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NEWSLETTER

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CENTRE FOR RESEARCH IN CORPORATE LAW AND GOVERNANCE

(CRCLG)

INDEX

About CRCLG...

Taking the legacy of standing distinct in the field of academic excellence in legal education, Army Institute of Law, Mohali, launched the Centre for Research in Corporate Law and Governance (CRCLG) in 2018 to provide to its scholars, a deep insight into the contours of corporate conundrums.

CRCLG, as a multi-faceted functional body, looks forward to conduct workshops, panel discussions, seminars, conferences, and guest lectures by the leading and eminent scholars from the legal field. It effectively deals with the discipline, balances and imbalances of corporate law exhaustively to provide to the readers a holistic understanding of the subject and matters connected and incidental thereto. It shall work promptly to promote and provide:

- comprehensive research; preparing the students with analytical skills to critically evaluate legal provisions of corporate law & governance.

- in-depth study of corporate law and governance interwoven with its economic, business and legal context with particular regard to how corporate law and governance mechanisms facilitate or inhibit economic activity.

- to provide a new way of thinking about the growing challenges in corporate law and how to respond to them.

Dealing with the traditional issues and the contemporary ones, the newsletter shall give the reader an opportunity to fathom into the corporate world.

ALTERNATE DISPUTE RESOLUTION

SOCIAL PANDEMONIUM: THE NEED FOR LEGAL AID IN ARBITRATION

ARSH SINGH
(3rd YEAR)

"A nominal winner is often the real loser in fees, expenses and waste of time."

-Abraham Lincoln

An act is justified by law, only if it is warranted, validated and made blameless by law.[1] Time and again arbitration has been found to be valid and sometimes a better option as compared to litigation and it is being used to settle disputes even among individuals as opposed to the archaic view of only organizations using them, and this metamorphosis can be clearly seen in foreign nations such as Singapore, Hong Kong, Members of the European Union. India however still seems to be stuck in the cocoon of traditional litigation which has led to further congestion in courts which has ultimately led to the unwanted delay in the dispensation of justice. It is undeniable that in the last four decades, ADR has become more popular in practice than it was anticipated to the point where courts and government agencies recommend it. Studies reveal that it is the lack of initiation that is mostly responsible for the stunted growth of legal aid in arbitration.[2]

It is quite disheartening to see that the notion that most people want black-robed judges, band wearing lawyers and fine paneled courtrooms as the setting to resolve their disputes whereas the truth is that people with problems, like people with pains, want relief and they want it as quickly and inexpensively as possible and ADR are a great way to usher that change.

One of the major reasons for Arbitration taking the backseat seems to be the poor quality legal aid being provided to the litigants. Since the lawyers are specialized in court based litigation, their knowledge of various ADR mechanisms itself is questionable. Even if they are aware of some ADR mechanisms, they lack the requisite skills to either administer or assist in arbitral mechanisms. Therefore, when a client approaches a lawyer for consultation, the chances of proceeding towards arbitration as a means of dispute resolution is almost zero. Delay, unpredictability and cost are considered as the three main enemies of efficient administration of justice. [3]

Understanding these factors the Supreme Court in the case of State of Jammu & Kashmir v. Dev Dutt Pandit[4] observed that “Arbitration has to be looked up to with all earnestness so that the litigant is in the speedy process of resolving their disputes.”

Man is not made for law, but the law is made for man. Law is a regulator of human conduct. No law works smoothly unless the interaction between the two is voluntary and even though the general trend can be seen in favour of arbitration the process is painstakingly slow and tacked on. Litigation is a heavy business, meaning it takes up huge chunks of time and effort to pursue with still a chance of not finding salvation, furthermore inordinate delays, which are a part of the ordinary legal process, may also emotionally affect the parties and cause frustration and anger and ultimately acting as the cause and catalyst towards eroding the public trust and confidence in the legal institutions[5] and these can be the road rollers paving the way for injustice and distrust. Litigation procedures are ridden with rigorous rules of procedure and endless technicalities.[6]

It is no doubt that ADR, especially arbitration can solve a majority of the aforementioned problems at hand and as India has taken few to none steps in the direction of legal aid in arbitration it becomes only logical to look at other countries benefitting from the same system. It is commonly accepted that world of corporate litigation and international law function on the principle of pacta sunt servanda[7] so it becomes imperative that such cases be judged by people who are experts in contract law and other related fields and at the same time it poses a huge problem if one party does not have funds to arbitrate and this gives the other party an undue advantage in a process which is otherwise fairly legal. In fact the English courts have adopted the view that lack of sufficient funding should justify the rendering of arbitration agreements as “incapable of being performed”. [8]

The lack of legal aid in arbitration is usually justified by saying that it is usually a process chosen by the parties over litigation and hence the aid given by courts should not be the same, which hold some truth in Switzerland where the Country has set up different tribunals for the same but in India the scenario is vastly different, here the courts have not ousted the practice of ADR but have welcomed it with open arms.

In the end it should be remembered that just like how law is ever changing to serve justice to the society we must allow the method of achieving that justice change too. Otherwise the changing law will amount to nothing and we would be left with limitless laws, in a lawless world. With the advent of legal aid in arbitration the goal of speedy justice will become one step closer.

FOOTNOTES

[1] 222nd Report of the Law Commission Of India.

[2] Dilip. B. Bhosale. 'An Assessment of A.D.R in India'. Kluwer Arbitration

[3] Arun Mohan, 'Justice, Courts and Delays', Baker and McKenzie pg19.

[4] AIR 1999 SC 3196.

[5] Hiram Chodosh, Niranjan Bhatt and Firdosh Kassam,'Mediation in India: A Toolkit', Global Arbitration News, pg 13.

[6] William W. Park, 'Arbitration of International Business Disputes: Studies in Law and Practice', Oxford University Press, 2006, pg 604.

[7] It lays down that what is written down in the contract is law. Parties are fully liable for their actions.

[8] Janos Paczy v. Haenlder & Natermann GmbH, 302 [1981] 1 Lloyd's Rep 302 (CA).

SOURCE: HOUSING.COM

ALTERNATIVE DISPUTE RESOLUTION: AN OVERVIEW

JYOTIKA AGGARWAL
(3rd YEAR)

The judicial system of India is one of the most ancient ones in the entireworld, and so is our litigation mechanism.

However, it wouldn't be much of a shock to know that as of November 2019, there are almost 60,000 cases pending in our highest court of justice.[1] Similar is the calamity all of our courts are facing presently, with more and more files lining up, eating dust for years and choking the system.

In this distressing situation, some relief comes to the Courts in the form of a mechanism called Alternative Dispute Resolution (ADR) under which altercations between parties are settled with the assistance of an unbiased third party outside Court, without resorting to the cumbersome litigation procedure.

ADR comprises of various methods like arbitration, negotiation, conciliation, etc. the usage of which helps melt down the differences and hostility between the parties, bringing them to a common ground peacefully.

History

The method of ADR for resolving disputes is not newfound in India. It dates back to the ancient Vedic period when the King was law and his Court was the highest court of order.

Even then, not all arguments reached the King's Court straightaway. The Panchayat system in villages which included kulas (family assemblies), srenis (guilds of artisans or tradesmen), parishads (bodies of learned men who knew law) was the most popular channel of dispute redressal between inhabitants before being referred to the King's Court.

During the period of Muslim rule in India too arbitration was a popular practice. An arbitrator known as Hakkam, who would be required to possess the qualifications of an official sitting judge of a court (Kazee), would settle disputes outside courts.

The practice of ADR gained momentum with the establishment of British Raj in India. The British government through the Bengal Resolution Act, 1772 and Bengal Regulation Act, 1781 gave legal backing to arbitration. Thereafter in 1859 came the Code of Civil Procedure, sections 312 to 325 of which dealt with arbitration in suits while sections 326 and. 327

contained provisions for arbitration without court intervention. This was followed by the Indian Arbitration Act of 1899, which was based on the British Arbitration Act of 1889. In 1937 the Arbitration (Protocol and Convention) Act was implemented in India to make operative the provisions of the Geneva Protocol on Arbitration Clauses, 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927. In 1940, The Arbitration Act was introduced which opened up doors for arbitration with court intervention during all stages. However, this judicial intervention ended up defeating the very purpose of arbitration itself and hence paved way for the final Arbitration and Conciliation Act of 1996. The main objective of this Act was to make arbitration a less time consuming and cost-effective process. The Act made provisions for domestic as well as international arbitration.

Significance

The practice of ADR has gained a lot of importance in the past few years. In fact, due to endless burden, some Courts have even made mediation compulsory before the matter is taken up by the Court. Following are the advantages of ADR;

1. ADR reduces the caseload on the Courts.

2. ADR is a cost-effective procedure and saves the parties a significant amount of money.
3. The technicalities of procedure are much less here as compared to a litigation process.
4. Dispute resolution is less time consuming.
5. It is a better platform for multi-party disputes because of stronger communication.
6. More number of issues can be taken up.
7. There is greater sense of trust and the parties can reveal true facts without hesitation.
8. The relationship between the parties might also get restored.

Types

Following are the various types of ADR:

1. Arbitration: Arbitration is the process wherein the parties at dispute refer their dispute to one or more arbitrators selected by them. The procedure of arbitration can be invoked only if the concerned parties have signed an arbitration agreement before the arising of the dispute. If a dispute arises, any of the parties can invoke the arbitration clause and the matter will be taken up by the arbitrators whose decision is binding on the parties.

2. Mediation: In this process a third neutral party assists the parties at dispute to resolve their differences

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2. Mediation: In this process a third neutral party assists the parties at dispute to resolve their differences

and encourages them to reach a common consensus. In an opening statement the mediator declares his neutrality and discloses all important information about his appointment. He then conducts a joint session wherein he listens to both sides of the argument and tries to maintain peace and calmness during the process. To acquire deeper understanding of the case, he then conducts separate sessions with both parties.

Finally, at the closing stage, he proposes various options for settlement by which none of the parties are bound.

3. Conciliation: This is a less formal form of arbitration wherein a third party tries to settle the matter by communicating with the disputed parties separately.
No prior agreement is required to invoke conciliation. Either of the parties may even choose to refuse to submit
to conciliation and they cannot be forced into it.

4. Negotiation: Negotiation is the process in which the disputed parties themselves establish dialogue and reach settlement through discussion. Either they themselves or their representatives negotiate with each other without the involvement of any third party.
This is considered to be the simplest form of ADR.

5. Lok Adalat: Also known as People's Court, a Lok Adalat is a Court conducted by theNational Legal Service Authority (NALSA) at regular intervals to handle fresh cases or cases pending before other Courts.

Payment of court fee is not required and the procedure is simple and fast. The parties are in direct communication with the deciding authority which could be a retired judicial officer, member of a legal firm or a social activist. The decision of the presiding authority is not binding on the parties and his role is merely that of a conciliator.

Conclusion

In conclusion, it can be said that ADR is an effective way of settling disputes, which benefits all parties concerned. It has gained prominence amongst general public as well as the legal arena in the recent years. More and more courts are making ADR compulsory before resorting to litigation and clients find it to be a better deal than courtroom hassles.

FOOTNOTES

1 The Wire Staff, Over 3.5 Crore Cases Pending Across Courts in India, Little Change in Numbers Since 2014, THE WIRE (May 8, 2020, 11:05 PM) https://thewire.in/law/pending-court-cases

ARBITRATION: WORTH A TON OF LITIGATION

KRITIKA
(1st YEAR)

"I can imagine no society which does not embody some method of arbitration."

-Sir Herbert Read

Every legal system in this world is either adversarial or inquisitorial system. Both the systems intend to dispense justice, but they vary in their methods of adjudication.

In India, adversarial system is followed, where the parties as assisted by their lawyers and they take a pro-active role in a legal proceeding and the main function of the judge is to decide the claims solely on the basis of the evidences presented by the lawyers. In an inquisitorial system, the judge takes a centre-stage and determines the facts and issues in dispute and decides upon the legal claims and pays less reliance on the lawyers.

MEANING & SCOPE OF ADR

Alternative Dispute Resolution (ADR) system discusses the utilization of non-adversarial practices for settling the legal disputes. Even prior to the advent of courts and judiciary, Indian legitimate framework had domestic ADR techniques. The Vedic age in India, saw the success of specialized tribunals, e.g., Kula (for conflicts of family, castes, clan, communities, races), Shreni (for internal disputes in business, company, etc.) and Puga (for association of traders/ commerce branches). Additionally, People's Courts or Panchayat prominent mode of dispute resolution in villages. In the contemporary era some of the ADR techniques have been adopted to resolve the disputes.

ARBITRATION

'Arbitration' has been derived from the nomenclature of Roman law. The Indian law of arbitration is provided in the Arbitration and Conciliation Act, 1996. which is based on the UNICITRAL Model Law on International Commercial Arbitration, 1985 and the UNCITRAL Arbitration Rules, 1976.

ELEMENTS OF ARBITRATION

Number of Arbitrators: Section 10 of Arbitration and Conciliation Act, 1996 provides that:

-The parties are allowed to appoint any number of arbitrators but the total number of arbitrators shall not be in even number.

-If the parties fail to decide the total

services Authority Act, 1987 gave the system of ADR a statutory recognition at the ground level. Lok Adalats are a unique blend of three forms of ADR: arbitration, mediation, and conciliation.

RULE OF LAW AND ADR

The concept of rule of law implies that law is supreme and everyone is equal before law. In the case of Kesavananda Bharati v. State of Kerala[3] the Hon'ble Supreme Court held that the Rule of Law is the "basic structure" of the Constitution. Thus, the Rule of Law advocates easy access to justice and equal treatment thereafter.

ADR can make justice easily accessible to people. There are specific statutes regarding ADR in India and those are Legal Service Authorities Act 1987 and Arbitration and Conciliation Act, 1996. Section 89 of Civil Procedure Code, 1908 also provides for out of court settlement. But there is a need to make people familiar to the concept so that justice could be imparted to people more often considering the condition of Courts.

FOOTNOTES

1[1] Dushyant Mahadik, Analysis of Causes for Pendency in High Courts and Subordinate Courts in Maharashtra, ASCI Final Report (January 2018).
[2] 1979 AIR 1369, 1979 SCR (3) 532.
[3] AIR 1973 SC 1461.

ADR & THE CONSTITUTIONAL GOAL OF JUSTICE

PREYOSHI BHATTACHARJEE
(3rd YEAR)

"Injustice anywhere is a threat to justice everywhere."

-Martin Luther King

These glorious words of Martin Luther King convey the significance that Justice has in our society. A very popular and old philosophy is that justice delayed is justice denied. Even after being familiar with this, piles of cases pending in courts have been rising tremendously. A report shows that the number of cases that are over five years old continue to be alarming. The number has increased from 43 lakhs in 2015 to 63 lakhs in 2017.[1]
If this situation continues then justice will just be a fictional concept incapable of being practically applied. The Constitution makers, however, had a bigger dream of providing justice to everyone, that is social, economic and political as is conveyed in the preamble and that is why the concept of ADR came into being. Alternative Dispute Resolution or what we call ADR is an effective tool to reduce the burden of the Courts as well as to eliminate unnecessary delays.

FUNDAMENTAL RIGHTS AND ADR

The concept of ADR stems from various Articles of the Constitution, including Article 14 which provides for equality before law and Article 21 laying down the right to life and personal liberty. Legal justice is part of social justice and without it, there will be no harmony in a society which will ultimately hinder development.

In the case of Hussainara khatoon vs. State of Bihar,[2] it was held that if an accused is not able to afford legal services then he has a right to free legal aid at the cost of the state. Thus, ADR can be an effective method to provide legal justice to the citizens as it is less expensive than the courts.

DIRECTIVE PRINCIPLE OF STATE POLICY AND ADR

Article 39A also directs the state to secure the operation of the legal system to promote justice, on a basis of equal opportunity and in particular, provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

These directives are not enforceable by the court of law but are of utmost importance for the welfare of the people. The system of Lok Adalat established through the Legal

number of arbitrators within 30 days of sending the request, then they can go to an arbitration tribunal which will appoint a sole arbitrator for them.

Arbitration Notice: Section 21 of the Act provides for initiation of the arbitration. The arguments commence from the date on which the request for the arbitration of a dispute is received by the respondent.

Appointment of Arbitrators: Appointment of the arbitrator is commonly decided and named by the parties. On the off chance, if the parties fail to commonly choose or appoint the arbitrator, then Section 11 of the Act states that the parties will move to the Court and request to appoint an arbitrator.

Statement of Claim: Section 23 of the Act states that within the timeframe fixed by the parties, the applicant shall state the facts for supporting his case, purpose of issue and relief.The statement of claim can be amended if it is concurred by the parties that they can alter the claim over the span of the arbitral proceeding, or if the arbitral tribunal considers the claim improper.

Hearing of Parties

Steps associated with the process of hearing of the parties:

Preliminary hearing and information exchange stage: After theappointment and affirmation of the arbitrator, the preliminary hearing of the arbitration starts when the parties ask their arbitrator to fix the calendar. In the preliminary meeting, issues are tended to, parties exchange the information and the next hearing date is decided. On the subsequent date, the arbitrator will give a written document called a 'scheduling order.'

Hearing Stage: During the stages, the parties present their issues to the arbitrator. This procedure can occur face to face, via phone, or by submitting written documents or arbitration agreements and appropriate rules that administer the case. Parties are required to submit written contentions after hearing, at the bearing of the arbitrator.

Award Stage: After the finishing of the hearing, the arbitrator decides that no more evidences will be introduced. A date for issuance of the result is decided and the arbitrator extracts a written award and it is sent to the parties.

Arbitral Award: An arbitration award is a final determination given by the arbitrator, which is analogous to the orders of the court. This award can be in monetary terms or a non-monetary award, for example,

adding incentives for employment or halting such business practices. Arbitral award can be interim or final.

Interim award: This is an impermanent award given by the tribunal over the span of the proceedings.

Final award: The final award is the order or judgement of the arbitrator which is given after the due process of arbitration and it is signed by the arbitrators and the parties.

Challenge in Court: Within 90 days, other parties can challenge the award in the Court till the party in whose favour the award is given doesn't execute the award. Section 34 of the Act expresses that the Court can set aside the arbitral award if a party challenges the award on some grounds as are specified in the Section.

CONCLUSION

The Law of arbitration in India has been efficacious through the adoption of new enactments and by accession to international and provincial conventions. These are exhaustive rules which administers commercial arbitration. By enforcing the Arbitration Act, 1996, the Indian law has moved towards a pro-enforcement position. Hence, ADR including arbitration is an effective tool for dispute resolution.

METHODS OF ADR: COMPARATIVE ANALYSIS

SUNIDHI SINGH
(3rd YEAR)

As the name suggests, Alternative Dispute Resolution comprises of the alternative methods for the amicable settlement of disputes without taking recourse to litigation. This is a great way of solving small disputes out of court an effectively reducing the burden on our courts which are already flooded with a mammoth amount of cases. Following are the most popular methods of ADR:

1. Mediation
2. Conciliation
3. Negotiation
4. Arbitration

The Article aims to bring forth a comparative analysis of these methods.

Mediation

Mediation is the voluntary process of settling disputes with the help of a mediator, the third part. It is a very flexible method and the parties to dispute are not bound to agree to the settlement. They may agree or not agree to the outcome and have total control over it.

The advantages of mediation include lower levels of stress, full control of the parties, quickly dispute resolution and confidentiality. However, there is always a possibility that a settlement may not arise many situations as the parties have unlimited discretion, there is no legal backup and properly fixed procedure.

Conciliation

Conciliation is the process of amicable dispute settlement with the help of a conciliator, who is generally an expert in the concerned field. The conciliator helps the parties to come to a settlement both by taking common sessions with both parties and separate ones with one party at a time.

The procedure is flexible as the parties to the dispute define the subject matter and purpose of the conciliation process. Unless the parties sign to agree to the decision arrived, they are not bound by it.Therefore, the conciliation provides the advantages of flexibility, expert's advice, economical and risk free.

However, since the parties are not bound by the decision until they sign it, the goal of arriving at a settlement may not be achieved in all circumstances. It also lacks legal backup.NegotiationNegotiation is a method of dispute resolution by the

help of a third party called, the negotiator who generally an impartial person. The negotiator tries different techniques of bringing about a settlement. The process of negotiation goes on until a compromise is reached and both the parties to contract agree to the decision.

Like mediation and conciliation, negotiation is also an informal process. Therefore, it provides the advantages of flexibility, quick dispute resolution and privacy to the parties. However, even in this case, the settlement may not be reached as the decision is not legally binding on the parties.

Arbitration

Arbitration is a formal method of dispute resolution under which an arbitrator is appointed to resolve the dispute. It can be voluntary or mandatory. It is mandatory when the parties come for arbitration under a statute, contractual obligation or order of Court. It is voluntary if the parties opt for arbitration with their discretion and consent. The decision thus, reached by the process of arbitration is known as an 'arbitral award' and is binding on the parties.

Hence, unlike mediation, conciliation and negotiation, arbitration provides the advantage of legal backup and enforceability apart from flexibility, quick decision making and maintenance of confidentiality. However, their enforceability depends on judicial sanction and once it has been opted for as the dispute resolution method by the parties of a contract, they can't opt for litigation.

CONCLUSION

Hence, Alternative Dispute Resolution includes the alternative methods for the amicable settlement of disputes which are both formal and informal in nature. While Arbitration is a formal method and has enforceability to some extent the other three methods of mediation, conciliation and negotiation are informal and lack legal force. However, all these methods have great potential for reducing the burden on the Courts to a large extent.

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1. What is Mediation?, WIPO, available at: https://www.wipo.int/amc/en/mediation/what-mediation.html.
2. V.G. Ranganath, Negotiation: Mode of Alternative Dispute Resolution, Legal Services India, available at: http://www.legalservicesindia.com/article/245/Negotiation-Mode-Of-Alternative-Dispute-Resolution.html.
3. Madonna Jephi, Conciliation: An Effective Mode of ADR Mechanism, Law Times Journal.

'COVID-19' & ITS LEGAL IMPLICATIONS

COVID-19 AND THE IMPENDING LEGAL WILDFIRE: TIMELY ARBITRATION FOR TIMELY RESOLUTION

ANIMESH PUNEET GUPTA
(3rd YEAR)

The COVID-19 pandemic has caused economic decline worse than the 2009 Recession and led to the largest global lockdown in human history. The situation has led to market instability, unemployment, decline in key industries, stock market crash and a downturn in consumerism. Such grim economic conditions will lead to increasing litigation at the end of the pandemic, especially viz a viz contracts, their non-performance and delays in payments; and companies will scramble to mitigate the losses by pinning blame on the other party. While litigation will be circumvented through an arbitration clause in the contract, valuable time will still be lost if the parties wait for the end of the pandemic.

Timely invocation of the arbitration clause is the easiest way to mitigate further losses. Arbitration has several benefits over traditional dispute resolution through litigation. The benefits are presented by the out-of-court resolution with a great degree of procedural flexibility available to the Tribunal in the arbitration. The process allows flexibility and versatility that can help rapid settlement while ensuring social distancing. The arbitration will allow the parties to obtain a binding decree by the time the situation normalizes while jeopardizing neither losses nor health. Normally, parties would wait for the situation to stabilize, but the invocation of the clause at this time, while things are comparatively at a standstill, would allow the parties to protect their interests from the legal wildfire that is impending while allowing fruitful utilization of the current situation.

The various Courts and Arbitration Tribunals will be heavily burdened at the outset of stability and the arbitrators and counsel will have multiple arbitrations and court cases on their hands. Avoiding that wildfire will ensure faster resolution than even the traditional arbitration process since the limited work will allow preferential treatment to the case. Moreover, given the uncertainty of the duration of the lockdown, with the considerably lower burden, legal counsel shall be able to prepare and present your case more meticulously.

The extensive utilization of digital resources and technology can help ensure a contact-free process. The correspondence for request for arbitration, response, request for

appointment and the appointment of the arbitral tribunal are some of the processes that are already largely digitalized.

Further, tools like emails, telephonic or video conferences can be exclusively relied upon for communication and case management and hearings. The documentation and relevant statements, applications, defences, and replies can all be served electronically[1] and transmitted through secure cloud computing services.

Further, the arbitral tribunal can also accept digital signatures of the parties in accordance with prevalent laws[2]. A great benefit arising from reliance on electronic mediums is that it shall allow for resolution in the matter of 3-4 months with minimum expenditure and logistical requirements.

The law permits the tribunal to decide disputes based on pleadings, documents, and submissions without need for oral hearings and if the need for oral hearings arises, the same can be done through video conferencing.

There is already a visible increase in the reliance on technology in arbitrations and the transition to interaction being exclusively across screens is merely the next step in the evolution of arbitration.

FOOTNOTES

[1] Bright Simons v. Sproxil, Inc, judgment dated 9 May 2018 in O.M.P. (Comm) 471 of 2016, High Court of Delhi.

[2] Section 85B, Indian Evidence Act, 1872.

LEGAL OUTLOOK TOWARDS COVID - 19 PANDEMIC

SHIEKHAR PANWAR
(2nd YEAR)

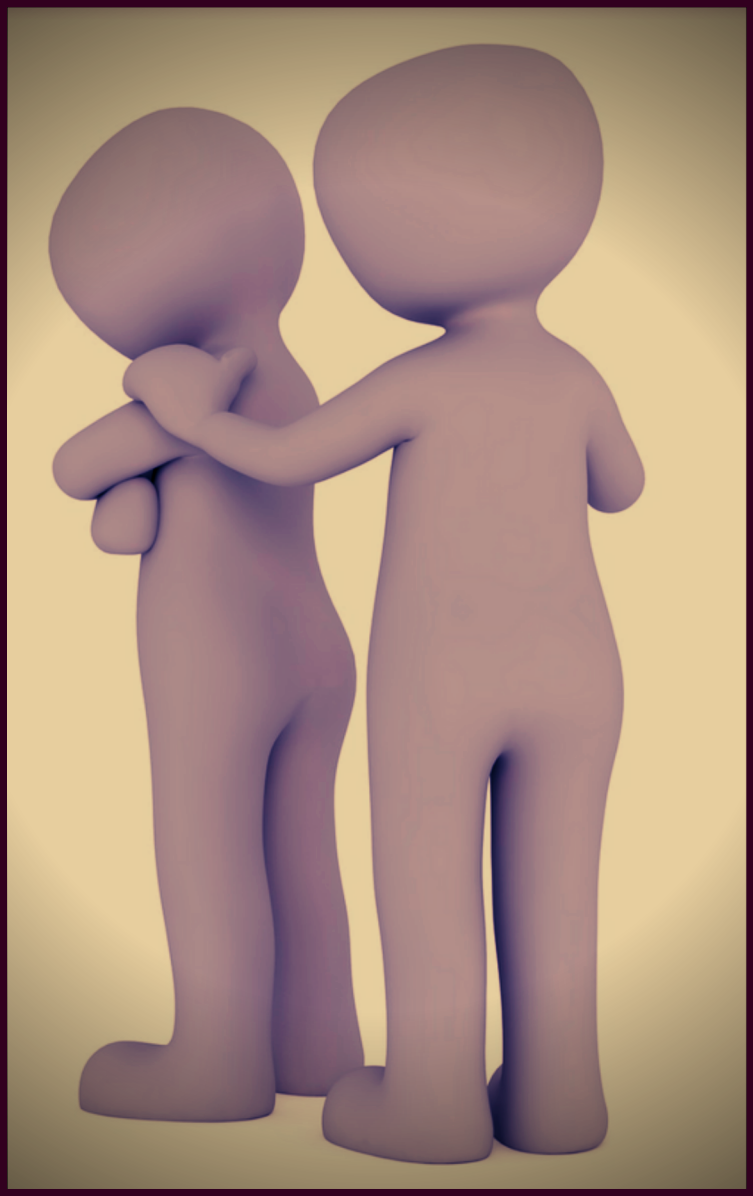
"Every adversity, every failure, every heartache carries with it the seed of an equal or greater benefit."

-Napoleon Hill

The trying times that we are confronted with due to the outbreak of the coronavirus has confined us to the sanctuary of our homes. It is undisputable that the pandemic named COVID -19 has created an irresistible fear in the mind of every human who could have never possibly thought about the widespread outbreak of genome disease turning into possible Nuclear warfare. Nevertheless, it is also widely accepted that extraordinary times demand for extraordinary measures. Therefore, to demystify the shroud of uncertainties of measures revolving around us, this article attempts to examine in brief the most basic contractual safeguard which fills the void created by the absence of contractual obligations on account of any crisis like situation occurring as much as it is in the present times.Much like any other virus, the outbreak of coronavirus was neither foreseeable nor threat it would pose on the health care of nations worldwide anticipated. Therefore, looking at the amount of unexpectedness this pandemic carried along itself it can very possibly be ascertained that this outbreak ought to have caused the disruption in the chain of transactions which happen on a daily basis in every other aspect of humans. Besides this the concern arises at the non-occurrence of contractual liabilities and more is to the aftermath of such non-occurrences. However, times like these validate the usefulness of the concept of Force Majeure Clause. 'The Force Majeure[1] is an unexpected eventsuch as a war, crime, or an earthquake which prevents some one from doing something that is written in a legalagreement.'[2]

Therefore, any party shall get dissolved of their contractual obligations if their contract had a 'Force Majeure Clause' (herein under as FMC) enumerating an exhaustive list of the above-mentioned events along with the occurring of an untoward event like Pandemic or Epidemic. However, where no relevant event is specifically mentioned, it is a question of interpretation of the clause by the parties. Inter alia, the question arises about the liabilities of the parties when they have overlooked the FMC in the past while drafting the contract then Section 56[3] of the Indian Contracts Act shall come to safeguard the interest of those

parties and Section 32[4] as well, occasionally. Simultaneously, If we check the qualification of pandemic under the FMC, since a pandemic has a timeline attached to it, it can't dissolve the parties' obligations of the contract for an indefinite time, unless there stands a radical change in the performance of a contract which dislodges the fundamental basis of the contract. [5] COVID - 19 has undoubtedly been the biggest challenge which the human race has witnessed in recorded history. It is on our part as citizens to act like good Samaritans to help eliminate this life costing threat out from our lives.



As a general supposition it is believed that there is a heightening threat of grave and systematic human rights abuse during the times of public emergencies. To address this threat due process of law needs to be followed not just in its akin sense but in its true sense. Besides, it needs to be ensured that modalities of justice are being fulfilled even if it has to devise some unconventional ways to putting in practice. With the help of this article the author has, in broader sense, tried to illuminate only one aspect of Contracts law which the transaction players will have to deal with in the coming times.

REFERENCES

[1] In English and Scots law, force majeure is a creature of contract and not of the general common law. It therefore differs from some other legal systems where force majeure is a general legal concept and where courts may declare that a particular event, such as a pandemic like COVID-19, is a force majeure event. Depending on their drafting, such clauses may have a variety of consequences, including: excusing the affected party from performing the contract in whole or in part; excusing that party from delay in performance, entitling them to suspend or claim an extension of time for performance; or giving that party a right to terminate. We talk principally below about parties being excused from performance entirely, but many of the principles are common to these different varieties of clause.

[2] Mackintosh Colin, Cambridge Business English Dictionary <https://www.cambridge.org/gb/search?site=CE&currentTheme=Learning&iFeelLucky=false&query=Force+Majeure+> accessed 18 April 2020

[3] Indian Contract Act 1872, s 56 – 'Agreement to do impossible act - An agreement to do an act impossible in itself is void.'

[4] Indian Contract Act 1872, s 32 – 'Enforcement of contracts contingent on an event happening - Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened.'

[5] Energy Watchdog v Central Electricity Regulatory Commission, [2017] SCC Online SC 378; See also Peter Dixon & Sons Ltd v Henderson, Craig & Co Ltd, [1919] 2 KB 778 (CA).

COVID-19 PANDEMIC: ORDINANCE PROMULGATED REGARDING TAXATION

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The current Covid-19 situation has adversely affected the economic growth of both the state and its citizens across the globe. This economic slowdown has thrown new challenges for developing nations like India and every section of the society.

Amid the corona virus outbreak, realising the hardships faced by its citizens and to relax this distress among the citizens of India, the Government of India came up with the ordinance- Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020, providing various tax filing extensions and relief to compliance. The said ordinance was promulgated with the objective of on March 31, 2020.

Few of the major highlights of the said ordinance providing relief to the taxpayers are as under:

1. Tax return filing deadline: The deadline for filing tax return has been extended from 31 March 2020 to 30 June 2020. This includes:

a. Belated income-tax return for tax year 2018-19

b. Revised income-tax return for tax year 2018-19

2. The timeline for linking Aadhaar with PAN has been extended to 30 June 2020.

3. Extension of compliance due dates: In respect of the following, where the due dates fall between 20 March 2020 and 29 June 2020, the revised due dates shall be 30 June 2020:

- Issue of notice
- Intimation
- Notification
- Sanction order
- Approval order or such other action
- Filing of appeal
- Furnishing of return, statements, applications, reports, any other documents
- Completion of proceedings by the authority

4. Making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purposes of claiming any deduction (For e.g. Investments or payments in LIC, Public Provident Fund and National Savings Certificates claiming for deductions under Section 80C, medi-claim under Section 80D and donations under

80G), have been extended till June 30, for claiming deductions for AY 2020-21 (i.e. FY 2019-20).

5. Also, investment, construction or purchase made up to June 30, 2020, shall be eligible for claiming deduction from capital gains under sections 54 to 54GB of the Income Tax Act, for AY 2020-21.

6. The Ordinance amends the IT Act to provide that donations made by a person to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND) will be eligible for 100% deduction u/s 80G.

This implies that an amount equivalent to the donations made by a person to the said Fund can be deducted from assessee's income, while calculating his total income under the Income Tax Act.

7. Regarding Tax Vivad se Vishwas Act, 2020: The timeline for payment of disputed arrears without attracting additional 10% amount under the Vivad se Vishwas Scheme extended from 31 March 2020 to 30 June 2020.

8. Interest and penalty: Payment of any tax, made after the due date (due between March 20, 2020 and June 29, 2020), but before June 30, 2020 (or any further date specified by the government), will not be liable for prosecution or penalty.

he rate of interest payable for the delay in payment will not exceed 0.75% per month.

9. GST-related compliances: The Ordinance amends the Central Goods and Services Tax Act, 2017 to allow the central government to notify an extension to the time limits for various GST-related compliances and actions under the Act. Such extensions would be given based on the recommendations of the GST Council. This will be done only in the case of actions which cannot be completed or complied with due to force majeure ("force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.').

In compliance to the said ordinance, several notifications (Notification Nos. 30/2020 to 36/2020, all dt.03-04-2020, by Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs) have been issued in order to provide relief to taxpayers. The time limit for filing of appeal, furnishing of return, or any other compliance under the GST Act have been extended.

REFERENCE:
http://egazette.nic.in/WriteReadDaa/2020/218979.pdf

EVENTS

Special Events

- Session with the 5th Year students by Mr. Siddharth Srivastava, Partner, Link Legal on September 19, 2019.

- Guest Lecture on the Insolvency and Bankruptcy Code, 2016, by Mr. Siddharth Srivastava, Partner, Link Legal on September 19, 2019.

- Session with the 5th Year students by Mr. Tomu Francis, Partner, Khaitan & Co. on February 11, 2020.

Sessions Taken by the CRCLG Team

- **Session 1:** 'Introduction to Corporate Law,CRCLG Society,' 'Importance of Research.'
  Date: 5th September, 2019
  Speakers: Mannat Mehta (5th Year) & Omvir Singh (4th Year)

- **Session 2:** Legal Research & its Imperatives- Part I
  Date: February 03, 2020
  Speaker: Mannat Mehta (5th Year) & Omvir Singh (4th Year)

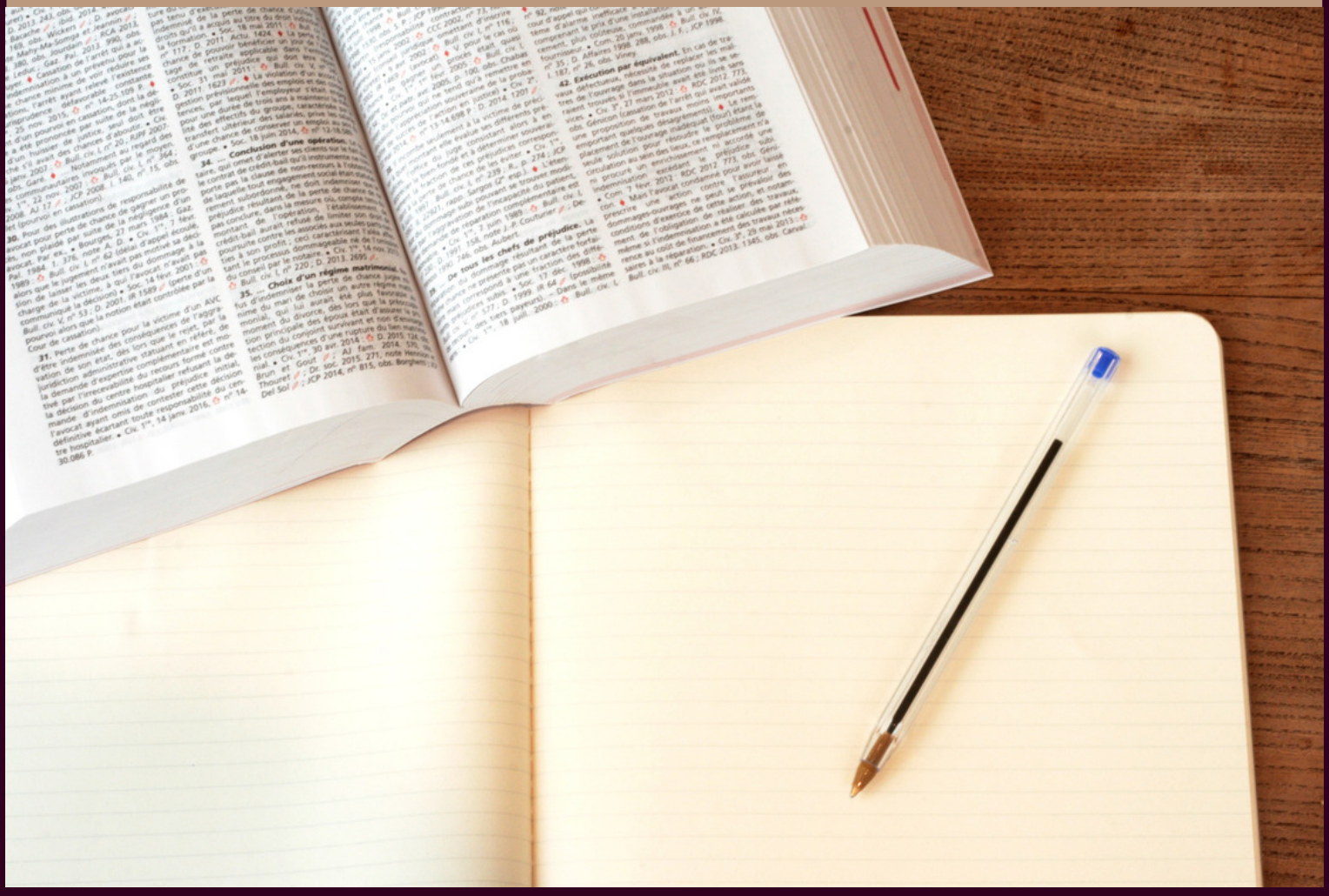
- **Session 3:** Legal Research & its Imperatives- Part II
  Date: February 04, 2020
  Speaker: Omvir Singh (4th Year)

- **Session 4: Discussion on Financial Budget 2020-21- Part-I**
  Date: February 17, 2020
  Speakers: Omvir Singh (4th Year),
  Nishant Tiwari (3rd Year), Sunidhi Singh (3rd Year)

- **Session 5: Discussion on Financial Budget 2020-21- Part-II**
  Date: February 25, 2020
  Speakers: Mannat Mehta (5th Year)

Events to Lookout For

- GNLU Law and Economics Blog: Rolling Submissions.
- Nirma University Law Journal: Call for Papers (Submit by May 30).
- RGNUL Online International Inter-University Competition (Register by August 17.
- Live Webinar Series on India Seated International Arbitration by IDAC India & Law Senate on May 24-28, 3pm).



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