DISPUTE RESOLUTION WITHOUT LITIGATION: PERSPECTIVES ON ADR IN INDIA

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ABSTRACT

This article explores the growing significance of Alternative Dispute Resolution (ADR) mechanisms in the Indian Legal Landscape. It discusses the advantages of ADR over traditional litigation. In India, ADR mechanisms are supported by various laws and regulations such as the Arbitration and Conciliation Act, 1996, which governs the arbitration proceeding to ensure fairness and enforceability of the outcome. These laws aim to promote ADR as a viable option for resolving disputes and reducing the burden on the overloaded court system. ADR methods include negotiation, mediation, conciliation and arbitration. These methods benefit the parties with more control over the resolution process and give quicker and cost-effective solutions compared to lengthy court proceedings. Mediation and conciliation involve the assistance of neutral third parties who facilitate discussions and help parties reach a settlement amicably. Arbitration, on the other hand, provides a more formal process where an arbitrator makes a binding decision based on the evidence presented. ADR provides a promising avenue for efficient dispute resolution and maintaining healthy relationships between the parties involved. In India, ADR provides advantages such as confidentiality, flexibility and the ability to choose experts in the field related to the dispute. However, challenges such as enforcement of arbitral awards and lack of awareness among the public about the ADR mechanism still exist. Embracing ADR can lead to more efficient and satisfactory dispute resolution trust in the justice system, benefiting individuals, commercial transactions, and international business, and promoting a culture of cooperation and consensus in resolving conflicts and the overall legal system in India.

Keywords: Arbitration, India, Dispute Resolution.

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INTRODUCTION

With the ever-growing economy of India which is aiming to step higher and higher in the ease of doing business scale worldwide, the Indian commercial and judicial landscape has seen a major reconstruction in recent years.

The Division of High Courts Act, 2015, also known as the Commercial Courts Act, and the Arbitration and Conciliation (Amendment) Act, 2015, which is the Arbitration Amendment Act, were significant legal reforms introduced in India. Subsequent efforts were made to further amend these laws in 2018. The Commercial Courts Act of 2018 was officially approved by the President in August 2018, although it was deemed to have been in effect since May 2018. These legislative changes were implemented with the aim of addressing the backlog of cases in Indian courts, improving the efficiency of the legal system in handling cases, and encouraging the commercial legal community to adopt alternative dispute-resolution methods. The purpose of these laws Is to streamline legal procedures, expedite the resolution of disputes, and promote the use of alternative dispute resolution mechanisms within the commercial legal sector. By doing so, the Indian legal system aims to become more efficient and effective in resolving disputes.

While this overview provides a general understanding of the key aspects of these laws, it is important for readers to conduct a more in-depth study to fully grasp the implications. The application of specific provisions may vary based on the unique circumstances of each case.

HISTORY

In India, the history of ADR has its roots in ancient times when communities used informal approaches to settle disagreements. The concepts of mediation, negotiation, and arbitration have been ingrained in Indian culture for centuries. Traditional systems like Panchayats, where village elders would mediate and resolve conflicts, reflect the early forms of ADR in India. In the modern legal context, the formal recognition and promotion of ADR in India began to gain momentum in the late 20th century. The Arbitration and Conciliation Act of 1996 was a significant milestone in the development of ADR in the country. This legislation was enacted to provide a legal framework for arbitration and conciliation, aligning India's practices with international standards. Since then, India has witnessed a growing acceptance and utilization of ADR mechanisms across various sectors. The establishment of specialized ADR institutions like the Mediation and Conciliation Project Committee (MCPC) and the Centre for Advanced

Mediation Practice (CAMP) has further bolstered the ADR landscape in the country. The Indian judiciary has also played a proactive role in promoting ADR by encouraging parties to explore alternative methods of dispute resolution before resorting to litigation. The Supreme Court of India has issued guidelines and directives to promote the use of ADR mechanisms, emphasizing their effectiveness in resolving disputes efficiently and amicably. Overall, the history of ADR in India reflects a gradual shift towards embracing alternative methods of dispute resolution to complement the traditional court system and provide parties with more accessible, timely, and cost-effective ways to settle their disputes.

WHAT IS ALTERNATIVE DISPUTE RESOLUTION (ADR)?

ADR encompasses employing different strategies to resolve conflicts outside the traditional legal system. These approaches include mediation, arbitration, negotiation, and conciliation, these methods are typically characterized by their informality, flexibility, and swiftness compared to the formal and time-consuming nature of court litigation. ADR offers a cost-effective, time-efficient, and confidential way for parties to reach a mutually agreeable resolution without the need for traditional litigation. It includes various approaches like arbitration, mediation, negotiation, and conciliation. ADR processes are generally less formal, more flexible, and often faster than litigation in court. These methods provide parties with more control over the resolution of their disputes and can be more cost-effective. In ADR, parties work together to seek mutually agreeable solutions with the aid of an impartial third party, like a mediator or arbitrator, is a key aspect of ADR. Mediation entails a mediator helping parties in reaching a voluntary agreement, while arbitration involves an unbiased arbitrator issuing a final decision on the matter. Negotiation is a direct dialogue between parties to resolve a dispute, and conciliation involves a neutral third party facilitating communication between the parties to achieve a resolution. ADR is extensively utilized in various sectors, such as business, family law, labor conflicts, and international relations. It provides advantages like confidentiality, adaptability, and the ability to maintain relationships between parties. ADR processes can help save time and costs associated with lengthy court proceedings while providing parties with more tailored and creative solutions to their conflicts.

METHODS OF ALTERNATIVE DISPUTE RESOLUTION ARE

• Arbitration

• Conciliation

• Mediation

• Negotiation

ARBITRATION

Arbitration has a rich history in India, dating back to ancient times. In traditional Indian society, disputes were often resolved through the intervention of respected community members or elders who acted as mediators. This informal method of dispute resolution laid the foundation for the more structured arbitration processes seen in India today. The formal legal framework for arbitration in India was established with the enactment of the Arbitration and Conciliation Act in 1996. This legislation was based on the UNCITRAL Model Law on International Commercial Arbitration and aimed to modernize and streamline the arbitration process in India. Over the years, India has made significant strides in promoting arbitration as a preferred method of dispute resolution. The country has established specialized arbitration centers, such as the Mumbai Centre for International Arbitration (MCIA) and the Delhi International Arbitration Centre (DIAC), to handle domestic and international arbitration cases. In recent years, the Indian government has taken steps to enhance the arbitration ecosystem in the country by introducing amendments to the Arbitration and Conciliation Act to make the process more efficient and cost-effective. These efforts have helped position India as a favorable destination for arbitration proceedings, attracting both domestic and international parties seeking to resolve their disputes in a neutral and efficient manner.

CONCEPT OF ARBITRATION

Arbitration is a way to settle disagreements without involving the formal legal process. It is a form of alternative dispute resolution where parties agree to have an impartial third party, known as an arbitrator, make a decision on the dispute. This process is often chosen because it is typically faster, more flexible, and confidential compared to traditional litigation. The arbitration procedure commences when both parties consent to refer their dispute to arbitration. They also agree on the rules that will govern the arbitration, including the selection of the arbitrator. The arbitrator is usually an expert in the subject matter of the dispute and is neutral, meaning they do not have a stake in the outcome. During arbitration, both parties present their evidence and arguments to the arbitrator, who then makes a binding decision known as an award. This decision is final and legally binding on both parties, similar to a court judgment. The arbitrator's award is enforceable in court, providing a level of security to the process.

Arbitration is commonly used in commercial disputes, labor disputes, construction disputes, and international disputes. It is often favored in international transactions because it provides a neutral forum for resolving conflicts between parties from different countries.

A key benefit of selecting arbitration Is its flexibility. Parties have the freedom to select the arbitrator, the regulations, and the venue of the arbitration, allowing for a personalized process. Additionally, arbitration awards are usually kept confidential, unlike court judgments, which can be a benefit for parties seeking to maintain privacy. However, as there are two sides of a coin so are there some potential **drawbacks** to arbitration. It can be more expensive than other forms of dispute resolution, and the arbitrator's decision may not always follow strict legal principles. Additionally, the limited ability to appeal an arbitrator's decision means that parties must be confident in the process from the beginning. Overall, arbitration is a valuable tool for resolving disputes outside of the court system. Its speed, flexibility, and confidentiality make it an attractive option for many parties looking to settle their differences efficiently and effectively.

Arbitration in India is governed primarily by the Arbitration and Conciliation Act, 1996. The procedure for arbitration in India involves several key steps:

1. **Agreement to Arbitrate:-** The initial stage in arbitration involves the presence of a mutual understanding between the parties to settle their conflicts through arbitration. This understanding can be in the form of a provision in a contract or a distinct arbitration agreement.
2. **Appointment of Arbitrator:-** Once a dispute arises, the parties need to agree on the appointment of an arbitrator. If they cannot agree, the procedure for appointing an arbitrator is outlined in the Arbitration Act.
3. **Arbitral Proceedings:-** The arbitrator conducts the arbitral proceedings, which involve the submission of evidence, arguments, and any other relevant information by the parties.
4. **Arbitral Award:-** Once the evidence and arguments are reviewed, the arbitrator issues an arbitral award, which is the final decision that settles the dispute between the parties.
5. **Enforcement of Award:-** The final step is the enforcement of the arbitral award. The award is binding on the parties, and they are required to comply with it. The award can be enforced in court if necessary.

The Arbitration and Conciliation Act, 1996, governs the arbitration process in India. This Act provides the legal framework for conducting arbitrations, enforcing arbitral awards, and challenging arbitral awards in certain circumstances. It is based on the UNCITRAL Model Law on International Commercial Arbitration, aiming to make the arbitration process more efficient and effective. Additionally, the Indian courts play a significant role in supporting the arbitration process. They have the authority to assist in the appointment of arbitrators, provide interim measures, and assist in the enforcement of arbitral awards.

Overall, arbitration in India is a widely used method for resolving disputes outside of traditional court litigation, offering parties a more flexible and efficient way to settle their differences.

MEDIATION

Mediation is a way to solve disagreements that uses a neutral third party, called a mediator, to help the conflicting parties negotiate and find a solution they both agree on. Unlike arbitration, where the arbitrator makes a decision, in mediation, the parties themselves come to a resolution with the help of the mediator.

The process of mediation typically involves the following steps:

The mediation process involves these key steps:

1. **Introduction**: The mediator introduces themselves and explains how the mediation works.

2. **Opening Statements**: Each party shares their perspective without interruptions.

3. **Joint Discussion**: With the mediator's guidance, the parties discuss to understand each other's viewpoints.

4. **Private Caucuses**: The mediator may have private meetings with each party to talk about their concerns and potential solutions confidentially.

5. **Negotiation and Agreement:** With the mediator's support, the parties work together to find a solution that satisfies both sides.

6. **Settlement Agreement:-**If the parties reach an agreement, it is typically put into writing and signed by both parties, creating a binding contract.

Mediation offers several advantages, including confidentiality, flexibility, cost-effectiveness, and the preservation of relationships between the parties. It allows for creative solutions that may not be available through litigation or arbitration. In many legal systems, including India, mediation is encouraged as a means of resolving disputes efficiently and amicably. The Indian legal framework supports mediation through the Commercial Courts Act, 2015, and the Mediation and Conciliation Project Committee (MCPC) established by the Supreme Court of India to promote mediation. **Section 89 of the Civil Procedure Code (CPC)** in India encourages parties to resolve disputes through methods like mediation, conciliation, or arbitration before going to court. It aims to promote a more amicable and efficient resolution of conflicts. Parties can choose to opt for these alternative dispute resolution methods voluntarily or as directed by the court. It's all about trying to find solutions outside of the traditional court process to save time and money and reduce the burden on the judicial system. It is most certainly seen in suits and cases related to family law issues (custody, divorce) matrimonial issues etc. Wherein there is scope for the parties being able to come to an amicable solution. It is also a tool that saves relationships between the parties as in general conscience once a party takes another to court the relationship sours but in the case of Mediation as it is more on the discussion perimeter this does not affect the relationship largely.

Overall, mediation serves as a valuable tool in resolving conflicts outside of traditional court proceedings, providing parties with a collaborative and constructive way to find solutions that meet their needs and interests.

ADVANTAGES OF MEDIATION INCLUDE

1. Confidentiality: What's discussed in mediation stays private.

2. Flexibility: Parties can come up with creative solutions.

3. Cost-effective: It's usually cheaper than going to court.

4. Preservation of Relationships: Helps maintain relationships between parties.

DRAWBACKS OF MEDIATION

1. No Guarantee of Agreement: Parties may not reach a solution.

2. Unequal Power Dynamics: One party might have more influence.

3. Non-binding: The agreement is not enforceable by law unless both parties agree.

Overall, mediation is a great way to solve issues peacefully, but there's no guarantee of reaching an agreement, and it might not work well if there's a big power difference between the parties.

CONCILIATION

Conciliation is similar to mediation but with some distinctions. In conciliation, a neutral third party called a conciliator, assists disputing parties in communicating effectively and comprehending each other's perspectives. The conciliator guides the parties towards finding a solution that they both agree on. It's a voluntary process, meaning that the parties choose to participate, and the conciliator doesn't have the authority to force a decision on them.

Conciliation is commonly used in various types of conflicts, such as commercial disputes, labor disagreements, and family issues. It can be a less formal and more flexible process compared to going to court. The goal of conciliation is to reach a fair and mutually acceptable resolution that satisfies all parties involved.

One key aspect of conciliation is that it maintains confidentiality. What's discussed during the conciliation process remains private, which can encourage open and honest communication between the parties. This confidentiality can help build trust and facilitate a more constructive negotiation environment.

Unlike arbitration, where the arbitrator makes a decision that is binding on the parties, in conciliation, the parties themselves reach an agreement. The conciliator acts as a facilitator, assisting the parties in exploring options and guiding them towards a resolution that meets their needs.

The **key difference between Conciliation and Mediation is** In conciliation, the conciliator actively suggests solutions and ways to resolve the conflict, while in mediation, the mediator mainly facilitates communication and encourages the parties to explore solutions independently without imposing any specific outcomes.

Additionally, in conciliation, the conciliator may provide expert advice or recommendations on how to settle the dispute, while in mediation, the mediator typically refrains from giving advice or opinions and focuses on assisting the parties in reaching their own agreement.

Another **key difference is in the level of formality.** Conciliation is often more structured and formal compared to mediation, which tends to be more flexible and informal in its approach.

Both conciliation and mediation are effective alternative dispute resolution methods that aim to help parties resolve conflicts amicably and avoid lengthy court proceedings. The choice between conciliation and mediation may depend on the nature of the dispute and the preferences of the parties involved.

Conciliation in India is primarily governed by the Arbitration and Conciliation Act, 1996. This Act sets out the legal framework for conducting conciliation proceedings and outlines the roles and responsibilities of the parties involved, including the conciliator. In addition to the Arbitration and Conciliation Act, other laws that may apply to conciliation in India include the Indian Contract Act, 1872, which deals with the formation and enforcement of contracts; the Specific Relief Act, 1963, which provides remedies for breach of contract and other civil wrongs; and the Code of Civil Procedure, 1908, which governs the procedure for civil litigation in India. These laws, along with the Arbitration and Conciliation Act, form the legal landscape that governs conciliation in India and ensures that the process is conducted fairly, transparently, and in accordance with the principles of natural justice.

The process of Conciliation between parties is as follows:-

In India, the process of conciliation is governed by the Arbitration and Conciliation Act, 1996:-

1. **Initiation of Conciliation:-** The process begins when the parties agree to resolve their dispute through conciliation. They may appoint a conciliator or seek assistance from a conciliation institution.
2. **Appointment of Conciliator:-**The parties, either jointly or individually, appoint a conciliator. If the parties are unable to agree on a conciliator, one may be appointed by a court or a designated authority.
3. **Conduct of Proceedings:-**The conciliator conducts the proceedings, which may involve meetings with the parties together or separately. The conciliator helps the parties identify issues, communicate effectively, and explore possible solutions.
4. **Communication and Negotiation:-**During the process, the conciliator facilitates communication between the parties, assists in clarifying interests and concerns, and encourages negotiation to reach a settlement.

5. **Settlement Agreement:-**If the parties come to a mutually agreeable resolution, the details are documented in a settlement agreement. This agreement is signed by both parties and the conciliator.
6. **Enforcement**:-The settlement agreement holds legal weight for the parties, similar to a contract. If necessary, the parties can request the courts to enforce the agreement.

The conciliation process aims to provide a flexible, confidential, and efficient way for parties to resolve their disputes amicably with the assistance of a neutral third party, the conciliator. Overall, conciliation is a valuable alternative dispute resolution (ADR) method that promotes communication, understanding, and collaboration between conflicting parties. It can be a cost-effective, timely, and less adversarial way to resolve disputes while preserving relationships and promoting mutual satisfaction with the outcome.

NEGOTIATION

Negotiation is a common form of Alternative Dispute Resolution (ADR) used to resolve conflicts outside of formal legal proceedings. In negotiation, parties involved in a dispute talk to each other directly to find a solution they both agree on without needing a third person's help. like a mediator or arbitrator. During negotiation, the parties discuss their interests, concerns, and desired outcomes, aiming to find a solution that satisfies all parties involved. Negotiation allows for flexibility, creativity, and control over the outcome, as the parties themselves determine the terms of the agreement. In the context of ADR, negotiation is often the **first step** in attempting to resolve a dispute before proceeding to more formal methods like mediation or arbitration. It is a voluntary process, and the parties can choose to end negotiations at any time if they are unable to reach a satisfactory resolution.

Negotiation, as a form of Alternative Dispute Resolution (ADR), differs from other ADR methods like mediation and arbitration in several different ways:

1. **Direct Communicatio**n negotiation, the parties directly communicate with each other to reach a resolution. This direct interaction allows for a more immediate exchange of perspectives, interests, and proposals without the presence of a neutral third party.
2. **Control and Flexibility:-** Negotiation gives the parties control over the outcome and the terms of the agreement. They have the flexibility to shape the solution based on their interests and priorities, unlike in mediation or arbitration where a third party may play a more active role in facilitating or deciding the outcome.

3. **Confidentiality**:- Negotiation typically offers a high level of confidentiality, as the discussions and proposals made during negotiations are not generally disclosed to others. This can be advantageous for parties seeking to keep their dispute private.
4. **Informality**:- Negotiation is often less formal compared to mediation or arbitration. Parties have the freedom to choose the negotiation process that suits their needs, allowing for a more informal and less structured approach to resolving the dispute.
5. **Outcome:-**In negotiation, the parties must reach a mutually acceptable agreement on their own. Unlike mediation where a mediator assists in facilitating a resolution, or arbitration where a decision is imposed by an arbitrator, negotiation relies solely on the parties' ability to find common ground.

Parties can select the most suitable approach for resolving their conflict by recognizing the differences between negotiation and other ADR methods based on their preferences, objectives, and the type of dispute involved.

There are various different styles of negotiation can be conducted, The common negotiation styles include:

1. **Competitive**:- A competitive negotiator is assertive and uncooperative, focusing on achieving their goals without much regard for the other party's interests. They tend to pursue their objectives aggressively and may use tactics like bluffing or intimidation.

2. **Collaborative:-**Collaborative negotiators are assertive and cooperative, aiming to find mutually beneficial solutions that address the interests of all parties involved. They prioritize open communication, active listening, and creative problem-solving to reach win-win outcomes.

3. **Accommodating:-** An accommodating negotiator is unassertive but cooperative, prioritizing the other party's needs and relationships over their own objectives. They may make concessions easily and strive to maintain harmony and positive relationships throughout the negotiation process.

4. **Avoiding:-**Avoidant negotiators are unassertive and uncooperative, preferring to evade conflicts or postpone decisions rather than engage in direct negotiations. They may avoid confrontation, delay discussions, or withdraw from negotiations altogether.

5. **Compromising:-** Compromising negotiator demonstrates moderate assertiveness and cooperativeness, seeking to find a middle ground or quick resolution by making concessions on both sides. This style aims to achieve a fair and expedient agreement but may not always maximize outcomes for all parties.

By recognizing these negotiation styles and understanding their characteristics, individuals can adapt their approach based on the context, goals, and relationship dynamics to achieve successful negotiation outcomes.

Overall, negotiation as a form of ADR empowers parties to actively participate in finding a solution to their dispute, promoting communication, understanding, and potentially preserving relationships while avoiding the time and expense of traditional litigation.

ADR IN INDIAN SOCIETY -

In India, relationships within society are highly valued, so disagreements are typically resolved openly, considering each other's status in the community. Alternative Dispute Resolution (ADR) is a similar approach but with specific rules. ADR allows disputing parties to maintain their relationship and reach a resolution swiftly and smoothly. In India, there's a common belief that courts are the sole place to resolve disputes between individuals due to faith in the judicial system and the legal protection provided by the Constitution under Part III, guaranteeing fundamental rights. As laws evolve, the system must adapt to changing societal dynamics to achieve legislative goals effectively.

In India, as per the Constitution of India, it is stated that "law is for the people and by the people," indicating that the success of any law depends on the support of the people. With a high number of pending cases in courts and the need for quick justice, people are turning to arbitration as a new way to address their issues. There is a growing demand for more support for arbitration to ensure timely dispute resolution. Additionally, individuals feel that traditional methods involve many steps without actually resolving the dispute, leading them to choose arbitration as a solution. Arbitration is a growing field and still needs more development as per the need and demand of the Indian Society. The Government, the judiciary and the people collectively as a society need to encourage ADR in India.

CHALLENGES FACED BY ADR IN INDIA

Government's lacking support: India as a developing nation has a lot of unbalanced growth going on in every sector. Some sectors of India are more advanced than others and ADR is one such field that has got limited to no support from the Government of India. Indeed even after 27 times since the end of the Arbitration and Conciliation Act, 1996 there aren't enough or ADR centres in India. The main reason is the Governments lack of support and initiatives. Small metropolises and municipalities are devoid of similar styles of disagreement agreement. In order to approach ADR parties will have to travel long distances from their place to the metropolises where similar installations are available. One of the advantages of ADR was to save the parties from anxiety about the high cost of suits but lack of structure defeats the purpose. Hence, the government's lack of support is one of the topmost hindrances in the growth of ADR in India.

Judicial interference: Courts in India veritably frequently intrude in Arbitral and other Dispute Resolution proceedings. Although Indian Courts do that to deliver proper justice to the parties, it also hinders the sovereignty of ADR medium and renders ADR less effective than it should be. One of the advantages that ADR provides for the parties is to freely choose their procedure and conduct but due to over hindrance of the judiciary, this benefit is held back. After the award is passed by the tribunal, the parties again have to approach the Courts for the execution of the award. ADR does not provide any other medium for prosecution. The parties are then again in the same pit which was meant to be bypassed by ADR.

Dearth of Professionals: In India presently there are veritably many professed judges, mediators and intercessors for the reason of the generalised basic academic system of education. There's an absence of skill development, creativity, communication and mindfulness among scholars and attorneys because of the non-vacuity of proper institutions for similar skill development. An outsized number of cases are unsuccessful in ADR settlement due to unskilled and unqualified professionals in the field.

Lack of mindfulness: The bigger section of our Indian society lives in deficient circumstances where their primary focus is to earn a good income. In similar conditions, a warrant of mindfulness about similar mechanisms is anticipated. The absence of legal education in our society is also one of the top hindrances in the growth of ADR in India, as people have zero to no knowledge about it. Since the Arbitration and Conciliation Act, 1996 was passed in 1996 and the Judiciary has only lately concentrated on promoting the ADR medium, it has not come a veritably popular system among the Indian society as of that. Also, Indian society has further

faith in the conservative judicial system than the recently developed system of disagreement resolution. It is good faith to cherish the judicial system of India but new change is inversely important for the society. There are numerous cases in the moment's time when the courts themselves relate parties to pursue arbitration to skip the lengthy court process for their own benefit.

LANDMARK JUDGMENTS IN ADR

Bhatia International v. Bulk Trading SA, AIR 2002 SC 1432

The Bhatia International case ruling by the Supreme Court of India is really important. It involved a situation where a foreign company and an Indian company had a dispute taken to the ICC in Paris for arbitration based on their contract. The foreign company wanted temporary relief from an Indian court to prevent the Indian company from selling its assets to ensure the enforceability of any future award. The argument was that since Part I of the Act applies only to domestic arbitrations, interim relief couldn't be granted. The Supreme Court clarified that the definition of "International Commercial Arbitration" doesn't differentiate between arbitrations in India and those outside. The difference lies in Part II, which applies to arbitrations in countries under the New York Convention and the Geneva Convention. The Court also stated that parties in international arbitrations outside India have the right to opt out of Part I of the Act, making international arbitration more effective. The Supreme Court's judgment in the Bhatia International case was a game-changer. It allowed foreign parties to request interim relief to ensure that international commercial arbitration remains effective. This decision aimed to prevent local parties from disposing of assets, which could undermine the arbitration process and nullify any award. This ruling was later reinforced in the Venture Global Engineering v. Satyam Computer Services case. It reiterated that Part I of the Act applies to all international commercial arbitrations, regardless of where the arbitration takes place.

In the Venture Global case, the Supreme Court ruled that a foreign award could be contested under Section 34 of the Act. Therefore, following the Bhatia International and Venture Global cases, unless parties explicitly or implicitly exclude it, Part I of the Act is applicable even to foreign-seated arbitrations. This means that unless parties specifically prevent it, foreign awards could face challenges under Section 34 of the Act. Moreover, courts in India can grant interim relief to support arbitrations conducted outside India. The law from the Bhatia case still applies to arbitration agreements made before September 6, 2012. However, recent court trends

show a more relaxed approach in interpreting exclusions in arbitration agreements. In the Eitzen Bulk A/S v. Ashapura Minechem Ltd. case, the Court found that the parties intended to resolve disputes under English Law. This meant that any objections or challenges to the arbitration process or the award would also fall under English Law. The Court referred to a Supreme Court decision with a similar situation, where the arbitration seat was London, and proceedings were to follow English Law, thus excluding Part I of the Act.

The Court ruled that the party on the receiving end of the award couldn't challenge the award by raising objections under Section 34 of the Act in an Indian Court. Importantly, the Court cited Redfern and Hunter on International Arbitration, stating that simply choosing a legal seat for arbitration automatically subjects the arbitration proceedings to the law of that place, thereby excluding the application of Part I of the Act.

Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc, [(2012) 9 SCC 552]

The judgments in Bhatia International and Venture Global were heavily criticized for causing significant judicial interference in International Commercial Arbitration conducted outside India. This situation was overturned in the BALCO case. The Supreme Court in BALCO reversed Bhatia International and ruled that Part I of the Act does not apply to arbitrations held outside India. Consequently, a foreign award cannot be contested under Section 34 of the Act in Indian courts. On a positive note, parties involved in a foreign-seated arbitration cannot request interim relief from Indian courts to support the arbitration proceedings.

UOI v. Hardy Exploration, 2018[1]

Based on the rejected idea of justice evolving from Bhatia International and continuing post-BALCO concerning pre-existing arbitration clauses, the court decided that Kuala Lumpur, Malaysia, as the arbitration venue, did not imply Indian Courts' authority. Another key aspect introduced in this case is the interpretation of Article 20 of the UNCITRAL Model Law.

"*Article 20. Place of arbitration – (1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case including the convenience of the parties.*

[1] (*2018) 7 SCC 374*

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.[2]

The Court clarified that while Article 20, clause (1) focused on determining the "seat," clause (2) addressed the convenience venue. The Court explained that even though the award was signed and subscribed in Kuala Lumpur, it did not definitively establish the seat of arbitration but only the venue. Therefore, the Court concluded that Kuala Lumpur was the venue, not the seat, and Indian Courts' jurisdiction was not excluded, following the rejected implication principle of Bhatia International.

ONGC vs. Saw Pipes, AIR 2003 SC 2629

Section 34 explains the reasons for invalidating an award. The concept of a clear legal error was extensively discussed in this case. The Supreme Court stated that an award proven to have a 'clear legal error' could also be challenged under the category of "award conflicting with India's public policy," thus broadening the grounds for invalidating a foreign award. In the ONGC case, the Supreme Court interpreted 'clear illegality' to fall within the realm of 'public policy' under Section 34.

The Court placed significant emphasis on the difference between enforcing foreign awards and domestic awards to expand the interpretation of public policy when necessary. If the award is incorrect based on legal principles or its implementation, the court has the authority to intervene in the award. However, this procedural error must be clear and impact the rights of the involved parties.

INSTITUTIONAL ARBITRATION IN INDIA

For the utmost portion, India continues to conclude ad-hoc arbitrations over institutional arbitrations. This may maybe owing to the appeal of advanced inflexibility in the arbitration process and saving of charges outstanding to the arbitral institution. The parties that do conclude for institutional arbitrations generally elect aged institutions similar to the Singapore International Arbitration Centre (SIAC) innovated in July 1991, the International Chamber of Commerce (ICC) innovated in 1919, the London Court of International Arbitration

[2] *Chapter V, Article 20*

(LCIA) innovated in November 1892, etc. In fact, India was the top stoner of SIAC in 2022. To feed to India-centric arbitrations, institutions similar to SIAC and ICC have opened up representative/ indigenous services in India at Mumbai, Delhi and GIFT City. Owing to the fashionability of institutional arbitration in India, Indian arbitral institutions have also cropped. The government is taking various steps to toughen India's situation as favourable governance for arbitration. For illustration, the Arbitration and Conciliation (Amendment) Act 2019 and the Arbitration and Conciliation (Amendment) Act 2021 are levelled at encouraging institutional arbitration in India and at fostering India as the center of transnational marketable arbitration. Indeed centers similar to SIAC, HKIAC[3] and LCIA didn't become recognized centers for arbitration overnight – it took them decades to arrive at the recognition they have a moment, with a respectable brace from their separate governments. India is making process and is gradationally developing as a hub for arbitration. Still, a thriving arbitration terrain in India would only be practicable with a brace from all stakeholders involved, including judges, judges, law enterprises, intermediaries and country governments and companies among others

In India, arbitral institutions have been operating and opening recently. Foremost there's the International Centre for Indispensable Disagreement Conclusion (ICADR) having its head department in Delhi and two indigenous services in Hyderabad and Bangalore. In Southern India, the Nani Palkhiwala Arbitration Centre in Chennai and the Indian Council for Arbitration(ICA) which was set up in 1965 at the public position beneath the enterprise of the Govt. of India and summit business associations like FICCI. Lately, the Government of Maharashtra and the domestic and transnational businesses and legit communities have deposited a non-return locus called the Mumbai Centre for International Arbitration (MCIA). There are various other micro position institutions as well performing to promote arbitration in India to ease the working of the judiciary. Still, India has a long way to became a Global character in Arbitration.

CONCLUSION

Alternative dispute resolution methods like arbitration and consensus are viewed as less confrontational and can offer a more effective framework for addressing disputes in a traditional manner. The utilization of dispute resolution methods is also expected to alleviate the workload on legal professionals and facilitate prompt dispensation of justice to the

[3] *Hong Kong International Arbitration Center*

populace. The government has taken significant steps in this regard, including the implementation of the Arbitration and Conciliation Act, 1996, which aims to streamline and modify laws concerning domestic and international arbitration and the enforcement of foreign arbitral awards. To adapt to the changing landscape of arbitration and enhance it as a viable means of dispute resolution, the arbitration laws have undergone substantial revisions in 2015, 2019, and 2021. These revisions aim to promote timely resolution of arbitration cases, reduce judicial interference in the arbitral process, and ensure the enforcement of arbitral awards.