sons, including KK Modi. These groups jointly owned several public limited companies. Disputes emerged between them, leading to the involvement of various financial institutions, including those with investments in the companies.

In an attempt to resolve these conflicts, a memorandum of agreement was executed. This document stipulated that the consultation on all matters would be overseen by the Chairman of the Industrial Finance Corporation of India (IFCI) or their nominees, whose decisions would be deemed final and binding. Both groups expressed dissatisfaction with the subsequent report that outlined the details of asset division. In response, they sought the intervention of the Chairman and Managing Director of IFCI.

To address the issues raised, the Chairman of IFCI established a committee, which thoroughly deliberated on the problems stemming from the initial report. The Chairman subsequently issued a final report, asserting it as the conclusive decision in the matter. Although this report was not formally filed in court, a set of directives for its implementation was provided to both groups through the nominated chairman.

On May 18, 1996, Group B initiated legal action by filing an arbitration petition in the Delhi High Court under Section 33 of the Arbitration Act, 1940. They contested the legality and validity of the directives issued by the Chairman and Managing Director of IFCI. Additionally, a civil suit was filed in the Delhi High Court by Group B, presenting similar arguments. However, a noteworthy distinction was made in one paragraph, where they asserted that relief was sought because the directives of the Chairman and Managing Director of IFCI constituted a decision rather than an arbitration award.

ISSUES: -

1. Does clause 9 in the agreement's memorandum function as an arbitration provision?

2. Is the determination made by IFCI considered an arbitration award?

3. Can the civil suit be deemed an abuse of the court proceedings?

JUDGMENT: -

The court ruled that the clause in question did not qualify as an arbitration clause due to the absence of explicit references to disputes being submitted to "arbitration" or an "arbitrator." The court provided a set of guidelines to determine whether the parties had mutually agreed to arbitration, and applying these guidelines, it was determined that the decision in question did not amount to an arbitral award.

[48] KK Modi v KN Modi (1998 AIR SC 1297)

Furthermore, the court deemed the civil suit an abuse of process, considering that the same issue was being addressed through two separate legal proceedings. However, the Appellants' counsel argued that, since the memorandum of understanding lacked an arbitration clause and the decision did not constitute an arbitration award, they were entitled to file a suit challenging the IFCI's decision. The court partially accepted these arguments, declaring the civil suit not abusive of the legal process, except for the aspects seeking the same reliefs as those in the arbitration petition.

- **C- P. Anand Gajapathi Raj v PVG Raju**[49]

Facts-

While this appeal was still pending, all the involved parties entered into an arbitration agreement. This agreement encompasses all the disputes arising not only in the ongoing court proceedings but also extends to others. The parties have mutually decided to refer their disputes, including those in this appeal, to Justice S. Ranganathan, a retired Judge of this Court, who will serve as the sole Arbitrator. The arbitration agreement, presented in the form of an application, has been duly signed by all parties involved. Importantly, the agreement complies with the stipulations outlined in Section 7 of the Arbitration and Conciliation Act, 1996 (the new Act).

Relevant Legal Provision: Section 8 of the New Act outlines the conditions that must be fulfilled for the referral of a suit to arbitration. The pertinent sections of the law are provided below:

"*8(1). A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement, shall if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.*

(1) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(2) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, and arbitration may be commenced or continued and an arbitral award made."

ISSUES-

a- Can this appellate court invoke the Arbitration and Conciliation Act, 1996, to direct the parties to arbitration?

b- In situations where the arbitration agreement encompasses the entirety of the suit's subject matter, is the court obligated to refer the parties to arbitration, and if so, what are the consequences?

[49] C- P. Anand Gajapathi Raj v PVG Raju (2000) 4 SCC 539

JUDGMENT-

Section 5, a component of Part I of the new Act, outlines the scope of judicial involvement in arbitration proceedings. It explicitly states that, in matters governed by Part I, no judicial authority shall intervene unless provided for within that Part, notwithstanding any other prevailing law.

Section 5 effectively underscores the objective of the new Act, which is to promote the swift and cost-effective resolution of disputes, with minimal judicial intervention when there is an arbitration agreement.

The conditions stipulated in subsections (1) and (2) of Section 8 that must be met before the Court can exercise its powers are as follows:

- The existence of an arbitration agreement.

- A party initiates legal action in the Court against the other party.

- The subject matter of the legal action aligns with the subject matter of the arbitration agreement.

- The other party petitions the Court to refer the parties to arbitration before submitting its initial statement on the substance of the dispute.

The last provision (4) grants the person initiating the action the right to have the dispute adjudicated by the Court once the other party has presented its first statement of defense. However, if the party seeking arbitration applies to the Court after submitting its statement, and the party bringing the action does not object, as is the case here, the Court is not prohibited from referring the parties to arbitration.

In the present case, the arbitration agreement encompasses all disputes between the parties in the ongoing proceedings and even extends beyond that. The agreement complies with the requirements outlined in Section 7 of the new Act. The language of Section 8 is imperative, making it obligatory for the Court to refer the parties to arbitration in accordance with their arbitration agreement.

There is no provision for the stay of proceedings until the arbitration process concludes and the Award attains finality under the provisions of the new Act. All rights, obligations, and remedies of the parties are now governed by the new Act, including the right to challenge the Award.

An application under Section 8 merely notifies the Court that the subject matter of the ongoing action falls within the scope of an arbitration agreement.

Final Decision: -

The Court allows the application and would refer the parties to the arbitration. No further orders are required in this appeal and it stands disposed of accordingly.

- **SBP and Co. v Patel Engineering Ltd., 2005**[50]

The significant case of SBP & Co. v. Patel Engineering Limited (2005) marked the decision of a seven-judge bench of the Honorable Supreme Court on Section 11(6) of the Arbitration and Conciliation Act, 1996. This section addresses the appointment of an arbitrator, specifying that if parties are unable to agree on an arbitrator or if the two arbitrators appointed by the parties cannot reach a consensus on a third arbitrator, or if an arbitral institution fails to complete the arbitrator appointment process, the Chief Justice or a person or institution designated by him, upon the parties' request, can make such an appointment.

Since the enactment of the Arbitration and Conciliation Act, there has been an ongoing debate within the Indian judiciary regarding whether the power granted by this section is administrative or judicial in nature. Before the SBP vs. Patel Engineering judgment, in the case of Konkan Railway Corp. Ltd. v. Rani Construction (P) Ltd., the Supreme Court had characterized the Chief Justice's power to appoint an arbitrator as administrative. According to this interpretation, the Chief Justice's role was limited to appointing an arbitrator to facilitate the arbitration process, thereby restricting the scope of judicial intervention in arbitration proceedings.

However, in the SBP & Co. v. Patel Engineering Limited case (2005), the Supreme Court reversed its previous judgment, declaring that the power outlined in Section 11(6) is indeed judicial. This decision has faced significant criticism and has been viewed as an instance of judicial overreach. The judicial power being deemed judicial authorized the court not only to appoint an arbitrator but also to scrutinize various aspects of the arbitration process, including the validity of the arbitral agreement, the necessity for arbitration, and related matters. Consequently, this judgment opened the door for increased judicial involvement in the arbitration process. Furthermore, the Apex Court clarified that a judicial power cannot be delegated, interpreting the phrase "any person or institution designated by him" to mean a judge of the Supreme Court or High Court other than the Chief Justice.

This judgment has been seen as contradictory to the UNCITRAL Model Laws, which advocate limiting court intervention in alternative dispute resolution methods. The judiciary has been criticized for deviating from the legislative intent of the Arbitration and Conciliation Act, which does not intend such expansive interpretation. Additionally, there is an allegation of judicial overreach, as the role of the judiciary is typically to interpret statutes rather than create laws. However, in interpreting Section 11(6), the Supreme Court introduced a novel interpretation, construing "any person or institution designated by him" as referring specifically to a judge of the High Court or Supreme Court, depending on the appointing authority.

Therefore, the SBP & Co. v. Patel Engineering Limited (2005) case has been deemed an unwarranted intrusion into arbitral proceedings, expanding the scope of judicial intervention in arbitral procedures contrary to the essence of the Alternative Dispute Resolution Mechanism.

[50] SBP and Co. v Patel Engineering Ltd (AIR 2006 SC 450)

- **Union of India v Popular Constructions, 2001**[51]

Held:

Regarding the language employed in Section 34 of the 1996 Act, the pivotal phrase is "but not thereafter" found in the proviso to sub-section (3). In our assessment, this expression constitutes an explicit exclusion within the purview of Section 29(2) of the Limitation Act, thereby precluding the application of Section 5 of that Act. Parliament's inclusion of this phrase is sufficient, and suggesting that the court could entertain an application to set aside the award beyond the extended period provided in the proviso would render the phrase "but not thereafter" entirely superfluous. Such an interpretation lacks justification based on principles of interpretation.

The historical context and structure of the 1996 Act support the conclusion that the time limit established under Section 34 for challenging an award is absolute and cannot be extended by the court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995, which preceded the 1996 Act, explicitly stated the objective of minimizing the supervisory role of courts in the arbitral process (as mentioned in clause (v) of the statement of objects and reasons of the Arbitration and Conciliation Act, 1996). This objective is reflected in Section 5 of the Act, which clearly delineates the extent of judicial intervention.

The "part" referenced in Section 5 is Part I of the 1996 Act, dealing with domestic arbitrations. Section 34 is part of Part I and, therefore, falls within the scope of the prohibition outlined in Section 5 of the 1996 Act.

Additionally, Section 34(1) itself specifies that recourse to a court against an arbitral award can only be sought through an application for setting aside the award "in accordance with" sub-section 2 and sub-section 3. While sub-section 2 pertains to grounds for setting aside an award and is not relevant for our discussion, an application filed beyond the period mentioned in Section 34, sub-section (3) would not align with the requirements of that sub-section. Consequently, pursuant to Section 34(1), seeking recourse to the court against an arbitral award is restricted to the prescribed period.

- **NTPC v Singer Company, 1993**[52]

FACTS-

National Thermal Power Corporation (NTPC), the plaintiff, and the Singer Company, the defendant, entered into a contract in New Delhi for the construction of certain works in India. The contract comprised two formal agreements, both subject to the same general terms and conditions that were integrated into the agreements. According to these terms and conditions, the law applicable to the contract was Indian law, and jurisdiction over contractual matters lay with Indian courts. The contract included an arbitration clause

[51] Union of India v Popular Constructions AIR 2001 SC 4010
[52] NTPC v Singer Company 1993 AIR 998, 1992 SCR (3) 106

specifying that disputes would be resolved through arbitration as outlined in the terms and conditions. However, the clause did not provide clarity on the governing law of the arbitration clause itself.

Subsequently, a dispute arose and was taken to arbitration by a tribunal established by the International Chamber of Commerce (ICC), following the arbitration clause. The ICC designated London as the place of arbitration, and an interim award was issued in favor of Singer. NTPC then filed an application with the Delhi High Court to set aside the interim award. The high court rejected the application, asserting that since London was the seat of arbitration, English law governed the arbitration clause, and consequently, only English courts were authorized to annul the award.

NTPC appealed to the Supreme Court of India, contending that the arbitration agreement within the contract was governed by Indian law, not English law. The argument emphasized that there was no external evidence introduced beyond the contract and terms and conditions to demonstrate a clear intention by the parties to subject the dispute to English law and jurisdiction.

ISSUES-

1. What does the Foreign Awards Act in India aim to achieve?

2. If Singer had filed a lawsuit in an Indian court, could National have compelled Singer to engage in arbitration, considering the court's mention of "procedure"?

3. Did the Supreme Court mandate a new trial due to the Act's lack of global applicability?

4. Can it be inferred that arbitration conducted under the ICC falls under the purview of Indian law?

JUDGMENT-

The High Court determined that the Arbitration Act of 1940 did not apply to the award, as the arbitration agreement underpinning the award was not governed by Indian law. Instead, the award fell under the purview of the Foreign Awards (Recognition and Enforcement) Act of 1961. Given that London was the seat of arbitration, the exclusive jurisdiction to set aside the award rested with English Courts. Consequently, the High Court declared that it lacked jurisdiction to entertain the application filed under the Arbitration Act of 1940. Dissatisfied with the High Court's decision, the appellant corporation has now filed the present appeal through special leave.

- **Union of India v. Parmar Construction Company**[53]

FACTS-

In this case, the Respondents engaged in a contract with Indian Railways for diverse construction tasks. They sought escalation costs and interest, attributing the project delay to the appellants' failure to fulfill their obligations. Concurrently, as raw material prices rose, the appellants were obligated to cover the augmented escalation price. Disputes arose when the appellant declined to meet the increased costs. In

[53] Union of India v. Parmar Construction Company 2019 SC 442

response, each respondent issued a notice, invoking the arbitration clause, which the appellant rejected on the grounds of the absence of a "dues certificate."

ISSUE-

1. Is it permissible to designate a third party or an impartial arbitrator pursuant to Section 11(6) of the Arbitration and Conciliation Act, 1996, when the parties have already agreed on the procedure and authority for appointing the chosen arbitrator?

2. Was the High Court correct in relying on the revised provision of the Arbitration and Conciliation (Amendment Act) of 2015?

JUDGMENT-

The dispute arose when the respondents submitted final bills in the agreed format, including the no dues certificate, indicating a disagreement over the payment of escalated prices or the retention of security deposits. Noting the existence of an arbitration clause in the agreement, the respondents sent a notice invoking clause 64(3) of GCC to appoint an arbitrator to resolve the outstanding dues issue. The appellants rejected this by claiming that the "No Due Certificate" had been signed, and therefore, there was no dispute requiring arbitration.

As the appellants failed to appoint an arbitrator in accordance with the agreement's arbitration clause, each respondent filed an application under Section 11(6) of the Arbitration and Conciliation Act before the High Court, seeking the appointment of an independent arbitrator. The primary objection raised by the appellants in the High Court was that, with the contractor furnishing a no claim certificate, no dispute remained for arbitration. They also argued that the claims submitted were beyond the stipulated time in the agreement, falling under the 'excepted matter.'

The facts revealed that the respondents, registered contractors with the railway establishment, undertook construction work contracts. They claimed escalation costs and interest due to project delays, attributing the extension to the appellants' breach of obligations. A rise in raw material prices further complicated the project's completion. The respondents requested the appellants to pay the increased escalation price, without which they couldn't conclude the contract. Upon the appellants' acceptance of the escalation costs, the respondents completed the work, delivered the project, and submitted final bills, including the no dues certificate.

With disputes arising over the payment of escalated costs, each respondent, invoking clause 64(3) of GCC, sent a notice for arbitration. The majority of these notices were declined by the appellants, citing the provision of the no dues certificate as grounds for no existing dispute. Subsequently, each respondent approached the High Court by filing applications under Section 11(6) of the Arbitration and Conciliation Act, 1996.

It is pertinent to note that the requests for arbitration were made to the appellants before the enforcement of the Amendment Act, 2015, which came into force on October 23, 2015.

The cases can be categorized into two groups. In the first, the court found that there was a full and final settlement resulting in accord and satisfaction, dismissing claims of coercion or undue influence. In the second category, the court recognized the claimants' contention that "no dues/no claims certificate or discharge vouchers" were insisted upon as a condition precedent for releasing the admitted dues. In these cases, the court held that the disputes were arbitrable, referring to principles previously outlined in the National Insurance Company Limited v. Boghara Polyfab Private Limited case. The court emphasized that the mere execution of a full and final settlement receipt or discharge voucher does not bar arbitration when the validity is challenged based on fraud, coercion, or undue influence. The court also clarified that even if the discharge of the contract is not genuine or legal, the claims can still be referred to arbitration. The court distinguished these cases from those cited by the appellant, noting that the earlier cases did not establish a proposition that executing a full and final settlement receipt or a discharge voucher precludes arbitration, especially when the validity is contested on grounds of fraud, coercion, or undue influence. Nor do these cases establish that claims cannot be referred to arbitration if the discharge of the contract is not genuine or legal, as the court examined the facts and determined whether there was accord and satisfaction or a complete discharge of the contract.

- **N. Radhakrishnan v. Maestro Engineers**[54]

In, N. Radhakrishnan v. Maestro Engineers, the two-judge bench of the Supreme Court held that the matters involving allegations of fraud and serious malpractices cannot be referred to arbitration.

FACTS

In this case, the involved parties were partners in a partnership firm. The appellant claimed malpractice, fraud, and collusion among the respondents to divert the firm's funds, as well as forging the firm's accounts for personal gain. Holding the respondents accountable for these allegations, the appellant expressed willingness to retire from the firm, contingent upon receiving his salary and share of profits corresponding to his investment. However, he disputed the characterization of this offer as final.

The respondents disagreed on the amount claimed by the appellant, proceeded to reconstitute the partnership, and filed a suit seeking a declaration that the appellant was no longer a partner in the firm. They asserted that the appellant's retirement offer was unequivocal and had been accepted.

Challenging the validity of the reconstituted partnership, the appellant argued that the original partnership deed's clauses should still apply. Consequently, he filed a Section 8 application to refer the dispute to arbitration since the original partnership agreement contained an arbitration clause. The respondents opposed this, contending that the original partnership agreement was no longer applicable after reconstitution, rendering the arbitration clause therein invalid for referring the dispute to arbitration. They also argued that the appellant's contentions, involving allegations of fraud and malpractice, were "serious" and required "detailed evidence," making arbitration an inadequate process.

[54] N. Radhakrishnan v. Maestro Engineers (2010) 1 SCC 72

ISSUES

1. Was the dispute within the arbitrator's jurisdiction?
2. Did the arbitrator have the competence to adjudicate on disputes encompassing "serious allegations" demanding "substantial evidence"?

DECISION

The Supreme Court explicitly stated that although the issue fell within the arbitrator's jurisdiction, due to the complexity of the matter, it needed to be addressed in a court of law. This decision was based on the recognition that allegations involving fraud, financial malpractice, and collusion carry criminal implications. The arbitrator, being bound by the terms of the contract, had limited jurisdiction confined to the contract's boundaries. In contrast, the courts, guided by comprehensive legal frameworks such as the Evidence Act and Codes of Civil and Criminal Procedures, possessed better capabilities to adjudicate on the matter and provide broader remedies.

CURRENT STATUS

The decision in N. Radhakrishnan found resonance in various judgments, including A. Ayyasamy v. A. Paramasivam and Ors[55]. In this instance, the involved parties were partners in a hotel venture. Following disagreements, the respondents initiated an injunction suit in court to bar the appellant from managing the enterprise. The respondent opposed arbitration, citing the involvement of fraudulent acts. The Supreme Court, however, clarified that matters entailing serious fraud allegations were not suitable for arbitration, while disputes involving "mere" fraud allegations were arbitrable. Dismissing parties from arbitration based solely on a claim of fraud was deemed misleading, and the burden of proving the dispute's inarbitrability rested with the party favoring court proceedings.

However, the Supreme Court, in Swiss Timing Ltd. v. Commonwealth Games [56] 2010 Organising Committee, declared that the N. Radhakrishnan decision was per incuriam and lacked reliability. In this case, Swiss Timing Ltd., the petitioner, had contracted with the respondent, Organising Committee, Commonwealth Games, to provide support services for the 2010 Commonwealth Games in New Delhi. Following the completion of the games, the petitioner submitted an invoice, but the respondent refused payment on unjustified grounds.

Despite the respondent's objections, claiming that arbitration was not appropriate due to fraud allegations against the petitioner rendering the contract void ab initio, the court rejected this stance. The court asserted that an arbitral tribunal could address such allegations, citing the principles of separability and competence.

N. Radhakrishnan v. Maestro Engineers thus stood overruled.

[55] Ayyasamy v. A. Paramasivam and Ors (2016) 10 SCC 386
[56] Swiss Timing Ltd. v. Commonwealth Games 2010, (2014) 6 SCC 677

- **Avitel Post Studioz Limited and Ors. v. HSBC PI Holdings (Mauritius) Limited and Ors.**[57]

FACTS

In this case, Avitel Post Studioz (the appellant) and HSBC Holdings (the respondent) entered into a share subscription agreement where the respondent committed to investing 60 million USD to acquire a specific percentage of the appellant's paid-up equity capital. The respondent-initiated arbitration proceedings and simultaneously filed a criminal complaint, alleging fraudulent misrepresentation by the appellant regarding a contract with a British corporation. The representation was purportedly designed to induce the respondent to enter into the share subscription agreement. Emergency arbitrators issued interim awards allowing the respondent to freeze the appellant's accounts. Subsequently, the respondent filed a Section 9 application seeking a deposit of the security amount (60 million USD), which was granted by the courts.

The Learned Division Bench concluded that:

- Fraud allegations pertained to Sections 17 and 18 of the Indian Contract Act, 1872, indicating that the disputes were of a civil nature and therefore suitable for arbitration.

- A security deposit of 30 million USD was required to be retained in the appellant's account, representing the variance between the price paid by the respondent for share acquisition and the amount anticipated upon resale of the shares.

This decision was subsequently challenged in the Supreme Court.

ISSUES

Whether the Section 9 application seeking a deposit of 60 million USD should be allowed against the appellant since allegations of fraud were raised by one of the parties to the arbitration agreement?

DECISIONS

The court determined that serious fraud allegations could only be deemed non-arbitrable if either of the following tests were satisfied:

1. Whether the plea affects the entire main contract and the arbitration agreement, making it void.

2. Whether the fraud allegations are confined to the parties' internal matters, having no impact on the public domain.

Concluding that the dispute was arbitrable, the court emphasized that the fraud allegations did not invalidate the arbitration agreement and were linked to the internal affairs of the parties, without public implications.

Contrary to the Division Bench's ruling, the court clarified that the measure of damages for fraudulent misrepresentation should not merely involve the difference between the price paid for share acquisition

[57] Avitel Post Studioz Limited and Ors. v. HSBC PI Holdings (Mauritius) Limited and Ors 2020 SC 656

and the anticipated resale amount. Instead, it should be assessed by restoring the respondent to the position as if the contract had never been entered into, necessitating a 60 million USD security deposit.

This landmark judgment dispelled uncertainties surrounding the arbitrability of fraud. The Supreme Court referenced its own decisions in Swiss Timing Ltd v. Organizing Committee, Commonwealth Games 2010, Delhi, and A. Ayyasamy v. A. Paramasivam & Ors. (although not binding precedents) and reiterated that only matters involving extremely serious fraud allegations should be deemed non-arbitrable and brought before the courts. In cases of simple fraud allegations, the tribunal need not void the arbitration clause and can adjudicate on the issue under the Principle of Kompetenz-Kompetenz (the tribunal's jurisdiction to rule on its own competence).

CHAPTER- IV

4.1 APPRAISAL

India, being a diverse nation with a dynamic society, witnesses continuous changes in societal attitudes. The Parliament, recognizing the evolving needs of the society, adapts and formulates laws accordingly. While alternative dispute resolution (ADR) may not have held significant value in the early 60s, the escalating population growth and rising caseloads in the Indian judiciary now pose challenges to the justice system. However, increased awareness among people about ADR options has prompted the legislature to empower the Indian Council of Arbitration to establish rules facilitating prompt dispute resolution outside the traditional court procedures.

Section 89 of the Civil Procedure Code, 1908, offers civil litigants the choice of various ADR methods, including arbitration, mediation, conciliation, and Lok Adalat, to achieve amicable settlements. The Arbitration Council of India oversees these functions and formulates rules to ensure the efficient operation of all ADR systems.

The Indian Council of Arbitration has made commendable efforts by outlining procedures for filing cases, requiring parties to provide necessary information for ADR processes. The party initiating arbitration submits a written application with details such as the statement of the claim, supporting facts, points at issue, relief sought, and, if directed by the court, a certified copy of the court order. The nominal registration fee of Rs. 1000 prevents financial strain on the parties.

To prevent premature filing of cases, the Council evaluates whether a dispute is suitable for alternate resolution, considering when the dispute arose or implementing rules for potential dispute scenarios. By doing so, the Council prevents the registration of numerous cases lacking merit, saving valuable time and resources. The Council also specifies the subject matter within its jurisdiction, focusing on commercial disputes related to shipping, sale, purchase, banking, insurance, construction, engineering, and other areas, excluding vexatious and frivolous cases.

The Council pays attention to the nationality of the parties involved in arbitration, ensuring fairness in the application of substantive and procedural laws to avoid injustice. The finality and binding nature of arbitrators' awards, as per Rule 8, provide clarity to the parties.

Maintaining a register of arbitrators, both Indian and foreign, the Council aids parties in selecting unbiased arbitrators and streamlining the appointment process. The guidelines on the number of arbitrators based on the pecuniary aspect of the case prevent unnecessary delays in less significant matters. The Council's rules on the appointment of arbitrators in case of disagreements between parties or objections ensure a fair and efficient process.

4.2 SUGGESTIONS

The primary objective of alternative dispute mechanisms is to offer prompt resolution and relief to aggrieved parties, a process often challenging in conventional court proceedings. However, parties entering such proceedings often fail to adhere to their pre-agreed terms, leading to prolonged disputes. Arbitral awards, meant to be final and binding, face execution challenges, compelling parties to seek judicial intervention, thereby undermining the prospect of amicable settlements. Shockingly, there are 43,000 pending arbitration cases before lower judiciary, including old cases from the 1980s.

Fast Track Arbitration, a time-bound dispute resolution method, operates as a subset of regular arbitration, establishing a sole Arbitral Tribunal with fixed time limits and streamlined procedures. Governed by Section 29B of the Arbitration and Conciliation Act, 1996, the legislature has laid down specific procedures to be followed by both parties and arbitrators. The efficiency of fast-track procedures became evident during the COVID-19 pandemic, providing swift resolution in times when traditional judicial processes were halted.

Introduced through the Arbitration & Conciliation (Amendment) Act, 2015, Fast Track Arbitration aims to conclude proceedings and issue awards within six months, emphasizing the importance of time in this process. Despite this, cases under the fast-track procedure often face delays due to various factors, necessitating legislative action and amendments to prevent such inconveniences. The recent pandemic has exacerbated delays, prompting a call for appropriate laws to address such issues in the future.

The execution of arbitral awards poses its own challenges, rendering awards ineffective if not enforced. Parties against the arbitral award may resist compliance, leading the victorious party to approach civil courts for execution, turning it into a purely judicial process. This increases pending execution cases, undermining the fundamental purpose of arbitration and fast-track procedures. The Indian Council of Arbitration must intervene, taking steps to expedite pending cases and establish rules for reasonable deposits, especially considering the economic impact of the pandemic on businesses.

In response to the economic challenges post-pandemic, the Indian Council of Arbitration should consider revising deposit requirements to be more lenient and reasonable. A flexible approach to deposit amounts,

coupled with a commitment to speedy case disposal, would instill confidence in alternative dispute resolution mechanisms, encouraging more litigants to opt for ADR and thereby alleviating the burden on civil courts.

4.3 CONCLUSION

The primary and exclusive goal of arbitration is to facilitate a friendly resolution between conflicting parties outside the courtroom. The Arbitration and Conciliation Act of 1996, enacted by the legislature, serves to achieve this objective seamlessly. The 2019 Amendment Act aims to address challenges introduced by the 2015 Amendment Act in the arbitration and court proceedings. Additionally, it outlines the structure and establishment of the Indian Council of Arbitration, granting it the authority to oversee the mechanisms and functionality of the Alternative Dispute Resolution (ADR) system in India.

However, the influence of the Indian Council of Arbitration is not as significant as the corresponding council in the Asia Pacific, which handles a substantial number of both domestic and international arbitration cases throughout the year. This council also provides unparalleled Maritime Arbitration services to the commercial world and offers education and training in alternative dispute resolution methods. Despite these strengths, certain deficiencies exist in the current Act, particularly regarding the formation of the Arbitration Council of India, as discussed in this article.

The success or failure of the 2019 Amendment Act ultimately hinges on its implementation. Formulated to address issues arising from the 2015 Amendment Act, it provides guidelines for the conduct of arbitration and court proceedings. Moreover, it empowers the government to establish the Indian Council of Arbitration, vesting it with the necessary authority to regulate ADR activities. This amendment represents a significant stride in rectifying previous challenges and enhancing the role of the Indian Council of Arbitration.

In essence, the 2019 Amendment Act strives to eliminate difficulties encountered during arbitration proceedings and court procedures under the 2015 Amendment Act. The creation of the Arbitration Council of India, if executed with genuine intent, has the potential to position India as a comprehensive global hub for Alternative Dispute Resolution.

ANNEXUTURE-1

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