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THE LEGACY OUTREACH

A QUARTERLY ROUND UP

IN THIS EDITION

THE CHANGING PHASES OF ARBITRATION LAWS IN INDIA

Arbitration Law in India is governed chiefly by **Arbitration & Conciliation Act, 1996 (Act)** which is based on the UNCITRAL model and came into force on August 22, 1996. This Act's primary objective is to provide speedy and effective dispute resolution for both International & Domestic commercial arbitration, Conciliation and Enforcement of Foreign Awards in India.

Significantly, filing of an application under section 34 provided automatic stay of Awards by convention till 2015 Amendment came into picture. The Act is an evolving legislation and has gone through major amendments in 2015, 2019 and more recently in 2021 to cater to the demands of the various stake-holders.

Here's a look at the major and notable amendments to the Principal act year-wise with a discussion on their objectives:

Arbitration & Conciliation (Amendment) Act, 2015 [w.e.f. 23.10.2015]

- The introduction of Section 2 (2) by way of which certain sections such as 9, 27 and 37 would apply to International Commercial Arbitration.
- Introduction of sub-section 2 in Section 9 prescribes a time limit of 90 days from the date of such order or as court may direct for initiation of Arbitral proceedings where a court institutions to maintain confidentiality of the proceedings and only disclose the Award for the purpose of its implementation. This amendment gave the Arbitration proceedings, the nature of reserved proceedings.
- Under Section 17, time frame for seeking interim measures by parties was limited till the passing of the award by the Arbitral Tribunal and not beyond.
- Further, it reduced the scope of interference by the Court under Section 34. It clarified in an explanation of clause 2 that an award will be in conflict with the public policy of India, only if: it was made by fraud or corruption or in violation of Section 75 or Section 81; or it is in contravention with the fundamental policy of Indian Laws or is in conflict with the most basic notions of morality or justice. Additionally, it restricted review of the merits of the dispute to ascertain if there was a contravention of the Fundamental policy of India.
- Pertinently, Section 36 sub-clause (2) and (3) of the amended Act also provided that in order to get stay on Award, a separate Application for stay needs to be filed and only if the Courts grants an order of stay of the operation, the stay shall be granted. In a nutshell, filing of an Application under Section 34 shall not render the Award unenforceable itself.
- The Act further involved many other improvements such as Fee modifications of the Arbitrators.

Afterwards, the **Arbitration & Conciliation (Amendment) Act, 2019** was passed which introduced Arbitration Council of India (ACI). The Act brought into various amendments to set up a successful hub of Arbitration field in India.

- One of the Amendment was that in Section 29A, the time period of 12 months for completion of Arbitration proceedings was reckoned from the date of completion of proceedings instead of date of constitution of Arbitral Tribunal.
- Secondly, Section 34(2) (a) mandated that an Award will be set aside if the party making the Application furnishes proof of its invalidity "on the basis of the record of Arbitration Award" in lieu of just "furnishing proof" of invalidity as provided in the un-amended act. In a nutshell, the requirement of furnishing proof of its invalidity has been replaced with more stringent requirement of establishing on the basis of the record of the Arbitral Tribunal.
- Surprisingly, the appeals against the Arbitration Award were being filed under the Commercial Courts Act, 2015 before this amendment. To put a restriction to the recourse under the Arbitration act for matters arising under the Commercial Courts Act, 2015, Section 37 was amended and the statement "Notwithstanding anything contained in any other law for the time being in force, an appeal" was added at the beginning of the sub- section (1).
- Further, the Act introduced the Confidentiality provision as Section 42A and protection of Arbitrators for the actions taken in good faith as Section 42B. A duty was cast on all parties, Arbitrators and Arbitral institutions to maintain confidentiality of the proceedings and only disclose the Award for the purpose of its implementation. This amendment gave the Arbitration proceedings, the nature of reserved proceedings.
- Also, the Act introduced Eighth Schedule which provided the Qualifications and Experience of Arbitrators as a pre-requisite.
- ·Moreover, the Section 87 (b) clarified that 2015 Amendments are applicable only to the Arbitration proceedings and to the Court proceedings arising out of or in relation these Arbitral Proceedings commenced w.e.f 23rd Oct 2015.

Subsequently, Arbitration & Conciliation (Amendment) Ordinance, 2020 (the 2020 Amendment) and successively, **Arbitration and Conciliation (Amendment) Act, 2021** came into force.

- It omitted Eighth Schedule i.e. Qualifications and Experience of Arbitrator.
- ·Further, it added a new proviso to Section 36(3). The proviso has retrospective effect w.e.f. 23rd October 2015. The Section 36 pertains to Enforcement. The proviso empowers the Court that on prima facie satisfaction that either the Arbitration Agreement or the making of the award itself was induced or effected by fraud or corruption, the Award shall be unconditionally stayed during the pendency of application under section 34.

Section 36 : Enforcement of Award - A Unique provision

- **2015 Amendment**

The Act in Section 36 after the amendment provides that in order to get stay on Award, a separate Application for stay needs to be filed and only if the Courts grants an order of stay of the operation, the stay shall be granted.

- **2021 Amendment**

By way of 2021 Amendment, the provision added that where the Court is satisfied that a Prima Facie case is made out that the Arbitration Agreement or contract which was the basis of the Award or the making of award was by fraud or corruption, it shall stay the award unconditionally.

In our view, section 36, is a very unique provision. It is titled as "Enforcement", however, from Sub-section 2 onwards, it is laying down procedure attendant to filing application for setting aside of award under section 34. Interestingly, to make out the case that the Arbitration Agreement or Contract was induced by fraud, an Application for stay along with the Application to set aside an Arbitral Award under Section 34 needs to be filed. However, Section 34 does not contain any provision to file an Application for the purpose of challenging the award if the Arbitration Agreement or contract which is the basis of Arbitral Award was induced or effected by fraud or corruption. In addition to this, the said issue would have already been dealt by the Arbitral Tribunal and it would have passed the Award after considering the same. In that case, the Court cannot re-appreciate the evidence as per the provisions of Section 34.

Therefore, there still exists numerous concerns which needs to be addressed and clarified by the Courts where the provisions of the Act are interpreted with due applications of Justice, equity and good conscience.

QUOTING IDENTICAL PRICES IN TENDER NOT ITSELF A CONCLUSIVE PROOF OF BID RIGGING

Introduction

In respect of an open tender for surgical tapes dated 26.05.2016 invited by the All India Institute of Medical Sciences **(AIIMS)** (hereinafter, referred as the "**Tender**"), the Competition Commission of India (**CCI**) on a letter received by it dated 26.05.2016 from the Assistant Store Officer of AIIMS, took suo moto cognizance on the allegation of cartelization between two of the thirteen bidders of the Tender, namely, Romsons Scientific & Surgical Industrial Private Limited (hereinafter, referred as **"Romsons"**) and BSN Medical Private Limited, now Essity India Private Limited (hereinafter, referred as "**BSN"** or **"Essity**").

It was noted by the CCI that both the bidders had quoted identical prices up to the last two decimal places for 4 out of the 8 items mentioned in the Tender. The CCI further observed that it was highly improbable for the two bidders to quote identical rates as the two bidders were operating in different regions, (Romsons was based in Agra, UP, and had offices in Noida and Delhi while Essity was based in Mumbai), and having separate labour costs, raw materials, transportation, etc. to quote identical rates to the extent of last two decimal places. The CCI was of the view that the same cannot be a mere coincidence. The identical rates quoted by the bidders along with the presence of facilitating factors which are conducive for cartelization, like limited players, homogeneous products, etc. compelled the CCI to find a case of bid-rigging against the two bidders and directing the Director General (DG) to investigate the matter.

Investigation by the DG

The key issue needing investigation by the DG was whether Romsons and Essity colluded to fix the prices of the items in the Tender which would be in contravention of the provisions of Section 3(3)(d) of the Competition Act, 2002 (the "**Act**").The DG noted that out of eight different categories of surgical tapes listed in the Tender, the rates quoted by Romsons and Essity were identical up to at least two decimal points for four of these categories.

As per the DG's investigative report, the quoting of prices in different patterns in the respective bids submitted by the parties, despite the mandate by AIIMS to submit quotes in a particular manner, was indicative of their intent to indulge in collusive bidding.

Further, a significant aspect considered by the DG was that while Romsons manufactured surgical tapes, Essity imported them. The DG highlighted that the nature of costs involved in the manufacture and import of surgical tapes was so varied that pricing could not have been unintentionally identical.

After examining certain other plus factors such as the parties' different geographical locations, and "evasive justifications" by the parties' personnel, the DG determined that Romsons and Essity had indulged in bid-rigging and had contravened the Act.

With the above said considerations and by placing reliance on the ruling in Excel Crop Care Ltd. v CCI (Excel Crop case), the DG concluded that the bidders had colluded and contravened Sections 3(3)(a) and 3(3)(d) read with Section 3(1) of the Act. The DG also recommended proceedings to be initiated against the officials of the bidders under Section 48 of the Act for imposing penalties.

LEGAL SNIPPETS

The Kerala High Court has passed a big judgment with respect to the interpretation of rape as a sexual crime. It said " When the body of the victim is manipulated to hold the legs together for the purpose of simulating a sensation akin to penetration is an orifice; the offence of rape is attracted. When penetration is thus made in between the thighs so held together, it would certainly amount to 'rape' as described under Section 375 of the Indian Penal Code."

The Court noted that the availability of law includes penetration to alternative components of the body of a woman and isn't confined to anus or vagina.

CCI's decision on merits

After the submission of the DG's report, the CCI heard both the bidders and observed that besides the one-off instance of identical pricing, there was no evidence that indicated collusion by the two. The CCI noted that there was no evidence of any communications or meetings between the bidders and there was a lack of any other "plus factors" also (like proof of conscious parallel behaviour before affixing any liability for contravention of competition law) which could indicate implicit collusion between the bidders.

It was also observed that the market of surgical tapes was not conducive to cartelization since the product was not homogenous and there were no entry barriers in the market as well. The CCI rejected the DG's findings that the bidders should have quoted different rates because they operated from different geographical locations and noted that the cost of production of the bidders were in a similar range and the prices charged by them were uniform across India.

Conclusion

The CCI's said Order reaffirmed the principles laid down in the past precedents of the Supreme Court in the case of the **Rajasthan Cylinders and Containers Ltd. v/s Union of India** wherein the Supreme Court has clearly stated that parallel or identical pricing alone is not sufficient for a finding of bid-rigging.

As such without there being any **"plus factors"** or additional evidence in the present case, the allegations of bid rigging against the bidders were rejected by the CCI in line with the above judgment of the Supreme Court. The plus factors with regard to bidding comprises of certain circumstantial evidence and indicators like market conditions, presence of a small number of players, appointment of common agents by the bidders, consistent matching of prices, identical typographical errors in bids, past business relations etc.

LEGAL SNIPPETS

Prime Minister Narendra Modi, at the Investor Summit in Gujarat, launched the **National Vehicle Scrappage Policy.** "We are promoting a circular economy. The aim is to develop a sustainable and environment-friendly economy. The decision is a step necessitated by India's commitment to the Paris Agreement", said the Prime Minister.

Why did this policy come into existence?

In order to promote clean mobility, low emission rates and reduced fuel import, this policy is a necessity. Quite a many vehicles in India are less-fuel efficient which in result contribute to rising pollution levels.

Union Minister said that personal vehicles over 20 years old and commercial vehicles over 15 years old are to be scrapped. The government plans to set up between 450-500 automated vehicle fitness testing stations across India on a public-private partnership (PPP) basis involving private firms and state governments.

Incentives of the policy

The policy would provide benefits like tax rebate up to 25%, waiver of registration fee and discount by vehicle manufacturers. The policy would also attract a good investment of over Rs 10,000 crore and would help generate around 50,000 jobs across the country.

TACKLING PLASTIC POLLUTION

As per the estimation of the Central Pollution Control Board, India generates more than 25,000 tonnes of plastic waste every day, out of which nearly 40 per cent remains uncollected and littered in the environment. The primary reason for these sky-touching numbers is economic development, resulting in higher demand for goods in the FMCG sector Owing to its strength, low cost and durability, plastic has emerged as one of the most reliable packaging materials, which on the flip side, has resulted in the challenge of plastic waste management. Due to its low cost, finding a cheap and, at the same time, a green alternative has become a challenging task.

The Ministry of Environment, Forest and Climate Change ("MoEFCC") issued draft amendments to the Plastic Waste Management Rules earlier this year, proposing to phase out the manufacturing, use, sale, import, and handling of certain single-use plastic goods ("Draft Amendment").

In 2019, the Government of India had expressed its intention of phasing out all single-use plastics by the year 2022. Pursuant to that, the government is taking various measures to reduce the use of plastic-made commodities to mitigate the adverse impacts on both terrestrial and aquatic ecosystems. One of such steps is the effective implementation of Plastic Waste Management Rules, 2016.

The amendments to the Rules were notified on August 12, 2021 ("2021 Amendment") after due consideration of the responses received from various stakeholders, inter alia prohibiting the manufacturing, use, sale, import, and handling of identified single-use plastic items with low utility and high littering potential. Some of the fundamental changes brought about by the Amendment Rules are as follows:

- Thickness of plastic bags has to be increased from 50 microns to a minimum of 75 microns from September 30, 2021 and to 120 microns from December 31, 2022. This requirement is a mandate for carry bags made out of virgin or recycled plastic but not applicable to bags made up of compostable plastic.
- Prohibition of the manufacture, import, stocking, distribution, sale and use of the following items from July 1, 2022:- Ear buds with plastic sticks, plastic sticks for balloons, plastic flags, candy sticks, ice-cream sticks, polystyrene (thermocol) for decoration, plates, cups, glasses, cutlery, wrapping or packing films, invitation cards, cigarette packets, plastic or PVC banners less than 100 micron, stirrers. This provision is also not applicable to goods made up of compostable plastic
- The Amendment provides that any notification in future which would prohibit the manufacture, import, stocking, distribution, sale and use of carry bags would come in force after the expiry of ten years from the date of publication of such notification.
- The Amendment has mandated mentioning the name and registration number of manufacturer, producer or brand owner, whatever the case may be. In addition to this, the name and registration number of the manufacturer has to be given in the case of multi-layered packaging, but this provision does not apply to imported goods.

A crucial step of eliminating single-use plastics has been taken but its real impact could only be assessed when the Amendment is completely implemented.

"YOU CANNOT GET THROUGH A SINGLE DAY WITHOUT HAVING AN IMPACT ON THE WORLD AROUND YOU. WHAT YOU DO MAKES A DIFFERENCE AND YOU HAVE TO DECIDE WHAT KIND OF A DIFFERENCE YOU WANT TO MAKE." -JANE GOODALL

DOHA AGREEMENT-PEACE FOR AGHANISTAN OR OTHERWISE

After more than 20 years of constant war in Afghanistan, the US and the Taliban, the two parties to the conflict i.e. a State and an Insurrectional Movement, entered into the "Agreement for Bringing Peace to Afghanistan" (the "**Doha Accord**") with a view to work towards ending the constant state of war in Afghanistan in existence since the last almost 20 years. Broadly speaking the Doha Agreement embodies elements which are typically within the realm of the State and provides for the following:

- **Cease Fire:** It was agreed between the parties that there would be a temporary reduction in violence and it was further agreed that a lasting cease fire from all the three sides i.e. U.S., Taliban & Afghan forces would be a part of the intra-Afghan negotiations.
- **Withdrawal of foreign forces:** The United States committed to withdraw all military forces of the United States, its allies and Coalition partners including all non-diplomatic civilian personnel, private security contractors, trainers, advisors and supporting services personnel within 14 (fourteen) months following the announcement of the Agreement.
- **Intra-Afghan negotiations:** The Taliban i.e. the Islamic Emirate of Afghanistan or the Insurrectional Movement which is not recognized by the United States as a state would hold talks with the Afghan Government in March, 2020 pursuant to release of prisoners.
- **Counter-terrorism assurances:** It was assured by the Taliban that Afghanistan will not be used by any of its members, other individuals or terrorist groups to threaten the security of the United States or any of its allies.

However, it remains to be seen as to what is the legal basis for international agreements between States and Non-State Entities.

Whether an agreement between a State on one side and a Non-State Entity on the other side could be regulated by International Law at all. The Vienna Convention on the Law of Treaties 1969 (the "VCLT") governs and regulates the application and interpretation of treaties. Having said this, the scope of application according to Article 1 of the VCLT is limited to "treaties between states".

1. The legal sanctity of such agreements;
2. The application of such agreements to any of the rules set forth in the VCLT to which they would be subject under International Law independently of the Convention;
3. The application of the Convention to the relations of the States as between themselves under international agreements to which other subjects of international law are also parties.

From the above, the next conclusion which needs to be drawn is, 'Whether Insurrectional Movements are "other subjects of international law" within the meaning of Article 3 of the VCLT?

According to the ICJ Report, 1949 - Advisory Opinion of Reparation for Injuries Suffered in the Service of the United Nations, the ICJ clarified that although States are natural subjects of international legal system, yet there are entities which exist as subjects of international too.

With regard to Article 3 of the VCLT, the ICJ observed that "other subjects of international law" has been drafted with the intention to include treaties entered and executed by: (a) International organizations, (ii) Holy Sea and (iii) other international entities for instance the insurgents which may under certain circumstances enter into treaties.

LEGAL SNIPPETS

Marital rape amounts to cruelty and is a ground for divorce"-- a two-judge bench of the Kerala High Court has passed a landmark judgment order acknowledging a woman's autonomous and individual rights in a marriage.

The bench of Justices A Muhamed Mustaque and Kauser Edappagath delivered the order on July 30 while hearing a woman's petition seeking a divorce from her husband on grounds of harassment and cruelty.

A Division Bench observed that "merely for the reason that the law does not recognize marital rape under penal law, it does not inhibit the court from recognizing the same as a form of cruelty to grant a divorce.

Therefore, with regard to insurrectional movements entering into agreements akin to treaties, such entities may have a limited form of international legal personality. Such peace agreements are not new to the concept of International law and such like agreements between States and Insurrectional Movements include the Agreement between the Government of Nepal and CPN (Maoist), concluded in 2006 and more recently, the Agreement between Colombia and FARC-EP concluded in 2016 among many others. The aim and objective of such agreements for attaining peace is usually bi-fold i.e. (i) to suspend hostilities and the parties mutually commit to one another that they shall not resort to use of force; and (ii) aim towards the political settlement of conflict.

However, with respect to the suspension of hostilities and non-usage of force, the question would be that whether the parties to the Agreement will reflect a will to apply within States, the rule prohibiting the use of force as set out in Article 2(4) of the United Nations Charter? Customarily, the 'use of force' within a State is a matter pertaining to its sovereignty and thus the same is subject to domestic jurisdiction of such State.

With regard to the perspective of political settlement, the issue which requires attention is whether achievement of a political settlement pursuant to overarching principles of democracy, equality and human rights show a willingness to ground the agreement of peace within the aforesaid principles as enshrined in International Law?

It is pertinent to note that every State exercises the Sovereignty to determine their political, social, economic and cultural regime. In this regard even though the Doha Accord contains stipulations for the suspension of hostilities but political settlement on the lines of principles of democracy, equality etc., has been left to "Intra-Afghan" Negotiations.

Therefore, with the progress of time, what remains to be seen is the way that the Doha Accord shall mature. Such Peace Agreements between States and Insurrectional Movements have become quite common and although, legal sanctity may back them outside the scope of law of treaties, what sort of international binding obligations they shall create remains to be seen and which shall largely depend on the willingness of the new regime in Afghanistan to implement the provisions of the Accord.

CROWDFUNDING

Crowdfunding is a manner of raising funds for a project or a venture through internet by raising capital from a large number of individual investors. Crowdfunding is mostly done online via social media and websites. In the present times, crowdfunding has been used widely for arranging funds for the entrepreneurial ventures such as artistic projects, startups, medical expenses, travel and community oriented social entrepreneurship projects etc.

The first company to engage in the business model of crowdfunding was the U.S website Artist Share. With the passage of time and as this model matured , more crowdfunding sites started to appear such as Kiva, GoFundMe, Microventures, YouCaring etc.

Crowdfunding is mainly of the following types, which are:

- Equity- based Crowdfunding: In this type of crowdfunding the contributors are allowed to become part owners of the company by way of trading capital for equity shares. In this type of crowdfunding the owner of the equity has a share in the profit by way of a dividend or distribution.
- Reward- based Crowdfunding: In the Reward based crowdfunding, the individuals contribute to the business in exchange for a reward. The reward may be in the form of a product or service which the company offers. The reward based funding is common for projects involving free software development, motion picture promotion, scientific research, civic projects etc.
- Donation –based Crowdfunding: In Donation based crowdfunding a large number of contributors individually donate and contribute small amount of finance without any expectation of return. This type of crowdfunding is done mainly for the projects which involve social cause. The Donation based crowdfunding has been widely initiated in situations of natural calamities, disaster relief, charities etc.
- Debt Crowdfunding or Peer-to-Peer (P2P) Lending: The P2P Lending is a type of crowdfunding which is used to raise loans and these loans are re-paid along with interest. The rate of interest is set by mutual agreement between the borrower and the lender. In this type of setup, the borrower can either be an individual or a legal person who requires a loan.

Benefits of Crowdfunding:

Crowdfunding has gained popularity in a number of ventures during the recent time. The various benefits of crowdfunding are given as follows:

- It helps in promoting and providing funding to new ideas.
- It encourages new startups in the country.
- Crowdfunding helps in raising funds during natural calamities and for social cause.
- It is also helpful in arranging money for those poor people who can't afford the expenses of severe diseases like cancer and kidney transplant etc.
- Crowdfunding provides access to capital and also serves as a marketing tool for new ventures.

Regulatory Framework of Crowdfunding

The Securities and Exchange Board of India (SEBI) in its Consultation Paper on Crowdfunding in India has furnished proposals for a regulatory framework which would be a governing procedure for the security based crowdfunding methods. It lays down that only the 'Accredited Investor' can invest money in a project of crowdfunding. There is a certain qualification criteria of 'Accredited Investor' which includes Companies incorporated under the Companies Act with a minimum net worth of Rs 20 crore, High Net Worth Individuals (HNIs) with a minimum net worth of Rs 2 crore and the Eligible Retail Investors who fulfil the prescribed criteria. SEBI has also proposed to place certain restrictions on the kind of companies which can raise funds through the Security based crowdfunding. These restrictions are given as follows:

- A company which is intending to raise capital should not be exceeding a maximum limit of Rs 10 Crore in a period of 12 months.
- A company which is should not be promoted, sponsored or related to any industrial group which has a turnover of more than Rs 25 Crore.
- The company should not be listed on any exchange.
- A company should not be more than 4 years old in incorporation.
- The company should not be engaged in real estate business and other activities which are not permitted under industrial policy of Government of India.

Conclusion

Crowdfunding is a phenomenon which is characterized with high dynamics. It promotes and represents new innovations and validates the market demands through investments by the investors. Through the process of crowdfunding a new product development life cycle is developed and promoted. Therefore it can be concluded that the crowdfunding potentially accelerates the innovations and new ideas.

E-COMMERCE RULES 2020, A BOON OR A BANE?

Introduction:

Buying products off of an online marketplace or an e-commerce ecosystem might seem a bit daunting of a task especially after all the recent reports of scams and unfair trade practices that users of such platforms are falling prey to. In order to deal with such an issue, the Government had to take certain steps in order to protect the consumer from such malpractices and to reinstate their trust in such online ecosystems and to enable its care-free utilisation.

Keeping that in mind, the Consumer Protection (E-Commerce) Rules, 2020 ("Act") have been notified by The Ministry of Consumer Affairs, Food and Public Distribution ("Ministry") on July 23, 2020, under the Consumer Protection Act, 2019 ("Act"), with an intent to prevent unfair trade practices in e-commerce and to protect the interest of the consumers and to ensure that there is transparency in the e-commerce platforms and also to further strengthen the regulations that govern the same.

Scope and Applicability:

These rules have quite a wide scope and applicability as they are intended to apply to all goods and services that are bought or sold over digital or electronic networks and applies to all models and formats of e-commerce retail with the exception of natural persons transacting in their own personal capacity as the same does not constitute a professional or commercial activity which is undertaken on a regular or a systematic basis.

As the said Rules purely apply to entities that operate and offer their goods and services digitally, we can say that services like cab hailing, ticket vending platforms, educational technology services etc. are governed by it.

Obligations of the Platforms and the Sellers:

The Rules prescribe a set of obligations that the Platforms and the Sellers covered by these Rules need to adhere to. These obligations ensure that the interest and rights of the consumer are secured. In order to ensure that the same happens, the Platform holder has to appoint a Nodal Officer or an Alternate Senior Functionary is tasked with ensuring that the Platform holder complies with the Rules and the Act.

However, the Rules seem to be silent on the minimum qualifications required for such a person to be hired and also the actions that need to be undertaken in order to satisfy such a requirement.

They also have to set-up a time-bound grievance redressal mechanism that allows the customer to lodge their complaints/ grievances and to track the same and also have to provide the customer with the details of the relevant seller(s) in case of a dispute, but the extent to which the disclosure of information is necessary hasn't been prescribed. Also, a grievance officer has to be appointed in order to facilitate this process however the Rules are silent on the adequacy of the said mechanism and poses an opportunity for certain bodies or organizations to formulate certain agreed upon standards. These obligations also extend to Sellers that are selling their products on these platforms.

The Platform is also required to furnish certain information like the country of origin of goods when it comes to inventory based or marketplace platforms but the Rules are silent on the assessment of goods assembled, packaged or manufactured in one country, licensed by an entity based in another country. Marketplace Platforms are also required to display information regarding the mode of shipping, payments methods, mode of refunds and also their terms and conditions which deals with their relationships with the sellers.

These Rules also imposes certain restrictions and obligations when it comes to the pricing of their products, returns in case of defective/ deficient/ spurious goods and services, late delivers (except due to force majeure) and due to false customer reviews. It also specifies that no cancellation charges can be imposed unless similar charges are payable by the Platform due to the said cancellation. They also deal with the authenticity of the goods being sold on these Platforms and if the said Platform vouches for the authenticity of the product/ service sold, it would bear the appropriate liability in relation to the same. The Platforms also need to maintain a record of all the sellers whose offerings have repeatedly violated trademarks, copyrights or the Information Technology Act.

Contravention of the Rules:

In case of contravention of these Rules, the provisions enshrined under the Act will apply and in such a case, the e-commerce entities in question would be required to comply with authorities that shall be investigating such a contravention and shall be imposed with fines or imprisonment, if found guilty. These Rules also have incorporated certain requirements that have been prescribed under the Legal Metrology Rules (LM Rules) and other laws that are applicable. In the absence of clarity, penalties mentioned in the LM Rules may also be levied on the e-commerce entities in question.

Conclusion:

These Rules have significantly increased the responsibilities that e-commerce Platforms have towards their consumers. However, these Rules are not perfect as there are still certain questions that need answering regarding things like the implementation and application of the Rules and whether they are ultra vires the Act as they apply to entities outside the country, obligations that have been imposed on Platforms that extend beyond the consumer and seller relationship, whether these Rules are applicable on B2B Platforms and what kinds of digital product offerings fall within its purview.

Also, as the origin of these Rules can be tracked to Section – 94 of the Act, it has to be seen that whether any breach of these Rules will have to satisfy the condition or test of being an "unfair practice" before they are held liable and whether a breach by a seller can also result in the Platform being held liable.

Hence, even though these Rules are a welcome step in ensuring the interest of the Consumers, the Rules still leave some ambiguity regarding certain factors. Therefore, these Rules are a boon for all the consumers that were affected by a lack of these regulations and a bane for the Platforms scrambling to implement them.

In order to answer some of the questions that were raised in accordance to these Rules, the Ministry released a Notification dated May 17, 2021, introducing the Consumer Protection (E-Commerce) (Amendment) Rules, 2021 which introduced the requirement for a company outside India or company having an office, branch or agency outside India, controlled by a person resident in India, it shall appoint a nodal officer or an alternate senior designated functionary who is an Indian resident to ensure that the provisions of the act and the Rules are being followed and abided by.

AN ANALYSIS OF THE ORDER PERTAINING TO GUJARAT FREEDOM OF RELIGION (AMENDMENT) ACT, 2021

The High Court of Gujarat in its recent order dated 19.08.2021 passed in the case titled as "**Jamiat Ulama-E-Hind Gujarat Versus State of Gujarat**" has vide an interim order that has stayed the operation of the rigors of Sections 3, 4, 4A to 4C, 5, 6 and 6A of the Gujarat Freedom of Religion Act, 2003 as amended by the Gujarat Freedom of Religion (Amendment) Act, 2021 and has directed that the aforementioned provisions of the Act shall not operate until the final outcome of the writ petition due to the reason that, the marriage solemnized by a person of one religion with a person of another religion without force or by allurement or by fraudulent means cannot be termed as marriages for the purposes of unlawful conversion. The said interim order has been passed in order to protect the parties solemnizing marriage inter-faith from being unnecessary harassed. Before we understand the order which has been passed by the High Court it is important to understand a brief history behind the laws pertaining to religious conversion in India.

Brief Background & Existing Legal Position:

India is a secular and multi- religious country and the right to freedom of religion has been accorded constitutional protection under Article 25 to 28, of the Constitution of India which are provisions of significance on freedom of religion. It is also important to mention herein that the religion is not defined in the Indian Constitution but the term has been explained by way of judicial pronouncements. The Constitution guarantees freedom of religion to every individual residing in India with certain limitations where the State can regulate under Article 25(2)(a) the activities of an economic, commercial or political character although the same maybe associated with religious practices.

The Apex Court in a case titled as "**Ratilal Panachand Gandhi v. State of Bombay**' had made the provision of Article 25 clearer by confirming that every person has a fundamental right under Constitution of India to not only entertain religious belief as may be approved by his judgment or conscience but also to exhibit the same and propagate his religious views for the edification of others.

Further in case titled as '**Digyadarsan Rajendra Ramdassji v. State of Andhra Pradesh**', the Apex Court held that right to communicate a person's belief to another person or to expose the tenets of that faith, would not include right to convert another person to former's faith. Therefore, it came to be judicially established that although propagation enjoys constitutional protection under the right to freedom of religion but conversion does not.

Now, in general, the Anti-Conversion laws seek to prevent religious conversion of any person brought about by coercion or inducements or by fraudulent means. The Laws restricting religious conversions were originally introduced in India by Hindu princely states during the British Colonial period (1930-40) primarily to preserve Hindu religious identity in the face of British missionaries, some of the laws from that period include the Raigarh State Conversion Act, 1936; the Surguja State Apostasy Act, 1942; and the Udaipur State Anti-Conversion Act, 1946.

Analysis of the Order of Gujrat High Court

In the light of the background and legal position in relation to the law of religious conversion, it can be reasonably concluded that the operation of recent amendments in the year 2021 to the Gujarat Freedom of Religion Act, 2003, have been stayed by the Gujarat High Court and while staying the said operation of the amendments, 2021, it has also made certain prima facie observations in relation to Section 3 of the 2003 Act which are as follows:

- Section 3 of the Act as was brought into force in April 2003, there was a prohibition of conversion of any person from one religion to another religion by use of force or allurement or by any fraudulent means.
- By amended Act of 2021, prima facie pending the final outcome of the case, a plain reading of Section 3 of the 2003 Act, would show that marriage interfaith followed by conversion would amount to offence under the 2003 Act. Marriage itself and consequential conversion is deemed as an unlawful conversion attracting penal provision.

- Reference was also made to an excerpt from the case of "Shafin Jahan vs. Ashokan reported in (2018) 16 SCC 368", wherein the Apex Court had observed that right to marry a person of ones choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity.
- Section 6A of the 2003 Act places the burden of proof on the parties entering into an interfaith marriage to prove that the same was not solemnized on account of any fraud, allurement, coercion. This puts the parties validly entering into an interfaith marriage in great jeopardy.
- Prima facie interfaith marriages between two consulting adult by operation of the Section 3 of the 2003 Act interferes with the intricacies of marriage including the right to the choice of an individual, thereby infringing Article 21 of the Constitution of India.

Conclusion

We observe, that the High Court of Gujarat has further expanded and explained the law on conversion and has gone on to strike of balancebetween right to life as enshrined under Article 21 and freedom of religion (with its limitations such as forceful religious conversion) as per the respective state law i.e. Gujarat Freedom of Religion Act, 2003 as amended by the 2021 Act. We also observe that though religious conversion per se may not be a fundamental right (as held in Stanislaus case) but an individual has the freedom to profess / follow any religion that appeals to his faith and conscience as long as such faith or decision to profess / follow the said any religion (by way of religious conversion) is not dependent upon elements such as fraud, coercion and allurement.

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