A Comparative Analysis of Institutional Arbitration versus Ad-Hoc Arbitration

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Introduction

"Arbitration is justice blended with charity."- Nachman of Breslov

Rightly said by a man who was at the head start of a movement, that brought in change, if not a revolution. His quote, led to the questioning of the justice, as is dispensed in the courts of law. If it is done, keeping in mind the prosperity of the people, then why isn't it called a charity? Maybe, because mere law books could not teach those judges, what experience did, to the arbitrators. But not to forget, the judges are experienced too; in fact, it can be considered that they are far more experienced than the arbitrators, simply because, arbitration, as a rule of practice, is not resorted to, in general. Even still, the dispensing of justice in a court of law is not termed to be a charity, maybe, because of the constraints that the judges have. They are restricted within the *lex terrae*, whereas, arbitration is "synchronized benefit to all", or in other words, charity. Not to deny the fact, that arbitration too, is governed by certain rules and regulations, but then again, there's a reason why it's called a settlement, and not a judgment.

It all started in the 1920s on the continent of Europe. The world was at a probationer stage of becoming a global market place as never before. The field of international arbitration had begun as a compromise to the parties in dispute, in connection to a contract.[2]Off late, international arbitration law and its practice has become more and more complex. This reformation is a result of changes in the domestic arbitration law since 1979 when England amended its "Arbitration Act". Some amendments to arbitration laws had a limited and technical character but most changes were, to a large extent, inspired by concerns of either maintaining a country's status as one hospitable to international commercial arbitration or of promoting a country with little arbitration tradition. This phenomenon of international

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[2]Yates, Arbitration or Court Litigation For Private International Dispute Resolutior, The Lesser of Two Evils, in Resolving Transnational Disputes Through International Arbitration 233 (1. Carbonneau ed. 1982).

regulatory competition was, *inter alia*, the result of efforts by domestic lobbies to initiate or encourage domestic legislators to look afresh at arbitration laws.

Arbitration is basically the process by which a dispute or difference between two or more parties as to their mutual legal rights and liabilities is referred to and determined judicially and with binding effect by the application of law by one or more persons[3] (the arbitral tribunal) instead of by a court of law.[4] The object of arbitration is to provide fair and impartial resolution of disputes without causing unnecessary delay or expense and at the same time, it allows freedom to the parties to agree upon the manner in which their disputes should be resolved, subject to safeguards imposed in the interest of the public.[5]

In furtherance to this, the question of the hour is – what actually, is international commercial arbitration? If we break the term, we can define arbitration as a process by which parties voluntarily refer their disputes to an impartial third person, an arbitrator, selected by them for a decision based on the evidence and arguments to be presented before the arbitration tribunal[6]; commercial, meaning, which is concerned with commerce or something intended to make profit[7]; and lastly, international, which means beyond the boundaries of any particular nation. Therefore, it can be logically deduced that international commercial arbitration[8], in simple words, is an alternative process of resolving business disputes between or among transnational parties through the use of one or more arbitrators rather than litigation in the national courts. It is controlled primarily by the terms previously agreed upon by the contracting parties, rather than by national legislation or procedural rules. Most contracts contain a dispute resolution clause specifying that any disputes arising under the contract will be handled through arbitration rather than litigation.[9] The parties can specify the forum, procedural rules, and governing law at the time of the contract.[10] The types of law that are applied in arbitration include international treaties and national laws, both procedural and

[3] Halsbury's Laws of England (Butterworths, 4th edition, 1991) para 601,332.
[4]Rajoo, S, The Law, Practice and Procedure of Arbitration (Kuala Lumpur: LexisNexis, 2003).
[5]Mistelis,L, "International Arbitration—Corporate Attitudes and Practices—12 Perceptions Tested: Myths, Data and Analysis Research Report", 15 Am Rev Int'l Arb 525.
[6] Definition given by Martin Donke.
[7]'Commercial' should be construed broadly having regard to the manifold activities which are an integral part of interna- tional trade today (R.M. Investments & Trading Co. Pvt. Ltd. v. Boeing Co., AIR 1994 SC 1136).
[8]Blackaby, N, Partasides, C, Redfern, A and Hunter, M, Redfern & Hunter on International Arbitration (London: Oxford University Press, 2009).
[9]Marci Hoffman & Mary Rumsey, *International Commercial Arbitration, in* INTERNATIONAL AND FOREIGN LEGAL RESEARCH: A COURSEBOOK 315 (2d ed. 2012).
[10] Stacie Strong, *Research in International Commercial Arbitration: Special Skills, Special Sources* , 29 Am. Rev. Int'l Arb. 119 (2009).

substantive, as well as the procedural rules of the relevant arbitral institution.[11] Previous arbitral awards carry persuasive authority, but are not binding.

UNCITRAL Model Law

Article 2(a) of the United Nations Convention on International Trade Law (UNITRAL) Model Law on International Commercial Arbitration, whose arbitration rules are selected by the parties carrying out commercial transactions either as a part of their contract, or after the dispute arises to govern the conduct of the arbitration in resolving the dispute, recognizes both the types of arbitration evidently as it defines arbitration as- *"Any arbitration whether or not administered by a permanent arbitral institution".* It attempts to purview the worldwide consensus on major aspects of International Arbitration practice, which has been accepted by the countries of diverse regions, having various legal and economic systems of the world.

Adopted during the Cold Era period, in 1985, the motive of the Convention was to bring forth uniformity of the law in arbitral procedures and serve the needs of the international commercial arbitration. In my opinion, the background, in which it was brought into picture is of utmost importance. It was a time period, when there was an ongoing fight for earning the title of a superpower. One of the ways for doing this, was by imposing, if not persuading, the third world countries (including India) to follow the same suit. This is why, national laws, specifically on arbitral procedure, differed widely. The differences have been a constant source of concern, when it came to arbitrations, taking place on an international level, because, one or more parties, approaching the foreign forum of arbitration, were unaware or not well versed with the provisions and procedures of that institution. Fitfulness of the domestic laws, could also lead to frustration of the proceedings of the arbitration; and in fact, in choosing the arbitration place too. This, in turn, could forestall the basic purpose of arbitration, as an alternate dispute resolution.

Taking into consideration the then treaties in force, Model Law was framed, to provide for a specialist legal regime, in matters of International Commercial Arbitration. Where on one hand, opponents of Model Law advocated, that it aimed on foisting its laws over all the nations; on the other, proponents were of the view that it provided flexibility to the states in preparing a unique set of arbitration laws, as suited to their nation and their citizens. I,

[11] *Id.*

personally, on some level, could connect more with the latter view, because more than a coercion, it was advising, in a way that the nations must follow the Model Law, as closely as possible, for them to harmonize and contribute to the utmost level, in the best interest of the users of International Commercial Arbitration.

As promising as it was, there were certain grey areas too. Wherefore, it is considered, that arbitration is anything but similar to courts, it envisaged, a number of provisions which delimited the involvement of the courts. For instance, the appointment[12], termination[13] and challenge[14] of the mandate of an arbitrator. How is it to work freely? If the courts were to appoint the arbitrators, could this appointment remain unchallenged? Certainly, not always. The challenge would be made to a court of law, which brings us back to square one; a long struggle for receiving a judgment from the court, over the appointment, so challenged, and then initiate the proceedings before that arbitrator, so appointed.

Institutional Arbitration v/s Ad hoc Arbitration

1. A Sophie'sChoice

Arbitration can be either "institutional" or "*ad hoc*".[15] There are structural contrasts between the types of arbitrations as is reflected in the manner by which cases are generally presented by the parties and apprehended by the arbitral tribunal. However, in most situations, the type of arbitration is chosen by the parties not so much because they like it but rather because they have no other choice.[16]It is considered to be one Sophie's choice, not only because it is a difficult one to make, but also, because sometimes, it is something which is forced upon someone, due to constraints like lack of enough resources – in terms of accessibility and finances.

2. Institutional Arbitration

[12] Article 11, UNCITRAL Model Law.
[13] Article 14, UNCITRAL Model Law.
[14] Article 13, UNCITRAL Model Law.
[15]Blanke, G, Institutional versus Ad Hoc Arbitration: A European Perspective (published online: Academy of European Law, 2008).
[16]Craig M. Gertz, The Selection of Choice of Law Provisions in International Commercial Arbitration: A Case for Contractual Depecage, 12 Nw. J. Int'l L. & Bus. 163 (1991-1992).

If the arbitration agreement between the disputed parties stipulate that thearbitration may be administered by an arbitral institution, it is an institutional arbitration. It is an intervention of a specialized institution for playing the role of administering the arbitration process. However, the institution per se does not arbitrate over the matter. Rather, it the arbitral panel of which does that. The job of the institution is to merely keep an oversight on the parties, and on the arbitral panel, to ensure that the rules and procedures of that particular institution are followed. Despite of the fact that the work of such an institution, highly depends on the *lexarbitri* and on the specified rules of that institution, a generalized duty of such an institution is to provide a pathway for the appointment of the arbitral panel, which not only consists of fixing the number of arbitrators, or confirming the arbitrators, as appointed by the concerned parties, but also, providing an arbitrator *in lieu* of the one, as nominated by the party[17], wherein, the said party has utterly failed to do so.

What happens in a case, wherein the parties challenge the very position of the arbitrator, who has been appointed by the concerned institution? In the first place, can they do it? Unequivocally, they can. Not only because they actually feel that such a position is to be questioned, but also, because even if, it being an "out of court" settlement, nothing can happen lawfully, without getting delayed.In case of our own country, the parties very well can and in fact, they do. However, certain grounds have to be fulfilled. As a matter of law, these are in accordance with the Arbitration and Conciliation Act, 1996.[18]Under this, the person who is approached for being the arbitrator in a particular dispute, has to mandatorily, provide in writing, the circumstances which can appraise justifiable doubts over his independence or impartiality to act as an arbitrator.[19]In the recent decision of the Hon'ble Supreme Court of India, in *HRD Corporation (Marcus Oil and Chemical Division) v. GAIL (India) Limited*[20],the legal position regarding challenges to a person's possible appointment as an arbitrator, was set out. The position under the act is that a disclosure must be made by a person approached as a possible arbitrator. If he or she discloses circumstances which fall under any of the categories specified in the Seventh Schedule, then that person cannot be appointed as an arbitrator.Focus should be made to the Fifth and the Seventh schedule of the

[17]*Supra* note at 8.
[18]Malhotra,OP, *The Law and Practice of Arbitration and Conciliation*: The Arbitration and Conciliation Act 1996, 2nd edn (New Delhi: LexisNexis Butterworths, 2006).
[19] Section 12, Arbitration and Conciliation Act, 1996.
[20]HRD Corporation (Marcus Oil and Chemical Division) v. GAIL (India) Limited2017 SCC OnLine SC 1024 (India).

aforementioned act, which provides for a guide as to whether or not the circumstances result in canvassing the position of such an arbitrator's independence and impartiality, and subsequently, renders him ineligible, respectively. If the circumstances fall under the Fifth Schedule, which gives rise to justifiable grounds as to the person's independence or impartiality, it would not make the person *de jure* ineligible for appointment as arbitrator. Considering our history, such an act could not have been formulated without referring, and "not merely copying" (in the words, of the worthy members of our Constituent Assembly), the arbitration rules as enshrined in different statutes. It is highly influenced by the lists, namely – green list, orange list and the red list, of the International Bar Association. They specify the specific situations, that do or do not warrant the disclosure or disqualification of an arbitrator. This was initially adopted, with a view to increase the consistency, and avoid unnecessary challenges to the position of an arbitrator, and further withdrawals or removals.The sad part is that the provisions were taken from these lists, and applied to India, even without considering their suitability. The differences in the growth of the international business and that, in our nation, and also, the manner in which they are conducted, including interlocking corporate relationships and international firms, have caused more disclosures and have created more difficult conflict of interest issues to determine. Even though certain provisions are verbatim to those lists, but then again, we haven't copied.

However, it is to be appreciated that it is now well settled in case of India, that the courts will not interfere in a challenge to the appointment of an arbitrator. But then again, the Hon'ble Delhi High Court had entertained a petition challenging the appointment of an arbitrator on the grounds set out in the Fifth Schedule and while exercising its powers under Section 14 of the act, appointed another arbitrator because the arbitrator in question had withheld important information and had in turn, disclosed false information.[21] Therefore, there still exists *the* grey area.

Some common institutions include International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), etc. Therefore, in other words, it is an arbitral panel which arbitrates the dispute. But, it is not necessary to take recourse to the aforesaid

[21]Dream Valley Farms Pvt Ltd v ReligareFinvest Ltd (2016 SCC Online Del 5584). Also referred to New Tirupur Area Development Corporation Ltd. v. M/s. Hindustan Construction Co. Ltd A. NO. 7674 of 2016 in O.P. No. 931 of 2015; Tufan Chatterjee v. Rangan Dhar AIR 2016 Cal 213; Ardee Infrastructure Pvt. Ltd. v. Anuradha Bhatia 2017 SCC Online Del 6402 (India).

well known international arbitration organizations. A country could have its own arbitral panel, for instance, Dubai International Finance Centre (DIFC), or ADR Institute of Canada (ADRIC). Each institution has its own set of rules and procedures to be followed which formulates a framework for the arbitration. These rules are formulated as a result of years and years of experience, which is why, they try to cover all the possible types of cases.

3. Ad hoc Arbitration

Ad hoc arbitration is to be distinctly understood with reference to the Institutional Arbitration.The arbitration would be *ad hoc*, if it is one which is not administered or governed by any institution as the arbitration agreement does not make any sort of mention of anyinstitutional arbitration.[22] Hereby, it is quite certain that in such an arbitration, the parties will have to specify each and every term of the arbitration which, even includes the number of arbitrators, their manner of appointment, procedure for conducting the arbitration, etc.without any kind of assistance from or recourse to any arbitral institution.[23]

Thereby, in this case, the arbitral panel and its mechanism, is structured, specifically for a particular dispute. It is clearly open to the parties, to either, submit to the rules of any institutional arbitration or formulate their own. However, what needs consideration is the fact, that – how is it possible for two parties, to come down to a negotiation, when their expectations are different, and maybe, in contrast to each other? Undoubtedly, it is adopted to suit every kind of dispute, but how will that happen, if there are no rules which are abided by the parties and their counsels? Lack of coordination, agreeability and conciliation would render this form of arbitration, useless. It would render, the courts of law, a better forum than this.

4. Resemblance or Semblance

While on one hand both, institutional and *ad hoc* arbitration are disparate and poles apart from each other, on the other, they are, in some sense, similar to each other too. For instance, just like institutional arbitration, *ad hoc* arbitration may too encompass domestic as well as international commercial arbitration. Furthermore, as mentioned earlier, though unlike *ad*

[22] Attorney, Denver, Colorado, "International Ad Hoc Arbitration: A Practical Alternative", 15 Int'l Bus. Law. 5 (1987).
[23] James N. Hyde, "A Special Chamber of the International Court of Justice — An Alternative to Ad Hoc Arbitration", 62, Am. J. Int. Law, 439–441 (1968).

hoc, institutional arbitration has its own set of rules, but still, the former can at times, adapt the rules of an arbitral institution, amending provisions for selection of the arbitrator(s) and removing provisions for administration of the arbitration by the institution which creates way for another similarity between the two. Other than what is mentioned above, *ad hoc* arbitration may also incorporate statutory procedures of any applicable state law such as the United States Federal Arbitration Act or even adopt rules crafted specifically for *ad hoc* arbitral proceedings such as the UNCITRAL Rules (U.N. Commission on International Trade Law) or CPR Rules (International Institute for Conflict Prevention and Resolution). This is however, contended that they might be in semblance, but they, not in the least, resemble. This is because the latter is supposed to mean that they are similar in every aspect – one which is visually perceptible and one, which is not. However, they might be in semblance, because they at least look similar, in certain cases. For instance, as mentioned above, they can be similar in a way that sometimes, the *ad hoc* arbitration may also resort to laws as formulated by any institution, hence, turn out to be similar. But then again, they might look similar. Even after adopting such laws, of any particular institution, they are never bound by it completely. A clause can be entered into the contract that they abide by laws of any particular institution, *subject to* discretion of the arbitrators, or negotiations between the parties.

5. Compare and Contrast – Which one's better?

In *National Thermal Power Corporation v. Singer Company*[24], the Hon'ble Supreme Court of India observed that:

"The difference between an ad hoc arbitration and an institutional arbitration is not a difference between one system of law and another; for whichever is the proper law which governs either proceeding, it is merely a difference in the method of appointment and conduct of arbitration. Either method is applicable to an international arbitration…"

i. Flexibility

Once a dispute arises, parties tend to disagree even on the most basic things which causes lack of co-operation, which may frustrate the parties' intention of resolving their dispute.[25]

[24]National Thermal Power Corporation v. Singer *Company*1993 AIR 998 (India).

This is where the *ad hoc* arbitration has an advantage over the institution based arbitration as the former is flexible enough to enable the disputed parties to decide the dispute resolution procedure themselves which may require greater degree of effort and expertise on the part of the parties to decide the arbitration rules, but then, at the end of the day, if successful, it brings in harmonization and synchronization among them, which matters.It give the parties, enough liberty to mould or twist the arbitration according to their needs.

ii. Sovereignty issues

Also, when the disputes involve public interest or large sum of public money, institutional arbitration may not be preferred, as it is seen to be inappropriate where one party is a state. Sovereign entities are often reluctant, as a matter of politics, to submit to the authority of any institution, regardless of its standing, simply because, it may deny or devalue their sovereignty. Therefore, in such situations too, *ad hoc*overrules institutional arbitration.[26]

iii. Administration fee

Moreover, institutional arbitration is itself considered a cause of increasing expenses and time consumption, the former consisting of the administrative costs as well as the cost of arbitrators' fees involved in arbitration. Basically, it involves payment to the institution. In this aspect too, *ad hoc* arbitration superposes institutional arbitration as it is cost effective, including only the fees of the arbitral tribunal, lawyers or representatives and not the arbitration institute's administration fees.[27] But such is only the case if the parties and their respective advocates, cooperate with each other, they have the requisite expertise and that they duly abide by the rules and laws, as negotiated earlier. Failure of the same, might lead to increase in costs, on hourly basis. This, in turn, will lead to resort to courts of law. This can be very well avoided by agreeing, prior to the arbitration, that the negotiated laws would be abided by.

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[25]Branson & Wallace, Choosing the Substantive Law to Apply in International Commercial Arbitration, 27 VA. J. INT'L L. 39, 39 (1986).

[26]Arkin, H L, "International *Ad Hoc* Arbitration: A Practical Alternative", International Business Lawyer, January 1987.

[27]Ehrenhaft, Effective International CommercialArbitration, 9 LAw& POL'Y INT'L Bus. 1191, 1191 (1977) (litigation tends to be expensive and protracted); Danielowicz, The Choice of4pplicable Law in InternationalArbitration, 9 HASTINGS INT'L & COMP. L. REv. 235, 236 (1986); Note, General Principles of Law in International Commercial Arbitration, 101 HARv. L. REV. 1816, 1817 (1988).

iv. Interpretation

What we need to analyze here is that the arbitrators so appointed or at least, nominated by the parties, in question, shall have different interpretations, subject to different set of laws, that would be negotiated, then and there. In contrast to this, the draft of an arbitration clause is always updated, in case of institutional arbitration, with respect to, the developments that have taken place in arenas of arbitration laws and its procedures. This diminishes the possibility of a dispute leading to interpretive settlement.

v. Arbitration Rules

Despite the fact that*ad hoc* arbitration is better and comprehensive than institutional arbitration in various aspects like- it is suitable for all types of claims as the parties are in a position to devise a procedure fair and suitable to both sides, still there are certain arenas where institutional arbitration surpasses *ad hoc* arbitration. In case of latter, the parties have to rely upon their own discretion on selecting an individual arbitrator, which may be particularly difficult in cases of international arbitrations because a party would not be able to choose an experienced arbitrator from his respective country due to the notion of *ex parte,* and he may not know any other arbitrator from other countries; whereas a perceived advantage of institutional arbitration is the reputation and prestige of the institute.[28]It is also to be noted that each institution publishes, for the purpose of making available, the extensive and the comprehensive rules, governing that arbitral panel. In this way, the parties in dispute do have the access to the procedural rules, in advance, and it gives them and their advocate to plan out their case, in the subsequent manner.

vi. Reputation

Also, arbitral award issued in the name of a well known institute, for instance, ICC, is helpful in terms of enforcement. Another advantage of institutional arbitration is that, as aforementioned, its rules are generally set out in a booklet. The clause is advantageous as the

[28]Abraham, C, "*Importance of Institutional Arbitration in International Commercial Arbitration*", Symposium on Need for Speed: International Institutional Arbitration, Federation House, New Delhi, India, November 22, 2008.

arbitration process can be regulated freely and effectively as a set of rules exist to stimulate the appointment of the arbitral tribunal, its administration and conduction, which is not the case of *ad hoc* arbitration, which relies over other sources and taking them as persuasive value to set out a basic framework for itself to solve the dispute.

vii. Speed

Lastly, whether institutional or *ad hoc* arbitration, speed is the essence. In case of former, there would be an arbitral institution involved which would have strict time limits within which the party pleadings have to be exchanged, the main hearing and the publication of the final award has to be done, which will guide the tribunal as well as the parties to work out things swiftly and smoothly.Also, since the rules would have been decided beforehand only, there would not be any procrastination or the wastage of time, in negotiating the rules, that would govern such an arbitration. This would result in a far less adversarial approach. Not just this, there are quite a few institutions, which have a Rota, which specifies, the qualifications, the experience of the concerned arbitrators.

Analysis – Let's Judge!

As mentioned earlier, international arbitration brings together parties from diverse countries in an organized manner to resolve disputes before an impartial arbitral tribunal. The parties have a choice between of the type of which suits their purpose and objective. *Ad hoc* arbitration conveys us the message that parties are the masters of their own arbitration, which is questioned by the institutional arbitration, as it acquires the parties' power to make decisions and imposes its will over them, which, in my opinion, is against the norms and spirit of arbitration.[29] Although *ad hoc* may seem convenient in today's era of globalization and a commercially complex world, but, I believe, that it is suitable for small claims arising in domestic spheres only. In the context of international commercial disputes, institutional arbitrations may be more apt- despite being more expensive, time consuming and rigid. The institutional process provides established and up to date arbitration rules, support, supervision and monitoring of the arbitration, review of the awards and strengthens the awards' credibility.The particular circumstances of the parties and the nature of the dispute will ultimately determine whether institutional or ad hoc arbitration should prevail.

[29]Lew, J D M, Mistelis, LA and Kroll, S M, Comparative International Commercial Arbitration (The Hague: Kluwer Law International, 2003).

Korean and/or American?

"Wars will remain while human nature remains. I believe in my soul in cooperation; in arbitration; but the soldier's occupation we cannot say is gone until human nature is gone."- Rutherford B. Hayes

Though, there is an agreement between the contractual parties on how to deal while resolving disputes, in resorting to arbitration, but, what we, or they, themselves, as a matter of fact, forget, is that, they belong to different nationalities, and therefore, sometimes the differences in the expectations and misunderstandings between or amongst them may turn out to be stumbling block for the arbitral tribunal, of also different nationalities. One of the most substantial cause of misunderstanding amongst them, ameliorates when it comes to making choice of an institutional arbitration, as parties submit their dispute to that administration.

As accurately noted by Rutherford, even if we start taking recourse to arbitration, in practically, all matters of dispute, there still would be, "soldier's occupation", if I may say so. In case of a dispute, arising out of a contract, between two parties, belonging to North Korea *and* the United States of America, having an arbitration clause, there would be nothing called as a "settlement". This is very well substantiated from that conundrum, that it will create when it will come to choosing the arbitration institution or the arbitral panel, and as to the laws by which, such an arbitration would be governed; whether it would be Korean *or* American.

When such contrasting countries are placed before an arbitration panel, how *humble* would they be? In a way to say, that in such cases, the parties, in dispute, would end up making a fuss even on smallest of the issues, because of lack of coordination that their countries, in general, have. That's the human nature, or patriotism, as to say. But let's not get started on that. The whole sole point here is to say, that, despite the formulation of the Model Law, which gave rise to flexible arbitration laws in diverse nations, certain parties, belonging to different nationalities, especially those at war, would have different expectations from the arbitral panel. How well are they able to manifest is the smaller question here. What considerations are taken up by the arbitral panel before deciding on the matter, is the bigger question.

As Samuel Gompers rightly remarked, *"Do I believe in arbitration? I do. But, not in arbitration between the lion and the lamb, in which the lamb is in the morning found inside the lion."*

As true as it sounds, the reason why arbitration is hailed is that "the ball is in their court", and not just one party is benefitting out of it. If, as Gompers remarked, is the case, then in my opinion, the delayed court judgment should be preferred. Otherwise, arbitration in such a matter would pull us back to the dominant- submissive position. Thus would not happen in a court of law. At least, it would not merit the superpower, but the case, at hand.

Conclusion

In today's exponentially commercial and complex world, it is to be understood that the human nature is such, that it is selfish. We no more, follow Gandhian philosophy of selflessness. In case of disputes, parties, especially the affluent ones, would any way fight to any extent, and act in a way, by which they will completely disregard the claims of the other party. Therefore, in my opinion, ad hoc arbitration should only be resorted to when the parties are not so affluent, the claims are not low, and it is a dispute that has arisen within the territory of a particular nation. For parties, which are unboundedly well off, are to be restricted within the bounds of arbitration laws, as already formulated by an institution. They should not be given the choice of formulating the rules by which, the arbitration on that particular matter work. This is simply because, there can never be any sort of conclusion to this – no end to this. As obstinate as they can be, they would put all of their efforts, just to delay the process and create a paucity of time.

As far as the conflict between arbitration and a court of law is concerned, in my opinion, they both have their positions secure. However, taking into consideration the bundles of files which are piled up in, for instance, any regular District or a High Court of India, arbitration should be promoted. It is extremely saddening to even write that, where the world has progressed and at least has a choice, of whether to opt for institutional arbitration or *ad hoc* arbitration, there are certain countries, including India, wherein, institutional arbitration is not acclaimed; therefore, the people end having no choice of resolution.

"This is a court of law, young man, not a court of justice"- Oliver Wendell Holmes Jr.

It comes to me as a surprise, as to how these two can be distinguished. Well, they can very well *not* coincide. How, you ask? The fundamental reason is that sometimes, law, in itself, may be unjust. Triple Talaq in India, for instance, is downright unjust towards women, or illegality of contraception in Ireland, for that matter. Wherefore, a court enforces an unjust law, just to dispense justice, there actually isn't any justice, which is dispensed. Furthermore, what needs considerable pondering is whether the work of the court is to administer law or to dispense justice. But, from this, the skepticism emanates – why are we discussing courts, when our ongoing discourse is over arbitration? Is it a *form* of court?

Few days ago, I was told about an arbitration, that had taken place, years ago. The case had unfolded, as an injured lady had sued a lorry driver for driving recklessly and causing hurt to the lady. Despite all the witnesses going against the lorry driver, the latter adamantly denied the responsibility of the accident. It was blatantly clear that the injured lady must win, when the arbitrator turned towards the learned advocate of the lady, with the judgment, "You presented no evidence to prove that the man was the owner of the lorry. Case dismissed."

That is its power. Then, why not call it, a court? Just because, it does not have a jurisdiction, a rule book, some established principles or practice of the common law? It does have a jurisdiction – in equity. Unlike dispensing justice, it administers law. But then again, we are in a habit of calling *things* fancifully, so let's call it neither a court of law, nor a court of justice; rather, a court of equity.