Research Paper

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Topic- A Brief Introduction To Arbitration

Abstract :

Alternative Dispute Resolution (ADR) refers to a set of practices and methods aimed at enabling alternative dispute resolution. This is usually thought to include mediation, arbitration, and various "hybrid" procedures by which neutrals facilitate dispute resolution without a formal decision. These alternatives to jurisdiction have been proposed for a variety of reasons. Potential benefits include lower transaction costs for dispute resolution, as ADR procedures can be cheaper and faster than regular court procedures. Refinement of resolutions that better reflect the underlying interests and needs of the parties. Improved post-compliance to decision-making conditions. The focus of this article is mediation and arbitration, not unaided negotiations. This is, of course, the most common way for parties and their attorneys to resolve disputes outside the courtroom. Part I provides important background information for understanding alternative dispute resolution by focusing on arbitration and mediation. Comparing these processes with arbitration and negotiation reveals the potential strengths and weaknesses of two commonly used processes for resolving legal disputes, arbitration and mediation, and is easily analysed. increase. Next, Part II briefly describes the various hybrid procedures that are often included in the scope of alternative dispute resolution procedures. These mixed forms indicate that ADR procedures are often included as procedures in dispute resolution systems, including formal decisions. Part III briefly summarises the theoretical work aimed at examining the incentive effects created by adding the ADR layer to the court process, and also describes some empirical studies examining the effects. To do.

ADR- An Overview

With the advancement of technology, the globe has grown more globalised and commercialised. People may now communicate with one another and settle commercial deals and conflicts even if they are on opposite sides of the globe. Most people no longer have the time to go to the courthouse and file papers, then wait for a hearing. Due to the inefficiencies and downsides of litigation, we

are rapidly nearing a point where it will be superseded by ADR[1]. Although India has not yet reached the point where ADR approaches have replaced litigation, the legal system is beginning to recognise the benefits of ADR.

The Indian judiciary is one of the world's oldest judicial systems, but it is also well-known that it is becoming inefficient in dealing with pending cases, with Indian courts clogged with long unresolved cases. The situation is that, despite the establishment of over a thousand fast track courts that have already resolved millions of cases, the problem is far from solved, as pending cases continue to pile up.

ADR can be effective in this situation since it allows for the peaceful resolution of differences with a resolution that is acceptable to all parties.

The concept of an Alternative Dispute Resolution (ADR) mechanism has the potential to replace traditional dispute resolution techniques. ADR can be used to resolve a variety of conflicts, including internal (state-level/ national), mercantile, trade, and domestic issues, in which participants are unable to initiate or complete any type of discourse. ADR typically employs a neutral third party to assist the parties in communicating, discussing their differences, and resolving their disputes. It is a technique that allows individuals and groups to retain cohesion, social order, and the ability to lessen antagonism.

Alternative Dispute Resolution (ADR) refers to the process of addressing and resolving issues outside of the courtroom. ADR, in more technical terms, refers to the methods for resolving disagreements without resorting to litigation. Negotiation, arbitration, and mediation are examples of these methods. ADR procedures are often more expedient and less expensive. In fact, ADR is employed in cases where a dispute has the potential to turn into a lawsuit. Labor disputes, personal injury allegations, and divorce proceedings are examples of such disputes.

ADR methods, unlike traditional litigation, are often collaborative, allowing the parties to understand each other's perspectives. ADR also allows the parties to examine and propose inventive solutions, which are impossible to impose legally in a traditional courtroom.

[1] Alternative Dispute Resolution

The absence of effective delivery of legal remedies to those in need is one of India's major flaws in its legal system and law enforcement organisations. The number of unresolved cases much outnumbers the number of instances that have been resolved. The main cause of this phenomenon is an increase in the number of offences as well as the length of time it takes the judiciary to resolve cases. In such a case, the Alternative Dispute Resolution mechanism serves a significant role in settling disagreements between persons that are less serious than major offences, allowing the court to save time while also providing parties with an appropriate solution to their problems.

The aforementioned facts and conditions paint a clear picture of how the system of alternative dispute resolution plays a critical role in dealing with and resolving disagreements between two parties. In fact, the key area on which the Courts and judicial institutions are now focusing where successful dispute settlement is conceivable is the dispute between married couples as well as a property dispute Apart from the stringent norms and regulations of the courts, the impact of such mechanisms is that consumers obtain a quick redressal opportunity as well as a welcoming atmosphere. The current situation suggests that there has been a significant increase even in this sector of law, as people have begun to comprehend the fundamental concept of it.

How did the idea of ADR come about?

According to the Law Commission of India's 222nd Report, the Constitution guarantees equal access to justice for all citizens, primarily through Article 39A, according to which every individual must have equal chances of securing justice, and that this equal chance must not be taken away from an individual on the basis of his poor economic condition or other such incapacities.

The paper goes on to say that in India, 'access to justice' for the common people entails access to the courts of law. Even that, however, has been hampered by issues such as poverty, illiteracy, ignorance, social and political backwardness, and so on.

Many individuals still live in poverty in emerging countries like India. When their rights are violated, they sometimes lack the financial resources to prosecute long legal fights. They are unable to hire an attorney due to a lack of funds. They have no understanding of the legal system or procedures. As a result, people frequently consider the legal system to be inconvenient.

Many countries share these kinds of inefficiencies, which is why ADR is being investigated. The courts also have an excessive number of pending cases, many of which drag on for years, putting a significant strain on the system.

The benefits and drawbacks of ADR

Advantages of ADR

When opposed to the courts, ADR takes less time and allows people to resolve their disputes faster. If you go through the legal procedure, you will save a lot of money. It is free of the formalities of courts, and informal methods of resolving disputes are used. People are free to express themselves without fear of being prosecuted in court. They have the ability to tell the truth without having to reveal it to a court. As long as the parties discuss their difficulties on the same platform, there is always the possibility of mending the relationship. It avoids additional disagreement and maintains the parties' positive relationship. It protects the parties' best interests.

ADR's disadvantages

When a disagreement must be resolved based on precedent, ADR is ineffective. ADR would not be useful when court and interim orders are required. When there is a need for enforcement, ADR is less suitable. When live and expert evidence and analysis are required in a case, ADR is not

appropriate. When the parties in a dispute have an imbalance of power, ADR will not be effective. If the matter is complicated, the adjudicating body may need expert guidance and ideas to look into minor aspects. ADR is unlikely to succeed in this situation.

ADR can take many different forms:

- ***Arbitration***

Without a formal arbitration agreement in effect preceding the happening of a dispute, arbitration cannot take place. Parties to a dispute refer to one or more arbitrators in this method of conflict settlement. The arbitrator's decision is binding on the parties, and it is referred to as an 'Award.' The goal of arbitration is to reach a fair settlement of a dispute outside of court, saving time and money.

Any party to a contract with an arbitration clause can invoke the clause personally or through an authorised agent, who will refer the dispute to arbitration in accordance with the arbitration clause. In this unique situation, a mediation condition is a provision that determines the strategy, language, number of judges, and seat or legitimate area of the assertion in case of a question between the gatherings.

The applicant begins the arbitration process by filing a statement of claim outlining the relevant facts and remedies. The certified copy of the arbitration agreement must be included in the application.

A statement of claim is a written document that is filed with a court or tribunal for judicial determination, with a copy sent to the defendant, in which the claimant describes the facts that support his case and the remedies he seeks from the defendant.

The responder responds to the arbitration by filing an answer to the claimant's arbitration claim, which details the pertinent facts and viable defences to the claimant's statement of claim.

The procedure by which the parties obtain a list of potential arbitrators and choose the panel to hear their case is known as arbitrator selection.

Then there's the 'Discovery' hearing, which involves the exchange of documents and information.

The parties meet in person to conduct the hearing, during which they present their respective arguments and evidence in support of their claims.

Following the examination of witnesses and the presentation of evidence, the arbitrator issues a 'Award' that is binding on both parties.

The complexity of the processes now varies depending on the arbitration agreement. For example, there may be a deadline that must be adhered to. This timeline would be spelled out in the contract.

According to Section 8 of the Arbitration and Conciliation Act 1996, if a party ignores an arbitration agreement and files a civil action instead of going to arbitration, the other party may apply to the court to arbitrate the case according to the settlement. However, no later than the submission of the first application. The application must include a certified copy of the arbitration agreement and, if upheld by the court, the case will be referred to arbitration.

Case law: ***Hero Electric vehicle Pvt. Ltd. & Anr. V Lectro E-Mobility pvt. Ltd & Anr.***

The Court held that while dealing with cases under Section 8 of the Act, the Court has to make sure that it is exercising the very same jurisdiction which the arbitral tribunal is empowered to exercise while determining the aspect of arbitrability of the dispute, or the existence of a valid arbitration agreement.

- ***Mediation***

Mediation is a form of alternative dispute resolution in which a neutral third party helps two or more disputants achieve an agreement. It is a straight forward party-centred negotiation process in which a third party acts as a mediator to help parties reach an amicable resolution through the use of appropriate communication and negotiation techniques. The parties have complete control over this process. The role of the mediator is to assist the parties in resolving their disagreement. The mediator does not impose his viewpoints or make any decisions regarding what constitutes a fair settlement.

The mediator must guarantee that all parties and their counsel are present at the start of the mediation session.

Case law: In **Gurudath K. v. State of Karnataka** the facts are identical to the case above. Here the court stated, "Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably … Section 320 CrPC would not be a bar to the exercise of power of quashing of FIR or criminal complaint in respect of such offences." Thus, the court allowed for the offences to be compounded on coming to the conclusion that the wife was under no threat or coercion for the same.

Statement of the Case

In his opening speech, he provides all relevant information concerning his appointment and says that he has no affiliations to either party and has no stake in the issue.

Meeting in a joint session

In the joint session, he gathers all relevant information, ascertains the facts and issues surrounding the dispute, and invites both parties to present their case and present their points of view without interruption. The mediator strives to encourage and foster discussion during this session, as well as handle interruptions and outbursts from the parties.

Then there's a second session where he seeks to get a better understanding of the issue and gets specific information by taking both parties into confidence individually.

Closing

The mediator asks the parties many questions about the facts of their cases and discusses their strengths and shortcomings.

After hearing both sides, the mediator begins to formulate concerns for resolution and create settlement solutions.

In the event that a mediator is unable to reach an agreement through negotiation, he or she will apply a Reality Check technique such as the

- ***BATNA[2]***

It's the finest potential solution that all parties can come up with or envision. It's a good circumstance because each party considers what their best-case scenario is.

The best alternative to a negotiated agreement (BATNA) is the course of action that a party engaged in negotiations will take if talks fail, and no agreement can be reached. Negotiation researchers Roger Fisher and William Ury coined the term BATNA in their 1981 bestseller "Getting to Yes: Negotiating Agreement Without Giving In." A party's BATNA refers to what a party can fall back on if a negotiation proves unsuccessful.

BATNA Is necessary because it used in negotiation tactics. Good negotiation tactics are important for negotiating parties to know in order for their side to win or to create a win-win situation for both parties. ... It provides an alternative if negotiations fall through. It provides negotiating power.

- ***MLATNA[3]***

In order to have a successful negotiation, the mediator must examine both parties and come up with the most likely outcome. Depending on the bargaining circumstances, the result is not always in the middle, but slightly to the left or right of the centre.

[2] Best Alternative to Negotiated Agreement

[3] Alternative to a Negotiated Agreement with the Highest Probability

- ***WATNA***[4]

It's the worst-case scenario a party envisions for what might happen during a discussion. It may be beneficial for the parties and mediator to consider an alternative outside of mediation (particularly, litigation) and explore the repercussions of failure to achieve an agreement, such as the effect on the parties' relationship or business. It's always vital to think about and discuss the worst and most likely possibilities; people don't always receive the best results. The mediator addresses the parties' perspectives on the potential outcome of the dispute. It is also beneficial for the mediator to work with the parties and their attorneys to arrive at a clear understanding of the best, worst, and most likely outcomes of the dispute through litigation, as this will enable the parties to accept reality and prepare realistic, logical, and workable proposal.

- ***Conciliation***

Conciliation is similar to arbitration in that it is less formal. This is a method in which the parties to a dispute meet separately by appointing a mediator to resolve differences of opinion. A separate meeting with the conciliator is held to relieve tensions between the parties and improve communication and interpretation of issues to achieve a negotiated resolution. No prior consent is required and cannot be imposed on parties who do not wish to be reconciled. In that sense, it differs from arbitration. The party who initiates conciliation must send the other party a formal invitation to conciliate under this section, which must include a brief description of the disagreement.

When the other party accepts the invitation to conciliate in writing, the conciliation process begins.

There will be no conciliation proceedings if the other party refuses the invitation.

The conciliation agreement should be an extemporaneous agreement entered into after the dispute has been resolved, not before.

[4] Alternative to a Negotiated Agreement that is the Worst

Even when the arbitral proceedings are ongoing, the parties are authorised to engage in a conciliation process (section 30).

- ***Lok Adalat***

The chairman of the Lok Adalat, often known as the 'People's Court,' is a sitting or retired judicial officer, social activists, or members of the legal profession. To exercise these jurisdictions, the NALSA[5] and other legal services agencies regularly perform Lok Adalat. Any matter pending in the general court or any disagreement not brought before the court may be referred to Lok Adalat. There are no court fees and a strict procedure is followed, making the process quick. The court money originally paid in the court when the petition was filed is also reimbursed back to the parties if any matter standing in court is referred to the Lok Adalat and is concluded later.

The parties interact directly with the judge, which is not possible in ordinary courts. It is up to the parties to agree that they may refer long-pending general court cases to Lok Adalat. The judges act only as legal mediators and can only persuade the parties to decide to settle the dispute outside the general court of Lok Adalat. In some cases, the legal service (state or county) may refer the matter to Lok Adalat upon receipt of an application from one of the parties in the preliminary trial stage, which will be notified to the other party. Lok Adalats has no jurisdiction to deal with unaggregated crimes.

ADRs' suitability for various types of disputes

Family Dissensions

[5] National Legal Service Administration

Family conflicts usually arise when members of the family have opposing viewpoints or opinions that clash. Family members frequently misinterpret each other and jump to the wrong assumptions as a result of their emotions. Disagreements and family feuds might arise as a result of such conflicts. Mediation is the most popular technique of resolving family conflicts, and it is facilitated by a neutral third party. Instead of going to the family court, most families are urged to go to mediation.

The following are the **most common causes of family strife:**

- Separation and Divorce
- Inheritance
- Care for the Elderly
- Partnerships and family businesses
- Conflicts among the extended family
- Children's care and discipline are a source of contention for divorced parents.

In the case of family mediation, a mediator is expected to continually narrow the gaps in the suggested solutions from both parties in order to establish some common ground that will satisfy both parties to the conflict.

Keeping in mind that once issues connected to emotional and social elements are addressed, it becomes much simpler to resolve disputes and achieve an acceptable solution that meets the needs of all parties to the dispute. As a result, the parties to the conflict feel more at ease and confidence in their ability to deal successfully with monetary and legal issues.

In a study, Justice Manju Goel outlined tactics for the mediator to use when addressing family disagreements. They are as follows:

- Inquiry into the facts
- recognition of the true cause of the dispute

- exploration of options for reconciliation or divorce
- bringing the disputants to a mutually agreeable conclusion; and
- Incorporation of the solution into legal formats.

The following are the legal aspects that apply to the resolution of family disputes through mediation:

- The State Government, in consultation with the High Court, is considering forming an association of social welfare organizations for family litigation to reach a settlement under Section 5 of the Family Courts Act of 1984.
- The Family Courts Act of 1984, Section 6, authorises the appointment of counsellors, officials, and other employees to assist and facilitate the family courts in reaching settlements in family disputes.
- The courts are required by Section 9 of the Family Courts Act of 1984, Section 89, and Order XXXII-A of the Civil Procedure Code of 1908 to give a fair chance to a negotiated settlement before the adjudication procedure begins.

In addition, Section 23 of the Hindu Marriage Act of 1955 focuses on judicial recodisadvantage

Disputes over Business

A commercial dispute usually emerges as a result of a specific deal or transaction between two or more businesses. Most commercial agreements include sections allowing for alternative dispute resolution processes or recourse to the courts for redress of grievances.

The following are the most common commercial disputes:

- Contractual conflicts, such as breach of contract and failure to deliver.
- Disputes between shareholders, directors, and other business entities with a higher position.

- Negligence on the job and in business.
- Contractual, building, and regulatory difficulties are all common sources of construction disputes.
- Disputes in partnerships
- Countersuits, defamation, and non-disclosure agreement breaches are all examples of reputation management.
- Disputes over patents and intellectual property.

Conciliation or arbitration are the most common methods for resolving commercial disputes. Choosing a process to resolve a disagreement is largely determined by the parties' cultural and legal traditions. Conciliation is generally chosen since it is quicker, less expensive, and less formal. Furthermore, the win-win situation that conciliation creates for both parties encourages the continuation of a cordial corporate relationship that could have been harmed if complex formal conflict resolution methods had been used.

Part III of the Arbitration and Conciliation Act of 1996 (the Act) establishes the legal foundation for conciliation. The CPC[6], 1908, and the Indian Evidence Act, 1872 do not apply to the conciliator, according to section 66 of the act. The role of the conciliator is defined in Section 67 of the Act as "to assist the parties impartially in obtaining an amicable settlement of the dispute." The conciliator must be aware of principles of fairness and justice, trade customs, consideration of the parties' rights and obligations, and the dispute's surrounding circumstances, among other things.

Also, an agreement signed by the parties has the same binding status and effect as an agreement signed in arbitration procedures, pursuant to section 74 of the Act. Conciliation is a straightforward process in and of itself, and because of this, it is frequently used by businesses to resolve economic disputes. When compared to traditional court proceedings addressing the same conflict between parties, mediation usually provides an instant and effective dispute resolution setting that saves

[6] Code of Civil Procedure

time. Mediation is frequently accepted by business people since it allows for a faster resolution and disposal of commercial conflicts, and it also encourages international investors to rely on the Indian legal system for a simple, cost-effective, and quick dispute resolution method. The Arbitration and Conciliation Act is divided into two parts: the first sets out the rules for conducting arbitration in India, and the second sets out the rules for arbitration in other countries.

Arbitration is commonly used by parties in commercial disputes because it allows them to choose whether to go with a single arbitrator or a panel of arbitrators who are experts in the subject matter of the dispute, and it saves them time that would otherwise be wasted in court proceedings. It also has a strict code of confidentiality.

The 2019 modification to the Arbitration and Conciliation Act aims to enable effective conflict resolution through international commercial arbitration. In addition, by establishing the Indian Council of Arbitration, the current revision tries to institutionalise and clarify the arbitration system in India.

Conflicts in the Workplace

Industrial disputes develop when there are disagreements between employers and employees, or between employers and workers, or amongst workers themselves. Industrial disputes can be caused by two sorts of factors:

Economic: disagreements over pay, bonuses, and allowances, among other things.

Non-economic: arguments over worker mistreatment, worker discipline, worker victimisation, political factors, and so on.

There are several forms of industrial disputes:

- ***Lockouts***

- ***Strikes***
- ***Picketing***
- ***Gherao (to surround)***

The state takes a keen interest in industrial relations and intervenes because it has a responsibility to protect the interests of the industrial sector while also preserving the country's economic growth rate. The Indian government enacted the Industrial Dispute Act in 1947, which established systems for preventing and resolving industrial disputes. Conciliation is one of the state-suggested techniques for resolving labour conflicts.

Section 4 of the Industrial Disputes Act of 1947 authorises the government to appoint appropriate persons as conciliation officers in whatever number deemed necessary by publication in the Official Gazette for the purpose of resolving industrial disputes.

In addition, Section 12 of the Industrial Dispute Act of 1947 outlines the conciliation officers' responsibilities in relation to industrial disputes.

According to Section 5 of the Industrial Disputes Act 1947, the government might appoint a board of conciliation to help with the settlement process if necessary. However, unlike conciliation officers, the board of conciliation's function might be temporary or permanent, and it is normally established when the need arises. The conciliation board normally consists of 2 to 4 members who represent each of the disputing parties in equal proportions, as well as a chairman who is neutral and independent. The board also has the same legal standing as a civil court, with the power to issue summons.

Disputes over property

Property disputes usually emerge as a result of claims from legal family members, co-owners, neighbours, landlords, and tenants, among others. In India, property conflicts are fairly common. Common property disputes in India include:

- Ownership Disputes.
- Disputes involving the title of the property.
- Disputes relating to the transaction of property between builders and buyers.
- Inherited properties disputes.
- Disputes in which the buyer cannot move into a new residential property until the real estate developer or developer has obtained a certificate of delegation from the necessary authorities.
- Disputes related to the tenant's rental or misuse of rental property.

In most property disputes, the parties concerned are hesitant to pursue legal action because it is commonly recognised that litigation is a time-consuming process with unpredictable outcomes. Property disputes are common in India because of issues such as poor land maintenance, unclear land titles, and other types of issues that have arisen as a result of ignorance, resulting in disputes. Property disputes also take a long time to resolve. To prevent such complications, parties frequently resort to negotiation, which assists them by providing a means of resolution and is also a time-saving technique in which both parties save a significant amount of money as well as time.

Case Law: *Himangi Enterprise Vs Kamal Singhjeet Alluhwalia*

was a lease dispute that was not arbitrable under the Transfer of Property Act,1882. The case was moved to the larger bench for review. The reason given by the Court was that the disputes that have been raised under the Transfer of Property Act,1882 involve a 'right in rem' and the question for debate is non-arbitrability. This has been reflected as an unprogressive view given on arbitration at the time when the public policy of India has asked to increase the reliance on Alternate Dispute Resolution(ADR) mechanisms for commercial and civil disputes.

Most arbitration contracts include provisions for negotiation. These terms provide that if a dispute arises as a result of their agreement, the parties must endeavour to resolve it amicably within a month, and if they are unable to do so, the dispute will be addressed by arbitration. These clauses ensure that even minor difficulties arising from a contract are addressed without the need for court intervention.

Judicial pronouncements:

- ***Renusagar Power Co Ltd v. In General Electric,*** the Supreme Court stated that the purpose of this law is to promote and encourage international trade by enabling the prompt resolution of disputes from trade. Will be taken care of by arbitration. It was noted that the arbitrator would normally not be empowered to exercise the authority to determine the issue of his own jurisdiction unless the parties explicitly empower him. The court further stated that "the issue of contract validity is not the arbitrator, but the court's decision under Article 33." If there is no arbitration clause at the time the arbitrator takes office, the entire procedure will be void.

- ***Bhatia International v Bulk Trading SA,***, the Supreme Court of India interprets the scope of Part I of the Act as applicable to arbitration conducted outside India and supports arbitration based outside India. The law does not state that the provisions do not apply to international commercial arbitration in non-treaty countries. Part II of the law applies only[7]

[7] *Renusagar Power Co Ltd v. In General Electric, AIR 1985*
•Bhatia International v Bulk Trading SA, AIR 2002 • Bharat Aluminum Co.v. In the case of Kaiser Aluminium Technical Services Inc., [(2012)

to arbitrations conducted in treaty countries. The Court of ruled that if such arbitration were to take place in India, the provisions of Part I would be mandatory. However, in the case of international commercial arbitration conducted outside India, the provisions of Part I will apply unless the parties expressly or implicitly exclude all or part of the provisions by agreement. In this case, the law or rule chosen by the parties will prevail. The expressly excluded provisions of Part I do not apply. The current ruling allows parties injured in foreign arbitration to seek interim relief in India.

- ***Bharat Aluminium Co.v. In the case of Kaiser Aluminium Technical Services Inc.*** the Supreme Court has stated that Part I of the Arbitration Mediation Act of 1996 provides injunctive relief and appeal clauses relating to procedures, rulings and arbitral awards by the parties. The implied agreement ruled that it would apply to arbitration outside India, unless all or part of the provisions were excluded. The Supreme Court has determined that there is a clear distinction between Part I and Part II. These apply to completely different areas and do not contain duplicate clauses. Again, the court made a distinction between "seats" and "venues." The arbitration agreement designates a foreign country as the place / place of arbitration and selects that law as the governing law of the arbitration. The court also clarified that the choice of another country as the place of arbitration inevitably implies the assumption that the laws of that country regarding the implementation and supervision of arbitral proceedings apply to arbitration. Therefore, it should be understood that Part I applies only to arbitrations located / located in India. Contrary to the views made in the Bhatia International case, the court further noted that, by logical interpretation of the law, Indian courts do not have the authority to give interim measures if the place of arbitration is outside India. Therefore, the pre-arbitration arbitration set out in Article 36 may only relate to arbitration taking place in India. The court further ruled that in international commercial arbitration with foreign elements in India, either arbitration or proceedings cannot uphold the request for provisional remedies.

- ***K.K Modi v K.N Modi***

This case concerns the attributes that make up the agreement, the arbitration agreement. According to the court, the clause is equivalent to the arbitration clause only if the arbitral tribunal's decision provides for binding the contracting parties. The court further states that jurisdiction of the arbitral tribunal can only exist if the parties agree to conduct arbitration to resolve the dispute, or if the court or law permits the arbitral tribunal to conduct arbitration. It must also be agreed that the Agreement will be decided by the court in which the substantive rights of the parties have been agreed. To be legally enforceable, the parties' agreement must be intended to file a dispute in the arbitral tribunal's decision. The agreement must also provide for an arbitral tribunal to make decisions on disputes that have already been established at the time the arbitral tribunal was seized. Other important factors include whether the agreement provides for this court to receive evidence from both sides, present the matter to the parties, and give them the opportunity to hear their allegations. Whether the terms of the contract are consistent with the view that the procedure was intended to be arbitration. Whether the agreement requires the arbitrator to decide the dispute under the law. J&K State Forest Conservation v. In Abdulkalim Crocodile, AIR 1989 SC 1498, the Supreme Court ruled that interim measures may be granted to support arbitration rather than interfere with it. The court also noted that the court could not rule on the merits of a dispute under the guise of giving an injunction. Its mission lies in the arbitral tribunal, not the court. In this case, the question was how to interpret the arbitration clause of the contract and whether the dispute between the parties could be referred to arbitration. In this case, the Supreme Court ruled that it should refrain from expressing its opinion on the merits of the proceedings. The court needs to confirm the intentions of the parties, which should be confirmed by reading the term broadly, clearly and without limitation. In this case, it was further noted that the jurisdiction of the court issuing the[8]

[8] *K.K Modi v K.N Modi AIR 1998 • J & K State Forest Conservation v. In AbdulkalimCrocodile, AIR 1989 • National Thermal Power Corporation vs. Singer Company, 1992*

injunction exists only for the "purpose" of the arbitration and the court must not dismiss it.

- In ***J & K State Forest Conservation v. In Abdulkalim Crocodile***, the Supreme Court ruled that interim measures may be granted to support arbitration rather than interfere with it. The court also noted that the court could not rule on the merits of a dispute under the guise of giving an injunction. Its mission lies in the arbitral tribunal, not the court. In this case, the question was how to interpret the arbitration clause of the contract and whether the dispute between the parties could be referred to arbitration. In this case, the Supreme Court ruled that it should refrain from expressing its opinion on the merits of the proceedings. The court needs to confirm the intentions of the parties, which should be confirmed by reading the term broadly, clearly and without limitation. In this case, it was further noted that the jurisdiction of the court issuing the injunction exists only for the "purpose" of the arbitration and the court must not dismiss it.

- In ***National Thermal Power Corporation vs. Singer Company,***, the judge argued that the parties should apply appropriate law and be placed in place of "reasonable persons". He must establish the intentions of the parties by asking himself, "How did a fair and rational person see the problem?" Unless the parties explicitly or implicitly choose the correct law, courts are known to presume intent by applying objective criteria. The judge must put himself on behalf of a reasonable person and apply his own law to the parties.

- ***Puri Construction Company v. Union Of India,***, finds that if the court is asked to award an objection raised by a party to an arbitral award, the court's jurisdiction will be limited, as explicitly stated. Did. In fact, we do not have the authority to appeal and investigate the credibility of the arbitral award. The court also finds that the ruling or the document accompanying the ruling is flawed, and the alleged or alleged error is only a factual error and is reasonable if done fairly after the ruling was awarded. The arbitral award cannot be

amended by the court in order for the parties to file a complaint in the manner prescribed in the arbitral agreement.

- In ***Venture Global Engineering v Satyam Computer Services Ltd*** , the SC held that the enforcement of overseas awards want now no longer be restrained to grounds below Section 45 (which had been narrower), however also can be challenged at the grounds of home public coverage in India (below Section 34 of the Act). Prior to this judgment the judicial function became that Part I of the Act applies best to home awards and Part II applies to overseas awards. The SC held that the Indian courts have the electricity to intrude in overseas awards issued in worldwide arbitrations held outdoor India. According to the Court the award became issued outdoor India; the events had now no longer expressly excluded the utility of Part I of the Act in its contract; and in view of the non-obstante provision of the shareholder's agreement, Indian regulation is applicable. This approach that the events have a proper to visit courtroom docket in India in search of an injunction towards the enforcement of a overseas award. It became held with the aid of using the SC that if the brand new records are applicable and material, the concealment of which opposes fraud, it opposes standard public coverage concepts and a celebration trying to set apart the arbitral award, can be allowed to introduce the brand new records and materials.

- ***Satish Kumar vs Surinder Kumar,*** in this case Section 35. This takes into account the finality of the arbitral award. The Supreme Court has determined that after the arbitral award has been finalised, the rights and obligations of the parties to the claim can only be determined based on the arbitral award and no further proceedings can be filed against the[9] original claim. Did. Subject to arbitration. The Supreme Court has determined that the arbitral award is in fact the court's final decision on the rights and obligations of the parties

[9] *Puri Construction Company v. Union Of India, AIR 1986 • Venture Global Engineering v Satyam Computer Services Ltd (2008) • Satish Kumar vs Surinder Kumar, AIR 1970 • ONGC vs. Saw Pipes, AIR 2003 • Datar Switchgears Ltd vs. Tata Finance Ltd., 2000*

and is prima facie in terms of the merits of the controversy presented. In addition, a ruling made under the Arbitration Act requires registration under Sections 17 (1) (b) of the Registration Act if the ruling relates to a division of real estate in excess of Rs, 100 /. It was noted that.

- ***ONGC vs. Saw Pipes,***

Section 34 explains why the award is withdrawn. In this case, the idea of patent infringement was discussed in detail. The Supreme Court can also challenge an arbitral award that turns out to be suffering from a "patent law error" under the heading "Arbitral award against Indian public policy," and the reason for revoking a foreign arbitral award. Arbitrated to expand. At ONGC[10], the Supreme Court interpreted "patent illegality" as being within the scope of "public policy" under Article 34. The court relied heavily on the distinction between the enforcement of foreign arbitral awards and the enforcement of domestic arbitral awards in order to provide extended scope to public policy in the latter case. If the ruling is documentarily incorrect with respect to the legal approach or its application, the court has jurisdiction to intervene in the ruling. However, such procedural failures are obvious and should affect the rights of the parties.

- ***Datar Switchgears Ltd vs. Tata Finance Ltd.,***

What is the position of the Chief Justice if a celebration does now no longer act as in line with the arbitration clause? The problem in this situation became approximately the appointment of an arbitrator beneath Section 11(6). It became held that Section 11(5) may be invoked via way of means of a celebration who has asked the opposite celebration to employ an arbitrator and the latter fails to make any appointment inside 30 days from the receipt of the notice. An software u/s 11 (6) may be filed whilst there's a failure of manner

[10] Oil & Natural Gas Corporation

for appointment of arbitrator. This failure can get up beneathneath distinctive circumstances. It may be a case wherein a celebration who's sure to employ an arbitrator refuses to achieve this or wherein the two appointed arbitrators fail to employ the third arbitrator. If the appointment of an arbitrator is entrusted to any man or woman or organization and such man or woman or organization fails to discharge such function, the aggrieved celebration can technique the Chief Justice for appointment of arbitrator. In this situation, it can not be stated that there has been a failure of manner as prescribed via way of means of the Act.

- ***Sundaram Finance Ltd. V.N.E.P.C.India Ltd.,***

Is it possible to issue interim orders even before the commencement of arbitration proceedings (i.e. before the publication of the notice of commencement of arbitration? Arbitration)? The issue here was whether, under section 9 of the 1996 Act, the court had jurisdiction to make interim orders even before the commencement of arbitration proceedings and before the appointment of a arbitrator. India's arbitration law draws heavily on the UNCITRAL[11] Model Law. It is therefore important to know that article 9 of the model law states that: "It is not inconsistent with an arbitration agreement for a party to request, before or during the arbitration proceedings, a measure conservatory to a court to grant such relief". Article 9 aims to specify that, simply because a party to an arbitration agreement requests a precautionary measure from the judge "before or during the arbitration procedure", such a remedy would not be considered incompatible with an arbitration agreement. Arbitration can begin and continue even if a party goes to court for interim protection. The phrase "before or during the arbitration proceedings" used in article 9 appears to have been inserted in order to give it the same meaning as those words in article 9 of the UNCITRAL Model Law.

[11] United Nations Commission on International Trade Law • *Datar Switchgears Ltd vs. Tata Finance Ltd., 2000*

- ***Olympus Super Structure Pvt. V Meena Vijay Khetan, Inc.***

This case will later ask questions regarding the jurisdiction of the arbitrator and the scope of reference to the arbitrator under Article 16 of the 1996 Act in the event of an arbitral award. In this case, the court also considered the question of whether a dispute regarding the performance of a particular contract could be brought to arbitration. The Supreme Court will challenge the arbitrator's jurisdiction in front of the arbitrator if the parties object to the arbitrator's jurisdiction, as provided in Articles 16 (2) and (3) of the Act. Judgment that it should be (this is authority-the doctrine of ability). Article 16 (5) requires the arbitral tribunal to determine the cause of action mentioned in Article 16 (2) or (3) at an early stage, if the cause of the action is dismissed by the arbitral tribunal. The arbitral tribunal makes arbitrations and arbitrations. However, the party receiving such a ruling may apply to revoke the ruling under Article 34 of the 1996 Act. In addition, in this case, the court may determine that the right to a particular performance is related to the contractual right and the parties may agree to submit the issue relating to the particular performance to the arbitration. The Specified Relief Act of 1963 does not prohibit matters relating to the specific performance of a real estate contract from being referred to arbitration. The 1996 Act does not include such a ban.

- ***Narayan Prasad Lohia vs. Nikunj Kumar Lohia,***

The Court in this example mentioned whether or not an arbitration settlement will become invalid at the floor that it furnished for appointment of most effective arbitrators, thinking[12]

[12] *Olympus Super Structure Pvt. V Meena Vijay Khetan, Inc., AIR 1999 • Narayan Prasad Lohia vs. Nikunj Kumar Lohia, 2002 • National Aluminum Company Ltd v Metalimpex Ltd, 2001*

about that the act calls for an extraordinary variety of arbitrators. It become held that even supposing the events furnished for appointment of two arbitrators, the settlement does now no longer turn out to be invalid. Under Section 11(3) the 2 arbitrators need to then rent a 3rd arbitrator who shall act as presiding arbitrator. However, such an appointment need to rather be made in the beginning, despite the fact that the 2 arbitrators might also rent a 3rd arbitrator at a later stage, if this kind of scenario arises whilst the 2 arbitrators vary in opinion. This guarantees that on a distinction of opinion the arbitration lawsuits do now no longer attain a stalemate. However there could be no want of a 3rd arbitrator whilst each the arbitrator so appointed agree and provide a not unusual place award.

- ***National Aluminium Company Ltd v Metalimpex Ltd,***

The arbitration agreement in this case stipulates that two arbitrators alternately appoint one arbitrator. One arbitrator was appointed by the petitioner who requested the defendant to appoint another. As the defendant did not, the petitioner applied to the Chief Justice of the Supreme Court to appoint the only arbitrator. In such circumstances, it was decided that no single arbitrator could be appointed without the agreement between the parties to that effect. It is illegal to appoint one arbitrator unless the parties agree in court, as the arbitration agreement requires that two arbitrators appoint the chair in turn.

- ***P. Anand Gajapathi Raju et al. Raju et al,***

Does this proceeding include an arbitration agreement entered into while the proceedings are pending? Please deal with it. While the appeal was pending in court, the parties agreed to enter into an arbitration agreement and submit the dispute to the arbitrator. If the party wishing to be referred to arbitration, after submitting its findings, seizes the court and the party who filed the proceeding does not object, as in this case, the court inquiring is

arbitration. Note that the phrase "subject to an arbitration agreement" does not necessarily mean that an agreement must exist before the proceeding is brought to court. This phrase also means that an arbitration agreement will be reached while the proceedings are pending.

- ***Skypak Couriers Ltd v Tata Chemicals Ltd,***

In this case, it was debated whether the existence of an arbitration agreement would hinder the pursuit of relief under the Consumer Protection Act. If an arbitration clause is included in the contract and the consumer complains about a particular defect in the service, the arbitration committee established under the Consumer Protection Act can handle such complaint. The Supreme Court has made a mistake in the process of the National Consumer Dispute Relief Commission by referencing complaints received from consumers to third parties for mutual decision. The Court finds a provision in the Consumer Protection Act that allows the Commission to refer the pending procedure to a third party for a consensual decision and later make a so-called consensual arbitral tribunal decision. I found that it wasn't. Of the committee itself. Even if the contract contains an arbitration clause and the consumer complains about a defect in a particular service, the existence of the arbitration clause excludes the relief complaints body established under the Consumer Protection Act. Not. This law, in addition to the provisions of all other laws currently in force.

- ***M.V. Baltic Confidence and another vs. State Trading Corporation of India Ltd.*** contained the standard arbitration clause contained in the charter contract for bills of lading. However, while the arbitration clause was included in the bill of lading, the expression "charterer" was not changed to "bills of lading." This raises the question of whether the[13] arbitration clause is still valid. The Supreme Court said the question to be considered in

[13] *P. Anand Gajapathi Raju et al. Raju et al, (2000) • Skypak Couriers Ltd v Tata Chemicals Ltd, (2000) • M.V. Baltic Confidence and another vs. State Trading Corporation of India Ltd. Also, another (2001)*

this case was "what was the intention of the parties to the bill of lading in including the arbitration clause?" The court further stated that if the bill of lading includes the terms of the Chartered Party Agreement, there must be an explicit reference to the arbitration clause, using the phrase "includes rights and arbitration clause." The Supreme Court also attempts to give meaning to the inclusion clause in establishing the intent of the parties and not to invalidate or interfere with it through the literal, pedantic and technical interpretation of the clause. Judgment that should be done.

Conclusion

The current pandemic situation in India has only exacerbated the problem of outstanding cases. The courts are overburdened with paperwork, and individuals are having difficulty getting to them due to travel restrictions and fears of contracting the coronavirus. It is past time to encourage the use of ADR processes, and the government may improve the country's ADR situation by training workers, establishing proper guidelines, incorporating legal assistance, and so on. Also, ADR mechanisms can be combined with digital platforms, and doing ADR online can be beneficial because it encourages asynchronous contact between the parties throughout the process, making it simpler to achieve an amicable resolution. All stakeholders must take a comprehensive approach to making the necessary modifications in the process of alternative dispute resolution methods and establishing a peaceful, rapid, and cost-effective settlement method.

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