DOES ARBITRATION REALLY PROVIDE A VIABLE ALTERNATIVE TO COMMERCIAL LITIGATION? : A CRITICAL ANALYSIS

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ABSTRACT

Justice is something that people have been trying to achieve for a very long time. Aspirations for "justice-social, economic, and political"[1] are reflected in the Preamble of our Constitution. Adversarial litigation is not the only way disagreements may be resolved, as the world has seen. The need for new alternatives is made clear by the overcrowding in courtrooms, the lack of staff and resources, and the delay, expense, and procedure. Alternative Dispute Resolution procedures are urgently needed to augment the existing court infrastructure in this setting. However, is arbitration really a viable alternative to commercial litigation? Considering the loopholes in the present act pertaining to public policy clause, neutrality requirements, court involvement and absence of impendent authority for appointing arbitrators. The present research is an attempt to discover whether arbitration in its present form as prevalent in India could be considered as a viable alternative to commercial litigation.

1 Preamble, Constitution of India

INTRODUCTION

Arbitration is a out of court settlement method in which the parties agree to submit a disagreement to one or more arbitrators, who issue a binding ruling on the matter [2].

Businesses have admitted that they know more about the litigation process than the arbitration procedure. Businesses have resisted employing litigation to save time in most developed countries, especially when big sums of money are at stake. Companies that have gone through arbitration report that on average, the process takes less than three years from beginning to end. Concerns such as these and herein after mentioned make litigation a less desirable option, like mandatory rules that litigation must follow and proceedings cannot be treated as secret because of this.

Many of businesses chose arbitration because of its apparent benefits, not everyone was pleased with their outcome owing to various challenges interalia are, high arbitrator fee, lack of standardisation, high probability of biased arbitrator thereby high frequency of court intervention via setting aside proceedings.

1. GENERAL TRENDS OF LITIGATION

Based on the record and tendency followed, the following are some of the conclusions that may be drawn about the general pattern of litigation in India:

2 Investopedia,Arbitration: What it is ? (July 27,2024), https://www.investopedia.com/terms/a/arbitration.asp

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a. The annual number of cases resolved is somewhat lower than the institution of cases in the court. Inevitably, this will lead to yearly pending of number of cases.

b. The backlog of cases may be the primary cause of the large number of pending cases.

c. This indicates that a case is pending in the justice system annually as every previous year's pending cases is being added on to the next year.

d. This trend strengthens the general public's conviction that the judicial system is corrupt. Litigation increases workload and wait times, which leaves an impression that India's legal system does nothing to advance the cause of justice administration[3].

1.1 How long and how much money does it take to get a legal matter handled in India through Litigation?

Many estimates have been made on the length of time it takes for Indian courts to rule on cases., but none have been based on empirical research. Nevertheless, a recent study conducted in Mumbai has revealed some illuminating details. The research indicates that, it took a total of 1420 days from the filing of a lawsuit to the enforcement of the court's decree. This time frame may be broken down even further into its 3 constituent parts. First, it takes 20 days to serve a summons once it has been filed. Second, the duration of the trial and the resulting decree is 1095 days; third, the duration of the implementation of the decree is 305 days.

The study found that the cost of commercial litigation is 39.6% of the totality. In the present case, attorney's fees made up 30.6% of the entire claim. Legal fees amounted to 8.5 percent of the claim, with another 0.47 percent going towards seeing the decree execution.

The analysis presented hereinabove reveals that the pendency rate is significantly greater than the institution rate and the disposal rate. On the other hand, the disposal rate is very variable and often falls below the institution rate. Possible causes include insufficient court facilities, an insufficient number of judicial officers, poor cadre management, a lack of skill, efficiency, and techniques adopted by the judicial officers, the nature of the case itself, a failure to properly manage the case, a lack of cooperation between attorneys, a strained relationship between the parties, and an absence of effective alternative dispute resolution methods, among other things.

1.2 "Commercial Litigation & Section 12 A of Commercials courts act, 2015 [4]"

Since business disputes account for a substantial portion of all cases brought before the courts, the govt. decided to implement pre-institution mediation in order to cut down on the amount of time that lawsuits take to reach a conclusion and to facilitate the speedy resolution of commercial disputes. According to sec. 12A of the Commercial Courts Act, 2015 [5], the parties are required to participate in pre-institution mediation prior to the complaint is filed, with the exception of situations in which a "urgent" temporary relief is requested. India decided to implement pre-institution mediation in order to enhance the "ease of doing business" in the nation and to boost the financial standing of the nation in its entirety. This technique depends on the "opt-out" technique, which is used in numerous nations. Under this method, parties to a dispute are barred from approaching courtrooms until they can provide evidence that they participated in the initial session of mediation.

The following are some of the disadvantages associated with the "pre-institution mediation" that was established in accordance with Sec. 12 A of the Commercial Courts Act [6]:

In accordance with Sec. 12A, it is the responsibility of the plaintiff to launch the preliminary stages of the mediation procedure. However, pursuant to rules, 2018, the other party has the option to decline to engage in the mediation process. This provision was established in order to facilitate the resolution of disputes before the institution of commercial courts. The failure of the other side to show up to the mediation session causes the process of mediation to fail to get off the ground, which leaves

3 Legal500, Commercial disputes: Litigation is a crucial step while arbitration can be alternative (July 27,2024), https://www.legal500.com/developments/thought-leadership/commercial-disputes-litigation-is-crucial-step-while-arbitration-can-be-alternative/

4 The Commercial Courts Act, No. 4 of 2016, §12A (India)

5 Ibid

6 Ibid

the person who was wronged without any options for redress. Because of this, Section 12A is rendered meaningless.

A claim for "urgent interim relief" is excluded from the requirement to participate in "pre-institution" mediation by Sec.12A. The Act, on the other hand, does not specify what constitutes an "urgent" temporary remedy. This is frequently abused by the parties' attorneys or by the parties themselves in order to induce a delay in the proceeding or to annoy the other party.

2. CRITICAL ANALYSES OF MERITS OF ARBITRATION

2.1 Is Arbitration Really Cost Effective[7]?

It is well settled undisputed fact that arbitration in India is not particularly cost effective. Many surveys have shown that even court litigation is a far more cost-effective alternative to ad hoc arbitration. The consensus was that ad hoc arbitration is not a viable choice in modern India.

The arbitral tribunal has the authority to determine the expenses of the arbitration in accordance with the specifics of Sec. 31A [8] of the Arbitration & Conciliation Act, 1996. The amount, method, and timing of arbitration expenses are within the discretion of the Court and the arbitral tribunal, according to Section 31A of the Act.

The Act's Fourth Schedule specifies model fee to be paid to the arbitrator(s) based on the value of the dispute. It is important to remember that if the arbitral tribunal consists of a single arbitrator, the price owed to the arbitrator will increase by twenty-five percent (25%) in accordance with the schedule. The fees and expenses of the parties' legal representatives account for a significant portion of the total costs incurred, cost concerns are inextricably linked to the pace at which the arbitration proceeds. According to research conducted in 2015 by the International Chamber of Commerce Commission on Arbitration and Alternative Dispute Resolution, only 15% of arbitration costs are attributable to arbitrators' fees and expenses, while another 2% is attributable to administrative fees, and the remaining 83% is attributable to lawyers' fees and other party costs.

In ONGC v. Afcons Gunanusa JV[9], the S.C dealt held that Rs. 30,00000/- is max. fee that could be given to an arbitrator, & the maximum amount cumulatively applicable includes variable as well as base cost, as envisioned under the 6th entry to the 4th Sch. of present arbitration act & unilateral fixation of arbitral fee. The court also ruled that aforementioned cap applies to the fees of each arbitrator and not the total fees of the panel. The Indian S.C recognised the problem of arbitrator costs being too expensive and too variable in UOI v. Singh Builders Syndicate [10]. According to the 2015 Amendment to the Arbitration & Conciliation Act, 1996, Due to the excessive costs of arbitration processes, the Law Commission suggested a model schedule of fees to be used for future cases. This would seem to render null and void the subsequent provisions u/s 31-A.

Therefore, considering there is no conclusive judicial finding nor any provision on the applicability of the 4th sch., it appears, arbitrators and panel keep going to have unlimited freedom in determining their fee, particularly in adhoc arbitration proceedings.

There is so little to guide or restrict arbitrators in the setting of their fee, unless the parties contractually agree to a prior fee structure, or the procedures are governed by institutional regulations prescribing the same. If the tribunal is already biased against one of the parties, then they may have to accept whatever charge is decided. Other options include parties refusing to pay the price and challenging it in court, or arbitrators just resigning, all of which can have a major impact on the outcome of the arbitration. The Fourth Schedule fees seem to be resolved by the 2019 Amendment Act, which grants authority to a graded arbitral institution to set those fees. The new subsections (3-A) and (14) to Section 11 are ambiguous as to whether they would apply to party-appointed arbitrators in ad hoc procedures, and it has been almost a 4 years since the amendment was enacted, and no notification of the said amendment has been issued.

7 Aishwarya Sandeep, Myths of cost effectiveness of arbitration, WordPress (June 29th, 2024) https://aishwaryasandeep.com/2021/12/13/myth-of-cost-effectiveness-in-arbitration/

8 The Arbitration and Conciliation amendment Act, 2021, No. 3 of 2021(India)

9 ONGC v. Afcons Gunanusa JV Civil Appeal, (2022) SCC 5880

10 UOI v. Singh Builders Syndicate, (2007) SCC 3632

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- **Payment Of Fee**

Ad hoc arbitration proceedings leave a lot of room for ambiguity for the payment and, thus, arbitrariness, whereas institutional standards typically provide for simplified and streamlined methods for the deposit and payment of the arbitrators' costs. An advance for costs, including the tribunal's fees, is required by Sec. 38[11] of the Act, and the amount of the deposit is determined by the tribunal. Sub-sec. (2) requires that the parties equally split the cost of the deposit, or that one party pay the full amount if the other fails to do so. The Act grants the tribunal the authority to delay or terminate such proceedings if the other party refuses or is unable to pay the entire deposit. Interestingly, while no such provision can be found in the Model Law (upon which the Act is founded), identical clauses may be found in a number of institutional norms including the SIAC and LCIA. In addition, the Act does not provide the tribunal with authority to enforce compliance should a party fail to pay the charge, and there is no remedy available to a party that is justifiably unwilling to pay the cost.

Although the S.C's decision in Alka Chandewar v. Shamshul Ishrar Khan[12] interpreted the Act to grant broad powers of contempt, the same may not hold in light of the Section 38 (2). There are a variety of circumstances in which a party can refuse to pay the deposit, and the Act does not specify any of them. If one party contests the arbitral tribunal's composition or jurisdiction, or challenges the impartiality of the arbitrators, that party may refuse to pay any amount that could subsequently be considered frustrated costs. As a result, there is a need for a standard structure and procedure that safeguards the rights of the parties and the needs of the arbitrators without reducing the effectiveness of the arbitration itself. One such set of rules is the one governing the fees charged by the Delhi International Arbitration Centre, which allows for different portions of the total price to be paid at different points in the process. After the modification is notified, the Arbitration Council of India, which is scheduled to be established under the new Part I-A of the Act, will be able to address and better control these issues.

The Sec. 38(3)[13] of the Act states that upon conclusion of arbitration procedures, the tribunal "must restore any such unexpended balance" and provide an accounting of any deposits received from the parties. As a result, arbitrators are legally required to account for all monies they collect from the parties as deposits (including any costs). But, if the tribunal fails to do so, as is typically the case, the parties have no legal remedy under the Act. Whether or whether the same would constitute misconduct is not addressed either. Sec. 42B [14], on the other hand, provides immunity to arbitrators for any and all actions taken in good faith. For this reason, the termination of proceedings for lack of jurisdiction, the setting aside of a patent illegal award, or the resignation of an arbitrator may not always indicate a lack of due care and caution on the part of the tribunal. In effect, it appears that the parties' ordinary civil law recovery rights have been eliminated as well.

Notwithstanding the fact that a number of awards have been terminated and the mandate of tribunals has been terminated for various reasons, the subject of recovery of arbitral fee has yet to be determined by Indian courts.

2.2 Arbitrators' Rule Of Conduct And Professional Ethics

According to the debates, arbitrators are not currently bound by any code of conduct or principles of professional ethics. There must be a solution to this. Some arbitral institutions are more selective in who sits on their panel of arbitrators than ad hoc arbitrations. It is possible that these organisations will also establish and tightly enforce comprehensive codes of conduct and professional ethics.

The State trading corp. vs Molasses Co. Bengal Chamber of Commerce[15], a permanent arbitral institution, ruled against the corporation and didn't permit Co. to be represented by law officer, who was employee of the co. The Court found both the arbitrator's conduct and the arbitration process's to be improper. It is a classic situation where the arbitrator misconducted the procedures and also

11 Arbitration and Conciliation Act, No. 26 of 1996, §38 (India)
12 Alka Chandewar v. Shamshul Ishrar Khan, (2017) SCC 8720
13 Arbitration and Conciliation Act, No. 26 of 1996, §38(3) (India).
14 Arbitration and Conciliation Act, No. 26 of 1996, §42B (India)
15 State trading corp. v. Molasses Co. Bengal Chamber of Commerce, (1981) Cal 440

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misconducted himself. The principles of law, process, and justice were disregarded entirely.

2.3 Is Arbitration Really Free From Court Clutches?

The Arbitration and Conciliation Act (as revised in 2015) does limit judicial involvement by requiring parties to apply to the court for a ruling on their dispute, and no court has the authority to take Suo moto cognizance of a case unless one of the parties files an application for it to do so. The load on the courts only grows as a result of these judicial interventions into the arbitration process. This is counter to the very idea of arbitration.

Not-withstanding that arbitration is considered as autonomous proceeding free from the rigid procedure of court. However, unfortunately the same isn't the case with Indian arbitration law, hereinafter mentioned are certain situation where court step in the arbitration proceedings: -

- To refer dispute to arbitration (Sec. 8[16])
- To grant temporary measures to help with arbitration (Sec. 9[17])
- Appointment of Arbitrators (Sec. 11[18])
- the procedure for challenging an arbitrator's decision (Sec. 13[19])
- settling any disputes concerning the mandate of an arbitrator's authority (Sec. 14[20])
- Interim award enforcement by the arbitral tribunal (Sec. 17[21])
- Help with evidence-gathering tasks including calling witnesses and providing paperwork (Sec. 27[22])
- The imposition of sanctions on the noncompliant parties by the arbitral tribunal (Sec. 27[23]).
- To extend the time limit for arbitration proceedings, replacing one or more arbitrators on an arbitral tribunal, or penalising the tribunal or the parties responsible for delay (Sec. 29(A)[24]).
- Consideration of a motion to set aside an arbitral award (Sec. 34[25]).
- An appeal of the award (Sec. 36[26]).
- Considering appeals from the arbitral tribunal (Sec. 37) when the arbitral tribunal accepts a party's plea of lack of jurisdiction under Sec. 16 or rejects a party's request for an interim remedy under Sec. 17[27]
- Costs must be paid to the tribunal before an award may be issued (Sec. 39[28]).
- The Arbitration Act allows the parties to extend the deadline within which they must initiate arbitration proceedings (Sec. 43(3)[29])

2.4 Arbitration Vis A Vis Autonomy Of Parties

The concept of "party autonomy" is used to announce that the parties to the arbitration agreement have complete independence in the selection of legislation and the management of the arbitration proceeding itself.

The S.C of India ruled that party autonomy is envisioned under the Indian Arbitration Act of 1996. However, the idea of party autonomy, the de facto worldwide acknowledged standard in arbitration, was violated in the recent Bombay HC decision by Judge R.D. Dhanuka. The court ruled that domestic parties can't have foreign seat, & that Indian parties should follow law of India. The inconsistency may be examined alongside the S.C's most lauded prior ruling, which was reached by a 5 judge bench in the case of BALCO[30]. Both parties to an arbitration within India need not be Indian for Part I to apply, while both parties to an arbitration outside of India need not be Indian for Part I to not apply. According to the "seat-centric approach" used by the court, the only distinction that matters under the Act is between "domestic arbitrations" (arbitration having a seat within India) and "foreign arbitrations" (arbitrations having seat outside of India).

16 Arbitration and Conciliation Act, No. 26 of 1996, (India)
17 Ibid
18 Ibid
19 Ibid
20 Ibid
21 Ibid
22 Ibid
23 Ibid
24 Ibid
25 Ibid
26 Ibid
27 Ibid
28 Ibid
29 Ibid
30 Bharat Aluminium Co v. Kaiser Aluminium Technical, (2005) SCC 7019

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When it comes to Perkins Eastman Architects DPC and Others Versus HSCC[31], the S.C ruled that an arbitrator cannot be appointed by a party with a vested interest in the outcome of the dispute. The respondent has proposed appointing the arbitrator; nevertheless, the Court makes clear that each party has the exclusive authority to do so. Three judges agreed in the TRF verdict, which was relied on by the court to reach its conclusion that a person who is unable to serve as an arbitrator cannot appoint one. Using the rule that you shouldn't try to accomplish anything indirectly if you can't do it straight up.

Case of Perkins Eastman, The S.C has ruled that a person who is not eligible to act as a arbitrator isn't also eligible to appoint a "Arbitrator" under S.11 & the Sch. of the present arbitration act, as amended by the Arbitration & Conciliation amendment act, 2015, in order to guarantee the impartiality of arbitrators. Some solo arbitrators chosen by one party to the arbitration agreement have resigned in light of the aforementioned ruling, either voluntarily or at the request of the other party to the agreement, causing a commotion in a number of current arbitration processes across the nation. Furthermore, requests for the removal of arbitrators appointed by one party have been made under Sec. 14 and Sec. 15 of the Act.

The S.C's decision in Perkins has reignited debate over the TRF ruling. The issue before the S.C was whether or not a single party to the agreement may designate the lone arbitrator, and whether or not the Courts could step in to prevent an improper appointment.

After reviewing the TRF decision, the S.C decided that the Managing Director in question served as an arbitrator and an appointing authority under the dispute resolution clause. The S.C has ruled that a disqualified person's interest in the outcome of the case makes him ineligible to serve as an arbitrator under the Act. As a result, the S.C ruled that arbitration clauses that do nothing more than provide the Chief Executive Director of a party the authority to appoint an arbitrator are similarly unenforceable under the Act. The S.C's rulings in Bharat Broadband Network Ltd[32] v. United Telecoms Limited and TRF (above) were interpreted to mean that ineligibility under Sec. 12(5) read with Sch. VII of the Act will have retrospective application rather than being limited to prospective application.

Another sec. under arbitration act that limits party autonomy is sec. 29 A of act. Arbitration's many benefits include giving the two sides in a dispute the power to determine their own fate in court. While deciding between arbitration and litigation, parties value the ability to select the rules of process that will apply to their case. Others feel that the parties' independence and power in the arbitration process are curtailed by Sec. 29A. Because the next stage in the proceedings is predetermined by the clause of judicial intervention, the parties' freedom of action is effectively nullified.

2.5 Is flexibility indeed a merit of arbitration proceedings[33]

The fact that alternative conflict resolution occurs outside of the judicial system is a major selling point for this method. Maybe, but is there a limit? One of the main selling points of ADR is that it doesn't involve the judicial system, therefore the processes involved in ADR aren't as formalised as those in litigation. Hence, ADR choices provide more leeway. But how flexible is too flexible? To what extent do we go? Is it even possible to have too much of a good thing when it comes to ADR flexibility?

The parties' willingness to agree on the arbitration processes at a time when there may already be a disagreement is a significant drawback of the ad hoc method. When one or both sides aren't willing to play ball, it might delay the resolution process or even lead to legal action.

The parties to the issue are able to determine the conflict resolution method through the ad hoc approach, which is a major benefit. However, the parties will need to expend more time, energy, and experience in determining the arbitration rules. When dealing with partners of various nations and

31 Perkins Eastman Architects DPC and Others v. HSCC, (2019) SCC 32

32 Bharat Broadbaand Network Ltd v. United Telecoms Limited, (2019) SCC 3972

33 Monash University, Too much of a good thingss? The case for less flexibility in International commercial arbitration, Monash University (June 27, 2024), https://impact.monash.edu/legal/too-much-of-a-good-thing-the-case-for-less-flexibility-in-international-commercial arbitration

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legal systems, communication might be slowed due to misunderstandings. Again, once a conflict has formed, this might scuttle any attempts at an ad hoc resolution.

2.6 Legal Questions of Competence: Violation of principles of Natural Justice

Competency-based competence is recognised in India. It is up to the arbitral tribunal to determine whether or not it has jurisdiction (Sec. 16, Arbitration Act[34]). Nonetheless, Sec. 16(2) requires that challenges to the tribunal's jurisdiction be made in a timely fashion (that is, before filing the statement of defence). If a party does not challenge the tribunal's authority within the allotted period, it will lose the opportunity to do so. The verdict of an arbitral tribunal might be contested in court if the tribunal determines it lacks jurisdiction. But, if the arbitral tribunal determines that it does have jurisdiction, no further appeal or challenge may be made, and the sole recourse is to dispute the arbitral tribunal's final decision on the basis that it lacked jurisdiction.

2.7 Whether Arbitration Is Time Bound & Confidential Process?

The 2019 Amendment Act makes various improvements and gives the parties more leeway in terms of the length of time for the arbitration. This serves two functions. First, it helps to understand why people choose arbitration over going to court to settle their differences. Second, the modification does not dissuade arbitrators from pursuing claims since all parties would be given a chance to present their side.

Unfortunately, the legislature failed to take into account the procedural implications of a six-month filing deadline for the statement of claims. There wouldn't be a chance for parties to separate out jurisdictional or preliminary concerns from pleadings or substantive problems. Hence, this limits the parties' freedom and control over the pleas they submit.

The arbitration's privacy may also be jeopardised by the short time frame of six months. This defeats the Act's intended aim. One advantage of arbitration over litigation is that the proceedings may be kept private. This is in contrast to the public nature of court records. Because of this need, Sec. 42[35] of the Act was enacted to protect the privacy of arbitral proceedings. Yet, if the deadline is missed and the parties appear in court, divulging the case's sensitive elements, a contradiction between Sec.29A[36] and 42[37] arises. Judicial involvement in arbitration proceedings should continue to be confined to supporting the work of arbitral institutions rather than taking on that work itself. The two laws need to be harmonised so that the parties can benefit from private, swift, and time-limited processes.

Under the leadership of Hon'ble Judge B.N. Srikrishna (Retd.), a Committee was formed (the "Committee") to address gaps in the Act and advance institutional arbitration. On 30 July 2017, the Committee released its report.

As detailed in the Report, the international community was divided on the required deadline established by Sec. 29-A[38]. Timelines for arbitration procedures are often established by the institution administering the arbitration or by the arbitration rules itself. As a result, parties may view India as a less desirable seat of arbitration due to Sec. 29-A's non-derogable nature, which interfered with the authority of arbitral institutions to govern the conduct of arbitrations. It was unreasonable to set an inflexible deadline without considering the specifics of the issue at hand, such as the number of papers involved. The time constraints ran against the spirit of an effective conflict resolution procedure, which called for giving the parties a fair chance to present their case to a tribunal.

When parties were compelled to repeatedly approach the court for extensions of time, the already lengthy process of securing such extensions was slowed down even further.

It was, however, determined that a court-controlled arbitral tribunal would become an instrument of the court rather than a party-structured conflict settlement system, which would be counter to the expansion of arbitration in India and contrary to international best practises.

It is being asserted that time limit that is of

34 Arbitration and Conciliation Act, No. 26 of 1996, (India).
35 Ibid
36 Ibid
37 Ibid
38 Kranjawala & Company, purpose, parameters & problems of section 29A, Mondaq (June 27, 2024), https://www.mondaqq.com/india/arbitrationn--dispute-resolution/1168310/purpose-parameters-and-problems-of--section-29a

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18 months is placed on arbitration, the courts are becoming more involved in the process[39]. Parties that seek a neutral, expedient, and financially reasonable settlement to their dispute and who wish to restrict disclosures to the press, public, rivals prefer arbitration because of the confidentiality of the process. Yet, the need that the parties go to court in order to get an extension on the set time limit is seen as requiring the parties to renounce this arrangement mutually.

2.8 Delay In Arbitral Proceedings[40]

Significant time lags have developed over the past several years at each step of judicial intervention during arbitration. This was due to the courts' eagerness to weigh in on the merits of arbitration and the overwhelming volume of pending cases. However there have been advancements in the former.

In the past, submitting parties to arbitration and/or assigning an arbitrator were preceded by long judicial inquiries concerning the legitimacy and impact of the arbitration agreement, which significantly slowed down proceedings. Nonetheless, the Arbitration Act has been updated recently, greatly limiting the potential for involvement. Now, the sole issue for a court to decide is whether or not an arbitration agreement exists; any and all other issues must be submitted to the arbitrator for resolution.

In similar fashion, courts have previously re-evaluated the merits of arbitration or an arbitrator's erroneous application of law or interpretation of evidence in procedures brought to set aside arbitration verdicts. These hearings typically lasted far longer than the original arbitration.

The Arbitration Act suggests that any setting aside procedures be finalised in a year. While courts have accepted certain restrictions on their ability to investigate, in practise they have seldom been able to wrap up cases within the allotted amount of time .

Several legislative and judicial changes have aimed to limit the amount to which courts can intervene; but, in reality, parties can submit repeated petitions and postpone proceedings before and after arbitration processes have concluded.

CONCLUSION & SUGGESTIONS

Most people have the impression that each side has complete control over the arbitration procedure and arbitration is free from court clutches as well as other merits of arbitration are absolute. If India wants to become a global arbitration hub, it must take into account the efficiency and cost effectiveness and autonomous of the arbitral process, as it is one of the few jurisdictions where ad hoc proceedings are largely favoured over institutional arbitrations. Mandatorily capping arbitrators' fees by law and allowing the introduction of a rationalised, transparent system of payment will effectively hold the parties and the arbitrators accountable. Nevertheless, these benefits can only be fully evaluated when the 2019 amendment's intended purpose—"to encourage institutional arbitration"—would be notified & put into practise.

The provision for time-limited arbitration appears to damage the very foundations upon which arbitration rests, and as such, it might be perceived as a legislative overreach. The Sec. purpose and rationale were to ensure the smooth operation of the courts and the prompt resolution of disputes; however, they appear to have made a mistake that renders the entire arbitration procedure meaningless and capricious.

In the light of aforesaid loopholes in the apparent merits of Arbitration proceeding it could be concluded that arbitration act as in the present form needs to amended and reformed to make it really viable alternative to commercial litigation.

39 Ibid

40 S&A Law Offices, Analysis of Unexplained Delay In Rendering The Arbitral Award As a Ground For Challenge Under Section 34 Of The Arbitration And Conciliation Act, Mondaq (June27,2024) https://www.mondaq.com/india/arbitration--dispute-resolution