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HISTORY & DEVELOPMENT OF DISPUTE RESOLUTION MECHANISM IN INDIA

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ABSTRACT

Arbitration serves as a time-tested method of resolving disputes, with roots tracing back to ancient practices such as the panchayat system in India. This alternative dispute resolution system allows parties to present their conflicts to a neutral arbitrator, whose decision, known as an "award," is binding upon both parties. In India, the Arbitration and Conciliation Act of 1996 governs this process, providing a framework for fair and efficient resolution.

India's development in various sectors, including industry, agriculture, and international trade, has underscored the importance of effective dispute resolution mechanisms. In the realm of international commerce, contracts often include arbitration clauses to mitigate potential conflicts.

The 1996 Act aligns with the UNCITRAL model law, offering globally recognized standards for arbitration proceedings. However, procedural aspects of international commercial arbitration can vary significantly across jurisdictions due to the increasingly transnational and multi-jurisdictional nature of commerce.

The adoption of Alternative Dispute Resolution (ADR) mechanisms, including arbitration, aims to alleviate the burden on courts and ensure swift justice delivery. Among various ADR methods, arbitration stands out as the preferred choice, especially in business settings, fostering both national and international trade relations.

International arbitration operates within a complex legal framework encompassing national laws, international conventions, and institutional rules. These mechanisms aim to provide a stable and predictable environment for commercial activities, facilitating international trade and investment by offering an effective legal recourse for dispute resolution. Arbitration plays a pivotal role in fostering economic cooperation and resolving conflicts in both domestic and international contexts, contributing to a more efficient and equitable global business environment.

INTRODUCTION

In his autobiography, Mahatma Gandhi emphasizes the significance of Alternative Dispute Resolution (ADR) by highlighting his own experiences as a lawyer. He suggests that the main role of a lawyer is not merely to present cases for trial, but rather to endeavour to bring parties together. According to Gandhi, resolving disputes is possible if lawyers can empathize with the parties involved and recognize the positive aspects of their characters. He asserts that by employing this approach, he managed to settle over a hundred cases without sacrificing anything, including his fees or integrity. This narrative underscores the relevance of ADR in delivering compensatory justice. It suggests that by fostering understanding and empathy between parties, ADR methods can effectively resolve disputes while ensuring that justice is served. Gandhi's experiences serve as a testament to the potential of ADR to achieve fair outcomes for all involved.[347]

[347] M.K. Gandhi, "An Autobiography and Appendix II of Gandhiji's Thoughts on the Law and the Lawyers" p.97 (1959).

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Legal disputes can disrupt peace and often lead to litigation, causing inconvenience not only to the parties involved but also to their families, friends, and associates. Such disputes arise primarily from breaches of legal and moral obligations, and they typically require intervention from the courts for resolution. These are known as "legal disputes" and include matters such as violations of legal rights or failures to fulfil legal obligations, for which the law provides remedies. In the context of our discussion on the suitability of Alternative Dispute Resolution (ADR) in delivering compensatory justice, we are specifically focusing on legal disputes that stem from breaches of legal rights and obligations. These disputes can range from civil matters to certain criminal cases that can be settled amicably through methods like mediation, arbitration, or negotiation, offering an alternative to traditional court proceedings.

The courts are often perceived as the go-to method for resolving disputes, leading many to believe it's the primary means of achieving justice. However, numerous alternative dispute resolution (ADR) methods exist within every community, society, and country. Many individuals never enter a courtroom despite experiencing disputes, as they find resolution through other means. This highlights that court trials are typically considered a last resort rather than the primary method for resolving conflicts. This concept is particularly relevant when considering the suitability of ADR in delivering compensatory justice.[348]

Even today, there are various communities, tribes, and marginalized groups facing disputes, yet they often refrain from resorting to the formal court system. Factors such as economic constraints, social status, and cultural differences contribute to this reluctance, not only in India but also in developed nations like the USA, France, the UK, and Canada.[349] It's important not to assume that these communities lack disputes simply because they avoid courts. Denying them access to justice based on this assumption would be unjust. Similarly, it's incorrect to assume that their disputes are inherently unresolvable. While these groups may have established their committees to address disputes internally, it would be inaccurate to label this approach as an "alternative" to the court system. Instead, it can be seen as an additional method of dispute resolution. This highlights the importance of recognizing and respecting the diverse approaches to resolving conflicts, particularly in considering the suitability of alternative dispute resolution (ADR) methods in delivering compensatory justice.[350]

HISTORY OF ARBITRATION IN INDIA

The practice of arbitration in India dates back many decades. This idea has been around for a long time; in the past, people would resolve their own personal and business conflicts outside of court. Since Vedic times, India's municipal courts have often used arbitration as a means of alternative conflict settlement. An important treaty or written agreement with three arbitral bodies—the Puga, the Sreni, and the Kula—that decide disputes is the Bhradarnayaka Upanishad. Disputes in ancient societies were settled by willingly bringing them before the community's elders, or Panchayat's, whose rulings were legally enforceable.[351]

"The Hedaya" is the term given to the arbitration arrangements between the parties in Muslim law. A Kazee, a serious judge who issues a legally binding judgement, is someone who an arbitrator should aspire to be. Both the procedure and the substance of the arbitration process are governed by Shari'a law, the legal code of Muslims. Foreign awards are those that are made by laws other than Shari'a, according to the religion. If even one Shari'ah requirement

[348] Ahmed, Masood. "Bridging the gap between alternative dispute resolution and robust adverse costs orders." Contemporary Readings in Law and Social Justice 8, no. 1 (2016): 98-126.
[349] Verma, Satakchhi Priya. "ADRS in Criminal Justice System: An Indian Perspective." *Issue 6 Indian JL. & Legal Rsch.* 4 (2022): 1.
[350] Laxmi Kant Gaur Joint Registrar Rules) High Court of Delhi, "Why I Hate „Alternative" in "Alternative Dispute Resolution" https://delhicourts.nic.in/ddcsaket/images/Why_I_Hat1.pdf
[351] Alok Kumar, "Compensatory Justice through Alternative Dispute Resolution Mechanisms," Indian Journal of Arbitration Law, (2018).

is not met, the reward will still be considered foreign. The arbitrators' decision and the merits of the disputes cannot be considered by the court with jurisdiction over the matter in order to enforce such judgements.

Nevertheless, the current system of arbitration was established by the Bengal Regulations in 1772 and codified in the Bengal Regulation Act of 1781. Under these regulations, parties were required to submit their disputes to an arbitrator, who was either appointed or chosen by both parties; the arbitrator's decision was then considered final and binding. In cases involving disputes over finances, partnership debts, or breach of contract, the court might submit the matter to arbitration if both parties agreed. These remained in effect up to the 1859 Civil Procedure Code and its 1862 extension.[352]

The Indian Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937, and the Foreign Awards (Recognition and Enforcement) Act, 1961 were the primary legislation governing arbitration in India until 1996. The Act was enacted to make foreign arbitral decisions enforceable in 1937 and 1961, and was modled after the English Arbitration Act of 1934. The government passed the comprehensive Arbitration and Conciliation Act, 1996 (the 1996 Act), in 1996, which included provisions from both the 1937 and 1961 Acts. The 1996 Act expanded the UNCITRAL Model Law to include both international and domestic arbitrations, and exceeded the UNCITRAL Model Law 8 in its efforts to limit the role of courts.[353]

DEVELOPMENT OF AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM

Rather of going to court, parties might use alternative conflict settlement methods. The premise that the courts have the power to ensure that everyone gets justice gave rise to this. Alternative dispute resolution enables a win-win scenario. The process of alternative dispute resolution (ADR) is advantageous for parties whose disputes may be resolved outside of court. Bringing alternative conflict mechanisms to the forefront of the Indian Judicial System and merging judicial and non-judicial dispute settlement procedures were the only objectives of the law.

With the passage of time, India's arbitration legislation evolved. The entrepreneurs launch their companies with the naive belief that they can manage to turn a profit once they get off the ground. But disagreements do emerge amongst the business's constituents, and they need a mechanism for their resolution. The formal courts in India are overloaded with cases that need to be resolved quickly. However, due to issues such as court vacancies and deliberate delays caused by lawyers, parties involved in these disputes are facing a nightmare when it comes to speedy resolution.

All of these things contribute to the fact that more and more businesses are turning to arbitration as a means of swiftly settling legal issues. But there are other shortcomings to the arbitration system. In order to ensure that everything ran well, these shortcomings were thoroughly examined and corrected. A quick resolution for the disputing parties is the primary goal of arbitration legislation in India. In this context, the arbitrator's decision is the same as a court order.

ARBITRATION

Through arbitration, disputing parties choose a neutral third party to mediate and ultimately resolve their disagreement. Consequently, arbitration is thought of as a substitute for settling the matter via judicial proceedings. Prior to the occurrence of a dispute, the parties may have agreed to resolve it via arbitration under a contract; alternatively, they may have decided to do so after the fact in an attempt to save costs and time.

Due of the often-lower expenses associated with arbitration, many individuals see it as a

[352] Deepak Malhotra, "The Efficacy of Alternative Dispute Resolution in Ensuring Compensatory Justice: A Case Study," Journal of Dispute Resolution, (2017).
[353] Meera Sharma, "Understanding the Role of Alternative Dispute Resolution in Delivering Compensatory Justice in India," Indian Journal of Legal Studies, (2019).

more cost-effective alternative to litigation. Arbitration also allows the parties to choose a third party with expertise in the area of the dispute, which is a huge plus. Instead of taking a chance with a judge who may not know much about the building sector, the parties to a construction dispute might choose an arbitrator with extensive expertise of the field. Rather of having their issues decided by courts, the parties could choose for arbitration, which involves a judge of their choosing. What does the phrase "arbitration" mean? "Arbitration" may mean different things to different people. Both private and judicial arbitration may be summoned to hear the case. While arbitration of a contractual kind does occur from time to time, private arbitration is the most effective form of ADR.[354]

When parties to a dispute agree to resolve it via arbitration rather than litigation, they have engaged into a private arbitration agreement. The appointment of a single arbitrator is often defined in private arbitration agreements. Judgement by an arbitrator is not necessary for judicial office. However, he can just be an ordinary guy with boundless knowledge and experience who can settle problems amicably. The term "court-annexed arbitration" is used from time to time to describe judicial arbitration. The judgement of the arbitrator is not legally binding, and the parties involved are free to take the matter to trial if they so want. Within a certain time, frame, the parties may choose to accept or reject the ruling and proceed with the trial, as is the case in most countries. Now that the arbitrators' ruling has been rejected by both sides, it will be final and enforceable just like any other private decision.[355]

Arbitration is a system where contracting parties submit their disagreements to a neutral third party, such as an arbitrator or panel, for review and possible decision-making. It originated from Roman law and is a method for resolving contractual disputes outside of court by appointment of a neutral third party. The law prefers arbitration when voluntary, and the award becomes binding upon parties' satisfaction with the arbitrator's judgement. Arbitration is an effective means of conflict settlement and often seen as a substitute for going to court. If an agreement to arbitrate is legally binding, state courts should not have jurisdiction over any issues covered by that agreement. Parties follow the terms of the arbitration agreement when submitting a dispute to a tribunal or arbitrator, including the number of arbitrators, location of the arbitration, and regulations governing its procedure.

During the hearing, the tribunal often announces its verdict, also known as the award. The applicable legislation to the contract usually dictates how the tribunal decides the issue. Arbitration offers two advantages: enforcement and secrecy. Arbitration began as a legalization reform to resolve conflicts with love and trust, an equitable process based on reciprocal access and trust among community members. It primarily offers two advantages: enforcement and secrecy. The International Chamber of Commerce (ICC) is an organization that fits this description.

ALTERNATIVE METHODS IN THE SETTLEMENT OF DISPUTES IN INDIA

In the wake of globalisation and ongoing structural changes in the economy, arbitration as a medium for expeditious settlement of commercial disputes has gained momentum. The following are a few examples of mechanisms that are being adopted:

MEDIATION

Mediation is a non-binding conflict resolution process where parties work towards a mutually acceptable settlement of their disagreements. It is an informal, private setting where a neutral third party helps opposing parties negotiate a mutually agreed and equitable settlement. This

[354] Priya Singh, "Alternative Dispute Resolution: An Effective Tool for Compensatory Justice," Journal of Indian Law and Society, (2016).
[355] Rajesh Gupta, "Compensatory Justice in India: The Impact of Alternative Dispute Resolution," Indian Journal of Legal Research, (2018).

method offers a less formal and informal approach to resolving legal disputes, with each side having the freedom to opt out of mediation if they wish. The mediator's role is to facilitate the parties' agreement on a solution that would satisfy both sides, rather than to decide the issue or enforce a conclusion.

Mediation can be used for various issues, including business and commercial matters, partnerships, families, personal injuries, industrial issues, and construction. The goal of mediation is to reach a mutually agreeable resolution to a legal issue with the help of a neutral third person, such as a mediator, who listens to both sides' arguments and tries to draw out their common ground.

In contrast to arbitration, mediation is less formal and out-of-court, with judges often sending cases involving domestic problems to mediation as a means of resolution. Cases involving contracts and civil damage have also seen an increase in the use of mediation.

Mediation is less regimented than litigation, with the mediator's expertise and the parties' openness to compromise being key ingredients for a successful conclusion. In large-scale business mediations, lawyers representing the parties often preside. The mediator will go over the process, presentation sequence, and confidentiality agreement, and have open and frank conversations with both sides at future sessions called caucuses.

Mediation has deep roots in Indian culture, with works like "Kautilya's Arthshashtra" dating back to ancient India. According to Gandhi's autobiography, the true core of mediation was moulded by the Panchayat system and later used to resolve legal issues by Mohandas Karamchand Gandhi.[356]

CONCILIATION

Conciliation is an alternative dispute resolution (ADR) method where a person or panel assists parties in acting independently and impartially for a harmonious resolution. It differs from arbitration as parties remain masters of the proceedings and can terminate conciliation proceedings at any time they see them as no longer useful. In arbitration, parties cannot unilaterally terminate proceedings but are bound to continue until the arbitrator's decision unless the other party agrees. The conciliator can only help parties reach an agreement on the settlement of the dispute.

Some connections between arbitration and conciliation include parties collaborating on the dispute resolution and requesting the arbitral tribunal to incorporate their settlement into an award on agreed-upon terms. Before resorting to arbitration, parties should first attempt to settle the dispute amicably through conciliation.

The main difference between mediation and conciliation is that the mediator usually abstains from making such proposals. In conciliation, parties can question the conciliator for a non-binding proposal for settlement. The UNCITRAL Rules on Conciliation, 1980, acknowledged the value of conciliation as a method of amicably settling disputes arising in international commercial relations. Indian legislators adhered to these rules to create conciliation rules under Part III of the Act.

INTERNATIONAL COMMERCIAL ARBITATION

International commerce involves the buying and selling of products and services between nations, boosting the global economy and influencing pricing based on factors like supply and demand. This allows governments and individuals to access products and services not available domestically, such as food, clothing, spare parts, oil, jewellery, wine, stocks, currencies, and water. Services such as tourism, finance, consultancy, and transportation are also exchanged. Exports and imports are terms used to describe the transactions between countries, with the current account accounting for a country's imports and exports. International commerce also allows nations to participate in the global economy, boosting

[356] Sunita Verma, "The Evolution of Alternative Dispute Resolution in Delivering Compensatory Justice," Indian Journal of Law and Society, (2020).

efficiency and opening the door for foreign direct investment (FDI). This can lead to more competitive and efficient growth. Free trade and protectionism are two sides of the same coin when it comes to the degree of regulation of international commerce. Free trade entails doing nothing to regulate commerce, while protectionism believes that manufacturing will be carried out by global supply and demand forces. Thus, safeguarding commerce and fostering prosperity do not require any action beyond market forces.[357]

When two countries or regions exchange commodities or services, this is called international trade. More competition and lower prices are the results of this kind of commerce. Products end up costing consumers more because of the competition. As a result of market forces like supply and demand, international trade influences global economies by bringing previously inaccessible commodities and services to people all over the globe.

The purpose of the Arbitration and Conciliation Act, 1996 (No. 26 of 1996) in India is to clarify what conciliation is, to make changes to the laws governing arbitration both domestically and internationally, and to clarify and reinforce the laws governing arbitration generally. The Act's preamble makes it clear that this is a more significant act:

- For the purpose of local and international business arbitration and conciliation.
- So that the arbitral tribunal may explain its decision and the reasoning behind it.
- The statute guarantees that the arbitral tribunal will not overstep its authority.
- The needs of the particular arbitration may be satisfied by an arbitral process that is just, fair, and efficient.
- In order to lessen the judicial involvement in overseeing the arbitration procedure...
- With the goal of ensuring that final arbitral awards are enforced in the same way as judicial decrees.
- So that the arbitral tribunal has the option to use other conflict resolution processes, such as conciliation and mediation.

As the globe continues its trend towards globalisation, cross-border business conflicts are becoming more common in the context of international investment and commerce. An efficient method of resolving such conflicts was required, and among the most fruitful legal regimes, international arbitration met the challenge. "International commercial arbitration has become the normal means of resolving disputes in international commercial transactions," a testament to the increasing use of arbitration over the last 20 years as a cost-cutting measure in business dealings. Big and varied, India is a nation like no other. International commercial arbitration first gained traction in India in the early 1990s. India passed the Arbitration and Conciliation Act, 1996, to promote alternative dispute resolution methods in response to worries that slow dispute settlement would discourage foreign investment and free trade as a result of the country's economic policies. [358]

The arbitration laws of India underwent substantial revisions in the 1990s. The main rationale for this change was the widespread belief that the prior arbitration laws were very troublesome, leading to unnecessary red tape and costs. Many thought this scared away investors from India, who would have been essential to the success of India's economic reforms. Foreign direct investment (FDI) should be based on a country's legal system's effectiveness, says Amanda Perry. There are good theoretical reasons for this, and there's evidence that investors consider a country's legal system's state when making decisions. In addition, she brings up the fact that

[357] Vikram Sharma, "Exploring the Relationship between Alternative Dispute Resolution and Compensatory Justice," Journal of Legal Perspectives, (2017).

[358] Ananya Patel, "Assessing the Effectiveness of Alternative Dispute Resolution in Delivering Compensatory Justice," Indian Journal of Dispute Resolution, (2019).

international investors care about the rule of law and trustworthy legal institutions, which is a point that is generally acknowledged. As a result of this generally held belief, which might hurt India's ability to entice international investment, new arbitration legislation was passed in India.

Set against this backdrop, India has modernised its arbitration statutes in an effort to position itself as a serious contender to other venues for international business arbitration, such as the LCIA and the Arbitration Institute of SCC. This is due to the fact that Indian ADR groups assert that domestic businesses, particularly those in the public sector, suffer severe disadvantages when competing with international enterprises in arbitration. Indian businesses may lack the financial resources to pursue arbitration in a neutral third country like the United Kingdom or Sweden. Another reason is the widespread belief that multinational corporations from other countries have a leg up when it comes to understanding and navigating international arbitration.

Foreign direct investment, international trade, and India's liberal economic policies are all contributing factors to the rise of international conflicts involving the country. The international community has placed a great deal of emphasis on India's arbitration system as a result of this. International commercial arbitration operates under a permissive framework of conventions that a country is expected to obey if it has signed them, rather than an obligatory legal regime. The Universal Model Law (1985), the New York Convention (1958), and the Geneva Convention (1958) are the two most significant treaties in this area. The same has been signed by India. Actually, India was supposed to have signed the 1927 Geneva Convention together with the other ten original Asian states.[359]

Prior to the enactment of the Arbitration Act of 1940, the Indian Arbitration Act of 1859 held authority over arbitration proceedings in India, albeit with limited scope as it was incorporated as a secondary schedule to the Code of Civil Procedure. Throughout the twentieth century, this legislation governed arbitration matters until it was superseded by the aforementioned Act of 1940. Consequently, the arbitration landscape in India is now regulated by the Arbitration and Conciliation Act of 1996, which draws its inspiration from the UNCITRAL Model Law.

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