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Law

INTERPLAY BETWEEN THE ROLE OF JUDICIARY AND ARBITRAL AWARDS

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ABSTRACT Confusion abounds when discussing judiciary's role in arbitration, and it is simple to become mired in theoretical and practical definitions and restrictions. The scope of their role in domestic arbitration awards is a topic that is considerably more constrained in this article because it concentrates on a few prominent cases. This subject is diverse primarily because arbitration is still developing in India. Provocative ideas abound in this field, and both legal experts and stakeholders frequently have more questions than solutions. Given that arbitral judgments are a reflection of the minds of the arbitrators, a significant question in this regard is how much judicial meddling is appropriate and where the judiciary should draw the line.

KEYWORDS : Arbitration, Dispute Redressal, Arbitral Award, Conciliation, Public Policy.

1. Introduction: -

Fundamentally, arbitration is a technique of resolving conflicts in which parties to the issue do it through a neutral third party, known as an arbitrator, instead of going to court. Today, arbitration as a means of resolving disputes is becoming more and more significant. As a method of dispute resolution, arbitration is gaining popularity on a global scale. Arbitration clauses are included in almost all company agreements. "One of the fundamental elements of our constitution is an independent and effective judicial system. In accordance with our constitutional obligations, we must work to reduce the backlog of cases and increase case disposition.

People turned to arbitration as a conflict resolution method when laws weren't established, the justice system wasn't organised, and principles weren't established. People prefer arbitration because it is less expensive than litigation. In contrast to courtroom proceedings, it allows for quick trials and more casual and straightforward conflict resolution. Less judicial intrusion is a fundamental tenet of arbitration, because it is necessary for the process to be successful. It can only be done if the judiciary has little or no influence over the arbitral awards. The issue is how much the arbitration procedure should be influenced by the court. The arbitration's processes and progress would be hampered by excessive involvement. Too little might lead to the infringement of the principle of natural justice.

One of the best methods to settle disputes that has been around forever is the arbitration procedure. Because the law of arbitration is based on the idea of removing the conflict from the regular courts and allowing the parties to replace a domestic tribunal, it is evident that the powers of the court of law are deliberately deleted for the sake of an affordable and quick resolution of a case. It could be defined as the process of sending a dispute or difference between at least two parties to a person or people other than a court of competent jurisdiction for resolution following a judicial hearing on both sides. There must be *animus arbitrandi*, or an agreement between the parties to arbitrate their differences.

In plainer terms, the arbitration process is said to have begun when parties agree to bring their dispute before one or more arbitrators and give them the authority to render a binding judgement. An award is a judgement rendered in an arbitration procedure by an Arbitration Tribunal and is compared to a court's ruling. Since it would not be an arbitration reference if the award only applied to one party, it must apply to both parties.

It is important to emphasise that the fact that arbitration is not entirely independent of court oversight, unlike other administrative body adjudications, does not come as a surprise. With the purpose being quick dispute redressal, it is crucial that arbitration disputes must be judged based on affidavits and other relevant papers and without oral evidence. Giving the parties a chance to present oral evidence may be necessary in a select few extraordinary instances. In all situations, the judicial authority must make a swift decision within a set amount of time and not consider the case like typical civil lawsuits.

2. Judicial Interference Justified: -

The lack of institutions that can provide the necessary codification, infrastructure, and convenient arbitral facilities to conduct disputes by the book in arbitration has recently led to arbitration becoming an offshoot of litigation in the sense that it has become entangled in the spiral of pleadings and proceedings. Due to the Act's insistence on party autonomy and the fact that the majority of arbitral tribunals are not institutionalized but rather operate ad hoc, its goal of reducing the line of people waving their dockets during a court case has failed due to the lack of a streamlined procedure or qualified arbitrators. Due to the fact that the majority of the arbitrators chosen under Section 11 of the Act are retired judges, established practices and arguments are relied upon in accordance with their knowledge gained while sitting on the bench, creating a drawn-out process strikingly similar to a court hearing. Arbitration involving problems, oral and written evidence, chief and cross-examination, etc. results from disagreements over the arbitrator's authority to mark evidence, his authority to record objections, and the order of such recording, to name a few.

Additionally, the arbitration process may work unethically if the parties pick incompetent arbitrators and if attorneys repeatedly ask for unnecessary adjournments. A narrow definition of judicial meddling could have severe consequences for the parties and the entire system.

3. Scope of judicial Intrusion: -

The lengthy and expensive litigation procedure may be largely responsible for arbitration's rise to prominence as the preferred method of resolving disputes. The majority of people approach the courts for one of two reasons: either because they genuinely believe that justice will be served by the Indian judicial system, or because they assume that a civil court case will take years to resolve, giving the wrongdoer plenty of time to take advantage of this. On the other hand, arbitration guaranteed that its principal goals were to lessen, if not completely eliminate, the judiciary's oversight function and to settle matters quickly and cheaply. Despite the widespread misconception that arbitration will fully nullify the court's jurisdiction, this is far from the case. Due to the inherent inefficiency of the arbitration process and the inherent party autonomy allowed by the legislation, some judicial intervention is necessary to uphold the rule of law.

It might be astonishing to learn how many provisions exist to allow for court participation in arbitral matters. The Arbitration and Conciliation Act, 1996, Section 5 describes the scope of judicial involvement in arbitration procedures. It opens the door for court involvement in the following circumstances, among others, which can be divided into three categories, namely those that occur before, during, and after arbitration.

Section 8 – ability to recommend arbitration for the parties.
Section 9 – authority to issue temporary orders.

Section 11 - In some events, the arbitrator is appointed.
Section- 13(5) - Procedure for contesting an arbitrator.

In the event that the arbitrator is unable to carry out his duties, Section 14(2) gives the court the authority to decide whether to terminate the arbitrator's appointment.
Section 16 (6) – Competence of an arbitral tribunal.
Section 27 – Assistance in taking evidence.
Section 34 – Power to set aside an award.
Section 34(4) – Power to remit the award to the arbitration tribunal.

An award made by an arbitrator is not easily changed since, according to the Supreme Court, "an arbitrator is a judge selected by the parties." But because the major goal of the Award is to make a decision that promotes justice, the Court has the authority to closely monitor the Arbitrator's conduct. The law offers specific remedies against the arbitral awards with this goal in mind.

According to Section 34 of the Arbitration and Conciliation Act, the court has the power to interfere within the parameters of the arbitration and overturn an arbitrator's ruling. The section defines the time frame by which a court must be notified of a request to annul an arbitral decision as well as the criteria under which an arbitral award may be revoked. An arbitral judgment cannot be reversed unless one of the causes listed in S. 34(2)(a) or S. 34(2)(b) can be demonstrated, sealing the fact that the petition lacks standing if the application cannot stand within the restrictions set forth in the sections. Section 34's scope has been drastically narrowed in order to avoid court intrusion in arbitral proceedings and the recourse to court can opt only in the following circumstances:

1. If the party contesting the award provides evidence that he was incapable in some way;

2. That the contract lacked legal standing;

3. That the party was not properly informed of the arbitrator's appointment or the arbitration process, or that the party was otherwise unable to make their case;

4. That the award deals with a dispute that is not mentioned in or outside the scope of the agreement;

5. If the award incorporates decisions on subjects beyond the scope of the arbitration's submission, only the severable portion of those decisions that can be separated from those that aren't to be submitted is subject to being overturned;

6. If the parties' agreement was not followed on the makeup of the arbitral panel or the arbitration process;

7. If the court determines that the dispute's subject matter cannot be resolved by legal means.

8. If the award conflicts with Indian public policy.

The courts that hear cases with such grounds are nonetheless unable to act as appellate courts and determine the case's merits. Only in the following scenarios may the court intervene to set aside an arbitral award:

- If the composition of the arbitral tribunal is not in accordance with the law
- The arbitral proceedings transgressed from the procedure and other specifics laid out in the agreement between the parties.
- Additionally, the arbitrator's process wasn't compliant with part I of the act in the absence of such an agreement. This indicates that section I of the act must necessarily be followed for the award to be valid, and any deviation from that rule may result in its revocation.

4. Indian Arbitration Law Development:-

The first attempt to introduce arbitration law in India by the British East India Company, Act IX 1850 was promulgated. This was followed by a number of legislations, but they were deemed ineffective thus the English Arbitration Act, 1934–based Arbitration Act, 1940, was implemented. Although the Act of 1940 covered the topic in detail, it primarily addressed domestic rewards and ignored the enforcement of international awards. As a result, the Arbitration Act of 1940 was ineffective in achieving its goals. Justice D.A. Desai stated as much in the case of Guru Nanak Foundation v. Rattan Singh & Sons (1981), where he stated that the lengthy and complex court proceedings forced jurists to seek an alternative course of action that is less costly, more informal, more effective, and less time-consuming, to dissolve disputes avoiding the procedural claptrap, and this took them to Arbitration Act 1940. The lawyer laughs and the philosopher weeps at the way that proceedings under this Act are conducted and challenged in court without exception. Due to legal snares, the processes have grown extremely sophisticated and time-consuming at every turn. Due to the court's ruling, the alternative conflict resolution process is now covered with "legalese" of unexpected complexity.

India accepted the UNCITRAL Model Law on International Commercial Arbitration, 1985, and passed the Arbitration and Conciliation Act, 1996, nearly 50 years after the country eventually responded to the criticism. This Act addressed both domestic and foreign arbitration awards. Thus, this act was passed with the goal of reducing delays and court interference in arbitration proceedings in order to ensure a comfortable business environment and encourage foreign investment following post-economic liberalization.

5. The Arbitration and Conciliation Act, 1996:-

The principle of minimal interference- The court should not get involved unless there is a clear provision listed in Part I of the Act 1996, according to Section 5 of the Act. This restricts and clarifies the role of the court in arbitration. If there are any irregularities in the processes, the court must review them; but, it must refrain from assessing the merits of the award. By making sure that the court's responsibility is confined to aiding the arbitral procedure and should not interfere with it, it highlights the significance of the party's autonomy and limits the function of the judiciary.

5.1 Section 34 of the Act - Application to set aside the arbitral award pursuant to Section 34. This is based on New York Convention Article V (2). If the grounds listed in Section 34 are established, the party challenging the award may have the decision set aside. Therefore, after declaring the arbitration result, the court could intervene in the arbitration procedure. With the exception of the phrase "public policy of India," which is used in Section 34(2), all of the requirements specified in Section 34 are specific, constrained, and do not provide for any room for free-form expression (b). Therefore, the discussion and reach of judicial action have always been included in the term "public policy."

5.2 Public policy- The Act of 1996 and other statutes do not define public policy in any particular way. Due of the term's ambiguity and difficulty in defining it, it is always subject to judicial review. In one of his rulings, Justice Burrough compares public policy to a wild horse. You won't know where it will take you until you get on it. There are some landmark judgments where the Supreme Court tried to define the meaning of public policy:

In Renusagar Power Co. Ltd vs General Electric Co. (1993), according to the Supreme Court, breaking Indian law alone is insufficient cause to withdraw the enforcement of the award. The phrase "public policy" should be used in the way that it is used in the context of private international law. The implementation of the award would be against public policy if it is against (i) the fundamental policy of Indian law; (ii) the interest of India; or (iii) justice or morality, according to the Supreme Court's narrow definition of the term. As a result, the award, which was made in contravention of the Foreign Exchange Regulation Act of 1973 but benefited the national economy, was against public policy.

In Oil & Natural Gas Corporation Ltd v/s Saw Pipes Ltd (2003), the Supreme Court broadened the definition of public policy in this case. The court determined that the award is against the public interest if it violates an Indian statute. A legally incorrect award would interfere with the administration of justice and go against public policy. As a result, the award's enforceability could be challenged on the grounds of "patent illegality." Therefore, every legal mistake will draw the attention of the public policy bar and provide the court the opportunity to assess the legal foundation and increase its interference.

In Oil & Natural Gas Corpn.Ltd vs Western Geco International Ltd,(2014), the Court decided that the award could be contested in court if the arbitrator drew a conclusion that is clearly incorrect or failed to draw one that should have been drawn. Any perverse or

unreasonable award would be thrown out, and the arbitrator's decision would be reversed if "no reasonable person would have arrived at it."

In Associate Builders vs Delhi Development Authority (2014), the Supreme court held that "the fundamental public policy of India" would include:

1) not taking orders from the superior court,
2) judicial approach,
3) principle of natural justice.

The SC decided that if the decision was proven to be perverse, the reward would be revoked. As a result, the perverse principle contains the following: a) the results are based on no evidence; b) important evidence is ignored; and c) the tribunal takes something irrelevant into consideration while making the decision.

In Bharat Aluminium and Co. v. Kaiser Aluminium and Co. (2012) in short known as BALCO, part I of the Act would not apply to Part II of the Act, the Supreme Court ruled. International commercial arbitration would fall under part II of this agreement and part I would not apply. As a result, the court could not consider an application for interim relief made pursuant to Section 9 of this agreement.

6. The Arbitration and Conciliation, Act 2015 (Amendment):-

The judiciary's extension of the definition of "public policy" was the subject of the 246th Law Commission Report. In the report, it was suggested that Section 34 of the 1996 Act be amended, among other items. The 2015 amendment was then created based on this suggestion. The group recommended that the Renusagar judgment's ruling be upheld and applied to all decisions reached in international arbitration. By eliminating the phrase "interest of India," which was open to ambiguous interpretation, it reduced the scope of the term "public policy," especially in cases when an award resulted from an international arbitration. The concept of "patent illegality" ought to be upheld but applied more strictly than in Saw Pipes.

The Arbitration and Conciliation Act 2015changed Indian arbitration as a result of the recommendation (Amendment). As a result, this ordinance limited the scope of judicial intervention by allowing the annulment of an international award on the basis of public policy in the following circumstances: The award is tainted by fraud or corruption; it is inconsistent with the fundamental principles of Indian law; it violates fundamental principles of morality and justice. Only domestic awards may be revoked on the grounds of patent illegality, in accordance with Section 34(2A).

The 2019 Arbitration and Conciliation Act received presidential approval on August 9, 2019. According to the Shri krishna committee report, it resolved the issue of the 2015 Act's applicability by introducing Section 87, which stated that the 2015 Act only applied to court proceedings involving arbitration that began after the introduction of the 2015 Act and not arbitration proceedings that started before the 2015 Act, eliminating the 2015 Act's ability to be applied retroactively. The Arbitration and Conciliation Act, 2015 will apply to all court actions, whether new and pending on, before, or after the decision in Hindustan Construction Company limited vs. Union of India (2019), which struck down this Section. According to some, the addition of Section 87 will lengthen the arbitration process and encourage judicial intervention, contradicting the whole purpose of the 2015 amendment. The length of time it takes to enforce an arbitration ruling can be seen in the case *Nafed v. Alimenta*, where it took the Supreme Court until 2020 to reach a decision.

7. Conclusion: -

The entire purpose of using arbitration is to expressly oust the court's jurisdiction. It is a system designed to save time and address issues between parties quickly and economically. Theoretically, Section 34 could result in a never-ending cycle of litigation between the parties by allowing the losing party to petition the court to annul the award on the basis of, say, public policy, which is still somewhat nebulous, delaying enforcement of the award and undermining the arbitrator who made it in a way that, even if the award is set aside, there is nothing to prevent the losing party from filing yet another "appeal."Although here acknowledges that arbitration costs the parties a lot of money and that the parties would ultimately settle their dispute sooner or later, the likelihood of this still calls into question the arbitration process's overall goal.

The courts must not get involved when the parties have decided to forego court involvement and settle their issue through arbitration. The issue of compelled court intrusion has greatly diminished since the provision to allow for trained capable and impartial arbitrators was put in place.

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