

INSTITUTIONALISING THE PROCESS OF ARBITRATION - FROM INDIGENOUS ROOTS TO THE NORMATIVE PUSH

Abstract

The design and nomenclature of arbitration is not a fancy legal development of recent times rather an adjudicatory root in the legal process, as it has always been present, existent and efficient. The rise in alternative forms of dispute resolution can be largely attributed to the failure of the traditional litigation system to render a cost- and time-effective justice mechanism. While being overburdened with the plethora of cases, time as the essence of justice gets lost and subsequently, the system took bold strides towards alternatives like arbitration, mediation and conciliation. While enabling an easy mechanism, it is imperative that any dispute resolution process be fair, run as per established rules of a system and at the same time retain its efficacy and unique selling point. In case of arbitration, the biggest advantage which commercial cases have found is the speed of delivery – delivering an end goal of the resolution process, or at least moving things in the direction of a resolution, without being excessively overburdened with the procedural obligations. In light of this statement, there is a growing discussion about institutional arbitration in India, the need and relevance of the same. This is in line with India's aspirational goal to transform itself into a hub of global commercial arbitration, and the journey towards realising this goal goes through a lucid process of conducting the same. As a jurisdiction, India has to be more encouraging and supportive towards the process of arbitration by sharing the autonomy of conducting these institutions, which are governed by their own set of rules and regulations, often found to be conducive for fast-paced dispute resolution mechanisms. The path towards more

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economic investment, treaties and trade is undeniably combined with the safety and security of a sound dispute resolution system, and it is precisely here that arbitration as a model needs to succeed. The author has tried to reconcile prevailing developments in the field of arbitration and institutionalising the process through a range of primary and secondary doctrinal sources, and formulate a suggestive plan for the future public policy discourse in the country.

Keywords: Normative, Institution, Arbitration, Speed, Justice

I. INDIGENOUS ORIGINS AS A KNOWLEDGE SYSTEM OF ARBITRATION MECHANISM

The modus of arbitration rests on the principle of dispute resolution with active participation and involvement and although the modern construct, both legally and rationally relies on international agreements of the recent past, we cannot ignore the fact that the same modus has existed all along and is a part of the indigenous knowledge system as well. Ancient texts elaborate on the existence of Courts like Kula, Sreni and Puga - all of which are guilds of different genres that depended on the association of like-minded people groups, occupations or castes and dealt with issues of everyday problems that required adjudication or resolution. The early Vedic age gives us an idea of the presence of Sabha¹ - a consortium of wise elders in the village, which used to help solve the problems at the local level in the villages. They acted like a delegated power stemming from the sovereign authority of the king and were helpful in arbitrating issues at the regional level, while the king acted as the appellate authority for justice. Similarly refined the presence of a body called Samiti, which had the membership of the common mass and the position of Madhyamasi, who used to act as mediators. The same process continued in the later Vedic and subsequently in the age of Dharmashastras, where tremendous importance was laid on the local associations of Sreni, Kula, Puga, and others, like Panchas of villages, Parishads all of which represent the idea of self-sufficiency of villages and at the same time the judicial rationale of enabling groups to deal their disputes in their circles where the adjudicators and the decision making both would involve participatory mechanisms.

The conciliatory mechanism, together with the quest for the determination of disputes involving a participatory character, has been sine qua non for survival, as evidenced in historical texts. The settling of disputes related to complicated civil matters, criminal matters, family matters and the entire ADR technique was based on the co-existential justice. The ancient Panchayat system had an efficacious solution with a fundamental backing of the sovereign authority; it was normative as it was a social establishment with a political character as sanctioned by the king, and it did not concern itself with the convenience of the parties but rather with the compatibility of Dharma. Adherence to a strict code, together with involvement of the parties and sufficiency of the local authority, was a perfect solution to the complicated problems.² The development of such local units as adjudicating authorities has kept its imprints in the successive dynasties for example we have the Sabha of the Mauryan period, Ur/ Mahasabha of the Chola period and Janapadas of the Gupta and all these units have won functional commonality, it is that the verdict was respected, and they were all delegated units at the village level under the sovereign authority. Even at the village administrative level, portfolios like the gram or the headman, Ghosh and Gramini, were in charge of record keeping and mediating disputes.³

¹ Manjula. S R ,HISTORY AND DEVELOPMENT OF LAW OF ARBITRATION IN INDIA,SARA BOOK PUBLICATION ISBN: 978-1-73034-973-7, June 2022.

² Shivaraj Huchhanavar, In Search of True 'Alternative' to Existing Justice Dispensing System in India, NALSAR Law Review, Vol. 7(1) 2013

³ Amit Kumar , Kumar Ashutosh , ALTERNATIVE DISPUTE RESOLUTION - AN ANCIENT INDIAN PRACTICE AS AN ALTERNATE TO REALIZE SUSTAINABLE DEVELOPMENT GOAL- 16, Dehradun Law Review Special Issue ,101 , 2023

II. NORMATIVE VERSUS DISCRETIONARY SYSTEMS

It is important to note that institutionalising does not necessarily entail a hefty burden of procedural formalities like the litigation system, rather a uniform way of encountering issues concerning the arbitration process and deciding on the charted course of action to solve them, so in a way it is adding to the time effectiveness of the procedure. With the speed of globalisation transforming and impacting almost every other sector, dispute resolution is no exception. Traditional litigation systems reeling under backlogs and delays have been utterly disregarded by the fast pace of corporate litigation, which favours alternatives and has widely embraced arbitration. In keeping up with the international pace, India not only implemented its Arbitration legislation in tandem with the UNCITRAL model and pushed successive amendments as well. The next step forward is institutional setups and empowering the course of arbitration through them. An effective arbitration institution would go a long way in bringing economic impacts, too.⁴ By increasing foreign direct investments, startups and a preference for choosing India as the seat of arbitration.

Although India has institutions that administer arbitration, their workability is still in the nascent stages, with very few caseloads, as confirmed by data⁵, owing to the tendency to switch and prefer ad hoc systems. Further, these institutions have varying rules, like the ICADR, the Indian Council of Arbitration (“ICA”), the Delhi International Arbitration Centre (“DAC”), and recently, the Mumbai Centre for International Arbitration (“MCIA”). They offer varying degrees of administrative support, and still not the preferred choice. The goal towards making India a hub of arbitration and pushing for international arbitration depends on the strengthening of these institutions. They serve an important role in projecting feasibility, workability and the model of arbitration that will be followed in the country to stakeholders in the international area, to attract them. To popularise them, it is necessary to first understand the ground reality concerning the same.

The arbitral institutions often follow their own rules and procedures or resort to the UNCITRAL model rules. In India, the Public Sector Undertakings have their system of arbitration, but it is beyond the applicability of the Arbitration and Conciliation Act (ACA)⁶. Hence, they do not have the sanctity of being recognised under the law of arbitration in India. This has negatively affected its legacy as an arbitral institution. In India, data suggests⁷ An overwhelming preference for ad hoc systems over institutionalised arbitration, as opposed to the global preference for the opposite.⁸ The construction sector, which

⁴ World Bank, Ease of Doing Business 2019
https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_webversion.pdf

⁵ ICADR Annual Report 2015–16, available at <http://icadr.nic.in/file.php?123?12:1490865651> (accessed on 18.07.2017); LCIA, ‘LCIA Facts and Figures—2016: A Robust Caseload’, 03.04.2017, available at <http://www.lcia.org/News/lcia-facts-and-figures-2016-a-robust-caseload.aspx> (accessed on 18.03.2024)

⁶ Department of Public Affairs website, ‘Permanent Machinery of Arbitration’, available at [http://dpe.gov.in/dpe-guidelines/permanent-machinery-of-arbitration-\(pma\)](http://dpe.gov.in/dpe-guidelines/permanent-machinery-of-arbitration-(pma)) (accessed on 22.03.2024).

⁷ Corporate Attitudes & Practices towards Arbitration in India’, PricewaterhouseCoopers (2013), available at <https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in-india.pdf>

⁸ ‘International Arbitration: Corporate attitudes and practices 2008’, Queen Mary University of London and PricewaterhouseCoopers (2008), available at <http://www.arbitration.qmul.ac.uk/docs/123294.pdf>

experiences maximum disputes and resorts to arbitration, also shows the same trend.⁹ This signifies a long-standing tendency, or rather an inertia that works against the adoption of the institutional rules of practice. The high number of contractual obligations leads to a quick settlement of issues to preserve the sanctity of time in these contracts. The inability to furnish a sustainable system will land India in greater trouble, making companies not prefer the location for business pursuits.

When comparing the two types of arbitration systems, the preference for ad hoc systems comes because of certain dominant reasons –

Firstly, due to a lack of credible institutions that have long-standing arbitration viability, success rates and high preference among the bigger corporates in dealing with their disputes, and secondly, the poor marketability of institutional arbitration, which stems from the first cause, though. The conceptions have not been adequately challenged¹⁰, judicially discussed and promoted as a viable means of arbitration, the constitution of a committee goes a long way in this direction¹¹ with Justice Srikrishna spearheading the initiative along with 10 other luminaries and the aim of this committee was to come up with suggestions to make India a hub of international arbitration, an aspirational goal set as a vision by this country and the Government.

III. COMMITTEE ON INSTITUTIONAL ARBITRATION

On investigation, the Committee concluded that while there is no lack or absence of institutional arbitration centres in the country, their relevance and approach are faulty. This is largely attributed to the lack of judicial insight and expertise of these institutions and the people involved in them. Both the facilities involved with these institutions, like video conferencing, virtual connectivity services, operations and the human resources available at their disposal or in service are seriously compromised because the people involved lack the necessary skills or knowledge. This has further alienated people from making a determined choice for institutional arbitration centres. Misconceptions regarding costs¹² being associated with institutional setups has made this option look less viable and not the perfect choice. This is a wrong idea as the institutions charge a reasonable price, depending on their rules, which can be discussed and decided by the parties while making a conscious choice of the same. Further, the biggest advantage of institutional arbitration is in its rigid framework – often a hoc system tends to become costly when adjournment, procedural and litigation issues get involved, but in the case of institutions, that excess is prevented as it operates on a set system of rules. Parties have the wrong idea that institutional rules make the process very rigid, but in reality, they make a balanced approach possible by reconciling party interests and autonomy with the rules that need to be followed. The committee makes these institutes responsible for their inability to advertise themselves and their benefits, due to which even

⁹ Krishna Sarma et al., 'Development and Practice of Arbitration in India—Has it Evolved as an Effective Legal Institution', Working Paper 103, Centre on Democracy, Development, and The Rule of Law Freeman Spogli Institute for International Studies (2009), available at https://cddrl.fsi.stanford.edu/sites/default/files/No_103_Sarma_India_Arbitration_India_509.pdf

¹⁰ Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India, Justice B. N. Srikrishna, Retired Judge, Supreme Court of India, available at - <https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf>

¹¹ <https://pib.gov.in/newsite/PrintRelease.aspx?relid=169621>

¹² Gary Born, 'International Arbitration: Law and Practice', (2012) at p. 13

lawyers and other commercial enterprises, big corporate houses, do not choose them and the cycle goes on.

A large chunk of litigation is directed towards arbitration, one that involves the Government and PSUs being the most prolific litigant, and even they choose to ignore mentioning institutional arbitration in their contracts. Efforts on a large scale need to be driven towards recognising the importance of these institutions, especially in cases that are highly valued in terms of the money involved. Recent examples show how the Maharashtra Government.¹³ Has taken this matter seriously and promoted its advantages. It goes a long way in creating the required awareness to combat misconceptions regarding institutional arbitration in India. In this direction, positive legal reinforcement is necessary in the form of ordinances or orders or a body of administration responsible for drafting rules on institutional arbitration in the country. Examples are – Singapore, where the institution of SIAC – Singapore International Arbitration Centre is the main body responsible for the appointment of arbitrators, by the International Arbitration Act 1994 (IAA).¹⁴ On the other hand, in India, the insertion of section 29A¹⁵ Which made of proper timelines for the arbitration process has been criticised¹⁶. The Indian system needs to give more relaxation to the institutes to come up with their process of adjudication, keeping in mind the spirit of speedy delivery of the dispute resolution and minimising court interference.

This highlights yet another drawback that India suffers, alienating parties from choosing it as a preferred site for arbitration, is the excessive judicial interference, be it in the initial stages during the institution of the arbitration tribunal or in the later stages of resolution when the awards stage starts and the delay inordinately sets in thereby often defeating the very purpose for which an alternative route to arbitration was explored in the first place.¹⁷ The courts have, although with good intentions to uphold and see that fairness is done, interfered way too much in arbitral processes, often laying down inconsistent ratios and opening up scope for further litigation based on their various interpretations. One such example is an interpretation of “public policy” and the sheer subjectivity of the matter.¹⁸ However, the 2015 amendments to sections 9 and 36 have tried to give more power to the arbitral institutions.

The need for government support in strengthening these institutions is paramount.¹⁹ as the infrastructure and resources of these bodies need to be ramped up, following international models, for example, SIAC and Hong Kong International Arbitration Centre (HKIAC). With

¹³ ‘Maharashtra readies arbitration policy’, Business Standard (online), 15.10.2016, available at http://www.business-standard.com/article/economy-policy/maharashtra-readies-arbitration-policy116101400574_1.html (accessed on 17.02.2024).

¹⁴ Section 24(3) and (4) read with section 13(2), AO.

¹⁵ 2015 Amendment

¹⁶ Special Address by Justice A.P. Shah at the Nani Palkhivala Arbitration Centre 9th Annual International Conference on Arbitration on Current Issues in Domestic and International Arbitration, 18.02.2017

¹⁷ Bibek Debroy and Suparna Jain, ‘Strengthening Arbitration and its Enforcement in India—Resolve in India’, Research Paper of the Niti Ayog (2016), p.15, available at http://niti.gov.in/writereaddata/files/document_publication/Arbitration.pdf (accessed on 02.03.2024).

¹⁸ ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705; ONGC v. Western Geco International Ltd., (2014) 9 SCC 263.

¹⁹ Gourav Asati & Sarthak Chouhan, Institutional Arbitration, Can India Efficiently Deal with it? SOCIETY FOR EXCELLENCE IN ARBITRATION LAW, MAY 16, 2021 available at - <https://rmlnluseal.home.blog/2021/05/16/institutional-arbitration-can-india-efficiently-deal-with-it/>

autonomy and capacity vested in these tribunals, the dispute resolution process will be faster and will garner more faith from the stakeholders to choose it. With such capable arbitral institutions, India can realise its potential of developing into an international commercial arbitration hub.

IV. EVALUATING INSTITUTIONAL ARBITRATION AS THE BEST OPTION

The rapid growth of international trade has brought stakeholders from different jurisdictions to collaborate, participate and settle on some similar planes when transacting business and, at the same time, need a stable solution for dispute resolution without getting mired in the delays of a cross-country litigation. The New York Convention provides the perfect balance to step up international commercial arbitration in these times.²⁰ Ever since the apex court's stand in *F.C.I. v. Joginderpal Mohinderpal*²¹ that the arbitral process should be as simple as possible and devoid of technical and procedural difficulties to make it effectively speedy, all amendments and efforts have been focused on the efficiency of the arbitration system. In recent times, if higher, more valuable and international stakes are involved, then India has to ramp up its institutional arbitration centres fast enough. Article 8 of the UNCITRAL Model Law, which declares "an agreement by the parties to submit to arbitration all or certain disputes" is the essence of any arbitration agreement and the cornerstone for the process, hence when parties submit their dispute to an arbitral institution, the rules of that institution should be given absolute priority. This works as a forum that is non-governmental and parties, by exercising their discretion,²² feel more comfortable and confident about the dispute resolution process.

In drawing a comparison between ad hoc and institutional arbitration, we find the former suffering from certain problems that the latter can resolve as a better option. Firstly, concerning the appointment of arbitrators, if both parties cannot reach a common ground concerning the appointment owing to issues of scrutiny, influence, competence and faith, that invariably delays the process. Often, if either party wants to slow down or deliberately create an obstacle to the smooth functioning of the process, the other party would bear the brunt of the consequences of such actions.²³ Repeated challenges to the process and dragging the issue to court could ultimately delay and defeat the entire purpose as well.²⁴ Institutes are bodies with a set system of governance, prescribed rules and a normative framework that is entirely designed to combat the ills of subjective and whimsical actions by the parties. The arbitration process and its various steps are guided according to the rules of the procedure that are laid down by the appointment of arbitrators, timelines, awards and scrutiny, fixing of venue, fees and costs and review of awards so that they align with the laws of the land.²⁵

²⁰ Edlira Aliaj, 'Dispute resolution through ad hoc and institutional arbitration', (2016) Academic Journal of Business, Administration, Law and Social Sciences 2(2) 241 <http://iipcccl.org/wcontent/uploads/2016/07/241-250.pdf> (Last accessed 12 March 2024)

²¹ (1989) 2 SCC 347.

²² Gray B Born, *International Arbitration: Law and Practice* (Wolters Kluwer 2012) 33.

²³ Sundra Rajoo, 'Institutional and Ad hoc Arbitrations: Advantages and Disadvantages', [2010] The Law Review 547, <https://www.extractiveshub.org/servefile/getFile/id/2612> last accessed 12 March 2024

²⁴ *ibid*

²⁵ Edlira Aliaj, 'Dispute resolution through ad hoc and institutional arbitration', (2016) Academic Journal of Business, Administration, Law and Social Sciences 2(2) 241 <http://iipcccl.org/wp-content/uploads/2016/07/241-250.pdf> (last accessed 12 March 2024)

Having a definitive and normative sketch work of the process makes two things easier –

- Parties can make an informed choice of not just the appointing members and constituting the tribunal, but the entire process as it will play out in the course of dispute resolution
- Secondly, it acts as a measure of certainty to counter any unforeseen challenges and disagreements in the course of the process to keep the process on track and not get delayed.

Institutional arbitrations have performed very well in some of the premier centres of international commercial arbitration, like the London Court of International Arbitration, the International Chamber of Commerce, the American Arbitration Association and its International Centre for Dispute Resolution and the Singapore International Arbitral Centre. The main reason for their success is a normative, pre-determined process.²⁶, which saves the labour of determining a course of action. These centres have their own model rules, which need to be incorporated in the contract when the parties agree to submit their disputes to them. The presence of expert panels further adds to their dexterity and expertise, and trained staff who regulate the process, which adds to the dignity of the process and the reputation they command. These centres have the most relevant clauses like “*concerning competence-competence, separability, provisional measures, disclosure, arbitrator impartiality, corrections and challenges to awards, replacement of arbitrators and costs*”²⁷ In their model rules that help counter unforeseen disagreements in the course of the process.

V. STEPS TOWARDS ENCOURAGING INSTITUTIONAL ARBITRATION IN INDIA

The Mumbai Centre (MCIA) took one important step.²⁸ In the Sun Pharmaceuticals international arbitration case when it was ordered to appoint arbitrators by the Supreme Court of India. This push or backing is important in order to establish and encourage these institutions, and to make them creditworthy as well.

The International Centre for Alternative Dispute Resolution (ICADR) was set up in 1995 as a registered society, but could not make substantial progress. After the high-level committee report on institutional arbitration, the central Government took it up and then, by way of an ordinance, finally, as an act of the parliament, passed the New Delhi International Arbitration Centre Act, 2019 (NDIAC Act)²⁹ - with the aspirations to make it as prestigious as the premier international institutions. It has been declared as an institution of national importance, like the educational institutions of high repute, and it can be estimated that the centre will receive a tremendous infrastructural boost from the government.

²⁶ Ibid

²⁷ Ibid

²⁸ Sun Pharmaceuticals Industries v. Falma Organics Ltd. (2014) Arbitration Case No.33 (SC)

²⁹ Department of Legal Affairs

<https://legalaffairs.gov.in/sites/default/files/The%20New%20Delhi%20International%20Arbitration%20Centre%20Act%202019.pdf>

The Amendment Act of 2019³⁰ is another big step. However, some of its provisions are yet to be notified, and some others have mixed consequences as well. The Act suggests the formation of a council for grading the arbitral institutions in the country as a boost to popularise and credit them. However, the bill deviated from the committee report, which suggested the formation of the council with independent members and the gradation of only institutes, while the Act stipulates appointments by the Central government itself and the gradation of both arbitrators and arbitral institutions. This again dilutes the focus and is evaluated by the council, subject to manipulations and influence, as the Government itself is one of the biggest litigators in this country. In this sense, if the Government itself makes the appointments, then the credibility of the third parties decreases; thereby, it becomes less trusted.³¹

The next problem lies with the appointment of arbitral institutions by the Courts, in which there are two situations suggested – either refer the dispute to the designated centre or, if any particular High court does not have such a graded centre, then maintain a panel of arbitrators who are usually retired High Court judges to ad hoc arbitrate the matter. This is a half-hearted attempt as it would divert the cause; rather, the entire focus should be on choosing arbitration centres and streamlining the process through them. The New Delhi International Arbitration Centre (“NDIAC”), which has been given special attention, should be encouraged as a designated centre till more such institutions come up at various state and regional levels.³²

The statutory backing will help.³³ Clear any misconceptions about the arbitral institutes and give a boost to their popularity so that people choose them as their preferred seat of arbitration.

Last but not least, there is another important area in arbitration that only the institutional models can properly promise- Emergency Arbitration. This is a process where the process is conducted on an exigency level, with very little procedural and documentary compliance, as per the parties’ consent, so that the resolution can be reached very fast. The arbitral institutions around the globe have introduced unique styles and systems of conducting emergency arbitration proceedings, and it is entirely dependent on the institutions to design their ways of doing it; parties just consent. Rule 20A, Nani Palkhivala Arbitration Centre’s Rules to Regulate Arbitration, Part IV, Madras High Court Arbitration Centre (MHCAC)

³⁰ THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2019. NO. 33 OF 2019. [9th August, 2019.] An Act further to amend the Arbitration and Conciliation Act, 1996.

³¹ Zisha Rizvi, “The Shift Towards Institutional Arbitration: Critically Examining the Arbitration (Amendment) Act 2019” *SSRN Electronic Journal* 1–21 (2020).

³² Ibid at 16

³³ Shiv Sang Thakur, “Institutional Arbitration Post the Arbitration and Conciliation (Amendment) Act, 2019” October 2020, available at -<https://www.thearbitrationworkshop.com/post/institutional-arbitration-post-the-arbitration-and-conciliation-amendment-act-2019>

³³ Department of Legal Affairs
<https://legallaffairs.gov.in/sites/default/files/The%20New%20Delhi%20International%20Arbitration%20Centre%20Act%202019.pdf>

³³ THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2019. NO. 33 OF 2019. [9th August, 2019.] An Act further to amend the Arbitration and Conciliation Act, 1996.

³³ Zisha Rizvi, “The Shift Towards Institutional Arbitration: Critically Examining the Arbitration (Amendment) Act 2019” *SSRN Electronic Journal* 1–21 (2020).

³³ Ibid at 16

³³ Shiv Sang Thakur, “Institutional Arbitration Post the Arbitration and Conciliation (Amendment) Act, 2019” October 2020, available at - (last accessed on 13/03/2024)

Rules, 2014, Rule 57(b), ICA Rules of Domestic Commercial Arbitration 2016, are certain Indian centres engaging in the same process.³⁴ In the recent case of *Amazon Investment Holdings v Future Retail Limited*³⁵ Emergency arbitration was conducted under the SIAC rules, Singapore. The awards like interim awards, as passed were challenged in India as the Indian law does not explicitly recognise the concept of emergency arbitration. Still, it was nevertheless held valid, thereby upholding the autonomy of the institution that is administering the process.

The goal towards making India a hub of international commercial arbitration goes through the development of institutions that conduct these arbitral proceedings with a high degree of efficiency.³⁶ In the success of arbitral proceedings, international stakeholders will show interest and preference to select India as the seat of arbitration. In this way, investment intercourse will grow in tandem with the adjudication process.

VI. THE TRIBAL SOLUTION OF THE INDIGENOUS ARBITRATION MECHANISM

When deliberating on indigenous knowledge systems, one very important aspect that has to be kept in mind is the current status of the tribal societies that heavily rely on such knowledge. On the issue of arbitration, one intrinsic aspect is dispute resolution mechanisms that involve tribal and non-tribal parties, respectively. Tribal economic development requires venturing out beyond tribal societies and advancing their commodities and knowledge into the modern society, but there is no transaction without disputes or the chance of disputes. The inherent dichotomy in this problem is whether and to what extent, when the tribes are advancing their business interest beyond their societies, they're endangering their sovereignty and security. At the same time, when the non-tribal partners are entering into business ventures with the tribal partners, how would they protect their inherent interests while at the same time ensure a smooth transaction? The answer to this complicated situation lies in embracing arbitration- something which was always present in the roots has to be revitalised once again in the modern context.³⁷

In choosing arbitration for dispute resolution, the tribes retain the importance of laying a strong foundation for participation and diplomatic dialogue. Business interest in this matter might be pedestrian in other contexts, but when it involves a particular tribe, their political integrity and sovereignty over their distinct lifestyle come into play, and hence any resolution of dispute on that scale and manner has to be a customised solution suiting the purpose. The importance of arbitration should not always be coloured with modern legislative coating but rather the modus in the process has to be realised as something indigenous, rudimentary and

³⁴ India: Recognising Emergency Arbitrations In India: The Need Of The Hour?, 28 June 2021, https://www.mondaq.com/india/arbitration--dispute-resolution/1084480/recognising-emergency-arbitrations-in-india-the-need-of-the-hour#_ftn10 (last accessed on 13/02/2024)

³⁵ CIVIL APPEAL NOs. 4494-4495 OF 2021

³⁶ Amitabh Kant, 'View: Effective arbitration process can make India a sought after business destination', The Economic Times (New Delhi, 24 July 2019)

<https://economictimes.indiatimes.com/news/economy/policy/view-how-proper-arbitration-mechanism-can-make-india-a-sought-after-business-destination/articleshow/70368747.cms> (last accessed on 12 March 2024)

³⁷ Jessie Sixkiller, "Procedural Fairness: Ensuring Tribal Civil Jurisdiction After Plains Commerce Bank," 26(3) *Arizona Journal of International and Comparative*. 779 (2009).

fundamental to regional lifestyles. For the very same reason, tribal societies should engage and appreciate arbitration mechanisms for their dispute resolution process.

DECLARATION

I do hereby affirm that the submission is original and not plagiarised. I had prepared the same as a part of my LLM course work consideration in Arbitration law paper at WB NUJS.

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