

## COMPARATIVE ANALYSIS OF PROCEDURAL RULES IN NATIONAL AND INTERNATIONAL ARBITRATION

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### ABSTRACT

*Nationwide and worldwide, alternate dispute resolution is a process of arbitration that gives parties independence, efficiency, and flexibility in settling their disputes. Arbitration is a fast-moving alternative dispute resolution process that can be used for both domestic as well as international business disputes. This specific way of resolving disputes has survived throughout this long time as a result of the trust that the parties have shown in it, presenting to the arbitration for resolution of their disputes. The procedural laws governing domestic and international arbitration are compared in the essay. This essay aims to highlight the similarities, differences, and emerging trends in procedural rules across jurisdictions by examining important aspects such as the commencement of proceedings, appointment of arbitrators, conduct of proceedings, enforcement of awards, etc. It also examines the difficulties the Indian arbitration system faces, such as problems with judicial intervention, enforcement, undue delays, and the requirement for capacity building. Stakeholders in arbitration will obtain insights into the procedural frameworks influencing arbitration practice worldwide through this comparative analysis, as arbitration is becoming a more and more popular means for parties to resolve their domestic and international commercial disputes.*

**Keywords:** Arbitration, Procedural Rules, National Arbitration, International Arbitration, Comparative Analysis.

### INTRODUCTION

Arbitration is a fundamental component in the field of dispute resolution, providing a confidential and frequently practical substitute for conventional court proceedings. However, when comparing the national and international arenas, there are significant differences in the procedural rules governing arbitration. The legal framework of the host nation, which reflects its procedural subtleties and judicial ethos, usually binds national arbitration.

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On the other hand, international arbitration transcends national boundaries and adopts a more global strategy that aims to harmonise the various legal systems of the parties. This paper undertakes a comparative examination of these procedural rules, exploring their nuances and the significant consequences they have for the effectiveness and equity of the arbitration procedure. By dissecting the procedural frameworks, this discourse aims to illuminate the tailored strategies that underpin arbitration's adaptability across different legal landscapes.

However, significant differences exist between national and international arbitration procedures. Let's discuss them in brief: -

## PROCEDURAL RULES IN DOMESTIC ARBITRATION

### India

Arbitration as an instrument of conflict resolution is a blessing for countries like India, where there is a huge backlog of cases and justice is delivered quickly and efficiently. This is now possible in various cases, in which Arbitration in India is governed by the Arbitration and Conciliation Act 1996. Arbitration and Conciliation Act 1996 is a result of the UNCITRAL model law on international commercial arbitration 1985. The most crucial step in the arbitration process is drafting the arbitration agreement, which inadvertently determines how the other arbitration processes will go. The procedure for arbitration is outlined in Chapter V of the Act, which runs from Sections 18 to 27<sup>1</sup>. Any arbitration begins with an arbitration agreement and concludes with the finality and execution of the arbitral award. The most important aspects of the arbitral proceedings are the seat, place, and venue, as specified by Section 20(1)<sup>2</sup>. The seat of arbitration will determine which local law will apply. Subsequently, the submission of a statement of claim and defence, hearing, and written proceedings will commence, culminating in the granting of an arbitral award. The deadline for an arbitral award is typically twelve months from the conclusion of the pleadings; exceptions. Court intervention in this ADR procedure might be seen both as a backdrop and as a source of security for arbitration. Court intervention is provided in matters of enforcement of arbitral awards as per Section 36<sup>3</sup>, foreign awards, assistance in taking evidence under Section 27, etc. Limits to judicial intervention are

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<sup>1</sup> Arbitration and conciliation act 1996

<sup>2</sup> Arbitration and conciliation act 1996

<sup>3</sup> Arbitration and conciliation act 1996

provided under Section 5 of the Act. India's less stringent arbitration laws have made conducting business easier.

## USA

The USA is a developed nation with a number of business conflicts within and outside the nation. In this issue, the USA has also benefited a lot from the notion of alternative dispute resolution, which includes arbitration. The Federal Arbitration Act (FAA) is the fundamental legislation that governs arbitration procedures in the United States. Providing an exception to the applicability of the legislation on "maritime transaction" and commerce, as indicated in Section 1 of the act. Further stating proceeding by libel, further stating the procedure for awarding arbitrators, confirmation, jurisdiction, etc., further stating the procedure for appeal under Section 16 of the FAA<sup>4</sup>. Procedures related to foreign awards are as per the rules embedded in the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 1958.

## UK

The UK Arbitration Law, i.e., the Arbitration Act 1996, though not directly adopted UNICITRAL model law, is somehow based on UNICITRAL model law principal<sup>5</sup>, with the objective of providing fair resolution to disputes by an impartial tribunal and providing parties full autonomy in the processes. The process of arbitration is provided under Part I of the Act. Certain laws in this act are categorized as "mandatory" and "non-mandatory." The Arbitration Act 1996 applies where the seat of an arbitration proceeding is England, Wales, or Northern Ireland, and other provisions related to the scope of the act are provided under Section 2 of the act. Further, the act explains the procedure for the commencement of arbitral proceedings, where it states that parties are free to decide on the terms and conditions of the arbitral agreement. Further, the act provides provision for the appointment of an arbitrator under Section 16<sup>5</sup> of the act, and so on and on.

## COMPARATIVE ANALYSIS

United States the United Kingdom and INDIA have derived strong laws of arbitration through various conventions, like the UNICITRAL model law, the Panama convention, and the IBA

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<sup>4</sup> [https://en.wikipedia.org/wiki/Federal\\_Arbitration\\_Act](https://en.wikipedia.org/wiki/Federal_Arbitration_Act)

<sup>5</sup> Arbitration Act 1996 (UK)

Though their source are the same, there are still differences in the application and adoption of the procedures of arbitration, In US, arbitration is governed by the Federal Arbitration Act, whereas in UK it is governed by the Arbitration and Conciliation Act of 1996, and in India it is governed by Arbitration and Conciliation act 1996. Confidentiality is well maintained in English law; otherwise, despite the enactment of the Arbitration Conciliation Act act 1996, India has failed to bring confidentiality in arbitral proceedings.

## **PROCEDURAL RULES IN INTERNATIONAL ARBITRATION**

### **UNICITRAL**

UNICITRAL model law on international commercial arbitration (1985) with certain amendments in 2006 has been adopted by many countries. It has established a thorough set of procedural rules that are feasible for both parties to a dispute emerging from a commercial relationship and are frequently applied in administered and ad hoc arbitrations. The rule covers almost every aspect of the arbitral process. Provisions related to arbitral proceedings are given under Section III, from Articles 17 to 32.

### **ICC**

With an increase in international commercial trade, the number of cross-border disputes has also increased, providing feasible dispute resolution. The ICC has made various attempts to establish standard arbitration rules. Provisions regarding arbitral proceedings are provided in articles 16 to 30<sup>6</sup>, which include language, place of arbitration, conduct, hearing, etc. Further explanations about arbitral awards are given in articles 31 to 36, in which the process of how an award will be made, the time limit for the final award, and the correction or alteration of the award are given.

### **IBA**

The International Bar Association (IBA) has established a standard ruling pertaining to evidence in international arbitration and has introduced a "document production" procedure. Numerous international institutions had previously failed to provide strict laws pertaining to

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<sup>6</sup> 2021 arbitration rules: ICC, International Chamber of Commerce (2023b) ICC. Available at: <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/> (Accessed on 29 March, 2024)

the same, and despite being non-binding in nature, the IBA has influenced a lot worldwide<sup>7</sup>. In India, the 5th and 6th scheduled sessions were added under the Arbitration and Conciliation Act of 1996 through an amendment of 2015 based on IBA guidelines. IBA guidelines are the second most used soft law in international arbitration. The Supreme Court in the case of *voestalpine Schienen GmbH vs. Delhi Metro Rail Corporation*<sup>8</sup> held that “the seventh schedule is based on IBA guidelines, which are clearly regarded as a representation of international-based practice and are based on statute, case law, and juristic opinion from a cross-section on jurisdiction.

### COMPARATIVE ANALYSIS

While UNICITRAL rules provide for ad hoc arbitration, ICC rules provide for arbitration in an institutional setting.<sup>9</sup>

An arbitral tribunal has a final determination for the award under UNICITRAL rules, while under ICC rules of arbitration, the court of arbitration may examine the decision made the by arbitral tribunal and has the right to alter the award.

The guidelines for establishing evidence in the arbitration system have been briefly provided by IBA, although there was silence on the subject in the other two regulations.

UNICITRAL model laws sentence the approval of the arbitrators whereas, under ICC rules, approval of all the arbitration is necessary.<sup>10</sup>

### CHOOSING THE RIGHT FORUM

The optimal forum for resolving a dispute through arbitration hinges on several factors, including:

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<sup>7</sup> LLC AL, ‘IBA Rules and Guidelines Regarding International Arbitration: An Overview’ (Aceris Law, 29 March, 2021) <<https://www.acerislaw.com/iba-rules-and-guidelines-regarding-international-arbitration-an-overview/>> accessed March 29, 2024

<sup>8</sup> Concerns of Legitimacy in the Application of Soft Law in International Arbitration, 2 IALR (2020) 88

<sup>9</sup> ‘Uncitral Arbitration Rules: Survey and Comparison’ (<http://digitalcommons.law.umaryland.edu/mjil>) <<https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1137&context=mjil>> accessed March 29, 2024

<sup>10</sup> ‘Uncitral Arbitration Rules: Survey and Comparison’ (<http://digitalcommons.law.umaryland.edu/mjil>) <<https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1137&context=mjil>> accessed March 29, 2024

## **Nature of Dispute**

For complex, cross-border disputes with parties from different jurisdictions, international arbitration's flexibility and emphasis on party autonomy can be highly advantageous.

## **Desired Level of Control**

Parties seeking a more customized process with specific rules favour international arbitration.

## **Cost Considerations**

When cost is a primary concern, national arbitration might be a more suitable choice due to its often simpler procedures and reliance on local resources.

## **CHALLENGES**

### **Conflict of Laws**

One of the primary challenges is the conflict of laws, particularly when the governing law is absent in an arbitral agreement. This can lead to uncertainty and complexity in determining which laws apply to the arbitration agreement and proceedings<sup>11</sup>.

### **Procedural Autonomy**

While arbitrators have procedural powers to manage and conduct arbitration proceedings, these are often limited by the arbitration agreement and applicable arbitration rules. This can result in a lack of uniformity and predictability across different arbitrations<sup>12</sup>.

### **Public Policy Considerations**

National systems may allow for a wide degree of autonomy in arbitration, but this must be balanced with public policy considerations and the fundamental right to access a court under international human rights<sup>13</sup>.

<sup>11</sup> <https://ijrar.org/papers/IJRARTH00078.pdf>

<sup>12</sup> <https://www.lawjournals.org/assets/archives/2023/vol9issue1/9013-243.pdf>

<sup>13</sup> <https://www.lawjournals.org/assets/archives/2023/vol9issue1/9013-243.pdf>

## **Cultural and Economic Diversity**

The harmonization process may be challenged by concerns that it is insensitive to cultural and economic diversity, which is particularly relevant in international commercial arbitration where party autonomy is deeply entrenched.

## **Jurisdictional Challenges**

Jurisdictional challenges can arise at different stages of the arbitral process, affecting the procedural considerations and potentially leading to disputes over the arbitral tribunals.

## **Lack of efficiency**

It leads to the non-exploration of potential reforms to address procedural complexities and enhance the effectiveness of arbitration.

These challenges underscore the need for a careful balance between the flexibility and autonomy of arbitration and the desire for a harmonized, efficient, predictable dispute-resolution process.

## **CONCLUSION**

In conclusion, the comparative analysis of procedural rules in national and international arbitration underscores the complexity and diversity inherent in dispute resolution mechanisms across the globe. National arbitration procedures are deeply rooted in the legal traditions and cultural norms of their respective jurisdictions, offering a sense of familiarity and predictability for domestic parties. On the other hand, international arbitration provides a more fluid and adaptable framework, designed to bridge the gaps between different legal systems and facilitate a neutral ground for cross-border disputes. Despite the challenges of harmonizing these diverse procedural rules, the overarching goal remains the same: to provide a fair, efficient, and effective resolution process. As the world becomes increasingly interconnected, the evolution of arbitration procedures will continue to reflect the dynamic interplay between the steadfastness of national practices and the innovative flexibility of international norms. This delicate balance is crucial for maintaining the integrity and appeal of arbitration as a preferred method of resolving complex disputes in an ever-changing global landscape.