Page 229 - 239 ***DOI:*** *https://doij.org/10.10000/IJLSI.112202*

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 5

2024

Arbitration as an Alternate Dispute Settlement Mechanism

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ABSTRACT

Conflicts are common between nations because of divergent views on interest and geo-political complexity of countries. Since World War II international community was struggling to combat the conflicts, though peace treaty were being signed between nations they face a stagnation in implementation part. Effective mechanism for settlement of disputes was in question then. Global peace and stability will become a greatest issue in this prospective. In order to effectively implement the dispute settlement process United Nations has taken a step by implicating the mechanisms in peaceful ways such as Negotiation, Mediation, Conciliation Good offices, Arbitration to settle the disputes arose between nations peacefully. International arbitration plays a vital role in settling politics related disputes. It acts as an excellent tool for promoting diplomatic relations between states and to reduce disagreements. This paper attempts to explain about the process of arbitration, its characteristics, types, international instruments and also gives an insight with the implementation of arbitration in municipal level.

Keywords: *International Arbitration, Pacific ways of settling dispute, Conflict resolution mechanism, Effective mechanism for dispute settlement, International peace and security, Arbitration Procedures.*

I. INTRODUCTION

I.A. Shearer, Starke's The main purpose of international law is to maintain peace and security among the international community. With this motive after the first world war League of nations had been established during 1919. The League failed to maintain peace and ensure security among the world nations. Hence the World War II broke out. In order to promote peace and security United Nations had been established after World War II during 1945. Article 1 of United Nations charter ensures to maintain international peace and security. Diplomatic settlement of dispute is the basic pillar of contemporary international community. Diplomatic Procedure, adjudication and institutional methods are the pillars of conflict management. Diplomatic Procedure involves settlement of disputes by the parties themselves or by seeking the help of third parties. Adjudicative methods are based on the adjudication of disputes either

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 [ISSN 2581-9453]

by judicial tribunal or arbitral tribunal. When United Nations or any international or regional institutions come to the rescue then it is considered as Institutional methods. Article 2 of UN charter speaks about peaceful settlement of disputes which is an essential principle of International Law, which relates to the cooperation and friendly relations among nations. One of the adjudicative processes of settlement of dispute is Arbitration, which is one of the pacific modes of settlement of disputes. Arbitration refers to reference of dispute to certain persons called Arbitrators, who are chosen through consent of the parties who makes an award exactly as same in municipal law.

II. DISPUTE AND TYPES

Basically, dispute refers to disagreement between Parties there are two types of disputes which will arose between nations. One is legal and other one is political. The distinction between political and legal disputes is indeed nuanced and can often be subjective. It hinges largely on how states perceive the nature of the disagreement and how they choose to address It. In a legal dispute, states seek to resolve the issue through established laws, treaties, or legal principles, typically bringing it to an international court or tribunal. The goal is to find a binding, lawful resolution based on rules that both parties recognize. Legal disputes often involve questions of interpretation, application, or breach of international law or agreements. On the other hand, a political dispute is less about what the law says and more about the broader interests, power dynamics, and strategic concerns of the states involved. These disputes are often resolved through diplomacy, negotiation, or other non-legal means. When states prefer not to engage with legal frameworks, they frame their disagreements in political terms, making it harder to apply judicial resolutions. The subjectivity lies in how states frame the issue. If both parties want a legal ruling, the dispute is typically classified as legal. However, if one or both parties prefer negotiation, mediation, or refuse legal arbitration, the issue may shift into the political realm, even if it originally had legal dimensions. But the difference between the two becomes crucial because the international law-established dispute resolution process exclusively addresses legal disputes. The court made it quite apparent that it is solely interested in the legal side of issues in **Nicaragua v. Honduras**, a case involving Border and Transborder Armed Action. The court cannot focus only on the political side of a matter if it involves both political and legal aspects. A political element present in addition to a legal one does not take away from the case's status as a legal one, according to an advisory opinion issued in the **Legality of the Threat or Use of nuclear weapons.** But when a question comes up about whether or not State conflicts are valid, that question is answered in line with Article 36, paragraph 6 of the Statute, which states that the court's verdict will be the final arbiter. Because international law

exclusively addresses legal issues, it is necessary to interpret the term "dispute" in a limited sense. There are two ways that legal conflicts in international law can be resolved: peacefully or amicably, or through forceful or compulsive tactics. Peaceful or Pacific means includes Negotiation. Mediation, Good offices, Conciliation, Arbitration and Judicial settlement of disputes. Forceful or coercive means includes Retortion, Reprisals, Embargo, Pacific Blockade, Intervention and settlement through United Nations.

III. International peace and security as an epitome of International Law

The absence of fighting is reflected in the state of peace. One could argue that in order to maintain a peaceful atmosphere, war must be truly rejected for whatever cause. The phrase used to describe the circumstances' level of certainty is what is necessary for independence. Peace, then, is a collaborative endeavour linked to the mutual terms of individuals. Because it is connected to international organizations, the path toward peace and security has significant importance on a global scale. The modern definition of peace places equal emphasis on its constructive and destructive elements as well as its grasp as a rigorous process.

The responsibilities for resolving international disputes peacefully and the practical means of doing so are the outcome of a lengthy and continuous improvement in state-to-state interactions, which was followed by the development and improvement of organizations and norms of universal law. The term "peace resort" refers to several interpretations of peaceful dispute resolution on a global scale. In recent times, several agreements have been reached between the states to resolve their problems, leading to the resolution of disputes or the establishment of authorities for conflict resolution. The United Nations Charter called a conference that led to the creation of international justice and law in order to lay the groundwork for a peaceful and prosperous world.

Effective communication is the fundamental factor that lessens the effects of conflicts. In the past, a wide range of mass media, including radio, newspapers, and television, were utilized extensively and recognized as vital components for reaching the intended audience with information or messages. The elements that can lessen violence and advance peace can be discussed using these resources. Since the primary goals of the peace building grant program in communication are to dissipate violence, promote peace, and disseminate information, it is an excellent tool for lessening the effects of violence. A number of crucial strategies for managing tense circumstances have been outlined. These include offering assistance, backing, or influence, which will ultimately aid in fostering calm and facilitate the flow of information that may intensify the situation.

 [ISSN 2581-9453]

IV. Amicable or peaceful or pacific means of settlement

International law has traditionally been seen as a means by which the international community works to build and maintain world peace and security. The preservation of world peace and security has been the fundamental goal of the League of Nations' which was founded in 1919 and in 1945 the United Nations'. A number of multilateral accords that seek to settle disputes amicably have been signed. The **Hague Convention of 1899** for the Peaceful Settlement of Disputes is one of the most significant.

The UN Charter's Article 2 paragraph 3 states that members shall settle any international disputes amicably, so long as international peace, security, and the administration of justice are not jeopardized. A variety of methods for the amicable resolution of conflicts are listed in Article 33, Paragraph 1 of the Charter. Extrajudicial and judicial ways of settlement are the two main categories into which the different peaceful techniques of settlement can be broadly classified. Extra Judicial comprises of Mediation, Negotiation, Conciliation and Good offices. Judicial comprises of Arbitration and settlement through International Court of Justice.

V. Arbitration

Arbitration gained more importance in recent days for settlement of disputes. Arbitration is an alternate dispute settlement where aggrieved parties appoint Arbitrators through their consent and the decision given by the Arbitrator is final and binding on the parties of dispute. In addition to the **Hague Conventions of 1899 and 1907**, several bilateral and multilateral agreements of a global or regional nature provide for the peaceful settlement of disputes between States through the use of arbitration. Thus, arbitration has become one of the third-party processes that are most commonly selected to resolve conflicts pertaining to, among other things, international law violations, disputes over the interpretation of bilateral or multilateral treaties, and issues involving territory and border disputes. In this regard, the Permanent Court of Arbitration was founded by 1899 and 1907 Hague Conventions to aid in the resolution of conflicts that diplomacy had been unable to resolve.

VI. Arbitration agreement types

The parties' agreement to arbitrate may be given either before or after a disagreement arises. The parties may agree that arbitration will be used to settle all or a specific category of future disputes. Such a pledge may be included in bilateral or international agreements that are only focused on resolving conflicts amicably. Including a compromissory clause in a treaty, wherein parties agree to arbitrate all or portion of their future disputes pertaining to that treaty, is a more popular approach. After a disagreement arises, the parties may additionally decide to proceed

to arbitration by a special agreement or compromise. A compromissory clause is a clause in a treaty that stipulates that all or some of the disputes arising out of the interpretation or application of the treaty shall be settled by arbitration. Compromise clauses are frequently written in broad strokes. Although the compromissory clauses reflect the parties' agreement to arbitrate all or some disputes, they typically don't specify the tribunal's creation and functioning procedures. In order to employ a compromissory provision to bring a matter to arbitration, the parties must often reach a particular agreement. However, because the compromise deal with the constitutional features of the arbitral tribunal that is being established, the special agreements are more extensive. As a result, in a compromise, the disputing parties may address the following matters: the tribunal's composition, including its size, appointment process, and methods for filling vacancies; the appointment of the parties' agents; the issues to be decided by the tribunal; the procedural rules and methods of the tribunal's work, including, where appropriate, the languages to be used, the applicable law, the tribunal's administrative aspects and seat, the financial arrangements for the tribunal's expenses and the finality of the tribunal's decisions and obligations and rights of the parties relating thereto.

The problems listed above are merely examples of what should be addressed by a compromise the extent to which they are included in a compromise varies depending on the circumstances and is determined by the disputing parties. As a result, some compromise remains silent about the issue of applicable law, while others contain clauses pertaining to the arbitral tribunal members' privileges and immunities, and yet others deal with the issue of interim arrangements for maintaining each party's legal rights while the arbitral tribunal's job is being completed. Certain agreements are concise and solely cover necessary details, they don't address the tribunal's operational procedures, financial standing, or administrative and operational features.

VII. COMPOSITION AND PROCEDURE OF ARBITRAL TRIBUNAL

One person designated by the disputing parties as the only arbitrator or umpire may conduct arbitration as a third-party proceeding, or a group of people nominated to constitute an arbitral tribunal may undertake arbitration. Most treaties establishing arbitration tribunals typically provide for an odd number of arbitrators, some stipulate that the tribunal must consist of five arbitrators, while three members have historically been the most typical size. At that time, each disputing party may choose to designate one of the three arbitrators or depending on the situation, two of the five arbitrators. The parties to the dispute will typically appoint the third or fifth arbitrator, who is also frequently referred to as the chairman, by unanimous decision. In certain situations, the parties may also decide jointly amongst the arbitrators who have already been nominated by the parties. In the event that obstacles impede the appointment of

the third or fifth member, so impeding the fulfilment of the tribunal's composition, the disputing parties may delegate to a third State or a notable individual the authority to make the requisite appointment in that instance.

The provisions regarding the tribunal's composition specify the time frame in which the parties to the dispute must make their respective initial appointments to the tribunal in compliance with the terms of the applicable treaty, as well as the period within which the individuals assigned the duty to make the necessary appointments must discharge the duty. The aforementioned regulations pertain to the resolution of any potential vacancies within the tribunal. Typically, these vacancies necessitate the same procedure for filling as the initial appointment. Certain arbitral tribunals are made up of people chosen by the parties based on a pre-existing list of arbitrators, like the Permanent Court of Arbitration, which was established in accordance with the 1899 and 1907 Hague Conventions. Other arbitral tribunals are made up without the advantage of a pre-existing list. Nonetheless, nationality and the qualifications of the arbitrators are typically discussed in both kinds of arbitrations. In certain instances, the parties specify the precise credentials of the people chosen to serve as arbitrators in the arbitration agreement.

It is possible for the parties to an arbitration to decide which law the tribunal will use to decide their issues. Certain arbitration agreements stipulate the application of particular rules, while others merely mention the relevant law in passing. Numerous arbitration agreements expressly state that international law will apply, and some even demand that the norms of international law be followed. Certain arbitration clauses have said nothing about this. Consequently, the tribunal shall adopt the substantive rules listed in Article 38 of the Statute of the International Court in the event that the arbitration agreement contains no provisions defining the law that would apply to the merits of the dispute. Principles of equity, Justice and equitable solutions which are applicable to dispute also may be chosen by the parties to arbitration. The seat of the arbitration may also be specified in the agreement. If it is not mentioned then the Tribunal itself decide the seat as recommended by the President. The place where the first meeting is being conducted and also the further meetings will be specified in the agreement.

Arbitration agreement involves two kinds of expenses what parties has to do with getting each of their case ready and presenting it to the arbitral panel. These expenses, which are paid for by the parties themselves, include things like legal fees, expert fees, costs associated with acquiring evidence, document translation costs, travel costs, and so on. Other expenses consist of the arbitral tribunal's common expenses, which include the arbitrators' fees, the registrar's salary, the arbitral tribunal staff's salaries interpreters, clerical supplies and so on. Each party

to the case pays for their own expenditures and contributes to the tribunal's administrative costs. The expenses of the arbitrators are often split evenly between the parties. But occasionally, some agreements provide that each party must pay.

The arbitration process culminates in an award that legally binds the disputing parties. Every compromise that the parties to the case enter into always includes a supplementary clause committing them to follow the ruling of the relevant arbitration panel. Awards are usually in written format, duly signed, and dated. The decision of the tribunal would be decided by a majority vote of its members, according to some agreement while others additionally grant arbitrators the ability to file a separate or dissenting opinion, depending on the procedural procedures that the specific tribunal has chosen. Award may be subject to revision or correction with respect to arithmetic, typical or clerical mistakes and it may be interpreted based on some arbitral awards. Finally, execution of award follows.

VIII. Role of Permanent Court of Arbitration, International Chamber of Commerce and International Court of Arbitration in Settling Disputes

Hague convention for pacific settlement of disputes 1899 contains provisions for maintaining peace between countries. The establishment of PCA is one of the most important outcomes of this convention. Permanent Court of Arbitration (PCA), an international body mediates or supports disputes between states, state organizations, and investors by methods of arbitration, mediation, conciliation, and other procedures. The headquarters of PCA is at Hague, Netherlands. PCA provides a range of services to carry out this facilitation, including the designation of arbitrators, hearing procedure provision, teaming up to handle the demands of the proceedings for each hearing, and impartial arbitration. The parties in dispute may also consent to follow PCA procedural norms in exchange for PCA's assistance. The establishment of the Permanent Court of Arbitration (PCA) aimed to expedite international disputes between member countries, or inter-governmental organisations, by offering an instantaneous arbitration option in cases where diplomatic negotiations proved fruitless. The primary characteristic that set PCA apart from typical courts was its inception as a distinct process. PCA allowed the contracting parties to freely select PCA as an impartial third-party administrator or facilitator, without imposing its jurisdiction on them. The PCA was established as an impartial platform with its own independent set of rules and arbitrators who could ultimately settle the disputes amicably, in contrast to the courts in various countries where disputes had to be referred to in case of domestic disputes, in case of international disputes,

between two countries, as well as private parties of two countries. Rather of having a fixed building where its panel of arbitrators may be located, the PCA was intended to appoint the arbitrators mutually from the panel maintained by PCA. The disputes referred to PCA may be inter-state dispute, investor state dispute Contract baaed arbitration, mediation and conciliation. Some of the landmark cases decided by PCA are The Pious Fund of the California's (United States v. Mexico) (1902), United States v Netherlands (1928) – Island of Palmas (or Miangas) Case, Murphy Exploration & Production Company – International vs. Republic of Ecuador (2017). India had also gone before Permanent Court of Arbitration (PCA) in Indus Waters Treaty Arbitration (2013) and Enrica Lexie Case (2020).

With the goal of promoting worldwide trade and investment, the worldwide Chamber of Commerce (ICC), which was founded in 1919 in Paris, is a pillar of international business. Establishing worldwide commercial marketplaces and best practices, as well as advocating for trade liberalization, are its main objectives. In order to create laws and policies that support international trade, it actively collaborates with governments, international organizations, and other stakeholders.

The International Court of Arbitration (ICA), a body founded in 1923, is one of its noteworthy innovations. ICA handles the arbitration process for resolving issues involving international commerce. The International Chamber of Commerce Rules of Arbitration are a collection of guidelines for international arbitration that are established by it and are updated on a regular basis. It isn't an arbitrator or a court. Instead, it is an administrative body that appoints arbitrators in a supervisory capacity. It is also in charge of examining and approving arbitral awards. The ICC World Council appoints its president, vice-presidents, and members, who serve three-year terms. The parties delegate certain decision-making authority to the International Court of Arbitration (ICA) when they want to use it.

IX. COMPARING ARBITRATION WITH OTHER DIPLOMATIC SETTLEMENTS

In order to settle disputes, compromise is required. But during the implementation stage, voluntary concessions obtained through mediation or negotiation typically come with a hefty political price. Citizens become less supportive of leaders who make voluntary concessions. This is due to a number of factors. Citizens become disgruntled when concessions are made. People typically feel that their side of a conflict is correct and dislike giving in to pressure from their opponents, especially after a peace treaty has been signed and the issue appears to be being reopened even it was previously settled. People perceive voluntary concessions as a sign of vulnerability. Price when combined, these elements could make voluntary compromise challenging or unfeasible. The significant political costs associated with a mediated or

negotiated settlement may make leaders unable or unwilling to accept it. Parties may terminate a negotiation or withdraw their consent to mediate if they are unwilling to reach a settlement, which will lead to the failure of process This implies that a great deal of implementation disputes will be beyond the scope of negotiation or mediation. Furthermore, the chances of a long-lasting peace would be diminished if leaders decide to incur the political cost of a voluntary settlement because their citizens will not be happy. It is improbable that an unpopular settlement will be carried out.

Arbitration lessens these damages. Leaders acknowledge beforehand that their agreement to an arbitral award will be binding and cannot be revoked. Concessions imposed on their leaders are more likely to be accepted by domestic spectators than ones that are voluntary. Citizens acknowledge that leaders are bound by rulings and hold arbitrators not leaders accountable for the decision. Individuals could nevertheless be dissatisfied with an arbitral decision that does not support their viewpoint. Arbitration allows a leader to partially exonerate herself from this dissatisfaction. Negotiation or Mediation cannot do this. Thus, by lowering the political cost of reaching a compromise and resolving conflicts, arbitration facilitates leaders' ability to do so. Spectators in the country may also have greater faith in the results of arbitrations. Using arbitration to resolve disputes bindingly shows that all parties intend to be bound by the decision which fosters confidence. Apart from that, sending the conflict to a neutral arbiter helps keep the parties apart from their strong feelings or opinions. Ultimately Arbitration indicates cooperation as opposed to weakness. As a result, arbitration reduces dissatisfaction that could jeopardize peace while also better facilitating compromise. The perceived legitimacy of arbitration could also help to lower unhappiness.

X. CONCLUSION

Arbitration is a highly effective method of resolving conflicts between parties by giving them the opportunity to participate directly in the process and by using an impartial arbiter. In addition, it offers a number of significant advantages over standard civil litigation. Due to these factors, arbitration has become one of the most popular methods of resolving disputes in recent years. A number of international accords have been negotiated to standardize and create uniformity in the arbitration process worldwide as a result of its increasing popularity. Arbitration is practiced in many different forms all around the world. The goal of the international conventions is to establish some fundamental rules that will guide these actions. However, since the conventions are not universal, there is no law that applies to arbitration hearings. Hence, Arbitration is still developing.

The capacity of international arbitration to offer a legally binding, unbiased, and neutral means

of settling disputes between states is a clear indication of its efficacy in handling political disagreements. International arbitration has many benefits, including flexibility, confidentiality, and respect to international law, despite drawbacks including enforceability and voluntary participation. Arbitration is essential to the forming of international politics and government because it encourages peaceful resolution of disputes, upholds legal standards, and fosters international collaboration. In the area of trade and commerce also International Arbitration is playing a vital role in settling disputes. The United Nations Commission on International Trade Law (UNCITRAL) is a body formed under the United Nations to regulate and facilitate international trade and investment. The UNCITRAL Arbitration Rules are a set of arbitration rules adopted by the United Nations for the contracting parties to opt strictly for the resolution. These observations make it clear that, despite the complexity of contemporary geopolitics, international arbitration remains a useful tool for advancing peaceful resolution and maintaining international stability. States can support the values of multilateralism, the rule of law, and respect for human rights by accepting arbitration as a form of conflict resolution. This will help to create an international order that is more peaceful, just, and cooperative.

In Municipal level all the states should have to incorporate the Arbitration processes stringently in their municipal laws, to combat unnecessary complications arising out of usual judicial processes. The primary piece of legislation governing arbitration in India is the **Arbitration and Conciliation Act, 1996**. The Act seeks to establish a thorough legal framework for both domestic and international arbitration, drawing inspiration from the UNCITRAL Model Law on International Commercial Arbitration. The appointment of arbitrators, the conduct of the arbitration process, and the enforcement of arbitral rulings are only a few of the topics it addresses. The Indian government has strengthened the arbitration regime with major improvements in recent years. The goal of the 2015 and 2019 amendments to the Arbitration and Conciliation Act was to streamline, expedite, and improve the user experience. These adjustments demonstrate India's dedication to foster an atmosphere that is favourable to arbitration and establishing itself as a top location for the settlement of disputes. In the global arena, even though there are challenges remaining, the future of Arbitration in India is optimistic enough to increase the probability of arbitration, as an ideal destination.

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