# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

 ISSN: 2582-6433

# DISCLAIMER

 **ISSN: 2582-6433**

# EDITORIALTEAM

## EDITORS

### Dr. Samrat Datta

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur.Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*

### *Dr. Namita Jain*

*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time &Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

 ISSN: 2582-6433

# Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*

# Avinash Kumar

*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

 ISSN: 2582-6433

# ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

 ISSN: 2582-6433

# ARBITRATION AS AN ALTERNATIVE DISPUTE RESOLUTION

AUTHORED BY - AJITH C.J.

## Abstract

Arbitration, a key method within Alternative Dispute Resolution (ADR), is a private, consensual process where disputing parties agree to have their conflict resolved by neutral third-party arbitrators whose decisions are binding and enforceable. As a flexible and confidential alternative to traditional court proceedings, arbitration offers advantages such as procedural adaptability, party autonomy, and the ability to tailor outcomes to specific legal, cultural, or ethical needs—making it especially suited for commercial and international disputes. Historically rooted and once predominantly used in labor relations, arbitration has expanded to various sectors, including art and commerce, with many contracts now incorporating ADR clauses as prerequisites to litigation. Despite perceptions of cost and time efficiency, empirical evidence remains mixed, influenced by diverse legal systems and dispute resolution practices. Challenges persist, including the need for valid arbitration agreements, reasonable party conduct, potential judicial intervention, and difficulties in enforcing foreign arbitral awards, as seen in jurisdictions like Indonesia. The evolving nature of arbitration addresses concerns around confidentiality, ethical standards, technology, and diversity, while maintaining its role as a quasi-judicial mechanism that provides a viable and increasingly preferred alternative to overburdened national courts.

## I Introduction

Arbitration is a private, consensual method of dispute resolution where parties agree to have their conflict settled by a third-party arbitrator, whose decision is binding and enforceable. It serves as an alternative to traditional court processes, offering flexibility in procedures and applicable law to meet parties' specific needs. While arbitration is often perceived as more efficient than litigation, empirical evidence of time and cost savings is inconclusive due to the variety of national judiciaries and alternative dispute resolution methods. The success of arbitration depends on parties' consent, a valid arbitration agreement, and adherence to legal obligations. Historically, arbitration has been widely adopted by unions and management to resolve contract disputes and grievances, serving as an alternative to strikes and lockouts. As

 ISSN: 2582-6433

arbitration continues to evolve, it addresses concerns such as confidentiality, ethics, technology, and diversity.

Alternative dispute resolution (ADR) methods, particularly arbitration, have gained prominence as efficient and effective means of resolving commercial disputes. ADR processes are generally less formal and more flexible than traditional court proceedings, enhancing accessibility to dispute resolution.[1] Arbitration and mediation are two key ADR techniques, characterized by their amicable, cost-effective, and expeditious nature. While both methods have their strengths and weaknesses, business actors often prefer arbitration for resolving commercial conflicts. However, the enforcement of foreign arbitral awards requires further attention from governments, as exemplified by the case of Indonesia.[2]

Arbitration is an alternative dispute resolution method with ancient roots, predating formal legal systems.[3] It involves parties agreeing to have their dispute decided by impartial arbitrators rather than a court. Key characteristics include it being a decision-making process, voluntary, conducted by individuals unconnected to the court system, and resulting in a final, binding award. While arbitration has a long history, its importance in international commercial transactions has only recently been fully appreciated.[4] Arbitration offers advantages such as flexibility, confidentiality, and party autonomy. It is quasi-judicial in nature, with arbitrators often described as private judges.[5] Unlike formal legal systems, arbitration has not developed a set of substantive principles, with decisions often based on practical expediency and group-specific norms.

## II An Alternative to National Courts

Alternative dispute resolution (ADR) methods, such as arbitration and mediation, offer an alternative to national courts for resolving conflicts. These approaches have gained popularity due to their flexibility, efficiency, and ability to preserve relationships between parties.

[1] D. Kadambari, A Light on Dispute Resolution Methods with Special Reference to International Commercial Arbitration, SSRN, https://doi.org/10.2139/ssrn.3932855 (2021).
[2] S. Suherman, Arbitration and Other Alternative Dispute Resolution for Commercial Dispute (Reviewed from the Strengths of ADR and Decision of Arbitration), 6 Brawijaya L.J. 104 (2019).
[3] E. S. Wolaver, The Historical Background of Commercial Arbitration, 83 U. Pa. L. Rev. & Am. L. Reg. 132 (1934).
[4] S. A. Tiewul & F. A. Tsegah, Arbitration and the Settlement of Commercial Disputes: A Selective Survey of African Practice, 24 Int'l & Comp. L.Q. 393 (1975).
[5] V. Fulena & H. B. Chittoo, International Commercial Litigation and Arbitration Research Essay, Int'l J. Soc. Sci. & Hum. Rsch., no. 2, at 1311 (2023).

 ISSN: 2582-6433

National courts increasingly engage with international law interpretation, recognizing the need to balance executive power and maintain judicial review.[6] However, arbitral tribunals still rely on court support to enforce agreements and awards.[7] The interplay between ADR and national courts varies across jurisdictions, with some legal systems limiting the role of mediators or arbitrators to facilitating agreement between parties. While ADR methods offer advantages over domestic courts, including confidentiality and potentially lower costs, they also face challenges, such as the need for reasonable parties and the risk of unnecessary court intervention.[8]

Alternative Dispute Resolution (ADR) methods offer several advantages over traditional court proceedings in resolving conflicts, particularly in commercial and art-related disputes. These benefits include procedural flexibility, confidentiality, potentially lower costs, and the ability to tailor creative solutions that consider legal, cultural, and ethical interests.[9] ADR processes such as mediation, negotiation, and arbitration provide parties with greater control over the resolution process and can be especially suitable for international disputes.[10] However, ADR methods also face challenges, including the need for reasonable parties and the risk of unnecessary court intervention. Court-connected ADR programs must balance efficiency with fairness and justice, often struggling to maintain this equilibrium. Despite these challenges, ADR continues to grow in popularity, with many commercial contracts now including ADR provisions as a precondition to court proceedings.[11]

### A. A Private Mechanism for Dispute Resolution

Arbitration is often viewed as a private alternative to public court proceedings, but its confidentiality is not absolute. While arbitration offers privacy, it does not guarantee secrecy, creating a "privacy paradox" that can lead to misunderstandings about information protection.[12] International commercial arbitration represents a hybrid system, combining private decision-making with public involvement.[13] As arbitration expands to cover disputes with significant

[6] E. Benvenisti & G. W. Downs, National Courts, Domestic Democracy, and the Evolution of International Law, 20 Eur. J. Int'l L. 59 (2009).
[7] P. A. Awuni & N. A. Agyapong, An Analysis of Judicial Intervention and Assistance for Arbitral Proceedings: A Look at the Courts of Ghana, 27 Int'l J. Current Rsch. Humanities 1 (2023).
[8] E. Cela, ADR and Domestic Courts in Albania, Jus & Justicia, No. 16, Issue 2/2022, at 112.
[9] I. Todorović & B. Harges, Alternative Dispute Resolution in the World of Commercial Disputes, 5 J. Strategic Contracting & Negotiation 214 (2021).
[10] M. B. Deli & V. Proietti, Art-Related Disputes and ADR Methods, 17 Braz. J. Int'l L. 127 (2020).
[11] Y. Boyarin, Court-Connected ADR—A Time of Crisis, A Time of Change, 50 Fam. Ct. Rev. 377 (2012).
[12] A. J. Schmitz, Untangling the Privacy Paradox in Arbitration, 54 U. Kan. L. Rev. 1211 (2005).
[13] C. R. Drahozal, Private Ordering and International Commercial Arbitration, 113 Penn St. L. Rev. 1031 (2008).

 ISSN: 2582-6433

public policy implications, there is increasing pressure to incorporate public court features such as due process protections and transparency. This trend blurs the line between private and public adjudication, potentially undermining arbitration's value for purely private disputes.[14] The assumption of confidentiality in arbitration is increasingly questioned, with debates arising about its nature, scope, and utility in various jurisdictions and institutions.[15]

Arbitration is a private dispute resolution method where parties agree to have their disputes settled by appointed arbitrators rather than state courts. The Arbitration Act 1996 emphasizes the parties' freedom to agree on procedural matters, subject to necessary public interest safeguards.[16] This contractual underpinning requires arbitrators to honor the parties' rights and expectations (Gluck, 2012). While arbitration is commonly assumed to be private and confidential, this principle is not absolute and has been subject to debate in various jurisdictions and institutions. The evolving nature of arbitration, now used for complex, high-value commercial disputes involving participants from different legal systems, presents challenges in meeting user expectations for a fair and predictable process. Adapting to this changing paradigm while maintaining arbitration's fundamental characteristic as a consensual dispute resolution process is a key challenge for the arbitration community.[17]

### B. Selected and Controlled by the Parties

Arbitration is a popular alternative dispute resolution method that offers several advantages over traditional litigation. Parties can select their own arbitrators, ensuring higher quality decisions, and benefit from faster resolution, confidentiality, and preserved relationships.[18] However, concerns arise when one party has exclusive control over the dispute system design, potentially compromising fairness. Critics argue that arbitration's private nature lacks the public benefit of court decisions, which guide society and interpret legal principles. Additionally, arbitration's emphasis on procedural values may come at the expense of substantive law and thorough fact-finding.[19] From an economic perspective, ex-ante arbitration agreements generally enhance parties' well-being and should be legally enforced, while ex-post

[14] D. R. Hensler & D. Khatam, Re-inventing Arbitration: How Expanding the Scope of Arbitration Is Re-shaping Its Form and Blurring the Line Between Private and Public Adjudication, 18 Nev. L.J. 381 (2017).
[15] L. Y. Fortier, The Occasionally Unwarranted Assumption of Confidentiality, 15 Arb. Int'l 197 (1999).
[16] Mark Q. C. Littman, The Arbitration Act 1996: The Parties' Right to Agree Procedure, 13 Arb. Int'l 269 (1997).
[17] G. Gluck, Great Expectations: Meeting the Challenge of a New Arbitration Paradigm, 23 Am. Rev. Int'l Arb. 231 (2012).
[18] R. I. Tektona, Arbitrase Sebagai Alternatif Solusi Penyelesaian Sengketa Bisnis di Luar Pengadilan, 6 Pandecta Res. L.J. 1 (2011).
[19] E. Brunet, Questioning the Quality of Alternate Dispute Resolution, 62 Tul. L. Rev. 1 (1987).

 ISSN: 2582-6433

agreements may not necessarily advance welfare.[20] Despite these concerns, arbitration remains a contractual choice that complements litigation in the dispute resolution landscape.

Party autonomy is a fundamental principle in international arbitration, allowing parties to choose their dispute resolution mechanism and applicable law.[21] This principle is evident in arbitration agreements, which serve as the basis for initiating arbitration proceedings and can override national judicial systems. While national courts have restricted party autonomy in the choice of law, international arbitration has embraced it more fully, leading to speculation about a global choice of law regime. The arbitration agreement is considered the primary resource for arbitration, guiding the entire process and demonstrating party autonomy.[22] In specialized areas like intellectual property disputes, organizations such as WIPO have established arbitration centers that allow parties to choose the applicable procedural law. However, some argue for amendments to arbitration rules to ensure legal clarity and prevent confusion in the absence of explicit choices.[23]

### C. Final and Binding Determination of Parties Rights and Obligations

Arbitration is often chosen over litigation for its finality and binding nature, offering certainty and cost savings.[24] However, the true finality of arbitral awards is debated. While arbitration decisions are typically considered "final and binding," there are circumstances where parties can challenge these decisions. In England, courts must balance limiting grounds for review while correcting serious errors in the arbitral process. Similarly, in Indonesia, decisions by the National Sharia Arbitration Board (Basyarnas) can be challenged through court-based annulment, raising questions about legal certainty. The ability to request annulment of arbitration awards in district courts contradicts the principle of finality and binding force. To maintain arbitration's credibility as an autonomous process, it's crucial to ensure arbitrators act professionally and deliver fair awards without false evidence or gimmicks.[25]

[20] S. Shavell, Alternative Dispute Resolution: An Economic Analysis, 24 J. Legal Stud. 1 (1995).
[21] J. D. Karton, Party Autonomy and Choice of Law: Is International Arbitration Leading the Way or Marching to the Beat of Its Own Drummer, 60 U.N.B. L.J. 32 (2010).
[22] S. Dursun, A Critical Examination of the Role of Party Autonomy in International Commercial Arbitration and an Assessment of Its Role and Extent, 1 Yalova Univ. Huk. Fak. Derg. 174 (2012).
[23] B. Alghanim, The Role of Party Autonomy in Choosing Procedural Law in Arbitration: The Rules of the WIPO Arbitration and Mediation Centre, 207 Int'l Rev. L. 207 (2020).
[24] Cotton, J., & Edwards, C. (2007). Just How Final Is Final and Binding. *In-House Persp.*, 3, 5.
[25] H. Sugiyono, H. Suyanto & R. D. Agustanti, Legal Certainty in Arbitration Awards That Are Final and Binding, 10 Indon. L. Rev. 360 (2020).

 ISSN: 2582-6433

The papers collectively emphasize the importance of party autonomy and limited judicial review in international arbitration. Arbitration agreements typically imply that parties will adhere to awards, with national court procedures largely excluded.[26] While some judicial review is necessary, it should be limited to procedural irregularities and due process violations to maintain arbitration's effectiveness.[27] The validation principle, which aims to uphold arbitration agreements, has gained traction in various jurisdictions. However, the extent to which parties can modify judicial review of awards varies across legal systems, necessitating a comparative analysis.[28] Overall, courts tend to enforce arbitral awards and respect party autonomy, recognizing that extensive judicial review could undermine the benefits of arbitration.[29] This approach aligns with the parties' intention to submit disputes to arbitration for efficient and final resolution.[30]

## III Types of Arbitration

Arbitration courts can be classified based on different criteria, including their jurisdiction and the nature of disputes they handle.[31] Specific types of arbitration include commodity trade, maritime, construction industry, rent review, property valuation, and international commercial arbitrations.[32] The Hong Kong International Arbitration Centre (HKIAC) and Singapore International Arbitration Centre (SIAC) are examples of actively developing arbitration institutions.[33] Understanding these various types and their characteristics is crucial for effective dispute resolution in different sectors and jurisdictions.

Arbitration is an alternative dispute resolution method that can be broadly categorized into domestic and international arbitration.[34] International arbitration deals with cross-border commercial and investment disputes, allowing parties to bypass national courts. The legal

[26] R. Baboolal-Frank, A Review of Judicial Enforcement of Arbitral Awards in South Africa, 40 Conflict Resol. Q. 271 (2022).
[27] *Journal of the American Romanian Academy of Arts and Sciences*, no. 5–7 (Am. Rom. Acad. Arts & Scis. 1984).
[28] M. Scherer, The Fate of Parties' Agreements on Judicial Review of Awards: A Comparative and Normative Analysis of Party-Autonomy at the Post-Award Stage, 32 Arb. Int'l 437 (2016).
[29] R. Baboolal-Frank, A Review of Judicial Enforcement of Arbitral Awards in South Africa, 40 Conflict Resol. Q. 271 (2022).
[30] G. B. Born, The Law Governing International Arbitration Agreements: An International Perspective, 26 S. Afr. J. L. 814 (2014).
[31] A. Khakberdiev, Types of Arbitration Courts and Their Classification, 3 TSUL Legal Rep. Int'l Electron. Sci. J. 57 (2022).
[32] R. Bernstein & D. Wood, *Handbook of Arbitration Practice* (Sweet & Maxwell 1998).
[33] P. A. Abdumutalov, Court of Arbitration Types, 2 Int'l J. Adv. Sci. Rsch. 107 (2022).
[34] A. Verma, *Introduction to International Arbitration* (2020) (unpublished manuscript), https://ssrn.com/abstract=3693704..

 ISSN: 2582-6433

foundations of arbitration are explained by four theories: jurisdictional, contractual, mixed, and autonomous.[35]

### A. Domestic Arbitration

Domestic arbitration in India refers to proceedings conducted within the country involving Indian parties and governed by Indian law. The Arbitration and Conciliation Act of 1996 does not explicitly define domestic arbitration, but it can be inferred from Sections 2(2) and 2(7) that it occurs when the arbitration takes place in India under Indian law.[36] The 1996 Act aimed to limit court intervention in both domestic and international arbitration, marking a shift from previous practices. However, the Dabhol project experience suggests that India may not yet be an ideal location for international commercial arbitration.[37] In domestic arbitration, both parties are from India, and Indian law applies according to Part I of the 1996 Act, while international commercial arbitration involves parties from different countries.[38]

The Act, adopted in 1996, largely conforms to the UNCITRAL Model Law and aims to limit court intervention in arbitration proceedings.[39] While India ratified the New York Convention early, the Dabhol project experience suggests challenges in international commercial arbitration within India. The expansion of business disputes has increased the importance of alternative dispute resolution, including arbitration, for both domestic and international firms operating in India.[40] The 1996 Act covers both domestic and foreign arbitral awards, with parties having the responsibility to choose the applicable legal rules.[41] Despite these provisions, the effectiveness of India as a suitable location for international commercial arbitration remains debatable.

### B. International Arbitration

International arbitration in India encompasses both domestic and foreign-seated arbitrations,

[35] Ioannis Bantekas, *An Introduction to International Arbitration* (Cambridge Univ. Press 2015).
[36] S. Jain, *Domestic Arbitration in India: Legal Framework Under Arbitration and Conciliation Act* (2015) (unpublished manuscript), https://ssrn.com/abstract=2780100.
[37] R. J. Bettauer, *India and International Arbitration: The Dabhol Experience*, 41 GEO. WASH. INT'L L. REV. 381 (2009).
[38] S. Rana & I. Kaur, Seat and Venue: An Endless Controversy, 5 SHODHKOSH: J. VISUAL & PERFORMING ARTS 1011 (2024).
[39] R. J. Bettauer, India and International Arbitration: The Dabhol Experience, 41 GEO. WASH. INT'L L. REV. 381 (2009).
[40] S. Jaiswal, *Arbitration Law in India – An Overview* (2020) (unpublished manuscript), https://ssrn.com/abstract=3788312.
[41] A. Dhingra, *Arbitration and Conciliation Act, 1996 – An Overview* (2020) (unpublished manuscript), https://ssrn.com/abstract=3582896.

 ISSN: 2582-6433

with the Arbitration and Conciliation Act of 1996 serving as the primary legal framework.[42] The 2015 amendment clarified the distinction between Indian-seated and foreign-seated arbitrations, limiting court interventions in the latter. This development is crucial for businesses operating in India or with Indian firms, as arbitration has become increasingly important for resolving commercial disputes.[43] However, challenges persist, including concerns about governmental control through the Arbitration Council and uncertainty regarding foreign-qualified arbitrators in Indian-seated arbitrations.[44] Despite these issues, international commercial arbitration has gained significance as India has opened up to trade.[45] The evolving arbitration landscape in India reflects efforts to align with global standards while addressing domestic concerns, making it a complex but essential aspect of dispute resolution in the country.

### C. International Commercial Arbitration

International Commercial Arbitration refers to the resolution of commercial disputes involving foreign elements through arbitration, rather than traditional court proceedings. Under Section 2(f) of the Arbitration and Conciliation Act of 1996, such arbitration is deemed "international" when it arises from a legal relationship, contractual or otherwise, that is considered commercial under Indian law, and at least one of the parties meets any of the following criteria:

- Is an individual who is a national of, or habitually resides in, a country other than India;
- Is a body corporate that is incorporated outside India;
- Is an association or body of individuals whose central management and control is exercised in a foreign country;
- Is a foreign government.

Arbitration is a widely used method for resolving disputes, with parties having the option to choose between institutional and ad hoc arbitration (Baumann & Pfitzner, 2019). Institutional arbitration involves established organizations with predefined rules and procedures, while ad hoc arbitration allows parties more flexibility in shaping the process.[46] The choice between

[42] R. Sharma, Bhatia International v. Bulk Trading SA: Ambushing International Commercial Arbitration Outside India?, 26 J. INT'L ARB. 365 (2009).
[43] S. Jaiswal, *Arbitration Law in India – An Overview* (2020) (unpublished manuscript), https://ssrn.com/abstract=3788312.
[44] D. Devitre, India's Waltz with Arbitration: A Critical Analysis of the 2015 and 2019 Amendments to the Indian Arbitration Act, in *Adjudicating Global Business in and with India* 135, 135–50 (Routledge 2021).
[45] V. Chauhan, *Arbitration in India: The Process and the Problems with a Special Focus on International Commercial Arbitration* (2020) (unpublished manuscript), https://ssrn.com/abstract=3713559.
[46] M. Stryjniak-Puza, Institutional Arbitration or Ad Hoc Arbitration? Not Such an Obvious Choice, 3 ANNALS ADMIN. & L. 83 (2024).

 ISSN: 2582-6433

these two types depends on various factors, including cost, control, and efficiency. Institutional arbitration offers the advantage of established rules and administrative support, whereas ad hoc arbitration may provide more cost-effective solutions through direct fee negotiations with arbitrators.[47] Several prominent institutions, such as the ICC, LCIA, AAA-ICDR, HKIAC, and SAKIG, offer institutional arbitration services with varying rules, cost structures, and timelines. Despite their differences, both institutional and ad hoc arbitrations are recognized as valid forms of dispute resolution, with the choice ultimately depending on the specific needs and preferences of the parties involved.[48]

### D. Ad hoc and Institutional Arbitration

Ad hoc and institutional arbitration are two primary forms of dispute resolution, each with distinct advantages and challenges. Ad hoc arbitration offers parties greater control over the process and potential cost savings but requires more effort in establishing procedures. It is often preferred by sovereign entities concerned about impartiality and preserving their sovereignty.[49] Institutional arbitration provides a structured framework and administrative support, which can be beneficial in complex cases.[50] However, its suitability for domestic disputes in developing countries may require adaptations. The choice between ad hoc and institutional arbitration varies across legal systems. For instance, Iran has not explicitly introduced institutional arbitration, while China does not recognize ad hoc arbitral awards. To improve their arbitration systems, Iran could consider introducing institutional arbitration, while China might benefit from recognizing ad hoc arbitration to respect party autonomy.[51]

## IV Arbitration Clauses

Arbitration clauses are crucial components of commercial agreements, governing future dispute resolution.[52] These clauses typically specify the rules, institution, seat, number of

[47] N. Salar, Institutional Arbitration Versus Ad Hoc Arbitration: Determining the Right Choice, 15 J. LEGAL AFFS. & DISP. RESOL. ENG'G & CONSTR. 06523002 (2023).
[48] Gary Born, *International Arbitration: Cases and Materials* (Aspen Publishers 2011).
[49] N. Salar, Institutional Arbitration Versus Ad Hoc Arbitration: Determining the Right Choice, 15 J. LEGAL AFFS. & DISP. RESOL. ENG'G & CONSTR. 06523002 (2023).
[50] N. Shah & N. Gandhi, Arbitration: One Size Does Not Fit All: Necessity of Developing Institutional Arbitration in Developing Countries, 6 J. INT'L COM. L. & TECH. 232 (2011).
[51] M. Shokrani, Institutional Arbitration Versus Ad Hoc Arbitration: Chinese and Iranian Perspectives, 3 J. ADV. RES. SOC. SCI. & HUMAN. 148 (2018).
[52] P. Cavalieros, Drafting, Interpretation, and Enforcement of Commercial Arbitration Clauses: A Practitioner's Perspective, in *The Cambridge Handbook of Judicial Control of Arbitral Awards* 130, 130–48 (L.A. DiMatteo, M. Infantino & N.M.-P. Potin eds., Cambridge Univ. Press 2020).

 ISSN: 2582-6433

arbitrators, and language to be used.[53] The number of arbitrators is a key consideration, with Article 11 of the ICDR Rules providing a default of one arbitrator unless circumstances warrant three.[54] The seat of arbitration is fundamental in defining the legal framework for proceedings, but clauses often fail to designate it clearly. In such cases, courts may need to interpret the agreement to determine the seat, with English courts developing interpretative guidelines for "uni-directional" cases but facing challenges in "pluri-directional" scenarios.[55] To avoid uncertainty and confusion, it is advisable to draft arbitration agreements in detail, addressing key issues as outlined in various practical guides.[56]

### A. Submission Agreement

A submission agreement is a type of arbitration agreement where parties agree to submit an existing dispute to arbitration. It differs from an arbitration clause, which covers future disputes.[57] Arbitration agreements can be broad, encompassing all disputes related to a contract, or narrow, limiting the types of disputes to be arbitrated. These agreements are fundamental to arbitration, representing the parties' consent to resolve disputes through this method.[58] They can be simple or extensive, and typically outline the terms of arbitration. By entering into such agreements, parties often waive their right to resolve disputes in court, instead accepting arbitration as the resolution method. While most disputes can be arbitrated, there are some exceptions, such as securities law violations and antitrust allegations.[59]

### B. Arbitral Tribunal

The word award is not exactly or precisely defined. Although the word decision and award have been used interchangeably the word award is different from the word decision'. The term decision‖ is generic and refers to the result of any conclusion or resolution reached after consideration while an award is a decision affecting the rights between the parties and which

[53] E.H. Bordin, Arbitration Agreements, 125 W. J. MED. 400 (1976).
[54] M.F. Gusy, J.M. Hosking & F.T. Schwarz, *A Guide to the ICDR International Arbitration Rules* (Oxford Univ. Press 2011).
[55] J. Hill, Determining the Seat of an International Arbitration: Party Autonomy and the Interpretation of Arbitration Agreements, 63 INT'L & COMP. L.Q. 517 (2014).
[56] E.H. Bordin, Arbitration Agreements, 125 W. J. MED. 400 (1976).
[57] P. Cavalieros, Drafting, Interpretation, and Enforcement of Commercial Arbitration Clauses: A Practitioner's Perspective, in *The Cambridge Handbook of Judicial Control of Arbitral Awards* 130, 130–48 (L.A. DiMatteo, M. Infantino & N.M.-P. Potin eds., Cambridge Univ. Press 2020).
[58] G. Pisacane, L. Murphy & C. Zhang, The Arbitration Agreement, in *Arbitration in China: Rules & Perspectives* 7, 7–17 (2016).
[59] M.F. Hoellering, Arbitrability of Disputes, 41 BUS. LAW. 125 (1985).

 ISSN: 2582-6433

is generally capable of being enforced.[60] The New York Convention, despite its focus on recognizing and enforcing foreign arbitral awards, lacks a clear definition of "arbitral award".[61] This omission has led to legal ambiguities and practical difficulties in international arbitration. The Convention only specifies when an award is foreign but remains silent on what constitutes an award. This has resulted in varying interpretations and confusion regarding the distinction between arbitral awards and other tribunal decisions. The Convention recognizes two types of foreign arbitral awards: those not considered domestic and those rendered in a territory other than the state of recognition and enforcement.[62] While some argue for revising the Convention to address this issue, others believe the existing framework provides sufficient tools to overcome these challenges.[63]

## V Conclusion

Arbitration, as a form of alternative dispute resolution (ADR), has a long history predating formal legal systems and remains a popular method for settling disputes, especially in commercial and international contexts. It involves parties voluntarily agreeing to resolve conflicts through impartial arbitrators whose decisions are final and binding. This process offers significant advantages over traditional court proceedings, including procedural flexibility, confidentiality, and the ability to tailor procedures to specific needs. Historically, arbitration has been widely used by labor unions and management to resolve contractual disputes, serving as a means to avoid strikes and lockouts. Still, it has since expanded into various sectors such as international trade and investment.

One of the key principles underpinning arbitration is party autonomy, which allows disputing parties to choose their arbitrators, applicable laws, rules, and the seat of arbitration. This flexibility ensures that disputes can be managed efficiently and by the specific preferences of the parties involved. However, this private system also raises concerns about fairness and transparency, especially when one party exerts significant control over the dispute resolution process. While arbitration offers benefits such as speed and confidentiality, critics argue that

[60] Julian D. M. Lew & Loukas A. Mistelis, *Comparative International Commercial Arbitration* (Kluwer Law Int'l 2003).
[61] R. Kapoor, The Concept of Arbitral Award Under the New York Convention: A Comparative Study of English, French and Indian Approaches, in *The Indian Yearbook of Comparative Law 2019* 39, 39–59 (Singapore: Springer Singapore 2021).
[62] Wang, T., International Cooperation in Settlement of International Commercial Disputes, 2 REV. JURÍD. EDITORA MIZUNO 1 (2023).
[63] Kalaitsoglou, K., Exploring the Concept of Arbitral Awards Under the New York Convention, 5 J. STRATEGIC CONTRACTING & NEGOTIATION 99 (2021).

 ISSN: 2582-6433

its private nature can limit societal insight, and its procedural focus may sometimes overlook substantive legal principles and thorough fact-finding.

Despite its advantages, arbitration relies heavily on national courts for enforcement of awards, which can vary across jurisdictions. International arbitration, in particular, faces ongoing challenges related to the recognition and enforcement of foreign arbitral awards, requiring cooperation from courts to ensure the process maintains credibility and effectiveness. Laws such as the Arbitration and Conciliation Act of 1996 in India exemplify efforts to regulate domestic and international arbitration, aiming to limit judicial intervention while supporting arbitration's finality. Overall, arbitration continues to evolve as a critical alternative to court litigation, emphasizing party autonomy, limited judicial review, and adaptability to meet the demands of modern dispute resolution.