DELAYED ADJUDICATION ERODES CONFIDENCE IN ARBITRATION PROCESS

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Introduction

- Informal adjudication had always been preferred over formal adjudication in India right from times immemorial. Centuries ago, the system of administration of justice through *Panchayats* something quite common and prevalent in all villages. This was duly noted by a Full Bench of the Bombay High Court in *Chanbasappa Gurushantappa v. Baslinagayya Gokurnaya Hiremath,* AIR 1927 Bom 565, wherein it was stated that:

  > "It (arbitration) is indeed a striking feature of ordinary Indian life. And I would go further and say that it prevails in all ranks of life to a much greater extent than is the case in England. To refer matters to a *panch* is one of the natural ways of deciding many a dispute in India."

- With the passage of time, alternative adjudication of disputes was codified. In earlier times, provision with regard to adjudication of disputes was incorporated in the Second Schedule of Civil Procedure. Later on Indian Arbitration Act, 1940 came into being.

Experience under The Indian Arbitration Act, 1940

- The Arbitration Act, 1940 had inherent flaws, which led to delay in the adjudication process. This fact was highlighted by the Supreme Court in *Guru Nanak Foundation v. Rattan Singh & Sons, (1981)4 SCC 634* :

> "Interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal more effective and speedy for resolution of disputes avoiding procedural clap trap and this led them to Arbitration Act, 1940. However, the way in which the proceedings under the Act are conducted and without an excepting challenged in courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the courts been clothed with 'legalese' of unforeseeable complexity."

- Again in *Ramji Dayawala & Sons (P) Ltd. v. Invest Import* (1981)1 SCC 80 the Supreme Court held:

- "Protracted, time consuming, exasperating and atrociously expensive court trials impelled an alternative mode of resolution of disputes between the parties: arbitrate – don't litigate. Arbitration being a mode of resolution of disputes by a judge of the choice of the parties was considered preferable to adjudication of disputes by court. If expeditious, less expensive resolution of disputes by a Judge of the choice of the parties was the consummation devoutly to be wished through arbitration, experience shows and this case illustrates that the hope is wholly belied because in the words of EDMUND DAVIES, J. in Price Vs Milner, these may be disastrous proceedings."

- In *Price Vs Milner* (6) where EDMUND DAVIES, J. stated:
- "Many years ago a top-hatted old gentleman used to parade outside these law courts carrying a placard which bore the stirring injunction 'Arbitrate – don't litigate'. I wonder whether the ardour of that old gentleman would not have been dampened somewhat had he survived long enough to learn something about the present case"

The Arbitration and Conciliation Act, 1996

- The United Nations General Assembly adopted the UNCITRAL Model Law in 1985, which has been followed by many countries, including India. Some changes have been introduced in the said Model Law to suit local conditions.

- In order to avoid delays in arbitration process, the Indian Parliament provided measures prohibiting Court's intervention in on-going arbitrations.

- Though there are innumerable factors contributing to delays in the culmination of arbitration process, some of the common factors are discussed here.

1. Delay in appointment of arbitrator

- By appointing authority
- By consent of parties
- By court

2. Absence of stipulation fixing time for making award

- Arbitration Act, 1940 provided for 4 months' time for making of award.

- No such stipulation has been provided in the Arbitration and Conciliation Act, 1996.

- Solution lies in parties' fixing time limit for publication of awards in arbitration agreements or for a statutory modification.

3. Early completion of pleadings

- Fixation of time for pleadings in Preliminary Meeting of arbitral tribunal.
- Delays caused by parties
- Action to be taken by arbitral tribunal to expedite.

4. Appointment of arbitrator unrelated to area of dispute

- Technical matters call for appointment of experts of the area of dispute.

- Non-technical arbitrators cannot appreciate the intricacies of the problems.

5. Conducting arbitral proceedings for short durations

- Busy arbitrators cannot afford time
- Busy lawyers give time only on court holidays or in the evenings
- Recording of evidence
- Continuity of arguments affected

6. Granting adjournments liberally

- Dates once fixed should be effective.
- Adjournment though not prohibited should not be a matter of routine.
- Recalcitrant party to be burdened with costs
- Ex parte proceedings

7. Fixing fee of arbitrators on daily basis

- For early completion of proceedings, suggestion is that arbitrators should be paid only when proceedings are concluded.

- Fixation of fees on daily basis generally contributes to delay

8. Ignorance of procedure for conducting arbitrations

- Delays occur because of inexperienced arbitrators.

- Need for imparting training before considering a person for appointment as arbitrator.

9. Lack of knowledge of contractual provisions and of law

- Awards are upheld only if they are in consonance with provisions of the contract agreement as well as the law to which the agreement relates.

- Awards based on compassion or whims.

- Awards made despite exclusionary/prohibitory clauses in the agreement.

10. Challenging awards in routine

- Faith in arbitral process
- Challenging awards in routine causes financial burden to the objector in the form of accumulation of interest.
- Delay inherent in court process
- Taking recourse to High Court and Supreme Court