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**EXPLORING INDIA'S ADR LANDSCAPE: SPOTLIGHT ON
ARBITRATION AND JURISDICTION**

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ABSTRACT

It is not a hidden fact that the need to develop Alternative Dispute Mechanism is now more than ever. The statistical data presented in the paper showsthat the ADR can act as an effective tool for dispensing justice quickly and affordably. This paper attempts to give a reader a brief understanding of one of the most preferred ways of solving a dispute, e.g., arbitration. Moreover, it dealt with the issue regarding the controversy related to the jurisdiction of the arbitration proceeding.

INTRODUCTION

Alternate Dispute Resolution is a process in which parties with conflicting interests choose to resolve it outside the court's boundaries. It prevents the parties from lengthy litigation proceedings, providing flexibility and confidentiality. Thus letting them save time and money. The history of Alternate Dispute resolutions in India dates back to when various disputes related to crime, business, family, property, etc., were settled through the Panchayati Raj System in which a village assembly is held.³ It was presided by the Sarpanch, an elected body of five people supposed to dispense justice.⁴ This provided a way for decentralizing power among people at the grassroots level. Later, the framers of the Indian Constitution incorporated Article

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³*Panchayati Raj Institution* (no date) *Drishti IAS coaching in Delhi, Best UPSC Website for IAS Test Series & Study material*. Available at: https://www.drishtias.com/important-institutions/drishti-specials-important-institutions-national-institutions/panchayati-raj-institution-pri/print_manually (Accessed: 25 August 2023).

⁴*Id.*

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243, which gave the Panchayati Raj System legal recognition.⁵ In 1992, the 73rd amendment was passed, strengthening it by providing clear guidelines for its establishment, making it compulsory to set it up where people couldn't reach the courts.⁶

In the British regime, the government passed the English Act of 1899, which recognized “Arbitration” as an alternate dispute-resolution mechanism for the first time.⁷ In 1940, an exhaustive Act related to arbitration in British India was passed, which clarified the definition of various terms like *arbitration agreement, award, court, etc.*—and acted as a procedural law to enforce arbitration clauses mentioned in contracts arising in case of disputes.⁸ The act had plenty of lacunas, it failed to meet the needs of evolving Indian as well as foreign conflicts. In 1996, the independent India passed the Arbitration and Conciliation Act, which borrowed its guiding force from the United Nations Commission on International Trade Law (UNCITRAL). The act mentions all the provisions related to Domestic and International Arbitration. Its criticism peaked a decade after its commencement, and the international arena questioned its efficacy. The act provided much scope for judicial intervention.⁹ Thus attacking the very spirit of the idea of an alternate dispute mechanism. The reputation of India was at its nadir regarding ease of doing business.¹⁰

The need for the growth of an efficient system of ADR was inevitable. According to a news report by Public Trust of India, the number of pending cases in High and Supreme Courts has

⁵*Panchayati raj system in independent India - Department of rural ...* Available at: <https://www.pbrdp.gov.in/documents/6205745/98348119/Panchayati%20Raj%20System%20in%20Independent%20India.pdf> (Accessed: 25 August 2023).

⁶*Role of Panchayats in Dispute Resolution.* Available at: <https://tathya.in/role-of-panchayats-in-dispute-resolution/> (Accessed: 25 August 2023).

⁷*Id.*

⁸*Arbitration Act 1940, - India code.* Available at: https://www.indiacode.nic.in/repealed-act/repealed_act_documents/A1940-10.pdf (Accessed: 25 August 2023).

⁹*Arbitration In India – A Story Of Growth And Opportunity (Cyril Amarchand Mangaldas Advocates and Solicitors), CYRIL AMARCHAND MANGALDAS, ahead of the curve.* (Cyril Amarchand Mangaldas Advocates and Solicitors). Available at: <https://www.cyrilshroff.com/wp-content/uploads/2019/06/Arbitration-in-India-%E2%80%93-A-Story-of-Growth-and-Opportunity.pdf> (Accessed: 14 August 2023).

¹⁰*Id.*

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crossed five crores.¹¹ The amount of time taken by Indian courts to resolve a dispute is one of the leading causes of disappointment in people because they do not want to rely on the judiciary.

Various amendments were made to meet the current needs of the dispute resolution mechanism. The recent revision of 2021 in the Arbitration and Conciliation Act took cognizance of many such lacunae present in the act and rectified them. This can be noted by the current ranking of ease of doing business, in which India ranked 10th in terms of business environment for 2023-2027.¹²

Recently, the former law minister of India, Mr. Kiren Rijju, has emphasized the importance of the ADR mechanism and its emerging scope, especially in the international arena.¹³ Thus, studying the evolution of the Additional Dispute Resolution mechanism and the road ahead is crucial.

The incorporation of section 89 In Civil Procedure Code, 1908 gives the power to courts to refer any issue where there is a chance of settlement through outside court mechanisms.¹⁴ It mentions four types of dispute mechanisms-

(a) arbitration; (b) conciliation; (c) judicial settlement, including settlement through Lok Adalat; or (d) mediation.¹⁵ It depends on the parties involved in a dispute to resolve it through any method they find convenient, subject to the provision mentioned in the dispute resolution clause mentioned in the contract. There is a slight difference in the meaning and ways of conducting each dispute mechanism.

This paper shall deal with one of the Alternative Dispute Mechanisms, “arbitration.” Essential sections, along with landmark judgments, are provided to clarify the confusion related to the

¹¹ *casess pending in courts cross Rs 5 crore mark: Law minister in Rajya Sabha (2023) India Today*. Available at: <https://www.indiatoday.in/law/story/cases-pending-in-courts-cross-rs-5-crore-mark-law-minister-in-rajya-sabha-2409541-2023-07-21> (Accessed: 25 August 2023).

¹² *Republic World (2023) India now among top ten countries for ease of doing business: Economist Intelligence Unit, Republic World*. Available at: <https://www.republicworld.com/business-news/india-business/india-inches-closer-to-singapore-as-top-business-environment-in-latest-ranking-articleshow.html> (Accessed: 25 August 2023).

¹³ *Prasad, M. (2023) 'India's moment is now': Kiren Rijju assures government's support to deliberations at the three-day Delhi Arbitration Weekend, The Indian Express*. Available at: <https://indianexpress.com/article/cities/delhi/english-in-courts-india-hub-of-international-arbitration-kiren-rijju-8454787/> (Accessed: 25 August 2023).

¹⁴ Code of Civil Procedure, 1908, § 89 (India).

¹⁵ *Id.*

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jurisdiction of the courts that arises while enforcing an award. In the end, a conclusion is articulated, including the road ahead to give this writing a coherent structure.

Meaning of Arbitration

Arbitration is amicably settling the dispute without approaching the court premises. According to the World Intellectual Property Organization, “*Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court*”.¹⁶

An arbitration clause or arbitration agreement is separately mentioned at the time of drafting of a contract by two or more parties. According to section 2(b) of the Arbitration and Conciliation Act of 1956, Arbitration Agreements mean a *written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not*.¹⁷ The arbitration process requires appointing an arbitrator who shall deliver the arbitral award at the end of the proceeding, which the parties shall be bound to follow. Courts do not have the jurisdiction to intervene in the awards the arbitrator gives. Still, it may be appealed, and a domestic award may be set aside if it falls within Section 34 of the Arbitration and Conciliation Act 1996 of India.¹⁸

Section 89 of the Civil Procedure Code, 1908 empowers the court to send any dispute to arbitration and other such mechanism that it finds feasible.¹⁹ It was incorporated in CPC, 1908, by the amendments which were done in the year 1999.²⁰ The landmark case of Salem Bar Association, Tamil Nadu v. Union of India upheld the amendment's constitutionality. The Hon'ble Court further provided the *modus operandi* of initiating an arbitration clause in civil litigation. The apex court directed the responsible authorities to follow the draft rules unless the

¹⁶What is arbitration? (no date) WIPO. Available at: <https://www.wipo.int/amc/en/arbitration/what-is-arb.html> (Accessed: 25 August 2023).

¹⁷ The Arbitration and Conciliation ACT, 1996, §2(b) (India).

¹⁸*Id.*

¹⁹*Supra Note 12.*

²⁰ (No date) Section 89 CPC- settlement of dispute outside of Court. Available at: <https://districts.ecourts.gov.in/sites/default/files/Section%2089%20CPC.pdf> (Accessed: 25 August 2023).

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committee offered the final regulations.²¹ The committee presented the Civil Procedure Alternative Dispute Resolution and Mediation Rule, 2003, to clarify the procedure that needs to be followed during the arbitration process by the courts while referring a case to arbitration and conciliation.²²

Section 19 of the Arbitration and Conciliation Act, 1996, expressly excludes the applicability of the Evidence Act, 1987, and Civil Procedure Code, 1908, in arbitration proceedings.²³ Thus paving the way for speedy justice. Section 20 of the act mentions the condition of the place of arbitration.²⁴ It is essential to choose the location of arbitration with diligence as it determines the court's jurisdiction. It is often seen that a dispute may arise if there is no specific mention of seat and venue. In arbitration, the venue only means a geographical place where the proceedings shall be held.²⁵ The seat of arbitration decides the applicability of *lex loci contractus*, which shall determine the laws according to which arbitration proceedings must take place. Section 20 does not define the meaning of venue and seat specifically. They are used interchangeably by section 20.²⁶ Various landmark judgments are provided in this paper to clarify the confusion. Section 21 of the Act gives the procedure that should be followed during the arbitration process.²⁷

The Arbitration Mechanism in India is still in its developing stage. A 2016 report by NITI Aayog revealed that the resolution process for construction sector arbitrations faced considerable delays, with an average time of approximately five years for completion. Furthermore, an extra period of 2 and a half years was required for the court's adjudication if an award faced legal challenges. This indicates a parallel delay issue within domestic arbitration as well.²⁸ A lot must be done to make the procedure more people-friendly by removing the ambiguities.

²¹ Sridhar, M. (2006) *Alternative dispute resolution: Negotiation and mediation*. New Delhi: LexisNexis Butterworths.

²²*Id.*

²³*Supra note. 15.* §19

²⁴*Id.*

²⁵ Basu, R. (2020) *The seat V/s.venue debate – a continuing saga - arbitration & dispute resolution - india, The Seat v/s.Venue Debate – A Continuing Saga - Arbitration & Dispute Resolution - India*. Available at: <https://www.mondaq.com/india/arbitration-dispute-resolution/957918/> (Accessed: 25 August 2023).

²⁶*Id.*

²⁷*Id.*

²⁸NITI Aayog Press Note 'Initiatives to revive the Construction Sector'. Available at: http://niti.gov.in/writereaddata/files/press_releases/Initiatives%20to%20revive%20the%20Construction%20Sector.pdf

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Case Analysis: Determining Jurisdiction?

The Arbitration tribunal does not have exclusive jurisdiction for enforcing arbitral awards. It is subject to the conditions mentioned in the arbitration clause. Section 16 of the Act says the provision regarding the Competence of an arbitral tribunal to rule on its jurisdiction.²⁹ Further, The Arbitration and Conciliation Act of 1996 is divided into four parts. The first part deals with the issues related to arbitration within India, and the second part deals with enforcing foreign seated arbitration awards.³⁰ It has been seen plenty of times that a dispute may arise on the contention of specifying the jurisdiction of it. The apex court delved into the issue of applicability of part 1 of the Act on foreign seated arbitration in the case of *Bhatia International vs. Bulk Trading S. A. & Anr*³¹, in which it was held that part 1 should not apply to the foreign seated arbitration. However, in *Bharat Aluminium Co vs. Kaiser Aluminium Technical*³², the apex court held that part 1 of the Arbitration and Conciliation Act should only be excluded if mentioned explicitly in the contract in Indian and foreign disputes. In the case of *Oil & Natural Gas Corporation Ltd vs. Saw Pipes Ltd*,³³ the court emphasized the point that the purpose of arbitration ends if the courts keep on intervening in its process. Thus, observing that the arbitral awards given by the arbitration tribunal should be followed under all circumstances, and courts should only intervene when the arbitration agreement becomes invalid, inoperative, or impossible to perform. But again, in the case of *Venture Global Engineering v. Satyam Computer Services Ltd.*,³⁴ the apex court held that Indian courts could intervene in cases even if the seat of arbitration is set outside India and it has the power to grant interim reliefs unless it is expressly excluded by putting a term in a contract. In the case of *Inox Renewables Ltd. v Jayesh*

²⁹*Supra Note 15.* §16

³⁰*Arbitration and Conciliation Act, 1996* 12 font. Available at: <https://kjablr.kar.nic.in/assets/articles/Arbitration%20and%20Conciliation%20Act,%201996.pdf> (Accessed: 25 August 2023).

³¹*Bhatia International vs Bulk Trading S. A. & Anr*, supreme court, Appeal (civil) 6527 of 2001, (India).

³²*Bharat Aluminium Co vs Kaiser Aluminium Technical*, Supreme Court, CIVIL APPEAL NO.7019 OF 2005., (India).

³³*Oil & Natural Gas Corporation Ltd vs Saw Pipes Ltd*, Supreme Court, Appeal (civil) 7419 2001 of 518, (India). (2001).

³⁴*Venture Global Engineering v. Satyam Computer Services Ltd.*, Supreme Court, Appeal (civil) 309 of 2008, (India).

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Electricals Ltd.,³⁵ the issue before the court was to decide on the applicability of an award given by another seat not specified in the contract. The apex court held that the award should only be applicable if provided by the tribunal mentioned explicitly in the agreement. Thus, the court may decide to intervene from case to case in pursuit of delivering justice.

CONCLUSION

It can be concluded that Arbitration is an emerging field that is constantly being developed in India. The judgments presented clarify the judiciary's role in making it an efficient process in case of a dispute arising due to its non-specification of jurisdiction in the arbitration clause. However, it must be noted that the emphasis on non-intervention of courts makes it an independent process in which parties are free to decide their terms and conditions to settle the dispute amicably. Thus, it is pertinent for the Indian judiciary to try not to intervene in cases that the negotiation can solve. There is a need to frame strict arbitration laws which can limit the intervention of the Indian Courts. Only then can the objectives of ADR be fulfilled.

³⁵Inox Renewables Ltd. v Jayesh Electricals Ltd., Supreme Court, CIVIL APPEAL NO. 1556 OF 2021., (India).

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