

INTERNATIONAL ARBITRATION TRIBUNAL: FUTURE, OPPORTUNITIES, AND CHALLENGES

Sreesha Balla *

ABSTRACT

The arbitration and conciliation act 1996 governs the law for arbitration in India it is based on the UNCITRAL model it's basically divided into four parts as per the reports of Niti ayog there were 29 million cases pending in the courts of India and it was said that it would take more than 300 years to clear them. Therefore arbitration is an alternative method of resolving disputes in civil matters. Indian council of arbitration is the apex jurisdiction in the country's arbitration matters and also has handled many cases. In India, arbitration is of two type's ad-hoc arbitration and institutional arbitration in ad-hoc arbitration the parties agree upon arbitration in the absence of an agreement, and in institutional arbitration agreement itself about referring to arbitration if any dispute arises between the parties. This article focus on international arbitration and the challenge faced in India, its opportunities for international arbitration in India, why arbitration is preferred over litigation, developments made by India in international arbitration center, and requirements for enforcement of arbitration judgments.

Keywords: International Arbitration, Arbitration, Conventions.

Journal of Legal Research and Juridical Sciences

INTRODUCTION

When one party is a national or ordinary inhabitant of any country who is a party to the agreement outside of India in substitute when there is a dispute between corporate entities where one entity is incorporated outside of India international arbitration is a recurrent practice for settling commercial disputes in India. The effective implementation of arbitration as the preferred dispute resolution method for commercial transactions in India has been helped along by several legislative measures and judicial pronouncements, including the most recent amendment, which mandates that the process be completed within 18 months. The idea of "party autonomy" was recently upheld by the Supreme Court of India, making it possible for even two domestic Indian parties to select an arbitration location outside of India. For non-commercial disputes, the most common procedure of dispute resolution is still to approach

*IFIM LAW SCHOOL, BENGALURU.

local courts. International arbitration is the preferred method of dispute resolution for domestic parties in India when the other contracting party is based outside of India. The impeccable reputation of international arbitration institutions like, The London Court of International Arbitration (LCIA), The International Chamber of Commerce (ICC), The Singapore International Arbitration Centre (SIAC), and The Hong Kong International Arbitration Centre (HKIAC) among others is another reason why international arbitration is chosen. Additionally, the foreign parties to the contract would rather undergo an impartial arbitration seat.¹

WHAT IS ARBITRATION?

Arbitration is an alternative way other than going to court with one or more (odd number) people who are chosen as arbitrators by both parties. "Arbitration means any arbitration whether or not administered by the permanent arbitral institution," states Sec 2(1) (a) of the 1996 Arbitration and Conciliation Act.² To put it another way, India's Arbitration and Conciliation Act of 1996 applies to all types of arbitration, regardless of their nature. This means that India has officially recognized all types of arbitration. There is no discovery, a simplified trial, and simplified rules for the evidence. Most of the time, arbitration hearings are not made public. Like a court order or decree, the parties must abide by the arbitral ruling

MAJOR ARBITRATION CENTERS IN THE WORLD

London Court of International Arbitration (LCIA): This was established in 1892 the London Court of International Arbitration is one of the best international centers for resolving commercial disputes. Arbitration and other alternative dispute resolution (ADR) processes, such as mediation, negotiation, etc., are administered in an impartial, flexible, and efficient manner by it. Regardless of location or legal framework. The arbitrators' services are covered by this center's hourly administrative costs. In 2009, the LCIA in India began operations.³ Its objective was to encourage the use of arbitration and additional dispute resolution methods by

¹Ravi singhania, Shilpa shah, Vikas goel, Shambhu sharan, 'Chambers and partners' (16th august 2022) <<https://practiceguides.chambers.com/practice-guides/international-arbitration-2022/india/trends-and-developments#:~:text=International%20arbitration%20is%20a%20common,entity%20is%20incorporated%20outside%20India.>> accessed 5th February 2023

² Arbitration and conciliation act 1996, s 2(1)(a)

³ Herbert smith freehills 8th February 2006 <<https://hsfnotes.com/arbitration/2016/02/08/lcia-india-to-end-operations/>> accessed on 6th February 2023

providing institutionally administered arbitration under India-specific rules through an Indian arbitral institution.⁴

Singapore international arbitration center (SIAC): This was established in 1991, the SIAC is one of the most dependable establishments for arbitration. It has provided its clients with services for settling disputes between parties since its inception. Today, they have a panel of approximately 500 arbitrators from more than 40 countries and territories. A cutting-edge procedural framework is provided by the SIAC Rules for the effective, professional, and enforceable settlement of parties from various jurisdictions and traditions in global conflicts of any magnitude and complexity. India and China account for the majority of the institute's non-Singaporean clients. The UNCITRAL rules form the majority of its rules.⁵

International chamber of commerce (ICC): The International Court of Arbitration of ICC was set up in Paris in 1923. It is for the most part portrayed as the world's driving global business discretion foundation. The International Tribunal of Justice's Arbitration Court doesn't really rule matters or act as an arbitrator. It is not a court or tribunal. It functions mainly as an administrative body that supervises and appoints within the guidelines of the International Chamber of Commerce. The highest-ranking commercial institution in the world, the ICC, has one of its most active India-based branches. Its membership includes numerous businesses, business chambers of commerce, trade associations, consultancies, law firms, and other institutions.⁶

The Indian Council of Arbitration: The efforts of the Indian government and important business groups like the Federation of Indian Chambers of Commerce and Industry resulted in the establishment of a national specialized arbitral tribunal in 1965. (FICCI), among others. The Indian Council of Arbitration is a New Delhi-based organization whose primary goal is to encourage amicable, quick, and inexpensive commercial dispute resolution through arbitration and conciliation, regardless of location.⁷

The Permanent Court of Arbitration: PCA was primarily concerned with international arbitration involving states and other similar entities. The Hague Conventions for the Pacific

⁴Mudit gupta, 'I pleaders' (16th June 2022) <<https://blog.ipleaders.in/all-about-the-arbitral-tribunal/>> accessed 6th February 2023

⁵ Ibid

⁶ Mudit gupta, 'I pleaders' (16th June 2022) <<https://blog.ipleaders.in/all-about-the-arbitral-tribunal/>> accessed 7th February 2023

⁷ Ibid

Settlement of International Disputes of 1899 and 1907 established it. An Administration Council that oversees policies and expenditures, Members of the Court, a panel of potential arbitrators who really are independent, and the International Bureau, which is overseen by the Secretary-General, make up the Permanent Court of Arbitration's organizational culture.⁸

The international arbitration center in Hong Kong (HKIAC): Hong Kong-based organization that is specialized in handling mediations, arbitrations, adjudications, domain name disputes, and other forms of dispute resolution. Although HKIAC is a Hong Kong-based organization, having offices in both Seoul and Shanghai. Additionally, the HKIAC's 2020 case statistics indicate that more than 70% of the arbitrations it receives are international.⁹

DEVELOPMENTS MADE IN INDIA WITH REGARD TO THE INTERNATIONAL ARBITRATION CENTRE

The International Arbitration and Mediation Centre (IAMC) were established in Telangana in November 2021 to help domestic and foreign investors resolve disputes quickly and affordably. New services like Med-Arb, emergency arbitration, and online arbitration and mediation are the goal of the center. The IAMC is intended to function similarly to SIAC, LCIA, and ICC institutes in international arbitration. The Indian Council of Arbitration (ICA), The Indian Institute of Arbitration and Mediation, the Nani Palkhivala Arbitration Center, the Delhi International Arbitration Centre, the Mumbai Centre for International Arbitration, and others also facilitate the conduct of arbitration proceedings. These organizations have their own set of guidelines. In addition, in keeping with the true spirit of promoting arbitration worldwide, the courts have attempted to ensure the enforcement of foreign awards.¹⁰

CHALLENGES FACED BY INDIA IN INTERNATIONAL ARBITRATION TRIBUNALS

Ad hoc arbitration varies from institutional arbitration in India due to the absence of an arbitral body to oversee the trials, prosecutions, and procedures. The parties to a dispute can decide to

⁸ Mudit gupta, 'I pleaders' (16th June 2022) <<https://blog.ipleaders.in/all-about-the-arbitral-tribunal> > accessed 7th February 2023

⁹ Mr Mak Charles H.W., 'Jus mundi' (12 July 2022) <<https://jusmundi.com/en/document/publication/en-hkiac>> accessed on 9th February 2023

¹⁰ Ravi singhania, Shilpa shah, Vikas goel, Shambhu sharan, 'Chambers and partners '(16 august 2022) <<https://practiceguides.chambers.com/practice-guides/international-arbitration-2022/india/trends-and-developments#:~:text=International%20arbitration%20is%20a%20common,entity%20is%20incorporated%20outside%20India> > accessed 8th February 2023

establish their own set of guidelines for ad hoc arbitration. These regulations cover the selection of the arbitrators, the arbitration adjudication process, the kind of award desired the arbitration rule of law, and the arbitration location. There are no restraints on the costs, and there are no deadlines set by the organization to speed up business. Furthermore, no arbitrators may be chosen from a special panel. There will nevertheless be problems with honesty and ethics because there are no penalties for dismissal for breaching the stipulated laws. There are no substitute arbitrators, and if a replacement is required during the arbitration, the parties must come to an agreement on a new arbitrator immediately, which greatly lengthens the process. There is also no well-before award review. There will undoubtedly be appeals as a result.¹¹

On the other hand, in institutional arbitrations, the arbitral rules are established by the nominated institution. The institution offers a panel of arbitrators for the parties to pick from, allowing for quick proceedings; it also has a listening provision, making it less complex and costly than trying to find an expensive arena ad hoc; it oversees fees; it waives fines for non-compliance; it conducts the pre-award analysis, restricting pleas and time-consuming processes; and it provides substitute arbitrators, who offer service that is both affordable and efficient.

IMPEDIMENTS IN THE ARBITRATION PROCESS

Journal of Legal Research and Juridical Sciences

Time and judicial intervention are major obstacles in Indigenous Arbitration: It is common knowledge that Indian arbitration is simultaneously quick and lengthy, unlike litigation. Given the Indian judicial system's "independence" under Section 5 of the 1996 Arbitration and Conciliation Act,¹² the backlog of cases does not support the use of arbitration. The arbitration process is prolonged by judicial intervention, particularly given that Indian courts are seeking adjournments during the proceedings. Arbitration between the parties is discouraged by the lengthy and time-consuming processes involved in award enforcement and challenge.¹³

¹¹ Sunaina jain, White code via mediation & arbitration centre

<<https://viamediationcentre.org/readnews/Mzc1/International-Arbitration-Challenges-in-India> > accessed on 11th February 2023

¹² The arbitration and conciliation act, 1996, s5

¹³ Sunaina jain, White code via mediation & arbitration centre

<<https://viamediationcentre.org/readnews/Mzc1/International-Arbitration-Challenges-in-India> > accessed on 11th February 2023

Price: The present dispute and the arbitrator's choice of institutional or ad hoc arbitration may have an impact on cost-effectiveness. The amount of pay paid to arbitrators and Party representatives will differ in both forms of arbitration. In ad hoc arbitration, the parties would be responsible for paying for expensive locations, frequently hotels. In formal arbitration, the parties would be responsible for covering legal fees associated with managing the arbitration. Arbitration is a less expensive option than litigation in many countries. However, because arbitration is a lengthy process, it is expensive in India.¹⁴

Enforcement: Enforcement: The 1958 New York Convention, which was included in Parts I and II of the 1996 Act, serves as a major reference for the enforcement of international arbitral judgments in India. According to Section 36 of the 1996 Act, "an arbitral award shall be enforced as a court order and may be imposed as a judgment in a suit under the norms of the Code of Civil Procedure, 1908," domestic awards are controlled. An award that would typically take six months to enforce at a foreign institution might take up to eight years to do so in India. Additionally, if the dispute's main issue cannot be resolved through mediation, "A New York Convention State may also refuse to accept or enforce arbitral rulings," If the dispute's subject matter cannot be resolved through arbitration under its national law, or if such acknowledgment or compliance would run opposite to the particular State's ideas of public policy. In Indian arbitration, "public policy" has grown to be a significant and ever-expanding notion, particularly in the appeals. Foreign investors are deterred from participating in Indian firms by regulation delays, which constitute a substantial barrier in Indian arbitration.¹⁵

Appeals: Under Article 34(2)(b)(ii) of the 1996 Act, a party to an arbitration may challenge an award if one or more of the following conditions are met: 1) the party is incapable; 2) the arbitration clause is null and void; 3) the party cannot present the case and was not given adequate notice; 4) the award exceeds the scope of the arbitration; and 5) the award is inconsistent with public policy. Indian courts have not yet established what "public policy" is, giving case-by-case arbitral appeals a debatable foundation. Arbitration thus takes longer and is more expensive. Additionally, it lessens the predictability of the results and does not give international investors' confidence in the Indian arbitration procedure.¹⁶

¹⁴ Ibid

¹⁵ Sunaina jain, White code via mediation & arbitration centre

<<https://viamediationcentre.org/readnews/Mzc1/International-Arbitration-Challenges-in-India> > accessed on

11th February 2023

¹⁶ Ibid

An arbitral judgment would be against India's public policy, the Court decided in *Renusagar Power Company v. General Electric Company*¹⁷, if it violated any of the following: 1) the basic principle of Indian law, 2) The Welfare of India, or 3) decency or justice. This ruling allows for inconsistent precedent and unpredictability by expanding the concept of "public policy" and by making it more difficult for officials and arbitrators to interpret the law. Any party may seek to appeal on the basis of "public policy" due to the ambiguity of the word, adding to the already overburdened judicial system. The international community has been led to be convinced that India is not a preferred location for global arbitration due to all of these significant obstacles in Indian arbitration. Despite this, India regularly strives to get the better of these obstacles and also adhere to legislation in a more objective and without any loopholes.¹⁸

ENFORCEMENT OF ARBITRAL JUDGMENTS IN INDIA AND ITS REQUIREMENTS

The CPC civil procedure code 1908 and Commercial Courts Act 2015 also regulate the execution of overseas decisions. The only enforceable judgments are all those obtained overseas (Explanation 2 to section 44A, CPC)¹⁹. For foreign decisions in commercial issues to be enforceable in India, they must be final, conclusive, and meet the requirements of section 13 of the CPC²⁰. The Arbitration and Conciliation Act of 1996's Section 48²¹ governs applications for enforcement of foreign arbitral awards. For it to be enforced, a foreign decision needs to be decisive. Section 13 of the CPC outlines the requirements for conclusiveness and states that a foreign judgment is conclusive as to any matter directly decided between the same parties, or between parties through whom they or any of them claim unless the judgment:

- Was not issued by a court with jurisdiction;
- Was not made based on how well the argument held up;
- Appears, on the surface of the proceedings, to be based on an inaccurate understanding of international law or a failure to acknowledge Indian law where such law is relevant;
- Was acquired by legal means that violated natural justice's basic precepts;

¹⁷ *Renusagar power company v/s General electric company*, (1994) IS.C.R.22

¹⁸ Sunaina jain, White code via mediation & arbitration centre

<<https://viamediationcentre.org/readnews/Mzc1/International-Arbitration-Challenges-in-India>> accessed on 10th February 2023

¹⁹ Code of civil procedure, 1908, s44A, for explanation 2.

²⁰ Code of civil procedure, 1908, s13.

²¹ The arbitration and conciliation act, 1996, s48

- Was obtained illegally.²²

WHY IS INTERNATIONAL ARBITRATION PREFERRED TO LITIGATION?

When compared to traditional court litigation, using international arbitration to settle a dispute has the following primary advantages:

- Compared to typical court action, international arbitration can settle conflicts more rapidly since there are fewer appeals of arbitration awards.
- Compared to traditional court litigation, international arbitration may be more cost-effective.
- International arbitration can deliver greater justice since many domestic courts are overworked and do not always allow judges adequate time to render high-quality rulings.
- Instead of choosing a generalist arbitrator, like many judges in domestic courts, clients can actively choose an expert in international arbitration.
- The decision to include processes like document production is one that the parties to a dispute must make in order to determine which approach is best for resolving an international dispute. Arbitration internationally is adaptable.
- Confidential international arbitration could be beneficial if the parties really want to keep their business engagement confidential or remain out of the public spotlight.
- Arbitration at the international level is unbiased. This is vital for global business dealings because it prevents one party from having an advantage in the "home court."
- Judges in some nations do not rule on their own. In international arbitration, an award cannot be enforced unless it is made independently.
- When a legal right is violated, International Arbitration is the only option, such as in investor-State disputes.²³

²² Atharv gupta, Anirudh gotey, Anupama hebbar, Keystone partners, Newdelhi, 1st march 2022 <[https://uk.practicallaw.thomsonreuters.com/9-619-4568?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#:~:text=Foreign%20arbitral%20awards%20are%20not,Awards%20Global%20Guide%3A%20India](https://uk.practicallaw.thomsonreuters.com/9-619-4568?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=Foreign%20arbitral%20awards%20are%20not,Awards%20Global%20Guide%3A%20India)> accessed on 17th march 203

²³ International Arbitration Information by Aceris Law LLC, <<https://www.international-arbitration-attorney.com/what-is-international-arbitration/#:~:text=The%20primary%20benefits%20of%20using,limited%20appeals%20from%20arbitration%20awards>> accessed on 12th February 2023

CONCLUSION

Even though India is still a long way off from becoming a global center for arbitration, taking small steps is better than nothing. Singapore international arbitration center (SIAC) was established in 1991, just a few years after India's arbitration Act was created in 1996. The current situation can be remedied by competent new amendments enacted through legislation. India's arbitration system will take time to catch up to international standards. It will be interesting to see how things develop, especially with the newly formed ACI (arbitration council of India) and (The New Delhi international arbitration center) NDIAC.

