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AD HOC ARBITRATION AND INSTITUTIONAL ARBITRATION

Authored By-Aanchal Dhuria

Abstract

Arbitration is one of the oldest systems of alternative dispute resolution to the traditional state administered court litigation. According to Aristotle, 'it is equitable to be patient under wrong (not to retaliate); to be willing that a difference shall be settled by discussion rather than by force; to agree to arbitration rather than to go to court- for the umpire in an arbitration looks to equity, whereas the juryman sees only the law. Indeed, arbitration was devised to the end that equity might have full sway'.¹ This precept has been echoed by William O Douglas J. in *Bernhardt v Polygraphic Co.*² in the following language: 'The nature of the tribunal where suits are tried is an important part of the parcel of rights behind a cause of action. The change from a court of law to an arbitration panel may make a radical difference in ultimate result'

The origin of arbitration may be traced back to the age-old system of village Panchayats prevalent in ancient India. The decision of the Panchas while sitting collectively as Panchayat commanded great respect because of the popular belief that they were the embodiment of voice of God and therefore had to be accepted and obeyed unquestionably. In course of time this mode of divine dispensation of justice through Panch Parnswar underwent radical and civilization. changes with the changing pattern of society and growth of human knowledge and civilization.

¹ The Rhetoric of Aristotle, Book I, ch.13

² (1956) 350 US 198, 203

Introduction

Arbitration in India during the 20th Century was governed by the Indian Arbitration Act, 1859 with limited application and the Second Schedule to the Code of Civil Procedure. Thereafter, it was replaced by the Arbitration Act, 1940. The Arbitration Act, 1940 was replaced by the Arbitration and Conciliation Act, 1996 which, by virtue of its Section 85, repealed the earlier Act of 1940. The Act of 1996 was introduced in view of the growing³ complexities of modern commercial transactions in the wake of globalization of economy which necessitated an effective redressal mechanism for speedy settlement of domestic as well as international commercial disputes so as to ensure uninterrupted flow of trade and commerce. This has been possible through measures such as conciliation, mediation or arbitration which are considered as relatively less expensive and speedy mechanism as compared with the court proceedings which are expensive, dilatory and involve a complex and cumbersome procedure.

The Arbitration and Conciliation Act, 1996 was intended to comprehensively cover international and commercial arbitrations and conciliations as also domestic arbitrations and conciliations. It envisages the making of an arbitral procedure which is fair, efficient and capable of meeting the needs of the globalised economy. It sought to consolidate and amend the law relating to domestic arbitrations and international commercial arbitration as also to lay down the law relating to conciliation and matters connected therewith or incidental thereto.

Arbitration

Arbitration is a process in which a dispute is submitted to an impartial outsider who makes a decision which is usually binding on both the parties.

Arbitration is a means of securing an award on a conflict issue by reference to a third party. It is a process in which a dispute is submitted to an impartial outsider who makes a decision which is usually binding on both the parties.

It is a process where there is a hearing and a determination of a cause between parties in controversy by a person or persons chosen by them, or appointed under a statutory provision.

³ SBP & Co. v. Patel Engineering Ltd. & another, (2005) 8 SCC 618.

The parties submit their disputes/issues and are bound by the award of an arbitrator in relation to the matter which is in dispute between them.

The definition of “Arbitration” in Section 2 (1) (a) of the Arbitration and Conciliation Act 1996⁴ is merely a clarification that the Act covers both ad hoc and institutional arbitration. This definition corresponds to the definition as mentioned in clause (a) of Article 2 of

UNCITRAL Model Law on International Commercial Arbitration. Evidently, this definition does not spell out the denotation of the term ‘arbitration’. At its core, arbitration as a method of solving the litigation has been in meaning for centuries. The need for a definition has always been subsidiary to its purpose although attempts have been made at a definition. Quite a large number of definitions of arbitration have been given from time to time. Halsbury says: “ An arbitration is the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction”.⁵

Ad Hoc Arbitration And Institutional Arbitration

In India, arbitration proceedings are of two types: ad-hoc arbitration and institutional arbitration. The parties have the option to seek recourse to either of them depending on their choice and convenience.

Ad-Hoc Arbitration:

It refers to an arbitration where the procedure is either agreed upon by the parties or in the absence of an agreement, the procedure is laid down by the arbitral tribunal. Thus, it is an arbitration agreed to and arranged by the parties themselves without seeking the help of any arbitral institution.

⁴ Section 2 in the Arbitration and Conciliation Act 1996: (1) In this Part, unless the context otherwise requires,- (a) "arbitration" means any arbitration whether or not administered by permanent arbitral institution.

⁵ Halsbury’s Laws of England, 4th ed., Vol. 2, p.255, 501.

The parties then have to determine all aspects of the arbitration like the selection and manner of appointment of the arbitral tribunal, applicable law, procedure for conducting the arbitration and administrative support without assistance from or recourse to an arbitral institution. The arbitral mechanism is therefore structured specifically for the particular agreement or dispute. If the parties cannot agree on such arbitral detail or, in default of agreement, laid down by the arbitral tribunal at a preliminary meeting once the arbitration has begun, it will be resolved by the law of the seat of arbitration.⁴ It is open to the parties to adopt the rules framed by a particular arbitral institution without submitting its disputes to such institution. Parties may when they cannot agree on the arbitral tribunal may agree to designate an arbitral institutional as the appointing authority Parties can also incorporate statutory procedures such as applicable arbitral law or adopt the UNCITRAL Arbitration Rules which are specifically designed for ad hoc arbitral proceedings. In Ad-hoc arbitration, if the parties are not able to nominate arbitrator/arbitrators by consent, the appointment of arbitrator is made by the High Court (in case of domestic arbitration) and by the Supreme Court(in case of international commercial arbitration). In India, still most of the arbitrations are Ad-Hoc Arbitrations.

Advantages Of Ad Hoc Arbitration:

1. Suitable for all types of claims

Ad hoc arbitration if properly structured should be less expensive than institutional arbitration. It is suitable for use with for all types of claims, large or small. Bigger corporations may prefer ad hoc arbitration as they often have large and sophisticated in-house legal departments and have accrued experience in managing arbitration proceedings. Ad hoc arbitration may be designed according to the requirements of the parties, particularly where the stakes are large or where a state or government agency is involved. The parties are in a position to devise a procedure fair and suitable to both sides by adopting or adapting to suitable arbitration rules.

2. Control of the process

Parties are in control of the process. They can write their own rules, set their own timelines and move the arbitration along their own pace. The arbitral tribunal and to a lesser extent the parties have to shoulder the burden of organising and administering the arbitration proceedings.

3. Agreed procedures

The effectiveness of ad hoc arbitration depends upon the parties' willingness to agree upon procedures at the time when they are already in dispute. If the parties do not cooperate in facilitating the arbitration, there could be loss of time in resolving the issues.

4. Flexibility

Ad hoc arbitration is flexible in allowing the parties to cooperate and decide upon the dispute resolution procedure. It is only natural that once a dispute arises, parties tend to disagree even on the most basic of things. For example, parties of different nationalities and jurisdiction may misunderstand each other. They may find it difficult to agree and cooperate, which can delay the arbitration and frustrate the resolution of the dispute.

5. Ready-made arbitration rules

Parties can avoid such disagreement and avoid delays if ⁶they agree to conduct the arbitration under for example, UNCITRAL selected arbitration rules. The result is less time and legal expense spent in determining complex arbitration rules to be used in the arbitration.

6. Sovereignty issue

State parties may prefer ad hoc arbitration if they are concerned that a submission to institutional arbitration devalues their sovereignty particularly when the disputes involve public interest and large sums of public monies. They would want the flexibility to define issues quickly and also adopt acceptable procedures; for example; they may wish to file simultaneous pleadings as neither party would want to be a respondent as they both believe they have justifiable claims against each other.

7. Cost-effectiveness

Ad hoc arbitration is less expensive than institutional arbitration. The parties only pay fees of the arbitral tribunal, lawyers or representatives, and the costs incurred for conducting the arbitration, i.e. expenses of the venue charges, etc. They do not have to pay the arbitration institution's administration fees which, if the amount in dispute is considerable, can be prohibitively expensive. The parties also have the flexibility of holding the hearings at any venue. Normally, an institutional arbitration will be held in the institution premises.

8. Remuneration of arbitral tribunal

In ad hoc arbitrations, the parties will have to agree the scale of remuneration with the arbitral panel and agree fees directly with the arbitral tribunal who will have to collect the money directly from the parties. Although most arbitrators are detached in dealing with these matters, there will inevitably be some degree of distraction which may lead to awkwardness LatestLaws.com for all concerned. There is no opportunity for negotiation of the fees in institutional arbitration, which requires the parties pay arbitral tribunal fees as stipulated by the institution.

⁶ [https://uk.practicallaw.thomsonreuters.com/9-502-0625?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/9-502-0625?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1).

Disadvantages Of Ad Hoc Arbitration:

- Parties in ad hoc arbitrations normally have to rely on their own good judgment as to the identity and quality of the individual arbitrator. This may be particularly difficult, in the context of international arbitration, as a party may not be able to choose a well known arbitrator from his country due to objections of national bias and would have little, or no, knowledge of arbitrators outside his country.
- Only effective when both parties are ready to cooperate with each other as it depends for its full effectiveness upon the spirit of cooperation between the parties and their lawyers backed up an adequate legal system in the place of arbitration.

Institutional Arbitration

In an institutional arbitration, the arbitration agreement may stipulate that in case of dispute or differences arising between the parties, they will be referred to a particular institution such as:

- Indian Council of Arbitration(ICA)
- International Chamber of Commerce(ICC)
- Federation of Indian Chamber of Commerce & Industry(FICCI) ⁷
- World Intellectual Property Organisation(WIPO)
- The International Centre for Alternative Dispute Resolution(ICADR)
- London Court of International Arbitration(LCIA)

All these institutions have framed their own rules of arbitration which would be applicable to arbitral proceedings conducted by these institutions. Such rules supplement provisions of the Arbitration Act in matters of procedure and other details as the Act permits. They may provide for domestic arbitration or for international commercial arbitration or both and the disputes dealt with by them may be general or specific in nature.

In an institutional arbitration, the arbitration agreement designates an arbitral institution to administer the arbitration. The parties then submit their disputes to the institution that intervenes and administers the arbitral process as provided by the rules of that institution. The institution does not arbitrate the dispute. It is the arbitral panel which arbitrates the dispute.⁷ There are many excellent organizations, world-wide,

⁷ <https://blog.iplayers.in/institutional-arbitration-india/>

that have the capability and the knowhow to deliver this service. The parties may stipulate, in the arbitration agreement, to refer a dispute between them for resolution to a regional institution, for example, Cairo Regional Centre for International Commercial (CRCICA), Singapore International Arbitration Centre (SIAC) .

Advantages Of Institutional Arbitration

1. Reputation

One of the biggest advantages of opting for institutional arbitration is the reputation of the institution. Decisions given under the name of any prestigious institution is easier to enforce as it is accepted by a majority of other bodies.

2. Efficient Administration

One more advantages of going for institutional arbitration is that such institutes provide trained staff to the parties for administering the whole process. The administrative staff will lay down the rules, ensure that the time limits are being complied to, and the process is going ahead as smoothly as possible.

3. Clear Rules⁸

In the case of institutional arbitration, the rules of the arbitration are generally fixed by the institution. There is no further dispute between the parties regarding the rules of the procedure, which might happen in the case of ad-hoc arbitration. Also, the rules are framed keeping all eventualities in mind, as these institutions have an experience of going through various arbitration proceedings and know what eventualities may arise. Also, the rules are flexible in nature. There is a mechanism to oppose any part of the process which is not consistent.

4. Quality of Arbitral Panel⁹

One of the major advantages of institutional arbitration is that they have an extensive panel of experts, who acts as arbitrators. These institutions also have arbitrators who specialize in different areas, so that any type of dispute can be resolved. Big institutions like ICC also have a network of national committee for appointment of arbitrators to ensure that there is no bias based on the country to which the parties belong.

⁸https://shodhganga.inflibnet.ac.in/bitstream/10603/201577/9/09_chapter%203.pdf

⁹

5. Supervision¹⁰

Apart from the administration of the arbitral process, some institute also supervises the process, i.e., examine the award or penalty sanctioned ensuring that due process of law has been followed, and proper reasoning has been given to the parties for taking that particular decision.

Remuneration of the Tribunal

In the case of institutional arbitration, the remuneration to be paid to the arbitrators is already fixed. The disputing parties do not have to haggle with the arbitrators to decide the terms and amount of remuneration. The remuneration of the arbitrators in case of institutional arbitration is based on a fixed scale. The money is paid to the arbitrators without involving them directly.

6. Default Procedure

Many institutional arbitrators expressly provide the rule that the proceedings will continue and not stop in between, even if one of the parties defaults in the course of the proceedings. For instance, Article 21 (2) of the ICC Rules states that if any party fails to appear for the proceeding without giving any valid excuse, even after it has been duly summoned by the institution, the Tribunal will proceed with the proceedings.

Disadvantages Of Institutional Arbitration

There may be situations where the parties need to respond to the institution or pursuant to its rules within unrealistic time frames, though the parties may be able to agree to time frames more appropriate for the situation.

- Some users tend to complain about an overly “bureaucratic” feeling to the process.
- Some institutional fees may be expensive, in particular where they reflect a percentage of the value of a significant amount in dispute.
- Inflexible as it takes away the exclusive autonomy of the parties over arbitration proceeding

Which Form Is Acceptable In Present Indian Scenario

The Indian Arbitration and Conciliation Act, 1996 is the statutory adoption of the UNCITRAL Model Law for international commercial arbitration and the UNCITRAL rules of arbitration, with relevant modifications to fit into its institutional framework. India is also a party to the New York Convention (on enforcement of arbitration awards) allowing arbitral awards to be enforced by the

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courts in almost any country around the world. The Act provides for party autonomy, maximum judicial support of arbitration and minimal intervention. Section 89 of Civil Procedure Code, 1908 also supports settlement of disputes outside the court through the methods of Alternate Dispute Resolutions. Among the various forms of ADR, arbitration stands out as the most favourable mode. It is widely accepted that India prefers Ad Hoc Arbitration over Institutional Arbitration. Though various arbitral institutions have been set up in India, ad hoc arbitration continues to be the preferred mode of arbitration as in the Indian business community, people relied upon and put their faith on the ad hoc form of arbitration, and the concept of institutional arbitration is relatively new to the Indian community. The growth of institutional arbitration LatestLaws.com mechanism is inevitable. Also, the support of the Courts to the institutional arbitration mechanism gives it a huge boost. The Arbitration and Conciliation Act, 1996 is based on the UNCITRAL Model, which provides it with a lot of stability and uniformity, and it is at par with international standards of arbitration, which will surely be very beneficial for the institutional arbitration mechanism in the long run.

Challenges Faced By Institutional Arbitration In India

It is widely accepted that India prefers Ad Hoc Arbitration over Institutional Arbitration. Though various arbitral institutions have been set up in India, especially in the last five years, ad hoc arbitration continues to be the preferred mode of arbitration. Moreover, a large number of international arbitrations involving Indian parties are seated abroad and administered by foreign arbitral institution.¹²Challenges to Institutional Arbitration in India, examines the reasons why Institutional Arbitration is not the preferred mode of arbitration in India, with particular focus on:

- (1) misconceptions regarding institutional arbitration;
- (2) lack of governmental support for institutional arbitration;
- (3) lack of statutory backing for institutional arbitration; and
- (4) problems with delays and excessive judicial involvement in arbitration proceedings.

¹¹ <https://www.pinsentmasons.com/out-law/guides/institutional-vs-ad-hoc-arbitration>

¹² <https://legaldesire.com/concept-institutional-arbitration-need-hour/>

1. **Misconceptions Regarding Institutional Arbitration** – There are several misconceptions relating to institutional arbitration that exist among parties. One of these is related to costs. Parties consider Institutional Arbitration to be substantially more expensive than ad Hoc Arbitration, primarily because of the administrative fees payable to arbitral institutions.

This assessment is largely misconceived because:

- (a) numerous arbitral institutions charge very reasonable fees;
- (b) the use of an arbitral institution helps avoid disputes over procedural matters resulting in cost savings; and
- (c) the costs of an ad hoc arbitration can easily exceed the costs of an institutional arbitration in case of additional procedural hearings, adjournments, use of per-hearing fees, litigation arising from procedural infirmities in ad hoc arbitrations etc.

Parties also often believe that institutional arbitration is inflexible because arbitral institutions follow rules that take away exclusive autonomy of the parties over arbitration proceedings. However, most arbitral institutions that exist in the international scenario have made an attempt to balance institutionalisation with party autonomy, they only keep those issues which deal with the legality and integrity of proceedings out of the purview of party autonomy.

These misconceptions could be due to a general lack of awareness regarding institutional arbitration and its advantages. This could also be due to the lack of ¹³initiative on the part of arbitral institutions to promote their work and facilities as well as on the part of lawyers to properly advise parties about the advantages of institutional arbitration. Even when there is awareness on the existence of institutional arbitration as an option, there is often the misconception that this option is only available to bigger businesses and/or high value disputes.

2. **Governmental Support For Institutional Arbitration** – One of the reasons for a weak Institutional Arbitration framework in India is the lack of sufficient governmental support for the same over the years. While the government is the most prolific litigant in India, it

¹³ <http://www.legalserviceindia.com/article/l64-Ad-Hoc-and-Institutional-Arbitration.html>

can do more in this capacity to encourage institutional arbitration. The general conditions of contract used by the government and public sector undertakings often contain arbitration clauses, but these clauses usually do not expressly provide for institutional arbitration.

Further, the government policy on arbitration requires a relook if institutional arbitration is to become the norm, particularly for disputes valued at large amounts. For instance, if the government, being the biggest litigant, were to adopt institutional arbitration as regular practice, the sheer volume of cases moving to arbitral institutions would provide a powerful impetus to Institutional Arbitration.

There have recently been discussions and initiatives on the part of some state governments as well to promote Institutional Arbitration, citing that it would be more organised and cost-effective. One of the recommendations made by the Law Commission of India, was that trade and commerce bodies must establish chambers with their own rules. However, effectively, the government has so far focussed its attention on arbitration in general. To encourage Institutional Arbitration, special action aimed at the development of arbitral institutions is required.

- 3. Lack Of Statutory Backing For Institutional Arbitration** – The Act has been arbitration-agnostic, with no provisions specifically geared towards promoting institutional arbitration. This is in contrast with jurisdictions like Singapore, where the Singapore International Arbitration Centre (“SIAC”) is the default appointing authority for arbitrators under the International Arbitration Act, 1994 (“IAA”) which governs international arbitrations.

In fact, one of the provisions of the Act, Section 29A which was inserted by the 2015 Amendments, is perceived to have made arbitral institutions wary of arbitrations in India. Section 29A provides for strict timelines for completion of arbitration proceedings. This has been criticised as unduly restrictive of arbitral institutions which provide for timelines for different stages of the arbitration proceedings.^[13] The merits of such a view require examination in light of the endemic problem of delays plaguing arbitration in India.

4. **Problems With Delays And Excessive Judicial Involvement In Arbitration** – Delays in Indian courts and excessive judicial involvement in arbitration proceedings have resulted in India not being favoured as a seat for arbitration, and consequently stunted the growth of international arbitration (including institutional arbitration) in India. Parties often delay arbitration proceedings by initiating court proceedings before or during arbitration proceedings, or at the enforcement stage of the arbitral award. The high pendency of litigation before Indian courts means that arbitration-related court proceedings take a long time to be disposed of. The Commercial Courts Act sought to remedy this situation by setting up commercial courts at the district level or commercial divisions in high courts having ordinary original civil jurisdiction. These commercial courts /¹⁴divisions hear arbitration matters involving commercial disputes, amongst other commercial matters

However, an examination of the recent roster of the Bombay High Court, for example, indicates that commercial division judges often hear matters other than commercial matters, such as family law matters, juvenile justice-related matters etc. If commercial division judges are tasked with hearing matters other than commercial matters, it would detract from the legislative intent of speedy disposal of commercial matters, including arbitration matters. Additionally, we noted that the rotation policy of these High Courts was also applicable to commercial division judges. An excessively frequent rotation might hinder the creation of specialist arbitration judges who are well-versed in arbitration law and practice. Indian courts' tendency to frequently interfere in arbitration proceedings have also contributed to India's reputation as an 'arbitration-unfriendly' jurisdiction.

It is a well-known fact that courts in India are generally interventionist when it comes to regulating arbitration proceedings, whether it is at an initial stage of arbitration proceedings (such as the appointment of arbitrators, referral of disputes to arbitration or grant of interim relief) or at the enforcement stage. They have, despite good intentions and justifications, often misjudged the course to take, doing justice in the case at hand but laying down questionable precedent for the future. Further, inconsistent judicial precedent on several crucial issues] has contributed to uncertainty regarding the law, with severe consequences for India's reputation as a seat of arbitration.

¹⁴<http://www.legalserviceindia.com/article/I64-Ad-Hoc-and-Institutional-Arbitration.htm>

In addition to the above-mentioned negatives of Institutional arbitration, following are the challenges of the institutional arbitration in India.

1. Issues relating to administration and management of arbitral institutions.
2. Perceptions regarding arbitrators and expertise issues relating to resources and government support, lack of initial capital, poor and inadequate infrastructure, lack of properly trained administrative staff, lack of qualified arbitrators, etc.
3. Issues in developing India as an international arbitration seat.

High-Level Committee (HLC) To Review The Institutionalization Of Arbitration Mechanism In India¹⁵

To address the challenges and shortcoming of the Institutional arbitration, a High-Level Committee (HLC) to Review the Institutionalisation of Arbitration Mechanism in India under Mr Justice B N Srikrishna was constituted in 2016. The committee submitted its report on 3 August, 2017 in relation to institutional arbitration landscape in India the committee had put forward following view

1. Set up an autonomous body, styled the Arbitration Promotion Council of India (APCI), having representatives from all stakeholders for grading arbitral institutions in India.¹⁶
2. The APCI may
 - recognize professional institutes providing for accreditation of arbitrators.
 - hold training workshops and interact with law firms and law schools to train advocates with interest in arbitration.
 - create a specialist arbitration bar comprising of advocates dedicated to the field.
 - A good arbitration bar could help in the speedy and efficient conduct of arbitral proceedings.
- Creation of a specialist Arbitration Bench to deal with such commercial disputes, in the domain of the Courts.

¹⁵ <https://blog.ipleaders.in/institutional-arbitration-india/>

¹⁶ <https://blog.ipleaders.in/institutional-arbitration-india/>

1. Changes suggested in various provisions of the 2015 Amendments of the Arbitration and Conciliation Act with a view to making arbitration speedier and more efficacious and incorporate international best practices (immunity to arbitrators, confidentiality of arbitral proceedings, etc.).
2. The Committee is also of the opinion that the National Litigation Policy (NLP) must promote arbitration in government contracts.
3. Government's role – The Central Government and various state governments may stipulate in arbitration clauses/agreements in government contracts that only arbitrators accredited by any such recognised professional institute may be appointed as arbitrators under such arbitration clauses/agreements.

Comparative Analysis Of Indian Arbitration Institutions And Othersuccessful Arbitration Institutions Across The Globe¹⁷

Institutional Arbitration in a nation flourishes only when its arbitral institutions fulfill the basic requirements to successfully and effectively carry out an arbitration process. These requirements include:

Degree of Permanency – Disputes frequently arise many years after the making of the original commercial agreement, particularly in long term contracts. It is important that the institutions named in the arbitration clause should still be in existence when the dispute arises, otherwise, the arbitration agreement may prove to be “*inoperative or incapable of being performed*”, in the words of New York Convention, and the only recourse will be to the national court.¹⁸

It is easier to have confidence if the institution or the centre that is chosen has an established track record or, if it is a recent creation, has some reasonable guarantee of permanency. The International Chamber Commerce and London Court of International Arbitration established in 1923 and 1892 respectively have a track record of successful arbitrations over the course of their prolonged existence.

¹⁷ <https://legaldesire.com/concept-institutional-arbitration-need-hour/>

¹⁸ *ibid*

The Indian Council Arbitration was established in 1965. At the beginning of the year 2010, 574 arbitration cases were pending with the Council at different stages of arbitration proceedings but by the end of that year, 579 arbitration cases were under process including 20 arbitration matters which have been pending in courts pursuant to litigation between the parties. Thus, though not as successful as the ICC or the LCIA, the ICA has shown reasonable guarantee of permanency.

2. Modern Rules of Arbitration – The practice of International Commercial Arbitration changes as new laws and procedures come into existence, both nationally and internationally. It is important that the rules of arbitral institutions should be altered to reflect these changes and not rest in some comfortable time wrap. The ICA rules are in accordance with the IACA, 1996. For instance, the appointment of sole arbitrator or three arbitrators in the arbitral tribunal is in harmony with section 10(1) of the IACA, 1996.

3. Qualified Staff – One of the main objects of an arbitral institution is to assist arbitrators and the parties in the conduct of arbitration. This assistance may extend not only to explaining the rules, making sure that the time limits are observed, collecting fees, arranging visas and reserving accommodations, but also to advising on appropriate procedures by reference to past experience. It is a task that requires a combination of qualities, tact and diplomacy as well as legal knowledge and experience.

It is an area in which ICC sets the standard, with each arbitration being under the supervision of a designated “Counsel”, drawn from the ICC’ staff of experienced and multi-lingual lawyers. Though, the ICA does not have such a designated counsel to supervise arbitration, it does have a panel of around 1500 arbitrators with an extensive array of professional qualifications and expertise (legal and non-legal), guaranteeing a tribunal of the highest aptitude and proficiency. The ICA has access to the most eminent and experienced arbitrators and with the widest range of expertise from India, U.K., Singapore, France, USA, Malaysia, Germany and Belgium.

4. Reasonable Charges – The process of Arbitration is deemed efficacious if along with being expeditious and just, it is cost effective as well. Some arbitral institutions including the International Chamber of Commerce and the Indian Council of Arbitration assess their own administrative fees and expenses, and the fees payable to the arbitrator, by reference to a sliding scale which is based on the amounts in dispute. This has the advantage of certainty, in that the parties can find out at a reasonably early stage what the total cost of arbitration is likely to be.

5. Other institutions, such as the LCIA, assess their administrative costs and expenses, and the fees of the arbitrator, by reference to the time spent on the case.

Conclusion

The Arbitration Conciliation Act, 2015 has made an attempt to come to rescue in this regard by fixing fees and timeline for arbitration but the thorn in the flower is that courts are again to intervene to investigate as to who is to be blamed for the delay in meeting the timeline. Further, the High Courts have been provided the power to make rules for fees and the manner of payment which again would lead to lack of uniformity as each High Court of different states across India would have their own rules. Therefore, one needs to promote Institutional Arbitration in India.

It is universally acknowledged that, the quality of arbitration proceeding depends on the quality and skill of the arbitrators chosen and the Courts may not have the expertise in appointment of arbitrators who would be expert qua the subject matter in dispute. Moreover, in International Commercial Arbitrations, a national court judge understandably will have limited experience, expertise and resources for selecting suitable international arbitrators; particularly if practitioners from other countries must be selected. While having an arbitral institution making an appointment would be more beneficial as then they would be specifically organized to perform the function of selecting international arbitrators because of their day-to-day involvement in international arbitration and access to a pool of highly qualified arbitrators.

Also, Institutional Arbitration should be promoted where arbitration is carried out on a day to day basis say for instance 10 am – 4 pm so that there is no backlog of cases or delay in concluding the arbitration proceedings. Fees issue would also be taken care of by Institutional Arbitration as such Institutions have a fix fee schedule which will negate space for ambiguity

Further, steps can be taken to make the order passed by the Arbitrator under Institutional Arbitration open to appeal or review only by a President/Registrar(Head) of the Institution so as to negate parties taking the court route and the decision of the abovementioned authority can be made final and binding upon the parties and also the parties shall be taken to have waived any right to appeal or review in respect of any decision of the abovementioned authority to any state

court or other judicial authority. Besides, Court intervention in arbitration proceeding could be allowed only when arbitration agreement specifically provides for it.

We should make Institutional Arbitration an attractive hub for foreign parties and investors, certain things are to be kept in mind like a forum is attractive as a seat only if it has a judiciary that is supportive of arbitration. Further, the Institutions conducting Arbitrations in India should be provided ample resources and opportunities to participate in important international arbitration conferences and to host one to two major international arbitration conferences at least in a year so that it would invite worldwide participation/attention and exposure that can enhance the international image of Institutional Arbitrations in India and attract foreign parties to arbitrate in India.

Thus, Institutional Arbitrations should be given a green flag with patient expectations about its results rather than taking any hasty decisions because one thing is trustworthy that if countries like Singapore and Hong Kong can become Arbitration hubs on the strength of Institutional Arbitrations, so can India. India is on the track of establishing confidence in its legal system which is the fundamental condition for any country to become an international arbitration venue.

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