INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

 ISSN: 2582-6433

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 ISSN: 2582-6433

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 ISSN: 2582-6433

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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.

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 ISSN: 2582-6433

INSTITUTIONAL ARBITRATION EVOLUTION: ANALYZING THE RECENT DEVELOPMENTS IN ARBITRATION IN INDIA

AUTHORED BY - MADHAV GOSWAMI[1],
AVADHESH PRATAP SINGH[2] & MUGDHA GARG[3]

ABSTRACT

Institutional arbitration, a method for resolving disputes outside traditional courts, has developed significantly over time. Initially, it involved ad hoc arrangements with varied rules, arising as a solution to the limits of judicial systems. However, the need for consistent and reliable procedures led to the creation of institutions like the Indian Council of Arbitration (ICA), Mumbai Centre for International Arbitration (MCIA), and Delhi International Arbitration Centre (DIAC). These organizations offer standardized rules, administrative help, and a fair framework for dispute resolution, aligning with India's economic growth and the need for effective resolution methods.

This paper compares Institutional and Ad Hoc Arbitration, showing how institutional arbitration is managed by specific organizations, while ad hoc relies on the parties to organize the process. Indian courts have influenced arbitration laws, especially in terms of arbitrator appointments, judicial limits, and enforcement of rulings. Although there are challenges like costs and delays, institutional arbitration is becoming more popular. The paper also discuss the historical background of arbitration and explore the future potential of institutional arbitration, particularly as business transactions grow in complexity. This structured approach offers clear benefits, such as established procedures, administrative support, and experienced arbitrators, making it a valuable choice for both local and international parties.

Keywords: Institutional Arbitration, Ad Hoc Arbitration, Arbitrator, Dispute, ADR

[1] Student at GLA University, B.COM. LL. B, 5th Year, 13th Trimester.
[2] Student at GLA University, B.A. LL. B, 5th Year, 13th Trimester.
[3] Student at GLA University, B.COM. LL. B, 5th year, 13th Trimester.

 ISSN: 2582-6433

INTRODUCTION

Arbitration has been developed as one of the significant methods under alternative dispute resolution mechanisms internationally including the India as well. India on account of its commitment to developing a mechanism that resolves commercial disputes amicably along with reducing the burden of the judiciary in the country has made significant efforts to stimulate arbitration as a culled approach for settling the commercial disputes pertaining to transactional issues, non-fulfilment of contractual obligations in a speedier manner. The objective behind establishing and promoting arbitration as a preferred method of dispute settlement is to provide a speedier, more efficient and productive means of resolving disputes with a conjoin aim to attract foreign investment and upgrade the position of the country in the ease of doing business index issued globally. The last four to five years demonstrates a clear example where India has observed various developments in its arbitration landscape. The Legislative reforms and judicial stepping with a collective aim to integrate the arbitration skeleton of the country in accordance with the global standards and settle the dome of the long-standing issues faced by the parties to the arbitration proceedings have played an instrumental role in witnessing a landmark shift internationally.

One of the major changes that India has witnessed recently is the adoption of 'Institutional Arbitration' as a method to resolve commercial disputes effectively. Institutional Arbitration in India is nestling and making headway. It cannot be denied that still the domain of Institutional Arbitration is in a growing phase and requires a continual growth assessment to be carried out so that it can address the concerns pertaining to the consistently evolving dynamics of a business environment successfully. An enriching fetching is inescapable for making the method of Institutional Arbitration favourable in India. So, in order to cope with the dynamic business dynamics prevailing in a business environment and integrate the country with the fast-paced developed world, there is an emergent need to revive the practice of Institutional Arbitration in the country. It has been discovered that many business professionals or luminaries are not familiar with the concept of institutional arbitration, its advantages and capability of settling the commercial disputes amicably.

The advancement of institutional arbitration has been greatly aided by the Arbitration and Conciliation (Amendment) Act, 2015, as well as the changes that followed in 2019. These changes are intended to make doing business in India easier by offering conflict resolution processes that are quicker, more transparent, and more affordable. Furthermore, a step toward

 ISSN: 2582-6433

improving the legitimacy and effectiveness of arbitration in the nation is the creation of the Arbitration Council of India (ACI), which has the authority to govern and accredit arbitral institutions. In India, institutional arbitration is becoming more and more popular among local and foreign parties as a crucial instrument for settling complicated business disputes. This change is in line with the nation's goal of becoming a centre for international arbitration.

Furthermore, the government has not been pivotal in promoting the practice of institutional arbitration across the country. Furthermore, certain national and international institutional arbitration centres like the Delhi International Arbitration Centre (DIAC), Singapore International Arbitration Centre (SIAC), and India International Arbitration Centre (IIAC) have made key attempts to promote the practice of institutional arbitration in the country by organizing various conferences, seminars and inviting the different legal experts of the specific fields to provide a sense of clarity on the practice of institutional arbitration. Legal empiricists have reached to the conclusion that the efforts made by various national and international arbitration centres have promoted the cause of institutional arbitration and have been proven successful in attracting potential end-users. On the other hand, it has also been emphasized that the domestic arbitration centres shall adopt regular, consistent and proactive measures to advocate the emerging need to settle commercial disputes through the mechanism of institutional arbitration respectively. It can be said that there is an evolving need to create awareness of institutions in the country more effectively. The arbitration centres should also work on the merit and calibre of the arbitrators enrolled with them by culling out the eligibility, and selection criteria, which in turn, will lead the country to witness a hallmark change in the prevailing arbitration landscape.

HISTORICAL BACKGROUND OF ARBITRATION IN INDIA

Arbitration possesses an extensive chronicle in India. In ancient times, the disputes were voluntarily submitted by the people to a group of sagacious individuals of a community, known as, panchayat to obtain a conclusive decision, which in turn, used to be binding on the parties involved in such referred dispute. The Bengal Regulations, 1772 passed during the British regime established the foundation of arbitration law in the country. The Bengal Regulations establish that the parties with mutual consent can go for arbitration to resolve their disputes. It was further laid down that the court in which the matter is listed for adjudication can also refer to the settlement of the dispute through arbitration but after obtaining the consent of all the parties involved in such dispute. As per the Bengal Regulations, 1772, the lawsuits pertaining

 ISSN: 2582-6433

to discrepancies in accounts, violation of contractual obligations and partnership deeds can referred by a court of law for settlement through arbitration subject to the consent of all the parties involved in a given dispute. The Laws regulating the arbitration regime in India till 1996 were: (i)- The Arbitration (Protocol and Convention) Act, 1973, (ii)- The Foreign Awards (Recognition and Enforcement) Act, 1961, (iii)- The Indian Arbitration Act, 1940. The Indian Arbitration Act, 1940 was legislated by the parliament in alignment with the lines of the English Arbitration Act, 1934 respectively. The acts passed in the years 1937 and 1961 were enacted to enforce the arbitral awards passed by any foreign arbitral institution, called, foreign arbitral awards effectively. Moreover, the New York Convention, 1958 was the base on which the foundations of the Foreign Awards (Recognition and Enforcement) Act, 1961 were laid down. The Indian Arbitration Act passed in the year 1899, was superseded by another codified law, i.e., The Code of Civil Procedure, 1908 respectively. Later on, with a view to establish a uniform set of rules and regulations governing the arbitration procedure in the country, the Indian Legislature passed an act, namely, "The Arbitration and Conciliation Act, 1996". This act proved to be a successful effort of lawmakers to scrap the outdated act passed earlier in the year 1940. The Arbitration & Conciliation Act, 1996 is an exhaustive code shaped on the lines of the United Nations Convention of International Trade Law, i.e., UNCITRAL model law. By the virtue of Arbitration and Conciliation Act, 1996, the previously existing all three laws were repealed. The primary intent of the law-makers behind the Arbitration and Conciliation Act, 1996 was to promote the arbitration mechanism as an affordable and speedier method for ensuring the settlement of commercial disputes amicably or in an optimum manner. The said act of 1996 also consists of various provisions, with respect to both, i.e., the domestic and international arbitration. The said act also faced certain criticism due to the absence of judicial intervention. It was contended that the absence of judicial intervention in the Arbitration and Conciliation Act, 1996., would hamper the smooth functioning of arbitration practice in India. Later on, as a consequence of such criticism, the provisions of the said act were reassessed by the Law Commission of India and the findings with regard to the criticism were laid down in the 246th Law Commission Report. The suggestions made by the Law Commission through its 246th report led to the various amendments in the prevailing Arbitration and Conciliation Act, 1996. The government after considering the various suggestions made in the 246th Law Commission Report enacted a new code, namely, Arbitration and Conciliation (Amendment) Act, 2015. It can be said that arbitration seems to be a gradually emerging method of Alternative Dispute Resolution (ADR) in today's contemporary world. Various enterprises now incorporate a separate clause, titled, 'Arbitration Clause' in their main business

 ISSN: 2582-6433

agreements. The Ad-hoc arbitration, further, seems to be the most commonly adopted method of arbitration in India, wherein the parties to a contract themselves govern and regulate the arbitration proceedings, which in turn, also affects the practice of institutional arbitration in the country.

EVOLVING TRENDS IN INSTITUTIONAL ARBITRATION

The 2019 Amendment adds Section 11(3A) to the Act, granting the High Courts and the Supreme Court of India the authority to designate arbitral institutions that have been graded by the Arbitration Council of India (ACI). The basic idea is that graded arbitral institutions would be designated by the courts to serve as arbitrators in circumstances where parties are unable to come to an agreement, rather than the court intervening to choose arbitrators.

One key aspect that makes this scheme flawed is its tendency to undermine the principle of party autonomy in the realm of international arbitration, where various governmental bodies and court systems play pivotal roles. It is essential to consider the intricate dynamics between the relevant parties involved and the potential implications on their autonomy in deciding the arbitration process. Meanwhile, the Arbitration Council of India (ACI) functions as an official governmental entity responsible for overseeing the formulation of protocols that govern the evaluation of arbitral institutions and the regulation of arbitration practices within the Indian jurisdiction. By diligently monitoring and standardizing the processes through which arbitration institutions operate, the ACI aims to enhance the overall credibility and effectiveness of arbitration procedures in India, thereby fostering a conducive environment for fair and efficient resolution of disputes. It is nonetheless true that the options provided to the court by the ACI will restrict its ability to choose an arbitral institution. Thus, only arbitral institutions accredited by ACI and arbitrators who may sit on the panel of such arbitral institutions would be available to a foreign party seeking to appear before the Supreme Court and request the appointment of an arbitrator. When naming an ungraded institution that wants to open a local office in India without having to go through the administrative process of being graded by the ACI and has a global reputation for its facilities and service quality, the court will face similar challenges.

Institutional arbitration has been promoted by the Indian government and court. Organizations that are gaining prominence include the Nani Palkhivala Arbitration Centre (NPAC), Delhi International Arbitration Centre (DIAC), and Mumbai Centre for International Arbitration

 ISSN: 2582-6433

(MCIA). These organizations provide administrative assistance, skilled arbitrators, and organized procedures. Arbitration has been widely promoted by the Indian government as a way to settle business disputes. By establishing an arbitration council to oversee and support arbitration institutions, initiatives such as the 2020 Draft Arbitration Bill sought to strengthen institutional arbitration even more.

In recent years, the landscape of Indian arbitration has witnessed significant strides and achievements aimed at bolstering its legal infrastructure, strengthening its efficiency, and establishing a solid foundation for India to emerge as a prominent hub for arbitration on the global stage. These notable advancements have encompassed a wide array of initiatives focused on refining the procedural mechanisms, streamlining dispute resolution processes, and fostering a conducive environment for both domestic and international parties to engage in arbitration proceedings within the Indian jurisdiction. By investing in the development of specialized training programs, promoting institutional arbitration centres, and implementing legislative reforms to align with international best practices, India has demonstrated a staunch commitment to cultivating a robust arbitration ecosystem that upholds principles of fairness, transparency, and expediency. Moreover, these efforts have not only propelled India towards becoming a preferred destination for resolving commercial disputes through arbitration but have also positioned the country as a leading player in the global arbitration arena, paving the way for enhanced collaboration with key stakeholders and contributing to the evolution of a more harmonized and efficient international arbitration regime. The following are some significant recent advancements in Indian arbitration:

1. In an effort to improve the effectiveness and affordability of arbitration as a conflict settlement process, the Indian government made considerable changes to the Arbitration and Conciliation Act in 2019. The modifications sought to reduce court interference, expedite the arbitration procedure, and encourage institutional arbitration.
2. In order to create the NDIAC as an independent and autonomous institution for the advancement of institutional arbitration, the New Delhi International Arbitration Centre Act, 2019 was passed. The NDIAC wants to offer top-notch facilities and infrastructure for conducting both domestic and international arbitration.
3. The MCIA was founded in 2016 with the goal of advancing institutional arbitration in India. It is an autonomous, non-profit organization. It seeks to establish Mumbai as a

 ISSN: 2582-6433

significant centre for arbitration and offers a framework for the conduct of both domestic and international commercial arbitration.

4. The COVID-19 epidemic hastened the use of technology in resolving disputes. Online platforms are being used by Indian courts and arbitration centres to file cases for arbitration and hold virtual hearings in which parties can participate from a distance.
5. Before starting an arbitration process, the Indian government has urged parties to try mediation. According to the 2019 amendment, the court must direct parties to mediation if a side requests arbitration, unless it determines that mediation is not a feasible means of resolving the issue.

ARBITRAL AUTONOMY VS. INSTITUTIONAL SUPPORT: A COMPARATIVE ANALYSIS

As the name suggests, arbitral autonomy reflects the parties' discretion and choice while going into Arbitration. Parties are free to appoint the arbitrator for themselves, prescribe rules and regulations regarding the arbitral procedure and handle administrative work without the involvement of any related institution and this framework is known as Ad Hoc Arbitration. On the other hand, institutional support refers to the parties' adherence to an arbitral institution's guidelines in case they do not agree or come to a common conclusion regarding arbitration proceedings and this aspect is Institutional Arbitration.

The parties may choose to accept the guidelines established by a certain arbitral body without submitting their disagreements to it. When the parties cannot reach a consensus regarding the arbitral tribunal, they may agree to name an arbitral institution as the official appointment body. In addition, the UNCITRAL Arbitration Rules, which are intended especially for ad hoc arbitral proceedings, may be adopted by the parties, or they may integrate legislative procedures such as applicable arbitral law. Ad hoc processes have the potential to be more adaptable, less expensive, and quicker than administered hearings provided that the parties assist in facilitating the arbitration. Since neither party must pay the arbitral institution any administrative expenses, it is a well-liked option.

An arbitral institution is chosen under the arbitration agreement to conduct an institutional arbitration. Subsequently, the parties submit their disputes to the intervening institution, which then follows its regulations to govern the arbitral process. The dispute is not arbitrated by the

 ISSN: 2582-6433

organization. The matter is arbitrated by the arbitral tribunal. Around the world, there are a lot of outstanding organizations with the capacity and expertise to provide this service. The arbitration agreement between the parties may provide for the referral of a dispute between the parties to some regional organizations for settlement like Delhi International Arbitration Centre (DIAC), Singapore International Arbitration Centre (SIAC), and India International Arbitration Centre (IIAC).

Advantages and Disadvantages of Ad Hoc Arbitration and Institutional Arbitration

- **Ad Hoc Arbitration**

  One of the most important advantages of Ad Hoc Arbitration is that it is more cost-efficient than institutional arbitration as parties do not need to pay the arbitration institution's administration expense. Another important aspect of ad hoc arbitration is that it ensures flexibility in arbitral proceedings to fulfil their specific needs. Comparing ad hoc arbitration to open court action, a higher level of confidentiality is offered. Additionally, this confidentiality serves to preserve a company's reputation and secures proprietary corporate information. The expediency of ad hoc arbitration is well known. The method is a useful tool for quick dispute settlement, which is important in the fast-paced corporate world. Parties can modify it to speed up the resolution process.

  Coming to the disadvantages, Ad hoc arbitration might lead to a less formal and structured process because the parties must set the rules and procedures themselves. This lack of structure may give rise to arguments and conflicts about the administration of the arbitration, which could result in delays and issues. The difficulty in finding arbitrators with the requisite experience in intricate areas of company law is another major drawback of ad hoc arbitration. The parties to institutional arbitration can rely on reputable organizations to select knowledgeable arbitrators with experience in the pertinent legal area. Ad hoc arbitrations do not have this benefit, which could lead to less-than-ideal results because it is hard to obtain arbitrators with the necessary experience. Finally, the specialized administrative resources that are available in institutional arbitration are frequently absent from ad hoc arbitration. By supporting case management and logistical coordination, institutional organizations lessen the parties' administrative burden. These tools are usually unavailable in ad hoc arbitration, which puts more of the burden of managing the arbitration on the parties.

 ISSN: 2582-6433

- **Institutional Arbitration**

  Institutions often assemble a diverse panel of arbitrators, drawing from a pool of experts across various countries and professions. This strategy allows disputing parties the flexibility to select an arbitrator whose background, expertise, and understanding align closely with the nature of the conflict at hand, thereby fostering a more streamlined and effective resolution process. By incorporating individuals with a wide array of specializations and perspectives into the arbitration process, the institution aims to provide a balanced and fair platform for addressing complex disputes. The richness and depth of knowledge brought by this diverse panel of arbitrators not only ensures that the conflict settlement procedure is conducted with thoroughness and precision but also enhances the credibility and legitimacy of the entire arbitration process. Such a collaborative approach to arbitration showcases the institution's commitment to delivering transparent and impartial resolutions that meet the unique needs and expectations of each party involved. The confluence of expertise and experience within the panel not only facilitates expedited conflict resolution but also instils confidence in all stakeholders regarding the fairness and integrity of the arbitration proceedings. This thoughtful curation of arbitrators underscores the institution's dedication to upholding the highest standards of professionalism and effectiveness in navigating intricate legal and procedural complexities, ultimately promoting trust and cooperation among the involved parties.

  However, it should be remembered that the parties only propose an arbitrator; the institution is responsible for appointing the arbitrator and reserves the right to reject a nomination if it determines that the recommended arbitrator is not sufficiently qualified or unbiased. The ability of the parties and arbitrators to consult institutional staff members for support and guidance is another advantage of institutional arbitration. Generally speaking, one of the benefits of arbitration is that it yields an irrevocable, binding decision that is immune to appeal.

  Speaking of the disadvantages, though the parties may be able to agree on more reasonable time frames, there may be instances in which they must react to the institution or in accordance with its rules within irrational time frames. Some customers frequently gripe about the procedure feeling unduly “bureaucratic”. Certain institutional fees could be costly, especially if they represent a portion of the value of a sizeable sum that is under dispute. Rigid since it denies the parties their sole authority to control the arbitration

 ISSN: 2582-6433

process.

FUTURE DIRECTIONS AND SUGGESTIONS

The Future Directions and Suggestions which can be considered for increasing the practice of institutional arbitration in India are made as follows: -

1. The International Centre for Alternative Dispute Resolution (ICADR) should be declared as a centre of national importance.
2. The Central Government should impound the ICADR by enacting a separate statute and an ordinance with regard to the same should be passed in the parliament.
3. The said ordinance for the enactment of a separate statute with regard to the ICADR should contain, a precise preamble entailing the causes for such take-over, separate provisions for declaration of ICADR as an institution of national importance, withholding of assets, liabilities, debts, obligations, contract to a distinct body-corporate.
4. The ICADR should be re-branded as the 'Indian Arbitration Centre' by taking into account its position as a chief arbitral institution.
5. By updating and upgrading their resources and amenities, these institutions can enhance their reputation, credibility, and attractiveness to parties seeking reliable and top-tier arbitration services. Such refurbishments will not only elevate the overall quality and competitiveness of these institutions but also contribute significantly to the advancement and development of the international arbitration landscape. There exists a need to formulate a 'Chamber of Arbitration' whose function will be to look into the appointment of a dedicated, skilful and experienced panel of arbitration practitioners along with a focus on their training.
6. The Arbitral Institutions must ensure the selection of a transformed team focusing on public relations whose primary task will be to create awareness about institutional arbitration by organising various expert talk sessions, conferences, seminars and webinars.
7. There must be an establishment of an arbitration academy, which will be entrusted with the work of training the arbitrators and keeping a check on the latest upgrades introduced in the arbitration law globally.
8. Draconian standard to be complied with for admission of arbitrators in the panel of designated arbitral institutions.

 ISSN: 2582-6433

9. A uniform procedure for regulating the challenge petitions filed in the courts against the awards passed by the arbitrators of such designated arbitral institutions must be established.
10. The Designated Arbitral Institutions should provide excellent case-management services. The Registrar or Secretary General must ensure the selection of a dedicated and hard-working team whose primary task will be to assign each case to qualified arbitrators as per their prevalent area of expertise, arrange hearing venues and prepare case timetables.
11. The Designated Arbitral Institutions should select a panel of arbitrators having command over the different areas of law and economy.
12. Strategic placement of arbitral institutions near business and financial hubs acts as a catalyst for fostering confidence in the arbitration system, promoting transparency, and ultimately bolstering the overall effectiveness and legitimacy of commercial arbitration. In essence, the close vicinity of arbitral institutions to businesses and financial institutions serves as a cornerstone for ensuring robust, reliable, and efficient dispute resolution mechanisms that cater to the dynamic demands of the modern commercial landscape.
13. The designated arbitral institutions should ensure an affordable and innovative cost structure along with ensuring cost-effective services.
14. The Arbitral Institutions must possess a state-of-the-art infrastructure for organising the hearings.

CONCLUSION

The development of institutional arbitration in India is indicative of a paradigm shift in the nation's conflict resolution practices. India, which has traditionally relied heavily on ad hoc arbitration, is adopting institutional arbitration more and more to improve effectiveness, openness, and professionalism. A strong arbitration ecosystem has been facilitated by the creation of organizations such as the Mumbai Centre for International Arbitration (MCIA) and the New Delhi International Arbitration Centre (NDIAC), as well as by legislative changes like the Arbitration and Conciliation (Amendment) Acts.

With less dependence on foreign organizations like the Singapore International Arbitration Centre (SIAC), India is moving toward becoming a global arbitration powerhouse. This change

 ISSN: 2582-6433

has been reinforced by the judiciary's pro-arbitration posture, efforts to reduce court interference, and the embrace of technology. With its potential to provide quicker and more consistent results, institutional arbitration is expected to gain more traction and boost confidence in India's arbitration market. Even if there are still issues, such as the need for improved infrastructure and enforcement methods, India is well-positioned to provide top-notch arbitration services in the future.

There are still obstacles to overcome, especially with regard to institutional arbitration's broader adoption and the development of stronger enforcement measures. However, India's institutional arbitration environment is expected to flourish and become a major player in the global arbitration arena with ongoing reforms and the rising prominence of local arbitration bodies.

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