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COMPETENCE OF ARBITRAL TRIBUNALS: CONTRASTING ASPECTS OF THE UNITED KINGDOM AND INDIA

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Abstract

Arbitration is a convenient and mutually agree upon way of resolving disputes. It encourages parties in dispute to resolve their issues out of court. Arbitration is typically used when two parties have an established business relationship. The tenets of this specialized dispute resolution procedure are rooted in the complexity of the legal system and case laws. It seeks to preserve the autonomy of the disputing party while offering an effective conflict settlement procedure. Nonetheless arbitration is additionally growing more prevalent in non-commercial parties. Courts and disputing parties now bear less of a burden because of arbitration. A person acting as a judge (arbitrator) resolves binding issues in an arbitration proceeding; the domestic court shall not have the jurisdiction if the parties to the dispute did not include arbitration in their contract. Every such situations has been examined closely.

Keywords: Arbitration, case laws, disputing parties, business relationship, non-commercial parties, arbitrator.

Introduction

"In the modern world, the traditional judicial system fails to deal with the ever-increasing burden of legal proceedings. Arbitration is a popular method for settling conflicts and disputes.

Alternative Dispute Resolution is a legal system that is distinct from the traditional judicial system. It encompasses a range of standardized methods for resolving dispute issues more effectively when the traditional way of settling conflicts and negotiation fails. It is a non-litigation, inexpensive, and time-saving alternative for resolving disputes."[1]

One of the most popular methods of resolving disputes in the world today is arbitration, which frequently involves private parties, businesses, states, and even individual parties. Although there may not be a single, universal definition of arbitration, international experts from numerous nations concur on a few essential components[2]. Arbitration is primarily a private process[3] for resolving disputes between parties that begins with their voluntary decision to submit disagreements to one or more unbiased, non-governmental arbitrators, whose expertise and judgement they recognize.

Arbitration has been deemed an appealing alternative to conventional court-based litigation, whether intentionally or not, for various reasons. For example, arbitration is considered to be a significantly time and cost saving, neutral, informal, flexible, confidential, efficient, more autonomous and more business-oriented method of dispute resolution.[4]

It is generally required that the arbitration agreement between the parties must be in writing[5]. An agreement of arbitration may be a commercial contract[6] in the form of a clause or be a distinct agreement in itself.[7] Arbitration agreements are executed and entered into after a dispute arises between the parties. It is unlikely for the parties to sign anything after disagreements[8]. As a result, even if the business dealings between the parties remain cordial and robust, it is usually preferable to include an arbitration clause in the initial contract.[9]

Individuals who adopt arbitration as a dispute resolution method give up their right or entitlement to have their disputes resolved by a national court[10] or other appropriate state court.

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[1] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[2] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[3] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[4] Gary B Born, "*international Commercial Arbitration,"* 2nd edn
[5] The Arbitration and Conciliation Act, 1996 (Act of 1996), S.7(1).
[6] Margret L. Moses, *"The Principles and Practice of International Commercial Arbitration."*
[7] Margret L. Moses, *"The Principles and Practice of International Commercial Arbitration."*
[8] Gary B Born, "*international Commercial Arbitration,"* 2nd edn
[9] Margret L. Moses, *"The Principles and Practice of International Commercial Arbitration."*
[10] Gary B Born, "*international Commercial Arbitration,"* 2nd edn

The parties to the dispute mutually agree to settle their disagreements in private independent of the State's legal system. Entering into an arbitration agreement signifies the surrender of a significant entitlement, that is, the right to judicial resolution of disputes, while simultaneously conferring other privileges. The recently established rights include, among other things, the power to determine the laws and rules guiding the arbitration process, any convenient locations, the language to be used during the process, and the arbitrators themselves, whom the parties may choose based on their specialized knowledge of the subject matter of the dispute caused.

Historical Background of Arbitration

The term 'Arbitration' literally refers to "settlement or determination of a dispute outside the court by a private individual." The person who is referred to as "private individual" is known as the "Arbitrator," settling the matter between the controversialists. "According to the biblical theory,[11] King Solomon was the primary arbitrator when he settled a dispute between two women claiming to be the mother of a baby boy. Some authors have proclaimed that King Solomon's procedure is the same as the one employed in modern arbitration. Arbitration was also utilized by Philip the Second who was the father of Alexander the Great to settle domestic disputes in Greece in 337[12] B.C. in a dispute between Athens and Megara over possession of the island of Salamis around 600 B.C. The first law for arbitration is traced back to England to the seventeenth century, when merchants attracted by the lower cost and speed of arbitration considered resolving their disputes before resorting to litigation. In 1698 John Locke, an English philosopher, seemed to have a contempt for the legal field, which prompted his thoughts for arbitration so he with four Board of Trade members drafted an arbitration legislation, which was passed the following year known as the Locke Act/Arbitration Act 1698. Historical literature suggests that not along with private parties, the government and even the crown tried to resolve their issues through arbitration."[13]

[11] Gary B Born, "*international Commercial Arbitration,*" 2nd edn
[12] Gary B Born, "*international Commercial Arbitration,*" 2nd edn
[13] Kateryna Honocharenko, "*has Arbitration Always Been Favor in England,*" Kulewar Arbitral blog, (Jul. 6, 2021) https://arbitrationblog.Kluwerarbitration.com/2019.07/11/ roebuck-lecture-2019-has-arbitration-always-been-favoured-in-england/.

Arbitration was a common form of dispute resolution in construction and insurance contracts. In the late 18th century, there were basically two types of parties in a dispute, the first kind agreed to go arbitration directly and the second category were to arbitration by the judicial courts. The first form was not binding, while the second obliterated the time and expense of arbitral proceedings. "When the Act provided statutory recognition to arbitration, it increased the number of arbitrations in the 18th century. The subsequent Acts contributed to the Act, endorsing arbitration. In the 1845 Act, Statutory powers to refer parties to arbitration where their disputes were covered by an arbitration agreement were first embodied, followed by making all arbitration agreements irrevocable in the 1860 Act. Arbitral awards could no longer be challenged to judicial review for legal issues under the 1979 Act. Finally, the mechanism peaked with the introduction of the Arbitration Act of 1996. It has not opted to follow the UNCITRAL Model Law, however, contains similar provisions."[14]

"According to legislative developments and historical circumstances, arbitration evolved in the United Kingdom as an ancillary component of the legal system. Arbitration was a common law affair throughout this period in English history[15], but it was an entirely private arrangement with no authority or precedent and no binding power on the parties involved. Arbitration is a cornerstone of the legal system in contemporary England which has been supervised and developed by the courts, providing the same binding authority as the judgement of a court of law[16]. Arbitration has evolved as one auxiliary piece of the legal system only after a significant amount of time has passed, due to incremental legislative changes. India also has a history of arbitration.[17] The concept of non-judicial dispute resolution was widespread in ancient Indian before the adoption of any codified law. Yajna Valka's writings make references to certain special arbitration courts in ancient India. Yagnavalkya proposed and established the kula, Serni & puha as tribunals to settle conflicts between individuals, families, groups, and tribes.

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[14] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).

[15] Kateryna Honocharenko, "*has Arbitration Always Been Favor in England,"* Kulewar Arbitral blog, (Jul. 6, 2021) https://arbitrationblog.Kluwerarbitration.com/2019.07/11/ roebuck-lecture-2019-has-arbitration-always-been-favoured-in-england/.

[16] Kateryna Honocharenko, "*has Arbitration Always Been Favor in England,"* Kulewar Arbitral blog, (Jul. 6, 2021) https://arbitrationblog.Kluwerarbitration.com/2019.07/11/ roebuck-lecture-2019-has-arbitration-always-been-favoured-in-england/.

[17] Kateryna Honocharenko, "*has Arbitration Always Been Favor in England,"* Kulewar Arbitral blog, (Jul. 6, 2021) https://arbitrationblog.Kluwerarbitration.com/2019.07/11/ roebuck-lecture-2019-has-arbitration-always-been-favoured-in-england/.

During Yagnavalkya's time, there was tremendous growth and improvement in commerce, industry, and trade, with Indian merchants believed to have sailed the seven seas, laying the foundations of international trade. In India, the panchayat system is regarded as one of the earliest forms of arbitration."[18]

"Chief Justice A. Marten comments while describing the concept of arbitration, "It is indeed a striking feature of ordinary Indian life. And I would go as far as to say that it is much more prevalent at all levels of society than it is in England. Referring matters to a panchayat is one of the oldest ways of resolving disputes in India. And, in many cases, the decision is reached through mutual agreement between the parties." The Arbitration Act of 1899 was India's first arbitration statute, but it was confined to the three presidential towns of Madras, Bombay, and Calcutta.[19] This statute was based on the English Arbitration Act, 1899[20] and was eventually extended to the rest of British India under Section 89, Schedule II of the Code of Civil Procedure 1908[21]. The Act of 1899 and the Code of Civil Procedure, 1908 were deemed inefficient and too technical, hence, the Arbitration Act of 1940 was adopted[22], which repealed the Act of 1899 and a few specific Sections of the Code of Civil Procedure, 1908. The Act of 1940 was a comprehensive piece of law that reflected the English Arbitration Act of 1934. However, it did not include provisions for the enforcement of foreign awards and thus dealt only with domestic arbitrations. The Act of 1940 failed to achieve its goal because its implementation was inadequate. The Act of 1940 gave courts the authority to interfere in arbitration proceedings at any step along the way, from the selection of the arbitrator to the passing of the award. This fostered the practice of court monitoring arbitration procedures rather than elevating arbitration to the level of an alternate dispute resolution procedure. As a result, this was exacerbated by the fact that the Courts in India had a significant backlog of cases, delaying the settlement of the matters that had been brought before them. Thus, defeating the entire purpose of the arbitration. The Supreme Court of India regularly criticized the 1940

[18] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[19] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[20] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[21] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[22] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).

Act. It can be observed in cases like the *Food Corporation v. Joginderpal*[23], where it observed that the law of arbitration must be "simple, less technical and more responsible to the actual reality of the situations, responsive to the canons of justice and fair play." And in *Guru Nanak Foundation v. Rattan Singh*[24], the Supreme Court Justice observed and stated that "Interminable, time consuming, complex and expensive Court procedures impelled jurists to search for an alternative Forum, less formal, more effective and speedier for resolution of disputes, avoiding procedural claptrap and this led them to Arbitration Act, 1940. However, the way in which the proceedings under the Act are conducted and without exception challenged in Courts, has made Lawyers laugh and legal philosophers weep." Even then, the government failed to make the necessary changes to the Act of 1940. However, following privatization, globalization, and liberalization in India during 1991, legal reforms were made to attract international investors for ease of doing business. One of the reforms was the Arbitration and Conciliation Act of 1996; which is based on the UNCITRAL Model Law on International Commercial Arbitration of 1985 that encompassed domestic and international arbitration effectively repealing the Act of 1940. It was considered by Indian legislators while drafting the Act, as stated in the Preamble to the Act. It states that the Act is in accordance with and promote the UNCITRAL Model Law. Many of the provisions of the Act of 1996 are in conformity with the Model Law as a result of this adherence to the Model Law and some provisions were drawn from English arbitration Act. Even then, the 1996 Act had several flaws, notably the arbitrator's exorbitant fee and excessive judicial interference, authority to Arbitrator to issue a summons, taking evidence, examine witnesses, power to enforce awards, etc., was not provided."[25]

"In 2014, a Law Commission Report[26] suggested several modifications to the Act of 1996[27] which were accepted by the legislatures, and thus, the Arbitration and Conciliation (Amendment) Act 2015 came into effect in 2015[28], intending to expedite the arbitration procedure, restrict judicial interference, facilitating quick contract enforcement, easy recovery of monetary claims, decreasing the pendency of cases in courts, to judicial interference, facilitating quick contract enforcement, easy recovery of monetary claims, decreasing the

[23] Food Corporation v. Joginderpal (1989) AIR 1263.
[24] Guru Nanak Foundation v. Rattan Singh (1981) 4 SCC 634.
[25] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[26] Law Commission of India, Report No. 246, August 2014.
[27] Law Commission of India, Report No. 246, August 2014.
[28] Law Commission of India, Report No. 246, August 2014.

pendency of cases in courts, in order to encourage foreign investment. Even though the Act of 2015 provided new and improved provisions, it failed to promote institutional arbitration in India. As a result, parties to arbitration preferred a foreign seat instead."[29]

The government, in 2017, set up a High-Level Committee to review the institutionalization of arbitration mechanism in India and ponder over the performance of ICADR[30]. "One of its main recommendations was to establish an Autonomous Body for arbitration, named the Arbitration Promotion Council of India (APCI)[31], comprised of various stakeholders, to regulate and promote arbitration in India."[32] The aftermath was enforcement of the Arbitration and Conciliation (Amendment) Act 2019. With the enforcement of the Act, institutional arbitration came into being in India. The gave sole authority to arbitral institutions designates by the Suprem Court or the High Court to select arbitrators. "It tackles certain shortcomings that occurred due to the Act of 2015[33]. It also provided for the confidentiality of proceedings, easing of time limitations, and time-bound completion of written submissions, etc.[34] The establishment of the Arbitral Council of India to promote alternative dispute resolution systems by framing policies, grading arbitral institutions, and accrediting arbitrators, as well as making policies for the establishment, operation, and maintenance of professional standards for all alternate dispute systems and maintaining a depository of arbitral awards produced in India and abroad. The next Amendment Act was introduced in March 2021 with a retrospective effect from November 2020[35]." [36]

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[29] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[30] Rise of Alternative Dispute Resolution Stepping Towards Efficient Justice System, (Feb. 27, 2022), https://www.alliance.edu.in/research/ACADR/assets/publication/Rise-of-Alternative-Dispute-Resolution-Stepping-Towards-Efficient-Justice-System.pdf.
[31] Rise of Alternative Dispute Resolution Stepping Towards Efficient Justice System, (Feb. 27, 2022), https://www.alliance.edu.in/research/ACADR/assets/publication/Rise-of-Alternative-Dispute-Resolution-Stepping-Towards-Efficient-Justice-System.pdf.
[32] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[33] Rise of Alternative Dispute Resolution Stepping Towards Efficient Justice System, (Feb. 27, 2022), https://www.alliance.edu.in/research/ACADR/assets/publication/Rise-of-Alternative-Dispute-Resolution-Stepping-Towards-Efficient-Justice-System.pdf.
[34] Rise of Alternative Dispute Resolution Stepping Towards Efficient Justice System, (Feb. 27, 2022), https://www.alliance.edu.in/research/ACADR/assets/publication/Rise-of-Alternative-Dispute-Resolution-Stepping-Towards-Efficient-Justice-System.pdf.
[35] The Arbitration and Conciliation (Amendment) Act, 2021, No. 3, Acts of Parliament, 2021 (India).
[36] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).

Conforming to the provisions of Amendment Act of 2021, if it can prove on prima facie basis that the arbitration agreement or the contract was enforced by usage of corruption or fraud[37], then the court shall stay order indefinitely with a retrospective effect from October 2015, might be arising a greater confusion.

"The Supreme Court held the same in *McDermott International Inc. v. Burn Standard Co. Ltd*[38], that the "*Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in a few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it*." This judgment was also taken into consideration recently."[39]

A new provision was added to the law defining the qualification, experience and standards for appointing arbitrators. The rules employed indistinct and undefined language. Finally, schedule VIII of the Act was introduces, which previously limited the autonomy of disputants and prevented foreigners from acting as arbitrators in India. With the passage of the New Delhi International Arbitration Center Act, 2019[40], the cabinet has authorized NDIAC to manage arbitration. Conciliation and commutation proceedings.[41] "The NDIAC will be fully established after the Final Rules are published by the government[42]. Since its establishment,

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[37] Rise of Alternative Dispute Resolution Stepping Towards Efficient Justice System, (Feb. 27, 2022), https://www.alliance.edu.in/research/ACADR/assets/publication/Rise-of-Alternative-Dispute-Resolution-Stepping-Towards-Efficient-Justice-System.pdf.

[38] Mc Dermott International Inc. v. Burn Standard Co. Ltd. (2006) 11 SCC 181.

[39] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).

[40] Pratham Sharma, "Cabinet Approves New Delhi International Arbitration Centre Bill," *Mint*, Mar. 07, 2019, *available at*: https://www.livemint.com/news/india/cabinet-approves-new-delhi-international-arbitration-centre-bill-1562167019992.html (last visited on Mar. 3, 2024).

[41] Pratham Sharma, "Cabinet Approves New Delhi International Arbitration Centre Bill," *Mint*, Mar. 07, 2019, *available at*: https://www.livemint.com/news/india/cabinet-approves-new-delhi-international-arbitration-centre-bill-1562167019992.html (last visited on Mar. 3, 2024).

[42] Pratham Sharma, "Cabinet Approves New Delhi International Arbitration Centre Bill," *Mint*, Mar. 07, 2019, *available at*: https://www.livemint.com/news/india/cabinet-approves-new-delhi-international-arbitration-centre-bill-1562167019992.html (last visited on Mar. 3, 2024).

India's arbitration system has undergone numerous revisions and continues to improve. Just in the past 5-6 years[43], there have been various amendments and judicial decisions that have substantially contributed to the expansion of arbitration as an acceptable alternative to the traditional method of dispute resolution. Several areas like institutional arbitration need attention. Absolute judicial backing and limited court interference will provide a significant boost to institutional arbitration in India."[44]

What are Tribunal?

A tribunal basically is a judging body that is appointed to make a judgment or inquiry, it means "Seat or Bench upon which a Judge or Judges sit in a Court or Court of Justice." It even includes ordinary courts. The word "tribunal" is used in Articles 136[45] and 227[46] of the Indian Constitution. In Administrative Law, the word "tribunal" is used to refer to the adjudicatory bodies outside the sphere or ordinary courts.

"Arbitration is an alternative method provided for dispute resolution in civil matters. It is a way in which a dispute is decided by private individuals appointed and not the judicial officers appointed to the courts and tribunals of the country directly. These private individuals are called arbitrators, and they are *quasi-judicial* officers. However, all the matters cannot be decided by way of arbitration. Such matters involve matters related to crimes, matrimony, insolvency and winding up, guardianship, tenancy, testamentary matters, trusts, etc. This bifurcation is made by keeping in mind the kind of right affected, i.e., '*right in rem'* or '*right in personam'* and also the jurisdiction of special courts and the analysis of public policy."[47]

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[43] Pratham Sharma, "Cabinet Approves New Delhi International Arbitration Centre Bill," *Mint*, Mar. 07, 2019, *available at*: https://www.livemint.com/news/india/cabinet-approves-new-delhi-international-arbitration-centre-bill-1562167019992.html (last visited on Mar. 3, 2024).

[44] Pratham Sharma, "Cabinet Approves New Delhi International Arbitration Centre Bill," *Mint*, Mar. 07, 2019, *available at*: https://www.livemint.com/news/india/cabinet-approves-new-delhi-international-arbitration-centre-bill-1562167019992.html (last visited on Mar. 3, 2024).

[45] The Constitution of India, art. 136. Grants the Supreme Court the discretion to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of Inda.

[46] The Constitution of India, art. 227. The Indian Constitution confers supervisory powers in the High Court over all the courts and tribunals interrelation to which it exercises jurisdiction.

[47] Mudit Gupta, "*All About the Arbitral Tribunal," available at:* https://blog.ipleaders.in/all-about-the-arbitral-tribunal/ (last visited March 1, 2023).

"Whenever a dispute arises between two parties and they decide to resolve the dispute through arbitration, an arbitral tribunal is to be set up. An "arbitral tribunal" means a sole arbitrator or a panel of arbitrators. Their task is to adjudicate and resolve the dispute and to provide an arbitral award"[48].

Doctrine of Competence-Competence

"A matter of paramount significance within the realm of international arbitration is the authority vested in an Arbitral Tribunal to deliberate upon and resolve conflicts pertaining to its jurisdiction encompassing matters like the presence, validity, legality, and ambit of the parties' arbitration agreement. This particular issue forms the core of the competence-competence doctrine[49], which is alternatively known as the competence-competence principle[50]. The competence-competence doctrine profoundly connects with laws across jurisdictions governing the distribution of jurisdictional authority between Arbitral Tribunals and Domestic Courts." [51]

"Having regard to the fundamental principle in international arbitration that the tribunal has competence -competence to rule on its own jurisdiction, the better view is that the initial decision

by the arbitral institution to consolidate should be regarded as *administrative in nature* and should not purport to create the jurisdiction of the tribunal of the consolidated proceedings."[52]

[48] Mudit Gupta, "*All About the Arbitral Tribunal," available at:* https://blog.ipleaders.in/all-about-the-arbitral-tribunal/ (last visited March 1, 2023).

[49] Vasant Rajasekhara and Harshvardhan Korada, "Competence-Competence Doctrine in Indian Arbitration Law Jurisprudence: An In-Depth Analysis... Https://Www.scconline.com/Blog/Post/2023/11/01/Competence-Competence-Doctrine-Indian-Arbitration-Law-Jurisprudence-In-Depth-Analysis/" *SCC Online* (2023).

[50] Vasant Rajasekhara and Harshvardhan Korada, "Competence-Competence Doctrine in Indian Arbitration Law Jurisprudence: An In-Depth Analysis... Https://Www.scconline.com/Blog/Post/2023/11/01/Competence-Competence-Doctrine-Indian-Arbitration-Law-Jurisprudence-In-Depth-Analysis/" *SCC Online* (2023).

[51] Vasant Rajasekhara and Harshvardhan Korada, "Competence-Competence Doctrine in Indian Arbitration Law Jurisprudence: An In-Depth Analysis... Https://Www.scconline.com/Blog/Post/2023/11/01/Competence-Competence-Doctrine-Indian-Arbitration-Law-Jurisprudence-In-Depth-Analysis/" *SCC Online* (2023).

[52] Eunice Chan Swee En (Drew & Napier), "*Consolidation of Arbitral Proceedings and its Ramifications on a Party's Right to Challenge the Jurisdiction of the Tribunal and the Arbitral Award*" Kluwer Arbitration Blog (March 21st,

Almost all developed legal systems, especially those that have adopted the UNCITRAL Model Law, recognize the power of arbitral tribunals[53] (competence-competence or kompetenz-kompetenz) to investigate and resolve disputes based on their jurisdiction, as well as the possibility of subsequent judicial review[54]. Several legal systems agree that jurisdictional issues should be submitted to arbitration when parties contest disputes and disagreements related to the primary contract. Fundamentally, the principle of jurisdiction and competence negates the notion that an arbitral tribunal[55] may not be able to make a fair and independent decision of its jurisdiction to resolve disputes raised by disputing parties. However, it is important to note that not all jurisdictions support the principle of competence with equal gusto.[56]

"The issue of how thoroughly a court should examine the validity of an arbitration agreement comes into play when one party seeks the court's intervention to refer the matter to arbitration. The level of scrutiny applied in such cases largely depends on the substantive law of the relevant jurisdiction.[57] The doctrine of competence-competence plays a pivotal role in guiding the court's approach to determine whether it should conduct an exhaustive review or a preliminary assessment of the arbitration agreement's validity. In jurisdictions that have

2018). *Available at*: https://arbitrationblog.kluwerarbitration.com/2018/03/21/consolidation-arbitral-proceedings-ramifications-partys-right-challenge-jurisdiction-tribunal-arbitral-award/?output=pdf .

[53] Vasant Rajasekhara and Harshvardhan Korada, "Competence-Competence Doctrine in Indian Arbitration Law Jurisprudence: An In-Depth Analysis... Https://Www.scconline.com/Blog/Post/2023/11/01/Competence-Competence-Doctrine-Indian-Arbitration-Law-Jurisprudence-In-Depth-Analysis/" *SCC Online* (2023).

[54] Irina Țuca, Separability and Competence-Competence: A Comparative Perspective, JURDICE, (Jul. 26, 2021, 10:02 AM) https://rlw.juridice.ro/17150/separability-and-competence-competence-a-comparative-perspective.html.

[55] Eunice Chan Swee En (Drew & Napier), "*Consolidation of Arbitral Proceedings and its Ramifications on a Party's Right to Challenge the Jurisdiction of the Tribunal and the Arbitral Award*" Kluwer Arbitration Blog (March 21st, 2018). *Available at*: https://arbitrationblog.kluwerarbitration.com/2018/03/21/consolidation-arbitral-proceedings-ramifications-partys-right-challenge-jurisdiction-tribunal-arbitral-award/?output=pdf .

[56] Irina Țuca, Separability and Competence-Competence: A Comparative Perspective, JURDICE, (Jul. 26, 2021, 10:02 AM) https://rlw.juridice.ro/17150/separability-and-competence-competence-a-comparative-perspective.html.

[57] Irina Țuca, Separability and Competence-Competence: A Comparative Perspective, JURDICE, (Jul. 26, 2021, 10:02 AM) https://rlw.juridice.ro/17150/separability-and-competence-competence-a-comparative-perspective.html.

adopted the UNCITRAL Model Law, arbitrators typically hold the ultimate authority to decide on the validity of the arbitration agreement in most instances."[58]

"The doctrine is internationally recognized as it is adopted by the United Nations Commission on International Trade Law. Among several States, the United Kingdom and India have incorporated arbitration as a dispute resolution method and have implemented the doctrine of competence. Yet, the nature and implementation of the doctrine by the judiciary differ from one State to another since each country revised the Model Law[59] and implemented it to accommodate its legal environment. England & India have adopted a similar doctrine of competence-competence, as its previous arbitration legislations share a common history, and their new arbitration acts have a common foundation. Providing jurisdiction to Tribunals is important since the validity of arbitration proceedings and the enforceability of arbitral awards are both dependent on it."[60]

Doctrine of Competence in India

A general doctrine in international commercial arbitration is the doctrine of competence. Arbitration is a common method of settling disputes among international business parties, as it can be completed much faster than in conventional court proceedings.[61] However, the doctrine of competence is important in international business because it empowers the arbitral tribunal to decide or rule within its own jurisdiction.[62] It simply confirms that the court has discretion to determine its own jurisdiction in resolving disputes between two parties who

[58] Vasant Rajasekhara and Harshvardhan Korada, "Competence-Competence Doctrine in Indian Arbitration Law Jurisprudence: An In-Depth Analysis... Https://Www.scconline.com/Blog/Post/2023/11/01/Competence-Competence-Doctrine-Indian-Arbitration-Law-Jurisprudence-In-Depth-Analysis/" *SCC Online* (2023).
[59] Eunice Chan Swee En (Drew & Napier), "*Consolidation of Arbitral Proceedings and its Ramifications on a Party's Right to Challenge the Jurisdiction of the Tribunal and the Arbitral Award*" Kluwer Arbitration Blog (March 21st, 2018). *Available at*: https://arbitrationblog.kluwerarbitration.com/2018/03/21/consolidation-arbitral-proceedings-ramifications-partys-right-challenge-jurisdiction-tribunal-arbitral-award/?output=pdf .
[60] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).

[61] Eunice Chan Swee En (Drew & Napier), "*Consolidation of Arbitral Proceedings and its Ramifications on a Party's Right to Challenge the Jurisdiction of the Tribunal and the Arbitral Award*" Kluwer Arbitration Blog (March 21st, 2018). *Available at*: https://arbitrationblog.kluwerarbitration.com/2018/03/21/consolidation-arbitral-proceedings-ramifications-partys-right-challenge-jurisdiction-tribunal-arbitral-award/?output=pdf .
[62] Vasant Rajasekhara and Harshvardhan Korada, "Competence-Competence Doctrine in Indian Arbitration Law Jurisprudence: An In-Depth Analysis... Https://Www.scconline.com/Blog/Post/2023/11/01/Competence-Competence-Doctrine-Indian-Arbitration-Law-Jurisprudence-In-Depth-Analysis/" *SCC Online* (2023).

have signed an arbitration agreement. There are some restrictions on the use of this doctrine.[63] "Firstly, an admission from the moving party of its being partisan of the arbitration agreement is required. Second, a party can only involve the doctrine of competence-competence if it acknowledges that the tribunal has jurisdiction."[64]

"The Doctrine of "Kompetenz" (referring to its German Origin) indicates that the arbitrators are empowered to issue a definitive judgement on their jurisdiction with no further review by any court."[65]

The theory of doctrine of competence can be defined in 2 ways:

i. Favorable for the arbitral tribunal
ii. Negative on the national courts of law.

In the case of **Kvaerner Cementation India Ltd. v. Bajranglal Agarwal[66], "**petitioner had filed a civil court complaint seeking a declaration that there was no arbitration clause between the parties and that the existing arbitration procedures were without jurisdiction. Interim relief was granted by a civil court, however, was revoked later. The Bombay High Court's Single Judge refused to interfere with the civil court's order vacating the interim order because the Tribunal has the authority to rule on its jurisdiction under Section 5 read with Section 16 of the Arbitration and Conciliation Act, 1996".[67]

Facts of the case – The case involves a special leave request against a Bombay High Court single judge's decision. The Single Judge refused to interfere with the civil court's decision to

[63] Vasant Rajasekhara and Harshvardhan Korada, "Competence-Competence Doctrine in Indian Arbitration Law Jurisprudence: An In-Depth Analysis... Https://Www.scconline.com/Blog/Post/2023/11/01/Competence-Competence-Doctrine-Indian-Arbitration-Law-Jurisprudence-In-Depth-Analysis/" *SCC Online* (2023).
[64] "The Doctrine of Competence-competence", *available at:* https://grademiners.com/examples/the-doctrine-of-competence-competence#CompetenceCompetence (last visited on March 1, 2024).
[65] "The Doctrine of Competence-Competence", *available at:* https://viamediationcentre.org/readnews/MTM0Ng==/The-doctrine-of-Competence-Competence (last visited on March 1, 2024).
[66] 2012 5 SCC 214.
[67] "The Doctrine of Competence-Competence", *available at:* https://viamediationcentre.org/readnews/MTM0Ng==/The-doctrine-of-Competence-Competence (last visited on March 1, 2024).

vacate an earlier interim injunction. The suit was filed to declare that the arbitration proceedings are outside of the court's jurisdiction because there is no arbitration clause.

The Issue was whether the impugned order of the learned Single Judge of the Bombay High Court was erroneous and should be interfered with?

The Bombay High Court's Single Adjudicator wouldn't obstruct the common court's organization clearing the break request on the grounds that the Council has the position to administer on its ward under Area 5 read with Segment 16 of the Discretion and Assuagement Act, 1996. An injunction against the actions of an arbitral tribunal cannot be issued by a civil court. The court established that S. 16 clarified that the issue of the lawfulness of discretion arrangements might be brought before the Arbitral Council, whose judgment may be pursued under S. 34 by a party disappointed by the choice of the Arbitral Council. As a result, both the petitioner and the Arbitral Tribunal were free to address the issue. The Arbitral Tribunal has the authority to rule on its own jurisdiction even if there is an objection to the existence or validity of the arbitration agreement. Additionally, a combined reading of Subsections (2), (4), and (6) of Section 16 would make it clear that such a decision could be challenged within the scope of Section 34 of the Act. Thus, the challenged order did not contain any infirmities.

The Supreme Court's other decisions, such as the one in Hema Khattar & Others v., further support this decision. A. Shiv Khera v. Ayyasamy A. Reva Electric Car Co. and Paramasivam & Others (P) Ltd. v. The Green Mobil However, Section 33 of the 1940 Arbitration Act gave the courts the authority to determine jurisdiction, so this was not the case. As a result, it was crucial to include Section 16 in the 1996 Act.

In SBP & Co. v. United States[68], the Supreme Court attempted to reshape the Courts' authority. National Insurance Co., Patel Engineering Ltd. Ltd v. by broadening the range of issues that the courts must take into account when referring cases to arbitration or appointing arbitrators, Boghara Polyfab (P) Ltd. The Courts looked to strip and decrease the capacity of the Arbitral Councils to manage on their ability by moving these powers to legal specialists, sabotaging the plan of Area 16 of the Demonstration and the going with hypothesis of skill.

[68] "The Doctrine of Competence-competence", *available at:* https://grademiners.com/examples/the-doctrine-of-competence-competence#CompetenceCompetence (last visited on March 1, 2024).

Segment 11(6A) of the Assertion Act[69] was as of late revoked, with the goal of engaging Arbitral Organizations to dole out issues to intervention as opposed to the legal executive. The High Court held in M/s Mayavti Exchanging Pvt. Ltd. v. According to Pradyuat Deb Burman, the absence of Section 11(6A) does not imply the revival of prior legislation, which expanded the scope of the courts' involvement in arbitration procedures. As a result, the only option is to bring a jurisdictional issue to the Arbitral Tribunal under Section 16. The SBP Patel Engineering verdict was overturned as a result, and the Act reinstated the Competence-Competence doctrine. A presumption that the arbitral tribunal is competent to determine whether the arbitration provision is valid is the doctrine of competence-competence. The absence of locale by the arbitral council invalidates the assumption of ability. However, even if the arbitration tribunal concludes that it has jurisdiction, this decision is not final; the parties may, subject to certain conditions and criteria, file an appeal with the court challenging the arbitration tribunal's decisions regarding its competence.

"The competence-competence concept attempts to increase arbitration's autonomy by restricting the state judge's interference and, above all, by making the arbitrator a judge in his own right. Based on this finding, the competence-competence concept may be considered the cornerstone of arbitration and a probable concept with complete acceptance"[70].

"the doctrine, however, is considered a controversial doctrine as a dilemma exists that an arbitrator determines his or her competence and validity of the arbitration agreement[71] at the same time. The explanation given to this statement is that the parties expect that in the same way the arbitrator has jurisdiction over the arising disputes between the two subject parties, so should he have jurisdiction with regard to his or her own competence . For this reason, it is expected that the courts should respect the will and intentions of the two parties, as stated in their arbitration agreement, as long as the arbitrator acts Uberrima Fides (in good faith) i.e., is not bias or compromised by either of the parties. The doctrine emanated from S. 30 of

[69] "The Doctrine of Competence-competence", *available at:* https://grademiners.com/examples/the-doctrine-of-competence-competence#CompetenceCompetence (last visited on March 1, 2024).
[70] "The Doctrine of Competence-Competence", *available at:* https://viamediationcentre.org/readnews/MTM0Ng==/The-doctrine-of-Competence-Competence (last visited on March 1, 2024).
[71] "The Doctrine of Competence-Competence", *available at:* https://viamediationcentre.org/readnews/MTM0Ng==/The-doctrine-of-Competence-Competence (last visited on March 1, 2024).

the Arbitration Act. This section explicitly permits exclusion agreements, that is, a clause in agreement stating that the arbitrators cannot determine their jurisdiction on their own."[72]

Notwithstanding "that is has been considered that the negative corollary of the Competence-Competence principle is that national courts do not have jurisdiction over disputes relating to the jurisdiction of an arbitral tribunal, unless the underlying arbitration agreement is prima facie null and void."[73]

"It has been suggested that considering otherwise would allow parallel proceedings before an arbitration tribunal and domestic courts, thereby opening the door to dilatory jurisdictional objections."[74]

"The parties to an arbitration agreement may, under certain conditions, raise a jurisdictional objection before State courts in the majority of jurisdictions. The degree to which public courts might have the power to manage on an arbitral council's not entirely settled by (I) the pertinent arrangements in homegrown regulation, frequently consolidating the New York Show 1958,[75] and (ii) their development by case-regulation. A number of states, in particular, have incorporated Article II(3) of the New York Convention into their laws. The phrasing of Article II(3) of the New York Show could be understood either as conceding an incredible interpretative capacity to States' courts (see e.g., German courts' translation), or as giving homegrown courts the position to practice an at first sight survey just (e.g., Swiss courts' understanding).

"Anti-suit injunctions, when permitted by legislation[76], are a key remedy for parties who seek to protect an arbitral tribunal's jurisdiction from state interference at the jurisdictional stage, thereby aiding towards the enforcement of the Competence-Competence. Conversely, anti-arbitration injunctions issued from state courts have been used by a Respondent party as a tool to block arbitration proceedings. As a basis to oppose such injunctions, arbitral tribunals

[72] "The Doctrine of Competence-competence", *available at:* https://grademiners.com/examples/the-doctrine-of-competence-competence#CompetenceCompetence (last visited on March 1, 2024).
[73] Bhatty Saaida, *"Competence-Competence,"* Jud Mundi (April 2, 2024).
[74] Bhatty Saaida, *"Competence-Competence,"* Jud Mundi (April 2, 2024).
[75] Bhatty Saaida, *"Competence-Competence,"* Jud Mundi (April 2, 2024).

[76] Bhatty Saaida, *"Competence-Competence,"* Jud Mundi (April 2, 2024).

often refer to the Competence-Competence principle and have found that such an attempt to circumvent arbitral proceedings amounted to a denial of justice."[77]

Doctrine of Competence in United Kingdom

English law recognizes the doctrine of competence under Section 30[78] of the Arbitration Act, 1996.[79] "It provides that the arbitral tribunal may decide on its substantive jurisdiction and unless agreed by the parties, it may determine: Arbitral tribunals may rule as follows unless the parties agree otherwise; if a valid arbitration agreement exists if the tribunal has been duly established, and what issues have been referred to arbitration under the terms of the arbitration agreement. Prior to the 1996 Act,[80] the competence of an arbitral tribunal to determine on its jurisdiction was an inherent power, as per English law[81], however, it was limited. Any decision made by these tribunals on jurisdiction would only be interim. Therefore, the tribunal's decision on jurisdiction could be challenged in a court because the courts did not recognise the tribunal's authority to render a binding decision on jurisdiction"[82].

A party seeking to challenge the tribunal's jurisdiction has limited rights because the objection must be filed before the merits stage and as soon as the party learns the reasons for the objection. The English put a lot of emphasis in the 1996 Act[83] on the aspect of party autonomy, taking into account the provisions of the Model Law.

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[77] Bhatty Saaida, *"Competence-Competence,"* Jud Mundi (April 2, 2024).

[78] The Arbitration Act, 1996 Section 30 - Competence of tribunal to rule on its own jurisdiction. (1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to (a) whether there is a valid arbitration agreement, (b) whether the tribunal is properly constituted, and (c) what matters have been submitted to arbitration in accordance with the arbitration agreement. (2) Any such ruling may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this part.

[79] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[80] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[81] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[82] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[83] "The Doctrine of Competence-competence", *available at:* https://grademiners.com/examples/the-doctrine-of-competence-competence#CompetenceCompetence (last visited on March 1, 2024).

In a milestone instance of Dallah Land and the travel industry Holding Co v. The Supreme Court clarifies the scope of the competence doctrine's application in England in Ministry of Religious Affairs. The degree to which an English court can utilize its circumspection under Segment 103 (refusal to perceive or implement) of the Discretion Act 1996 to restore issues of truth and regulation to decide if the gatherings to a debate have gone into a substantial intervention arrangement. This choice recommends that a court doesn't have the last power, prompting postponed procedures.

English law does not recognize the negative aspect of competence-competence because, while the tribunal decides on its competence, it does not prevent domestic courts from doing the same thing simultaneously; rather, Section 32 states that the court may decide any question regarding the tribunal's substantive jurisdiction during a preliminary hearing concurrently with the arbitration tribunal. The dispute will be reexamined by the English courts, who will not be bound by the tribunal's decisions.

In this manner, the English courts will give the arbitral council's choice believability, however not decisively or even firmly: they will assess the debate from over again. Parallelism is a huge trait of the English structure. Because the parties can appear before the tribunal concurrently with the court's evaluation of the arbitration clause and do not reserve their decision until the stage of enforcement, the English courts provide a safeguard without infringing on party autonomy. In addition, the courts examine the arbitration clause concurrently with the arbitral tribunal to save time and avoid paternalist infringements on the parties' freedom of choice. Assuming without a doubt the very smart arrangement of the courts concerning mediation is 'greatest help, negligible impedance, then, at that point, it is said that the English courts are the nearest to Master Thomas' oppressed world. However, it is debatable whether or not a court must verify the existence of an arbitration agreement before assigning the dispute[84] to arbitration, and if so, to what extent.

Judicial Interference in Arbitral Proceedings

In **India**, the principle that the judicial system should not interfere with arbitration procedures is the foundation of arbitration. Under Section 9, either party may petition the court for

[84] "The Doctrine of Competence-competence", *available at:* https://grademiners.com/examples/the-doctrine-of-competence-competence#CompetenceCompetence (last visited on March 1, 2024).

interim measures during or before arbitration, and the court may issue interim orders. This allows the judiciary to intervene. The court might mediate to designate authorities. at the point when the gatherings or judges neglect to concur/act/play out any capability shared with them or any method they are supposed to settle on under subclauses (4), (5), or (6) under Segment 11. The law gives the Chief Justice, or any person or institution he chooses, the authority to take the necessary action.

In the landmark cases of **Konkan Railway Corporation v. Rani Construction Pvt Ltd[85],** the Supreme Court states, 'the function of Chief Justice of India and his designates is to ensure the nomination of an arbitrator who is independent, competent and impartial and settles the dispute between the parties to the best of his knowledge. ' Further, under Segment 12, when a party has difficulty the arrangement of mediators in the official courtroom. The Courts may impede in saving an arbitral honor under the guise of public arrangement. Segment 34 accommodates the method involved with carrying an application to save the arbitral choice.

In the recent case of **M/s. Ssangyong Engineering & Construction Co. Ltd. v. National Highway Authority of India Limited[86]**, the Supreme Court discusses the extent of the public policy ground for rejecting an award under the Amendment Act 2015[87]. The Court further stated that 'under no circumstances can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court[88]. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the Act, 1996 as has been noted earlier in this judgement.' Section 37 provides for the appeals that may lie in the higher court against awards and decisions.

A decision of the arbitral tribunal may be appealed against in the court of law if a decision is made by the arbitral tribunal under Section 16(2), 16(3)151 and even Section 17.[89]

[85] (2002) AIR SC 778.
[86] (2019) SC 677.
[87] Rise of Alternative Dispute Resolution Stepping Towards Efficient Justice System, (Feb. 27, 2022), https://www.alliance.edu.in/research/ACADR/assets/publication/Rise-of-Alternative-Dispute-Resolution-Stepping-Towards-Efficient-Justice-System.pdf.
[88] Rise of Alternative Dispute Resolution Stepping Towards Efficient Justice System, (Feb. 27, 2022), https://www.alliance.edu.in/research/ACADR/assets/publication/Rise-of-Alternative-Dispute-Resolution-Stepping-Towards-Efficient-Justice-System.pdf.
[89] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).

In Britain, the 1996 Demonstration permits the courts to mediate in specific matters. Under Section 9, the court initially issues a stay if it determines that the arbitration agreement is invalid, inapplicable, or unenforceable. However, due to the provision's broad scope, parties may attempt to prolong arbitration by provoking litigation. Under Section 18 of the 1996 Act, the court may also intervene to appoint arbitrators. It states that any party to the arbitration agreement may request the appointment of an arbitrator from the court in the absence of an agreement.

The court is able to take witness testimony, preserve evidence, make orders pertaining to property that is the subject of the proceedings, sell any goods that are the subject of the proceedings, grant an interim injunction, appoint a receiver, [90]and make orders pertaining to property that is the subject of the proceedings under Section 44.[91] The party requesting the court must first demonstrate, in accordance with the section, that the arbitral tribunal lacks the authority to make the required decision. By virtue of this provision, the courts assist the arbitral tribunal, but only if the assistance is beneficial and constructive, and not if the courts undermine the arbitral tribunal's authority or independence[92]. The Court's Innate Power, i.e., the court has a flat-out caution to hinder intervention procedures where it considers fit.

On account of Bremer Vulkan Schiff au und Maschinenfabrik Respondents v. The court had to decide whether it had the authority to stop a party from starting the arbitration. South India Shipping Corporation Ltd. The court decided that the respondents have the right to consider this a breach of the arbitration agreement if the claimants delay the proceedings, and that the claimants have a responsibility not to do so. The court for this situation believed that the authorities are awkward and that main the court can deal with the party. As a result, it is thought that the judiciary has a lot of power over arbitrations. Moreover, the courts are engaged to uphold grants given by the councils. Section 66's summary proceedings method or a lawsuit in a court of law must be used to enforce it. Last but not least, an arbitral tribunal's decision can be appealed in a court of law if it is made without jurisdiction under Section 67 or if there is a serious irregularity in the arbitration proceedings as described in Sections 68

[90] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[91] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[92] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).

and 69 regarding substantive breach of law, incompetence of the parties, or violation of the public policy of the state in which the award is issued.

The courts in both the nations actually assume a fundamental part in arbitral procedures, rather than drawing in and enabling arbitral councils. It should be noted that India has fewer restrictions on domestic courts' ability to interfere with arbitrations than England does. Recent legal precedents indicate that the Indian judiciary favors arbitration now. By acknowledging the arbitral tribunal's competent authority, it supports the arbitral tribunal and minimizes interference

Conclusion

Arbitration in the United Kingdom "has a long record, beginning with merchants and continuing with initiatives by the government to legitimate the arbitration mechanism. Even though the law is in place to control this mechanism, the practice itself remains genuine. Be it ad hoc or institutional, British arbitrators have repeatedly proved that the system has particular importance in British culture and that the government would do nothing to disrupt it. Overall, the United Kingdom arbitration system is better."[93] The government, as well as the Courts[94], have been promoting and supporting arbitration for a long period. The arbitration mechanism in India has a long way to go due to the lack of proper implementation of the 1996 Act along with the Court's discrepancy in allowing the Tribunal to rule on its matters. However, with change in time, the government is now promoting arbitration via constant amendments to the legislation. Individuals are now aware that the litigation process is expensive, lengthy and stressful whereas arbitration focuses on the emotional quotient of the parties and tries to improve relationships, mitigate stress, and settle disputes without much hassle. As observed by the Supreme Court in the case of **Union of India v. Singh Builders Syndicate**[95], *"It is unfortunate that delays, high costs, and frequent and sometimes unnecessary court interruptions at various stages are seriously hampering the growth of*

[93] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[94] Dr. Rahul Mishra, Dr. Aisha Sharif, *et. al.* (eds.), *Rise of Alternative Dispute Resolution: Stepping Towards Efficient Justice System* (Alliance Centre for Alternative Dispute Resolution (ACADR), Karnataka, 1st edn. /2021).
[95] (2009) 4 SCC 523.

arbitration as an effective dispute resolution process." The court opined that "an immediate solution to the problem is essential to save arbitration as it has come close to offering a proper alternative to the traditional judicial system. Therefore, India now has to focus on improving institutional arbitration as well as strengthen domestic arbitration by promoting and establishing several arbitration centers. Currently, India has established arbitration centers only in few major cities such as Delhi, Chennai, Bangalore & Kolkata".

In any case, on occasion it is seen that individuals are reluctant to place their confidence in a forward-thinking technique for resolving lawful debates. Arbitration can sometimes be seen as a private judicial system with many of the same procedures as the traditional legal system, which may make the arbitration process more difficult than it needs to be. India's lawmakers need to pay attention to the issues and make any necessary adjustments to the existing laws. In particular, the Legal executive necessities to help the discretion framework by limiting its obstruction and settle arbitral matters just when fundamental. As India has not yet fallen behind the United Kingdom in the field of arbitration, it is time to strengthen the domestic arbitration system to boost public confidence and alleviate court workload.